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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT JULIAN-BORCHAK WILLIAMS,

Plaintiff,

vs.

Civil Action

No. 21-10827

HON. LAURIE J. MICHELSON

CITY OF DETROIT, a municipal
corporation, DETROIT POLICE CHIEF
JAMES CRAIG, in his official capacity
and DETECTIVE DONALD BUSSA, in his
individual capacity,

Defendants,

_____ /

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The Deposition of
DEPUTY POLICE CHIEF FRANKLIN D. HAYES,
Taken at 2 Woodward Avenue, Suite 500,
Detroit, Michigan,
Commencing at 10:23 a.m.,
Thursday, February 2, 2023,
Before Dale E. Rose, CSR-0087

1 APPEARANCES:

2

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19 ALSO PRESENT:

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21 MS. JULIA KAHN

22 MR. WILLIAM ELLIS

23

24

25

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1 Detroit, Michigan
2 Thursday, February 2, 2023
3 About 10:23 a.m.

4 DEPUTY POLICE CHIEF FRANKLIN D. HAYES,
5 having first been duly sworn, was examined and
6 testified on his oath as follows:

7 EXAMINATION

8 BY MR. WESSLER:

9 Q. Good morning.

10 **A. Good morning.**

11 Q. Thanks for being here. My name is Nate Wessler,
12 I'm one of the attorneys for Robert Williams in
13 this lawsuit.

14 Have you had your deposition taken
15 before?

16 **A. Possibly once I believe.**

17 Q. Well, let me just set some ground rules and kind
18 of common expectations before we get going.

19 So do you understand that you're under
20 oath today as if you were in a courtroom?

21 **A. I do.**

22 Q. And in order to have a clean transcript can you
23 please wait until I finish a question before you
24 answer and I'll also try not to interrupt you,
25 does that make sense?

1 **A. Yes.**

2 Q. Since we have a court report taking down a
3 transcript, I'll need you to provide audible
4 "yes" or "no" answers. Shaking your head or
5 "uh-huh"s won't make a clean transcript, does
6 that make sense?

7 **A. Yes.**

8 Q. If you don't understand a question, please ask
9 for clarification. If you don't ask, I'll just
10 assume that you understand the question, makes
11 sense?

12 **A. Understood.**

13 Q. If you want to take a break at any time, you're
14 very welcome to do so. I just ask that you
15 please finish answering a pending question and
16 then we can break for as long as you need to,
17 make sense?

18 **A. Understood.**

19 Q. Is there anything today that would prevent you
20 from thinking clearly or answering truthfully?

21 **A. No.**

22 Q. And then, finally, Mr. Cunningham might object to
23 some of my questions. That's fine, but unless he
24 instructs you not to answer, please go ahead and
25 still answer the question, does that make sense?

1 **A. I'll be guided by counsel, yes.**

2 Q. Before we get going, I'd like to go over a few
3 terms I'll be using in this deposition just to
4 make sure we have a common understanding.

5 So if I say DPD, you understand I'm
6 referring to the Detroit Police Department?

7 **A. Yes.**

8 Q. And if I say the CIU, that means DPD's Crime
9 Intelligence Unit?

10 **A. Yes.**

11 Q. If I say MSP, you understand that's the Michigan
12 State Police?

13 **A. Yes.**

14 Q. And if I refer to the Shinola investigation, you
15 understand that that's the investigation into the
16 theft of watches at a Shinola store in October,
17 2018 that culminated in the arrest of my client,
18 Robert Williams?

19 **A. Yes.**

20 Q. If I refer to FRT, I'll be talking about facial
21 recognition technology, understand that?

22 **A. Yes.**

23 Q. And then by facial recognition technology I mean
24 a computer program or an algorithm that takes an
25 input photo, compares it against one or more

1 stored images and attempts to produce a output
2 with one or more possible matches, does that
3 sound right?

4 **A. Yes.**

5 Q. And then finally if I talk about a probe image or
6 a probe photo you understand that I'm talking
7 about the image or the photo that's fed into the
8 facial recognition system in order to be compared
9 against one or more photos for a possible match?

10 **A. Yes.**

11 Q. Have you been designated as a representative of
12 the Detroit Police Department or the City of
13 Detroit in a past deposition?

14 **A. Yes.**

15 Q. So you understand that you're here and you're
16 designated to testify on behalf of the City
17 today?

18 **A. Yes.**

19 Q. And you understand that the answers you provide
20 are binding on the City, correct?

21 **A. Yes.**

22 MR. CUNNINGHAM: Let me just say on the
23 record that Dep. Chief Hayes is testifying in his
24 capacity as Deputy Chief.

25 DEPOSITION EXHIBIT 1

1 notice of 30(b)(6) deposition

2 WAS MARKED FOR IDENTIFICATION.

3 Q. Well, let's start with the first exhibit here.

4 We'll mark this as Exhibit 1. Do you recognize
5 this document?

6 **A. No.**

7 Q. This is the Notice of Deposition for the
8 City of Detroit as a Defendant in this lawsuit
9 and it lists the topics on which the Plaintiff
10 has requested the City to produce what's called a
11 30(b)(6) deponent.

12 Can you just take a look at it and tell
13 me if that's in accordance with what it says?

14 **A. Yes, it does.**

15 Q. Could you please turn in the documents and read
16 Items 2, 11 and 13 and just read them to
17 yourself.

18 **A. I'm sorry, 2, and what were the other two?**

19 Q. 11?

20 **A. And the last.**

21 Q. And 13 and just let me know when you're done
22 reading; take your time.

23 **A. Yes.**

24 Q. Do you understand that you have been designated
25 to testify on behalf of the City of Detroit on

1 these three topics today?

2 **A. Yes.**

3 Q. And are you prepared to testify today on behalf
4 of the City of Detroit on all three of these
5 topics?

6 **A. To the best of my ability, yes.**

7 Q. And you're prepared to provide complete and
8 knowledgeable answers on each of these three
9 topics?

10 **A. To the best of my ability, yes.**

11 Q. Thank you. You can put this to the side.

12 Can you tell me without revealing the
13 content of any conversation you've had with
14 Mr. Cunningham, can you tell me what you did to
15 prepare for this deposition?

16 **A. I have reviewed policy as it pertains to facial
17 recognition technology.**

18 Q. Anything else you did to prepare?

19 **A. No.**

20 Q. Did you speak to anyone other than Mr. Cunningham
21 ahead of this deposition about preparing for it?

22 **A. Yes.**

23 Q. Who did you speak to?

24 **A. I reached out to the Planning entity of the
25 Detroit Police Department, they are the keeper of**

1 policy and I just wanted to ensure that I had the
2 correct, the up-to-date and pertinent policies
3 pertaining to facial recognition technology.

4 Q. And you said you reviewed that policy, the
5 current policy?

6 A. Yes.

7 Q. Did you review any other policies?

8 A. Specifically -- normally I read policy every day,
9 but so I have -- during this time yes, I've read
10 other policies, but my focus was on this facial
11 recognition technology.

12 Q. And are you familiar with the previous policies
13 on facial recognition technology, the ones that
14 are not still operative today?

15 A. Correct, I've seen those as well.

16 Q. And did you bring any documents or notes with you
17 today?

18 A. I did not, I brought a notepad.

19 Q. I want to start with a few questions about your
20 employment, background, and your
21 responsibilities.

22 Who is your current employer?

23 A. City of Detroit.

24 Q. And how long have you been with the Detroit
25 Police Department?

- 1 **A. It will be 24 years in June.**
- 2 Q. What did you do before DPD?
- 3 **A. High school student.**
- 4 Q. Can you please walk me through the positions
5 you've had at the department?
- 6 **A. Yes, I worked my way up, so a police officer,
7 sergeant, police lieutenant, police captain,
8 police commander and my current role police
9 deputy chief.**
- 10 Q. And at one point were you the commander of the
11 3rd Precinct?
- 12 **A. Yes, I was.**
- 13 Q. Can you tell me the years you were?
- 14 **A. From March of 2019 until June of 2021.**
- 15 Q. 2021?
- 16 **A. Yes.**
- 17 Q. And so were you the commander of the 3rd Precinct
18 at the time the Shinola investigation happened?
- 19 **A. I inherited it. The incident happened prior to
20 my arrival.**
- 21 Q. You said that you started in March of 2013 in the
22 3rd Precinct?
- 23 **A. 2019.**
- 24 Q. 2019, I'm sorry. So you were the commander of
25 the 3rd Precinct during a portion of that

1 investigation?

2 **A. Yes, sir.**

3 Q. And can you just say again your current position?

4 **A. Police deputy chief.**

5 Q. What are your responsibilities as a deputy chief?

6 **A. I oversee our Crime Strategies Bureau. It**
7 **consists of our Metropolitan Division, our**
8 **Communications Section, our Crime Intelligence**
9 **and Community Policing.**

10 Q. And have you ever worked in the Crime
11 Intelligence Unit before?

12 **A. No, sir.**

13 Q. But you supervise them now?

14 **A. That's correct.**

15 Q. Let's get into the meat of our conversation. DPD
16 operates facial recognition technology, correct?

17 **A. We utilize it.**

18 Q. Can you tell me when DPD began utilizing facial
19 recognition technology?

20 **A. To my understanding it was 2018, 2019, somewhere**
21 **in that window.**

22 **DEPOSITION EXHIBIT 2**

23 **"Policy Review, Facial**

24 **Recognition Technology"**

25 **WAS MARKED FOR IDENTIFICATION.**

1 Q. 2018 or 2019. I'm going to introduce an exhibit.
2 This will be Exhibit 2.

3 Do you recognize this document?

4 **A. No.**

5 Q. This is a document we received in discovery from
6 the City in this lawsuit. The first page is
7 labeled "Policy Review of Facial Recognition
8 Technology", is that correct?

9 **A. Yes.**

10 Q. And so if you can please turn to Page 7 -- those
11 pages don't have numbers, but it's a page that
12 says "DPD's Policy Timeline" at the top. That's
13 the one. And at the first bullet point it says,
14 "DPD began using facial recognition technology
15 in 2016 using the State's system. At the time
16 DPD had no policy directives specific to DPD's
17 use of the technology."

18 Did I read that accurately?

19 **A. That's what it says.**

20 Q. So do you have any reason to think this is
21 incorrect, that the City started utilizing facial
22 recognition technology in 2016?

23 **A. I don't.**

24 Q. What's the basis of you saying a minute ago that
25 you thought it was 2018 or '19?

1 A. My reference to policy, the first iteration of
2 policy is when I saw that reference of dates.

3 Q. So this document says that DPD started using the
4 technology prior to a policy directive in place,
5 is that right?

6 A. Yes.

7 Q. Do you know what year the department started
8 using facial recognition technology?

9 A. According to this document, 2016.

10 DEPOSITION EXHIBIT 3

11 e-mails

12 WAS MARKED FOR IDENTIFICATION.

13 Q. Let's put this aside and mark a third exhibit.

14 Have you ever seen this document
15 before?

16 A. No, sir, I have not.

17 Q. So this is an e-mail from someone named Angela
18 Yankowski at MSP to Andrew Rutebuka. And if you
19 look at the very last page you'll see a signature
20 block from Mr. Rutebuka which says that he has a
21 role as the executive manager of the Crime
22 Intelligence Unit.

23 Do you know Mr. Rutebuka?

24 A. I do.

25 Q. So the first page is an e-mail to Mr. Rutebuka

1 from Ms. Yankowski at MSP and you see the very
2 first sentence on the first page it says -- I'm
3 sorry, let's actually go to -- so on Page 2 at
4 the bottom there's an e-mail from Mr. Rutebuka to
5 Ms. Yankowski at MSP and it says,

6 "Were you able to find the number of
7 FR requests we've submitted and the
8 numbers of searches that have been
9 processed? We're looking to use that
10 to compare it to our records."

11 Did I read that correctly?

12 MR. CUNNINGHAM: What are you looking
13 at?

14 MR. WESSLER: Page 2 at the very
15 bottom, there's an e-mail at the bottom of Page
16 2, so one in your left -- that's right.

17 BY MR. WESSLER:

18 Q. Okay and now if you flip back to the first page
19 of this packet and this e-mail at the top from
20 Ms. Yankowski to Mr. Rutebuka says,

21 "From May 15, 2014 through July 16,
22 2019, MSP SNAP Unit facial examiners
23 have processed 377 SNAP Case
24 Management Facial Recognition (CMFR)
25 search requests for the Detroit Police

1 Department."

2 Did I read that okay?

3 **A. Yes.**

4 Q. And then if you skip down to the third
5 paragraph it starts saying,

6 "From September 16, 2014 to July 16,
7 2019 the DPD has used the SNAP CMFR
8 tool a total of 4,078 times (note that
9 several of those search sessions are
10 duplicate searches of the same photo
11 and/or subject)."

12 Did I read that sentence correctly?

13 **A. Yes.**

14 Q. And this e-mail is from July, 2019 if you look at
15 the top, correct?

16 **A. Yes.**

17 Q. So do you know why the MSP would have given a
18 date range starting in 2014 for how many facial
19 recognition searches DPD conducted?

20 **A. I don't.**

21 Q. Let's set that aside for the moment.

22 Does DPD have a contract with a company
23 that provides facial recognition software?

24 **A. Yes.**

25 Q. What company is that?

1 A. DataWorks.

2 Q. Is DataWorks the only company that DPD has
3 contracted with for facial recognition
4 technology?

5 A. I don't know.

6 Q. So you don't know whether DPD has ever used any
7 other facial recognition program or algorithm?

8 A. I do not.

9 Q. Are you familiar with a facial recognition
10 technology company called Clearview AI?

11 A. No.

12 Q. You've never heard of that company?

13 A. I have not.

14 DEPOSITION EXHIBIT 4

15 BuzzFeed.News article

16 WAS MARKED FOR IDENTIFICATION.

17 Q. I'm going to mark a fourth exhibit.

18 Have you ever seen this article before?

19 A. No.

20 Q. This is an article from BuzzFeed News entitled ,
21 "Your Local Police Department Might Have Used
22 This Facial Recognition Tool to Surveil you, Find
23 Out Here."

24 Did I read that title correctly?

25 A. Yes.

1 Q. And if you turn to -- the formatting is a little
2 odd here -- from an internet article, but if you
3 turn to the fifth page of this article -- that
4 one there -- you'll see at the top it says, "Use
5 the table below to search for US taxpayer-funded
6 entities that have used or tried Clearview AI as
7 of February, 2020 based on internal data."

8 Did I read that correct?

9 **A. Yes.**

10 Q. And then you'll see in this chart the first entry
11 says Detroit Police Department, correct?

12 **A. Yes.**

13 Q. And then the search count column says 11 through
14 50, is that correct?

15 **A. That's what it says, yes.**

16 Q. Do you understand that to mean that someone or
17 multiple individuals affiliated with DPD
18 conducted between 11 and 50 searches using the
19 Clearview system?

20 **A. I cannot verify this article.**

21 Q. Do you have any reason to believe this database
22 is incorrect?

23 **A. I don't have anything to believe it is correct.**

24 Q. Do you know whether DPD ever had a contract with
25 Clearview AI for facial recognition?

1 A. I do not.

2 Q. Could DPD personnel have used Clearview without
3 the knowledge of department leadership?

4 A. I can't answer. Did someone go outside the
5 policy, I don't know that answer, sir.

6 Q. Would it have been outside of policy at all
7 points?

8 A. This article is dated 2020. Again, I don't know
9 if someone used this technology that we don't
10 have a contract with or that I'm unaware that we
11 had a contract with.

12 Q. So it would be possible for DPD personnel to have
13 used this company without knowledge of senior
14 leadership?

15 A. That's kind of an open-ended question. It's
16 possible anything could happen, but I can't say
17 that they did and can't confirm that they did.

18 Q. And we'll talk about policy later, so you can put
19 that aside.

20 So can you tell me when DPD first began
21 using DataWorks?

22 A. I don't have the date of the contract, sir.

23 MR. CUNNINGHAM: Let's take a break for
24 a minute.

25 MR. WESSLER: Yes.

1 (A recess was taken).

2 DEPOSITION EXHIBIT 5

3 contract, City of Detroit and DataWorks Plus

4 WAS MARKED FOR IDENTIFICATION

5 BY MR. WESSLER:

6 Q. I'm going to introduce Exhibit 5.

7 Have you seen this document before?

8 **A. I have not.**

9 Q. The first page says "Professional Services
10 Contract between City of Detroit, Michigan and
11 DataWorks Plus," is that correct?

12 **A. Yes.**

13 Q. And then if you turn -- so the page numbers are
14 these blue numbers in the center at the bottom.

15 If you turn to Page 18457, do you see
16 this contract is dated 7-25-2017?

17 **A. Yes.**

18 Q. So looking at this is it your understanding that
19 the City of Detroit executed a contract to use
20 DataWorks in 2017?

21 **A. They bought it in 2017, yes.**

22 Q. Can you please describe what DataWorks does?

23 **A. They are the technology that we utilize that goes**
24 **through the sorting process once the sample**
25 **photos are put into facial recognition and then**

1 they would give us pieces to see if we garnered
2 that investigative lead as -- we get that and
3 then move out in the policy for ultimately a
4 confirmation that the person that we identified
5 is the person that we put into the system for
6 lack of a better term.

7 Q. Would it be correct to describe DataWorks as a
8 platform that integrates facial recognition
9 algorithms from other companies?

10 A. I can't speak to those other companies.

11 Q. So do you know what facial recognition algorithm
12 or algorithm DPD uses through DataWorks?

13 A. Could you -- in more detail.

14 DEPOSITION EXHIBIT 6
15 DataWorks solicitation
16 WAS MARKED FOR IDENTIFICATION.

17 Q. So let's introduce another exhibit. This is No.
18 6. This document -- have you seen this document
19 before?

20 A. No, sir.

21 Q. So this document is solicitation for facial
22 recognition and real time video feed facial
23 recognition from DataWorks Plus.

24 Does that accord with what's on the
25 cover page?

1 **A. Yes, that's what this says.**

2 Q. And if you look at the second page you'll see
3 this is a cover letter describing this as a
4 formal proposal in response to the City of
5 Detroit and Detroit Police Department's call for
6 facial recognition software?

7 **A. Yes.**

8 Q. And if you turn to Page 7 you'll see there's a
9 column of blue circles in the center and to the
10 right of the top circle it says, "We are
11 proposing the ROC and NEC facial matching
12 engine...", did I read that correctly?

13 **A. I'm sorry -- oh, very first one -- yes.**

14 Q. Do you understand what that means?

15 **A. No.**

16 MR. WESSLER: Mr. Cunningham, I think
17 this is probably a topic that we will --
18 something else that we will want to speak to
19 somebody.

20 MR. CUNNINGHAM: Okay.

21 BY MR. WESSLER:

22 Q. So do you have knowledge of what versions of
23 facial recognition algorithms the City of Detroit
24 DataWorks platform uses?

25 **A. I am not a subject matter expert on that, no.**

1 Q. Does DPD have access to the FBI's facial
2 recognition system?

3 **A. I don't know, we utilize the State.**

4 Q. So is that a "no" or that you don't know?

5 **A. I don't know.**

6 Q. DPD's version of DataWorks provides the ability
7 to perform a facial recognition search on a
8 static probe image, is that correct?

9 **A. Yes.**

10 Q. Are you aware that when DPD first contracted with
11 DataWorks DPD purchased the ability to run facial
12 recognition searches on live video?

13 **A. I'm unaware of that. I know we do not use that,
14 we only use static images, I do not use live
15 feed. In this document I see features and
16 functions just because it's a feature that they
17 have or are proposing. This is a proposal.**

18 **We do not utilize that feature of that
19 technology.**

20 Q. I understand. Look back at Exhibit 5, please,
21 the contract. If you turn to the page right
22 after those signatures, it's No. 18458, and then
23 it says "Scope of Services" at the top?

24 **A. Yes.**

25 Q. And then if you look on the back side of that

1 page there's a chart.

2 MR. CUNNINGHAM: 18459?

3 MR. WESSLER: That's right.

4 BY MR. WESSLER:

5 Q. And you'll see there are some data fields, the
6 top it says PhotoManager Face Plus Database
7 Application, 500,000 enrolled records.

8 It says -- talks about one time batch
9 enrollment. And then fourth field says, "Real
10 Time Screening Application Server Software."
11 There's a little asterisk and it says "monitors
12 100 concurrent video feeds."

13 Did I read that correctly?

14 **A. Yes.**

15 Q. And then to the right there's a column with
16 numbers in it and there's a "1" in that column,
17 correct?

18 **A. Yes.**

19 Q. So does this suggest to you that DPD did in fact
20 purchase real time facial recognition capacity
21 from DataWorks in 2017?

22 **A. It appears, yes.**

23 Q. Do you know whether DPD still has that technical
24 capability even if policy prohibits officers or
25 employees from using it?

1 **A. I can't speak to that, I don't know.**

2 Q. Do you know whether DPD personnel who used the
3 DataWorks platform can manipulate images, probe
4 images, prior to submitting them for a facial
5 recognition search?

6 **A. Could you explain?**

7 Q. So, for example, to change the brightness of an
8 image?

9 **A. Of a photo?**

10 Q. Of a photo being -- that will be submitted as a
11 probe photo for a search?

12 **A. I can't say that a member ever did that.**

13 Q. I'm asking about the capability using the
14 DataWorks platform. Do you know what a CIU
15 member who is using DataWorks is able to do with
16 a photo using that platform?

17 **A. Not with the platform. Once it's input, once
18 they get that static photo they would put it into
19 the system. Once it's in the system it can't be
20 -- that photo is what they would go off of.**

21 Q. Can we turn back to -- this is the DataWorks
22 solicitation, Exhibit 6 to Page 20.

23 And do you see up at the top it says
24 1.9.2, Image Enhancement. It says,

25 "Images can be edited to provide even

1 more accurate results by marking the
2 eye locations, cropping the images to
3 be similar, correcting image
4 brightness and other basic editing
5 functions. Pose correction in
6 lighting normalization is also
7 available allowing you to search
8 facial images that were once
9 unsearchable."

10 Did I read that accurately?

11 **A. You read that from the solicitation, but I can't**
12 **say that we bought this feature. They just talk**
13 **about the technology that it could do.**

14 Q. I understand. We can put this to the side.

15 What image database does DPD's
16 DataWorks platform perform facial recognition
17 searches against?

18 **A. SNAP.**

19 Q. Do you know what photos are in SNAP, what types
20 of photos are in SNAP?

21 **A. My understanding is public database photos from**
22 **the State of Michigan.**

23 Q. Does SNAP include driver's license photos?

24 **A. My understanding, yes.**

25 Q. State ID photos?

1 A. Yes.

2 Q. Photos from the Department of Corrections?

3 A. I'm not sure; I believe so.

4 Q. And how about photos from booking or arrests by
5 local police departments?

6 A. I don't know.

7 Q. Of the photos in SNAP do you know whether DPD can
8 access that whole database for facial recognition
9 search or only a subset of it?

10 A. I don't know.

11 Q. Do you know whether arrest photos from the
12 Detroit Police Department are able to be searched
13 through DataWorks?

14 A. I don't know.

15 MR. WESSLER: This is another area
16 where we're going to need somebody who's more
17 familiar I think with how it works.

18 MR. CUNNINGHAM: Okay, we'll see.

19 BY MR. WESSLER:

20 Q. Do you know how many photos are in the matching
21 database that DPD has access to?

22 A. I don't have that answer.

23 Q. Can we look at Exhibit 5 the contract with
24 DataWorks again and we are looking at that same
25 page we were looking at a moment ago, this is

1 18459 at the bottom.

2 Where at the top it says "Facial
3 Recognition Software" and then PhotoManager, Face
4 Plus Database and then the third line says --
5 there's an asterisk and then it says "500,000
6 enrolled records".

7 Did I read that correctly?

8 **A. That's what it says, yes.**

9 Q. Do you understand what that means?

10 **A. That their -- can you expound?**

11 Q. Does that mean to you that there are 500,000
12 photos available for DPD to search against with a
13 facial recognition search through DataWorks?

14 **A. That number seems -- I'm not sure of the
15 definition of this and I don't know how many are
16 in SNAP, so I can't answer that. You have to
17 find someone better prepared.**

18 Q. Are you aware that the SNAP database contains
19 both expired and current driver's license photos
20 of Michigan residents?

21 **A. I am not.**

22 Q. Do you know whether personnel in CIU who operate
23 the DataWorks platform are aware of that?

24 **A. I don't know.**

25 Q. Do you know whether Robert Williams' arrest photo

1 from when he was arrested in this matter is
2 currently in the SNAP database?

3 **A. I don't know.**

4 Q. Do you know whether DPD can request that MSP
5 delete images from the SNAP database?

6 **A. Can we ask? Are you asking --**

7 Q. The way I phrase it is can you ask and I'll ask a
8 follow-up. Can you ask?

9 **A. I'm sure we can ask anything.**

10 Q. Do you know whether MSP will delete photos upon
11 the request of DPD from the SNAP database?

12 **A. I don't know whether what MSP's policy is.**

13 Q. Do you know whether -- strike that, we'll move
14 on.

15 MR. WESSLER: This is another area
16 where I think we will want more information.

17 BY MR. WESSLER:

18 Q. Can you tell me what is the DPD Crime
19 Intelligence Unit?

20 **A. So that is where we manage our technology. From
21 within it houses certain functions, Real Time
22 Crime Center, Virtual Patrol, utilizing different
23 camera assets around the city.**

24 **Operation of Operation Green Light-**
25 **Detroit, license plate reader technology, all the**

1 **technology we use, that is our hub for it.**

2 Q. And forgive me if you just said this, but just to
3 confirm CIU is the unit in DPD that runs facial
4 recognition searches through DataWorks?

5 **A. Yes.**

6 Q. Do you know why CIU was the unit that was chosen
7 to operate the facial recognition search
8 capability?

9 **A. That is where we center all of our technology**
10 **that we use for the department, that's where it's**
11 **managed through.**

12 Q. How many people work at CIU?

13 **A. Approximately 84.**

14 Q. And are some of those civilian positions?

15 **A. Yes.**

16 Q. Are there detectives on the CIU staff?

17 **A. Yes.**

18 Q. Do you know about how many detectives?

19 **A. As of this month I believe we have three**
20 **detectives currently assigned to CIU.**

21 Q. And would those detectives have received the same
22 training that is typical for detectives in the
23 broader department?

24 **A. Yes.**

25 Q. And how about officers, commissioned officers --

1 maybe I'm not using that right -- but are there
2 -- thank you, sworn members of the department who
3 are also on staff of a lower rank than detective?

4 **A. Yes.**

5 Q. Do you have an estimate of how many of those
6 there might be?

7 **A. Approximately 15.**

8 Q. So can you please describe the process when a DPD
9 investigator, for example detective, wants to
10 have a facial recognition search run on an image,
11 what do they do?

12 **A. So first of all once it gets to -- you know it**
13 **will quality, so there are certain things that we**
14 **will run for you. Just can't run for traffic or**
15 **you can't run for a misdemeanor. Once it's there**
16 **we will get a copy of an image. From that it**
17 **would be submitted into the system.**

18 If we get back an investigative lead
19 once the analyst or the person that runs it comes
20 back we will have a second manual look to see if
21 it is in fact an investigative lead.

22 Or if it is that person, then we would
23 have a supervisor to verify that from those
24 findings. We will then either share that we have
25 a positive lead or if we find nothing on what

1 comes back, if it is not, if it's not and we
2 can't verify that, then we would report that we
3 have a negative lead.

4 Q. And if at the end of that internal process with
5 the three members of the CIU there's a
6 determination that it's not an investigative lead
7 does the first individual go back to the facial
8 recognition results and try to identify another
9 possible lead ever?

10 A. If it's a re-submission for it, if perhaps
11 there's a different photo. Say the photo is too
12 dark or they may have their face obstructed and
13 someone may say well, I think this is the person,
14 and they have a different image, then we start
15 the process over again.

16 Q. How does a detective outside of CIU submit a
17 photo for a facial recognition search?

18 A. They would request it. We have an online request
19 system that they could request it online.

20 Q. And then who receives that request?

21 A. The Crime Intelligence Unit.

22 Q. Is there one member of the unit that is always
23 receiving those or is it a rotating role?

24 A. We have two people that would receive that and
25 then they would go and perform the work-up.

1 Q. Can a detective or other DPD employee who's not
2 part of CIU directly run a facial recognition
3 search through DataWorks?

4 **A. No.**

5 Q. So when a CIU member receives a facial
6 recognition request do they always run the search
7 themselves or do they sometimes refer it to
8 another agency?

9 **A. My understanding is we utilize it ourselves.**

10 Q. Do members of the CIU always run a search when a
11 detective sends a photo?

12 **A. I don't understand the question.**

13 Q. Let me ask it a different way. Are there some
14 photos that are not of sufficient quality to run
15 through facial recognition?

16 **A. Yes.**

17 Q. What are some of the factors that would help a
18 CIU member determine whether a photo is of
19 sufficient quality?

20 **A. Facial obstructions, it could be sunglasses, it**
21 **could be a mask, anything that could inhibit the**
22 **symmetry of the facial image that would likely**
23 **not result in a lead of any sort.**

24 Say someone has a full ski mask on and
25 sunglasses. If that's the picture that we have

1 of the person that perhaps robbed a bank, we have
2 that photo, we couldn't pull anything out of
3 that.

4 Q. And so if a member of CIU received a photo that
5 they think, for example, has parts of the face
6 occluded in that way, would they sometimes
7 decline to run it through the facial recognition
8 search?

9 A. Yeah, if we can't use the photo it would not go
10 forward.

11 Q. Does CIU keep numbers on how often it declines to
12 run a search because of image quality?

13 A. I don't have that answer.

14 Q. Do you know if the rationale for declining a
15 search is recorded in some way when they do
16 decline?

17 A. If it's in the records that they officially ask,
18 we would give a disposition, so the photo is not
19 a viable photo, not a viable sample, so there
20 would be some feedback to the requesting
21 detective or member.

22 Q. I want to return to some of those factors that
23 bear on the adequacy of photos. So I'm going to
24 list some attributes of photos and can you please
25 tell me if you agree that each of these factors

1 can affect the reliability for adequacy of a
2 photo for facial recognition technology.

3 So first dim lighting?

4 **A. Lighting could be a factor.**

5 Q. Shadows on the face?

6 **A. It could be a factor.**

7 Q. The angle of the photo?

8 **A. Those are all factors that could.**

9 Q. So if the face is not directed straight at the
10 camera, that could be a factor?

11 **A. Yes.**

12 Q. And you said before if facial features are
13 blocked by, say, a hat or glasses?

14 **A. Yes.**

15 Q. How about the brightness of the image?

16 **A. That goes to lighting, yes.**

17 Q. The pixel density of the size of the image in a
18 digital file?

19 **A. I can't speak to that one.**

20 Q. How about the skin tone of the person depicted?

21 **A. Not that -- I can't speak to skin tone.**

22 Q. The race of the person depicted?

23 **A. No, I don't know -- so is this question my
24 opinion? You said what do I think?**

25 Q. Well, I'm asking you in your capacity as the City

1 of Detroit and the Detroit Police Department's
2 designee on practices and use of facial
3 recognition technology.

4 And so I'm asking in your capacity here
5 answering these questions are you aware that
6 these factors can bear on the reliability or the
7 adequacy of the photo?

8 **A. All of those are factors, yes, everything that**
9 **you indicated is a factor as it relates to a**
10 **positive lead or determining whether it's a**
11 **positive or negative lead.**

12 Q. And so the results that come back from a facial
13 recognition search may be less accurate or
14 reliable if the probe photo was dimly lit, for
15 example?

16 **A. It's possible.**

17 Q. Or if parts of the face were occluded by a hat or
18 dark glasses?

19 **A. It's possible.**

20 Q. Or if the image is too bright or not bright
21 enough?

22 **A. Again, that's a factor, yes.**

23 Q. Or if the person depicted in the image has dark
24 skin?

25 **A. I don't know about that one.**

1 Q. Are you aware of research that shows that facial
2 recognition algorithms in general produce less
3 accurate results on darker-skin people?

4 A. **I've read research on both sides.**

5 Q. On both sides?

6 A. **Yes.**

7 Q. Can you identify that research?

8 A. **I don't know the topic offhand, I don't know the
9 source. Again, you've indicated factors, but
10 just because a person has a darker hue of skin
11 doesn't mean that we can't get a positive lead on
12 a facial rec confirmation.**

13 Q. But it could be a factor that affects the
14 accuracy or reliability of those results?

15 A. **As in results as in identifying the right person
16 or it being a probative lead -- I mean a positive
17 lead.**

18 Q. I'm not sure I understand the difference between
19 those two things.

20 A. **I'm saying are you saying because a person has
21 dark skin we can't get a sample? I don't
22 understand what --**

23 Q. I'm saying that all these factors we've been
24 talking about including skin tone or race of a
25 person can affect how well the facial recognition

1 system is able to produce outputs that include an
2 actual match for a positive lead?

3 **A. I can't answer that.**

4 Q. And so how does a CIU facial recognition examiner
5 determine whether a photo is of an adequate
6 quality to run it into the facial recognition
7 system?

8 **A. Again, the things that we talked about, the
9 obstructions, a clear image, and, again, when
10 we're capturing that you can see the symmetry of
11 the individual that we're attempting to run or
12 identify through the technology, that's where we
13 look.**

14 **Again, once we get to that point and
15 once we identify that or see that, that's what
16 we're looking for.**

17 Q. Are there guidelines or policies that set
18 benchmarks for how occluded a face could be or
19 how bright or dim the image can be that would
20 help an examiner make that determination?

21 **A. No.**

22 Q. So is it up to the discretion of the individual
23 examiner to make that determination?

24 **A. Yes.**

25 Q. So when a search is run through the DataWorks

1 platform how many results of possible matches
2 come back?

3 **A. There could be numerous.**

4 Q. Do you know whether the number of possible
5 results can vary from search to search or is it
6 always one number of photos that come back as
7 possible matches?

8 **A. Could you repeat the question?**

9 Q. Yeah, so -- I'll back up.

10 When a CIU member puts a probe photo in
11 through DataWorks to run a search there's a
12 gallery of photos that comes back that are
13 possible matches, is that correct?

14 **A. Yes.**

15 Q. And so it's not a system that just spits back one
16 single image and says this is the match, is that
17 right?

18 **A. I need to familiarize myself with that. I don't**
19 **know that answer. There's times when you may get**
20 **a positive match from that and then we would**
21 **still go through the investigative process as**
22 **relates to ID'ing. Just -- it's just a tool.**

23 So once we get -- again, once we come
24 back, whether we get a hit on the first or
25 whether it comes back with others, there's still

1 more investigative work to be done.

2 Q. I understand and the thing I'm trying to get at
3 is, is the platform set up so that when a CIU
4 member runs a search it always, for example,
5 returns back 100 photos that are possible matches
6 or might in one search it might be five, one
7 search 200?

8 A. The numbers could vary.

9 Q. And how do you know that?

10 A. I've had the opportunity to see a search run.

11 Q. And can you describe to me visually what a result
12 looks like when the examiner has hit the search
13 button and then the system turns back possible
14 matches?

15 A. As to what?

16 Q. So -- let me just pause for a moment.

17 So please go back to the Exhibit 6,
18 this is the DataWorks solicitation, and this is
19 Page 23. Do you see at the bottom there is this
20 image, it says "Figure 1 - starting a Lineup" at
21 the top, right above the image?

22 A. Yes.

23 Q. Is this roughly what the platform looks like
24 after a search has been run?

25 A. The last time I saw it I believe so.

1 Q. And so on the left there's a photo of this man
2 with a hat and it says "Probe(s)" above it, is
3 that right?

4 A. Yes.

5 Q. And then to the right there are five images and
6 some texts below them, right?

7 A. Yes.

8 Q. And so am I correct that the photo on the left is
9 the probe image that was put in and on the right
10 are some number of faces that the system has
11 returned as possible matches?

12 A. Yes.

13 Q. And so just to be clear on my previous question
14 in one search it could return X number of
15 possible matches and another search it could
16 return Y number, totally different number?

17 A. Correct.

18 MR. CUNNINGHAM: Could we go off the
19 record for a second?

20 MR. WESSLER: Sure.

21 (An off-the-record discussion was
22 held.)

23 BY MR. WESSLER:

24 Q. Mr. Cunningham just pointed out I was directing
25 you to the wrong page, I'm sorry about that.

1 Can you turn back to Page 19?

2 **A. Yes.**

3 Q. And now here's an image at the bottom of the
4 page. The text at the top says, "The system will
5 show matching scores for each search result image
6 and allow for composite searches" .

7 And then there is -- on the top left of
8 this image there's a photo of a face and on the
9 right there are three lines that includes five
10 photos, right?

11 **A. Correct.**

12 Q. And so is this roughly the -- how it appears when
13 CIU runs a search through DataWorks and gets
14 results?

15 **A. Yes.**

16 Q. And there could be a different number of results
17 in one search from another search?

18 **A. That's correct.**

19 Q. You have observed these results at CIU before in
20 searches?

21 **A. Yes.**

22 MR. CUNNINGHAM: One more thing. If
23 you can do your best -- I know you know the
24 question he's asking you, but you're starting to
25 answer before he's done talking.

1 **THE WITNESS: Sorry.**

2 MR. CUNNINGHAM: If you can just wait
3 until he's done asking the question before you
4 start talking.

5 MR. WESSLER: Thank you.

6 BY MR. WESSLER:

7 Q. Are you familiar with the term "confidence
8 threshold" or "likelihood threshold"?

9 **A. I am not.**

10 Q. Are you familiar with the term "confidence score"
11 or "likelihood score"?

12 **A. I am not.**

13 Q. So in the same image on Page 19 if you look
14 underneath those photos arrayed on the right
15 you'll see in small text right under each photo
16 there's a number, three digits and a period and
17 three more digits?

18 It's very small, but can you see that?

19 **A. Yes.**

20 Q. Do you know what those numbers refer to or what
21 their significance is?

22 **A. No.**

23 Q. So let's go back to the process. When a CIU
24 examiner has a set of results what do they do to
25 determine whether one of those is actually an

1 investigative lead?

2 A. So it would come back and I don't know the
3 specific terms, but they would be scored. Again,
4 you have breakouts. I don't know that.

5 Once it's scored and then it would
6 bring in a second analyst to go over to verify
7 and look.

8 And once they confirm, the third piece
9 would be the supervisor to come and if in fact we
10 believe that this is a positive lead we would
11 then return that back to the investigator for the
12 additional investigative work to be done.

13 Q. So you said at the start of that answer that it
14 would be scored. Can you explain what you mean
15 by that?

16 A. So my understanding, quality the score just to
17 make sure that this is -- there's a strong --
18 this is the person of which we get the image back
19 from that probe photo.

20 Q. And how do members of CIU make that evaluation?
21 What are they looking at to determine whether it
22 actually is a good investigative lead?

23 A. They rely on their training.

24 Q. Well, I guess we'll get into training in more
25 detail later, but can you briefly describe the

1 nature of the training that they follow to make
2 that determination?

3 **A. I can't speak to the specifics of that training.**

4 Q. And do examiners sometimes determine that there
5 is no match, no investigative lead, in the
6 results from the system?

7 **A. Yes.**

8 Q. Do you know how often that happens?

9 **A. I don't have that.**

10 Q. And when an examiner after the whole process
11 you've described determines that there is an
12 investigative lead how do they communicate that
13 back to the detective who made the request?

14 **A. If there is?**

15 Q. If there is, that's right.

16 **A. They would communicate with them electronically,
17 let them know that we have returned a lead on the
18 probe photo for their investigation.**

19 Q. Does a CIU member ever provide multiple
20 investigative leads to a detective outside of CIU
21 for the same search at the same time?

22 **A. Multiple leads?**

23 Q. Yes.

24 **A. It's possible.**

25 Q. So it's possible that a CIU examiner in their

1 electronic communication would include two or
2 more different individuals who could equally be
3 an investigative lead for that search?

4 **A. It's possible.**

5 Q. Do you know if it actually happens?

6 **A. There's been twins before.**

7 Q. What do you mean by that?

8 **A. There's been a person that has a twin, an
9 identical twin, that has come back through that.**

10 Q. Do you know if outside the context of twins
11 whether CIU examiners ever have sent multiple
12 possible leads back?

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

14 Q. We started to talk about this earlier, but I want
15 to just make sure. I know what you can answer on
16 it. Did CIU personnel sometimes send an image to
17 another agency to run a facial recognition
18 search?

19 **A. It's possible.**

20 Q. For example the Michigan State Police?

21 **A. It's possible.**

22 Q. Does it ever actually happen?

23 **A. It's possible.**

24 Q. What do you mean by "it's possible"?

25 **A. We have a task force where we have different**

1 representations from different investigative
2 entities that they may utilize their technology
3 to do it, so it is possible.

4 Q. Are you aware that in the Shinola investigation
5 that we're here about today CIU actually did send
6 the probe image to the Michigan State Police to
7 run a facial recognition search?

8 A. Yes.

9 Q. So in fact it does happen?

10 A. It has happened, yes.

11 Q. Are there any agencies other than MSP that DPD
12 ever sends a probe image to to run the search for
13 them?

14 A. Not that I'm aware of.

15 Q. Can you tell me what are the reasons that a
16 member of CIU would send an image to MSP to run a
17 search?

18 A. There are several, but it could be that the team
19 is off and constitutionality, they've only got so
20 much time to charge someone and they want to see
21 if they can make positive identification before
22 then.

23 So by reaching out to a partner in law
24 enforcement to get that to ensure that someone's
25 rights isn't violated, that would be a plausible

1 **reason to reach out.**

2 Q. When you say the team is out, I mean CIU members
3 who are able to run the search themselves,
4 they're not on duty?

5 **A. Correct.**

6 Q. Are there any other reasons why it might be sent
7 to MSP?

8 **A. There could possibly be some exigent**
9 **circumstances that, again, it would only be done**
10 **in the pursuit of ensuring that no one's rights**
11 **were violated.**

12 Q. Could it be because MSP had access to a larger
13 database of images to try to match against?

14 **A. I can't answer that.**

15 Q. Could it be because a CIU member thinks that the
16 quality of the probe image isn't good enough for
17 the DPD system?

18 **A. I can't answer that.**

19 Q. Are there any other reasons that you're aware of
20 that DPD, CIU, might send the image to MSP?

21 **A. I can't think of any.**

22 Q. How often does CIU personnel send image to MSP
23 for facial recognition searches?

24 **A. I don't know the cadence.**

25 Q. Do you have a qualitative sense of how often CIU

1 members -- for example, is it daily?

2 **A.** It depends on crime. When a crime occurs that
3 would hit that threshold. If we haven't had that
4 crime occur, then it could be -- we wouldn't be
5 sending anything through there of any of the
6 trigger crimes, but if we have a spike, a
7 shooting spree, something like that, they could
8 come regularly, a couple a day.

9 So that's kind of a dynamic target.

10 **Q.** So do you know when CIU members send an image to
11 MSP and get a result back from MSP what CIU
12 members then do with that result that comes back?

13 **A.** There's a verification process, again that
14 two-step verification that any photos as it
15 relates to facial recognition results that we've
16 garnered have to be followed and shall be
17 followed.

18 There's discipline if it's not, so
19 that's what we do.

20 **Q.** So earlier you talked about that verification
21 process when DPD runs its own search through
22 DataWorks, right?

23 **A.** Right.

24 **Q.** And now you're saying that same three-step
25 verification applies on an investigative lead

1 when it comes back from Michigan State Police?

2 **A. Yes.**

3 Q. So CIU -- would three members of CIU review that
4 before sending it to the requesting detective
5 elsewhere in DPD?

6 **A. Yes.**

7 Q. And was that the practice in March of 2019?

8 **A. March of 2019?**

9 Q. March of 2019 which is the -- if it helps you
10 place it -- that's the month in which the facial
11 recognition search in the Shinola investigation
12 was run?

13 **A. Policy had not evolved yet to add those**
14 **processes.**

15 Q. So in the absence of the policy there was not
16 that three-level confirmation happening?

17 **A. Correct.**

18 Q. Was that three-level confirmation happening for
19 DPD's own searches at that time?

20 **A. The policy dictating these steps had not gotten**
21 **there yet, so there was -- we were -- again, I**
22 **policy evolved or it changed.**

23 Q. I understand and I think that's a great segueway
24 to actually start talking about the policies.

25 MR. WESSLER: We can go off the record

1 for a moment.

2 (An off-the-record discussion was
3 held).

4 DEPOSITION EXHIBIT 7

5 CIU SOP

6 WAS MARKED FOR IDENTIFICATION

7 BY MR. WESSLER:

8 Q. We are now going to start talking about the
9 policies within DPD relating to facial
10 recognition technology and we're going in
11 introduce now Exhibit 7.

12 Are you familiar with this document?

13 **A. This is an iteration of the SOP of Crime**
14 **Intelligence.**

15 Q. And can you explain what does "SOP" mean?

16 **A. Standard operating procedures, so an entity**
17 **outside -- if there's a function outside of -- or**
18 **specialized function outside of the normal**
19 **responsibility of a patrol officer or supervisor**
20 **they are trained with special skillset, a special**
21 **function of the department.**

22 **There is an additional set of rules**
23 **that are memorialized to dictate how they**
24 **operate.**

25 Q. And so who is this CIU SOP distributed to?

1 **A. The members of the Crime Intelligence Unit.**

2 Q. And every member of the Crime Intelligence Unit
3 would receive this?

4 **A. Yes.**

5 Q. And would every member of CIU be bound by it?

6 **A. This is the policy within, yes.**

7 Q. Is it correct that detectives outside of CIU are
8 not expected to be familiar with this?

9 **A. I mean, there are people outside of CIU that
10 could be familiar with it or they could have been
11 at CIU and then transferred out. So there are
12 people outside of CIU that have knowledge of the
13 SOP.**

14 Q. Is this SOP -- are the CIU SOPs distributed to
15 members of the DPD outside of CIU through a
16 formal channel?

17 Are they distributed by the department?

18 **A. There's a mechanism for that.**

19 Q. What does that mean?

20 **A. So you can call our Planning Division and get
21 policies. They are the keeper of policy for the
22 entire department, so any member could ask for or
23 get that.**

24 Q. So if a member is motivated to look for it they
25 could obtain it you're saying?

1 A. Yes.

2 Q. Does the Planning Division or any other part of
3 DPD affirmatively send these CIU SOPs out to
4 individuals not in CIU?

5 A. No.

6 Q. So on the right side this says "Effective date
7 7-1-2018" and "Revised date 4-1-2019"?

8 A. Yes.

9 Q. Let's turn to Section 8. If it helps, at the
10 bottom it says Defendants' initial disclosure
11 00134.

12 Are you on Section 8?

13 A. Yes.

14 Q. And this says Standard Operating Procedure, DPD
15 Crime Intelligence Unit and that it says Subject:
16 8. Facial recognition", is that right?

17 A. Yes.

18 Q. It again says effective date 7-1-2018, right and
19 revised date 4-1-2019, is that right?

20 A. Yes.

21 Q. So when it says revised date 4-1-2019 was there a
22 previous version of Section 8 on facial
23 recognition prior to April 1, 2019?

24 A. Yes.

25 Q. So there was a CIU SOP -- I know that there was a

1 --

2 **A. If I --**

3 Q. Yes, please, please.

4 **A. So something in this document changed. I can't**
5 **speak specifically to facial recognition as to**
6 **what was, but something in this changed from its**
7 **original iteration from July 1, 2018.**

8 Q. Do you know whether there was a section of the
9 CIU SOP prior to April 1, 2019 that addressed
10 facial recognition?

11 **A. Yes, I am.**

12 Q. Was there in fact a section of this SOP that
13 addressed facial recognition prior to April 1,
14 2019?

15 **A. Yes.**

16 MR. WESSLER: Mr. Cunningham, I don't
17 think we've received that.

18 MR. CUNNINGHAM: I've never seen it
19 before.

20 MR. WESSLER: So if we need to follow
21 up on that we can.

22 BY MR. WESSLER:

23 Q. So let me just ask one more time. So I
24 understand this whole document has a bunch of
25 sections on a bunch of topics. We're looking now

1 at Section 8, Subject - facial recognition.

2 This was -- we received this in
3 discovery in this case. We will later talk about
4 a revision of this that was later in time, and so
5 do you know whether there was a earlier in time
6 version of the facial recognition provisions here
7 that was in effect for CIU?

8 **A. Of this SOP, I can't answer that.**

9 Q. So can we just --

10 MR. CUNNINGHAM: The question is, do
11 you know of a prior section before this,
12 do you know? In your head do you know about one?

13 **THE WITNESS: No, not in the Crime**
14 **Intelligence Unit, my apologies, I'm sorry.**

15 BY MR. WESSLER:

16 Q. So it's my understanding that this Section 8 is
17 the first time there was a CIU SOP on facial
18 recognition?

19 **A. Yes.**

20 Q. Does that sound correct to you?

21 **A. I believe so.**

22 Q. So just to be very clear, in March of 2019 was
23 there any written policy governing CIU's use of
24 facial recognition technology?

25 **A. There was -- not to this detail. There was**

1 perhaps a training directive that spoke to -- it
2 was not as detailed as this, but there was a
3 mention of facial recognition technology.

4 Q. I have a copy of several training directives or
5 one training directive, a manual directive that
6 we can talk about later.

7 Let's go to subsection 8.5(a) and I'm
8 just going to read the start of the text that's
9 there in Subsection a. It says,

10 "Access to or disclosure of facial
11 recognition search results will be
12 provided only to individuals within
13 the entity or in other governmental
14 entities who are authorized to have
15 access and have completed applicable
16 training outlined in Section 8.11".

17 Did I read that part of the sentence
18 correctly?

19 **A. Yes.**

20 Q. So does that mean that at the time this was in
21 effect CIU could only provide the results of a
22 facial recognition search to a requester from
23 another part of DPD if that requester had
24 completed this applicable training?

25 **A. I'm not sure of your interpretation of the**

1 question, but the results would be what we would
2 later use in a 6-pack or a lineup, so --

3 Q. That I understand. I guess what I'm trying to
4 understand here is whether members of DPD outside
5 of CIU were required to receive a training that
6 is outlined later in this directive -- in the
7 SOP, I'm sorry, before they could receive facial
8 recognition results from CIU?

9 Am I interpreting this correctly when I
10 say that?

11 A. There's a reference to 8.11 so before we look at
12 that I'd like to see what 8.11 says.

13 Q. Let's turn there now. How about you just take a
14 moment and read through 8.11 and just tell me
15 when you're done.

16 A. Could I have your question again?

17 MR. CUNNINGHAM: Hold on. So when it
18 says disclosure of face recognition search
19 results, those are the search results we're
20 talking about?

21 THE WITNESS: Correct.

22 MR. CUNNINGHAM: Not the investigative
23 lead at the end. We're talking about the search
24 results in the -- within the system that you need
25 to be trained on?

1 **THE WITNESS: Correct, yes, yes.**

2 BY MR. WESSLER:

3 Q. So could you put that in your own words if in
4 fact you agree with what Mr. Cunningham is
5 suggesting?

6 **A. So the search results that come back from the**
7 **probe would then be kept. They aren't to be**
8 **disseminated.**

9 Q. So are you saying that members of DPD outside of
10 CIU were not required to be trained on facial
11 recognition technology before receiving an
12 investigative lead from a facial recognition
13 search?

14 **A. You do not need to be trained to receive an**
15 **investigative lead.**

16 Q. So looking at 8.11 again, so there are -- it says
17 training, Section a "DPD's face recognition
18 policy training program will cover..." and then
19 there are some sub-points and then going down to
20 "iii" it says, "In addition to the training
21 described, CIU face recognition examiners are
22 required to complete advanced specialized
23 training to include..." and then it's described.

24 So who would be receiving the more
25 basic face recognition training in "i" and "ii"

1 if there's also this more advanced for CIU?

2 **A. So the first one in 11(a) says that this is a**
3 **policy training, but -- so there's policy**
4 **training and there's examiner training.**

5 Q. And do you know who would be required to take
6 that policy training?

7 **A. Supervisors.**

8 Q. Supervisors within CIU?

9 **A. Yes.**

10 Q. Supervisors outside of CIU?

11 **A. Within CIU.**

12 Q. So none of the training described here is
13 directed at DPD members outside of CIU?

14 **A. Correct.**

15 Q. Okay, thank you. So four individuals in CIU
16 after the effective date of this SOP, was this
17 training actually provided to CIU members?

18 **A. Repeat your question.**

19 Q. So after the effective date of this SOP was this
20 training described in 8.11 actually provided to
21 CIU members?

22 **A. 8.11 as far as the policy or examiner's --**

23 Q. Any or all parts of this -- what -- let me
24 rephrase.

25 What I'm asking is so this is a policy

1 requiring training, correct?

2 **A. Yes.**

3 Q. In practice was this training actually then
4 administered within CIU?

5 **A. I can't speak to 2019. I can tell you now that
6 all members that touch this technology have
7 adequate training.**

8 Q. Do you know when that training started?

9 **A. It's a term of hiring, so when you come in with
10 the skillset and you're hired to be that or get
11 that role you automatically get that training
12 before you start to work on it.**

13 Q. And do you know for DPD employees in CIU who
14 began the job prior to the effective date of this
15 SOP when were they given this training?

16 **A. The member -- and I can only speak to the members
17 that are there now. Members that are assigned
18 this role have that training before they can
19 utilize the technology.**

20 Q. But you're not sure exactly when the people who
21 were there at the time this went into effect,
22 you're not sure when the training was first
23 administered?

24 **A. Correct, I'm not.**

25 Q. Does DPD take attendance records at training?

1 A. Yes.

2 Q. And does the department keep those attendance
3 records from training?

4 A. Outside of our -- we do have a training record,
5 yes.

6 Q. So in the exhibits -- go back to Exhibit 1, the
7 Deposition Notice. And just look down at the
8 bottom, so this is on Page 3.

9 We asked that representatives of the
10 City of Detroit please bring attendance records
11 of DPD facial recognition training.

12 And so Mr. Cunningham -- I know we have
13 another 30(b)(6) coming up, and if you're also
14 producing a bunch of other stuff, but do you want
15 to talk later about producing those?

16 MR. CUNNINGHAM: I don't intend to
17 produce those. Nobody in this case used facial
18 recognition technology at the Detroit Police
19 Department, so how those records are kept are by
20 individuals, we call them MAS.

21 So you can look at an officer's MAS and
22 you can look at that officer or you can say did
23 they go through this training and it will tell
24 you the dates that they went through the
25 training, but there's no like who went through

1 the training that day.

2 MR. WESSLER: You can't -- the system
3 is not set up so you can search by training.

4 MR. CUNNINGHAM: Correct, you search by
5 individual and you can have an individual and say
6 what training did this individual get, but you
7 can't say who got training this day.

8 BY MR. WESSLER:

9 Q. And, Deputy Chief, to the extent that you are
10 familiar with that system, is that your
11 understanding of how it's searchable?

12 **A. Yes.**

13 MR. WESSLER: Why don't we table this
14 and we'll talk later about this, both as to
15 relevance and how we might identify those.

16 MR. CUNNINGHAM: Okay.

17 BY MR. WESSLER:

18 Q. So in the same SOP can you please turn to Section
19 8.7(b). I'm going to read that subsection.

20 "CIU examiners will analyze, review
21 and evaluate the quality and
22 suitability of probe images, to
23 include factors such as the angle of
24 the face, image, level of detail,
25 illumination, size of the face image

1 and other factors affecting a probe
2 image prior to performing a face
3 recognition search."

4 Did I read that correctly?

5 **A. Yes.**

6 Q. And so this requires CIU examiners to evaluate
7 the quality and suitability of the probe image
8 before performing a facial recognition search,
9 right?

10 **A. Yes.**

11 Q. Does it require a CIU examiner to evaluate the
12 quality and suitability of a probe image prior to
13 sending that image to MSP?

14 **A. Policy doesn't speak to that.**

15 Q. And just to be clear, in March, 2019 there was no
16 written policy requiring CIU examiners to
17 evaluate the quality and suitability of probe
18 images at all, right?

19 **A. The SOP is dated April, 2019.**

20 Q. And in March, 2019 before sending a probe image
21 to MSP for them to run a search CIU examiners
22 didn't have to evaluate the suitability or
23 quality of that image, is that right?

24 **A. It was not -- there wasn't a guiding document to**
25 **this detail to give to them, again this clear**

1 detailed instruction.

2 Q. Let's turn to Section 8.5(d). So this subsection
3 describes the procedure for CIU conducting a
4 facial recognition search, correct?

5 A. Yes.

6 Q. So let's look down to "vi" on the next page.

7 A. Okay.

8 Q. So this line requires peer review of the results
9 of a DPD facial recognition search before you can
10 provide it to the requester, right?

11 A. Yes.

12 Q. And then the next subsection "vii" that requires
13 supervisor review, right?

14 A. Yes.

15 Q. And in March, 2019 there was no policy requiring
16 peer or supervisor review, right?

17 A. **This is the first iteration of these explicit**
18 **details as to how to operate the technology.**

19 Q. And under this SOP does this provision apply and
20 require peer and supervisor review for FRT
21 results returned by MSP when they run a search
22 for DPD?

23 A. **Didn't speak to that.**

24 Q. Let's look down at the bottom of the page, so
25 it's "viii" and then subsection "g", very bottom.

1 It says,
2 "The following statements will
3 accompany the released most likely
4 candidate images and any related
5 records: 'The result of a facial
6 recognition search provided by the
7 Detroit Police Department is only an
8 investigative lead and is NOT TO BE
9 CONSIDERED A POSITIVE IDENTIFICATION
10 OF ANY SUBJECT. Any possible
11 connection or involvement of any
12 subject to the investigation must be
13 determined through further
14 investigation and investigative
15 resources."

16 Did I read that accurately?

17 **A. Yes.**

18 Q. So prior to this SOP, prior to April, 2019 was
19 there any DPD policy that required inclusion of
20 this disclaimer communicating FRT results back to
21 a detective?

22 **A. Not that I'm aware of.**

23 Q. And prior to April, 2019 was this disclaimer
24 actually included along with facial recognition
25 results sent back to a requester?

1 **A. I don't know.**

2 Q. Does this policy -- strike that.

3 So the second sentence that we just
4 read, says, "Any possible connection or
5 involvement of any subject to the investigation
6 must be determined through further investigation
7 and investigative resources".

8 Does this policy provide any guidance
9 about what kind of further investigation and
10 investigative resources are appropriate or
11 required to confirm the lead?

12 **A. Well, they would -- can you narrow that question?**

13 Q. Yeah. So does this policy provide any further
14 guidance to a detective about what further
15 investigation or investigative resources would be
16 enough to confirm that that lead is actually the
17 right person?

18 **A. Well, in the language it is this alone doesn't**
19 **positively identify, so they would look through**
20 **the process of getting them identified through a**
21 **witness statement and, again, they would then go**
22 **to their detective training what it takes to**
23 **investigate a case ultimately combining their**
24 **facts and presenting them to the Wayne County**
25 **Prosecutor's Office and then justice will take**

1 its -- and then the criminal justice system will
2 play out.

3 Q. So in April, '19 was there guidance provided to
4 detectives about what kinds of confirmatory steps
5 were enough to confirm the lead?

6 A. Through detective training they understand what
7 it takes to -- excuse me, to confirm a lead?
8 Could you --

9 Q. What I mean is a detective receives an
10 investigative lead from a facial recognition
11 search?

12 A. Yes.

13 Q. And there's some sense here that they need to do
14 additional investigation, correct?

15 A. Correct.

16 Q. At this time was there guidance provided to the
17 detective about what investigation is sufficient
18 to confirm the lead?

19 A. A member at the rank of detective is trained on
20 how to investigate crime, what it takes to gather
21 the facts and then submit a warrant to the Wayne
22 County -- or investigative report to the Wayne
23 County Prosecutor's Office.

24 So his training as a detective would go
25 into those steps that you're speaking of.

1 Q. So would it be correct to say that guided by
2 their training a detective has discretion to
3 determine what additional steps they should take?

4 **A. Between their training or directives given.**

5 Q. By directives, do you mean written directives?

6 **A. It could be a verbal directive, it could be that**
7 **the prosecutor told them to bring more**
8 **information to them, to where they were satisfied**
9 **and in signing or submitting a warrant, direction**
10 **can come from a few different places.**

11 Q. And then to make sure I understand, were
12 detectives who actually received investigative
13 leads from CIU from facial recognition searches
14 expected to know this SOP?

15 **A. They are expected -- I can't speak to this SOP,**
16 **but they are trained and expected to know the**
17 **constitutionality of their function and what it**
18 **takes to submit an investigative report for**
19 **warrant review.**

20 **They are trained to know that.**

21 Q. But they -- for example, this SOP is not
22 distributed to detectives along with the
23 investigative lead results?

24 **A. Correct.**

25 Q. And there's nothing in those investigative lead

1 results that says please refer to this SOP?

2 **A. No, it would just be policy in the manual.**

3 **DEPOSITION EXHIBIT 8**

4 **CIU SOP**

5 **WAS MARKED FOR IDENTIFICATION.**

6 Q. I think we're done with this exhibit. Let's go
7 to the next exhibit.

8 Are you familiar with this document?

9 **A. I've seen this document before.**

10 Q. Could you describe what it is?

11 **A. It is a revision of the SOP section of -- the**
12 **facial recognition section within the standard**
13 **operating procedures of the Crime Intelligence**
14 **Unit.**

15 Q. And this has a revised date of 12-21-2020,
16 correct?

17 **A. Yes.**

18 Q. Is this the version that's still in effect today
19 for CIU?

20 **A. I don't believe so.**

21 Q. Do you know when there was an additional
22 revision?

23 **A. I believe there's a 2022 revision.**

24 MR. WESSLER: Mr. Cunningham, I don't
25 think we've received an updated version of this,

1 so if that exists could you please add it to this
2 list?

3 (An off-the-record discussion was
4 held)

5 BY MR. WESSLER:

6 Q. Let's turn, please, to Subsection 1.5(d). And
7 then look down to "ii" under that which says,
8 "CIU shall perform facial recognition
9 searches utilizing the Statewide
10 Network of Agency Photos (SNAP) which
11 include criminal mugshot images. In
12 the event additional analysis is
13 needed for confirmation of an
14 investigative lead a formal request
15 may be made to MSP to search the
16 State's database. Any such request
17 must be approved by a CIU supervisor."

18 Did I read that correctly?

19 **A. Yes.**

20 Q. So does the use of "shall" in the first sentence
21 mean that CIU has to always start by performing
22 their own search through the DataWorks platform?

23 **A. Yes.**

24 Q. And then if they want to send the probe image to
25 MSP they can only do that after they've first

1 attempted their own search, is that right?

2 **A. What did you say the transition was?**

3 Q. So if a member of CIU was to send a probe image
4 to MSP, that's only permissible if they've first
5 tried to run a search through DPD's system, is
6 that right?

7 **A. Correct.**

8 Q. Let's look just down right below this "iii" it
9 says, "If the examiner detects an investigative
10 lead the examiner must corroborate this lead with
11 at least one other examiner and a CIU
12 supervisor".

13 Does that -- so under this policy does
14 that peer review and supervisor review also apply
15 to investigative leads that come back from MSP?

16 **A. It doesn't speak specifically to that.**

17 Q. And is CIU's current practice to in fact do that
18 review for MSP results or only for CIU's own
19 results?

20 **A. Regardless and any results that we garnered --**
21 **and I don't know if I'm answering your question**
22 **-- it's still only a tool or investigative lead.**

23 It is still not the positive
24 identification, there's other investigative steps
25 that would have to be taken.

1 Q. I understand and what I'm asking is, whatever
2 knowledge the detective has of that, what happens
3 with CIU before the detective gets that lead and
4 does the follow-up.

5 And so just to be clear, when the
6 investigative lead is returned by MSP it goes to
7 CIU first, right?

8 **A. The requester would get it back, yes.**

9 Q. And then CIU has to forward that from the -- let
10 me start that again.

11 When CIU receives the lead back from
12 MSP CIU then has to forward it to the detective,
13 is that right?

14 **A. Yes.**

15 Q. And so in the time when CIU has received that
16 lead from MSP today is there peer review and
17 supervisor review of that lead or is it just
18 forwarded to that detective?

19 **A. Any lead we get, it still goes through our
20 verification process.**

21 Q. So a couple more questions about that process.
22 So when DPD runs its own search there's the
23 initial examiner who tries to pick one
24 investigative lead out of the results, right?

25 **A. Yes.**

1 Q. And when they go for peer review what is that
2 peer reviewing? Are they reviewing just the
3 probe image and one investigative lead or are
4 they looking at the gallery again?

5 **A. It could be either.**

6 Q. And how about a supervisor, same answer?

7 **A. Yes, the supervisor would -- depending on what we
8 get back.**

9 Q. And do you know how a decision is made about
10 whether to just look at the two images or look at
11 the whole gallery?

12 **A. Again, it could be depending on which one. The
13 supervisor would check each step of the way, so
14 the supervisor may -- in doing their job may have
15 looked at how it was narrowed down from the
16 gallery to how they got to the lead that this is
17 the positive lead that would go there.**

18 Q. Is it up to the discretion of the supervisor to
19 decide how much of that to look at in any
20 particular case?

21 **A. The supervisor should review it all.**

22 Q. And so the supervisor should look at the whole
23 gallery that came back from the program and look
24 at all those images and make their own
25 determination about whether there's a lead there?

1 A. The supervisor will review what's presented in
2 front of them to make sure that it was done and
3 how we got to that point.

4 Q. Do you know what is presented to the supervisor?

5 A. A work-up, a pack. So it would be, again, how
6 they got the probe photo, what came back, how it
7 was nailed down to this one and then whether it
8 was confirmed or supported by the second one, by
9 that peer review.

10 And then for ultimately the supervisor
11 to sign off and say do this as an investigative
12 lead, a positive or a negative.

13 Q. Are you aware that MSP also has a peer review
14 process when they're running searches?

15 A. I don't know the specifics of it, sir.

16 Q. Does MSP provide training to DPD on facial
17 recognition technology or its use?

18 A. Not that I'm aware of.

19 Q. Let's turn down to Section 1.13(a). If you just
20 read that to yourself, this is comparable to what
21 we talked about in the previous policy about
22 who's required to take the training on facial
23 recognition technology.

24 A. I'm sorry, what was the --

25 Q. I'm sorry, 1.13(a). Do you want to take a quick

1 look at it and tell me when it's done.

2 **A. Surveillance?**

3 Q. No, this is Use of Facial Recognition
4 Information?

5 **A. What document are you looking at there?**

6 Q. The same one, this is 1.13 -- 1.13, that was my
7 fault, 1.13(a).

8 Take a quick look, tell me when you're
9 done.

10 **A. Okay.**

11 Q. So earlier in the previous SOP we talked about a
12 comparable section about training before access
13 or disclosure of facial recognition search
14 results, right?

15 **A. Okay.**

16 Q. And my question is, is your understanding of this
17 the same as from the previous? In other words,
18 under this SOP are the recipients of an
19 investigative lead outside of CIU required to
20 take the training that's discussed?

21 **A. Of the investigative lead or --**

22 Q. Of the investigative lead only.

23 **A. It could be -- that's my understanding,**
24 **investigative lead, not the investigative**
25 **work-up.**

1 Q. I think I had too many questions in there. Let
2 me just make sure I'm fair.

3 So in the first line here it says
4 access to or disclosure of facial recognition
5 search results will be provided only to
6 individuals who have taken the training.

7 What does facial recognition search
8 results mean to you in this sentence?

9 **A. The result is what we come back -- the gallery**
10 **that comes back from the probe photo.**

11 Q. So is this section only requiring training of
12 people who may receive the whole gallery?

13 **A. Yes.**

14 Q. So this section does not require this facial
15 recognition training for members of the
16 department before they can receive just the
17 investigative lead, correct?

18 **A. Correct.**

19 Q. And then last question about this SOP. So if you
20 turn to the last section of the SOP, 1.18, and
21 this outlines the contents of the facial
22 recognition training, correct?

23 **A. Yes.**

24 Q. Do you know how often this training is offered?

25 **A. This specific training, policy training --**

1 there's a training when a member is hired on to
2 utilize this skillset and utilize this
3 technology.

4 And then there's constant refresher
5 training from all of our staff of all ranks in
6 their specific roles to make sure that they're
7 employing best practice.

8 Q. And how often are those refresher training on
9 this topic provided?

10 A. At least annually.

11 Q. Are they provided annually to everyone in CIU who
12 has a hand in the facial recognition system?

13 A. Depending on your skillset and whatever
14 technology you're utilizing there would be
15 pertinent training.

16 Q. Are there written materials associated with that
17 training other than this SOP itself?

18 A. As in actually print?

19 Q. Either printouts or Powerpoint slide or similar
20 slides?

21 A. I can't speak to the contents of the training,
22 it's done by the FBI, so the FBI does this
23 training and I don't have access to their
24 curriculum, it's not provided.

25 Q. Do they provide handouts on paper during the

1 training?

2 **A. I don't have that answer.**

3 Q. Do attendees at a training like this sometimes
4 take notes of the training?

5 **A. It's possible.**

6 Q. And it's possible that they would keep those
7 notes to refer to later?

8 **A. It's possible.**

9 **DEPOSITION EXHIBIT 9**

10 **training directive**

11 **WAS MARKED FOR IDENTIFICATION.**

12 Q. We can put this aside now and go to the next
13 exhibit, 9. Are you familiar with this document?

14 **A. Yes.**

15 Q. Can you describe what it is?

16 **A. This is a training directive on the use of**
17 **traffic light-mounted camera and facial**
18 **recognition technology.**

19 Q. This is dated April 9, 2019, correct?

20 **A. Yes.**

21 Q. Can you just explain to me, what is a training
22 directive?

23 **A. So a training directive is an order that dictates**
24 **the actions of our members and specific to**
25 **whatever the subject matter is when there is no**

1 mention of it in policy or it hasn't been
2 absorbed into our manual as of yet.

3 Q. And how does a training directive differ from a
4 manual directive?

5 A. It doesn't always. Training directives
6 ultimately morph into our policy, but there is --
7 it gets to that. Sometimes there may be
8 additional ones added and sometimes verbatim it
9 goes into the manual.

10 Q. And how are training directives disseminated?

11 A. Electronically by the department.

12 Q. What kind of electronic dissemination?

13 A. It could be through our inter-departmental
14 communications. It could be through our MAS
15 system. It could be by department teletype.

16 Q. Would you have given the same answer in April of
17 2019 when this is dated.

18 Were training directives disseminated
19 in the same ways in April of 2019?

20 A. Yes.

21 Q. Are manual directives disseminated in the same
22 way?

23 A. Yes.

24 Q. And were they disseminated in same way in April,
25 2019?

1 A. Yes.

2 Q. How does DPD ensure that members of the
3 department read training directives?

4 A. Through the MAS system there's an electronic
5 signature for it. Once they click on -- they
6 click on the policy and it shows after you read
7 it that there is basically an electronic
8 signature that confirms that they've read the
9 policy or whatever the topic is and it goes into
10 their MAS profile.

11 Q. Are members of the department required to review
12 training directives when they're sent out?

13 A. Yes.

14 Q. And are -- is there a mechanism for following up
15 with members who have not certified in the MAS
16 system that they have read the training
17 directive?

18 A. Yes.

19 Q. Can you describe that process?

20 A. Yes, there's an audit performed by the MAS team
21 and it sees -- and it's able to see of however
22 many times this was published or however many
23 profiles that this directives was placed on, how
24 many have been checked.

25 Q. And then that audit can identify the particular

1 membership of the department who have not checked
2 it?

3 **A. Yes.**

4 Q. And then does the supervisor follow up with those
5 members?

6 **A. They should.**

7 Q. And what would that follow-up look like
8 typically?

9 **A. It would be -- it's a directive, so it would be**
10 **-- the first would be a reminder in case someone**
11 **could have been on vacation when it comes up and**
12 **then if it's still not adhered to it could result**
13 **in discipline.**

14 Q. And was that the same process in April, 2019?

15 **A. Yes.**

16 Q. So in this exhibit can you please turn to Page 3
17 and down at the bottom it says "Use of Facial
18 Recognition Technology", do you see that?

19 **A. Yes.**

20 Q. Can you just read the text under that to
21 yourself.

22 **A. Yes.**

23 Q. So is this -- was this the first DPD training
24 directive addressing facial recognition
25 technology?

1 A. To my understanding, yes.

2 Q. And does that mean this was the first directive
3 that would have gone out to the full department
4 addressing facial recognition technology?

5 A. To my understanding, yes.

6 Q. And so prior to April, 2019 there was no written
7 policy for the whole department addressing facial
8 recognition technology, correct?

9 A. Not that I'm aware of.

10 Q. Put that aside.

11 A. Can I take a quick break.

12 Q. Absolutely.

13 (A recess was taken).

14 DEPOSITION EXHIBIT 10

15 manual policy proposal

16 WAS MARKED FOR IDENTIFICATION.

17 Q. Okay, you have a 10th exhibit in front of you.

18 Have you seen this document before?

19 A. Yes.

20 Q. Can you describe what it is?

21 A. This is policy now, the Detroit Police Department
22 manual policy on the subject that was just in the
23 training directive, traffic light-mounted cameras
24 and facial recognition technology.

25 Q. And on the cover page it's stamped approved by

1 police legal advisor on April 22, 2019 and
2 received by the Board of Police Commissioners on
3 April 23, 2019, is that right?

4 **A. Yes.**

5 Q. Does that mean that that's the effective date?

6 **A. No.**

7 Q. How does one know what the effective date is?

8 **A. It should be -- if you look on the policy when it**
9 **goes -- the effective date would be memorialized**
10 **in the second cell on the top line.**

11 Q. So this is Page 1 of the policy, Page 2 of this
12 document?

13 **A. This is Page 1 of the proposed policy and if I**
14 **could correct myself, this is the proposal of the**
15 **policy should it be approved by the Board of**
16 **Police Commissioners.**

17 Q. Do you know whether this proposal was in fact
18 approved?

19 **A. I don't.**

20 Q. If it was in fact approved how would that be
21 recorded?

22 **A. There would be an effective date on there once**
23 **it's published.**

24 Q. Can you look to the last page, Page 3 of what
25 you've described as the proposed policy?

1 **A. Yes.**

2 Q. And just putting that side by side with the
3 training directive that we spoke about a moment
4 ago, are these basically the same?

5 We're looking at the use of facial
6 recognition technology section?

7 **A. There are a few word differences, but the spirit**
8 **is the same.**

9 Q. Was the content of this use of facial recognition
10 technology section of the manual directive
11 actually implemented as an adopted manual
12 directive?

13 **A. I don't believe so.**

14 Q. But at the time of this manual directive --
15 strike that.

16 At the time that this proposed manual
17 directive was received by the Board of Police
18 Commissioners the training directive was still in
19 effect?

20 **A. Correct.**

21 Q. So the subject matter still would have been
22 binding policy for department members?

23 **A. Correct.**

24 MR. CUNNINGHAM: So I am able to look
25 up policy right now. I can see the manual

1 directive. Do you want me to print you a copy of
2 what was passed?

3 MR. WESSLER: That would be -- it's
4 dated late April?

5 MR. CUNNINGHAM: 6-27-19. I haven't
6 seen it. It doesn't address facial recognition
7 technology.

8 MR. WESSLER: Oh, it doesn't?

9 MR. CUNNINGHAM: Use of
10 traffic light-mounted cameras.

11 MR. WESSLER: So yes, it would be
12 helpful if you could print that. We don't need
13 to discuss it further here, but yes, please.

14 BY MR. WESSLER:

15 Q. So looking back at Exhibit 9 then just to make
16 sure I'm clear, this training directive when it
17 was issued was the only policy on facial
18 recognition technology that applied to the whole
19 DPD -- to all of DPD?

20 **A. Correct.**

21 Q. And this training directive is silent on whether
22 detectives or other personnel need to receive
23 training on facial recognition technology?

24 **A. It makes no mention in that document.**

25 Q. So at the time of this directive or prior to it

1 there was no written requirements that detectives
2 be trained on facial recognition technology,
3 correct?

4 **A. Not that I'm aware of, sir.**

5 Q. And at the time of this directive or prior to it
6 there was no requirement that detectives receive
7 training in whether -- in how to establish
8 whether an investigative lead from FRT is
9 actually a correct match to a suspect, right?

10 **A. I'm sorry?**

11 Q. At the time of this directive or prior to it
12 there was no requirement that detectives be
13 trained in how to evaluate whether an
14 investigative lead actually depicted the subject
15 of the investigation, right?

16 **A. I don't understand your question.**

17 Q. So there was no requirement at this time of the
18 directive or prior to it that DPD detectives be
19 trained in what steps to take when they receive
20 an investigative lead, to follow up on it, is
21 that right -- I'm sorry, an investigative lead
22 from facial recognition technology?

23 MR. CUNNINGHAM: If you don't
24 understand the question tell him.

25 **A. You said facial recognition technology. Other**

1 than -- I go back to the core detective training
2 which is once you get -- even if you have a photo
3 of someone, there's still a lineup process
4 referred to as a 6-pack.

5 So still with investigative leads a
6 detective still -- the subject still has to be
7 picked out of a lineup.

8 So specific to the detail of the SOP,
9 it's absent, but the detective training talks
10 about what happens when they get a photo or a
11 lineup to ID someone by photo.

12 BY MR. WESSLER:

13 Q. And was there -- as part of that training, that
14 general training about photo lineup, is there
15 particular training about how to handle a facial
16 recognition technology investigative lead in a
17 photo lineup?

18 A. There was not.

19 Q. And at the time of this training directive or
20 prior to it there was no written guidance for
21 detectives on what kind of factors might affect
22 the reliability of a probe image for a facial
23 recognition search?

24 A. Not that I'm aware of.

25 DEPOSITION EXHIBIT 11

1 manual policy proposal

2 WAS MARKED FOR IDENTIFICATION.

3 Q. We can put this one down and we will turn to this
4 exhibit. This is 11.

5 Are you familiar with this document?

6 A. No.

7 Q. It says on the front it is a transmittal of
8 written directive with signatures from 2nd Deputy
9 Chief and legal advisor and the Assistant Chief
10 Administrative Operations and a received stamp
11 from the Board of Police Commissioners, correct?

12 A. Yes.

13 Q. Does that mean that it was submitted to the Board
14 of Police Commissioners?

15 A. Yes.

16 Q. Does it mean that -- is there any information
17 here about whether this was adopted by the Board
18 of Police Commissioners?

19 A. There is not. This just a proposal from -- or
20 the request.

21 Q. And for a manual directive to go into effect does
22 the Board of Police Commissioners need to approve
23 it?

24 A. Yes.

25 Q. Is that the final step?

1 A. Yes.

2 Q. And so as far as you know this was merely a
3 proposal?

4 A. As far as I know.

5 Q. And you're not familiar with this particular
6 proposed --

7 A. No, I wouldn't see this document in my role.

8 DEPOSITION EXHIBIT 12

9 policy of facial recognition technology

10 WAS MARKED FOR IDENTIFICATION.

11 Q. And so let's put that aside then and go to the
12 next exhibit. This will be 12.

13 Are you familiar with this document?

14 A. Yes.

15 Q. Can you please describe what this is?

16 A. This is the policy of facial recognition
17 technology.

18 Q. Do you mean by that that this is the policy
19 that's currently in effect department-wide?

20 A. There was -- this isn't currently in effect.

21 Q. It is not?

22 A. No.

23 Q. There's a more up-to-date manual directive on
24 facial recognition technology?

25 A. There is a 2022 policy revision, yes.

1 MR. WESSLER: Mr. Cunningham, I don't
2 believe that we've received a 2022 update of the
3 policy.

4 MR. CUNNINGHAM: There's one with
5 effective date of December 16 of '22. I can
6 print that.

7 MR. WESSLER: Can we take a break?

8 (A recess was taken.)

9 BY MR. WESSLER:

10 Q. So we have Exhibit 12 in front of us. Can you
11 describe what this is, please?

12 A. **This is the policy, a version of the policy, in**
13 **the manual for facial recognition technology.**

14 Q. And this has an effective date of September 19,
15 2019, correct?

16 A. **Yes.**

17 Q. And I asked you earlier about how updates to the
18 manual are distributed. This would have been
19 distributed in that way that you described?

20 A. **Yes.**

21 Q. And we will in a moment turn to the subsequent
22 version of this that you said is the current
23 policy, so this is no longer the one in effect?

24 A. **Correct.**

25 Q. At the time this was issued its effective date in

1 September, 2019 did this then become the single
2 policy for the whole department on facial
3 recognition technology?

4 **A. Yes.**

5 Q. So other than the CIU SOP that just applied to
6 CIU this was the only policy that applied
7 department-wide?

8 **A. Yes.**

9 Q. And so to make sure I'm totally clear this policy
10 in conjunction with the CIU SOP is the full
11 written statement of DPD's policy on facial
12 recognition technology, correct?

13 **A. Yes.**

14 Q. So can you please turn to Page 3, Section 5.2,
15 "Criminal Investigation Required", do you see
16 that?

17 **A. Yes.**

18 Q. So this prohibits the use of facial recognition
19 technology for anything other than investigations
20 of Part 1 violent crime and Home Invasion 1,
21 correct?

22 **A. Yes.**

23 Q. Under this September, 2019 policy would DPD have
24 been permitted to use facial recognition
25 technology in the Shinola investigation?

1 A. As of September 19, 2019, no.

2 Q. And that's because retail fraud is not a Part 1
3 violent crime or Home Invasion 1, correct?

4 A. Correct.

5 Q. Are you aware of any other reasons why the effect
6 of this policy would have precluded running a
7 facial recognition search in that investigation?

8 A. No.

9 Q. Does this September, 2019 policy require DPD
10 personal to apply its provision to cases where a
11 facial recognition search had been conducted
12 prior to its effective date?

13 A. Proactively?

14 Q. That's right.

15 A. From this date, no. From this date, this is how
16 we operate, there is no going back.

17 Q. So in a case where a facial recognition search
18 had been conducted prior to September 19, 2019
19 for a crime that does not quality under this
20 policy --

21 A. Yes.

22 Q. -- there was no requirement for detectives to
23 re-evaluate that investigation?

24 A. No.

25 Q. There was the requirement to detectives to stop

1 relying on this facial recognition investigative
2 lead from before?

3 **A. No.**

4 Q. Why is that?

5 **A. There was no policy violation at the time. An**
6 **assessment was made to use it in these categories**
7 **and that's what the department adopted on that**
8 **date and that's what we continued to do.**

9 Q. Do you know what the rationale was for adopting
10 this limitation on types of crimes?

11 **A. I do not.**

12 Q. Let's turn back to the first page of this policy
13 directive, please. And you see the top
14 paragraph, it says "Purpose". And at the end of
15 that paragraph it says,

16 "If a match is found through DPD's
17 facial recognition process it shall be
18 considered an investigative lead and
19 the requesting investigators shall
20 continue to conduct a thorough and
21 comprehensive investigation."

22 Did I read that right?

23 **A. Yes.**

24 Q. Does this directive explain what constitutes a
25 thorough and comprehensive investigation to

1 confirm an investigative lead?

2 **A. No.**

3 Q. And does this directive address whether a photo
4 array for a photo lineup that includes a facial
5 recognition investigative lead is sufficient
6 investigation to corroborate an investigative
7 lead?

8 **A. It does not speak to that.**

9 Q. So at this time DPD policy permitted a detective
10 to consider a facial recognition result as a
11 match based solely on a photo array that included
12 that investigative lead, correct?

13 **A. Could you repeat that question?**

14 Q. So if a detective received an investigate lead
15 back from CIU from a facial recognition search,
16 used that lead as one image in a 6-pack photo
17 lineup and then administered it to somebody who
18 identified the lead photo, would that then be
19 sufficient to constitute probable cause and go
20 forward to seek an arrest for it?

21 **A. Yes.**

22 Q. And this policy would permit that?

23 **A. This policy here?**

24 Q. Yes.

25 **A. No, this policy wouldn't -- the crime then, no,**

1 but when this policy was adopted we changed
2 practices.

3 Q. And this policy doesn't speak to whether a photo
4 lineup that includes that investigative lead from
5 facial recognition technology is sufficient by
6 itself to then submit an arrest warrant?

7 **A. This policy?**

8 Q. That's right?

9 **A. It speaks to it twice that it's not.**

10 Q. To make sure we're understanding each other, so
11 the policy says that the investigative lead by
12 itself is not sufficient, right?

13 **A. Correct.**

14 Q. If then the detective does a photo lineup, uses
15 that investigative lead --

16 **A. Yes.**

17 Q. -- and the witness who views that photo lineup
18 selects the investigative lead, under this policy
19 is that sufficient to go forward for the arrest
20 warrant?

21 **A. Yes -- well, we would give it to the prosecutor.
22 We would gather our facts and then give it to the
23 prosecutor and let that office decide.**

24 Q. We can put that one aside, just give us a moment.

25 (An off-the-record discussion was

1 held)

2 DEPOSITION EXHIBIT 13

3 current facial recognition policy

4 WAS MARKED FOR IDENTIFICATION.

5 BY MR. WESSLER:

6 Q. So this is the last policy exhibit.

7 Do you recognize this document?

8 **A. Yes.**

9 Q. Can you tell me what it is, please?

10 **A. This is the current facial recognition policy in**
11 **the Detroit Police Department manual.**

12 Q. And this has an effective date of December 16,
13 2022, correct?

14 **A. Yes.**

15 Q. Would it be correct to say that other than that
16 effective date change this is identical to the
17 9-19-2019 version?

18 **A. I would need a minute to put them side by side.**

19 Q. Can you ask you a question before you do that.

20 **A. Sure.**

21 Q. So you see at the top of the new manual directive
22 there's a little box on the right side that says
23 "New Directive" and "Revised" with boxes that you
24 could check?

25 **A. Yes.**

1 Q. And neither of those are checked, correct?

2 A. Correct.

3 Q. Does that signify anything to you?

4 A. No.

5 MR. WESSLER: Could we go off the
6 record for one second.

7 (An off-the-record discussion was
8 held).

9 BY MR. WESSLER:

10 Q. So does DPD sometimes re-issue a manual directive
11 with a new effective date, but not change the
12 substance of the directive?

13 A. It's possible.

14 Q. Do you know why that might happen?

15 A. I don't.

16 Q. Okay, but just to close this conversation, this
17 is the current version of the binding DPD policy
18 on facial recognition technology?

19 A. Yes.

20 Q. And would that have been redistributed to the
21 whole department in December, 2022 if it has an
22 effective date that says that?

23 A. Yes.

24 Q. And up at the top on the front page there's a
25 field that says "Review Date" and under that it

1 says "Annually"?

2 **A. Yes.**

3 Q. What does that mean?

4 **A. So all policy is required to be reviewed to**
5 **ensure that it's fresh policy, it's not stale,**
6 **and that it remains constitutional.**

7 Q. Who does that review?

8 **A. Through our Planning and Analysis Section who are**
9 **our governance of policy and our legal advisor.**

10 Q. And so this policy is subjected to that review
11 once a year?

12 **A. Yes.**

13 Q. Just one last question about the policy. Was
14 there any DPD policy on facial recognition
15 technology in effect between the September, 2019
16 manual directive and the current December, '22
17 manual directive?

18 **A. The 2019 would govern and remain active until**
19 **updated.**

20 Q. And the only update you're aware of is this 2022?

21 **A. Yes, that's correct.**

22 Q. So the whole time in-between the September, 2019
23 version was in effect?

24 **A. Correct.**

25 MR. WESSLER: That's the end of my

1 questions about policy. I think we should take a
2 break now to get a little food and then we can
3 come back.

4 (A recess was taken for lunch.)

5 BY MR. WESSLER:

6 Q. Let's talk now about DPD's training regarding
7 facial recognition technology.

8 **A. Yes, sir.**

9 Q. I know we talked about it some before so I'll try
10 to recap a little. Currently do DPD detectives
11 receive any training at all about facial
12 recognition technology?

13 **A. No.**

14 Q. And during March of 2019 or prior to March of
15 2019 did DPD detectives receive any training of
16 any kind about facial recognition technology?

17 **A. No, not that I'm aware of.**

18 Q. And between March of 2019 to the present did DPD
19 detectives receive any kind of training about
20 face recognition technology?

21 **A. Technology -- so we have a policy, so it's in**
22 **policy, so at least from 2019 on they at least**
23 **know the policy, they have had some training**
24 **about it, so --**

25 Q. And so they are expected to read the policy?

1 A. Yes.

2 Q. Is there any additional training presentation of
3 any kind beyond that policy itself?

4 A. No.

5 DEPOSITION EXHIBIT 14
6 presentation slide for MSP
7 WAS MARKED FOR IDENTIFICATION.

8 Q. I'm going to pull up another exhibit. Have you
9 ever seen this before?

10 A. No.

11 Q. So looking at the document, does this look like
12 presentation slides for the Michigan State
13 Police?

14 A. Yes.

15 Q. And on the front it says SNAP, Statewide Network
16 of Agency Photos, at the top and then Biometrics
17 and Identification Division, Digital Analysis and
18 Identification Section, right?

19 A. Yes.

20 Q. Do you know whether MSP has given this
21 presentation to any personnel in DPD?

22 A. I do not.

23 Q. So you don't know whether CIU members have
24 received this presentation from MSP?

25 A. Correct.

1 Q. Do you know whether CIU members have received any
2 presentation about facial recognition technology
3 from MSP?

4 **A. I do not.**

5 Q. If MSP in fact had presented this -- strike that.
6 If MSP had trained DPD personnel using
7 this presentation would attendance at that
8 training been recorded in the MAS system?

9 **A. It's possible.**

10 Q. Why do you say it's possible as opposed to a
11 definitive answer?

12 **A. If the information got back to the DPD it could**
13 **have been entered because it's not a DPD-hosted**
14 **training.**

15 Q. So if an MSP staff member traveled to DPD and
16 presented this at DPD as a training, would
17 attendance at that be recorded?

18 **A. It's possible.**

19 Q. What would that depend on?

20 **A. I mean if the information got to the personnel**
21 **file into the Training Section to be recorded.**

22 Q. So attendance at a training offered by an outside
23 agency at DPD wouldn't necessarily be recorded?

24 **A. I'm telling you it should be.**

25 **I'm not telling you that always**

1 happens.

2 DEPOSITION EXHIBIT 15

3 transcript of Krystal Howard deposition

4 taken 1-10-23

5 WAS MARKED FOR IDENTIFICATION.

6 Q. I'm going to pull another exhibit. This will be
7 marked Exhibit 15.

8 If you look at the first page of this
9 it reflects that this is the transcript of the
10 deposition of Krystal Howard in this case, the
11 same case.

12 Does that seem right?

13 A. Yes.

14 Q. And if you look at -- turn to the third page of
15 this document and you'll see in the bottom right
16 quadrant there's an answer from Ms. Howard that
17 says, "Sure. My current employer is Michigan
18 State Police", is that correct, do you see that?

19 A. Yes.

20 Q. And then go to the next page in the top left
21 quadrant there's an answer in the middle that
22 says, "So as a manager I oversee the Statewide
23 Network of Agency Photos or the SNAP system in
24 the SNAP unit and the SNAP system is our
25 repository for all of our digital images..." etc.

1 So you see that?

2 **A. Which part?**

3 Q. This is what's marked as Page 10.

4 **A. Okay.**

5 Q. So if you can just turn now to -- this is kind of
6 in the middle of the packet, it's Page 50 of the
7 transcript itself and you see the small page
8 numbers at the top of each of these quadrants.

9 **A. Yes.**

10 Q. So look for Page 50. About three-quarters of the
11 way down that quadrant there's a question, "Has
12 MSP provided any training to the Detroit Police
13 Department or the Detroit Police DPD officers on
14 the use of facial recognition technology?" and
15 the answer is, "Yes".

16 And then there's a second question,
17 "What training has MSP provided?" Answer, "I
18 would like to clarify that though when I say yes
19 we specifically train the Crime Intel Bureau
20 which is not to my knowledge DPD officers.

21 Okay, but MSP does provide training to
22 DPD's Crime Intel Branch? Yes.

23 Did I read that correctly?

24 **A. Yes.**

25 Q. And you have no reason to think that's incorrect,

1 is that right?

2 **A. Correct.**

3 Q. Do you know how often MSP has provided this
4 training to CIU member?

5 **A. I don't. And we reference SNAP and that is the**
6 **portal that we use for our photos, so to access**
7 **SNAP, that would be how to get there when we have**
8 **facial recognition training from the State's**
9 **database.**

10 Q. But you just don't know how often or at what time
11 that training may have been offered?

12 **A. Correct. When the member is hired it's a part of**
13 **their training process.**

14 Q. Is it part of their training process to receive
15 training from MSP or receive internal DPD
16 training?

17 **A. The best I can explain it is the policy**
18 **references that we use SNAP. We have to give**
19 **that training piece to how to access SNAP through**
20 **that is what would be a part of the training**
21 **piece.**

22 Q. So can you describe to me what training -- what
23 training CIU members receive about facial
24 recognition technology?

25 **A. So those that are tasked to do facial recognition**

1 technology, they have training. The FBI puts on
2 a course that trains them.

3 We have training to our SOP and policy
4 and then there is the DataWorks piece to operate
5 the technology or the provider source, so it's
6 three different dimensions of the training.

7 And then globally whether it's new
8 policy, whether it's new investigative leads or
9 we compile our investigation, it could be
10 work-up, it could be -- there's constant
11 training.

12 And so that's the global CIU training
13 and then there's those three things that I
14 mentioned are specific to those that manage our
15 facial rec technology.

16 Q. And the FBI course is administered by an FBI
17 employee?

18 A. Yes.

19 Q. And they come to Detroit?

20 A. An FBI agent. I can't speak to that. I don't
21 know how it's administered, is it virtual. They
22 could be in Detroit already, but I don't know if
23 it's virtual or in person with COVID.

24 Q. And the training on SOP and policy you mentioned,
25 is that administered by members of DPD?

1 **A. Yes, that's in house.**

2 Q. And the DataWorks training, who gives that
3 training?

4 **A. In house.**

5 Q. So DataWorks does not send in somebody to train,
6 that knowledge is already within DPD?

7 **A. Correct.**

8 Q. And so you mentioned the FBI course, the internal
9 training on SOP and policy, the DataWorks
10 training and then general training on new
11 directives are policies?

12 **A. Correct.**

13 Q. Is there any other training that CIU receives
14 that addresses facial recognition technology?

15 **A. Not at this moment, not that I'm aware of.**

16 Q. Does the FBI course involve training -- actually
17 let me strike that.

18 Are you familiar with the term
19 morphological comparisons?

20 **A. I am not.**

21 Q. Does the FBI training address how an examiner
22 should compare a probe photo to the images in the
23 gallery?

24 **A. There is an NDA from the FBI that speaks to the**
25 **contents of that training.**

1 **DEPOSITION EXHIBIT 16**
2 **Non Disclosure Agreement re FBI training**
3 **WAS MARKED FOR IDENTIFICATION.**

4 Q. Let's look at that NDA. This is Exhibit 16.

5 Have you signed one of these NDAs?

6 A. **I have not.**

7 Q. But is this document the NDA you were referring
8 to?

9 A. **I don't know.**

10 Q. You say NDA, you mean non-closure agreement?

11 A. **That's correct.**

12 Q. Well, this is a document that was produced to us
13 in discovery. At the top it says non-disclosure
14 agreement regarding Federal Bureau of
15 Investigation face comparison and identification
16 training.

17 Are you familiar with the contents of
18 this training?

19 A. **I am not.**

20 Q. Oh, you're not. So whether or not this NDA
21 existed, would you be able to answer questions
22 about the contents of that training?

23 A. **No, I've haven't taken the training, I can't**
24 **speak to it.**

25 MR. CUNNINGHAM: You should feel free

1 -- you have not taken the training, you should
2 feel free to share -- don't feel constrained by
3 this non-disclosure agreement in making your
4 answers today.

5 **A. Yes, I don't know the training or the specifics**
6 **of that, so I couldn't speak to it absent the**
7 **NDA.**

8 BY MR. WESSLER:

9 Q. And have you ever spoken to someone who's taken
10 that training about what they learned in it?

11 **A. As to the curriculum, no, I have not.**

12 Q. As to anything else?

13 **A. They're my employees, I talk to them every day.**

14 Q. Fair enough. I mean have you talked to them
15 about any other aspects -- you said as to the
16 curriculum no.

17 Have you talked to them about any other
18 aspects of this FBI training?

19 **A. I have not.**

20 Q. Have you attended or are you familiar with the
21 contents of the training on the FRT SOP and
22 policy, the second training you mentioned
23 earlier?

24 **A. Yes.**

25 Q. You've attended it?

1 A. At the beginning at the onset because I've read
2 the policy and it's a reiteration to make sure
3 that they are clear as to what's in the policy,
4 so I have been at a training session when it has,
5 so I can say yes, I'm familiar with it.

6 Q. And does that training include any content that's
7 beyond what's on the face of the policy?

8 A. Well, it could. It could be several things that
9 we talk -- it could be code of conduct, it could
10 be what does discipline look like if they violate
11 this.

12 So outside we can expound upon a few of
13 the paragraphs that are in there.

14 Q. Are there written materials associated with that
15 training beyond the policies themselves?

16 A. If it's outside of -- again, if we're talking
17 about what disciplinary looks like, we could have
18 a few supporting documents that's based on what's
19 in here.

20 Q. Do any of those documents address the facial
21 recognition technology or the process of using
22 it?

23 A. No.

24 Q. And are you familiar with the contents of the
25 DataWorks training that CIU members sometimes

1 receive?

2 **A. I am not.**

3 Q. Have you ever talked to a member of CIU about
4 what is entailed in that training?

5 **A. Just at an extremely high level of that, but I
6 can't get into the weeds.**

7 Q. Can you describe at whatever level you know what
8 you know about it?

9 **A. Once they sign into the database or once they
10 sign in they input the photo and to results come
11 back.**

12 Q. Is there anything else you understand about what
13 that training includes?

14 **A. No.**

15 Q. So are CIU personnel trained to prepare any kind
16 of record or sheets documenting their comparison
17 between the probe photo and the photo in the
18 gallery that they think is the investigative
19 lead?

20 **A. They have files on their work-ups.**

21 Q. And can you describe what those files are?

22 **A. Well, once they get the information they will
23 triage the entire work-up as to how they got to
24 that point, making sure that the crime is as
25 stated, as accused, to make sure that it fits**

1 into what that Part 1 violent crime in which we
2 can actually use the technology for and then from
3 that based on the probe photos they could have
4 one or two or several to try to get the right
5 angle.

6 There may be a shadow, so from that
7 then they do the work-up and then they have in a
8 file what it is, their results, whether it was a
9 negative lead or a positive lead and then they
10 ultimately report their findings back to the
11 detective.

12 Q. And as part of that paperwork, that whole
13 universe of paperwork, is there any record where
14 the examiner describes or indicates what features
15 of the probe image they think visually are
16 similar to the features of their investigative
17 lead image?

18 A. I don't know.

19 Q. I think you said earlier but I want to confirm
20 that you don't know whether the DataWorks system
21 that DPD uses runs one facial recognition
22 algorithm or more than one, is that accurate?

23 A. I don't know the algorithms that were used.

24 Q. Do you know -- you've seen though the galleries
25 that come back?

1 **A. Yes.**

2 Q. Do you know whether those galleries are split
3 into, say, a set from an algorithm and a set from
4 another algorithm?

5 **A. I don't know.**

6 Q. But presumably somebody in CIU would be able to
7 answer that question?

8 **A. Yes.**

9 Q. And sometimes the system, the DataWorks system,
10 will fail to result at all, is that right?

11 **A. Yes, that would be a negative lead.**

12 Q. And one reason that could happen is because the
13 photo is too poor a quality?

14 **A. That's possible.**

15 MR. CUNNINGHAM: When you say "result",
16 are you talking about a gallery or are you
17 talking about an investigative lead?

18 MR. WESSLER: I'm talking about a
19 gallery. I'm sorry.

20 BY MR. WESSLER:

21 Q. So just let me make sure you understood the
22 question. Sometimes when a CIU member runs a
23 search on a probe photo do they get no results
24 back in a gallery at all?

25 **A. I don't know.**

1 Q. But a CIU member who runs these searches would
2 know that?

3 A. Yes.

4 Q. Are you familiar with what images are contained
5 in the matching database that DataWorks searches
6 against?

7 A. In the SNAP database?

8 Q. Yes, the SNAP database?

9 A. I don't know all of them. I know there's state
10 agencies, so whether it's a driver's license or
11 whether it's an ID, there are some corrections
12 records. I'm not sure which, is it their
13 booking, is it their processing. I don't know,
14 but I know there are several databases from that.

15 (A short recess was taken).

16 Q. So we were just talking about the SNAP database
17 and I think the one question I wanted to ask you
18 additionally is do you know which photos in the
19 SNAP database DPD has access to for facial
20 recognition matches?

21 A. I don't know that answer.

22 Q. Generally are you aware that there could be
23 multiple pictures of the same person in the SNAP
24 database?

25 A. That's possible.

1 Q. Say, for example, a current driver's license and
2 an expired driver's license?

3 A. That wasn't the example I was going to use, but
4 sure.

5 Q. What example would you use?

6 A. I would say someone who has a current driver's
7 license, but also is in the MDOC system, two
8 current photos.

9 Q. If that's the case for somebody and CIU runs a
10 search and they get back one photo of a person
11 does the examiner check to see whether there are
12 other photos of that person elsewhere in SNAP?

13 A. It's an investigative lead. With their training
14 they can check outside of that to find other
15 corroborating evidence to ID a person.

16 Q. What I'm asking is, do you know whether if an
17 image of somebody comes back in the gallery and
18 there's one image of that person in the gallery
19 does CIU members check to see whether there are
20 other images of that person in the SNAP database
21 that did not show up in the gallery?

22 A. Yes, that's possible.

23 Q. Do you know whether that's actually a practice in
24 CIU? I can explain again if you're not clear.

25 A. Because there are other databases out of SNAP we

1 can get a picture of a person and it shows their
2 driver's license, then we run their driver's
3 license in the Secretary of State or in the LEIN
4 so yeah, we can extract it out of there and get
5 that from there.

6 But then as a part of that verification
7 process we go directly to a database system to,
8 again, to corroborate, to decide whether or not
9 we have enough to deem this as a positive lead or
10 negative lead.

11 Q. Do you know whether when a CIU member is looking
12 at a photo from the gallery that's returned as
13 possible matches, when they're looking at that is
14 there a way for them to check within the system
15 whether there are other photos of that same
16 person elsewhere in the SNAP database?

17 A. I don't recall that.

18 Q. That's fine. Are CIU personnel informed that DPD
19 detectives outside CIU do not receive facial
20 recognition training?

21 So are CIU personnel informed that DPD
22 detectives outside of CIU are not trained on FRT?

23 A. Training on the use or training on the policy?

24 Q. Start with training on use.

25 A. Yes, this is specific -- they know that they are

1 the specific individuals that are trained to use
2 this technology.

3 Q. And so CIU members are aware that detectives
4 elsewhere are trained on the policies that apply
5 to them, manual directive, right?

6 A. Yes, as the department.

7 Q. But CIU members are also aware that there's no
8 further training that detectives would receive on
9 facial recognition?

10 A. I don't know if they're aware of it, but that's
11 the policy that's from the department standard.

12 Q. Thank you. We can move on to another area now.

13 So let's go to Exhibit 12, this is a
14 manual directive from September, '19 and if you
15 could just turn to Section 5.1. -- I'm sorry, I
16 have the wrong section, I'm sorry, 6.2.

17 MR. CUNNINGHAM: Weekly report to the
18 Board of Police Commissioners?

19 MR. WESSLER: That's right.

20 BY MR. WESSLER:

21 Q. Do you see that one, 6.2 weekly report to the
22 Board of Police Commissioners?

23 A. Yes.

24 Q. And so the section requires CIU to provide weekly
25 reports to the Board of Police Commissioners and

1 then it specifies some of the information to be
2 contained there.

3 So it says information pertaining to
4 the number of facial recognition requests that
5 were fulfilled, correct?

6 **A. Yes.**

7 Q. The crimes that the facial recognition requests
8 for attempting to solve, right?

9 **A. Yes.**

10 Q. If there are any upgrades to the facial
11 recognition software, any planned changes to the
12 contract and/or any confirmed policy violations,
13 right?

14 **A. Yes.**

15 Q. And that was all the information that was
16 required to be -- under the policy is required to
17 be provided in these weekly reports, right?

18 **A. Yes.**

19 Q. And then there's also this requirement of an
20 annual report --

21 **A. Yes.**

22 Q. -- in 6.3 and that says that the annual report
23 shall include a summary of the weekly reports, an
24 evaluation of the efficacy of the department's
25 facial recognition technology and that evaluation

1 should include if there were any relevant
2 lawsuits or settlements, the number of cases that
3 use of the technology assisted in investigations
4 and any other relevant factors.

5 Did I summarize that correctly?

6 **A. Yes.**

7 Q. So under the weekly reports section those weekly
8 reports were actually generated and sent to the
9 Board of Police Commissioners, right?

10 **A. Yes.**

11 Q. Are you familiar with those?

12 **A. Yes.**

13 Q. Have you reviewed them?

14 **A. Yes.**

15 Q. Did you review them ahead of this or you've just
16 seen them over time?

17 **A. I've seen them over time.**

18 Q. And do you know whether the Board of Police
19 Commissioners takes any follow-up action as a
20 result of these reports?

21 **A. I have no knowledge.**

22 Q. Can you tell me when the weekly reports started?

23 **A. I don't know. This date of the policy is when it**
24 **says it shall happen.**

25 **DEPOSITION EXHIBIT 17**

1 weekly report on facial recognition

2 printed 1-27-20

3 WAS MARKED FOR IDENTIFICATION.

4 Q. So Exhibit 17, are you familiar with what this
5 is?

6 A. Yes.

7 Q. Can you describe it, please?

8 A. This is the facial recognition weekly report.

9 Q. And this one is dated -- printed on Monday,
10 January 27, 2020, correct?

11 A. Yes.

12 Q. So this is the earliest weekly report we received
13 in discovery in this case. Do you know whether
14 this is in fact the first weekly report that was
15 generated?

16 A. I don't know that.

17 Q. So down in the bottom left corner it says "Prior
18 "Week Count of Leads" and then it says negative
19 and there's a bar that goes up to one and
20 positive bar that goes up to one, do you see
21 that?

22 A. Yes.

23 Q. Can you explain to me what negative and positive
24 means here?

25 A. That means they got back a photo that, again, was

1 a positive lead that could be of evidentiary
2 value to identify the person that was in the
3 probe.

4 Q. And are you talking about at the end of CIU's
5 process of review and peer review and supervisory
6 review if they had an investigative lead at that
7 point, then they would say positive?

8 A. Yes.

9 Q. And if somewhere in that process one of those
10 reviewers determines that it in fact was not a
11 good match, then that would be negative?

12 A. Correct.

13 DEPOSITION EXHIBIT 18
14 weekly report on facial recognition
15 printed 2-4-20
16 WAS MARKED FOR IDENTIFICATION.

17 Q. Exhibit 18, does this look familiar to you?

18 A. It's similar.

19 Q. So this one has a date of Tuesday, February 4,
20 2020, correct?

21 A. Yes.

22 Q. So it says the weekly facial recognition report
23 but from a little later than the one that we were
24 just talking about, right?

25 A. Yes.

1 Q. So in the bottom left corner where it says "Prior
2 "Week Count of Leads" this chart says match and
3 no match. How does that correlate to the
4 negative and positive that was in that previous
5 chart?

6 A. If you're asking me to corroborate, I mean it
7 would be my assumption that a match would refer
8 to a positive lead and no match would be a
9 negative lead. That would be my interpretation
10 of this document.

11 Q. And you don't know why that language may have
12 changed?

13 A. I don't. It could have been a number of reasons.
14 It could have been at the behest of the Board
15 that they wanted to understand it. I'm not sure.

16 But it appears to be a change in the
17 vernacular in this document.

18 Q. Are you aware of any other changes over time in
19 your memory to these reports?

20 A. No.

21 Q. And have these weekly reports continued up to the
22 present?

23 A. Since my time at CIU they have.

24 Q. Do you know whether they're continuing right now?

25 A. Yes.

1 MR. CUNNINGHAM: Yes, you know or yes,
2 they're continuing.

3 **A. Yes, I know and they continue.**

4 BY MR. WESSLER:

5 Q. They are in fact continuing?

6 **A. Yes.**

7 MR. WESSLER: Mr. Cunningham, I think
8 we have up to whatever you produced. If we can
9 get a supplement to that up to the present, that
10 would be helpful.

11 MR. CUNNINGHAM: If you guys can
12 provide me a date of the last one you got was,
13 that would be helpful.

14 MR. WESSLER: Yes, we can. I don't
15 think I have that noted down here, but if you can
16 just make a note.

17 BY MR. WESSLER:

18 Q. So back in the manual directive 6.3 addresses the
19 annual report, right?

20 **A. Yes.**

21 Q. And -- okay, so one of the things 6.3 says --
22 this is the third sentence,

23 "The evaluation shall include if there
24 were any relevant lawsuits or
25 settlements involving facial

1 recognition, the number of cases that
2 use of the technology assisted in
3 investigations and other relevant
4 factors."

5 Do you know what "assisted" means here?

6 **A. The furtherance of an investigation.**

7 Q. So would that include cases where somebody was
8 arrested based on that investigative lead?

9 **A. I don't understand.**

10 Q. I guess maybe if you could put it in your own
11 words, what do you mean by in furtherance of the
12 investigation?

13 What are the types of situations where
14 use of the technology would have assisted in the
15 investigation?

16 **A. If it helped identify a person, assists in**
17 **identifying who a perpetrator was of a violent**
18 **Part 1 crime.**

19 Q. And do you know whether this number of cases that
20 use of the technology assisted in the
21 investigation would include cases where an
22 investigative lead was generated and then the
23 detectives in following up determined that
24 actually it was not a correct match?

25 **A. Well, that's a breakout column in this report**

1 because it asks for that independent of that as
2 far as any relevant lawsuits in it.

3 So that's one of the categories, so I
4 think they would be captured in the report.

5 Q. It would be captured if someone was falsely
6 arrested and sues, is that what you're saying?

7 A. It says in there that the evaluation shall
8 include if there are any relevant lawsuits or
9 settlements involving facial recognition and a
10 number of cases that technology assisted in
11 investigations and other relevant factors, so it
12 would have been included in the report.

13 Q. I guess -- if you don't know the answer to this,
14 that's fine, just tell me. I'm wondering whether
15 just this section of the sentence "... the number
16 of cases that use of the technology assisted in
17 investigations..." would include cases where
18 someone was not falsely arrested, but where
19 there's an investigative lead, detective looks at
20 it, determines actually that's the wrong person
21 and goes back to the drawing board, do you know
22 whether that would be considered as the
23 technology assisting that investigation for this
24 reporting?

25 A. I don't.

1 Q. That's fine.

2 DEPOSITION EXHIBIT 19

3 annual report on facial recognition, 2021

4 WAS MARKED FOR IDENTIFICATION.

5 Q. This is Exhibit 19. Is this familiar to you?

6 **A. Vaguely.**

7 Q. This says Detroit Police Department Annual Report
8 on Facial Recognition, 2021. It says produced on
9 5-13-2022.

10 Do you understand this to be the annual
11 report discussed in the manual directive?

12 **A. Yes.**

13 Q. Can you identify what part of this report shows
14 the efficacy of DPD's facial recognition
15 software?

16 **A. Is this the complete report?**

17 Q. This is the complete report as it was turned over
18 to us in discovery.

19 **A. It's not contained in this document.**

20 Q. And so no part of the analysis in this document
21 includes whether the investigative lead
22 identified by facial recognition was actually the
23 right person, is that correct?

24 **A. The question again, I'm sorry?**

25 Q. So no part of the analysis in this document

1 includes whether the investigative lead
2 identified by facial recognition was actually the
3 right person?

4 **A. The question one more time.**

5 Q. So no part of the analysis in this document
6 includes whether the investigative lead
7 identified by facial recognition was actually the
8 right person?

9 **A. No because, again, facial rec doesn't confirm**
10 **that it's the person, it's just a tool to help**
11 **and assist to ID a person.**

12 Q. And sometimes that investigative lead will in
13 fact be the suspect that you're looking for,
14 right?

15 **A. Correct.**

16 Q. And sometimes it will turn out not to actually be
17 the suspect you're looking for?

18 **A. It's possible.**

19 Q. And nothing in this document records how often it
20 is actually the suspect and not often it's not,
21 correct?

22 **A. Not out of this report they wouldn't. This is**
23 **the analyst. They get the information and they**
24 **forward it. It would be up to the detective and**
25 **the corroborating witnesses that would ID them to**

1 actually speak to that.

2 So yeah, at the level we would only
3 send our findings forward.

4 Q. And does the department keep track of that
5 information from the later stage of the
6 investigation?

7 A. We would probably have to get it, but it exists.

8 Q. When you say it exists, does that mean that
9 somebody would have to go through individual case
10 files or is it centralized somewhere?

11 A. At the very least individual case files. I don't
12 know if it's centralized or not.

13 Q. You're not aware of any current analysis that
14 addresses how often the investigative lead is
15 actually the right suspect and how often it's
16 not?

17 A. I don't have that information.

18 Q. Let's turn back to the manual directive, looking
19 now at 6.1.

20 So 6.1 says it's Governance and
21 Oversight, LASO and Crime Intel Responsibilities.
22 And then this first subsection talks about a
23 local agency security officer (LASO), is that
24 right?

25 A. Yes.

1 Q. Is it LASO?

2 **A. Yes.**

3 Q. And it says Section 2(d) one of the
4 responsibilities of LASO is, "Ensuring that
5 random evaluations of user compliance with system
6 requirements along with this policy and
7 applicable laws are conducted and documented".

8 Did I read that right?

9 **A. Yes.**

10 Q. So can you tell me who's the LASO in CIU?

11 **A. The LASO is -- our department LASO or an agency
12 one that everything that CJIS touches is Capt.
13 Shelly Holderbaum.**

14 Q. And so she's the LASO for all of DPD you say?

15 **A. Yes.**

16 Q. And so her responsibilities include implementing
17 this section of the CIU SOP?

18 **A. Yes.**

19 Q. Do you know whether the LASO received training on
20 use of facial recognition technology?

21 **A. Not the actual use but the policy.**

22 Q. The policy that applies to everyone in DPD?

23 **A. Yes.**

24 Q. So back to 6.1 2(d) that talks about the LASO
25 conducting random evaluations of user compliance,

1 what do those evaluations consist of?

2 **A. I don't exactly know. I can simply tell you that**
3 **there are more redundancies and checks and**
4 **balances with this and nothing is brought to my**
5 **attention as it relates to any violations of use**
6 **of the technology.**

7 Q. Who does the LASO report to?

8 **A. Me.**

9 Q. And so do you have regular meetings with the
10 LASO?

11 **A. Yes.**

12 Q. In general what do those meetings consist of?

13 **A. Just the areas that the LASO is responsible over**
14 **to ensure that we're in accordance with CJIS,**
15 **Criminal Justice Information System.**

16 Q. Do you know how often these random evaluations by
17 the LASO occur?

18 **A. They wouldn't be random if it was a cadence to**
19 **them.**

20 Q. That's fair. Any ballpark sense, are you on a
21 monthly basis, yearly or you really can't say?

22 **A. I can't say.**

23 Q. Are the results of those evaluations stored
24 somewhere?

25 **A. I would assume, but I would need to confirm.**

1 Q. And does anyone look at those results?

2 **A. If it's a negative report -- if they're discussed**
3 **and it's a negative report it would go no further**
4 **than that.**

5 Q. What do you mean by negative report?

6 **A. If there were no violations so I didn't take a**
7 **deep dive.**

8 Q. Does the LASO provide you or anyone else in the
9 command staff with any summaries of these
10 evaluations?

11 **A. If I requested one. I have not requested one.**

12 Q. You have not to date ever requested one of those?

13 **A. Correct, based on the negative reports.**

14 Q. Looking down just a little in the manual
15 directive this is 6.1 3, now we're talking about
16 the commanding officer of CIU, correct?

17 **A. Correct.**

18 Q. If you look down to 6.1 3(c) this again talks
19 about random audits, right?

20 **A. Yes.**

21 Q. What do those audits by the CIU commanding
22 officer consist of?

23 **A. Those audits would be in accordance with Michigan**
24 **retention policy, I believe Schedule A as to what**
25 **files that we can keep and retain and what is to**

1 be purged.

2 Q. And I'll ask the question again, but feel free to
3 give the same answer, how often do those audits
4 occur?

5 A. Well, at least annually and, again -- so some --
6 built within this are things annual, so again it
7 goes. So as relates to applicable laws we know
8 that annually to purge the documents, that
9 they're gone beyond the retention period.

10 And then, again, other randoms not to
11 that level of document retention, each are
12 different.

13 Q. Are the results of those audits by the CIU
14 commanding officer stored somewhere?

15 A. I don't know.

16 Q. Have you ever seen the results of those audits?

17 A. We discussed them. I have not -- I don't recall
18 receiving a written report.

19 Q. Can you describe what the discussions have
20 entailed?

21 A. So it would be from confidential documents that
22 are out in public that are put in one of the
23 files that you have to protect a CJIS related, so
24 they may do a audit and walk through, hey, we
25 didn't find anything, no one left any classified

1 documentation out.

2 Six months in or a year in line with
3 the purge these documents don't fall within the
4 retention period we would throw these out. Any
5 improper usage of LEIN or the information
6 network, what that looks like.

7 So those are the areas that we discuss
8 during our conversations and interviews.

9 Q. Last set of questions about this directive.
10 Under 7, Section 7, Subsection 8, this is Page 7
11 of the document, it says,

12 "Queries made to the department's
13 facial recognition system would be
14 logged into the system identifying the
15 user initiating the query. All user
16 access including participating agency
17 access and queries are subject to
18 review and audit."

19 Did I read that correctly?

20 A. Yes.

21 Q. What data is stored about each query of the
22 system?

23 A. Well, that would be certainly time, date,
24 location, the crime, the unit where they're
25 requesting this from. Those are -- would be what

1 we would get in that CIU work-up request.

2 Q. Can you -- what do you mean by "CIU work-up
3 request"?

4 A. I'm sorry, the facial rec request to utilize the
5 technology.

6 Q. So each time a facial recognition request is made
7 the information you just listed is logged?

8 A. Yes.

9 Q. And how is that data saved?

10 A. Electronically.

11 Q. Does anyone review the audit trail for these?

12 A. Yeah, they're reviewed, actually they are on a
13 case-by-case basis. The supervisor wants to know
14 how we got there from the genesis of that, what
15 crime occurred, does it fit again within that
16 Part 1 violent crime that we can run this for, so
17 there's actually an audit done on every one.

18 Q. By the CIU supervisor?

19 A. Yes.

20 Q. And does anyone else review these audit trails?

21 A. What do you mean?

22 Q. Does anyone else within DPD also review this file
23 of audit logs?

24 A. The Crime Intelligence commanding officer.

25 Q. And how often would that person look at it?

1 A. Randomly.

2 Q. Anyone else?

3 A. To take the deep dive, no, that's the
4 responsibility of the commanding officer and then
5 we can discuss it later, but as far as conducting
6 it, that would be the commanding officer or
7 perhaps the captain.

8 Q. And does the commanding officer or the captain or
9 the CIU supervisor take any action as a result of
10 looking at those audit trails?

11 A. If there are any improprieties, yes, to wit,
12 corrective action will be taken.

13 Q. And what are some examples of the kind of
14 improprieties that might cause that?

15 A. Well -- and again with our case-by-case audit we
16 want to ensure that a crime isn't misrepresented
17 that we -- I mean every aspect of it.

18 The crime wasn't misrepresented, a
19 sample photo obviously is a viable photo or
20 sample piece that we put in every step of the
21 way.

22 Q. I want to ask a question about the way it's
23 saved. Is it possible to download, say, a year's
24 worth of that entire set of audit logs and look
25 at all those investigations together?

1 A. Looking at them altogether?

2 Q. That's right.

3 A. I mean I suppose you could.

4 Q. The question is, is the system configured so that
5 -- let me backtrack.

6 I assume the system is configured so
7 you can select a particular facial recognition
8 use and look at the logs for that one, right?

9 A. Yes.

10 Q. Is the system also configured so that you could
11 input, say, a time frame and download the logs of
12 all the facial recognition searches from that
13 period?

14 A. Yes.

15 Q. And so --

16 MR. CUNNINGHAM: Do you know that?

17 THE WITNESS: Yes, it's in the smart
18 sheet that's a chronological order based on date
19 range, yes.

20 BY MR. WESSLER:

21 Q. So looking back at now the paragraph right below
22 in the manual directive, Subparagraph 9, this
23 talks about retention of audit trail, right?

24 A. Yes.

25 Q. And the second sentence says, "An audit trail

1 will be kept for a minimum of one year of
2 requests, access and searches of facial
3 recognition technology, etc.

4 Do you know whether the audit trail is
5 kept for longer than one year?

6 **A. I don't.**

7 Q. So do you know how long it is retained for?

8 **A. I don't.**

9 Q. And last question on that, who has access to it?
10 You mentioned the CIU supervisor, the captain I
11 think and the commander?

12 **A. CIU and the LASO.**

13 Q. Does anyone else have the ability to access that
14 audit trail?

15 **A. No -- I'm sorry, the director of Crime
16 Intelligence.**

17 **(A recess was taken).**

18 BY MR. WESSLER:

19 Q. One more question about the annual report on
20 facial recognition. So we looked at the annual
21 report for 2021 which it says was produced in May
22 of 2022.

23 Has the annual report for 2022 been
24 produced yet?

25 **A. I have not seen it.**

1 Q. If it had been produced, would you have seen it?

2 **A. Yes.**

3 Q. And do you know whether there was an annual
4 report produced for 2019?

5 **A. That predates me, I don't.**

6 Q. So I want to ask you some questions about the
7 data that's collected in various ways about
8 facial recognition technology.

9 If there's anything you don't know the
10 answer to, of course just tell me that. So we
11 talked about CIU logging certain information.

12 Is CIU the part of DPD that's
13 responsible for collecting data or use of facial
14 recognition technology?

15 **A. Yes.**

16 Q. And is CIU also the part of DPD responsible for
17 analyzing that data?

18 **A. Yes.**

19 Q. Does CIU actually do the production of these
20 weekly and annual reports?

21 **A. Yes.**

22 Q. So DPD collects data on the number of facial
23 recognition requests that are made, correct?

24 **A. Yes.**

25 Q. And the number of --

1 A. They have the requests that were submitted to
2 them.

3 Q. The number of requests submitted to CIU?

4 A. Yes.

5 Q. And DPD collects data on the number of facial
6 recognition requests that are fulfilled by CIU?

7 A. Yes.

8 Q. And the number of facial recognition requests
9 that are sent to MSP?

10 A. I need to confirm that. Yes, if it's a request
11 it's a request, so we would keep it to the
12 outcome. If it happens, yes.

13 Q. And is the thing you're not sure of whether
14 there's some breaking out of DPD fulfilled and
15 MSP fulfilled requests?

16 A. Correct.

17 Q. Is data collected on who made the requests?

18 A. Yes.

19 Q. Is there information like the precinct or the job
20 titles of requesters?

21 A. Yes.

22 Q. Is there information recorded about whether the
23 request was from an outside agency?

24 A. Yes.

25 Q. Is there other information about the requester

1 that's logged?

2 **A. The specific requester, no.**

3 Q. What information is collected about the
4 investigation that the facial recognition
5 requested assistance with?

6 **A. The crime, date and time.**

7 Q. Anything else?

8 **A. No.**

9 Q. Is there information about the investigation
10 that's been conducted up to that point?

11 **A. A case number, so from that case number the**
12 **analyst or the person performing the facial**
13 **recognition query, the search will then go**
14 **through the case number and open up that case and**
15 **look at everything.**

16 Q. So the CIU examiner who's about to run the facial
17 recognition search will first look at the case
18 file?

19 **A. Yes.**

20 Q. What are they looking for when they're reviewing
21 that case file?

22 **A. Again, to make sure it qualifies for facial**
23 **recognition.**

24 Q. So is the only thing that they're paying
25 attention to whether it's a violent felony or a

1 home invasion 1?

2 **A. If it qualifies to move forward, yes, that's the**
3 **first thing they triage.**

4 Q. And so they're not concerned with what other
5 steps might have happened from the detective or
6 other features of the investigation?

7 **A. What do you mean?**

8 Q. What I mean is, I assume that the investigative
9 file they can access, has lots of notes about
10 what the detective may have tried before facial
11 recognition, right?

12 **A. Yes.**

13 Q. Does CIU log any of that independently?

14 **A. No, not independently.**

15 Q. Does the CIU examiner do anything with that
16 information?

17 **A. What information?**

18 Q. The information about what steps the detective
19 may have taken before requesting facial
20 recognition?

21 **A. No, they're just providing this tool to assist**
22 **the detective in moving forward with his**
23 **investigation -- he or she, sorry.**

24 Q. What information is collected about the probe
25 image that's provided to CIU by the detective?

1 A. What do you mean?

2 Q. So, for example, does the CIU examiner make any
3 notations about the quality of the image?

4 A. **There have been notations, yes.**

5 Q. What do you mean "there have been"?

6 A. **As an example, if the photo is not a good photo
7 or is dark where you can't use the photo a note
8 would be put, probe photo unable to process or
9 unable to go forward.**

10 **So yes, there are some notes as to
11 their actions.**

12 Q. And do those notes include the reason why it's
13 not sufficient to process?

14 A. **It's possible, I don't know.**

15 Q. If a probe photo -- if the CIU examiner
16 determines that the photo is able to be
17 processed, but there are still some features of
18 it that are not ideal do they record information
19 about that?

20 A. **If it's able to process, they will process and if
21 it comes back to a negative lead they will notate
22 why.**

23 Q. So, for example, if they have a probe photo that
24 they are going to run through the system, but
25 part of the face is covered, do they note that

1 down?

2 **A. Yes.**

3 Q. Even if they're going to run it through the
4 system they note it down?

5 **A. Yes, they note any deficiencies as relates to
6 that.**

7 Q. Where do they note that?

8 **A. It would be in their file.**

9 Q. Are those files -- those files are attached to
10 the case itself?

11 **A. No, as policy dictates they would -- as the
12 result of that investigation that would be housed
13 in Crime Intel. The detective would only get the
14 work product or the negative results notification
15 if there wasn't a work product that we could give
16 them.**

17 Q. And would a detective have the ability if they
18 wanted to to query those additional notes that
19 are in CIU?

20 **A. No.**

21 Q. Could they ask CIU to provide them?

22 **A. They can ask anything, but policy forbids that.**

23 Q. So that information is limited just to personnel
24 in CIU?

25 **A. Yes.**

1 Q. Are you familiar with the whole range of
2 notations about quality or features of the image
3 that a CIU employee might make?

4 **A. No.**

5 Q. So could it include information about the
6 resolution of the image?

7 **A. You're asking me could it? I don't know.**

8 Q. I asked you one question before about a request
9 to go to MSP, just a couple of more. So does CIU
10 record the number of requests that it forwards to
11 MSP?

12 **A. Yes.**

13 Q. And does it record the number of requests that
14 are actually fulfilled by MSP?

15 **A. Whatever they send back, there's a disposition on
16 each action they take.**

17 Q. Does it include information about who forwarded
18 the request to MSP?

19 **A. Yes.**

20 Q. And does it include information about who at MSP
21 handled the request?

22 **A. I don't know.**

23 Q. And does it include information about who in DPD
24 CIU received the response back from MSP?

25 **A. Yes.**

1 Q. Is there information collected about which facial
2 recognition algorithm was used in that search?

3 **A. Not to my knowledge, I don't know.**

4 Q. Is there information recorded about how many
5 potential matches were returned in the gallery?

6 **A. From an MSP?**

7 Q. From DPD. I should have made clear, we're back
8 on DPD right now.

9 **A. I don't know if the notation is put in there how
10 many came back in a gallery. I don't have that
11 answer.**

12 Q. We talked earlier about the term "confidence
13 score" or "likelihood score" and I think you said
14 you weren't familiar with those terms?

15 **A. Correct.**

16 Q. Are you familiar with the concept that there's
17 some notation in the gallery generated by the
18 algorithm that reflects how likely the algorithm
19 thinks it is to be a match to the probe photo?

20 **A. No, I'm not.**

21 Q. So is data recorded about the demographics of the
22 investigative lead

23 **A. Yes.**

24 Q. So, for example, race?

25 **A. Yes.**

1 Q. Gender?

2 **A. I don't recall.**

3 Q. Any other demographic characteristics?

4 **A. It's in the annual report.**

5 Q. Do you know beyond what's reflected in the annual
6 report are there any other demographic categories
7 that are recorded?

8 **A. Not that I'm aware of.**

9 Q. And does CIU record data about what happens in
10 the investigation after they send that lead to
11 the detective?

12 **A. No.**

13 Q. So CIU doesn't know whether it resulted in an
14 arrest, for example?

15 **A. No.**

16 Q. So when talking now about all the kinds of data
17 we've been discussing, is there a process whereby
18 anybody checks the accuracy of that data once
19 it's been recorded?

20 **A. Which part?**

21 Q. So for all these various types of information
22 that CIU records that we've been talking about in
23 the files, does anyone check to make sure that
24 there were not mistakes in that recording?

25 **A. That's what the LASO's responsibility is.**

1 Q. And so is the LASO checking regularly to see if
2 there were mistakes?

3 **A. Randomly.**

4 Q. So are you -- beyond the weekly reports and the
5 annual report is there any other kind of analysis
6 done on this data overall?

7 **A. No.**

8 MR. WESSLER: Can we go off the record?
9 (An off-the-record discussion was
10 held).

11 Q. I'm happy to report that we are now done with
12 questions where you're answering on behalf of the
13 department, on behalf of the City of Detroit and
14 the Detroit Police Department.

15 I have a few questions for you now in
16 your individual capacity.

17 **A. Yes, sir.**

18 Q. So you should answer these questions based on
19 what you know from your personal experience.
20 Again, you're no longer answering on behalf of
21 the City or the department, does that make sense?

22 **A. Yes. If it don't, I'll ask.**

23 Q. Okay, please do. You've said this now three
24 times I think, but can you remind me when you
25 became a commander of the 3rd Precinct?

- 1 **A. March of 2019.**
- 2 Q. And you left the 3rd Precinct in June of '21?
- 3 **A. Yes.**
- 4 Q. So you supervised Rodney Cox when you led the 3rd
5 Precinct, is that correct?
- 6 **A. I did.**
- 7 Q. And were you his direct supervisor?
- 8 **A. Yes.**
- 9 Q. Did you supervise Angelique Chadwick-Bills?
- 10 **A. Yes.**
- 11 Q. Were you her direct supervisor?
- 12 **A. No.**
- 13 Q. Who was?
- 14 **A. Capt. Cox.**
- 15 Q. So you supervised her supervisor?
- 16 **A. Yes.**
- 17 Q. Did you supervise Barbara Kosloff (sp)?
- 18 **A. Supervised her supervisor.**
- 19 Q. Who was her direct supervisor?
- 20 **A. Rodney Cox.**
- 21 Q. Did you supervise Donald Bussa?
- 22 **A. I was ultimately where it stopped because he had**
23 **a sergeant who had a lieutenant who had a**
24 **captain.**
- 25 Q. So you were up the chain?

- 1 **A. Yes.**
- 2 Q. Did you supervise Det. Levan Adams?
- 3 **A. No.**
- 4 Q. Because by the time you arrived he was no longer
5 in the 3rd Precinct?
- 6 **A. Correct.**
- 7 Q. Are you aware that Rodney Cox was de-appointed
8 from captain to lieutenant?
- 9 **A. Yes, I was.**
- 10 Q. Did that happen while you were commanding the 3rd
11 Precinct?
- 12 **A. Yes.**
- 13 Q. Who made the decision to de-appoint him?
- 14 **A. Chief James Craig.**
- 15 Q. Were you consulted ahead of time on that
16 decision?
- 17 **A. What do you mean "consulted"?**
- 18 Q. Did Chief Craig speak to you about the
19 de-appointment before it was communicated to
20 Capt. Cox?
- 21 **A. Yes -- well, I had a conversation with my deputy
22 chief at that time and I believe she relayed that
23 to the chief.**
- 24 Q. Who was the deputy chief at that time?
- 25 **A. Elaine Bryant.**

1 Q. What did that conversation consist of?

2 A. She wanted to know some of the performances or
3 tasks that had been given to Capt. Cox, had they
4 been completed.

5 Q. Specifically what tasks?

6 A. It could have been reports. I don't recall the
7 specific ones or exactly how it got to that
8 point.

9 Q. And this conversation included the deputy chief
10 asking you questions about Capt. Cox?

11 A. Yes.

12 Q. Did the deputy chief also provide you information
13 about the contemplated de-appointment?

14 A. No.

15 Q. Did the deputy chief explain the reason for the
16 de-appointment?

17 A. No, but I was present when it happened, so I mean
18 I got --

19 Q. So can you -- present when -- what do you mean
20 "when it happened", what happened?

21 A. So they had a conference with the captain and
22 then myself, I believe all of the chief officers
23 and myself were on the call.

24 Q. And who were the other chief officers?

25 A. Lashinda Stair, David LaValley, Todd Bettison, I

1 believe Marvin Wilson and Elaine Bryant as to
2 what I can recall.

3 Q. What are their responsibilities? Were they
4 within the 3rd Precinct?

5 A. They were part of the executive team, Chief
6 Craig's executive team.

7 Q. So they're at the central headquarters?

8 A. Yes.

9 Q. And can you describe what happened on that call?

10 A. They had given -- they had a summary of Capt.
11 Cox's performance that pre-dated our time at the
12 3rd Precinct and then from that they had --
13 including a work plan that they had for him
14 again prior to my time getting there.

15 And they had made the decision to go in
16 a different direction as to the department.

17 Q. And what were those performance issues that they
18 discussed then?

19 A. I guess I don't recall offhand, but I guess the
20 attributes or the expectations of a police
21 captain.

22 Q. Was the Shinola investigation discussed?

23 A. I don't recall.

24 Q. Do you understand that at least one reason for
25 the de-appointment was Capt. Cox's supervision of

1 the Shinola investigation?

2 **A. I can't confirm that because, again, it was a**
3 **large -- it was -- I don't want to say large, it**
4 **was but several things, not just one specific**
5 **incident, and I don't know how much of a factor**
6 **that it played into it.**

7 Q. Was that one of the factors that they discussed
8 during that call?

9 **A. I don't recall.**

10 Q. Do you know specifically any of the reasons why
11 the de-appointment happened?

12 **A. It was performance.**

13 Q. But you cannot recall what specific performance
14 deficiencies contributed to that decision?

15 **A. Correct.**

16 Q. Did you speak to Capt. Cox about the
17 de-appointment directly?

18 **A. We had spoken after it happened. I don't know**
19 **about what exactly -- we were co-workers, I had**
20 **known him for over 20 years, so we talked, but I**
21 **couldn't really offer anything. The chief made**
22 **his decision.**

23 Q. Do you have any other information about the basis
24 for that decision?

25 **A. I don't.**

1 Q. Is there any paperwork that you received related
2 to that decision?

3 A. No, that would have been in his personnel file.
4 Any notice he would have gotten, I wouldn't have
5 received that.

6 Q. Because you didn't have regular access to
7 personnel files?

8 A. Yeah, that one would have been a high level, that
9 would have come directly from the chief.

10 Q. And ask one more time, was the Shinola
11 investigation a factor in that de-appointment?

12 A. I don't recall, it could have been, I don't know.

13 Q. Are you aware that Rodney Cox was disciplined for
14 neglect of duty?

15 A. No, I wasn't.

16 DEPOSITION EXHIBIT 20

17 notice of discipline re: Cox

18 WAS MARKED FOR IDENTIFICATION.

19 Q. I have an exhibit, this is 20. Have you seen
20 this before?

21 A. No.

22 Q. It says Notice of Discipline, has Rodney Cox's
23 name, it says list of charges neglect of duty,
24 correct?

25 A. Yes.

1 Q. Does looking at this jog your memory about a
2 neglect of duty notice of discipline to
3 Capt. Cox?

4 A. **No, I wouldn't have gotten this. I wasn't a
5 witness on this or anything, so I don't know.**

6 Q. So even if the neglect of duty happened during
7 Capt. Cox's time at the 3rd Precinct working
8 under you, you wouldn't have received any
9 information about it?

10 A. **If I would have been a witness or something, had
11 the investigation happened. I didn't do that and
12 if you look at the time in the third line alone
13 it starts from October, 2018. Again, that
14 predates me before I got there.**

15 Q. But you got there within that time period?

16 A. **Yeah, I did.**

17 Q. It says,

18 "...while assigned to the 3rd
19 Precinct, neglect of duty when he
20 failed to ensure that the supervision
21 assigned to the 3rd Precinct PDU
22 properly supervised and trained
23 department members assigned to the 3rd
24 Precinct PDU."

25 I read that correctly, right?

- 1 **A. Yes.**
- 2 Q. What does "PDU" stand for?
- 3 **A. Precinct detective unit.**
- 4 Q. Do you know any idea what this failure in ensure
5 supervision entailed?
- 6 **A. I don't know about this investigation. Again --**
7 **yeah, I don't know what all is encompassed in**
8 **this charge.**
- 9 Q. We can put that aside. When did you first became
10 aware of the Shinola investigation?
- 11 **A. When it was made public on -- I think there was a**
12 **news article about it.**
- 13 Q. Do you recognize the name Katherine Johnston?
- 14 **A. No. I think in my review of it she was a part of**
15 **the asset management team of Shinola.**
- 16 Q. Does the company name Mackinac Partners sound
17 familiar?
- 18 **A. Yes, that's who they basically hired, the**
19 **security manager, assets managers for their two**
20 **properties.**
- 21 Q. Have you ever spoken to Ms. Johnston?
- 22 **A. If it was it was just in passing.**
- 23 Q. Did you ever speak to her about the Shinola
24 investigation?
- 25 **A. No.**

1 Q. When you were in charge of the 3rd Precinct did
2 you attend CompStat meetings?

3 A. Yes.

4 Q. Is it possible you met Katherine Johnston at one
5 of those meetings?

6 A. Yes, it's possible.

7 Q. Do you recall whether in fact you did?

8 A. No, sir, there are two different CompStats. I
9 mean I could have. I don't know if I did or not.
10 I've met Shinola representatives before. I don't
11 know if she was there.

12 DEPOSITION EXHIBIT 21

13 e-mails

14 WAS MARKED FOR IDENTIFICATION.

15 Q. I think this is our last exhibit, this is 21.

16 Does this look familiar to you?

17 A. Looks like an e-mail I was copied on.

18 Q. So it's an e-mail between Angelique
19 Chadwick-Bills and Katherine Johnston, right?

20 A. Yes.

21 Q. And that was Lt. Chadwick-Bills that was in the
22 3rd Precinct when you were there, right?

23 A. Yes.

24 Q. And you just said you see your name on the "cc"
25 line, correct?

1 A. Yes.

2 Q. Why would Lt. Chadwick-Bills have copied you on
3 this e-mail? If you need a second to look
4 through it, that's fine too.

5 A. It's not uncommon for a detective or a
6 superior to -- I mean someone to keep their
7 superior informed of it.

8 I don't know why I was copied
9 specifically on this one and not the others; I
10 don't know.

11 Q. Do you remember this e-mail exchange?

12 A. No.

13 Q. Were you involved in oversight of the Shinola
14 investigation?

15 A. No.

16 Q. Did you ever speak to Lt. Chadwick-Bills about
17 the Shinola investigation?

18 A. Not as to the case updates or anything, I did
19 not.

20 Q. Did you speak to her about anything else related
21 to that investigation?

22 A. Not while it was ongoing, no.

23 Q. When did you talk to her about it?

24 A. Post investigation.

25 Q. What did that conversation entail?

1 A. I made the command decision to reassign her until
2 the investigation was completed.

3 Q. Reassign her to where?

4 A. To a patrol shift. I relieved her of the
5 investigative oversight at the 3rd Precinct until
6 this, again, was decided or once this case had
7 been completed or resolved.

8 Q. And was that reassignment -- did that continue up
9 until you left the 3rd Precinct?

10 A. Yeah, I had not moved her back before I left.

11 Q. So she was still in that patrol capacity when you
12 moved out of the 3rd Precinct?

13 A. No, actually she had transferred out prior to me
14 leaving.

15 Q. So she was no longer in the 3rd Precinct at that
16 time?

17 A. Correct.

18 Q. But between when you reassigned her and when she
19 left the 3rd Precinct she was in that reassigned
20 role?

21 A. Yes.

22 Q. What was the reason for reassigning her?

23 A. I made the decision that because her name was
24 associated with this and just the oversight of
25 the investigation, for lack of a better term like

1 they say the fruit of the poison tree, I didn't
2 want this to corrupt any other investigations
3 that may be going on within the 3rd Precinct and
4 it be tainted, so I made that decision.

5 Q. Did you make any other decisions to reassign or
6 otherwise change the responsibilities of members
7 of the 3rd Precinct because of this
8 investigation?

9 A. I did not.

10 Q. Were there any other steps you took in response
11 to this investigation once you learned of it?

12 A. No, it was turned over, Internal Affairs began
13 their investigation, so I would be guided by them
14 once they adopted and took a look into it.

15 Q. And do you partly mean there that once Internal
16 Affairs starts looking into something, you step
17 back?

18 A. Yes.

19 Q. And so it's on their plate until they have a
20 final disposition?

21 A. Correct.

22 Q. So other than reassigning Lt. Chadwick-Bills to
23 another role there was no other steps you took
24 responding to this, this investigation?

25 A. Yes.

1 Q. Did you ever speak to Capt. Cox about the Shinola
2 investigation?

3 A. Yes, I'm sure we had -- yes, we've had
4 conversations.

5 Q. Do you recall what you discussed?

6 A. I know I gave him the directive that I wanted
7 Chadwick moved until this was gone and he
8 provided me the instances, the case and he gave
9 me a high level overview of what happened.

10 Q. Anything else that you discussed with him?

11 A. Specific to this, no.

12 Q. Did you ever speak directly with Det. Bussa about
13 the Shinola investigation?

14 A. I did not. He was moved the minute this came
15 up. I didn't make that decision. I would have
16 and, again, not to say that he did anything wrong
17 at that moment, but until we kind of pieced it
18 together I wouldn't want another citizen affected
19 or be tainted, whether the investigation, however
20 that panned out.

21 Q. Who made the decision to move Det. Bussa?

22 A. From the chief's office.

23 Q. And so were you informed after they had made that
24 decision?

25 A. Yes.

1 Q. Where was he assigned to, do you remember?

2 A. I don't.

3 Q. So at what point were you aware of the use of
4 facial recognition technology in the Shinola
5 investigation?

6 A. When I was briefed -- once the news media piece
7 came out and I was briefed on everything.

8 Q. And were you also aware at that point of the use
9 of the six-pack photo array in the photo lineup
10 in that investigation?

11 A. Yes.

12 Q. Were you aware of that previously?

13 A. Yes.

14 Q. Previous to the news coming out?

15 A. No, no, I was part of that was I was --

16 Q. Are you also familiar with what I'll call the
17 Michael Oliver investigation?

18 A. I am not.

19 Q. Another investigation involving use of facial
20 recognition technology that Det. Bussa was part
21 of, you're not familiar?

22 A. I'm unaware of that.

23 Q. Give me one moment.

24 So you said that in shifting Lt.

25 Chadwick-Bills' responsibilities you were -- tell

1 me if I'm representing this correctly -- you were
2 concerned about the appearance of -- her
3 involvement in this investigation?

4 **A. Any type of mismanagement because there's more**
5 **employees than Det. Bussa that was there, so I**
6 **made a decision just to ensure that it was**
7 **managed correctly and I wanted her hands off**
8 **until we could take a look at her actions and see**
9 **how we got to that point.**

10 **Q. And then did you actually take a look at those**
11 **actions --**

12 **A. I did.**

13 **Q. -- and form an opinion whether there was --**

14 **A. I did.**

15 **Q. What is your opinion?**

16 **A. I think that our detective, he made his decision**
17 **constitutionally, he was guided by the**
18 **Prosecutor's Office. He gathered the facts what**
19 **he could to the best of his ability and presented**
20 **it to the Prosecutor's Office and the warrant was**
21 **signed.**

22 **So I think that it was -- the arrest,**
23 **it came out not to be him, but I don't think that**
24 **there was misconduct or anything nefarious done**
25 **by Det. Bussa because he was -- again, he had**

1 instructions on the actions that he had taken.

2 Q. Are you aware of what kind of training Det. Bussa
3 received upon becoming a detective?

4 A. The detective school training, it has gone
5 anywhere from a week to two-week training and I
6 am familiar with some of the contents.

7 Q. Do you remember when Det. Bussa became a
8 detective?

9 A. I don't.

10 Q. But he was -- to your recollection was he already
11 a detective within the 3rd Precinct when you took
12 over there?

13 A. I don't recall.

14 Q. At what point upon becoming a detective do new
15 detectives get that training, detective school
16 training?

17 A. Immediately.

18 Q. Is that always the case?

19 A. Yes, I can speak to -- since I've been in a
20 leadership role and with the last three exams
21 that I've been to that Chief Craig has
22 administered there has been some type of
23 detective training.

24 That role only started in 2014 with
25 that actual detective role, but yes, there is

1 training and then they're sworn in after they
2 complete -- successfully complete the training.

3 Q. And would that have been true in 2019?

4 A. Yes.

5 Q. And was there written department policy requiring
6 detective school prior to being sworn in as
7 detective?

8 A. That's how it was operated. I don't know where
9 there is memorialized or perhaps it's
10 contracturally, I'm not sure.

11 But upon taking a test and based on how
12 you score in descending numerical order you're
13 selected based on the needs of the department,
14 your candidacy and you take the class.

15 With successful completion of the class
16 you are then sworn into your new role.

17 Q. So it's an exam first?

18 A. Yes.

19 Q. And then detective school?

20 A. Yes.

21 Q. And then sworn in?

22 A. Yes.

23 Q. But you're not familiar with where that is
24 memorialized in policy?

25 A. Correct.

1 Q. That would be a question for another person I
2 think. I think just a few more questions and
3 then we'll confer for just a moment, but I think
4 we're close.

5 So I think we addressed this earlier,
6 but I just want to make sure I'm clear. You said
7 I think that you have received training about
8 facial recognition technology to the same extent
9 that anyone in DPD has on the policies, right?

10 **A. Yes.**

11 Q. Have you received training about how to evaluate
12 the quality of a probe photo for a facial
13 recognition search?

14 **A. No.**

15 Q. Have you personally received training about how
16 to compare a probe photo to photos in the gallery
17 that come back?

18 **A. No.**

19 Q. Have you received training about what additional
20 investigation is needed to try to confirm that
21 investigative lead that CIU produces?

22 **A. As far as once they get that to put a case
23 together?**

24 Q. Yes.

25 **A. Yes.**

1 Q. Describe what that training is?

2 A. As a lieutenant I was in charge of the Special
3 Victims Unit so understanding what it takes for a
4 warrant package and submission with a statement,
5 again a 6-pack or -- I'm sorry, the photo lineup
6 done with six, I am familiar with that process.

7 Q. And does that training that you went through
8 include guidance about presenting all the
9 relevant facts in the warrant application?

10 A. Yes, yes.

11 Q. And so what's the expectation in that regard?

12 A. Again, that we, again, can establish what it is,
13 whether it's a positive identification or that
14 probable cause to believe that this person --
15 that the crime was committed and this person had
16 done it and then send it to the Prosecutor's
17 Office.

18 From that there's guidance from the
19 Prosecutor's Office. They may say, "Okay, this
20 is sufficient, I'm going to sign it" or, "This is
21 insufficient, I'm not going to sign this."

22 They may say it's insufficient but if
23 there are a few more things I can get there, let
24 me give you a to-do list.

25 And based on that guidance of the

1 **Prosecutor's Office we proceed accordingly.**

2 Q. Does that training include an obligation on
3 investigators to provide all the material facts
4 in that warrant application so that the
5 Prosecutor and judge can consider them?

6 **A. If it's a truthful recitation of the facts.**
7 **That's what should be in that investigator's**
8 **report.**

9 MR. WESSLER: Okay, I think we're
10 going to confer hopefully for the last time and I
11 may have one or two follow-ups, so just give us a
12 couple of minutes.

13 (A recess was taken.)

14 BY MR. WESSLER:

15 Q. So just one more question. You mentioned -- I
16 think you characterized this as the high level
17 conversation with Capt. Cox about the Shinola
18 investigation.

19 Can you describe any more about what
20 you discussed in that conversation?

21 **A. As far as with this investigation?**

22 Q. Yes.

23 **A. What do we have, what are the circumstances, what**
24 **did we do and basically how did we get to this**
25 **point. And that was just that, the detective**

1 reached out, talked to. Talked to the witness.

2 Was guided by the Prosecutor and this
3 is where we are now based on the decision of the
4 Prosecutor's Office.

5 I made the decision to move Chadwick
6 just until everything worked out and that was the
7 extent of it.

8 Q. You were -- you said a moment ago that you had a
9 position in SVU?

10 A. Yes.

11 Q. What was the position?

12 A. Lieutenant.

13 Q. And so you were responsible for various parts of
14 investigations?

15 A. 10,000 warrant submissions, 8,000 domestic
16 violence, 1,600 sexual assaults and about 500
17 child abuse.

18 Q. Those are big numbers?

19 A. Yes.

20 Q. When you -- did you conduct eyewitness
21 identifications, photo lineups?

22 A. I was the lieutenant in charge, I just looked
23 over submissions and made sure that the steps
24 were there and signed off on the investigations.

25 Q. At any time during your tenure at DPD have you

1 actually created a 6-pack photo lineup?

2 **A. No.**

3 Q. Have you ever administered one?

4 **A. No.**

5 Q. Have you -- okay that's fine. I think that's it
6 for questions.

7 THE REPORTER: Same order as always,
8 both getting electronic?

9 MR. CUNNINGHAM: E-trans, please.

10 MR. WESSLER: Yes.

11 (The deposition was concluded at 3:14 p.m.,
12 signature of the witness was not requested by
13 counsel for the respective parties hereto)

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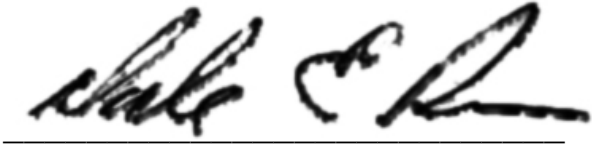
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CERTIFICATE OF NOTARY

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STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DALE E. ROSE, Certified Shorthand Reporter, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth, that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.



DALE E. ROSE CSR-0087

Notary Public,
Wayne County, Michigan

My Commission expires: 7-15-24

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