

*** CONFIDENTIAL ***

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IN RE:

INDEPENDENT INVESTIGATION INTO THE
CITY OF ROCHESTER'S RESPONSE, et al.

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December 17, 2020

9:31 a.m.

Videoconference deposition of TIMOTHY CURTIN
taken via Zoom remote video conferencing software,
pursuant to Notice, before CELESTE A. GALBO, a
Registered Professional Reporter, Registered Merit
Reporter and Notary Public within and for the State
of New York.

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1 IT IS HEREBY STIPULATED AND AGREED
2 by and between the attorneys for the respective
3 parties herein, that filing and sealing be and the
4 same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED
6 that all objections, except as to the form of the
7 question, shall be reserved to the time of the trial.

8 IT IS FURTHER STIPULATED AND AGREED
9 that the within deposition may be signed and sworn to
10 before any officer authorized to administer an oath,
11 with the same force and effect as if signed and sworn
12 to before the Court.

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1 THE COURT REPORTER: Will counsel
2 please stipulate to me swearing in the witness
3 remotely.

4 MR. CELLI: Yes, so stipulate.

5 MS. COHEN: Yes.

6 TIMOTHY CURTIN, stating a business address of 30
7 Church Street, Room 400A, Rochester, NY 14614, having
8 been duly sworn by the Notary Public, was examined
9 and testified as follows:

10 EXAMINATION

11 BY MR. CELLI:

12 Q. Good morning, Mr. Curtin. We said
13 hello off the record but just to make it official,
14 I'm Andy Celli and I'm sure you know I and my
15 colleague Scott Katovich represent the City Council
16 in this investigation.

17 Do you understand that?

18 A. Yes, sir.

19 Q. Okay. And you are represented today by
20 Ms. Cohen and her team?

21 A. Yes.

22 Q. Okay. And I know you've been a lawyer
23 for a long time. You know, if you want, I'm happy to
24 walk through the what a deposition is about but I
25 know you know that. Is it okay if we skip that?

1 A. Yes. Thank you. I've been in a
2 couple.

3 Q. Okay. I'm sure.

4 Is there any reason why you feel you
5 can't give truthful and accurate testimony today?

6 A. No.

7 Q. Okay. So let's get -- let's start
8 right in. Mr. Curtin, when did you first -- well,
9 actually I'm going to do some screen sharing and
10 start by marking an exhibit. Okay. Let's see if we
11 can get this going technologically.

12 You guys can see my screen, yes?

13 A. Um-hum. Yes.

14 Q. I'm going to mark for this deposition
15 we've numbered it Exhibit 20. And this is a document
16 bearing the Bates number Curtin 46 and 47 and it's an
17 email from you, Mr. Curtin on September 3, 2020.

18 (Curtin Exhibit 20, email, was deemed
19 marked for identification.)

20 Q. Do you see that?

21 A. Yes, sir.

22 Q. Do you recognize this document?

23 A. Yes. Yes, this was prepared by
24 Stephanie Prince.

25 Q. Right. And this is the timeline that

1 you sent to the mayor, the deputy mayor, Mr. Roj, Mr.
2 Yudelson and Dr. Archie on September 3rd around
3 noontime; is that correct?

4 A. Yes, but to be honest, I do not recall
5 including Cephas Archie on this. Yes, it appears to.

6 Q. And I will stipulate to you having
7 looked at the record and I'm sure you know there are
8 a number of timelines floating around. I'm going to
9 continue to return to this one just because I know
10 it's one that you saw and it was forwarded at a
11 particular point in time. But if we talk about
12 something in the timeline that you think is
13 inaccurate or was subsequently changed, I'm going to
14 ask you to point that out to me. Okay?

15 A. Okay. Yes.

16 Q. All right. So the first entry on the
17 timeline refers to the Law Department having received
18 a preservation notice from Elliot Shields; is that
19 correct?

20 A. Yes, that's what's indicated.

21 Now, are you asking me my personal
22 knowledge or just what's in the timeline?

23 Q. That's the right lawyerly question and
24 I will do that. I just wanted to frame the where we
25 are in time and then I will ask you whether this was

1 something you knew about at the time.

2 A. Okay.

3 Q. So, as you sit here today, you
4 understand that Mr. Shields represented the family or
5 represents the family of Daniel Prude, right?

6 A. He formerly did. He no longer does.

7 Q. Is that right? And what happened to
8 your understanding, is he out of the case?

9 A. He and the local Don Thompson have been
10 removed and the children of Mr. Prude have been
11 replaced as executors.

12 Q. I see. Okay. So the timeline reflects
13 that Mr. Shields communicated a preservation notice
14 on behalf of Mr. Prude on or about April 3rd. Did
15 you become aware at that time that a preservation
16 notice had been sent to the Law Department from the
17 family of Daniel Prude?

18 A. No.

19 Q. When was the first time you learned
20 that a preservation notice had gone to the Law
21 Department from the family of Mr. Prude?

22 A. I believe that it was April 10th after
23 I received a text from Chief Singletary and I went to
24 Patrick and to Stephanie and I said what's this
25 about.

1 Q. Got it. I'm only going to take this
2 down so that I can see you better and your attorney,
3 but if for some reason you want me to put it back up
4 I'm happy to. We will certain come back to it.

5 A. I opened it on my screen as well.

6 Q. Perfect. You can along at it if it
7 helps you.

8 When did you first become aware that
9 there had been a police encounter between members of
10 the RPD and Daniel Prude?

11 A. As I recall, it was on April 10th when
12 Chief Singletary contacted me.

13 Q. Okay. I want to show you what we have
14 marked, it's a compendium exhibit, No. 36. And I'm
15 going to take you to page -- we have this Bates
16 stamped so this is going to be, Carrie, Curtin 339.

17 (Curtin Exhibit 36, document Bates
18 stamped Curtin 000298 to 351, was deemed
19 marked for identification.)

20 Q. Mr. Curtin, I direct your attention to
21 the top of this document and I'll represent to you
22 that this is a document that was produced to us by
23 the Morrison & Foerster firm. As I understand, it
24 reflects text messages that you were a party to and I
25 believe these were drawn from your personal cell

1 phone; is that right?

2 A. That's correct.

3 Q. Okay. So --

4 MS. COHEN: I don't mean to interrupt.

5 (Audio distortion/technical issues.)

6 (Discussion off the record.)

7 Q. So, Mr. Curtin, I want to direct your
8 attention to the top of the page. This is Exhibit 36
9 and the page number is 339, Curtin 339.

10 Does this entry reflect some text
11 messages that you had with Chief Singletary on April
12 3, 2020?

13 A. It appears to, yes.

14 Q. Okay. And the first one is a text from
15 Chief Singletary to you where he writes, "Tim when
16 you have a second, would you give me a call? No
17 hurry," right?

18 A. Yeah.

19 Q. And the second one is a couple hours
20 later, I guess an hour and a half later, so where
21 Chief Singletary says, "Forgot to mention our Mayor
22 Crimes Unit commenced a criminal investigation on our
23 end as we would do in any in custody death and the
24 internal will commence once the can he criminal is
25 done."

1 Do you recall having two -- having a
2 conversation with Chief Singletary on an April 3rd?

3 A. I do not. I do not, but obviously I
4 did but I do not recall that.

5 Q. Okay. You said earlier that your best
6 recollection is that the first you heard of the
7 Daniel Prude mental health arrest was on April 10th?

8 A. That's my first recollection, yes.

9 Q. Do you believe that these entries from
10 April 3rd relate to the Daniel Prude arrest?

11 A. They certainly appear to.

12 Q. Okay. But as you sit here you just
13 don't have a recollection of that?

14 A. I do not.

15 Q. Do you recall learning in or about this
16 period that the Mayor Crimes Unit of the RPD had
17 commenced an investigation arising from an encounter
18 between a civilian and a member of the force?

19 A. Not at this point in time. I later
20 became aware of that but at this point in time I was
21 not aware of that.

22 Q. Okay. Right. And as you sit here
23 today and you read the entry for 1:14 p.m. on April
24 3rd, that does not refresh your recollection that you
25 were made aware of that on April 3rd?

1 A. It does not.

2 Q. Okay. What do you recall about your
3 first learning -- strike that. Let me ask it a
4 better way.

5 How did you first learn about the
6 Daniel Prude mental health arrest?

7 A. Well, I think we were formally notified
8 on April 10th, however, we receive preservation
9 notices and FOIL demands. As you know, we receive
10 some 6,000 FOIL demands a year. So I don't really
11 personally attend to each one of them. I have two
12 attorneys, two junior attorneys, a senior attorney
13 and a paralegal that attends to those matters. So I
14 don't really monitor those on a day-to-day
15 minute-by-minute basis. I have other
16 responsibilities.

17 Q. Sure. And no, I understand. And to be
18 clear for today, there may come a time when I want to
19 ask you about kind of the knowledge of the Law
20 Department, but I'm really interested in your
21 personal knowledge for today.

22 So you testified earlier that you first
23 became aware of the Prude mental health arrest on
24 April 10. My question is, when did you personally or
25 how did you personally become aware of that?

1 A. Well, to the extent that I became aware
2 of it, it was by Chief Singletary's April 10th text
3 message.

4 Q. Okay. So just to be clear, to the
5 extent that there may have been other people in the
6 Law Department that were aware of the issue prior to
7 that because of a preservation letter or a FOIL
8 request or anything else, you're clear in your mind
9 that you were not aware of it?

10 A. Correct, and I normally would not be
11 aware of those kind of things.

12 Q. Okay. So, I'm going to take you to
13 page Curtin 298 of this document which is Exhibit 36.

14 A. 298?

15 Q. Yeah. Okay. So on the top of this
16 page there is what appears to be a text message from
17 Chief Singletary to you and Patrick Beath on April
18 10th at 2:26 p.m. Is that the text message that you
19 were referring to where you say it's the first time
20 you learned of the Daniel Prude issue?

21 A. Yes.

22 Q. Okay. I'm going to ask some questions
23 about this. In Chief Singletary's message he refers
24 to a preservation order. It says, "About a week ago
25 you all received a preservation order from the arrest

1 of Daniel Prude."

2 Did you understand what he was
3 referring to there?

4 A. I know what a preservation order and if
5 we received it last week, I mean, I accept his
6 representation that we received it last week and I
7 assume that either Patrick or Stephanie would have
8 received it.

9 Q. Got it. And --

10 A. I'm not the recipient of preservation
11 notices.

12 Q. Okay. Well, did you speak to anybody
13 after you received this message about having -- the
14 office having received a preservation notice
15 concerning the arrest of Mr. Prude?

16 A. Not immediately. As I recall, wasn't
17 this the Good Friday message? So I didn't speak with
18 anyone until the following Monday. I did not call or
19 interrupt everybody's Easter weekend.

20 Q. Understood. Were you working on Good
21 Friday or were you off that day?

22 A. I was probably working.

23 Q. Okay. But there came a time when you
24 spoke to Mr. Beath and learned that there had been a
25 preservation letter sent by the Prude's family

1 lawyer?

2 A. Probably the following Monday.

3 Q. Okay. And what do you recall about
4 that conversation?

5 A. Just a brief recitation of the facts
6 and, you know, we get preservation notices from
7 Elliot, you know, we get dozens and dozens. So I
8 don't know that this stood out in my mind
9 particularly because we don't really get involved
10 until a notice of claim is filed.

11 Q. Okay.

12 A. We understand there is procedures that
13 take place before we get involved. They're -- just
14 the early FOIL process, those things like that are
15 just -- we don't get involved quite at that point.

16 Q. What did Mr. Beath tell you were the
17 circumstances of the arrest?

18 A. That according to the chief, there had
19 been a drug overdose and the gentleman subsequently
20 passed away in custody.

21 Q. Did Mr. Beath communicate to you that
22 there had been a use of force on Mr. Prude?

23 A. No.

24 Q. Okay. So going back to the April 10th
25 text message that we're looking at, you see that

1 Chief Singletary says, "As expected, the M.E. ruled
2 the death a homicide with attributing factors of his
3 death being," and then it goes on. I just want to
4 ask about that first part.

5 First of all, the M.E. there is the
6 medical examiner, right? You understood that?

7 A. As I understand it, yes.

8 Q. And when you received this, you knew he
9 was referring to the medical examiner, right?

10 A. Correct.

11 Q. Okay.

12 A. Oh, yes. Correct. Correct.

13 Q. And do you have an understanding --
14 strike that.

15 Well, do you have an understanding
16 today as to why Chief Singletary described this as an
17 expected ruling?

18 MS. COHEN: I'm not sure he can answer
19 why the chief did anything.

20 MR. CELLI: I'm only asking what his
21 understanding is as he sits here today.

22 A. I do not understand why the chief
23 characterized it in that fashion.

24 Q. Okay. And I take it you didn't have an
25 understanding then either on April 10th?

1 A. No.

2 Q. Okay. When you received this message
3 on April 10th, did you think it was significant that
4 the medical examiner had ruled a death of a person
5 who was in custody of the police to be a homicide?

6 A. Yes.

7 Q. And why did you think that was
8 significant?

9 A. Because a citizen -- you know, someone
10 had died in our custody, and that is significant to
11 me.

12 Q. Right. And did you understand on April
13 10th that at least one of the contributing factors in
14 the death of Mr. Prude was the use of force by
15 members of the RPD?

16 A. I understood it to be a contributing
17 factor according to the chief's note.

18 Q. Right. And, well, I don't want to put
19 words in your mouth, so tell me what is it about the
20 chief's note that caused you to understand that a
21 contributing factor was use of force by members of
22 the RPD?

23 A. The third element indicates resisting
24 arrest.

25 Q. Right. And that says to you police

1 involvement, right?

2 A. Correct.

3 Q. Okay. When you spoke to Mr. Beath, did
4 you ask him about the level of or degree of use of
5 force in connection with this arrest?

6 A. I did not.

7 Q. Okay. And when he told you that the
8 death had been caused by an overdose, did you
9 question him and say, hey, wait a second, the chief
10 said that there were -- there was a use of force
11 involved here?

12 A. I did not.

13 Q. Why not?

14 A. I can't tell you what was in my mind at
15 the time. I took their -- I accepted their
16 explanation and I did not look into it further.

17 Q. Okay. But as you sit here today, you
18 would agree that the explanation that the chief gave
19 and the description that Mr. Beath gave are
20 different, right?

21 A. What explanation of Mr. Beath are you
22 referring to?

23 Q. I asked you earlier, and maybe I
24 misheard the answer but I asked you earlier what did
25 Mr. Beath say were the circumstances of this arrest

1 and death. And you said that he described it as an
2 overdose. I asked whether he had mentioned that
3 there had been a use of force and you said no. So
4 I'm asking you now, am I correct that what you heard
5 from Mr. Beath was different from what was
6 communicated to you by the chief?

7 A. I don't think it's different. It's
8 just not a complete version. Mr. Beath gave me the
9 shorthand version and obviously the chief's version
10 was a little more detailed.

11 Q. Okay. What did you understand the
12 chief to be referring to when he says "Captain
13 Umbrino from Major Crimes will be meeting with the
14 M.E. next week to gather further information"?

15 A. Just literally what those words mean.
16 I don't have an understanding beyond that.

17 Q. Well, did you have an understanding
18 that the Mayor Crimes Unit was conducting an
19 investigation of members of the RPD as a result of
20 this incident?

21 A. I know that that's general practice. I
22 don't know that I knew the particulars at this point
23 in time of this investigation for this matter.

24 Q. Okay. Would you agree that as of
25 this -- as of the 10th, that you understood that it

1 would be the general practice of the Mayor Crimes
2 Unit to conduct a criminal investigation of members
3 of the department if there was a use of force that
4 resulted in a serious injury or death?

5 A. Correct.

6 Q. Okay. And you would agree that as of
7 April 10th you understood that it was possible that
8 members of the police department might be criminally
9 charged in connection with the death of Mr. Prude?

10 A. I doubt my analysis rose to the
11 level -- I don't think I reached any such conclusion
12 at that point in time.

13 Q. Okay. Would it be fair to say that --
14 strike that.

15 Did you regard the fact that there had
16 be -- that there was a criminal investigation
17 underway by the Mayor Crimes Unit as being a
18 significant event?

19 A. Yes. Yes.

20 Q. And did you take any steps as a result
21 of the significance of learning that fact?

22 A. I kept in touch with Mr. Beath and
23 Ms. Prince to see what the -- you know, how it
24 progressed, to see what went on, what the results
25 that came out of the hearings, that came out of the

1 determinations. I mean, there is nothing for us to
2 do at that point.

3 Q. Okay.

4 A. We wait for other folks to do what they
5 do.

6 Q. Fair enough. I'm simply asking the
7 question.

8 Did you report the fact that members of
9 the RPD were subject to a criminal investigation at
10 this point, did you report that to the mayor or the
11 deputy mayor?

12 A. You may misunderstand my role. I'm not
13 a reporter. I don't report things to the mayor.
14 That's not my job.

15 Q. Explain that to me. I'm not sure I
16 understand.

17 A. Well, I'm the mayor's attorney. I
18 consult with the mayor when she has questions. Some
19 folks report to the mayor, I'm not one of those
20 folks. I don't -- I'm not the Communications Bureau.
21 I am not the court reporter. I don't run around, go
22 down to the mayor's office and keep her up to date on
23 things that, you know, when they're in preliminary
24 stages. This was in a preliminary stage at this
25 point in time and I wouldn't normally do then and if

1 I had to do it all over again, I wouldn't have done
2 it in this instance either.

3 Q. Just so I understand what you're saying
4 is that you and your practice that as the Corporation
5 Counsel your role is to respond to requests for input
6 and legal advice but not to report facts that you
7 think might be significant to the mayor?

8 A. I report facts that the mayor is
9 unaware of as I believe they are significant. This
10 was too early in the process to make any conclusions
11 and I wouldn't normally advise the mayor. I can give
12 you a dozen examples of me running down to the
13 mayor's office to tell her of significant events.

14 Q. Right.

15 A. At this point in time in the
16 preliminary stages, this had not gotten to that stage
17 because there had been no conclusions reach.

18 Q. Right. I mean, one of the times that
19 you ran over to the mayor's office as you put it was
20 on August 4th to show her the body-worn camera
21 footage of this incident, right?

22 A. Correct.

23 Q. So, just to go back to this moment in
24 time in April, would it be fair to say that you
25 didn't report this to the mayor at this point in time

1 not because you're not a reporter in general but
2 because from your point of view this was not a matter
3 that had evolved to a point where you felt it was
4 necessary to make a report?

5 A. Correct.

6 Q. Okay. Let me go back to this for a
7 moment. Also in the April 10th text message from the
8 chief he actually says in the very last line "I'm
9 waiting on the mayor to call me back to give her the
10 latest info," right?

11 A. Correct.

12 Q. And would it be fair to say that you
13 understood that to be saying that the chief was going
14 to report to her about the findings of the medical
15 examiner?

16 A. Yes, correct.

17 Q. Okay. And to the extent that the
18 chief -- would you agree that at this stage of the
19 proceedings it would have been the chief's job to
20 report to the mayor about an event of this nature?

21 A. I do agree with that.

22 Q. Okay. And that it wasn't from your
23 point of you as the chief lawyer for the city, it
24 wasn't too early in the process for the chief to have
25 reported these developments to the mayor even if it

1 was too early in the process for you to have reported
2 them?

3 A. That's correct.

4 Q. Okay. Did you ever determine whether
5 the chief reported the findings to the medical
6 examiner in the Prude case to the mayor?

7 A. Did I ever conclude? No, I did not.

8 Q. To your knowledge he didn't or you're
9 just not sure one way or the other?

10 A. I'm not sure one way or the other.

11 Q. Okay. Did the mayor ever tell you
12 that -- strike that. Let me ask it a slightly
13 different way.

14 To your knowledge when is the first
15 time the mayor became aware that the death of
16 Mr. Prude had been ruled a homicide by the medical
17 examiner?

18 A. When the mayor first became aware, I
19 did not know.

20 Q. Do you think it was before August 4th
21 or on August 4th or later?

22 A. I don't have any basis to have an
23 opinion.

24 Q. Okay. That's something I'd have to ask
25 her, right?

1 A. Pardon me?

2 Q. I said that's something I would have to
3 ask her to find out the answer to?

4 A. Correct.

5 Q. Okay. Have you ever heard anybody in
6 any context refer to the medical examiner's finding
7 of homicide in the presence of the mayor so it's
8 something that you would have observed her hearing?

9 A. No, not until the August 4th meetings.

10 Q. Okay. And so we'll come to that. All
11 right. I'm going to take you back to Exhibit 20
12 which is the timeline and ask a couple questions
13 about that.

14 The timeline states that on April 6th
15 the Law Department received notice of a FOIL request
16 from Mr. Shields concerning the Prude matter. Do you
17 see that?

18 A. Yes.

19 Q. I take it you did not become aware of
20 that in real-time at the time; is that right?

21 A. I did not.

22 Q. Okay. When did you first become aware
23 that a FOIL request had been submitted on behalf of
24 the Prude family?

25 A. In all likelihood I did not become

1 aware of it until five weeks late Elliot appealed our
2 constructive denial. I'm the FOILs appeals officer.
3 You know that FOILs are due within 20 days. The
4 Communications Department received the FOIL, took
5 action on it and five years -- five weeks, excuse me,
6 after the 20 days expired, Elliot finally got around
7 to appealing the constructive denial and I became
8 aware of it at that point. That was, I believe, the
9 end of May.

10 Q. Okay. I want to go back for a moment
11 to our discussion a minute ago about what occurred on
12 April 10th. As you sit here today, you're aware that
13 Mr. Roj was informed on April 10th by Chief
14 Singletary that Mr. Prude's death had been ruled a
15 homicide, right?

16 A. Yes.

17 Q. And you've seen that the chief sent
18 Mr. Roj an email on that subject on the 10th of
19 April?

20 A. Yes.

21 Q. And my question to you is, when did you
22 become aware that Mr. Roj was aware, had learned on
23 April 10th that the Prude death had been ruled on a
24 homicide?

25 A. Sometime after August 4th when I had

1 Stephanie do a search of the emails and she came into
2 my office and showed me that email.

3 Q. Okay. Just to place that on the
4 timeline in a generic sense, not literally, would
5 that have been after August 4th but before September
6 2nd when the --

7 A. Yes. Yes. Yes.

8 Q. Okay. Okay. And when you learned
9 that, did you take any steps as a result of learning
10 that?

11 A. Yes. And this gets into my role as I'm
12 not the reporter but I try to influence folks to do
13 the right thing.

14 Q. Okay.

15 A. I immediately took the email to Justin
16 and I instructed Justin that he needed to go tell the
17 mayor that he was advised on April 10th and if he
18 didn't do that, then I would advise the mayor
19 directly.

20 Q. Okay.

21 A. So he and I went into the mayor's
22 office and had that discussion with her.

23 Q. Can you put a date on that series of
24 events?

25 A. If this has something on it about

1 Stephanie's email search, that was the day, and I
2 don't recall, it would have been after August 4th.
3 It would have been sometime in August but I could
4 not -- I could not specify a date.

5 Q. Okay. Yeah, I don't think it's -- I
6 don't want to characterize the exhibit, but I didn't
7 see a reference to that on this exhibit. So --

8 A. I don't know if you asked Stephanie but
9 she would know that because she's the one who did the
10 email search.

11 Q. Okay. Well, tell me what you recall
12 about the conversation sometime in August between you
13 and Mr. Roj where you confronted him with the April
14 10th email that had been sent to him by the chief.

15 A. Well, I called him and summoned him to
16 my office and I showed him the email and he was,
17 frankly, shocked. He had no recollection of
18 receiving that email and everybody has the, Well, it
19 was Good Friday and I was with my family, you know,
20 all those kind of things. And I wasn't judgmental.
21 I didn't say whether he was right or wrong, I just
22 said that this was something that we had to share
23 with the mayor.

24 Q. Okay. And I take it you believed him
25 when he said he didn't recall it?

1 A. Oh, completely. He was -- the look of
2 shock on his face. I believe he had no recollection
3 of ever receiving that email.

4 Q. And then you had a meeting with the
5 mayor right away?

6 A. Correct.

7 Q. So tell me about that meeting. What
8 happened?

9 A. Well, we went down to the mayor and I
10 let him describe the circumstances and he said to the
11 mayor "I'm very sorry, I don't recall ever receiving
12 this but it's an email that I" -- I think he
13 acknowledged receiving the email. I don't know if he
14 said thanks, chief or I'll get back to you chief or
15 something. He acknowledged receipt of it and Justin
16 offered his resignation to the mayor.

17 Q. And what did the mayor say in this
18 meeting?

19 A. The mayor declined it at that point and
20 said get back to work.

21 Q. Did the mayor offer any reprimand or
22 criticism or comment one way or the other or she
23 simply declined his resignation and told him to get
24 back to work?

25 A. Justin, you know, he had taken enough

1 responsibility for it. The mayor, I think was --
2 recognized that there was no point and, you know, in
3 piling on. So she just accepted his statement and
4 said, okay, I won't accept your resignation but we've
5 got to get back to work and we've got to do a better
6 job.

7 Q. And are you aware of any steps that the
8 mayor took as a result of that discovery of
9 information?

10 A. I am not. I don't know if she did
11 anything because of that meeting.

12 Q. Okay. Or because of learning of
13 Mr. Roj's -- well, let me go back.

14 What did you believe the problem was
15 with the fact that Mr. Roj had received this message
16 on April 10th? Strike that. Let me ask it a
17 different way.

18 When you saw this message to Mr. Roj,
19 you were bothered by that, right?

20 A. Yes because prior to that he told the
21 mayor that he had no notice. She asked him directly
22 whether did you know that this was happening and he
23 said no, I received no notice that this ever
24 happened.

25 Q. Got it. And when did he tell her that?

1 A. It may have been -- August 4th is the
2 day, you know, all this changed. We all know what
3 happened then. And then we had a couple meetings
4 with the mayor after August 4th and I probably am not
5 going to be able to identify the precise date. I
6 know one of the meetings was on the Friday after
7 August 4th. I'm not sure what day of the week August
8 4th was. I guess I could look it up. But we had a
9 meeting with the mayor on the following Friday and we
10 kinds of rehashed who knew what when. And he
11 indicated that he had no knowledge or notice of that
12 event.

13 Q. Got it. Okay. We'll come back to
14 that. I just want to take a note. So when you saw
15 sometime after that Friday meeting evidence that in
16 fact he had been informed of this, you understood
17 immediately that that was a problem, you brought it
18 to his attention and then you went to see the mayor,
19 is that it?

20 A. Yeah, I had understood that we had said
21 something to the mayor that turned out to be not
22 factually accurate, so I wanted Justin to correct
23 that.

24 Q. Okay. You said when we started to talk
25 about this that you see one of your roles as

1 encouraging other people to do the right thing,
2 right?

3 A. Yes.

4 Q. Did that -- did you exercise that, I
5 guess, that muscle, that practice in any other
6 circumstances relating to the Prude matter?

7 A. Relating to the Prude matter, not --
8 probably not until I saw the videotape myself.

9 Q. Okay.

10 A. And then it began when other folks
11 could have told the mayor and didn't.

12 Q. Got it. Let's have a look back at
13 Curtin Exhibit 20 which is the timeline again. And I
14 want to direct your attention now to -- well, let me
15 ask a question.

16 As you sit here today, are you aware
17 that the Major Crimes Unit at the RPD closed its
18 investigation of the Prude matter on April 27th?

19 A. I don't recall. At some point in time
20 I became aware of it but it was not really discussed
21 until we discussed transferring the matter over to
22 the District Attorney and then the District Attorney
23 sending the matter to the Attorney General. So I
24 don't think that discussion came about until after
25 the August 4th meeting when we went through the

1 litany of who got what when. So I don't know if
2 there is any point in time, I don't recall being told
3 independently that the Major Crimes Unit had finished
4 its investigation.

5 Q. Got it. When did you become aware that
6 the Attorney General's Office had opened an
7 investigation of the Prude matter?

8 A. When I received the FOIL appeal, so
9 that May 28th.

10 Q. I want to take you to a different
11 exhibit now. This is going to be Exhibit 37.

12 A. I don't have that.

13 (Curtin Exhibit 37, Office of Public
14 Integrity report, was deemed marked for
15 identification.)

16 MR. CELLI: Carrie, did I get you that?

17 MS. COHEN: Andy, I don't think so.

18 MR. CELLI: You know, I know it's my
19 fault. I'm going to -- this is -- so, I think I
20 should have sent you this last night and I didn't and
21 I apologize. But this is the Office of Public
22 Integrity report that came out earlier this week and
23 I'm going to direct your attention --

24 MS. COHEN: Andy, I don't mean to
25 interrupt but if you're trying to screen share it is

1 not --

2 MR. CELLI: Oh, okay. Thanks.

3 How is that? Can you see that?

4 MS. COHEN: I can although is there a
5 way you can like --

6 THE WITNESS: If I squint.

7 MS. COHEN: -- enlarge --

8 MR. CELLI: Better?

9 MS. COHEN: Yeah.

10 MR. CELLI: It won't let me do one page
11 per screen, I don't know why that is. But let me ask
12 some preliminary questions and I apologize, this
13 should have been sent to you and it's my fault that
14 it wasn't. Nobody in my office's fault, I just
15 decided to add this the last minute.

16 Q. Mr. Curtin, you know that the Office of
17 Public Integrity issued a report on the 10th of
18 December about the City's response to the arrest of
19 Daniel Prude, right?

20 A. I do.

21 Q. Have you had a chance to read that
22 report?

23 A. I have.

24 Q. And one of the things in that report is
25 a summary of an interview that you gave to the OPI,

1 right?

2 A. Correct.

3 Q. Okay. So I'm going to ask a couple
4 questions about things that are said in that summary.
5 That's what I'm focusing on here, and I'm going to
6 take you guys to page 28 of the report.

7 MS. COHEN: Andy, is there a way you
8 can sent send it in PDF so I can follow along?

9 MR. CELLI: Yeah, there is.

10 MS. COHEN: I want to read it.

11 MR. CELLI: There is. You know what,
12 you actually did get this. I'm seeing an email to
13 you and the team, Carrie. I'll forward it to you
14 obviously but just so you know, yesterday at 3:06
15 with a link.

16 MS. COHEN: Okay, but it wasn't with
17 the group thing, so I didn't know if you were using
18 it or not.

19 MR. CELLI: Yeah. All right. It's not
20 a big deal. I'm going to forward it to you anyways
21 but I take back --

22 MS. COHEN: It wasn't with all the
23 exhibits, so I couldn't tell.

24 MR. CELLI: You're going to just blame
25 me no matter what. Is that it, Carrie?

1 MS. COHEN: No, I'm just explaining why
2 I remember that email.

3 MR. CELLI: I'm Catholic enough already
4 for goodness sake. Come on.

5 All right. I'm going to send it to you
6 again because you already got it yesterday as you
7 know. All right. It should be coming through now.

8 BY MR. CELLI:

9 Q. Mr. Curtin, just while we're waiting
10 for Carrie, I'm going to focus you on this paragraph,
11 third paragraph down, "Mr. Curtin also indicated,"
12 you see where my pointer is?

13 A. Yes.

14 Q. And what I'm focusing on is the next
15 sentence. I'll wait for Carrie.

16 MS. COHEN: All right. It downloads it
17 because you sent the link. So I was just curious if
18 you could send the PDF of the document but maybe I
19 can pull it up on the website. It's public, right,
20 so...

21 MR. CELLI: Yeah, it is public. This
22 is not going to be an extensive examination, Carrie.
23 Literally two questions.

24 MS. COHEN: Go ahead. I have it up on
25 the public website. I got it.

1 Q. Okay. So looking at page 28, Mr.
2 Curtin, there is a line there that says, "Mr. Curtin
3 specifically noted that the Rochester Police
4 Department chief La'Ron Singletary emailed him prior
5 to receiving the medical examiner's ruling but
6 characterized the death of Mr. Prude as a result of
7 an overdose."

8 Do you see that?

9 A. Yes.

10 Q. Do you recall receiving an email from
11 the chief on that subject as distinct --

12 A. I'm guessing, I'm guessing that's a
13 misstatement. I think I'm referring to the April
14 10th text message.

15 Q. Okay. All right.

16 A. Just so you know on these things, I
17 don't know if you need any background, OPI typically
18 does its investigation and then it forwards it to me
19 for approval before they publish anything. This is a
20 little bit different because I'm involved in it. So
21 this was published without my review and approval.

22 Q. Fair enough.

23 A. So I may or may not have caught that
24 but it was not emailed, it was texted.

25 Q. Got it. I appreciate that explanation

1 but I guess what I'm asking is, to your knowledge
2 there is not an email as distinct from a text that
3 Mr. -- that Chief Singletary sent to you
4 characterizing the death of Mr. Prude as the result
5 of an overdose?

6 A. I can't say that there wasn't one but I
7 do not recall one.

8 Q. Okay. And just so I understand, and we
9 can go back to this, the April 10th text message that
10 we talked about in some detail, did you characterize
11 that in your interview with OPI as Chief Singletary
12 telling you that the death of Mr. Prude was the
13 result of an overdose?

14 A. I think the answer to that would be
15 yes, I probably did.

16 Q. But that's not exactly accurate,
17 though, right, Mr. Curtin, because the April 10th
18 text message refers to it as a homicide?

19 A. Yes, I guess you're correct.

20 Q. Okay. I just want to make sure I'm not
21 missing something here. So, I have another similar
22 question on the same page -- well, I won't
23 characterize, just to go further down.

24 So now we're still on page 28 of
25 Exhibit 37. And this paragraph where I'm pointing

1 begins "Mr. Curtin indicated that on a Sunday
2 afternoon in May in response to a reverend in the
3 community being scheduled to make a public statement,
4 Chief Singletary texted him and sent him a video.
5 Mr. Curtin stated that he attempted to view the video
6 on his cell phone but was unable to clearly view the
7 footage. Mr. Curtin indicated that he followed up
8 with Chief Singletary to clarify what the footage was
9 of and learned it related to this matter." And then
10 it goes on which we'll talk about in a moment.

11 What is this a reference to? Tell me
12 about this incident on a Sunday afternoon in May
13 between you and the chief.

14 A. Well, the chief texted me and said can
15 I talk to you about this video, Reverend Stewart
16 apparently was going to hold a press conference to
17 discuss the death of Daniel Prude.

18 Q. And what was the video that he sent?

19 A. I don't know. It didn't work out too
20 well. I don't know what it was. Apparently,
21 according to the chief, it was one of the scenes from
22 the Daniel Prude custody on Jefferson Avenue but it
23 was too small on a cell phone and too dark and I have
24 no idea what it was about, that's why I called him
25 and he explained to me what it was about.

1 Q. Okay. Okay. What did you say to him
2 in response to that information?

3 A. Well, I told him there was nothing for
4 the Law Department to do at this point. We had not
5 been served with a notice of claim at this point but,
6 again, I told him he needed to discuss it with the
7 mayor and he needed to be sure that the mayor had
8 reviewed the footage.

9 Q. Okay. And the footage that you're
10 referring to in that answer, what footage is that?

11 A. Well, the footage that he was
12 attempting to send me, whatever the footage was. I
13 don't know what the footage was but it was obviously
14 of a scene where Mr. Prude was being held in custody.
15 So it was that footage that I referred to, even
16 though I was unable to review the footage myself.

17 Q. Got it. I will represent to you that I
18 have been unable to locate a text message that lines
19 up with this. Are you, you know, having conducted a
20 review of your phone, are you confident that that
21 text message was on your cell phone and that you
22 revealed that or disclosed that to Mofo and to us?

23 MS. COHEN: So, Andy, perhaps I can
24 helpful here. You asked me this I think yesterday.
25 We found a text message in June on a Sunday. I don't

1 know if it's the same one. There is no video that
2 attaches, although it refers to a video. So I'm
3 happy to send that over to you.

4 MR. CELLI: That would have been nice
5 to have gotten two days ago when I asked about it.

6 MS. COHEN: Andy, as you know, we've
7 been busy and we found it. It is not the May one,
8 so --

9 THE WITNESS: Well, I could have been
10 off. Does it say "Can I talk to you about this?"

11 MS. COHEN: Sure. So I haven't talked,
12 obviously, to Mr. Curtin about it. So we can take a
13 break, we can look at it. We can do it whenever you
14 want to take a break.

15 MR. CELLI: Yeah, why don't you ask
16 somebody to send it to us in PDF, not a link, and
17 I'll look at it on a break and we'll come back to
18 that.

19 MS. COHEN: Okay.

20 BY MR. CELLI:

21 Q. When you spoke to Chief Singletary on
22 this occasion -- first of all, let me ask you, can
23 you explain to me the significance as you understood
24 it of Reverend Stewart's involvement with this issue?

25 A. The significance to me was obviously

1 the media becoming involved and I wanted to be sure
2 the mayor knew about this incident before she read it
3 in the paper.

4 Q. So maybe I'm filling in a blank here
5 that's not correct and you'll tell me if I'm getting
6 it wrong but did you understand Chief Singletary to
7 be saying to you that Reverend Stewart was going to
8 have a press conference and be critical of the police
9 department on the Prude matter and perhaps show this
10 video that got forwarded to you and that's something
11 that you wanted the chief to communicate to the
12 mayor?

13 A. In general terms, yes. We all know
14 what a Reverend Stewart press conference is and it's
15 always critical of the city for one reason or
16 another. So to the extent that he's having a press
17 conference, somebody is getting criticized.

18 Q. I don't know what a Reverend Stewart
19 press conference is like. I guess he's a critic of
20 the administration?

21 A. He's a wonderful, wonderful man but he
22 is highly critical and enjoys the press conferences
23 and he enjoys the media as much as anybody else. So
24 anything that gives him an excuse, they have a press
25 conference and this certainly was one of those

1 excuses.

2 Q. Did the chief and you discuss anything
3 about dissuading Reverend Stewart from conducting a
4 press conference?

5 A. Absolutely not. We would never do
6 that.

7 Q. Did a press conference in fact happen
8 in and around this time having been conducted by
9 Reverend Stewart?

10 A. Not that I ever saw in the media. I
11 don't know that it never happened but I know it
12 didn't get coverage, that I'm aware of.

13 Q. Right. And when you told Chief
14 Singletary to speak to the mayor about this and to
15 show her the video footage that he had forwarded to
16 you, what did he say to that?

17 A. He agreed that he would do it.

18 Q. To your knowledge did he do that?

19 A. I have no knowledge whether he did or
20 not.

21 Q. Okay. Did you suggest to him that this
22 might be something that you should talk about with
23 Mr. Roj?

24 A. At that point, no.

25 Q. At any point?

1 A. That he should discuss with Mr. Roj,
2 no.

3 Q. Was this something that you discussed
4 with Mr. Roj, this Reverend Stewart press conference
5 issue?

6 A. I did not.

7 Q. Do you know whether Mr. Roj was ever
8 informed by anybody about the possibility of a press
9 conference by Reverend Stewart on the Prude matter
10 sometime in May or June?

11 A. I do not.

12 Q. As you sit here today do you know
13 whether the mayor became aware by any means of the
14 fact that Reverend Stewart was considering doing a
15 press conference on the Prude matter in late May or
16 sometime in June?

17 A. I do not.

18 Q. Did you ever ask anybody that question?

19 A. No.

20 Q. Did you tell anybody else about the
21 call that you had with Chief Singletary that you
22 referred to in your OPI interview?

23 A. I don't believe I did.

24 Q. Okay. So, in your OPI interview the
25 summary notes that you told Chief Singletary to tell

1 the mayor about this and not to delay. You see that?

2 A. Yes.

3 Q. Is that a fair characterization of what
4 happened when you spoke to the chief?

5 A. Yes.

6 Q. Okay. And the OPI also says that when
7 you were interviewed by them, you noted that your
8 instructions to Chief Singletary to go to the mayor
9 with this information were given while you were under
10 the impression that this matter was in regards to a
11 man who had died of an overdose while in police
12 custody, right?

13 A. Well, I think that's --

14 Q. That's what they're saying you told
15 them at OPI?

16 A. That's correct.

17 Q. Okay. Did you tell them that?

18 A. I don't recall that I -- at that point
19 in time I knew it was a homicide, so I don't know why
20 I would have said that it was a drug overdose but I
21 don't recollect that discussion precisely or that
22 part of the interview precisely.

23 Q. Okay. I'm just going to put the
24 Exhibit 20 back up just so we have it for context.
25 And I think you testified earlier that you first

1 became aware of the FOIL request from Mr. Shields on
2 or about May 28th when there was a constructive
3 denial; is that correct?

4 A. When he appealed our constructive
5 denial.

6 Q. Right. I'm sorry, when he appealed it.
7 Just to go back one second to the conversation with
8 Chief Singletary about the Reverend Stewart press
9 conference. Now that we're into the details of this,
10 maybe your recollection is a little more clear.

11 Did that conversation happen before or
12 after Mr. Shields appealed the constructive denial of
13 the FOIL request?

14 A. Before.

15 Q. Okay. And so if Ms. Cohen shares with
16 us a text message from sometime in June, that
17 probably does not relate to the Stewart press
18 conference; is that correct?

19 A. I believe --

20 MS. COHEN: Andy, Andy, I'll review it
21 with him and then you can ask that question.

22 MR. CELLI: Okay.

23 MS. COHEN: We did not think it did,
24 obviously, but --

25 MR. CELLI: I'm not interested -- I'm

1 not trying to make a point here about the production.
2 I'm interested in the timing.

3 Q. Just to get it clear from Mr. Curtin,
4 if there is an email that talks about something in
5 June, that would not relate to the Stewart press
6 conference because you were aware of that prior to
7 May 28th; is that fair?

8 A. Say that again.

9 Q. Right. I'm just trying to get it clear
10 that you seem quite certain that the conversation
11 with Chief Singletary about the Stewart press
12 conference, that happened prior to May 28th, right?

13 A. To be honest, I don't recall.

14 Q. Well, when you had a conversation with
15 Chief Singletary, were you aware that there was a
16 FOIL request from Mr. Shields for information about
17 the Prude arrest?

18 A. Probably. Again, you're attributing
19 responsibilities and roles to me that I don't have.
20 I have folks that do this for me, so I don't
21 micromanager -- you know, I can't tell you when a
22 deed was recorded. I can't tell you a lot of things
23 that I am ostensibly responsible for and ostensibly
24 manage but as a practical matter, probably as you
25 know if you manage for these, you don't micromanage

1 every working moment.

2 Q. And I'm not trying attribute anything
3 to you. I'm just trying to understand what you knew
4 at a particular point in time. Let me ask it a
5 different way.

6 When you spoke to Chief Singletary
7 about the Stewart press conference and he was sharing
8 with you this video clip which -- as I understand it,
9 you never were able to actually view it in a way
10 where you understood what you were seeing; is that
11 fair?

12 A. That's correct.

13 Q. Okay. When you had that conversation
14 with Chief Singletary and you said to him you ought
15 to show this video clip that you just sent to me to
16 the mayor, did you also discuss with him the idea
17 that there was an outstanding FOIL request for the
18 body-worn camera footage from the Prude arrest?

19 A. I did not share that with him. I don't
20 know that I ever connected -- I don't know that I had
21 the name Prude -- I got to think back. I'm not -- I
22 believe that the discussion I had with the chief
23 about Reverend Stewart's press conference was before
24 May 28th when the appeal -- when Elliot filed the
25 appeal.

1 Q. Right.

2 A. Because I don't think I had the name
3 Prude even when Chief Singletary discussed the press
4 conference, I don't know if I ever had the name Prude
5 tied to that press conference.

6 Q. Okay. Fair enough. Let me just ask it
7 as a more general question then.

8 When you had this conversation with
9 Chief Singletary about the Stewart press conference,
10 did the two of you discuss the idea that either you
11 or the mayor or somebody other than Chief Singletary
12 should review the body-worn camera footage from the
13 Prude arrest?

14 A. No. My feeling at that point, at that
15 point in time was the mayor needed to review it.

16 Q. And did you tell Chief Singletary at
17 that point in time that the mayor should review the
18 body-worn camera footage from the Prude arrest?

19 A. From that incident whether or not I
20 connected it to Prude?

21 Q. Right.

22 A. I don't know that I knew the name Prude
23 at that point but I said that the mayor -- if it was
24 a matter of police -- an allegation of excessive
25 force, that the mayor needed to see it if Reverend

1 Stewart was holding a press conference.

2 Q. Got it. And the "it", just so I'm
3 really clear about this was the body-worn camera
4 footage as distinct from whatever the footage was
5 that he had sent you by text?

6 A. Which may or may not have been the same
7 thing, but, yes.

8 Q. Okay. And did you do anything after
9 that and before August 4th to determine whether the
10 mayor -- whether Chief Singletary had shown the mayor
11 the body-worn camera footage from the Prude arrest?

12 A. I did not.

13 Q. Okay. And that's because you felt that
14 was for the chief to take care of; is that fair?

15 A. That's fair.

16 Q. Okay. So you testified earlier that it
17 was when the constructive denial appeal was filed by
18 Mr. Shields that you first learned that the Attorney
19 General's Office was involved in this investigation?

20 A. Yes. Yes.

21 Q. How did you learn that?

22 A. Stephanie told me.

23 Q. And were you surprised to hear that?

24 A. I had not been involved in an Executive
25 Order 147 case before, so that was the first one we

1 had done. I don't know that I was surprised but I
2 remember the gentleman in New York who passed away
3 and that the governor had issued some order. So I
4 was vaguely familiar with the concept, even though I
5 couldn't have told you what number the executive
6 order was that gave the Attorney General
7 jurisdiction.

8 Q. Got it. Were you the Corp. Counsel in
9 Rochester in October of 2018?

10 A. Yes.

11 Q. And do you recall there being an
12 investigation by the Attorney General's Office into
13 the Terrell Blake shootout that occurred?

14 A. I don't know that name. I may know the
15 circumstances but I don't know Terrell Blake.

16 Q. Okay.

17 A. I don't know that name. I don't think
18 it was ever -- did he ever sue the city?

19 Q. I don't know the answer to that. So
20 maybe --

21 A. I don't think so.

22 Q. Okay. So, Stephanie Prince tells you
23 that the Attorney General's Office is investigating
24 this matter. What else did she say, if anything, on
25 that subject?

1 A. We got into the FOIL release and I
2 asked her whether we were ready to release the
3 body-worn camera footage. And she said, "Well, I had
4 a discussion with Jenn Sommers and Jenn Sommers asked
5 me not to release any information including the
6 body-worn camera footage." I call it footage but
7 that's probably an old term. It's not really
8 footage.

9 Q. Right. It's all digital now.
10 And how did you respond to that?

11 A. I said let me take a look at executive
12 order and we reviewed the executive order together.
13 I went over it and I said, okay, then if she asked us
14 not to do it, then we're going to decline to release
15 it to the public. I said but we will follow the FOIL
16 rules if chief may need a HIPAA request that she had
17 sent to Elliot. And I said we can release it to the
18 family but we will not release it to the media
19 pending the results of the Attorney General's
20 investigation.

21 Q. And did all this happen in one meeting
22 or a series of meetings or something else?

23 A. A series of meetings, some with the
24 mayor, some without the mayor, some we're famous for
25 in hallway meetings and going over the railing and

1 half of our conversations are phone and half are text
2 and half are email, which is three halves. But, you
3 know, it's in a series of connections so there was
4 probably this discussion probably was completed with
5 various people over the course of three or four or
6 five conversations, some with Stephanie, some with
7 just Patrick.

8 Q. Okay. Well --

9 A. I asked Stephanie to confirm with Jenn
10 Sommers on August 4th. She told me, you know, on May
11 28th that the Attorney General's investigation was
12 still pending and then when we came to August 4th and
13 we decided to release the body-worn camera footage, I
14 asked Stephanie to confirm with Jennifer Sommers that
15 the Attorney General's investigation was still
16 pending and she did that.

17 Q. Got it. Did Stephanie Prince ever tell
18 you that the Attorney General's Office had
19 communicated to her that the City of Rochester was
20 not to make any public comments or statement about
21 the Prude arrest or this issue?

22 A. No, she told me that the Attorney
23 General had asked us not to disseminate any
24 information, including the body-worn camera footage.

25 Q. And you understood Ms. -- strike that.

1 Did Ms. Prince tell you that the
2 Attorney General's Office had told her that it could
3 not legally advise the City of Rochester how to
4 respond to a FOIL request?

5 A. I think that's accurate in general
6 terms.

7 Q. Right. And I'm focusing on the
8 language that's in the June 4th entry on Exhibit 20
9 where Ms. Prince writes "I speak with Jenn Sommers
10 who confirms there was an ongoing investigation and
11 she stated that while she could not legally advise us
12 what to do, she asked that we withhold release of
13 records, including the body-worn camera footage, as
14 the release will interfere with the AG's ongoing
15 investigations."

16 Do you see that?

17 A. Yes. Yes. That was my understanding.

18 Q. Right. And turning away from the
19 exhibit, I'm just asking this in a sort of a general
20 way. Did Ms. Prince tell you that a public statement
21 by the City of Rochester about the fact that there
22 had been an arrest and there was an investigation,
23 that that was something that the Attorney General's
24 Office had told her should not occur?

25 A. I don't know that we used that words,

1 she said disseminate information. I guess that could
2 be, you know, somewhat subjectively interpreted.

3 Q. Okay. Well, to go back to our friend,
4 Exhibit 20, the reference that she makes in the June
5 4th entry is to a release of records. And I'm trying
6 to draw a distinction between whether Ms. Prince told
7 you that the Attorney General's Office did not want
8 the City of Rochester to release records or did Ms.
9 Prince tell you that the Attorney General's Office
10 had told her that they did not want the City of
11 Rochester to make any public statement of any kind.

12 A. Well, my understanding was that she
13 indicated that release of records -- my understanding
14 was that we were being asked not to release any
15 information. So information, I guess, is records.
16 Information, I guess, is press releases. Information
17 is information. So it can be interpreted in
18 different ways and under Executive Order 147 that
19 seemed to be an acceptable or an understandable
20 request, that they were handling all matters, all
21 jurisdiction, all everything.

22 So I think somewhat of a
23 misunderstanding is what we do and we don't make
24 public announcements. I've never announced anything
25 to the media. So other folks do that but the Law

1 Department does not make public announcements. We
2 only hold press conferences when we're trying to
3 accomplish something specific. We just don't
4 generally -- I would never hold a press conference
5 and say, hey, guess what happened. That's just not
6 my role.

7 Q. Okay. I understand that answer and let
8 me -- I guess let me ask a follow-up question.

9 Did you understand the request of the
10 Attorney General's Office in this period to relate
11 only to the Law Department or was -- did you
12 understand it to relate to the City of Rochester in
13 general including, for example, the mayor?

14 A. I understood it to relate to the City
15 of Rochester in general.

16 Q. Okay. So you would agree with me that
17 there are times when the mayor as distinct from you
18 in your role, that the mayor does in fact announce
19 things publicly?

20 A. Absolutely.

21 Q. Okay.

22 A. But the instances where she has made
23 public announcements is not situations where the
24 Attorney General in my view has asked us not to.

25 Q. I understand. And we'll dig into that

1 a little bit later but I just -- I understand your
2 view.

3 Let me ask a question. You testified
4 that you and Ms. Prince had a look at Executive Order
5 147?

6 A. Yes.

7 Q. And did you conduct any research in
8 connection with the scope of the meaning of 147 or
9 did you just read it or something else?

10 A. We read it. I asked Stephanie whether
11 there is any case law behind it. I don't recall if
12 we had any case law but I accepted the terms pretty
13 much of the executive order, you know, as it
14 literally was worded. I didn't challenge it. I
15 didn't call the Attorney General and say, hey, you're
16 wrong. You know, I accepted their request. It
17 seemed reasonable under the circumstances and it
18 seemed consistent with the intent of 147.

19 Q. Well, did you ask anybody to contact
20 the Attorney General and office ask them not to say,
21 hey, you're wrong but to make sure that your
22 understanding of the Executive Order 147 was
23 consistent with their understanding?

24 A. I don't know whether Stephanie did or
25 not. I did not.

1 Q. And you didn't ask anybody? I mean, I
2 know you didn't do it yourself but did you ask anyone
3 to do that, "Hey, check with the AG, see whether
4 we're reading this the right way"?

5 A. I didn't think it was necessary because
6 we had already spoken with the AG and we had an
7 understanding of what she requested. I don't know
8 how many times we can ask the same question.

9 Q. Would you be surprised to learn that
10 Stephanie Prince does not share the view that
11 section -- that Executive Order 147 precludes a
12 statement by the City of Rochester in a situation
13 where the AG is conducting an investigation?

14 A. I think that that may be a belief that
15 she has garnered after the fact. It was not her view
16 at the time.

17 Q. Okay. So, why do you say that?

18 A. Well, because you're saying something
19 different than what our discussions were.

20 Q. Fair enough. So your testimony is that
21 when you and Stephanie Prince discussed this, that
22 she expressed to you her agreement that 147 would
23 preclude the City of Rochester from making public
24 statements?

25 A. Correct.

1 Q. So if she testified that she doesn't
2 believe that, that would be something that she
3 developed later on is your view?

4 A. Yeah. And you can, you know, check
5 with Patrick because he was involved in those
6 discussions at the time.

7 Q. Would you be surprised to learn that
8 Patrick Beath doesn't share the view that executive
9 law -- Executive Order 147 has that expansive scope?

10 A. That wasn't his view at the time
11 either. I don't know whether views have changed but
12 we had enough discussions among ourselves and with
13 the mayor and with various other people, we discussed
14 it, you know, on a daily basis for a while.

15 Q. Is this a topic -- was the scope of
16 Executive Order 147 a topic that you discussed with
17 the mayor prior to August 4th, 2020?

18 A. No, not prior to August 4th.

19 Q. Okay. It's something that came on the
20 4th and afterwards; is that right?

21 A. Yeah. Yes.

22 Q. All right. Fair enough.

23 MS. COHEN: If you're at a good time
24 for a break, Andy, I would love one.

25 MR. CELLI: Sure. Sure.

1 (Recess taken.)

2 BY MR. CELLI:

3 Q. Mr. Curtin, so I'm going to share a
4 screen again and put up what we've premarked as
5 Curtin Exhibit 2.

6 (Curtin Exhibit 2, email chain, was
7 deemed marked for identification.)

8 Q. This is a document that bears the Bates
9 number Curtin 000003 to 6. I'll make it larger so
10 that you guys can see it.

11 And, Mr. Curtin, I'm just going to
12 start at the end. I want to sort of give you the
13 context of this. So starting on the page marked
14 Curtin 6 you have an email exchange between
15 Lieutenant Perkowski and Ms. Prince on June 3rd at
16 5:51. You see that, right?

17 A. 5:31, yes.

18 Q. And going further up the document I
19 want to show you is that there is a number of
20 exchanges among and between various folks, and I
21 don't know if this got cut off of the top at my
22 version but the one that reads "Good afternoon,
23 gentlemen, Are you available tomorrow morning to
24 discuss the FOIL request?"

25 Do you see that, where my cursor is?

1 A. Yes, I do.

2 Q. Can you see on your version of this
3 that that is -- you are on the To line there along
4 with Chief Singletary, Mr. Beath and Mr. Mura?

5 A. Correct.

6 Q. Okay. And that's where I think you get
7 added to the chain, Mr. Curtin, okay? And then there
8 are some additional emails subsequent to that in time
9 that go up to the first page of this exhibit. Okay?

10 So I'll start by asking you this
11 question: Do you have a practice when you receive an
12 email that includes a chain of prior emails on it,
13 that you review the prior emails?

14 A. I would like to say that I typically do
15 but I can't say that I always do.

16 Q. Okay. Well, I want to take you through
17 a couple of things on the prior emails where you were
18 not on a chain and ask you whether you reviewed those
19 at the time. Okay?

20 A. No, I never reviewed these. I don't
21 think I ever saw them before.

22 Q. All right. Well, let me ask a couple
23 specific questions and then we can --

24 A. Okay.

25 Q. Let's go to the very first one on the

1 chain where Lieutenant Perkowski is providing contact
2 information to Ms. Prince about -- for Jenn Sommers
3 at the AG's office. Did you review that email
4 chain -- that email when you received this chain on
5 June 4th, 2020?

6 A. I did not.

7 Q. I'm sorry, I didn't hear if you
8 answered.

9 A. I did not review it.

10 Q. Okay. When you received the email
11 chain at around 12:55 on June 4th, were you aware
12 that Lieutenant Perkowski was concerned enough about
13 the release of the body-worn camera video footage
14 from the Prude arrest that he believed that the
15 chief's office and the mayor's office would want a
16 heads up before that went out?

17 A. I did not review that but I understand
18 what he's saying.

19 Q. Right. I guess my question is,
20 understanding that you don't recall reviewing that
21 particular email, were you aware that Lieutenant
22 Perkowski had the view that this was sufficiently
23 important that it should get the mayor's and the
24 chief's attention?

25 A. Was I aware at that time, no. No.

1 Q. Looking at the next email up the chain,
2 who is Frank Umbrino?

3 A. He's one of the deputy chiefs.

4 Q. Okay. And at this time was he the
5 deputy chief in charge of the Major Crimes Unit?

6 A. I believe he was. I'm not certain,
7 though.

8 Q. And who is Henry Favor, Jr.?

9 A. Henry Favor is in charge of PSS, the
10 internal review entity that reviews complaints
11 against police officers.

12 Q. Professional Standards Section?

13 A. Yes.

14 Q. Got it. And when you received this
15 message, this chain of messages, were you aware that
16 Captain Umbrino also was concerned about the release
17 of body-worn camera information to the degree that he
18 believed that coordinating with the mayor and the
19 chief's office was something that should be done?
20 I'm looking at his numbered paragraph 2.

21 A. Was I aware of it, no.

22 Q. No. Okay.

23 A. I mean, a lot of these were
24 predictable. I would have thought that he would have
25 had that view but I didn't review this particular

1 email.

2 Q. And what would you have thought that he
3 would have had that view at this time?

4 A. Because they have every other time.

5 Q. What do you mean by that?

6 A. They're always very cautious about
7 releasing body-worn camera footage. It's not a
8 popular thing over at the police department. It's
9 obviously not a popular thing at the Locust Club, so
10 it's a constant point of contention. And we go
11 through this on virtually every matter we do; the
12 Locust Club contacts us and these guys -- you know,
13 it's just part of the process. It's part of everyday
14 life.

15 Q. Right. And, well, at this point in
16 time -- I'll try to put this in some historical
17 context, though, and represent to you that the death
18 of George Floyd in Minneapolis occurred in the third
19 week of May of 2020. And there were obviously
20 demonstrations going on nationwide with respect to
21 that issue.

22 Would you have expected on June 4th
23 that the leadership of the police department would be
24 concerned about the release of body-worn camera
25 footage from the Prude arrest because of the fact

1 that there were demonstrations going on nationally
2 around the George Floyd killing?

3 A. Well, there was probably a heightened
4 sensitivity but RPD always has this concern. So if
5 the unfortunate George Floyd incident had never
6 occurred, we probably would still have these concerns
7 from RPD.

8 Q. That's helpful. How would you
9 articulate in your experience as Corporation Counsel
10 what the concern is whenever there is a discussion
11 about releasing body-worn camera footage? And when I
12 say "the concern," I mean on the part of RPD
13 leadership.

14 A. I think historically when you have
15 folks that have grown up in the department and they
16 haven't been under this scrutiny, I think under the
17 heightened scrutiny of the body-worn camera, they're
18 just simply uncomfortable. You know, if I filmed you
19 all day at your office, there is probably sometimes
20 that you're looking at the window and you're not
21 doing work. So I think they just have a sensitivity
22 to that that they historically were never subject to.
23 So I think it's a systematic uncomfortable status for
24 body-worn camera that will adjust over time and they
25 will become used to them and you will see they're

1 doing some things because the camera is turned on
2 that they shouldn't. So it's a process. They will
3 learn to do it and learn to be comfortable with it.
4 But at this point in time they remain uncomfortable
5 because of the newness of the whole process.

6 Q. All right. As you sit here today are
7 you aware of any particular reason why apart from
8 what you just said is their general -- the police
9 leadership's general view about the release of
10 body-worn camera, as you sit here today are you aware
11 of any reason why they would be particularly
12 sensitive to the disclosure of the body-worn camera
13 footage in the case of the Prude arrest?

14 A. No, I'm not.

15 Q. Is it your testimony that this is just
16 a reflection that any concern about the Prude
17 body-worn camera footage on the part of police
18 leadership would really just be a reflection of their
19 general antipathy or concern about disclosure of
20 body-worn camera footage generally?

21 MS. COHEN: Just, Andy, just to the
22 extent he can't know what's in their mind.

23 MR. CELLI: No, I understand. I'm
24 asking based on Mr. Curtin's knowledge of these
25 things, is it his testimony that their concern or

1 antipathy towards releasing body-worn camera footage
2 of the Prude issue is really just a reflection of the
3 way they react whenever there is a release of
4 body-worn camera footage.

5 A. That's my impression, yes.

6 Q. Okay. And prior to June 4, 2020, this
7 antipathy or concern on the part of police
8 leadership, this is something that you've had to deal
9 with in processing requests under FOIL for body-worn
10 camera footage; is that fair?

11 A. Yes.

12 Q. And what has your approach been to
13 that?

14 A. My approach is to take directions from
15 the mayor and the mayor says release. So we have not
16 in my experience have we ever failed or declined to
17 release body-worn camera footage for any particular
18 reason. I think we've complied with every FOIL, even
19 though some of the FOIL are incredibly time-consuming
20 and incredibly pointless. We go through the process
21 and we have limitations on the time that's spent. So
22 we don't always do them in a timely matter simply
23 because of the volume. But we in my recollection
24 have never declined to release any body-worn camera.
25 As far as I know, we've released everything and

1 it's -- you know, show all our warts, we release.

2 But the mayor said on many occasions
3 we're not going to do the body-worn camera program
4 and then refuse to release. We didn't have to do the
5 body-worn camera program. It's optional. And she
6 chose to do it, therefore we're going to release.

7 Q. And was that a policy statement or
8 position that the mayor articulated prior to June 4,
9 2020?

10 A. Probably about a thousand times.

11 Q. Okay. You see where you come into the
12 chain here, and, again, on my screen it's a little
13 bit obscured, but there is a request from Mark
14 Simmons who is the deputy chief to you and Chief
15 Singletary and others to have a discussion the
16 following morning. Do you see that?

17 A. Yes.

18 Q. And did that conversation take place?

19 A. Not with me. Under normal situations
20 because I don't handle these I think I would have
21 deferred to Patrick who has direct responsibility. I
22 don't recall the meeting and I don't have the meeting
23 on my calendar. My calendar is usually pretty up to
24 date. So I don't ever remember participating in that
25 meeting.

1 Q. Okay.

2 A. I'm guessing under normal procedure I
3 would have asked Patrick to cover it.

4 Q. Okay. If I suggest to you that
5 Mr. Beath recalled you being there, does that help
6 you recall it at all?

7 A. Patrick may have a better memory than I
8 do. I don't recall that meeting, to be honest.

9 Q. Okay.

10 A. And it would have been set up by Zoom
11 which means I would have had to have a Zoom link and
12 I don't have a Zoom link on my calendar.

13 Q. Okay. So you see that after this
14 invitation to the meeting there are a couple of
15 communications -- well, there is one communication
16 where Mr. Mura -- is he a deputy chief also?

17 A. Yes.

18 Q. -- Deputy Chief Mura says "I'm
19 available," right?

20 A. Yeah.

21 Q. And then in the chain is an email where
22 you forward the whole chain to Stephanie Prince. Do
23 you see that?

24 A. Yes.

25 Q. And there you say, "Can you review

1 this? Can we deny/delay?"

2 A. Yeah.

3 Q. Well, first of all, why did you forward
4 this chain to Stephanie Prince?

5 A. She had direct responsibility for our
6 FOIL response.

7 Q. Okay. And what did you intend to
8 convey when you said to Stephanie Prince can we
9 deny/delay?

10 A. Maybe I went to Mark Simmons. I went
11 to one of the emails and I understood that their
12 purpose was to try to delay dissemination of the
13 body-worn camera. So I was asking for Stephanie's
14 advice, is there a rational basis or an appropriate
15 basis to deny or delay this otherwise, you know, I
16 didn't say this, but otherwise we have to release.

17 Q. Got it.

18 A. So I was asking her to research his
19 question.

20 Q. And did she report back to you on that?
21 I don't want to decontextualize this. There is also
22 a response from her above which may or may not be her
23 report back. So I'm asking generally did she report
24 back to you on your question?

25 A. I don't remember specifically but I

1 know that we never identified a basis to withhold
2 other than and with -- you know, the HIPAA release
3 was not a basis to withhold. Elliot had come through
4 with the HIPAA release and that took five or six
5 weeks. I can't remember how long that was. But
6 outside of that, I was advised by Stephanie and
7 Patrick that once they supplied the HIPAA release,
8 there was no basis to withhold it from the family.

9 Q. Would you be surprised to learn that
10 Stephanie Prince and Mr. Beath do not believe that
11 HIPAA applies to this request?

12 A. They do not believe it applies?
13 Stephanie is the one who sent it out, the HIPAA
14 demand without ever checking with me. I was never
15 involved in do we send out a HIPAA request. That was
16 between Stephanie and Patrick. I was not even aware
17 that it was sent.

18 Q. Did you intend your statement "Can we
19 deny/delay" to be a direction or suggestion to
20 Stephanie Prince to find a way to deny or delay
21 responding to the FOIL request that Mr. Shields had
22 submitted?

23 A. Absolutely not. And we never did.
24 Once he submitted the HIPAA release, we released. It
25 was really to pass on -- it was a research assignment

1 to pass on Frank's question or Mark's question, I
2 can't remember which one.

3 I'm not that subtle. If I wanted her
4 to release it, I probably would have not asked her to
5 her basis. I can put things in my draw as well as
6 anyone else can. So I didn't need her to delay or
7 deny it. I didn't need her assistance doing that. I
8 wanted her to research Frank's question.

9 Q. Okay. So let's have a look at the top
10 email which is the latest in time. This is from
11 Stephanie Prince to you at 2:05. I'm sorry that this
12 got obscured but it's Thursday, June 4th. So it's
13 the same day. It's about a half hour or so, 35
14 minutes after your email to Ms. Prince. Okay?

15 What did you understand to be the
16 import of Ms. Prince responding to your request by
17 referring to what the Attorney General's plans were
18 for offering a viewing of the body-worn camera
19 footage to the lawyers for the Prude family?

20 A. Well, I thought the AG was
21 accommodating her lone desire not to have this
22 released to the public and that she had offered this
23 on her own volition. You know, instead of releasing
24 it to the public, how about this you guys. And we
25 said, great idea, we'll cooperate.

1 Q. Did you draw a distinction -- this is a
2 general question and then we can apply it to the
3 circumstances. Do you draw a distinction between
4 releasing something to a requester pursuant to FOIL
5 and releasing something to the public?

6 A. Absolutely.

7 Q. What's the distinction? Explain that
8 to me.

9 A. Well, there are certain people that
10 have a vested interest in certain things. Sometimes
11 a general concern of the public, you know, if a
12 building falls down, a parking garage collapses,
13 that's of general concern to the public and we would
14 release that to the public.

15 Here you had a very, very tragic
16 situation. I would not and to be honest I would not
17 to this day have released this to the media. You
18 have an incredibly sad situation where you have a
19 naked man flailing on a street in March and everybody
20 wants to make a circus out of it. The only people
21 who have an interest in this, a real interest are his
22 children in this instance.

23 So we knew as a practical matter that
24 once we released this to the family, Elliot, knowing
25 Elliot, would immediately seek to monetizing this

1 tragedy, and by monetizing this tragedy, he would get
2 it out to the public. But I -- and maybe this is
3 personal, there is no way -- you know, you're proud
4 of your dad. There is no way that I would have ever
5 released a picture of my father lying naked on a
6 street for any amount of money, I don't care how big
7 the check is. Not everybody shares that view and we
8 understood that.

9 So it was never our role to inform the
10 public. It's never the Law Department's role to
11 inform the public of anything. My role is to defend
12 the City's liability in this instance. By doing that
13 here, we released it to the family and in my opinion
14 -- and maybe this is personal, maybe this is not
15 universally shared -- in my opinion the only folks
16 who had a vested interest in the body-worn camera
17 footage was his family and his family could do with
18 that footage whatever they deemed to be appropriate,
19 including using it to sue the City but that's they're
20 prerogative. It was never my prerogative to have
21 this as the last view of this man flailing naked on a
22 street. I mean, I don't do that, I wouldn't do that
23 and I've never done that. And maybe that's too
24 personal but that's not me.

25 Q. Okay. I appreciate that expansive

1 answer.

2 Would you agree, though, Mr. Curtin, as
3 you sit here today that the public has a great
4 interest in precisely what happened to Mr. Prude?

5 A. Show me the statute that says that.

6 Q. Well, you would agree that the Freedom
7 of Information Law does not draw the distinction that
8 you draw, that there are some people that have an
9 interest and then there is the public and they don't
10 have an interest, right? It's just a question of is
11 there a request or not a request; is that fair?

12 A. No. I mean, the public couldn't give
13 us a HIPAA release. So there was -- we would release
14 the redacted version but Elliot didn't consent to the
15 redacted version. We were in the process of
16 releasing the redacted version under general FOIL.
17 It never got that far because Elliot demanded the
18 unredacted version. And then we demanded the HIPAA
19 release and then he released it to the public. So
20 that process would have moved forward where we would
21 have released the redacted version to the public but
22 we were -- you know, that's a very, very
23 time-consuming process. If you have ever been
24 involved in that, it can take you a month to redact
25 all this footage.

1 Q. But you would agree that once this
2 footage was released by the family, that it became
3 very clear that the public had a deep interest in
4 what had happened to Mr. Prude on March 23rd?

5 A. A literal interest, yes. An indirect
6 interest, yes. But the interest and the decision to
7 monetizing this death was solely up to the family in
8 my view.

9 Q. And is it also your view that the only
10 reason the body-worn camera footage was released by
11 the family's lawyer was to obtain some kind of
12 monetary result from the city?

13 A. It's one of the reasons. He may have
14 had other reasons. I've never asked.

15 Q. Would you agree, Mr. Curtin, that the
16 views expressed by police leadership in the June 4th
17 emails about concern about releasing body-worn camera
18 footage in this instance are contrary to the
19 presumption under the FOIL law that public records
20 should be publicly available?

21 A. Generally, but I wouldn't expect them
22 to have too much concern for the FOIL law. That's
23 not their role in the universe.

24 Q. Right. That's your role, right, your
25 office's role?

1 A. Yes.

2 Q. Okay. Did you participate in a
3 discussion about -- in or around this time of June,
4 early June of 2020, about whether or not the criminal
5 investigation being carried out by the Major Crimes
6 Unit was open or closed at that point?

7 A. I know I became aware that it had been
8 closed. I couldn't tell you the date, to be honest.

9 Q. Okay. Well, let me direct you a little
10 bit here. And I recognize that you say you don't
11 recall reading this, but, having a looked at Captain
12 Umbrino's 9:58 a.m. message which is on Curtin page
13 5, this is to Henry Favor. He writes, "I told you
14 before this is closed and after discussion we think
15 it is up for interpretation on the RPD's end,
16 although that does not change the fact we pretty much
17 have to give it to Corporation Counsel. Basically
18 Corporation Counsel will review the package and
19 decide what should and should not be turned over.
20 They need to keep in mind, number one, this can be
21 labeled still an active investigation because the
22 AG's office has not concluded their portion of it and
23 have requested additional interviews of the officers.
24 Our investigation can be interpreted technically as
25 remaining open until their investigation is complete

1 in the highly unlikely event that they uncover any
2 additional information that could impact our
3 investigative findings."

4 Okay. You see that part?

5 A. Yes.

6 Q. And I'm asking whether that refreshes
7 your recollection about being involved in a
8 discussion about whether the status of the Major
9 Crimes Unit investigation being open or closed was
10 considered as part of the decision whether or not the
11 body-worn camera footage was subject to disclosure
12 under FOIL?

13 A. I think by that point I knew that the
14 Major Crimes Unit had concluded their investigation.
15 It did not have any impact on my decision. I don't
16 know if you have ever represented police officers,
17 but --

18 Q. I have.

19 A. Okay. So you understand they're all
20 junior lawyers and they argue their case. And this
21 is -- you know, I fully understand this. I get this
22 every day and you have to take it, you know, under
23 consideration and I think that they're very
24 emotionally tied to their jobs. I think they're all
25 well-meaning, good folks and they make arguments,

1 some legal arguments that don't always hold water.

2 Q. This is one of them.

3 A. Correct.

4 Q. As of June of 2020 did you view the
5 fact that the Attorney General's Office had a pending
6 investigation, criminal investigation of the Prude
7 matter as a basis to withhold the body-worn camera
8 footage or any other materials pursuant to FOIL?

9 A. Yes.

10 Q. And what was your belief about that?

11 A. My belief was the Attorney General had
12 requested that we do not release it and I was willing
13 to cooperate in that request.

14 Q. Reviewing Stephanie Prince's June 4th
15 email about her communications with the AG's office,
16 does that refresh your recollection as to whether you
17 had a discussion with the mayor in this time frame
18 about the fact that there was an AG investigation of
19 the Prude matter? There is no mention of the mayor
20 here. I'm not trying to mislead you. I'm just
21 trying to contextualize this.

22 A. I don't believe I had a discussion with
23 the mayor at this point in time.

24 Q. Okay. Did you agree with Stephanie
25 Prince's suggestion that she should reach out to

1 Elliot Shields to ask whether he would agree to
2 adjourn the appeal deadline until after the Attorney
3 General's investigation?

4 A. I think she did that before I became
5 directly involved. I think she did that on her own
6 or may have checked with Patrick but I don't believe
7 she checked that with me.

8 Q. When you learned of it, did you think
9 that was a good idea, a bad idea, or no opinion?

10 A. I thought it was a good idea because it
11 was the Attorney General's idea and I didn't go much
12 beyond that.

13 Q. Okay. You testified that you don't
14 recall a meeting following up on Deputy Chief
15 Simmon's suggestion. Do you recall conversations
16 with Chief Singletary one-on-one or small group
17 conversations that you participated in in or around
18 this time in early June of 2020 around the release of
19 the body-worn camera footage?

20 A. No, I did not.

21 Q. Okay. Did there come a time in the
22 middle of June of 2020 when you became aware of a
23 request for body-worn camera footage arising out of
24 an incident where a ten-year-old child was handcuffed
25 by the police?

1 A. Yes.

2 Q. And what do you recall about that?

3 A. I recall being notified by someone from
4 RPD. I don't know if it was Chief Singletary. It
5 might have been Deputy Chief Simmons that we have a
6 situation up on Ridge Road, can you take a look at
7 this quickly.

8 Q. And did you review the body-worn camera
9 footage from that incident?

10 A. Yes, from start to finish from, I
11 think, four or six different officers.

12 Q. And was there a discussion with the
13 mayor about whether or not that footage should be
14 released in response to a FOIL request?

15 A. I don't recall Patrick discussing this
16 specifically with the mayor but (distorted audio) --

17 Q. I'm sorry?

18 A. I don't recall having a specific
19 discussion with the mayor but it was our
20 understanding that it was subject to FOIL release and
21 I think we released it immediately. The mayor and I
22 subsequently met with the family.

23 Q. Okay. Let's go to what we've
24 previously marked as Curtin No. 4.

25 (Curtin Exhibit 4, email chain, was

1 deemed marked for identification.)

2 Q. This is an email chain bearing the
3 Bates numbers Curtin 008 to 11. And I want to focus
4 your attention -- well, first of all, Amalia
5 Bellucci, is she someone with the police department?

6 A. No, she works in Communications. She
7 works for Justin Roj.

8 Q. Okay. And Ms. Bellucci is reporting to
9 Mr. Roj here that there are requests for body-worn
10 camera information relating to the arrest of the
11 ten-year-old she says, right?

12 A. Correct.

13 Q. Okay. And you get added to the chain
14 here on June 11th, 2020 at 9:08 a.m. where Mr. Roj
15 says, "Stephanie, Mayor Warren stated at a press
16 event yesterday that we would release this footage.
17 My understanding is that the footage has been
18 redacted and shared with you. Please call me at your
19 earliest convenience."

20 Do you see that?

21 A. Yes.

22 MS. COHEN: Andy, if you're trying to
23 screen share again, it's not sharing.

24 MR. CELLI: Oh, I'm sorry. I
25 apologize. I just at times forget to hit that.

1 Q. So you get looped in at 9:08. There is
 2 an exchange between Stephanie Prince and Justin Roj
 3 about basically how the body-worn camera footage is
 4 going to be redacted involving this ten-year-old
 5 child and then you respond at 9:26 a.m. saying,
 6 "Please send the newly redacted to me and I will
 7 coordinate with Justin. Thanks."

8 Do you see that?

9 A. Yes.

10 Q. Why did you want to be the person who
 11 would get the redacted body-worn camera footage and
 12 coordinate that with Justin Roj?

13 A. Because I'm the last review and I
 14 didn't want to interrupt the process. This is kind
 15 of a long, involved story that's not germane to this
 16 issue but these folks had an incident on Route 104.
 17 The little girl was handcuffed for what we all think
 18 to be legitimate reasons and then these people came
 19 to City Hall. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

10 Q. Got it. You started -- I appreciate
 11 that answer.

12 When you started that answer, you said
 13 because you're the last reviewer. What do you mean
 14 by that?

15 A. Well, when redact -- I'm the appeals
 16 officer, so if there is ever a question on body-worn
 17 camera, I have the last word.

18 Q. Okay.

19 A. So we just kind of jumped from step one
 20 to step 10 and I was step 10.

21 Q. Got it. So is it generally your
 22 practice that before any body-worn camera footage
 23 goes out to a requester, that you would review that?

24 A. Only when the people reviewing it that
 25 are underneath me, whether in Communications or in

1 Law, and it's up to them to determine this is an
2 instance that needs some special attention. So
3 probably 95 percent of them go out the door and I
4 never see them. But it's the five percent that in
5 their discretion is going to raise some concern, some
6 legal issues that there is a problem and I'm the
7 backstop for that. But I don't see 95 percent of
8 these.

9 Q. Understood. Have you ever given
10 instructions to the people in the Law Department
11 about the circumstances under which you want to be
12 the person to see body-worn camera footage before it
13 goes out the door to a requester?

14 A. That's probably part of our process.

15 Q. I mean, you talked about them
16 exercising their discretion and I guess I'm just
17 curious have you ever explained to folks how you
18 expected them to exercise discretion in that way,
19 what the factors were, for example?

20 A. I don't recall specifically. I
21 remember, it may have been in this instance where
22 because this was such -- so highly publicized I asked
23 Stephanie to make sure I knew the day that it was
24 going out to Elliot. And I think that she sent them
25 out earlier, sent them out without telling me. And

1 then I said, I need to know because I need to tell
2 the mayor. And then Patrick I think sent out a memo
3 saying, you know, from here until the end of the
4 world, you know, we shall do it this way and I never
5 acted on that because Patrick overreacted a bit to
6 it. But I said that people had to use their
7 discretion and if something was especially sensitive,
8 they had to let me know the moment it went out
9 because I have to let the mayor know that it may be
10 on the evening news.

11 Q. Right. But the instance that you're
12 talking about right now where Stephanie sent it out
13 and didn't show it to you first, that was with
14 respect to the Prude material, right?

15 A. I had seen the material first. I
16 wanted to know the moment it was sent to Elliot. I
17 already knew what the footage showed. It was just
18 the moment Elliot was going to receive it and I
19 thought that would be the evening news and I wanted
20 to be able to advise the mayor.

21 Q. We'll come back to that. I'm going to
22 take you now to back to Exhibit 36 which you may
23 recall is the compendium of text messages, and in
24 particular I'm focusing on Curtin page 319. And here
25 we have a text exchange between you and -- from you

1 that by saying, "I've relayed the message of the
2 shift from the Jefferson Avenue incident to the
3 ten-year-old redaction video. Matt is in today at 1
4 p.m. and will begin to work on a redaction. They
5 will notify me once complete and I will notify you
6 guys." And it goes on to say "Matt is on the work
7 share program."

8 What did you understand Chief
9 Singletary to be saying there?

10 A. That Matt who was on the work share
11 program -- do you know what that means?

12 Q. Nope.

13 A. Okay. During the pandemic when we were
14 cut back on all city revenues, we were entitled to
15 certain CARES Act reimbursement unemployment costs.
16 So we split a bunch of jobs in half and they could
17 collect unemployment for the half that they were
18 furloughed. So folks basically were working half
19 time.

20 So for some reason our redaction guy
21 was put on work share which means he only showed up
22 for work half the days he otherwise would have.

23 Q. Okay.

24 A. So he was on -- apparently which I was
25 unaware of at the time but what this message says to

1 me is Matt was on the Daniel Prude redaction detail
2 and because the mayor wanted the little girl's
3 body-worn camera footage to be released as soon as
4 possible. And, as you know, with minors, we have to
5 redact faces. Under the HIPAA law we can't release
6 faces of minors. So that's a very time-consuming
7 process. So I think what the chief is saying I told
8 Matt as a priority, you know, put Daniel Prude aside
9 and go to the little girl on Route 104.

10 Q. Got it.

11 A. But that was a relatively short
12 duration. I mean, the body-worn camera footage for
13 the little girl was not nearly as comprehensive as
14 the Daniel Prude video was.

15 Q. So, thank you. You actually
16 anticipated my next question.

17 Can you characterize for us the degree
18 to which there was delay in redacting the Prude video
19 based on the fact that the video of the ten-year-old
20 child being handcuffed, that that was given priority
21 at this point?

22 A. I would say maybe half a day.

23 Q. Okay.

24 A. Slightly exacerbated by the fact that
25 Matt only worked half time. But in terms of just

1 real hours, it wouldn't take more than three or four
2 hours to -- because with faces, there is an automatic
3 redaction thing that you can just press the button
4 and it searches out, I think it's by height, so they
5 can search out little kids and it's an automatic
6 redaction. So it's a matter of pressing the button,
7 not a matter of manually going through each foot of
8 the footage or whatever the digital word is.

9 Q. And you would agree that as of June
10 11th, the mayor was aware that footage from the
11 Daniel Prude Jefferson Avenue incident was in the
12 process of being redacted, right?

13 A. I don't know that the mayor knew what
14 that really meant. I don't have any knowledge that
15 the mayor would have connected Jefferson Avenue with
16 Daniel Prude at that point in time.

17 Q. Okay. You knew what it meant, though,
18 when you saw that, right?

19 A. I don't know that I connected the dots
20 either to be honest.

21 Q. As you sit here today, you know when
22 it's a reference to the Jefferson Avenue incident,
23 that's the Daniel Prude?

24 A. Yes.

25 Q. And, in fact, it was Chief Singletary's

1 practice to refer to the Daniel Prude mental health
2 arrest as the incident, the guy who was high on PCP
3 on Jefferson Avenue, right?

4 A. Correct.

5 Q. That is the way --

6 A. Right.

7 Q. That is the way he always referred to
8 it, right?

9 A. I don't know that that's the case.
10 I'll take your word for it.

11 Q. Well, I'm asking just in your
12 experience.

13 A. I think he referred to it different all
14 the time. You know, he -- I don't know that he
15 always referred to it as the Jefferson Avenue
16 incident but I certainly now sitting here know,
17 understand what he meant.

18 Q. Just as a general matter, this issue
19 with the ten-year-old child, this is a case where if
20 the mayor wanted something to be released as --
21 body-worn camera footage to be released in response
22 to a FOIL request, she would communicate that to the
23 Communications Department, they would then tell you
24 guys and you would oversee that; is that fair?

25 A. No. It may come directly to us, it

1 came come to Communications but then the police
2 department is the one that was doing the redaction.
3 So somebody would have had to communicate to the --
4 with the police department.

5 Q. Fair enough. I guess I'm trying to
6 understand exactly what the Law Department's role is
7 here. Can you help with that?

8 A. No, I can't because I don't know what
9 our role is in this either. It's -- sometimes roles
10 fall to people rather than titles and I think the
11 mayor knows how to get things done. So if she's got
12 something important to do, there are certain people
13 that are contacted and certain people that are not
14 contacted irrespective of their titles.

15 Q. Who are you referring to there?

16 A. Everybody.

17 Q. Well, I mean, this is one where you
18 jumped in. As you said, you went from step 1 to step
19 10 to take control of this. Are you viewed by the
20 mayor in your perception as the guy who can get
21 things done?

22 A. I think sometimes.

23 Q. And do you think that's why the Law
24 Department was looped into this issue?

25 A. Yes.

1 Q. And do you have any other information
2 about that or that's just your assumption?

3 A. I can give you a thousand examples how
4 I've come to believe that but it's not formal. There
5 is no chain of command that indicates this. It's
6 just kind of always the same people when there is a
7 crisis.

8 Q. And you're one of those go-to people;
9 is that right?

10 A. I think the mayor thinks that.

11 Q. Okay. So let's move on. Well, let me
12 show you what's been previously marked as Curtin
13 Exhibit 5.

14 (Curtin Exhibit 5, email chain, was
15 deemed marked for identification.)

16 Q. I'm not going to ask a lot of questions
17 about this in detail. I'm more interested in the
18 general. This is an email from Stephanie Prince to
19 Elliot Shields -- I'm sorry about that -- in which
20 she is forwarding him certain paper information in
21 response to his FOIL appeal. Do you see that?

22 A. Yes.

23 Q. Is this -- when this occurred, that Ms.
24 Prince provided this -- these reports to Mr. Shields
25 on June 11th, in or around that time did you report

1 that information or notify the mayor that paper
2 reports had been provided to Mr. Shields in response
3 to a FOIL request?

4 A. Did I report to the mayor, no.

5 Q. Yeah. Did you notify her? I mean
6 report --

7 A. No, I did not.

8 Q. Okay. And why not?

9 A. I guess just based on practice. I'm
10 responsible for legal matters in the Law Department
11 and I -- you know, she's a busy lady. I have lots of
12 things to do. I don't -- I think you think we report
13 or we chat more often than in reality we do.

14 Q. Honestly, Mr. Curtin, I'm just asking
15 the question. I don't have an opinion.

16 A. All right. I didn't and I normally
17 would not.

18 Q. Let's look at Curtin Exhibit 6.

19 (Curtin Exhibit 6, email chain, was
20 deemed marked for identification.)

21 Q. I'm trying to move through this
22 quickly. This is an email chain in the latter part
23 of July that appears to relate to some legal issues
24 around the protests that were occurring in Rochester
25 at this time in connection with the death of George

1 Floyd. Am I correct about that?

2 A. Yes. This is a matter of writing Black
3 Lives Matter on the street in front of the public
4 safety building and in front of City Hall.

5 Q. Right. And looking at the message from
6 Chief Singletary to you on July 28th at 2:23 down
7 here on the bottom left, Curtin No. 16, he writes,
8 "Hello, Tim, I hope all is well. I feel like we've
9 been joined at the hip given our current climate with
10 policing in America and the all the issues related to
11 such."

12 Do you see that?

13 A. Yep.

14 Q. What did you understand him to be
15 saying there?

16 A. I don't interpret it a lot. I didn't
17 get a plaque or anything. You know, he just, you
18 know, he contacts me frequently.

19 Q. But would it be fair to say in this
20 period of time and the period of time when there were
21 demonstrations around the George Floyd death, that
22 you and the chief were in close communication on a
23 regular basis?

24 A. Yes.

25 Q. And that's what you understood him to

1 mean when he said that you were joined at the hip
2 with one another?

3 A. I mean, that wouldn't be how I would
4 characterize it, but, you know, it's up to him.

5 Q. Well, how would you characterize it?
6 How would you characterize -- what level of your
7 communication at that point?

8 A. It wasn't -- I don't know how many
9 times joined at the hip has to be but we would speak
10 once or twice a day, you know, not ten times a day.
11 So he would come to us for advice on a lot of matters
12 that he was not familiar with.

13 Q. Okay.

14 A. He had never gone through this kind of
15 a situation before with these kind of protests, so he
16 was often looking for advice.

17 Q. Okay. And so when you were speaking in
18 this period once or twice a day to Chief Singletary,
19 it was about dealing with the demonstrations that
20 flowed out of the George Floyd issue, right?

21 A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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2 Q. When -- in that answer when you said
3 "this matter," you're referring to the Prude matter?

4

A. The Prude matter, yes.

5

6 Q. Tell me all the times that you
7 encouraged Chief Singletary to communicate something
8 about the Prude matter to the mayor.

8

9 A. I think you've documented all the times
10 that I can think of. There may have been other
11 matters but on a number of occasions including, you
12 know, the last one on August 4th, I instructed him or
13 advised him that the mayor should be made aware of
14 these things.

14

15 My typical speech to these folks is
16 that if you tell the mayor right away, she'll be your
17 best friend and she'll help you figure all this stuff
18 out. If you keep it from the mayor, you've alienated
19 the mayor and she can be rough on people who try to
20 keep secrets from her.

20

21 So I've coached -- I can give you
22 probably 20 examples where I've walked in the DES
23 commissioner to the mayor's office. I've walked in
24 the MBD commissioner to the mayor's office and kind
25 of made him do the right thing.

25

Q. I'm actually more interested in the

1 chief of police. Did you give that speech to Chief
2 Singletary?

3 A. Yes.

4 Q. Once or more than once?

5 A. I believe twice.

6 Q. And what were the issues specifically
7 that we were talking about when you gave that speech
8 to Chief Singletary?

9 A. The body-worn camera footage.

10 Q. From the Prude incident?

11 A. Correct.

12 Q. And what were the dates of those
13 conversations?

14 A. I honestly don't recall. One of them
15 was up phone call in June apparently which I said was
16 May but apparently is June. And another time I don't
17 remember the date. I believe that it was after an
18 SMT meetings.

19 We have senior management team meetings
20 where all the department heads get dragged in Tuesday
21 mornings and we would kind of see each other. And I
22 think the chief and I at some point had that
23 conversation and he always understood, he always
24 agreed that he would. But obviously he never did.

25 Q. The second meeting you're talking about

1 where you gave a speech, you say that was after an
2 SMT meeting. I take it that was prior to August 4th?

3 A. Correct.

4 Q. And what were the circumstances that
5 led you to give that speech and encourage the chief
6 to -- well, what did you do? You encouraged him to
7 show the body-worn camera footage from Prude to the
8 mayor?

9 A. Correct.

10 Q. And what were the circumstances that
11 led you to have that conversation with him at that
12 time?

13 A. I don't recall specifically, you know.
14 I know I hadn't seen him for a while. Sometimes I
15 only see him once a week, even though we talk
16 frequently. So this was just the next time that I
17 saw him that it came to mind. So I don't have a
18 specific date but I know it was before August 4th.

19 Q. Where did the conversation take place?

20 A. Outside the mayor's conference room on
21 the third floor where the SMT meetings occur.

22 Q. Right. Who was present?

23 A. Just the chief and I.

24 Q. And as best you can recall, what did
25 you say to him and what did he say to you?

1 A. I kind of gave, you know, my usual
2 speech, she'll be your best friend if you tell her
3 soon enough. And he indicated that he would. I
4 think obviously there was a reticence on his point --
5 on his part and I don't know why. I never -- you
6 know, I never said, hey, why didn't you tell her. We
7 never had that conversation. I had told him on a
8 couple of occasions that he should tell her and he
9 accepted my advice. I guess he listened to my
10 advice. And I -- you know, it just went on from
11 there until obviously August 4th when it was just too
12 late. It was too late to delay any longer.

13 Q. And just so we're clear, in this
14 meeting after the senior management team meeting
15 outside the conference room, what you were
16 encouraging him to do was not to tell her or was it
17 to tell her but I thought you said it was to show her
18 the body worn --

19 A. It was both. It was to tell her and
20 showing her the video.

21 Q. And what were you encouraging him to
22 tell the mayor?

23 A. Just that this incident occurred. But
24 remember at this point in time, I had not yet seen
25 the video.

1 Q. Okay.

2 A. So I just kept telling him make sure
3 the mayor is aware. Because we weren't really
4 involved yet other than knowing about it. There had
5 been no notice of claim and, you know, the lights
6 don't turn on in the Law Department generally
7 speaking until a notice of claim comes in. So this
8 was all pre-notice of claim but I knew this tape was
9 out there. I didn't know what was contained in the
10 tape but I knew a man died. So, I knew this was
11 serious incident and something that I wanted the
12 police chief to share with the mayor before it hit
13 the media.

14 Q. Okay. So just going back to our old
15 friend Exhibit 20. You see that the timeline says
16 that the city received a notice of claim in the Prude
17 matter on July 30th, right?

18 A. Correct.

19 Q. Were you made aware of that in
20 real-time when it occurred?

21 A. Yes, Patrick told me.

22 Q. Okay. So just -- that helps me
23 understand that the conversation that you're talking
24 about occurring after the senior management team
25 meeting was sometime before July 30th, am I right?

1 A. Correct.

2 Q. And you also mentioned the conversation
3 about the Reverend Stewart press conference. Do you
4 now believe that that conversation between you and
5 Chief Singletary occurred in June rather than in May?

6 A. Yes, that's what the text message
7 indicates.

8 Q. And you're confident that that text
9 message is a reference to that conversation about the
10 Reverend Stewart's press conference?

11 A. I am. That's the text that I referred
12 to during the OPI report. I just had the wrong
13 month.

14 Q. Got it.

15 MR. CELLI: So, Carrie, let me just ask
16 you, so I can't remember, was this produced to us or
17 not? Do you know?

18 MS. COHEN: I don't believe it was.

19 MR. CELLI: Okay. All right. I'll
20 come back and ask about that.

21 Q. So now that you're clear on when that
22 conversation happened with Chief Singletary, the one
23 about Reverend Stewart and that was around June 28th;
24 is that correct?

25 A. Correct.

1 Q. So that would be well after you became
2 aware that there was a FOIL request that had been
3 made by the Prude family for the body-worn camera
4 footage from the Prude incident, correct?

5 A. Well, after our Law Department had
6 received the FOIL request but if you're asking about
7 my personal knowledge, I have no personal knowledge
8 of the FOIL request from the get-go.

9 Q. Well, I thought you testified earlier,
10 and we can just -- whatever, the transcript will be
11 whatever it will be, but you learned of the FOIL
12 request on May 28th when there was an appeal of a
13 constructive denial?

14 A. Oh, the appeal. Yes. Yes. Yes. Yes.
15 I was aware of it when the appeal was filed. So,
16 yes, I knew about the Prude matter before the June
17 28th text with Chief Singletary, yes.

18 Q. And you knew about the fact that there
19 was a FOIL request for the Prude body-worn camera
20 footage when you had the conversation on June 28th
21 with Chief Singletary?

22 A. Correct.

23 Q. Okay. Thanks for the clarification.
24 Maybe what we'll do after the lunch break, which I'm
25 happy not to have right now but we'll mark this

1 document so it's clear in the record.

2 Mr. Curtin, are you okay plowing ahead
3 for a little bit?

4 A. I'm fine.

5 Q. All right. I'd like to show you what
6 we've previously marked as Exhibit 7.

7 (Curtin Exhibit 7, emails Bates stamped
8 Curtin 19 and 20, was deemed marked for
9 identification.)

10 Q. This is a two-page document bearing the
11 Bates numbers Curtin 19 and 20. Before we talk about
12 this, let's go back a moment.

13 So we've seen on the timeline and I
14 think you've confirmed that contemporaneously with
15 the filing of the notice of claim you were informed
16 of that notice of claim by Mr. Beath, right?

17 A. The appeal?

18 Q. No, I'm talking about the filing of the
19 notice of claim which would have been --

20 A. Oh, the notice of claim. Yes. Yes.

21 Q. And what do you recall about that? How
22 did it occur?

23 A. How did I become aware? Patrick came
24 to my office and told me that Elliot had filed his
25 notice of claim.

1 Q. And when you learned that, were you
2 surprised that there was a notice of claim on the
3 Prude matter?

4 A. Elliot doesn't surprise me on anything.
5 So, no, I was not surprised.

6 Q. And you knew there had been a
7 preservation request going back to April by that
8 point, right?

9 A. By that point I probably did. I
10 probably became aware of that on his FOIL appeal in
11 late May. So by then I knew, yes. I knew it was
12 coming, yes.

13 Q. And did you give Mr. Beath any
14 instructions about how to deal with the notice of
15 claim at that point?

16 A. I don't think so. I think, you know,
17 we were focused on the release at that point and we
18 went through the notice of claim. I don't know that
19 I gave him any instructions. It's typically his
20 responsibility to receive those, to assess those, to
21 see if there is any chance to settle a matter based
22 on a claim rather than litigation which sometimes
23 works in the City's favor. But, you know, this is
24 one of the many, many lawsuits. We have obviously
25 hundreds of lawsuits pending against us. So he knows

1 the procedure. Even though this was a little bit
2 more sensitive of a matter, he's very familiar with
3 the procedure, the litigation procedure.

4 Q. All right. I mean, this was a notice
5 of claim for the -- asserted a claim value of \$75
6 million, right?

7 A. We have a lot that are a lot more than
8 that.

9 Q. Did you view the \$75 million demand in
10 the notice of claim as being significant?

11 A. Well, \$75 million is a significant
12 number. I didn't perceive it to be realistic.

13 Q. Okay. But the fact that it was
14 asserted in connection with the Prude death, was that
15 significant to you or not?

16 A. It was significant to me because it
17 connected to a death.

18 Q. Right. And did Mr. Beath tell you when
19 he -- strike that.

20 Do you know what day it was that
21 Mr. Beath told you about the notice of claim?

22 A. June 28th -- no, July --

23 Q. June 28th is when it came in.

24 A. I'm sure it was that day.

25 Q. Okay.

1 A. I'm pretty sure it was that day.

2 Q. Did he show you a copy of it?

3 A. I believe so, yes.

4 Q. And did you keep a copy or just give it
5 back to him?

6 A. Did he forward it to me electronically?
7 Is that what this is?

8 Q. The answer is I don't know what
9 happened because I wasn't there but I have not seen
10 an email that does that.

11 A. Okay. Oh, it's just the files. I
12 don't believe I ever physically had a copy of the
13 notice of claim. He may have sent it to me
14 electronically, then I would. I could search to see
15 if I've got an email.

16 Q. I haven't seen it but it's not that
17 important actually.

18 Well, did you notify anybody else in
19 city government about the fact that there was a
20 notice of claim filed when it came in on the Prude
21 matter?

22 A. I notified the chief.

23 Q. And you did that by text message,
24 right?

25 A. Correct.

1 Q. And that happened on August 4th,
2 correct?

3 A. Correct.

4 Q. I'm not trying to give you a memory
5 test. I'll show you what I'm talking about, but
6 before we get to that, other than the notification
7 that went to the chief by text, were there any other
8 notifications of the notice of claim that you
9 provided?

10 A. I don't believe so.

11 Q. Okay. So now we are looking at Exhibit
12 36. I'm going to take you to page 342. Here we have
13 a text exchange between you and Chief Singletary
14 where you -- on August 4th where you write "Chief,
15 did mayor see Daniel Prude BWC footage? They served
16 notice of claim 75 mil. We should show her if she
17 has not seen it yet. Thanks."

18 You see that, right?

19 A. Correct.

20 Q. Is that what you're talking about when
21 you refer to the fact that you notified Chief
22 Singletary that there had been a notice of claim?

23 A. Yes.

24 Q. Okay. And other than -- and this is on
25 August 4th, right?

1 A. Correct.

2 Q. So between July 30th and August 4th did
3 you talk to anybody else in city government other
4 than Mr. Beath about the fact that there had been a
5 notice of claim?

6 A. I don't believe so.

7 Q. Okay. You didn't talk to Mr. Roj about
8 it?

9 A. No.

10 Q. Or anybody -- sorry.

11 A. I don't believe so. I don't believe
12 so.

13 Q. How about the mayor or anyone in her
14 office?

15 A. No.

16 Q. Okay. Why not?

17 A. I think you're ascribing to us a
18 responsibility that I don't share. I tell the mayor
19 the things that I think she should know when I think
20 she should know them and a notice of claim is not a
21 lawsuit. We get notice of claims a lot. The death
22 was obviously a very sensitive issue with a lot of
23 attention. I'm struggling with why I didn't do
24 things. I didn't do things because I didn't think it
25 was appropriate under the circumstances.

1 Q. That's fair. I guess I'm trying to
2 conceptualize you learning about the notice of claim
3 with your testimony about encouraging Chief
4 Singletary to talk to the mayor about the Prude
5 incident and show her the body-worn camera footage.
6 And in light of the fact that you were urging him to
7 do that prior to the notice of claim, did it occur to
8 you that, well, now I have a notice of claim, \$75
9 million, maybe I should notify the mayor what's going
10 on here?

11 A. I still thought it was the chief's
12 responsibility. I did not think it was mine at that
13 point in time.

14 Q. Okay. By the time you sent this
15 email -- I'm sorry, this text message that we're
16 looking at on Curtin 36, were you aware that the
17 lawyers for the Prude family had already seen or been
18 shown the body-worn camera footage by the Attorney
19 General's Office?

20 A. Yes, I believe there is an email from
21 Stephanie that tells me that.

22 Q. Okay. I'm going to now take you to
23 what we've marked as Exhibit 7 which I had up a
24 minute ago. So this is Patrick Beath emailing you on
25 August 4th. The subject is Prude and it looks like

1 he's attaching body-cam video and the M.E.'s
2 findings. Do you see that?

3 A. Yes.

4 Q. What were the circumstances under which
5 he forwarded you this material?

6 A. I believe Stephanie or Patrick told me
7 that the HIPAA release had been received from Elliot
8 and release of the body-worn camera footage was
9 eminent. And I said I want to see it before it goes
10 out.

11 Q. So -- Mr. Beath is saying this is a
12 result of a request from you; is that right?

13 A. Yes.

14 Q. And why did you want to see it before
15 it goes out?

16 A. As I stated earlier, I'm the FOIL
17 appeals officer. That's part of my responsibility on
18 behalf of the City to, I guess, have the last crack.

19 Q. Okay. And did you have occasion to
20 view the body-worn camera video footage that
21 Mr. Beath sent you on August 4th at 10:14 in the
22 morning?

23 A. I did.

24 Q. When did you do that?

25 A. Immediately, as I recall.

1 Q. And same question with respect to the
2 medical examiner's findings. Did you review those
3 immediately as well?

4 A. I don't recall reviewing them
5 immediately. I believe they were later on in the day
6 after I had the meeting with the mayor.

7 Q. Okay. So what happened next after
8 you -- what was your impression when you viewed the
9 body camera video?

10 A. Well, I thought that it looked bad
11 primarily because of the tactic, the segmentation
12 practice -- the segmentation tactic that one of the
13 officers utilized and I was unaware at that point
14 that that was a textbook practice and it looked to me
15 like it was an abuse. It looked to me like he was,
16 as I described to the mayor, you got a guy doing a
17 push-up on Mr. Prude's head. And I at that point in
18 time thought that that may have resulted in
19 Mr. Prude's death.

20 You know the story about I went and
21 brought it -- do you want me to go through what I did
22 then?

23 Q. Yeah. I'll ask you questions, but I'm
24 sure Carrie wouldn't be happy for me to just let you
25 narrate. So why don't I help you along here.

1 Let me ask this question. You
2 mentioned this term segmentation. What are you
3 referring to there?

4 A. The push-up that the officer was doing
5 on Mr. Prude's head.

6 Q. And have you ever heard of segmentation
7 as a police technique prior to August 4th?

8 A. No.

9 Q. When was the first time you heard that
10 term being used?

11 A. With the chief in the mayor's office
12 about two hours later.

13 Q. Okay. And so you watched the body-worn
14 camera video and did you watch it alone or with
15 somebody else?

16 A. Alone.

17 Q. Okay. In your office?

18 A. Yes.

19 Q. And what happened next?

20 A. I knew that there was an exigent
21 circumstance that needed to be addressed immediately
22 and after the chief confirmed with me that he had not
23 shown the mayor the body-worn camera footage, I went
24 down to the mayor's office, I interrupted a meeting
25 and I said, "I'm really sorry. I need to speak with

1 the mayor." And I said, "Mayor, stay in your office
2 for a second, I'm going back up to my office so I can
3 forward you the footage."

4 Q. Got it. And so let me show you what
5 we've marked as Curtin 8.

6 (Curtin Exhibit 8, email, was deemed
7 marked for identification.)

8 Q. Is this the email by which you
9 forwarded Mayor Warren the Daniel Prude video on
10 August 4th, 2020?

11 A. Correct.

12 Q. And that's -- you did that at 12:33 in
13 the afternoon, right?

14 A. Correct.

15 Q. And I notice that if we go back to 36,
16 I notice that if we look at Curtin page 342 of
17 Exhibit 36, your communication with the chief where
18 you ask him whether the mayor has seen the body-worn
19 camera footage, that happened at 12:19, right?

20 A. Correct.

21 Q. So this is all unfolding within a
22 period of 10 or 15 minutes; is that fair?

23 A. Correct.

24 Q. Okay. And when you went to the mayor's
25 office and told her to wait there while you went to

1 your office and forwarded her some material, what
2 happened next?

3 A. She gave me one of those mayor looks
4 like, you know, what the hell are you doing. But she
5 complied. She went to her office. I forwarded her
6 the tape, this footage, and by the time I got back
7 down to her office she was already had it up on her
8 computer.

9 Q. Okay. Was she alone or with others
10 when you got back into her office?

11 A. She was alone when I first encountered
12 her. James Smith was in the Law Department on
13 another matter, so I grabbed him and said come with
14 me, you know, I got to show you as well. So
15 initially it was James, the mayor and I, and then at
16 some point, I can't remember precisely when, the
17 mayor told her secretary to go get Justin. And so I
18 think -- I forget which of the secretaries reached
19 out for Justin and Justin showed up. And then after
20 we watched it for maybe 45 minutes, then she
21 contacted La'Ron. La'Ron was out on patrol or doing
22 whatever he was doing and he was summoned to City
23 Hall.

24 Q. So during the period when it was you
25 and the mayor and the deputy mayor, whether or not

1 Mr. Roj was present, what was the discussion?

2 A. Well, there wasn't much of a
3 discussion. It was mostly the mayor watching the
4 tapes. And then after she watched the first maybe
5 two, it became rather repetitive, so I indicated to
6 her to fast forward so she could look at the, what
7 now I know to be segmentation, the segmentation
8 technique because I thought in my mind at that point
9 in time that that was the real abuse and that would
10 be the City, in effect the City liability that may or
11 may not have caused Mr. Prude's death. So we had to
12 fast forward and I think it was in the very last
13 body-worn camera footage, I can't remember the
14 officer's name, where there is a side angle and there
15 is the ambulance on one side and then this officer
16 doing the segmentation technique on Mr. Prude's head
17 in the background.

18 Q. Let me take you to what we've marked as
19 Exhibit 10.

20 (Curtin Exhibit 10, email, was deemed
21 marked for identification.)

22 Q. This is an email between you -- from
23 you to Mr. Beath where you refer to a sideways angle
24 and you say -- of a body-worn camera footage and you
25 say, "I'll keep looking but I think this proves what

1 I was saying." Do you see that?

2 A. This is the segmentation technique that
3 he goes through these faster than I do and I couldn't
4 find that same footage as I had found the day
5 earlier, so I was asking his assistance so I could
6 find that footage, the particular footage of the
7 segmentation.

8 Q. And looking at this email now, does
9 that lead you to the conclusion that it was the
10 body-worn camera that Officer Santiago was wearing
11 that day that showed the segmentation?

12 A. I can't verify that name but we did
13 find the footage.

14 Q. I'm looking at what's in the link here,
15 Santiago Francisco.

16 A. No, the one that he sent me was not the
17 one I was looking for. There was a view of it but
18 not the view I had recalled from the day before. So
19 I had said this is not precisely what I'm looking for
20 and then I think I ultimately found it on my own but
21 I can't remember which officer. If you look at
22 the -- what we sent out, if you look at the tapes
23 that were sent to the mayor, I believe it's the last
24 one. But I couldn't swear to it.

25 Q. Okay. Yeah, it's hard to tell. Okay.

1 So we were talking about the period before Chief
2 Singletary was summoned to City Hall. And you said
3 that -- I asked what the discussion was and you said
4 that there was a fair amount of time spent looking at
5 the tapes and there wasn't a lot of discussion. Did
6 there come a time when there was any discussion about
7 the Prude matter in that meeting before Chief
8 Singletary arrived?

9 A. Yes. At some point the mayor became
10 very, very irritated over the way Mr. Prude was
11 treated, the lack of respect displayed by the other
12 officers, the jokes, the laughing, the not taking his
13 complaints seriously. She became very offended, very
14 deeply affected by the lack of respect that the
15 officers showed.

16 Q. Okay. And she verbalized that? She
17 said something about that?

18 A. Yes, many things about that.

19 Q. What do you recall?

20 A. It had some colorful language but she
21 said that basically citizens don't deserve to be
22 treated in this fashion, no matter how drugged out he
23 was, no matter how many mental health challenges he
24 had, these officers were simply disrespectful and
25 abusive verbally and she wanted them off the streets.

1 She didn't think that they deserved to be police
2 officers.

3 Q. And what do you recall about that
4 colorful language?

5 A. The mayor, you know, she is not a
6 longshoreman but she could be.

7 Q. Well, only because it's important to my
8 work to have an understanding of the mayor's state of
9 mind, if you could share with us what you recall
10 about what she said.

11 A. She was completely outraged and
12 emotionally overwhelmed. Started screaming, started
13 crying. It takes a little history to put this in
14 perspective but it was a similar process that we did
15 through Christopher Pate when the mayor saw these
16 tapes, she became visibly upset and was at one point
17 before the chief got there just flat out sobbing
18 uncontrollably.

19 Q. That must have been difficult.

20 A. It was very difficult.

21 Q. Yeah. And, again, not to poke too hard
22 at this, but because it's my job to figure out her
23 state of mind, can you share with us the colorful
24 language that she expressed?

25 A. No. Basically all the words you can

1 think of. [REDACTED] They should be
2 taken off the street. They don't deserve to
3 represent RPD. You guys are going to bring this
4 whole city how down. You guys are going to have this
5 city burned down."

6 Q. Okay.

7 A. Other things that I specifically can't
8 remember because, you know, they kind of -- I've
9 heard all the words too. But she was truly
10 emotionally -- a question came by -- maybe I
11 shouldn't editorialize. A question came up do you
12 think the mayor knew this before and she was just
13 faking it. The mayor is a horrible actress. She
14 can't fake things. You know from the heart what she
15 feels and she had no clue in the world what these
16 tapes showed when she ultimately saw them.

17 Q. In the conversation before Chief
18 Singletary arrived, did she talk about what Chief
19 Singletary or others from the police department had
20 told her about the Prude mental health arrest before
21 she had actually saw the body-worn camera footage?

22 A. When she first started to show -- when
23 she first started to look at the footage when I was
24 back in her office, at the very beginning she turned
25 and said "Is this the mental health arrest?" She

1 wanted to be sure that the tape that she was looking
2 at was the -- had of vanilla version of what the
3 chief had described. So she first wanted
4 clarification that this was indeed the Jefferson
5 Avenue incident where somebody high on drugs had
6 passed away in police custody. So we had to confirm
7 with her that, yes, this is the same instance. And
8 then she became outraged that it was so understated
9 and Chief Singletary's descriptions to her.

10 So I think part of her outrage is she
11 was so misled by the chief and, frankly, that none of
12 us had verified what the police had told us that we
13 all took him at his word and we all said, hey, no big
14 deal, you know, an unfortunate drug overdose and the
15 man passed away in police custody, which is very
16 innocuous if it's worded in the right way, and she
17 saw this as anything but innocuous. She saw this I
18 think as we all did, that his passing may be
19 connected to the police activity. And at one point
20 -- she said this on two occasions and I think it's --
21 I don't know, should I say the officer's name if I'm
22 not convinced it's the right one?

23 Q. Yeah.

24 A. I think it's Officer Vaughn and she
25 said, "If Vaughn called in sick today, Daniel Prude

1 would be alive."

2 Q. So, listen, I appreciate that you're
3 trying to describe for me, you know, the scene as it
4 were. But I want to really focus you if I can, Mr.
5 Curtin, on what you remember the may mayor saying
6 specifically, not what you think and belief and based
7 on your impressions, but the words that came out of
8 her mouth about what had been communicated to her by
9 Chief Singletary or others about this arrest prior to
10 her seeing the body-worn camera video.

11 You said one thing that is "Is this the
12 mental health arrest?" And then you said that you
13 understood that to mean she wasn't sure it was even
14 the same incident that had been described to her?

15 A. She wasn't sure it was the same
16 incident.

17 Q. And so what other words do you recall
18 coming out of her mouth about what she had been told
19 had occurred with Mr. Prude?

20 A. At the August 4th meeting?

21 Q. Yes.

22 A. By that point in time she was more
23 reacting to the tape and her criticism of the
24 officers' treatment of Mr. Prude. You know, early on
25 she said is this the same incident, is this what, you

1 know, La'Ron told me. And once we confirmed with her
2 that it was the same incident, we didn't talk at that
3 point in time a whole lot about what La'Ron had told
4 her because she was focused on what was on the tape.

5 Q. Fair enough. Now there came a time
6 when Chief Singletary was summoned, as you put it, to
7 City Hall, right?

8 A. Correct.

9 Q. And did he come right away or was there
10 sort of a lag between when he was summoned and when
11 he arrived?

12 A. He headed right over as soon as he was
13 called. It probably took him ten minutes to get
14 there.

15 Q. And during that ten minutes, were you
16 with the mayor? Was she with somebody else? Was
17 show alone? What was her status?

18 A. I was with the mayor watching the tapes
19 the whole time.

20 Q. Okay. And the deputy mayor was there
21 also?

22 A. Yeah, and by that time Justin was there
23 as well.

24 Q. Okay. And was it before or after Chief
25 Singletary came that Mr. Roj said, he indicated to

1 the mayor that he had never heard of this incident
2 before?

3 A. I think it was the time that after
4 Justin had got there before La'Ron arrive. So
5 initially it was James the mayor and I. She called
6 Justin and then 20 minutes later whenever, I don't
7 know the exact time, she called La'Ron. So it was
8 during the period of time that Justin was there
9 before La'Ron arrived.

10 Q. Okay. And what stimulated Mr. Roj to
11 say that he had never heard of this or knew nothing
12 about this?

13 A. You know, you would have to ask him
14 what his motivation was. I can only guess. It's not
15 a good guess.

16 Q. I don't want you to guess. I'll ask it
17 a different way.

18 Did the mayor look at you and Mr. Roj
19 and the deputy mayor and say did you guys know
20 anything about this and did you give responses to
21 that question?

22 A. Yes, she did. She asked that question
23 pretty much just as you stated. And we said -- I had
24 indicated that this was the drug overdose and we had
25 talked to La'Ron about it a couple times and we had

1 received a notice of claim but as far as we were
2 concerned, it was -- you know, it turned out to be
3 understated, that this was what La'Ron had described
4 to us all and we accepted his version of it.

5 Q. And when you gave that answer, that was
6 based on the information that you were provided by
7 Chief Singletary, right?

8 A. Correct.

9 Q. And that information included the fact
10 that the medical examiner had determined this to be a
11 homicide, right?

12 A. Yes. And you'll have to ask James
13 Smith about this but James claims to be some sort of
14 an expert in the word homicide.

15 Q. Okay.

16 A. And he explained that homicide doesn't
17 mean killing, homicide just means death through a
18 means other than natural causes. So James had this
19 rational explanation while I think I would think that
20 homicide means I killed you, but James' version of
21 that and his interpretation of the medical examiner's
22 statement was that it just means he didn't die by
23 natural causes. So homicide does not mean
24 culpability according to some experts.

25 Q. Fair enough. I guess my question -- I

1 mean that's helpful context but my question is much
2 more simple which is, did you tell the mayor that
3 this death had been declared a homicide by the
4 medical examiner?

5 A. Yes. And then that explanation was
6 given to the mayor, that homicide does not mean
7 killing.

8 Q. Who gave that explanation?

9 A. James.

10 Q. And right there in the moment when you
11 guys were talking about it?

12 A. Yes.

13 Q. And when Mr. Smith was asked what he
14 knew about this prior to August 4th, did he say that
15 he knew that it had been declared a homicide?

16 A. James as far as I know was really not
17 involved in any part of this.

18 Q. What was your understanding of why he
19 was weighing in on the meaning of the word homicide
20 in this context?

21 A. That's what James does.

22 Q. What do you mean by that?

23 A. You're trying to get me to say
24 something negative. James has a lot of opinions
25 about a lot of things. Some of them are based in

1 fact, some of them aren't.

2 Q. Well, did you disagree with his
3 interpretation of the word homicide when he shared
4 that with the mayor in the moment there?

5 A. I did not debate it at the moment.

6 Q. I understand. But did you agree with
7 it or disagree with it?

8 A. I didn't either one.

9 Q. It's kind of ridiculous, isn't it, Mr.
10 Curtin?

11 A. What is?

12 Q. His interpretation of the word
13 homicide.

14 A. I may not medically agree with it but
15 he's pretty determined. You should look it up. I
16 mean, he's told this story about a hundred times. It
17 sounds like your line of questioning that you believe
18 homicide is killing but medically speaking it's
19 really not.

20 Q. Well, my views don't matter really.
21 I'm interested in what was communicated to the mayor
22 and what she said.

23 A. That you think it's ridiculous means
24 you don't believe --

25 MS. COHEN: Can we just go back to

1 questions and answers? Thank you.

2 Q. Did the mayor have any response to the
3 news that the medical examiner had determined this to
4 be a homicide?

5 A. At that moment, I don't recall. We
6 were truly focused on the tapes at that point.

7 Q. From your perspective in this
8 conversation, was there any doubt that the death of
9 Mr. Prude had been caused at least in part by members
10 of the RPD?

11 MS. COHEN: I'm sorry, doubt in whose
12 mind, Andy?

13 MR. CELLI: Well, any doubt in the
14 mayor's mind which you can't read but based on things
15 that she said in that meeting.

16 A. Do I believe the mayor thought that
17 Mr. Prude's death was partially as a result of RPD
18 actions?

19 Q. Yes.

20 A. Yes, I do believe that.

21 Q. And you believe that based on what?

22 A. The mayor statements at the time.

23 Q. Which were, as best you recall them?

24 A. Which, you know, "What are these guys
25 doing? These guys just killed a man. These guys

1 should be off the street. I want these guys
2 arrested. I want them taken off the street
3 immediately." You know, there is -- it was ten
4 minutes of just emotional reaction to watching, you
5 know, this poor man die.

6 Q. Prior to Chief Singletary arriving for
7 the second part of the meeting, if you will, did the
8 mayor express criticism of anybody -- of any of the
9 three of you for not giving her information about
10 this prior to this day?

11 A. Not that I recall. We were pretty much
12 solely focused on the actions of the police.
13 Because, remember, there were eight body-worn camera
14 footage things. So it took a long, long time to work
15 through all the tapes.

16 Q. Got it.

17 MR. CELLI: So, Carrie, I think this is
18 probably a good time because I'm going -- we'll
19 switch over to the second part of the meeting and
20 then continue. Should we take a break now?

21 MS. COHEN: Sure.

22 (Discussion off the record.)

23 (Luncheon recess taken at 12:43 p.m.)

24

25

1 AFTERNOON SESSION

2 1:18 p.m.

3 TIMOTHY CURTIN, having been previously duly sworn by
4 a Notary Public, was examined and testified further
5 as follows:

6 EXAMINATION Continued

7 BY MR. CELLI:

8 Q. Mr. Curtin, let's do a couple things
9 just to clean up before we pick up where we left off.
10 So I'm placing onto the screen a document that was
11 produced today bearing the Bates range PERSCELT
12 0000272.

13 And, Mr. Curtin, can you tell us what
14 this text message exchanged is about?

15 A. That's the text message I referred to
16 earlier when I referred to the OPI investigation that
17 I had incorrectly identified that I received it in
18 May. Apparently I received it late June and that's
19 the text message by which La'Ron wanted to discuss
20 the proposed press conference by Reverend Stewart.

21 Q. And now that you've situated this
22 Reverend Stewart press conference issue in time, does
23 that refresh your recollection as to whether or not a
24 press conference like that did occur?

25 A. No, I never saw any media coverage. I

1 don't know that it ever occurred or not.

2 Q. And to your knowledge did anyone other
3 than you and Chief Singletary have -- were anybody
4 other than you or Chief Singletary notified of the
5 prospect of there being a press conference on the
6 Prude matter to be conducted by Reverend Stewart?

7 A. I don't know. I'm not aware of any
8 other contact.

9 Q. So that's one thing.

10 The second thing is I want to take you
11 to what we've marked as Exhibit 13.

12 (Curtin Exhibit 13, email chain, was
13 deemed marked for identification.)

14 Q. This is a document bearing the Bates
15 numbers Curtin 29 to 31. And, again, as with all of
16 these emails, you know, the last one is the first one
17 in time. So I'm looking at an email from July 9th at
18 8:53 a.m. from Stephanie Prince to Mike Perkowski
19 about the redacted Pate body-worn camera video.

20 A. Yes.

21 Q. And in it she talks about -- she says,
22 "Upon reviewing this video, Tim Curtin noticed that
23 the video chronology appears to be out of order."

24 What can you tell us about your review
25 of the Pate body-worn camera footage in or about July

1 of 2000 -- I see, this is 2019?

2 A. The only thing I recall about that is
3 one of the tapes and, again, I don't know the proper
4 terminology, but one of them had the second half
5 first and the first half second. So it showed the
6 police. It showed that Mr. Pate in the back of the
7 police car was the first image received and the
8 second half of the tape show the encounters of
9 Officers Sickle and McElroy and Mr. Pate. I don't
10 think the tape was accurate. It was split incorrect.

11 Q. And the next message up is Stephanie
12 Pate to Matthew Ehlers, July 9, 2019 -- I'm sorry --
13 right. Let me start over again.

14 So the next message in time is
15 Stephanie Prince to Mike Perkowski July 9, 2019, at
16 11:01. And I notice here, Stephanie Prince writes
17 "Mike and Matt, Per the mayor, the redacted Pate BWC
18 video needs to be rerun so that the beginning of the
19 compiled video is the beginning of the officer's
20 interaction with Pate."

21 My question to you is -- and you're
22 copied on this email. What was the level of or
23 nature of the mayor's involvement with the Pate
24 body-worn camera footage in July of 2019?

25 A. Well, the Pate footage, there was a

1 cell phone camera footage on the news that evening a
2 couple days after this incident. So we all knew that
3 there was an incident and we were FOILED immediately.
4 I think there was -- I forget what date the incident
5 was, I guess sometime early in July of 2019. There
6 was cell phone camera footage on the news that night
7 and then we got FOILED by all the media outlets the
8 next morning. So the mayor wanted to get this out
9 right away.

10 Q. Got it.

11 A. It says per the mayor. I think per the
12 mayor, she wants to get it out immediately, not per
13 the mayor correct the tape.

14 Q. Okay. That's fair. And is this an
15 example of what you testified earlier about when the
16 mayor wants to get things done, she goes through the
17 Law Department?

18 A. Yes.

19 Q. Okay. And I think I know the answer to
20 this question, which is rare in my life, but if you
21 go to the very first email, this is from Matt Ehlers
22 to Shani Mitchell and now we're in August of 2020.
23 Does this email chain in August of 2020 have anything
24 to do with the Prude matter?

25 A. I don't believe so. I think -- I guess

1 I'm not certain. I don't think Shani was ever
2 involved. The only thing I can think of the YouTube
3 link maybe that we became aware of the Prude --
4 somebody on Facebook posted Mr. Prude walking down
5 Jefferson Avenue and that was on -- oh, no, that
6 wasn't YouTube, that was Facebook. To be honest, I
7 don't know. It says Christopher Pate.

8 Q. Right. That's what I thought too. I
9 mean, YouTube is where normally the Law Department
10 will post responses to FOIL requests that are of a
11 video nature, right?

12 A. Yes.

13 Q. And what's the policy with respect to
14 that? Well, first of all, is there a written policy
15 with respect to what gets posted on YouTube when it's
16 a FOIL response in video format and what doesn't?

17 A. It's a response to a FOIL request that
18 we have approved, so I don't know that there is a
19 written policy on how to do that. It's mostly the
20 mechanics. Once we approve it, whether through a
21 normal FOIL submission or an appeal, the staff is
22 instructed to post it. So I don't even know what the
23 written instructions would say.

24 Q. Okay. Fair enough.

25 MS. COHEN: Andy, I have tried to

1 unmute before but didn't want to interrupt your flow.
2 Just before you had a question where you had said is
3 this an example of when the mayor would go to the Law
4 Department when she wants something done and I don't
5 think that's his testimony. She would go to certain
6 people including him when she wants something done.
7 I just wanted to make sure there was no
8 misunderstanding.

9 Q. With that amendment, Mr. Curtin, would
10 it be fair to say that the previous exhibit would be
11 an example of the mayor coming to you as the person
12 that could get things done so that the Pate video
13 would be promptly corrected and released?

14 A. I think in her mind, yes.

15 Q. When the Prude video was sent out to
16 the family in August of 2020, it was not posted on
17 the YouTube channel, correct?

18 A. Correct.

19 Q. Why is that?

20 A. Again, it was only pursuant to the
21 specific FOIL demand of the family and we did not
22 think it was appropriate at that point to release it
23 to the public for the reasons I stated earlier.

24 Q. Right. So it wasn't -- just so I'm
25 clear, it's not that it wasn't posted to the YouTube

1 site because of there was an oversight and somebody
2 should have done it but they didn't, it's that a
3 decision was made not to do that, correct?

4 A. Correct.

5 Q. And whose decision was that?

6 A. Under guidelines, probably ultimately
7 mine.

8 Q. When you say "guidelines," what do you
9 mean?

10 A. Well, the way that we do things in this
11 instance and the way Patrick and Stephanie wanted to
12 proceed with this, I ultimately approved their
13 approach to this, so I guess the decision was
14 ultimately mine.

15 Q. So did Stephanie Prince and Patrick
16 Beath make a recommendation to you that the Prude
17 material not be posted on YouTube?

18 A. We never discussed it specifically. I
19 don't think I ever anticipated it would be posted on
20 YouTube, that it would just be sent to Elliot
21 individually.

22 Q. Okay. So when you say it was your
23 decision, you're really saying that the fact that
24 there was no decision about it is something that you
25 as the corp. counsel would be responsible for?

1 A. I think that's fair.

2 Q. Okay. So we're back at August 4, 2020.
3 And is there anything about the meeting that you had
4 with the mayor, Deputy Mayor Smith, eventually
5 Mr. Roj prior to the chief arriving at City Hall that
6 you haven't told me about that you recall as you sit
7 here?

8 A. I was obviously just very emotional and
9 we went through a whole series of comments and points
10 and counterpoints. I don't think I left anything out
11 that would be germane to this discussion. You know,
12 it happened over a relatively short period of time.
13 I don't think that there was anything that I've left
14 out intentionally.

15 Q. Okay. So now Chief Singletary comes to
16 the mayor's office at City Hall and who is present in
17 the room for that meeting?

18 A. The mayor, James, Justin and I.

19 Q. All right. And what occurred? Who
20 said what in what order as best you can recall?

21 A. It was mostly a discussion between the
22 mayor and the chief. The mayor tore into the chief
23 for the actions of his officers and the chief became
24 very defensive and, number one, said "Mayor, I've
25 told you about this. Mayor I've told you about

1 this." And the mayor said that you didn't tell me
2 about this footage and the actions of your officers
3 in this footage. And the chief said, "Mayor, they
4 were following protocol. They were following the
5 handbook. They were doing as they were instructed.
6 If they didn't do as they were instructed, they would
7 have been subject to discipline." It's kind of the
8 Mike Mazzeo response to all of this.

9 So the chief gave that early on and
10 said they were following protocol. Then the mayor
11 showed the segmentation technique that I had showed
12 her earlier as our example that they weren't
13 following protocol and she said, "No, you guys
14 respectfully are wrong, that that's a training
15 technique and he can demonstrate that to you." And I
16 said, "Well, you have a training manual. Can you
17 send us the page of that training manual that shows
18 this is a recognized technique?" And he said, "Yes,
19 I will."

20 And the next day he sent it to us and
21 we all learned something, that it actually was a
22 trained technique that had been developed by the
23 state public safety -- it's Mike Green's entity for
24 the state but I don't -- I can't recall the name of
25 it.

1 Q. And when you say that -- I have a
2 number of questions. Is there more that you recall?
3 I just want to get it all out and then we'll go back.

4 A. Then the mayor kind of walked through
5 the tape again with La'Ron and said see this, see
6 this. And she especially pointed out the disrespect
7 and the lack of sensitivity towards Mr. Prude and as
8 each instance went on, she pointed it out and kind of
9 turned to the chief and said, you know, what's your
10 explanation of that, that's not in the book, you
11 know, that's not acceptable, that's not acceptable
12 for somebody who represents the City of Rochester to
13 treat a troubled man in this fashion. So we kind of
14 went through the tape, not quite foot by foot but we
15 went through it a lot. And each time, you know, when
16 they made jokes about him, when they laughed, you
17 know, at his distress, she stopped the tape and kind
18 of turned to the chief again and said what about
19 this, what about that.

20 We went through, we spent a lot of time
21 on the spit sock and how that was part of the
22 procedure and that was a recognized procedure and
23 that it did not endanger him. I think the mayor
24 first thought he may have been suffocated by the spit
25 sock but Chief Singletary demonstrated to us not in

1 real terms but explained to us that that was a
2 recognized technique and it was not -- you know,
3 remember, this is like the fourth day of the world
4 pandemic and everybody was freaking out. So his
5 officers were especially sensitive to COVID and the
6 spread of the coronavirus and no one really knew what
7 the rules were, no one really knew what to do. It
8 was just too early in the process. But we were all
9 locked down and his officers were folks out on the
10 street.

11 Q. Anything else?

12 A. I can't remember precisely how -- I
13 think the meeting ended by us asking the chief for a
14 demonstration of the training manual and then it kind
15 of ended like, okay, we'll get back to you when we
16 get back to you.

17 And after the chief left we had another
18 discussion among ourselves about the officers and
19 what we do with the officers and whether we terminate
20 them, whether we suspend them with pay, all those
21 kind of things. So I was given the task of looking
22 through, you can't suspend officers -- you probably
23 know this -- you can't suspend officers without pay,
24 without a certain number of days' notice to file
25 charges and then have them respond to the charges.

1 So we just decided to get them off the street as soon
2 as possible we would suspend them with pay.

3 Q. All right. So why don't I stop you
4 there. I appreciate that. I'll come back and ask
5 more questions about the meeting after the meeting
6 with Chief Singletary but I wanted to drill down a
7 little bit on a couple things you said about the
8 meeting with Chief Singletary in the room.

9 You said that Chief Singletary said to
10 the mayor, "Mayor, I told you about this," and he
11 said that more than once, right?

12 A. Correct.

13 Q. And you testified that the mayor's
14 response was you didn't tell me about the footage and
15 the actions of the officers, something along those
16 lines. Is that what she said?

17 A. Correct.

18 Q. And to your understanding, what was she
19 referring to when she said you didn't tell me about
20 the footage?

21 A. She was referring to the actions of the
22 officers that it was characterized to her to be an
23 unfortunate death due to a drug overdose. And I
24 think what Chief Singletary did not point out which
25 the mayor feels he should have pointed out is the

1 officers were -- without, you know, finding them
2 guilty of anything -- I think she thought the
3 officers were a contributing factor to Mr. Prude's
4 death.

5 Q. Well, did the mayor communicate to
6 Chief Singletary that she did not understand before
7 she saw the tape that force had been used on
8 Mr. Prude?

9 A. You know, force is exercised at every
10 arrest. So every arrest has some degree of force.
11 The question is what's excessive force. So I believe
12 the mayor understood force was used in the arrest.
13 She did not believe the force rose to the level of
14 excessive force.

15 Each action has a counterbalancing link
16 on the chain of reactions of the police department,
17 they do this, you do that. If they -- you keep
18 escalating this ladder of force and ultimately you
19 can use deadly force if you need to, if circumstances
20 justify.

21 But the mayor thought that the use of
22 force was more than what was required to constrain
23 Mr. Prude, so it rose to the level of excessive force
24 as opposed to just force.

25 Q. That's helpful to understand. And is

1 it your understanding that -- well, is it your
2 recollection that what the mayor communicated was --
3 what the mayor communicated to Chief Singletary was
4 he never told her that excessive use of force had
5 been applied?

6 A. Correct. And there was disagreement.
7 The chief probably to this day does not believe
8 excessive force was used and the mayor's view at that
9 point in time clearly was excessive force was used.
10 I don't think -- without speaking for the chief, you
11 know, he said it was done by the book.

12 Q. Right. Was that term used, "done by
13 the book"?

14 A. I think so and then the term was more
15 than once he used the term, the terms, "according to
16 the training manual". So maybe the training manual
17 was referred to as the book, just to stop saying
18 training manual too many times.

19 Q. Right. Was it Chief Singletary who
20 said this was done by the book?

21 A. Yes. Yes.

22 Q. Did the mayor say to Chief Singletary
23 in this meeting you told me this was done by the book
24 and now I'm looking at this video and it doesn't
25 appear to be?

1 A. No, I don't think so. I think the
2 chief had also characterized it as a drug overdose.
3 So we never got into the circumstances of the arrest.
4 So now when we understood that it was indeed an
5 arrest of Mr. Prude, then she took a look and said,
6 "Well, the force is inappropriate for a man who is
7 lying on his back offering no resistance."

8 Q. Did the mayor in this meeting say that,
9 "Chief Singletary, you told me this was a drug
10 overdose. This is not a drug overdose. This is
11 something other than that."?

12 A. Absolutely. Yes.

13 Q. And what was the chief's response to
14 that?

15 A. He said, "Mayor I told you. Mayor, I
16 told you." He just kept repeating that "Mayor, I
17 told you." He said, "I have text messages. Mayor, I
18 told you what this was."

19 Q. And he referred to text messages as
20 well?

21 A. Yes.

22 Q. Did anybody ask to see those messages?

23 A. Not at that point, no.

24 Q. At any point?

25 A. Not that I'm aware of. You know,

1 through the OPI and your investigation, I'm sure all
2 you have but we never required his text evidence as
3 evidence of anything.

4 Q. Okay. You testified that at some point
5 after this meeting the chief sent over to somebody a
6 page from a training manual; is that right?

7 A. Yes.

8 Q. Who did he send that to?

9 A. It was, I think, emailed to Patrick and
10 he emailed a page of the training manual and I think
11 this goes down -- I don't think this was Chief
12 Singletary. I'm guessing it was Chief Simmons. But
13 he emailed a page of the training manual to Patrick.
14 Patrick came and showed me and I said, "This is not
15 the segmentation technique. This is not, you know,
16 what I referred to as the push-up." And so Patrick
17 got back to whoever sent it to him and said this is
18 not what we asked for and then ten minutes later the
19 page out of the training manual, the state training
20 manual that shows the segmentation technique is
21 indeed a printed page of the training manual. But
22 I'm sure you saw the Locust Club attorneys' press
23 conference where they showed the video.

24 Q. Right.

25 MR. CELLI: So let me just say we will

1 go back, Carrie, and look for this but I have not
2 seen that email or an email that appears to be what
3 Mr. Curtin is referring to. That's not an accusation
4 of any sort I'm just --

5 MS. COHEN: As you know, the City
6 produced the documents directly to you. We didn't do
7 a review of them.

8 MR. CELLI: Understood.

9 THE WITNESS: It would be probably be
10 August 5th, 6th or 7th. It was immediately after
11 August 4th where they were instructed to send those
12 pages of the training manual directly to us.

13 Q. Right. So I will look and see if we
14 can find those but in the meantime I want to show you
15 what we've marked as Exhibit -- Curtin Exhibit 21.

16 (Curtin Exhibit 21, email, was deemed
17 marked for identification.)

18 Q. Now, this is an email that Mr. Beath
19 sent to you on the 3rd of September and there is a
20 video link that refers to "Training
21 Materials/Segmenting Photos-Videos/Segmenting" and
22 then Mr. Beath includes a message "Instructor
23 expressly states 'all my weight's going to be on his
24 head.'" "

25 Do you see that?

1 A. Yes.

2 Q. Did you receive this email on September
3 3rd?

4 A. I apparently did but I don't ever
5 recall looking at the video. The only time I saw the
6 video is when the lawyers played it at the press
7 conference.

8 Q. Okay.

9 A. I don't know that I ever actually
10 looked at this video.

11 Q. Is this -- this is not the material
12 that you're referring to as having come from the
13 chief, am I right about that?

14 A. Correct. Because this is a video and
15 what they sent to us was a printed page out of a
16 manual.

17 Q. Okay. By the way, you know as you sit
18 here that the segmentation technique is not taught as
19 something that is to be applied to a human being in
20 handcuffs, right?

21 A. Yes.

22 Q. And so to that extent anyways and
23 without passing judgment on the officers, you would
24 agree that the segmentation technique applied to
25 Mr. Prude does not line up with the training

1 materials that the chief sent over?

2 A. I think that's correct and it took us a
3 while to figure that out but we did figure it out.

4 Q. Well, let's talk about that. When did
5 you figure that out?

6 A. Oh, three, four, five days after we got
7 the training manual page from RPD and then we had --
8 and I actually think Patrick is the one that noticed
9 this because I think somewhere in the printed
10 language in the manual it says -- it recommends first
11 to immobilize his legs. I can't remember what that's
12 called but you basically tie his ankles together.
13 And then it said something like in a very off-casual
14 kind of way, it said prior to handcuffing or in the
15 event handcuffs cannot be utilized, then you do the
16 segmentation. So I think you're right that
17 segmentation is only appropriate for somebody who has
18 not been handcuffed.

19 Q. Okay. So, back to our meeting. Did
20 anyone reveal to the mayor on August 4th at any of
21 these meetings or discussions that the medical
22 examiner had determined that Mr. Prude had died as a
23 result of asphyxia in the setting of a physical
24 restrain?

25 A. Yes, the medical examiner's statement

1 was discussed and that's when James Smith, you know,
2 applied his knowledge of the word homicide.

3 Q. Right. So to be clear, so we're not
4 talking past each other, the mayor was told in -- on
5 August 4th that Mr. Prude had died as a result of a
6 homicide, right?

7 A. Correct.

8 Q. And she was also told specifically that
9 the medical examiner's finding was that he decide of
10 asphyxia in the setting of a physical restraint?

11 A. I can't swear to the latter. I know he
12 used the word homicide and he picked up the homicide
13 especially. I don't know if we ever got into the
14 specifics other than the medical examiner's report.
15 So if that's the terminology out of the medical
16 examiner's report, then the mayor would have read it.

17 Q. And that's because the mayor looked at
18 the medical examiner's report?

19 A. Yes. Yes.

20 Q. The reason I ask the question is you
21 testified that the mayor said in the context of
22 discussing the spit sock, the mayor suggested that
23 she believed that Mr. Prude had been suffocated and
24 that the chief said, no, the spit sock is a
25 recognized technique, right?

1 A. Yes, correct. That came before. You
2 know, chronologically that discussion was prior to
3 the time that the chief left and then after the chief
4 left, we discussed the medical examiner's ruling.

5 Q. That makes perfect sense. So during
6 the time the chief was in the room -- strike that.

7 Prior to the time the chief got there,
8 to your knowledge had the mayor reviewed the medical
9 examiner's report?

10 A. I don't believe she did, no. I didn't
11 present it to her, so that means she didn't have it.

12 Q. Well, let's go back to Exhibit 8 for a
13 second just so we're clear. So this is you
14 forwarding material to Mayor Warren at 12:33 on
15 August 4th, right?

16 A. Yes.

17 Q. And the third item that you're
18 forwarding is the M.E. report, correct?

19 A. Correct.

20 Q. And it's the report of the medical
21 examiner that it talks about the death having been
22 caused by asphyxia in the setting of a physical
23 restraint, right?

24 A. Correct.

25 Q. Okay. So you did give that to her

1 before at the start of your initial meeting with her
2 on the 4th, right?

3 A. Yes, but she as far as I know never
4 opened it. We never got that far.

5 Q. Okay.

6 A. So constructively I suppose, yes, she
7 has it. But did she open it, no.

8 Q. Right. Well, just to be clear, I think
9 just so I understand you're saying that she opened it
10 after Chief Singletary was dismissed for the day,
11 right?

12 A. I don't believe she ever opened it on
13 her computer. I think somebody had a copy of it and
14 physically had a hard copy of it because I remember
15 looking at a piece of paper. I don't think when she
16 opened this on her computer, my recollection is we
17 never opened the medical examiner's report on her
18 laptop.

19 Q. Okay. But the discussion of the
20 specific language in the medical examiner's report,
21 that happened after Chief Singletary left the room;
22 is that fair?

23 A. Correct.

24 Q. Okay. And what do you recall about
25 that discussion?

1 Let me ask it a better way. Tell me
2 what you recall about the discussion between and
3 among yourself, the mayor, the deputy mayor and
4 Mr. Roj -- I guess there wasn't anybody else there,
5 right?

6 A. Correct.

7 Q. -- after Chief Singletary left on
8 August 4th?

9 A. We, you know, we discussed, you know,
10 now what do were we do. And different people had
11 different opinions on what to do, whether to take
12 immediate action, to commence an investigation. You
13 know, everybody had different opinions and we
14 discussed the medical examiner's report and that's
15 when James expressed his opinion about what homicide
16 means and that kind of tabled that whole discussion.
17 I don't think we agreed with his analysis but, you
18 know, we weren't in a position at that point to
19 debate it. There was no point to debate it.

20 So the post meeting didn't last very
21 long and we went back -- I went back to the Law
22 Department to meet with Patrick and Matt Green who
23 does our union negotiations and all our Civil Service
24 tasks to discuss when and under what terms we were
25 going to suspend these officers.

1 Q. Got it. Was there any discussion --
2 strike that.

3 So let's just refer to this as the post
4 meeting. I think that's a helpful way to describe
5 it.

6 A. Okay.

7 Q. In the post meeting where Chief
8 Singletary wasn't there, what do you recall the
9 conversation being about the medical examiner's
10 conclusions?

11 A. We went over the terms and that's when
12 James was very adamant in analyzing what the word
13 homicide meant.

14 Q. And what was said with respect to the
15 language that Mr. Prude had died in part as a result
16 of asphyxia in the setting of a physical restraint?

17 A. James stuck to his opinion.

18 Q. What did the mayor say about that?

19 A. We ultimately just left that issue for
20 another day because there was no resolving it at that
21 point.

22 Q. Just so I understand the position that
23 James Smith -- that you ascribe to Mr. Smith, it's
24 what, that a human being did not cause the death of
25 Mr. Prude?

1 A. I should probably leave it to him to
2 explain to you. What he basically said was homicide
3 means death from other than natural causes. So
4 homicide does not ascribe culpability to any
5 particular individual. So, I mean, I didn't follow
6 the logic but he was adamant in having his logic
7 carry the day.

8 Q. And what did the mayor say in response
9 to Mr. Smith?

10 A. She was focused on the tapes by that
11 point in time. She was back looking at the tapes. I
12 don't recall any response that she had.

13 Q. Okay. What was the discussion in the
14 post meeting without Chief Singletary about
15 disciplining the officers or the Civil Service law?
16 You mentioned those two things.

17 A. The mayor wanted to terminate them on
18 the spot. And we indicated to her that under Civil
19 Service law, they had to have a notice and hearing
20 before they could be terminated. And we went back to
21 the Sickle and McElroy examples with Christopher Pate
22 that she was familiar with.

23 Q. Okay.

24 A. She didn't want to serve notice. She
25 didn't want to leave them on the job for 14 days. So

1 she said, okay, I'm not going to worry about the pay,
2 so find a way to get them off the street immediately
3 and if that means to suspend them with pay, that's
4 fine but I want them off the street.

5 Q. Did that happen?

6 A. Yes.

7 Q. And what happened --

8 A. It happened so well that we suspended
9 somebody who wasn't even on the scene.

10 Q. Okay. Well, let me ask it this way:
11 Did you take any action against any officers in
12 connection with the Prude incident prior to September
13 2, 2020?

14 A. I don't know. I can't recall the
15 dates.

16 Q. Let me help. I don't want to confuse
17 you. So if September 2nd was the date on which the
18 body-worn camera footage was released by the Prude
19 family, did you take any action, that is to say did
20 the City take any action against any of the officers
21 prior to that happening?

22 A. I don't believe so.

23 Q. Okay. And was there any discussion
24 of -- in the post meeting or I guess the
25 pre-meeting -- strike that.

1 Let me go back. So after Chief
2 Singletary basically said that the conduct of the
3 officers was by the book and consistent with training
4 and then he left the room, at that point the mayor
5 nevertheless wanted to take disciplinary action
6 against these officers, right?

7 A. Correct.

8 Q. So she did not accept his conclusion
9 that this conduct was consistent with training and
10 appropriate?

11 A. No. Her standpoint, even if it were a
12 proper, even if the segmenting was a proper
13 technique, she was very offended by the way that the
14 officers were treated and there was never an argument
15 that that was by the book.

16 Q. Right. So I guess that's what I'm
17 getting at. What did the mayor express to you about
18 her basis for wanting to discipline these officers
19 after having heard what the chief had to say?

20 A. She asked us to look into it and make a
21 recommendation to her. She wanted those officers off
22 the street and she wanted to hear from us as to what
23 the best method or best means was for that.

24 Q. And did she tell you that she wanted
25 them off the street because of their disrespectful

1 matter and laughing and joking when somebody was in
2 an obvious distress, that that was the thing that
3 caused her to want them to be off the street?

4 A. Yes.

5 Q. Okay. Was there any discussion in the
6 post meeting about Chief Singletary?

7 A. No. It was an allusion that we will
8 get back together and we will discuss consequences
9 for, you know, the upper end of RPD. So that was
10 agreed that that could come at a later time.

11 Q. Was that something that was expressed
12 to Chief Singletary before he was dismissed from the
13 meeting?

14 A. No, I don't believe so.

15 Q. I see. So he leaves and then it's just
16 you and the mayor and deputy mayor and Mr. Roj and
17 the only discussion of there being consequences for
18 Chief Singletary was we'll talk about that later; is
19 that fair?

20 A. Right. That's correct.

21 Q. Got it. And was there any discussion
22 in the post meeting of the Attorney General's Office
23 investigation or the Monroe County DA's Office
24 investigation?

25 A. I think during the meeting Chief

1 Singletary had when he went through the chronology
2 with the mayor, you know, mayor I told you, mayor
3 this went through Major Crimes, we referred it to --
4 we went through Major Crimes, Major Crimes found no
5 wrongdoing according to the book. We referred it to
6 the DA. The DA started to look at it and then the DA
7 advised us that under Executive Order 147 it would be
8 transferred to the Deputy Attorney General in the
9 Rochester office. So he had all those facts and he
10 recited those during the course of that meeting with
11 the mayor.

12 Your question about the AG's -- I don't
13 think at that point I knew what the status of the AG
14 review was. So I think that came later.

15 Q. Okay. Well, I guess my question really
16 was after the Singletary -- Chief Singletary was
17 dismissed from the meeting, was there any discussion
18 of the fact that the AG's office had an investigation
19 open?

20 A. I don't specifically recall. I don't
21 think I knew enough about it at that point to advise
22 the mayor at that point.

23 Q. Was there any discussion on August 4th
24 at any time of whether the fact that there had been a
25 mental health arrest that resulted in the death of a

1 man, whether that should be made public?

2 A. I had indicated that there was a
3 pending FOIL demand. I don't know if I knew then
4 whether or not the -- I don't think at that point --
5 you know, I don't have the timeline ahead of me but
6 when did Elliot comply with the HIPAA request? So, I
7 told her at that point that we would need to comply
8 with the FOIL demand after our HIPAA request had been
9 fulfilled and we didn't have a basis after the HIPAA
10 request was fulfilled to withhold it from the family.

11 Q. And you told her that on the 4th,
12 right?

13 A. Yes.

14 Q. And in what part of your series of
15 meetings that day?

16 A. That was probably the post meeting.
17 I'm not certain of that. I know we discussed it. I
18 can't remember at what point. It must have come late
19 because I think after the chief left, we said, okay,
20 what are we going to do now and I said, "Well, we've
21 got to release this. We've got to release the
22 footage as soon as the HIPAA release comes in."

23 Q. And what was the mayor's response to
24 that?

25 A. I don't know that she had one. I just

1 said this is what we're going to have to do and she
2 just kind of acknowledged that that's what we're
3 going to have to do. She, I don't think, had a
4 verbal response.

5 Q. At any point on the 4th did she say,
6 look, I think it's a really bad idea for us to be
7 releasing this footage to anybody until we get our
8 arms around this or something else happens?

9 A. No. The mayor -- we all have good
10 clients and bad clients. The mayor is a wonderful
11 client. The mayor actually takes our advice.

12 Q. So let me go back to Exhibit 20 which
13 is the timeline. Okay. So, looking at the timeline,
14 it appears that from what Ms. Prince reports is that
15 on July 23rd the HIPAA authorization from Mr. Shields
16 was received. Do you see that?

17 A. Yes.

18 Q. So that's obviously before this August
19 4th meeting right?

20 A. I was unaware that the authorization
21 had come in. Stephanie doesn't report -- they kind
22 of operate these things independently. She wouldn't
23 have told me, hey, I got the HIPAA release today.

24 Q. So when you told the mayor on August
25 4th that we're going to have to release this footage

1 as soon as we get a HIPAA release but we don't have
2 it yet, that was an error that you were mistaken
3 about that, right?

4 A. I didn't say we don't have it yet. I
5 said as soon as we have it, we need to release it.

6 Q. Okay. And, in fact, the Law Department
7 did have it by that point as you know today?

8 A. Right. That's correct. Yeah.

9 Q. Okay. And why did you think the HIPAA
10 authorization was relevant or something that you
11 needed to have before you could release this footage?

12 A. Well, that's based on advice that I
13 received from Stephanie and Patrick and I did not
14 challenge their advice, I accepted it.

15 Q. Right. But as you sit here now you
16 understand that HIPAA does not actually cover the
17 City of Rochester because the City of Rochester at
18 least insofar as it's providing police services is
19 not a covered entity, right? You know that today?

20 A. I don't know that today.

21 Q. Okay. You'd be surprised to hear that,
22 to learn that?

23 A. I wouldn't be surprised. I just didn't
24 know it. I accepted we have a naked man lying on the
25 street. I intuitively thought that there may be some

1 restrictions.

2 Q. At any time on August 4th did you
3 discuss with the mayor the idea -- and when I say you
4 discussed it, I mean, was it discussed in the mayor's
5 presence the idea that there ought to be a public
6 announcement or disclosure of the fact that Mr. Prude
7 had died under these circumstances?

8 A. Not that I was involved in. My only
9 discussions had to do with following the FOIL
10 request -- filling the FOIL request.

11 Q. And so to ask it the other way I think
12 I know the answer but just to get a clear record, you
13 did not advise the mayor on the 4th that the Attorney
14 General's Office had directed or suggested that the
15 City of Rochester not make a public disclosure about
16 the facts surrounding the Prude death, right?

17 A. On the 4th, I did not.

18 Q. Okay. And did you advise her of that
19 at some later date?

20 A. I believe so, yes.

21 Q. What was the later date?

22 A. I don't know but it was -- we get a lot
23 of business done at SMT meetings and after SMT
24 meetings. So that's usually my easiest availability
25 to her. So I think at the next SMT meeting which was

1 probably the following Tuesday morning I brought her
2 up to date on the, you know, the AG's or the DA's
3 referral to the AG, that we confirmed with the AG
4 that their investigation was still pending and they
5 had asked us not to make any formal -- I forget their
6 terminology, but not to make -- not to release any
7 information including the body-worn camera footage.
8 So that was probably the Tuesday morning following
9 August 4th.

10 Q. Okay. And other than that occasion --
11 strike that.

12 When you gave her that advice, what was
13 the mayor's response?

14 A. We talked about Executive Order 147 and
15 she said do you have a copy of Executive Order 147
16 and I said yes. And we read it together and she said
17 okay.

18 Q. And did she explain to you why she
19 wanted to see a copy of Executive Order 147?

20 A. You know, the mayor is a lawyer and she
21 likes to -- oftentimes she likes to verify this on
22 her own.

23 Q. Right. I guess my question is, what
24 did you understand her to be verifying?

25 A. I think she was not familiar with

1 Executive Order 147, so I'm sure she had a curiosity
2 and partially from advice to her she wanted to read
3 the terms of the Executive Order 147. She does that
4 a lot.

5 Q. Okay. Well, let me ask it a different
6 way. Was the advice that you read it to her on that
7 occasion, that Executive Order 147 precluded the City
8 of Rochester from making a public disclosure of the
9 circumstances of the Prude death, or was it that the
10 Attorney General's Office had asked you not to make a
11 public statement about those circumstances or both?

12 A. The latter. I advised her that the
13 Attorney General had asked us not to make any
14 announcements respecting Mr. Prude's death.

15 Q. So let's go back to August 4th. Was
16 there any discussion on August 4th about the
17 possibility of the City of Rochester making a
18 disclosure that members of the RPD were under a
19 criminal investigation?

20 A. No.

21 Q. And did that subject come up
22 subsequently prior to September 2nd --

23 A. No.

24 Q. -- with the mayor? Okay.

25 So nobody ever said, you know, people,

1 we should probably tell the public that there is a
2 criminal investigation of some officers, we're doing
3 what we can to be respectful of their rights but also
4 be protective of the public and that's something that
5 the public ought to know?

6 A. Well, we thought that that was
7 something that the Attorney General had asked us not
8 to disclose.

9 Q. Okay. And when you say we thought
10 that, you mean that you thought that, right?

11 A. Correct.

12 Q. And as you sit here today, do you still
13 think that the Attorney General's Office didn't want
14 you to disclose the fact that there was a criminal
15 investigation?

16 A. Absolutely.

17 Q. Where did you get the idea that the
18 Attorney General had made that request?

19 (Discussion held off the record.)

20 (The record was read.)

21 A. That information was given to me by
22 Stephanie Prince and it was confirmed by Patrick
23 Beath.

24 Q. When you say it was confirmed by
25 Patrick Beath, what do you mean by that?

1 A. I said, "Patrick, what do you think of
2 this? Is Stephanie's analysis correct?" And he
3 said, "Yes, I believe Stephanie's analysis is
4 correct. The Attorney General does not want us
5 meddling in their investigation or trying to release
6 non-public information."

7 Q. Okay. And on August 4th did you have
8 any discussion or were you present in any discussion
9 where the mayor was present about whether the
10 circumstances of Mr. Prude's arrest and the fact that
11 there was a criminal investigation, whether that
12 should be disclosed to the City Council?

13 A. No.

14 Q. Did you ever have a discussion along
15 those lines?

16 A. Yes, the following, I believe, Friday
17 we had a discussion about updating all the FOIL
18 response because then I had all the FOIL information.
19 I knew that the HIPAA papers had come in and our
20 release to the family was imminent. And at that
21 point in time I don't know if it was the mayor or
22 James said, well, what are we doing about public --
23 no, he said -- I forget the question he asked about
24 public statements. And I said, "Well, Mayor, it's my
25 advice that we don't make any public statements, we

1 don't release any non-public information." And she
2 said, "Yes, but you know I have to tell Loretta."
3 And I said yes, I understand that because she always
4 tells Loretta everything. And that's standard
5 procedure that I can go back and cite 100 examples.
6 The mayor tells Loretta everything.

7 Q. And Loretta is Loretta Scott, the
8 president of the City Council, right?

9 A. Correct.

10 Q. When you learned from Ms. Prince and
11 then had confirmed by Mr. Beath that the Attorney
12 General's Office had a request to you, was that the
13 AG's office did not want to see the release of the
14 body-worn camera footage but that there really was no
15 request made of the City with respect to public
16 statements about the fact of the investigation or the
17 circumstances of the death?

18 A. Except that they did not want us -- in
19 my understanding of it, they said that they did not
20 want us to release information including body-worn
21 camera footage. So the start is any information and
22 a specific example was body-worn camera. So they
23 never said don't release body-worn camera. They said
24 don't release non-public information including
25 body-worn camera.

1 Q. And was the reasoning behind the
2 Attorney General's request, at least as you
3 understood it, was that ever conveyed to you by
4 anybody?

5 A. The reasoning why they wouldn't want us
6 to release information in the middle of that, and
7 Jenn Sommers emailed to us, they said it would -- I
8 forget, impair our investigation. I can't remember
9 the correct -- the terminology, but they said your
10 release of non-public information would interfere
11 with our investigation. Those words came from them,
12 not me.

13 Q. Well, I don't know if you can see this.
14 Maybe not. So when you say Jenn Sommers' message,
15 were you referring to the timeline?

16 A. I'm referring to the email that Jenn
17 Sommers sent to Stephanie.

18 Q. Okay. And you did not understand --

19 A. Remember, the deal is that if we don't
20 release the body-worn camera footage as they
21 requested us not to, then she would call them in
22 in-house and let them view the footage. So I think
23 people are suspect whether or not the deal existed
24 but why would Elliot fly up from New York to look at
25 body-worn camera footage in Jenn Sommer's office if

1 we had already -- if we were permitted to release it
2 to the public? So I think Jenn -- I don't know if
3 you're interviewing Jenn as part of this but she
4 pretty much confirmed that that was her deal.

5 Q. You talk about an agreement when you
6 give your press conference on September 4th, and I'll
7 come back to that, but who is the deal that you're
8 referring to now between? Who are the parties to the
9 deal and what are its terms?

10 A. The deal is between Stephanie and Jenn
11 Sommers where Stephanie called Jenn Sommers and said
12 can we release body-worn camera footage. Jenn said
13 we would prefer -- she doesn't say you absolutely
14 cannot -- she said we would prefer that you don't but
15 in order to satisfy the folks that are demanding the
16 body-worn camera footage, I'll invite them into my
17 office, they can look at them in camera and then they
18 can go their way. And that's what Elliot and Don
19 Thompson did. So if the AG said to us go ahead and
20 release the body-worn camera footage, why would
21 Elliot fly up to New York to look at in camera Jenn
22 Sommer's office and why would Jenn write to us and
23 say, see, I lived up to my deal; I had Don Thompson
24 and Elliot come in and look at it?

25 Q. Is it your understanding, Mr. Curtin,

1 that the Freedom of Information Law permits a city to
2 make an arrangement with another governmental agency
3 about what its obligations are to make a release
4 pursuant to FOIL?

5 A. Absolutely. It goes by its express
6 terms.

7 Q. Explain that to me.

8 A. Well, one of the exceptions in the FOIL
9 law is interfere with an ongoing criminal
10 investigation. It says that in the law.

11 Q. Right. But is that a, to your way of
12 thinking, an invitation for the City to make an
13 arrangement or deal as you put it with the AG's
14 office about what can and can't be released or is it
15 an objective standard about whether in fact there is
16 interference or not interference with an ongoing
17 investigation?

18 A. Well, whether it interferes or doesn't
19 interfere with the AG's investigation is within the
20 discretion of the AG in my opinion. So they can say
21 to us either, no, you can't do it because it would
22 interfere with our investigation or if you do it this
23 way, we will consider it not to interfere with our
24 investigation and we'll bring the boys in and we'll
25 show them the tape. So this to me is entirely within

1 the discretion of the AG and the deal made sense to
2 me and it makes sense to me to this day.

3 Q. Do you believe that the municipality,
4 in this case the City of Rochester, can withhold
5 information under the exemption from FOIL that we're
6 talking about for ongoing investigations where the
7 release would interfere with the investigation when
8 the investigation is not being conducted by the City
9 of Rochester, where it's being conducted by some
10 other governmental agency?

11 A. Absolutely. You got to read all the
12 rulings. All the rulings are right on point. There
13 is 100 rulings on point that say that.

14 Q. Okay. I just want to make sure I
15 understand your understanding of it. That's all.

16 A. It doesn't say -- the formal statute
17 does not say who conducts the criminal investigation.
18 It simply refers to interfering with an ongoing
19 criminal investigation. What if it was the federal
20 government? We would say, well, the FBI, we can
21 release FOIL stuff?

22 Q. Would you be surprised to learn that
23 Mr. Beath and Ms. Prince have a different view of the
24 FOIL obligations on this point?

25 A. Yes, because they're the FOIL experts

1 who gave me the advice that I accepted.

2 Q. And are they the ones that brought the
3 100 rulings that you referred to?

4 A. Yep.

5 MS. COHEN: I think he was just
6 referring in general to 100 rulings.

7 MR. CELLI: Okay.

8 Q. I wasn't trying to hold you to the
9 number, Mr. Curtin.

10 Is there any particular case that comes
11 to mind that you think establishes the principle that
12 you've described?

13 A. No, but I do rely on their advice. I
14 know that, you know, the bucks stops here kind of
15 thing. You know, I'm a bond lawyer. I'm not a FOIL
16 lawyer. So a lot this stuff I'm not familiar with so
17 I accepted the advice of people in my office that
18 are -- that I have faith are experts in these various
19 areas of the law.

20 Q. Off the record.

21 (Discussion off the record.)

22 (Recess taken.)

23 BY MR. CELLI:

24 Q. Mr. Curtin, did there come a time in
25 the early part of August when you determined that an

1 effort should be made to try to resolve, that is to
2 say to settle, the claim asserted by the Prude
3 family?

4 A. Yes, as we always do.

5 Q. Is that right? Every time there is a
6 notice of claim, you try to settle that? You don't
7 wait for a lawsuit?

8 A. Almost every time.

9 Q. Okay. And was the fact that there was
10 a pending FOIL request for the body-worn camera
11 footage from the Prude arrest a factor to consider
12 when you determined that you should try to resolve
13 the claim with the Prude family?

14 A. No.

15 Q. And if somebody said that it was one of
16 the factors that was discussed in the Law Department,
17 that person would not be telling the truth?

18 A. Well, I wouldn't be aware of it. It
19 was not discussed with me.

20 Q. Well, if somebody said that was
21 something that was discussed with you, that would not
22 be telling the truth but maybe --

23 MS. COHEN: I'm going to object to not
24 telling the truth. That would not be his memory.

25 MR. CELLI: Well, that's what I'm

1 asking him.

2 Q. Is it that you say you don't remember
3 one way or the other or that you say it didn't
4 happen?

5 A. I'm saying to the best of my
6 recollection, it didn't happen.

7 Q. Putting aside whether -- what your
8 recollection is of what occurred then, would it be
9 appropriate in your view for you to consider as the
10 Corporation Counsel the fact that there was a pending
11 FOIL request for body-worn camera footage in
12 determining whether or not to resolve a claim?

13 A. No. You know, from my perspective all
14 these things become public, so there is really no
15 such thing as avoiding a FOIL claim. It becomes
16 public in one form or another. So to me in settling
17 a claim, it wouldn't be worth anything to avoid a
18 FOIL request. I wouldn't pay any money for that.

19 Q. Because ultimately if the material is
20 subject to FOIL, it's subject to FOIL no matter what
21 the agreement might say with another party, right?

22 A. Well, everything becomes public in one
23 form or another. It's not always FOIL. Things
24 become public because the plaintiff releases
25 information. It's just not everything is connected

1 to FOIL.

2 Q. Look, I don't want to have a
3 theoretical conversation here. So if you're telling
4 me that this didn't happen, then we can probably move
5 on. Let me ask it more directly.

6 Was it part of the City of Rochester's
7 strategy in terms of the seeking an early resolution
8 of the Prude claim that if they did that, it would be
9 less likely that the Prude related body-worn camera
10 footage would be released to anybody outside of the
11 city? The city structure, I mean.

12 A. That was not and that would not
13 properly be a consideration.

14 Q. Okay. I'm going to screen share with
15 you and go to what's been previously marked as
16 Exhibit 11.

17 (Curtin Exhibit 11, email, was deemed
18 marked for identification.)

19 Q. I don't know if you can help with this
20 but just in putting this in the time frame. We have
21 here an email from Stephanie Prince to you on the 7th
22 of August 2020, and the subject is "Prude full
23 redaction" and then there is -- there are a couple
24 of -- I guess it's just the one attachment.

25 Do you know what this email is?

1 A. I really don't. If it was dated
2 earlier, I would think it was in connection with the
3 FOIL but I think by this date -- oh, no, by this date
4 we had sent out the FOIL to Elliot but Elliot had not
5 released it to the public. So, you know, they were
6 working on this for a long time. I think maybe it
7 had just been finally completed. I don't -- I don't
8 think I ever saw a redacted Prude video.

9 Q. So I want to direct your attention back
10 to Exhibit 20. And I want to point out to you that
11 on the timeline that Ms. Prince put together, she as
12 August 12th as the date that the unredacted body-worn
13 camera footage and surveillance video footage and
14 photographs were mailed to Elliot Shields. Do you
15 see that?

16 A. Yes.

17 Q. So is it consistent with your
18 recollection that the body-worn camera footage was
19 mailed to Mr. Shields on August 12th?

20 A. I couldn't have told you the date but I
21 know that it was mailed to him sometime after I
22 authorized it. After I authorized it, then they had
23 to do some indexing and things like that. I'm not
24 sure what the process is. But it wasn't quite ready
25 for release and then this is obviously the date, a

1 couple days later when it had been completed.

2 Q. I think you testified earlier today
3 that the body-worn camera footage was mailed to
4 Mr. Shields without your knowledge; is that correct?

5 A. I had authorized it and asked Stephanie
6 to tell me the date that it went out. So it was
7 authorized and she failed to tell me the 12th was the
8 date. So I found out after the 12th that she indeed
9 had mailed it on the 12th.

10 Q. Okay. And how did you find out that
11 she had mailed it on the 12th afterwards?

12 A. I believe Patrick told me.

13 Q. And how did you react to that?

14 A. I said that I wanted to be advised when
15 it went out and they had failed to comply with my
16 request.

17 Q. Were you angry about that?

18 A. I don't recall I was very angry. You
19 know, we yell and scream all the time. We're
20 lawyers. But I think I get over it quickly.

21 Q. Did you tell Mr. Beath and Ms. Prince
22 that you were all going to lose your jobs and that
23 the city was going to be burnt to the ground as a
24 result of this mix-up?

25 A. If this comes from Stephanie, I told

1 Stephanie that this was a very, very serious matter
2 and we had to control the media aspect of this,
3 otherwise the city -- I said people will lose these
4 lives and the city will be burnt to the ground if you
5 don't follow my request. This is serious stuff and
6 look what happened, you know. I was dead right,
7 unfortunately.

8 Q. Right. What about did you also tell
9 Stephanie Prince that people were going to lose their
10 jobs as a result of the FOIL request having been
11 fulfilled on the body-worn camera material mailed
12 out?

13 A. No, I never threatened her job. It was
14 more concern with the bigger picture with the riots,
15 the demonstrations, the looting, the burning of the
16 city.

17 Q. I wasn't suggesting that you threatened
18 her job. I was just asking whether you told her
19 that, "We're all going to lose our jobs as a result
20 of the body-worn camera footage having been released
21 to Mr. Shields"?

22 A. I'm not sure how precisely that came
23 across but people at City Hall were losing their
24 jobs. There was two things going on. There was a
25 pandemic and there were, you know, riots in the

1 street. So, yeah, as a practical matter I said
2 people will lose their jobs, yes. I didn't threaten
3 her job but people in general have, will and continue
4 to lose jobs as a result of a couple things, one of
5 them being the pandemic, one of them being riots in
6 the streets.

7 Q. And but you weren't referring to the
8 pandemic when you talked about this to Stephanie
9 Prince, were you?

10 A. I was referring to the interplay of a
11 number of factors as -- you know, not one aspect of
12 this can be isolated.

13 Q. Well, what does the Prude issue have to
14 do with the pandemic?

15 A. I think from my perspective we were not
16 communicating well within City Hall because half the
17 people were working from home. We were having all
18 sorts of problems. We couldn't get into City Hall.
19 So I don't think some of the things that you all
20 think we did wrong with the Prude case would have
21 happened if we all lived at City Hall together like
22 we had in the past. This was our first pandemic.
23 This is the first time we've had two-thirds of our
24 workforce working from home trying to connect through
25 Zoom calls. I think our communications suffered as a

1 result of this.

2 Q. Did you say to Ms. Prince or Mr. Beath
3 or anybody else that because the body-worn camera
4 footage of the Prude arrest had been released to
5 Mr. Shields, that we, meaning people in the Law
6 Department, were going to lose their jobs as a result
7 of that?

8 A. No. No.

9 Q. Or anything, words to that effect?

10 A. No. I fire people but I don't threaten
11 to fire people.

12 Q. Well, did you express that you might
13 lose your job as a result of the fact that Ms. Prince
14 and Mr. Beath had released the material, body-worn
15 camera footage to Mr. Shields?

16 A. No.

17 Q. Did you -- were you communicating to
18 Mr. Beath or Ms. Prince or anybody else that as a
19 result of the body-worn camera footage becoming
20 public and getting out there, that that could result
21 in you being fired from your job?

22 A. No. Releasing the footage was an
23 inevitability. It was never contingent.

24 Q. When you learned a couple days after
25 the 12th that the body-worn camera footage had been

1 sent over to Mr. Shields, did you notify anybody of
2 that?

3 A. No -- that it went out?

4 Q. Yes.

5 A. Yes.

6 Q. Who did you notify?

7 A. Justin and the mayor, I believe, and
8 said that the body-worn camera footage has been
9 released.

10 Q. Justin and the mayor. And how did that
11 notification occur?

12 A. I believe verbally. I don't think it
13 was by text message but I'm not positive.

14 Q. Okay. And was it a meeting, a phone
15 call, two different phone calls, a meeting and a
16 phone call? How did that happen?

17 A. I think it was in a meeting and then I
18 think a couple days later I advised them that the
19 media -- we were getting media requests, which means
20 that Elliot had released it to the media. So I think
21 I verbally advised them that it was released and then
22 days later the media actually got it.

23 Q. And when you told Mr. Roj this, what
24 did he have to say about that?

25 A. He didn't express an opinion. It's

1 just a matter of keeping him advised on what to
2 expect.

3 Q. And did Mr. Roj make any comments about
4 needing to plan for what might happen as a result of
5 this and that there should be some discussions within
6 city government about the possibility that this could
7 become a public matter and how we would respond to
8 that?

9 A. Generally that's his responsibility.
10 We didn't specifically discuss it in this instance
11 because he has that responsibility in every instance.

12 Q. Right. And fair enough. And when you
13 spoke to the mayor about this, what did you have to
14 say?

15 A. I think I just advised her that the
16 body cam footage had been released to the plaintiff's
17 attorney.

18 Q. And what did she say?

19 A. Nothing. You know, it's not a matter
20 of much discussion. It's just a matter of advising
21 her as to events.

22 Q. I know, I get that, but did she have a
23 response at all or just said nothing?

24 A. I think she said nothing. I don't
25 recall any specific answer.

1 Q. Okay. Why didn't you tell Chief
2 Singletary that you had done this?

3 A. I believe he was not involved in that
4 process at that point in time. You know, he doesn't
5 do FOIL. He doesn't do litigation.

6 Q. Well, to the extent you were concerned
7 that there might be public unrest as a result of this
8 footage becoming public, did you think it was
9 something -- did you consider the possibility of
10 notifying the police chief that this material had
11 been released out of the government's hands?

12 A. I relied on the fact that the mayor
13 informed Chief Singletary.

14 Q. And to your knowledge did anybody
15 inform Chief Singletary that this had happened, that
16 the material had been mailed to Elliot Shields prior
17 to it becoming public on September 2nd?

18 A. Stephanie may have been advised -- in
19 touch with her contacts in RPD but I have no
20 knowledge of whether or not she was.

21 Q. Okay. All right. We'll come back to
22 this in a moment.

23 When you told the mayor that the
24 footage had been mailed out to Elliot Shields, did
25 you tell her that it had been mailed out without your

1 knowledge, without prior notification to you?

2 A. No.

3 Q. Why not?

4 A. It was not relevant to the discussion.

5 Q. So when the footage became public on
6 September 2, 2020, did the mayor express any surprise
7 about the fact that this body-worn camera footage was
8 no longer in government hands and had become public?

9 A. She knew we had released it to Elliot
10 and I think we all knew that ultimately Elliot would
11 release it to the media. So, no, she was not
12 surprised. They expected it.

13 MS. COHEN: Andy, it was still in
14 government hands, just because it was released.

15 MR. CELLI: Fair enough. A copy was in
16 the hands of somebody outside the government.

17 Q. Do you know whether Chief Singletary
18 was surprised to learn that the information -- that
19 the body-worn camera footage had been released to the
20 Prude family's lawyer?

21 A. I have no idea. He never expressed
22 surprise to me.

23 Q. Okay. I want to do a couple things.
24 So I'm going to show you what we've marked as Exhibit
25 14.

1 (Curtin Exhibit 14, email chain, was
2 deemed marked for identification.)

3 Q. It might help, Carrie and Mr. Curtin,
4 for you guys to actually open this on your own
5 because I'm going to -- I want to show you this in
6 the context of Exhibit 15 also which is an email
7 among some of the same parties very close in time.
8 Okay? But let's start by talking about Exhibit 14.
9 This is an email from you to Chief Singletary on
10 September 2nd at 7:53 a.m., right?

11 A. Yes.

12 Q. And you're responding to an inquiry
13 from Chief Singletary that came in at 7:46 regarding
14 an inquiry that he -- that his staff received from a
15 staff reporter at "The Appeal" and this is all about
16 the Prude matter, right?

17 A. Correct.

18 Q. And in response to -- well, he asked
19 the question -- he says, "I also believe the family
20 has filed a lawsuit, correct? I know when we met
21 with the mayor a few weeks ago this was still under
22 investigation by the AG's office." And you respond
23 to that by saying, "Family has filed a notice of
24 claim. I'm guessing this reporter got her
25 information from their attorney who has the video.

1 You can refer her inquiry to me and I will work with
2 Justin on a reply. Thanks, Chief."

3 You see that?

4 A. Is that accurate, yes, as far as I
5 know.

6 Q. Right. Did you have a telephone
7 conversation with Chief Singletary right around this
8 time that morning?

9 A. I don't recall. I think not but I
10 don't recall.

11 Q. Okay. So have a look at Exhibit 15.
12 (Curtin Exhibit 15, email chain, was
13 deemed marked for identification.)

14 Q. And you are not on this message, okay,
15 so I'm really just asking you to read the message
16 with -- that Chief Singletary sent to Mark Simmons,
17 Joe Morabito and Mark Mura at 8:28 on September 2nd.
18 He said, "I talked with Tim Curtin this morning. We
19 believe the family's attorney reached out to this
20 media outlet called "The Appeal" after they were
21 granted a look at the video which Tim said is fairly
22 common. They usually sign a non-disclosure agreement
23 prior to viewing such. I forgot the legal term that
24 Tim uses when attorneys can preview any paperwork or
25 video evidence prior to filing a lawsuit." And then

1 it goes on to say, "Tim Curtin is going to respond to
2 the inquiry."

3 Do you have any --

4 A. Can you hold on a second? Somebody is
5 at my door. I'm sorry.

6 Q. Sure.

7 A. I'm sorry.

8 Q. Sure. So this is a description -- this
9 is what Chief Singletary is conveying to his command
10 officers and he's talking about a conversation that
11 he had -- says that he had with you that morning.
12 Reviewing this email, 8:28 a.m. email, does that
13 refresh your recollection that there was a
14 conversation that you and Chief Singletary had that
15 morning?

16 A. No, it doesn't. That's -- I honestly
17 don't remember having that discussion with him. I
18 can see what he's trying to say here but I don't
19 remember having a specific discussion with him.

20 Q. Well, would the discussion that is
21 described here be consistent with something that you
22 would have told Mr. Curtin at this time -- I mean
23 Chief Singletary?

24 A. Yes, at this point in time if I have
25 the dates correct, this was referring to his deal

1 with the Attorney General, Elliot's deal with the
2 Attorney General which they would go to look at the
3 footage which is not a non-disclosure agreement, it's
4 an in camera, you know, he's not a lawyer. Does
5 Elliot have this on September 2nd; yes, Elliot
6 already has it. So we're guessing that Elliot sent
7 it to the media. I think what I told them, I think
8 what I would have told them but I honestly don't
9 recall a conversation, was that they looked at the
10 video in camera at the AG's office and now we had it,
11 so once we release it to Elliot, Elliot can do
12 whatever he wants with it.

13 Q. I see. I'm sorry, I didn't mean to cut
14 you off.

15 A. No, no, I'm just -- "I forgot the legal
16 term where attorneys can preview any paperwork," that
17 doesn't sound like something I would have told him.

18 Q. Maybe that is referring to in camera?

19 A. Maybe, but, you know, he's -- La'Ron
20 has heard enough terms that, you know, it's kind of
21 hard to get to non-disclosure, but maybe that was the
22 concept of an in camera hearing. I don't know. I'm
23 just guessing.

24 Q. I don't want you to guess.

25 MS. COHEN: We don't want people

1 guessing.

2 Q. Yeah, I don't want you to guess. But I
3 do want to understand this, though. So in this email
4 -- and I understand you didn't write it and you
5 didn't receive it but you're reading it now -- there
6 seems to be a discussion about there having been a --
7 the video having been shown to the Prude family
8 lawyers by the Attorney General's Office essentially.
9 I guess it doesn't say Inn. It doesn't say that.
10 Let me ask it again.

11 To summarize the Singletary email at
12 8:28, he's talking about a discussion with you where
13 it's described that the Prude family lawyers are
14 shown the video, okay. However, if you look at
15 Exhibit 14, which is just about 40 minutes earlier,
16 you very clearly tell Chief Singletary that their
17 attorney has the video. You see that?

18 A. Okay, yes. I don't understand his
19 letter.

20 Q. Right.

21 A. His, the next day letter.

22 Q. Well, it's the same day, it's just a
23 couple -- 30 minutes later, right?

24 MS. COHEN: Andy, here is the problem.
25 He said he doesn't remember this and I just don't

1 want the record to get confused.

2 MR. CELLI: Fair enough. Let me just
3 be really clear.

4 Q. When you wrote at 7:53 "Their attorney
5 who has the video," you're referring to Mr. Shields
6 there?

7 A. Correct.

8 Q. Okay. And as you sit here now, do you
9 have any explanation or recollection for why Chief
10 Singletary is describing the scenario where the Prude
11 family attorney got a chance to look at the video but
12 it doesn't -- he doesn't reference them having
13 received a copy of it?

14 A. I don't. You know, again, I would just
15 be guessing. I don't have a rational explanation.

16 Q. Okay. Did you tell him in a
17 conversation subsequent to your email that in fact
18 the Prude family lawyers had simply seen the video
19 rather than having been given a copy?

20 A. Well, I tell them they have a copy,
21 right?

22 Q. You say that at 7:53, that's right.
23 And now we're at 8:28 and I'm wondering whether you
24 recall talking to Chief Singletary between those
25 times and telling him in fact they were just shown a

1 copy as opposed to having been given a copy?

2 A. I don't believe I would have done that.

3 Q. Okay. Let's have a look at, and I will
4 screen share once again, Curtin 16.

5 (Curtin Exhibit 16, email chain, was
6 deemed marked for identification.)

7 Q. Here we are the same morning, September
8 2nd. This is an email from you to Mark Mura at 8:36
9 and he had communicated to you at 8:09 "Can you give
10 me a quick call" with his phone number, right?

11 A. Yes.

12 Q. And what he attached to that email was
13 an email from Jackie Shuman forwarding an email from
14 a reporter asking for information about the Daniel
15 Prude matter, right?

16 A. The same email, right? The same
17 reporter, the same letter?

18 Q. I don't want to represent one way or
19 the other. I think this person is from "The Appeal"
20 if that helps.

21 A. I thought there was attachment to the
22 prior one. Am I off?

23 Q. No, you may be right but it's not
24 relevant to my question. My question really is, do
25 you have any explanation for why -- Jackie Shuman is

1 from the Office of Public Information, right, at the
2 RPD?

3 A. Yes.

4 Q. She is the press person there, right?

5 A. Correct.

6 Q. And my question to you is, do you know
7 why -- whether Ms. Shuman was informed of the Prude
8 matter prior to September 2nd, 2020?

9 A. I would have no idea.

10 Q. Well, she asks in her email to Chief
11 Mura, "Are you familiar with this?" And then he
12 forwards it to you and wants to talk about it. So
13 that's why I thought you might have an idea.

14 A. I don't.

15 Q. It appears that she's never heard about
16 this case before, right?

17 MS. COHEN: He can't answer that.

18 Q. Was that your understanding when you
19 received this message?

20 A. It was my understanding that Jackie had
21 never heard of it before; I guess I didn't formulate
22 any understanding.

23 Q. So Mayor Warren gave a press briefing
24 on September 2nd about the Prude matter, right?

25 A. I was not there, so I'm not certain.

1 Q. Okay. That was my next question,
2 whether you attended.

3 Have you ever reviewed a transcript or
4 video of her September 2nd press briefing?

5 A. I don't believe so.

6 Q. Okay. Did you provide -- I'm sorry?

7 A. Is that the one in the basement? Okay?
8 All right. Because I know she went to one but I
9 wasn't in attendance if that's the one I'm thinking
10 of.

11 Q. Well, did you provide her with any
12 advice about how she might address the Prude matter
13 before she spoke -- how she might address the Prude
14 matter in public before she spoke on September 2nd?

15 A. I had been providing ongoing advice. I
16 don't know specifically if there is a transcript of
17 that hearing and I can tell you whether any part of
18 it is me.

19 Q. There is and it's kind of lengthy and I
20 don't want to burden the record with it but let me
21 ask a couple narrow questions and maybe we can make
22 headway.

23 A. Okay.

24 Q. Prior to September 2nd did you provide
25 advice to the mayor that she should not make an

1 announcement or a public statement about the fact
2 that Mr. Prude had been the subject of a mental
3 health arrest and had died in police custody?

4 A. I advised her that she should not
5 release any non-public information.

6 Q. And when you talk about non-public
7 information, what are you referring to there? I
8 mean, Mr. Prude was arrested on a public street.
9 People videoed it. Facebook. Are you saying that
10 that's non-public information or are you saying that
11 that is something that she could have discussed?

12 A. I think that is public information but
13 I asked her not to release according to the Attorney
14 General's request is not to release any information
15 that was solely within the control of the City of
16 Rochester.

17 Q. Okay. Prior to September 2nd, had you
18 ever told her not to make a public statement about
19 the Prude matter?

20 A. Well, I didn't use those terms. I used
21 the terms not to release any non-public information.

22 Q. Okay. And so from your point of view,
23 had the mayor publicly announced there had been a
24 death in custody, the man's name was Daniel Prude and
25 that an incident occurred during a mental health or

1 mental hygiene arrest, that would have been
2 consistent with what you understood the Attorney
3 General to be asking the City to comply with?

4 A. Well, it's very difficult to generalize
5 what part of that is public and what part of that is
6 not public and we never got into those details. She
7 never -- I never proofed statements about a public
8 statement that did not disclose any non-public
9 information. We never got into those nuances.

10 Q. But I guess your testimony is that you
11 were consistent in saying to her don't disclose
12 anything that's not already public, right?

13 A. Yes.

14 Q. And that implicit in that advice was
15 that if something was already public, like the fact
16 that there had been a mental health arrest that
17 happened on Jefferson Avenue at 3:00 in the morning
18 on March 23rd, RPD was involved, and the man was
19 naked and segmented on the ground, those would all be
20 public facts that she would be permitted to comment
21 on and that was your advice?

22 A. I don't know if all of that is public.

23 MS. COHEN: I don't know that -- Andy,
24 is that a hypothetical or I don't understand?

25 MR. CELLI: No, it's not a

1 hypothetical. I'm trying to figure out what he meant
2 by non-public.

3 Can you read the question back again.

4 MS. COHEN: That's not what the
5 question was, Andy, if that's what you wanted to ask.

6 MR. CELLI: Well, let's see what my
7 question was and maybe I'll change it.

8 (The record was read.)

9 A. I don't know if all the elements of
10 that are public information.

11 Q. Okay. Which elements do you regard as
12 being non-public?

13 A. The fact that there was an arrest. I
14 don't know that that's public information.

15 Q. Well, it happened in the public space,
16 right, outdoors? It wasn't behind closed doors,
17 right?

18 A. Right. I'm not sure that's the
19 deciding factor.

20 Q. Well, tell me why you think an arrest
21 would not be a public fact.

22 A. Because that was information within our
23 control. We didn't post it in the newspaper. The
24 newspapers were not aware of it. So to the extent
25 that the mayor made that announcement, she would be

1 announcing non-public information contrary to the
2 request of the Attorney General. So I would have
3 told her not to make that statement.

4 Q. All right. That's clarifying. I
5 misunderstood you. I mean, you did know as of this
6 point -- strike that.

7 You did know as of the point that you
8 gave that advice that one of the first things that
9 the Law Department came into possession of was a
10 Facebook posted video of Mr. Prude naked in the
11 street on March 23rd?

12 A. Yes.

13 Q. That you would acknowledge is public
14 information, right?

15 A. Yes. So the mayor could have said we
16 have a video of a man running down the street.

17 Q. Okay. Did anyone else weigh in with
18 the point of view about your advice to the mayor on
19 this subject?

20 A. I'm not sure I follow. Anybody --

21 MS. COHEN: On what subject, Andy?

22 Q. Okay. Did any of the mayor's other
23 advisors, whether they be lawyers or non-lawyers,
24 ever give her advice about whether she should make a
25 public statement about the arrest and death of

1 Mr. Prude prior to September 2nd, 2020?

2 A. Not in my presence.

3 Q. Did anybody to your knowledge, even it
4 wasn't in your presence, take a contrary view and say
5 look, I know Curtin thinks we shouldn't say anything
6 but I think we should and here is why?

7 A. I have no idea. It never got back to
8 me and the mayor never said to me that I had
9 inconsistent advice.

10 Q. To your knowledge did any of the
11 mayor's other advisors ever advise her in a way that
12 was consistent with what you said, in other words,
13 Curtin's view is that we shouldn't say anything and I
14 agree, we really shouldn't, let's not say a word
15 about it?

16 A. Not to my knowledge.

17 Q. All right. So is it fair to say that
18 to your knowledge anyways the mayor's decision not to
19 provide a public statement about the arrest and death
20 of Mr. Prude prior to September 2nd, the only advisor
21 who gave her that advice was you?

22 A. Ultimately, yes.

23 Q. Okay.

24 MS. COHEN: Although obviously, Andy,
25 he doesn't know what advice she got that he wouldn't

1 know about.

2 MR. CELLI: Through his knowledge.

3 Q. I only want you to tell me what's to
4 your knowledge.

5 A. I don't know who agreed with me and I
6 don't know who disagreed with me. They never shared
7 that with me.

8 Q. Right. It sounds like you've not heard
9 either way about anybody agreeing or disagreeing?

10 A. Correct.

11 Q. Let's look at Exhibit 17.

12 (Curtin Exhibit 17, email, was deemed
13 marked for identification.)

14 Q. This is an email from Patrick Beath to
15 you at 9:30 in the morning on the morning of
16 Wednesday, September 2nd. And he's sending over a
17 letter dated April 21st from the Attorney General's
18 Office to District Attorney Sandra Doorley confirming
19 that pursuant to Executive Order 147, the Office of
20 the New York State Attorney General has jurisdiction
21 over the investigation into the death of Daniel Prude
22 on March 30th in Rochester. Do you see that?

23 A. Yes.

24 Q. Do you know the circumstances under
25 which Mr. Beath sent this to you? Is this something

1 you would asked for or he had volunteered?

2 A. It was something that I asked for. I
3 wanted to put together our record of proceedings of,
4 you know, how it got to the -- how it got from the
5 Major Crimes to the DA to the AG's office. I wanted
6 to have that information available for the mayor.

7 Q. Do you know how Patrick Beath obtained
8 this document?

9 A. I think he got it from Mark Simmons or
10 one of the other RPD guys. Maybe Joe Morabito.

11 Q. Okay. And I also noticed it's copied
12 to Sergeant Zenolovic.

13 A. Yeah, I don't know him.

14 Q. What makes you think he got it from the
15 RPD?

16 A. Because they were the ones that did
17 advised -- they were the ones who Major Crimes sent
18 it to the DA's office and then the DA's office sent
19 it over to the AG. So I think that Major Crimes had
20 a copy of the chain of custody as they call it.

21 Q. And let's look at Exhibit 18 for a
22 moment.

23 (Curtin Exhibit 18, email chain, was
24 deemed marked for identification.)

25 Q. This an email exchange between you and

1 Stephanie Prince on the 2nd. This is at 9:40 in the
2 morning and it's a follow-up, forwarding a follow-up
3 communication between she and Jennifer Sommers at the
4 AG's office. Do you see that?

5 A. Yes.

6 Q. Do you recall the circumstances under
7 which this was forwarded to you?

8 A. Yeah. This was part of that us, you
9 know, putting our ducks in a row to make sure that
10 the investigation was still ongoing and I sent to
11 Paul and Jenn Sommers and have her see if the
12 investigation is still ongoing and she did so.

13 Q. Why was that important for you?

14 A. Because we were withholding certain
15 information based on the fact that the criminal
16 investigation was pending. So I had to determine
17 that the criminal investigation remained pending.

18 Q. What were you withholding at that
19 point?

20 A. Release of the footage to the public,
21 responding to the media FOILs.

22 Q. And had there been Freedom of
23 Information requests by this point on the morning the
24 2nd for this footage?

25 A. From the media, yes. Dozens.

1 Q. Okay. Was it relevant to your
2 consideration whether to release stuff to the media
3 that your office had already released it to
4 Mr. Shields some two or three weeks earlier?

5 A. Yes.

6 Q. How so?

7 A. Well. We thought that we only released
8 the footage to the family based on the HIPAA release.
9 We thought that if there was an investigation, a
10 criminal investigation pending, we could not make a
11 public release so long as that investigation was
12 pending because we had no control over when
13 Mr. Shields would release it to the public. So I
14 mean the fact that he held it back for some reason,
15 you know, we were playing, you know -- we were going
16 down two roads at the same time.

17 Q. Did it occur to you when you authorized
18 the release of the body-worn camera footage to
19 Mr. Shields that he and the family might decide to
20 make it public?

21 A. Oh, it's a certainty.

22 Q. And did it occur to you that if
23 Mr. Shields and the Prude family made the information
24 public, that that might itself interfere with an
25 ongoing criminal investigation in some way?

1 A. I don't believe that he was bound by
2 Executive Order 147, so in our view he could do
3 whatever he wanted. We were the only ones bound why
4 it.

5 Q. So your perspective was that releasing
6 this information to the requester Prude family would
7 not interfere with the criminal investigation but
8 releasing it to media outlets who had made FOIL
9 requests on September 2nd, that that would interfere
10 with an ongoing criminal investigation?

11 A. Correct.

12 Q. And do you have an understanding that
13 there is a basis for that distinction in the law or
14 was that a matter of your discretion?

15 A. That was a matter of our discretion
16 with the Attorney General. We advised her that
17 that's what we were doing and she didn't object at
18 that point.

19 Q. Okay. Let's go to number 19.

20 (Curtin Exhibit 19, email chain, was
21 deemed marked for identification.)

22 Q. So here we have an email exchange
23 between you and Mr. Beath again on the morning of
24 September 2nd. The re line is Umbrino Timeline. And
25 you could have a look at the email but what I'm

1 interested in is the message from you to Mr. Beath at
2 10:07 where you say "Thanks. Bring this to the
3 meeting." Okay? That's what I'm going to ask about,
4 so if you want to have just a quick look and then I
5 can turn to that.

6 A. Okay.

7 Q. Do you recall what meeting you're
8 referring to here?

9 A. I don't. If I -- I can look at my
10 calendar.

11 Q. That would be helpful. Maybe that will
12 tell us.

13 A. I have nothing on my calendar for that
14 day. Is that the day that -- there is a day earlier
15 that I said I didn't have a meeting. Is this the
16 same date?

17 Q. Well, I had asked you about a proposed
18 Zoom meeting on June 4th.

19 A. Oh, okay.

20 Q. And you did not recall attending that
21 meeting.

22 A. I don't know what this meeting is and I
23 don't have anything on my calendar.

24 Q. Okay. Did you -- are you aware that
25 Mayor Warren gave a press briefing on the Prude

1 matter on September 3rd, which would be the next day?

2 A. Do I -- I don't recall it even though I
3 don't recall a lot of dates.

4 Q. Well, did you attend a press briefing
5 that she gave on September 3rd on the Prude matter?

6 A. I would have to look at her comments in
7 order to respond to that specifically.

8 Q. Okay.

9 A. I can tell by reading the comments
10 whether or not I wrote portions of it.

11 Q. Well, did you provide written comments
12 to the mayor for her to deliver at a press briefing?

13 A. Not that I specifically remember but I
14 do it all the time.

15 Q. Meaning what?

16 A. Nothing stands out about this September
17 date but I review her comments pretty consistently
18 but I couldn't tell you from my own recollection
19 whether it was September 3rd or September 15th.

20 Q. Do you remember -- and, again, it's not
21 a memory test, I just don't have the exhibits
22 prepared for right now. We can do them if necessary,
23 but do you recall Mayor Warren in this time frame
24 making comments along the lines that you had given
25 her advice not to make public statements about the

1 Prude matter and that she was -- that she had
2 followed that advice but now she was going to violate
3 that advice or go against that advice and discuss the
4 matter publicly?

5 A. I remember her at a public -- at a news
6 conference saying that she had received that advice
7 from me. I don't remember her saying that she was
8 going to stop following that advice.

9 Q. Okay. Fair enough. And when the mayor
10 made the comment that you recall which was that she
11 had received that advice from you, did you regard
12 that as her waiving the attorney/client privilege?

13 A. Well, as you know, it's her privilege
14 to waive.

15 Q. Exactly.

16 A. So she can waive -- I think that would
17 be subject to the attorney/client privilege but I
18 also think she could waive that privilege.

19 Q. Right. I agree. And I'm asking
20 whether just your own view as her lawyer, whether
21 when she made those remarks, that constituted a
22 waiver.

23 A. [REDACTED]

[REDACTED]

[REDACTED]

1 that." And it's a "Democratic Chronicle" article by
2 Justin Murphy.

3 A. I remember receiving that from Tom. I
4 don't think I ever read the article, no. Tom is a
5 lawyer who works for me.

6 Q. Right. You don't believe you read this
7 article at the time?

8 A. I don't believe so, no.

9 Q. Okay. Do you recall discussing with
10 the mayor this question of whether New York law does
11 or does not require -- did or did not require the
12 City of Rochester to keep the Prude case secret other
13 than what you have already told us?

14 A. We never had that discussion. That's
15 kind of an amateur's version of it, just saying New
16 York law. We were responding to what I perceived to
17 be a valid order of the state Attorney General.

18 Q. Okay. Well, was it an order of the
19 Attorney General or a request of the Attorney
20 General? How would you characterize it?

21 A. I would characterize it as a request
22 from the Attorney General based on the governor's
23 executive order.

24 Q. Okay. Let's go to Exhibit 23.

25 (Curtin Exhibit 23, email, was deemed

1 marked for identification.)

2 Q. This is an email from September 3rd
3 from Alex Yudelson to you at 2:35 in the afternoon
4 with an attachment. Have you seen this document
5 before?

6 A. Yes.

7 Q. And describe what the attachment is as
8 you understand it.

9 A. I believe the attachment is some
10 revisions. I sent the mayor a timeline. Alex in his
11 attempts to protect the mayor from whatever he's
12 trying to protect the mayor from made certain
13 comments and suggestions that enhanced the mayor's
14 platform, I guess. And that's what Alex does and
15 that's what we all understand Alex does, so I thought
16 it was legitimate comments in an attempt to help the
17 mayor which is what we all do.

18 Q. Do you recall being present at a
19 meeting with the mayor, Alex Yudelson, and others in
20 which this timeline was discussed and the comments
21 that appear in bold -- I can take you to both pages
22 here because those comments are on a few different
23 pages -- that those were comments that the mayor
24 herself wrote down that Alex Yudelson was then given
25 the task of inputting and sending on to you?

1 A. I think -- well, no, I wasn't at any
2 such meeting. I always assumed that these were
3 Alex's comments that the mayor may or may not have
4 approved. I didn't think that they were the
5 mayor's -- you know, she takes things and writes all
6 over it and makes revisions but I didn't think this
7 was one of those situations.

8 Q. Well, the message that he conveys on
9 the first page is "The mayor asked for a few
10 additions here for her reference. I made them in
11 bold so you have them."

12 Do you see that?

13 A. Yes.

14 Q. So when you read that, you knew that
15 these were things that had come from the mayor, at
16 least according to Mr. Yudelson, right?

17 A. Yes. I mean, this is that inside
18 baseball that you always gets farther in City Hall if
19 you say the mayor wants this rather than I want this.

20 Q. But you're not disputing the notion
21 that there was a meeting at which this timeline was
22 discussed directly with the mayor, she made notes and
23 gave them to Mr. Yudelson, right?

24 A. I don't know one way or the other.

25 Q. Okay. Let me take you back to Exhibit

1 36. There are a few different things I want to ask
2 about. First of all, on page Curtin 300 -- and I
3 don't want to take this out of context for you, but
4 there is a string of discussions -- there is a text
5 discussion that starts out -- well, I guess at 10:17
6 a.m. on September 3rd and among you and Patrick Beath
7 and it sort of goes on and off until 2:04 p.m. and
8 then it picks up again after that. What I'm
9 interested in is the entry at 2:04 where you write to
10 Mr. Beath "Reach out to Justin. Michelle may have
11 transcribed some stuff." I'm trying to understand
12 what that refers to.

13 A. Michelle is the only person in the Law
14 Department that can take transcription. So if we
15 have one lawyer who doesn't use the, you know, Word
16 too well, so we have one attorney that's got the
17 little -- secretary who has got the little recording
18 box, the old style, the foot peddle and all that kind
19 of stuff. So she does that for us. Justin was --
20 the mayor was preparing some statement, maybe that
21 was the September 3rd press conference you're talking
22 about. Justin was just spouting off, kind of he
23 proposes these things and he takes off and he just
24 gets on a roll dictating stuff. There was nobody
25 there to dictate to. So we're all sitting there

1 listening to him and saying, you know, we're not
2 transcribers, we can't do this. So Patrick -- I was
3 down in the mayor's office. I reached up to Patrick
4 and said get Michelle ready because we may tape this
5 and then Michelle will transcribe it into a Word
6 document that the mayor can read from.

7 Q. And did that happen?

8 A. No, it never happened.

9 Q. Why not?

10 A. Justin figured it out on his own.
11 There was either a phone call or something later on
12 where Justin said never mind, I can do it. So I
13 guess he typed it himself.

14 Q. So that's helpful. So the emails --
15 I'm sorry, the text messages between you and Patrick
16 Beath, you know, from say 1:35 over to 2:04, are
17 those text messages that you sent from a meeting that
18 you were in in City Hall with the mayor and others?

19 A. Yes. Yes.

20 Q. And who was in that meeting?

21 A. The mayor, James, Justin. This may
22 have been the meeting with Justin, Alex and Cephas
23 Archie showed up at one of the meetings. I think
24 this is the meeting the first time we saw Cephas and
25 I have no idea what the mayor brought him in but she

1 brought him in. I think that that was the meeting we
2 had a wide range of topics and the mayor focused in
3 on, you know, putting the police officers on leave.
4 So that's what a lot of this stuff is.

5 Q. Right. What were the other topics that
6 the mayor wanted to cover in that meeting?

7 A. The primary topic that we discussed in
8 that meeting was what discipline may be relevant or
9 appropriate for Chief Singletary.

10 Q. Any other topics?

11 A. No, it pretty much was various
12 disciplines. So we discussed Chief Singletary and
13 then we discussed the officers on-site.

14 Q. And what was the discussion as you
15 recall it about disciplining Chief Singletary at that
16 point?

17 A. Well, this gets into some detail that
18 Carrie tells me not to get into.

19 Q. You can get into it.

20 A. It's -- there was a -- Carrie, cut me
21 off whenever you think it's appropriate.

22 There was a difference of opinion among
23 the folks in the meeting what discipline would be
24 appropriate for Chief Singletary.

25 Q. Okay.

1 A. And we kind of took sides and dug in
2 our heels against one another.

3 Q. And who was on what side?

4 MS. COHEN: And just for the record,
5 Mr. Curtin, I didn't tell you not to talk about this.
6 You're free to talk about this conversation.

7 THE WITNESS: Okay.

8 A. On one side was --

9 MS. COHEN: And I was not revealing any
10 attorney/client discussions with you myself with Mr.
11 Curtin.

12 THE WITNESS: Oh, no, her discussion
13 was in general.

14 A. On one side was me, Justin and Cephas
15 and on the other side was James, Alex -- I think it
16 was just James and Alex.

17 No, I'm sorry. I need to correct that.
18 It was me and Cephas joined my team and the other
19 side was James, Justin and Alex.

20 Q. What were the respective positions of
21 the two teams as you've described them?

22 A. James' team wanted to terminate La'Ron.

23 Q. Um-hum.

24 A. And I argued against that. And then
25 James finally came off the termination and said,

1 well, if we're not going to terminate him, then we
2 need to suspend him for a substantial period of time.
3 And my argument was -- which came back to haunt me --
4 but my argument was suspensions are ticky tacky,
5 amateurish punishments for police officers not
6 wearing their badges appropriately. So I said,
7 either you have a discussion with La'Ron -- either
8 the mayor has a discussion with La'Ron saying you
9 disappointed me, you do it again and you're out of
10 here or fire him but you don't do the ticky tacky
11 suspension thing.

12 We went at it and it ended up being a
13 debate between James and I. And ultimately the mayor
14 said, okay, we're going to follow Tim's advice which
15 James didn't like to be honest and then after this
16 discussion was -- after the mayor's discussion with
17 La'Ron, La'Ron turned around and retired as we all
18 know and James said, see, I was right.

19 Q. Got it.

20 A. So, it was a difficult period and some
21 feelings were hurt and some -- you know, obviously
22 some long-term relationships, you know, were damaged.

23 Q. And when you say feelings were hurt and
24 relationships were damaged, you mean between you and
25 the deputy major?

1 A. Yes, James -- I guess this is isn't
2 confidential. James didn't like the fact that the
3 mayor took my side.

4 Q. So, tell me about the basis that was
5 articulated by the James Smith group for terminating
6 or at least suspending Chief Singletary at this
7 point?

8 A. Well, his argument was the chief saw
9 the tape, the chief misled the mayor into thinking it
10 was a, you know, a non-custody -- that it was just a
11 drug overdose, not as a result of any police
12 involvement, and that breach of trust with the mayor
13 was basis enough to terminate La'Ron.

14 Q. Okay. Anything else?

15 A. Well, he pretty much held to that
16 single argument.

17 Q. Okay. And what was the position that
18 you articulated along with Dr. Archie?

19 A. Yeah, Dr. Archie just kind of voted
20 with me. He didn't say much. But my position was
21 that La'Ron was a man of high integrity and had maybe
22 been advanced before his time, so we gave him too
23 much trust, too much reliance too early in his
24 career, so we had to take some responsibility for him
25 making some, you know, what would be perceived to be

1 rookie errors. And we had a frank discussions
2 discussion with the mayor that perhaps La'Ron was
3 afraid to tell you and maybe that's something that
4 you have to deal with in your relationship with your
5 various department heads is they can't be afraid of
6 you. And I said La'Ron didn't deserve to be
7 suspended. In my opinion he did not deserve to be
8 terminated. He was a man, a good guy that we had a
9 lot of faith in that had a great career and he made a
10 mistake and I didn't think that that should be a
11 death sentence.

12 Q. In the context of taking that position,
13 did you disclose to the mayor that you had previously
14 counseled Chief Singletary to be more disclosive
15 about the Prude incident to her and to show her the
16 videotape?

17 A. Yes.

18 Q. And was that the first time you told
19 the mayor that you had those conversations with him?

20 A. That was not the first time. It
21 probably came up in reference -- probably came up in
22 passing at the August 4th meeting. You know, we
23 talked about a wide range of things.

24 Q. And what was the mayor's response to
25 learning that you had been counseling the police

1 chief to say -- to be more disclosive to her about
2 the Prude incident and to show her the videotape?

3 A. I don't know that she had any real
4 reaction. I mean, that's kind of my job. So she
5 probably was not surprised that I had given him that
6 advice.

7 Q. Well, did she ever say, you know, geez,
8 Tim, why didn't you tell me? If it was such a big
9 deal, you could have told me directly.

10 A. She did not say that. She may have
11 thought that but she did not say that.

12 Q. I mean or words to that effect,
13 obviously.

14 A. Yeah. She had never said that to me.

15 Q. Okay.

16 A. She may have thought that, I don't
17 know.

18 Q. And in terms of the position asserted
19 that the chief had misled the mayor and caused her to
20 believe that the incident around Mr. Prude's death
21 was just a drug overdose, is that something that --
22 how did the mayor react to that argument?

23 A. Well, I guess the mayor didn't believe
24 it because the mayor believed that they had -- you
25 know, the rudeness and all that issue, and that's one

1 that the mayor has not gotten over to this day. I
2 think that she really was waiting to see and probably
3 is it waiting until this moment to see whether -- you
4 know, the investigation is not over yet, the grand
5 jury is not yet risen and I don't know how to say
6 this, if the grand jury no bills the officers, La'Ron
7 would have been telling the truth from the beginning.

8 I don't know how you come to grips with
9 that. I don't know how anybody comes to grips with
10 that. But let's pretend -- and we all hear rumors.
11 Let's pretend the grand jury is going to no bill
12 these guys. That means La'Ron has been telling the
13 truth.

14 Q. Is that position, what you just
15 articulated which I think I understand, is that
16 something that the mayor has expressed to you?

17 A. No. No, that's my view.

18 Q. I see. Okay.

19 A. I have never heard the mayor say that.
20 She thinks punishment is appropriate. She doesn't
21 believe the segmenting will be justified and she
22 knows in her heart that the officers' actions on the
23 scene with this gentleman violated, you know,
24 fairness and justice and respect, you know, besides
25 the handbook.

1 Q. Right. I guess my question here is
2 really about how she reacted to the suggestion that
3 she had been misled by the chief. Is that something
4 that she agreed with, did not agree with --

5 A. She thinks she was misled. She
6 believes in her heart that she was misled by the
7 chief.

8 Q. And is that something that -- did she
9 express that in this meeting that we're talking about
10 on September 3rd?

11 A. Yes. And she has expressed it any
12 number of occasions.

13 Q. To your knowledge has she ever -- did
14 she ever hold a different view where she felt that he
15 had not misled her and then she changed her mind
16 because of some subsequent realization or events?

17 A. Not as far as I know.

18 Q. So would it be fair so say that from
19 what you heard her say on August 4th that she
20 believed -- she expressed a belief that she had been
21 misled even as early as August 4?

22 A. Correct.

23 Q. Okay. So we talked about this, the
24 meeting on the 3rd. Other than the discipline of
25 Singletary, you talked about the possible discipline

1 of the individual officers who were on the scene that
2 night, right?

3 A. Yes.

4 (Recess taken.)

5 BY MR. CELLI:

6 Q. So, I put up on the screen, Mr. Curtin,
7 what's been previously marked as Exhibit 36 and we're
8 on page Curtin 305. And just again to give you some
9 context, I'm really focusing on this article from
10 Spectrum News "AG's office says that it has never
11 told Mayor Warren, police chief they could not
12 discuss Prude case." You see that?

13 A. Yes.

14 Q. But if you wanted to look at the chain
15 before that, there is obviously some other stuff here
16 having been forwarded. So, looking at the entry at
17 9:47 p.m., I guess that's Mr. Yudelson who has
18 forwarded to you and Justin Roj and Deputy Mayor
19 Smith this Spectrum news article "Called AG's office
20 says it has never told Mayor Warren, police chief
21 they could not discuss the Prude case"?

22 A. Yes.

23 Q. First of all, when you read this, did
24 you understand this to be a statement by the Attorney
25 General's Office that they had never told anyone in

1 the City of Rochester government level that the City
2 of Rochester should not discuss the Prude case?

3 A. I don't think I ever read the article.

4 Q. Okay. Well, before you say that, let
5 me direct you a little bit further down the page. So
6 that comes in at 9:47, that article. Then there is a
7 response from Justin Roj at 9:49. And then I think
8 there is a response from you at 9:51 "So unfair to
9 mayor. Think about me issuing a statement as to who,
10 what, when. Mayor was not advised until August 4th
11 and I can demonstrate that above statement is not
12 accurate. I am much more expendable than mayor."

13 Do you see that?

14 A. I don't remember that comment being
15 responsive to the Spectrum article. The Spectrum
16 article kind of didn't say anything. I think we were
17 talking about something else in between but maybe
18 not. Well, it's 9:47 p.m. and then I responded at
19 9:51, so maybe it was. I don't recall the Spectrum
20 article but I recall the whole discussion that we had
21 about, you know, the sequence of events and what
22 happened in what chronological order and that the
23 mayor was being accused of a coverup. So I do
24 remember reacting to that.

25 Q. Okay. Let me ask this question: You

1 do recall that the Attorney General's Office issued a
2 statement in response to the mayor's statements and
3 the AG's office basically said we never told anybody
4 in Rochester that they couldn't comment on or
5 publicly discuss the Prude case; is that fair?

6 A. Yes. That was a statement that came
7 out of the -- reportedly came out of the Attorney
8 General's Office in Albany that was not signed by
9 anyone. It was just a paragraph that said it was
10 from the Attorney General's Office. So I had said if
11 somebody is not even willing to put their name on it,
12 I'm not going to change my advice based on an
13 anonymous message and how could the Attorney General
14 in Albany know what the Attorney General in Rochester
15 said and why didn't the Attorney General in Rochester
16 respond? So I didn't give much weight to the
17 Attorney General in Albany's statement.

18 Q. Well, you would agree that the
19 statement issued by the Attorney General's Office
20 about not having told anyone at the City of Rochester
21 not to comment on the Prude matter, that's something
22 that Mayor Warren gave some weight to, didn't she?

23 A. Yes. I don't know that it -- I don't
24 know that it did. It went to comments. It was
25 always releasing non-public information. I guess

1 what comments, you know, you make that are non- --
2 that are public, you know, you get back into that
3 fine line but never really, you know, took form.

4 Q. So let's have a look at the statement
5 that got released just so we're all talking about the
6 same thing. I don't want to chase the comma around
7 the page here. I created a -- oh, it's in the trash.
8 That can't be right. Hold on one second.

9 I tried to create a slightly different
10 exhibit but I don't know what I've done with it. So,
11 I'm going to go back to -- just give me one more try
12 now Exhibit 28. And I want to -- this is an article
13 that got forwarded around called "City counsel,"
14 C-O-U-N-S-E-L, "pushes back against Attorney General
15 statement and Daniel Prude case." You see that?

16 MS. COHEN: Andy, can you just share
17 your screen?

18 MR. CELLI: I'm sorry. Apologies.
19 This is Exhibit 28.

20 (Curtin Exhibit 28, email, was deemed
21 marked for identification.)

22 Q. I'm just focusing on the news article
23 at this point, "City counsel pushes back" September
24 4th. Do you see that, Mr. Curtin?

25 A. Yes.

1 Q. And I want to focus you on the second
2 page there is a quote attributed to a spokesperson
3 for Attorney General Letitia James "There was never a
4 request from the Attorney General's Office to the
5 City of Rochester Corporation Counsel to withhold
6 information about the events surrounding the death of
7 Daniel Prude, plain and simple."

8 Do you see that?

9 A. Yes.

10 Q. Okay. And do you dispute that
11 statement?

12 A. Absolutely. I mean, they asked us,
13 they never directed us, they asked us not to release
14 non-public information including the body-worn camera
15 footage.

16 Q. And so the basis for that, you're
17 disputing that is what Stephanie Prince told you,
18 right?

19 A. Yes. Yes.

20 Q. And you never made any effort to
21 determine on your own what the Attorney General's
22 position on this was, you relied on Ms. Prince; is
23 that fair?

24 A. That's fair.

25 Q. Okay. So now back to our exhibit --

1 Q. Got it. Did you show that statement
2 that came from the unnamed spokesperson to Stephanie
3 Prince and say like what's going on here?

4 A. Yes. Yes.

5 Q. And what was her response to that?

6 A. She said, well, we never spoke with
7 anyone in Albany. I got my direction from Jenn
8 Sommers and the -- again, the instructions were in
9 writing and Jenn lived up to her part of the deal in
10 writing. So I think just to ignore that is not
11 really realistic in this context. Jenn offered a
12 deal, we took the deal, Jenn confirmed the dealing in
13 writing. I don't know how I have to keep defending
14 the fact that there was a deal.

15 Q. Yeah, I guess I don't want to go back
16 but I thought you said the deal was between the
17 Attorney General's Office and Mr. Shields and the
18 other lawyers from the Prude family.

19 A. No, it was between the Attorney
20 General's Office and Stephanie. If we didn't release
21 the footage, she would show the footage to the
22 plaintiff's attorneys.

23 Q. I see.

24 A. So they weren't really part of the
25 deal. The deal was to get us not to release the

1 footage.

2 Q. Got it. Do you have any other examples
3 in your history as the corporation counsel of there
4 being arrangements like that? I mean, you use the
5 term deal but agreements like that between
6 governmental agencies that relate to FOIL, I mean, to
7 be more specific?

8 A. Oh, related to FOIL. I can't think of
9 any. I mean, we obviously have deals, negotiations,
10 you know, contracts with, you know, all kinds of
11 municipalities. I can't cite another example that we
12 would properly withhold information due to the
13 pendency of a criminal investigation but the party
14 conducting the criminal investigation allowed us to
15 release certain things under certain circumstances.
16 I don't have another example but even today it sounds
17 perfectly logical to me. I would do the same deal
18 all over again.

19 Q. Since you mentioned it, I just want to
20 ask you so in this email which you sent to Kevin
21 Curtin -- that's your son; is that right?

22 A. My son, yes.

23 Q. And Jerome St. John, that's a friend of
24 yours?

25 A. He's -- he was my law partner for 35

1 years.

2 Q. Got it.

3 A. He lives out of state and my son lives
4 in Los Angeles.

5 Q. Got it. And the message that you sent
6 along with forwarding this message is "Please tell
7 the AG who she is up against," right?

8 A. Yeah, that was a response to something.
9 And, again, I don't defend it. It's, you know,
10 comedy among my children which I didn't expect to be
11 in this analysis, so I probably should not have
12 written that. My son, I don't know what all the
13 response is or I don't know what you have of the
14 string.

15 Q. I'll show you what I have just so we
16 have the context. I want to be fair to you here.
17 So --

18 MS. COHEN: Andy, I know we're going to
19 deal with this later but I would ask that this part
20 of the transcript going back a couple of questions be
21 confidential. I don't think this is actually
22 relevant.

23 MR. CELLI: I don't know that --

24 MS. COHEN: They still haven't redacted
25 the email addresses and things, so it concerns me

1 Q. Understood. Okay. So back to Exhibit
2 36. Now having had a chance to look at the specific
3 statement that came out of the AG's office which is
4 how we went down that path, and now the Spectrum news
5 article from 9:47 p.m. on September 3rd and your
6 response to it, "So unfair to the mayor" well, let me
7 ask you, do you now agree that this text message at
8 9:51 is your response to the Spectrum news item?

9 A. Yes, and a number of other things but
10 yes, to the Spectrum item. There are a whole bunch
11 of things going on on this thing at the same time.
12 It's been going on all day.

13 Q. All right. Tell me what they are.

14 A. Everything --

15 Q. Let me be more specific. I'm sorry. I
16 didn't mean to cut you but I want to try to get to
17 what I want to get to.

18 You say that above statement is not
19 accurate. What are you referring to there?

20 A. The statement that the mayor knew
21 before August 4th, that it was involved in some sort
22 of coverup.

23 Q. Where do you see that in the Spectrum
24 item?

25 A. Well, I don't know that I can tie it to

1 the Spectrum item because, again, there were 20
2 things going on all at the same time. So my comment
3 might have been -- you know, this is 10:00 at night
4 where we've been working since 8:00 in the morning,
5 so at some point in time maybe I just said all this
6 is unfair to the mayor and I tried to help out in a
7 way. I don't know that I was responding to a
8 specific line of a specific newspaper article that I
9 to be honest can't even recall reading.

10 Q. Okay. It's just the phrase you use is
11 above statement. Is there an above statement on this
12 text chain that you want to refer to or --

13 A. No. There is something that I must
14 have focused on, maybe I got to go back and reread
15 the Spectrum article. The point was that they were
16 accusing the mayor of knowing something before August
17 4th. Maybe I just have to expand that article and
18 try to address it more specifically but I don't
19 recall the specific line but I recall the concept.

20 Q. Okay. Well, in response to your
21 comment at 9:51 we have Mr. Roj saying "I spoke to
22 Spectrum and told them that the AG's office spoke to
23 our Law Department on June 4th and told us not to
24 share information regarding the case." Right?

25 A. Yeah.

1 Q. And then the mayor says "You probably
2 need to put out a statement that clarifies that
3 because that is what people are latching on so that
4 there is clarity," right?

5 A. Right.

6 Q. So viewing those text messages in
7 context, do you believe that the discussion here is
8 about whether in fact the Attorney General's Office
9 had told the City of Rochester not to comment
10 publicly on the Prude matter?

11 A. To be honest, I don't believe that
12 that's what this discussion is about. I think, I
13 believe the discussion is about the timeline of the
14 mayor hiding things. You know, I wouldn't respond so
15 this is so unfair to mayor. I mean, that's not
16 unfair to the mayor whether the Attorney General said
17 something or didn't say something. So I don't think
18 I'm reacting to the newspaper article. I think I'm
19 reacting to a bunch of other things that are
20 simultaneously going on that I truly believed were
21 unfair to the mayor. Even now whether the Attorney
22 General said it or didn't say it, is not fair or
23 unfair to the mayor. It's sort of irrelevant.

24 Q. Well, if the Attorney General had told
25 your office -- had not told your office not to make

1 public comments -- that's a double negative.

2 If the Attorney General had told your
3 office not to make public comments about Prude and
4 then later on said wait a minute, we never said that,
5 that would be unfair to the mayor, right?

6 A. It would be unfair to us that was
7 giving the mayor's advice.

8 Q. Okay. Well, let's go to -- so I just
9 want to focus you for a second -- where is it? So
10 the mayor says, "You probably need to put out a
11 statement that clarifies that because that is what
12 people are latching on so that there is clarity" and
13 then 31 minutes later Mr. Roj says "The statement is
14 out." Right?

15 A. Yes.

16 Q. I'm taking you to Curtin -- wait a
17 second -- Curtin 24.

18 (Curtin Exhibit 24, media statement,
19 was deemed marked for identification.)

20 Q. This is a statement, media statement
21 issued by Justin Roj at 10:36 p.m.

22 A. 34?

23 Q. It's actually 24 but I think there was
24 an error in the original box that went over to Carrie
25 and so it came in a separate email but it's very

1 short, Mr. Curtin. So if you look on screen, you'll
2 see it.

3 A. Okay.

4 Q. Okay. So this is the statement that
5 Justin Roj put out in response to the Spectrum
6 article; is that correct?

7 A. It appears to be. I don't know. I
8 don't -- it looks like it.

9 Q. Did you participate in the drafting of
10 this statement?

11 A. No.

12 Q. Do you know where Mr. Roj got the
13 information that's contained in this statement?

14 A. I can only guess that he put it
15 together from prior communications. I was not
16 involved in the drafting of this particular
17 statement, even though it's consistent with what
18 Stephanie has been saying all along.

19 Q. Well, let's go back a second.

20 A. It's a direct quote. I think it's a
21 direct quote from Stephanie's email.

22 Q. Well, if you look at Exhibit 20 where
23 she -- where Stephanie Prince is discussing the
24 advice that she got from Jenn Sommers, she talks
25 about withholding a release of records and not

1 withholding release of information. Do you view that
2 as a relevant distinction?

3 A. Yes. I mean, there is a difference
4 between information and records. I think the word
5 that I always -- this is a timeline of a timeline of
6 a timeline. I think if we go back to Stephanie's
7 original advice to us, I don't know what word she
8 used in that.

9 Q. Okay.

10 A. I relied on I think what I believed to
11 be the case was they told us not to release
12 information including the body-worn camera. So
13 probably Stephanie's earliest memo around August 4th.

14 Q. Mr. Curtin, do you recognize this
15 document? This is Exhibit 25 from our list. It's an
16 undated, unsigned narrative and it bears the Bates
17 numbers Curtin 62 and 63.

18 (Curtin Exhibit 25, narrative Bates
19 stamped Curtin 62 and 63, was deemed marked
20 for identification.)

21 A. Yes, I wrote this.

22 Q. When did you write this?

23 A. I think close to the time that I
24 offered to make a statement that tried to clear up
25 all these facts. And, you know, I think maybe I

1 thought that I was writing a statement that Justin
2 ended up -- James used to be Communications director.
3 Justin and James have very different styles, so we
4 are trying to cope with the difference in their
5 styles, but I think I was writing this as a
6 contemporaneous kind of memo to myself of what had
7 happened when to be used in appropriate circumstances
8 like in defense of the mayor's involvement in this
9 case. So, I wrote this personally.

10 Q. Okay. Did you distribute this to
11 anybody?

12 A. I don't believe so.

13 Q. Okay.

14 A. I guess you got this off our G drive as
15 we call it. It's just an internal document. I wrote
16 this and I don't really think I ever distributed it
17 to anybody.

18 Q. And did you write it in a single
19 sitting or did you work on it over time? How would
20 you describe it?

21 A. I think I just sat down and wrote it
22 but I probably reread it at some point.

23 Q. Um-hum. Now, you gave a press
24 conference on September 4th, right?

25 A. Right.

1 Q. And how did that come to be?

2 Well, actually before I ask that, was
3 Exhibit 25 something that you prepared in preparation
4 for your news conference?

5 A. No, no.

6 Q. And was it prepared after the news
7 conference?

8 A. I think it was prepared before. I
9 think it was prepared when I had no knowledge that a
10 news conference -- that I would be involved in a news
11 conference.

12 Q. Okay. That's helpful. Let me come
13 back to this but for the moment I just wanted to ask
14 about the news conference. So how did it come to
15 pass that there was a news conference where you were
16 featured?

17 A. Well, in my memo there when I said this
18 is unfair to the mayor, you know, think about me
19 making a statement and then at five to three or five
20 to two or five to whatever hour the next day Justin
21 came up and said, you know, "I noticed that press
22 conference." And I said, "What press conference?
23 Who is involved?" He said, "You are. The mayor is
24 saying you do it." So literally I found out five
25 minutes before the press conference started.

1 Q. Okay. And other than --

2 A. Obviously no preparation.

3 Q. Other than him telling you that it was
4 going to happen in five minutes, was there any other
5 discussion of what was to be covered in the press
6 conference?

7 A. We went down to Justin's office at two
8 minutes to whatever the hour was and he said, "I
9 think you should cover the timeline." And I said,
10 "Well, we haven't even sat down and revised the
11 timeline ourselves," and he said "The mayor said to
12 do it."

13 Q. And then he did?

14 A. So I just walked out there and just
15 kind of made it up.

16 Q. And did you talk to the mayor about the
17 idea that you were going to give a news conference
18 before you went out and did it?

19 A. I never talked to her before. I never
20 talked to her after about it.

21 Q. Was it your practice to take orders
22 from Mr. Roj about statements in the public --

23 A. It's only because it was scheduled and
24 when I looked over the balcony, all the cameras were
25 already lined up. You know, if you have ever been in

1 City Hall, the Law Department is on the fourth floor
2 that overlooks the atrium. So if the cameras collect
3 in the atrium, you know something is up, and I just
4 didn't know I was the something that was up.

5 Q. Right. I guess I had a more narrow
6 question which was, was it generally your practice to
7 take orders from Mr. Roj about statements that you
8 were going to make as Corporation Counsel?

9 A. No. No.

10 Q. Has that ever happened before?

11 A. No.

12 Q. I take it it hasn't happened since?

13 A. No.

14 Q. Do you think it was a good idea as you
15 sit here today to give a statement to the press about
16 a matter of great public interest like the Prude
17 arrest without having an opportunity to discuss it
18 with the mayor?

19 A. No, I don't.

20 Q. And do you think it was a good idea as
21 you sit here today to give a press conference on a
22 matter like the Prude matter without having a chance
23 to prepare?

24 A. Certainly not.

25 Q. Did you get any reaction from anyone at

1 City Hall after the news conference about how you
2 did?

3 A. No. Only my children.

4 Q. Okay. I want to -- one or two more
5 questions on No. 25, Exhibit 25. When you prepared
6 this, what was your purpose in doing so?

7 A. In my own mind it was just to have a
8 contemporaneous -- you know, we have a lot of things
9 going on and as you can tell in this case, people's
10 recollections change over time. And this was fresh
11 in my mind and we had a million other things going on
12 and I thought I would take a moment and write this
13 all down so we would have some memorialization of it
14 because I thought at some point in time it may be
15 helpful to the mayor.

16 Q. But you never had a chance or an
17 opportunity to show it to her; is that fair?

18 A. I don't think I've ever shown it to
19 anyone other than now that you have it.

20 Q. Right. Okay. The next exhibit is
21 No. 26.

22 (Curtin Exhibit 26, transcript of news
23 conference, was deemed marked for
24 identification.)

25 Q. And this is a transcript that we've had

1 created of the news conference that you gave on
2 September 4th. The first question is, we could not
3 find a full videotape of the news conference. Do you
4 have one in the Law Department?

5 A. Do I have one, no. No. As far as I
6 know, Justin may but I certainly don't.

7 Q. So the ones that we could find publicly
8 sort of begin in the middle of a sentence as you'll
9 see at the top of the first printed page "Tim Curtin"
10 and then there is an ellipsis, "until the Attorney
11 General had completed its investigation of this
12 matter" and then it starts, "the timeline starts off
13 on June 4th." Do you see that?

14 A. Yes.

15 Q. Can you tell me what it is you were
16 communicating immediately prior to where you say the
17 timeline starts off on June 4th?

18 A. I can guess.

19 Q. I don't want you to guess. I want you
20 to give me your best understanding.

21 A. Again, it's just a guess. You know, I
22 was responding to the circumstance. If I had to do
23 it again, I would say something like we were
24 requested not to release non-public information until
25 the Attorney General had completed its investigation.

1 So that's the only really lead-in I can think of.

2 Q. Got it. You know what, I'm sorry to do
3 this, I want to go back for one moment to 25. I
4 notice in 25 that you are describing the meeting on
5 August 4th in 2020, correct, in this paragraph that
6 begins on August 4th, 2020?

7 A. Yes.

8 Q. And it's the meeting where you and the
9 mayor and others were talking about the Prude matter,
10 right?

11 A. Yes.

12 Q. And about a third, almost halfway down
13 there is a sentence that you wrote that said "We had
14 a discussion about N.Y. Civil Service Law protections
15 and at that point I advised the mayor the AG had
16 control of the investigation and that we were asked
17 to hold any internal action until the AG
18 investigation was completed. We had a detailed
19 discussion regarding the timing of the investigation
20 and the consequences of non-compliance with the
21 attorney -- with the assistant AG request."

22 Do you see that?

23 A. Yes.

24 Q. When and in what way did the Attorney
25 General's Office ask the City of Rochester to hold on

1 internal action -- strike that.

2 What are you referring to when you say
3 "to hold on any internal action"?

4 A. I think it's a reference to immediately
5 suspending the police officers for their involvement
6 in the Prude matter which would have resulted in us
7 releasing non-public information.

8 Q. Got it. And that makes sense because
9 the sentence there is talking about the protections
10 afforded to officers from the New York Civil Service
11 Law, right?

12 A. Right.

13 Q. Okay. And when did the Attorney
14 General's Office ask the City of Rochester to hold
15 off on taking internal disciplinary action against
16 the officers involved in the Prude matter?

17 A. They never did specifically. They
18 asked us to control the release of non-public
19 information. If we suspended someone, the Locust
20 Club would immediately have a press conference to
21 complain about -- there is an inevitable chain of
22 events that I was trying to avoid.

23 Q. When you wrote this document, that was
24 in -- after September 2nd, correct?

25 A. I wouldn't say -- I'm sure there is a

1 date on this document.

2 Q. Not that I could find.

3 A. You keep going. Maybe I can find it.

4 Q. Okay. Were you aware from this
5 document that the body-worn camera footage from the
6 Prude incident had been sent over to the Locust Club
7 would have been days of the incident on the street,
8 right?

9 A. I was aware of that.

10 Q. And so there was no issue about the
11 Locust Club and the officers involved having access
12 to information about the investigation, right? They
13 already had that.

14 A. Again, but we had not taken -- you
15 know, the Locust Club would react to our disciplinary
16 action. You know, if you let the Locust Club sit
17 there with information and we don't take any action
18 that they deem to be inappropriate, you know, they
19 wouldn't release that information even though they
20 had it, even though I didn't know immediately that
21 they had it but I later found that out. So if we
22 took action against the officers, we would bring that
23 non-public information public. If we let sleeping
24 dogs lie, everything would have -- nothing would have
25 become public.

1 Q. Okay. And further on in the same
2 paragraph you write "At that point I was instructed
3 by the mayor to comply with the family FOIL request
4 the incomplete AG investigation notwithstanding and
5 provide the family with all BWC footage."

6 You see that?

7 A. Yes.

8 Q. And did you understand that instruction
9 based on your advice to the mayor to be her directing
10 you to do something that was contrary to what the
11 Attorney General had asked the City to do?

12 A. I told her once we got the HIPAA
13 release, we would -- I thought it appropriate to
14 release the information to the family.

15 Q. Well, here you have her instructing you
16 to comply with the family's FOIL request
17 notwithstanding the fact that the AG's investigation
18 was not complete, right?

19 A. Yes. What I do -- and maybe this is
20 the phraseology -- I make a recommendation to her and
21 then she acknowledges it and says okay. So she
22 didn't say, Tim, release the footage. I said, once
23 we get the HIPAA release, I'd like to release the
24 footage and she said, yes, do that.

25 Q. Okay. Fair enough. And when she said

1 that to you, you didn't understand her to be
2 directing you to do something contrary to the AG's
3 wishes, right?

4 A. No. The Law Department took
5 responsibility for that advice. That was the advice
6 that we gave her.

7 Q. Okay. And is it your view that
8 releasing the footage to the Prude family attorneys
9 notwithstanding the ongoing existence of an AG's
10 investigation, that was consistent with the request
11 that had been made of the City by the AG's office?

12 A. No. To be honest, I thought that was
13 inconsistent but the AG was clearly dragging its
14 feet. It's been involved in the investigation for
15 five or six months and are taking no steps to do
16 anything. So there is a limit on our willingness to
17 cooperate with this investigation. So I was saying
18 at that point, notwithstanding the AG's request
19 because the AG has done nothing in this
20 investigation, we're going to go ahead and comply
21 with the FOIL request and let the AG, you know,
22 battle us out if that's what they choose to do. We'd
23 still be waiting for that if we waited for the
24 investigation, the AG's investigation to be
25 completed.

1 Q. I don't disagree.

2 Did you, by the way, determine the date
3 of that memo that you wrote to yourself by looking at
4 your computer?

5 A. No, I can but to do so I've got to
6 close out all these exhibits of yours.

7 Q. Okay. So let it be.

8 A. So can I follow up?

9 Q. Yes, leave a place in the transcript to
10 do that. Or maybe we can really do it at the end of
11 this if it only takes a minute. All right. Let's
12 come back to it.

13 Okay. Why did you decide to start your
14 news conference timeline on June 4th as opposed to
15 going back to when the FOIL request and the
16 preservation letter were submitted to the Law
17 Department?

18 A. To answer that I probably have to go
19 back to the timeline.

20 Q. Okay. Do you want to look at the
21 one --

22 A. Yeah. What's that original one you
23 had?

24 Q. Exhibit 20.

25 MS. COHEN: Andy, do you know how the

1 press conference started? I thought it was a
2 truncated version.

3 MR. CELLI: The best I can tell, there
4 was very little before this. I think it was a
5 sentence or two and that's what I tried to figure
6 out. But --

7 MS. COHEN: Okay. Thanks.

8 THE WITNESS: June 4th was the date
9 that Stephanie confirmed that the AG had asked us not
10 to release non-public information.

11 Q. And so that's why you decided that
12 that's where you should start the timeline?

13 A. Yes.

14 Q. Okay. Did anybody tell you that you
15 should not reference the fact that there had been a
16 preservation notice and a FOIL request as early as
17 April on the Prude matter?

18 A. Did anyone tell me, no.

19 Q. Did anyone suggest to you it's not
20 helpful to our story if we go back that far in time?

21 A. No, no.

22 Q. Okay. So now I'm looking on this page
23 which I guess is page 2. Hold on a second. Line 10
24 you say "But, again, a conclusion of this ended up
25 with us giving the mayor the advice on August 4th

1 after I reviewed the tape with the mayor not to
2 proceed further until the Attorney General had
3 concluded its investigation."

4 Do you see that?

5 A. Yes.

6 Q. And that's you publicly discussing the
7 legal advice that you gave to the mayor, right?

8 A. Yes.

9 Q. And did you understand at that point
10 that the mayor had waived the attorney/client
11 privilege with respect to that topic by the time you
12 gave this statement in public?

13 A. No, not exactly. If you're alleging an
14 ethical violation, then there is another jurisdiction
15 to take that up with.

16 Q. No, I'm not alleging anything, really,
17 Mr. Curtin, and it's a little unfair to you because I
18 don't have the transcripts of the previous statements
19 by the mayor. But I will represent to you that she
20 did on previous -- on occasions previous to this talk
21 about advice that you had given to her.

22 So my question is, with that
23 representation, do you agree that in giving this
24 statement in describing your advice, you were not
25 violating the attorney/client privilege, it's

1 something that had already been waived?

2 A. I don't believe that I was.

3 Q. Okay.

4 MS. COHEN: But I don't think he can
5 comment whether it was waived or not waived.

6 Q. Well, I guess my question is, you
7 didn't think you were intentionally violating the
8 attorney/client privilege when you said that, right?

9 A. No, and I certainly heard the mayor
10 comment about it before. We never discussed a waiver
11 in specific terms but certainly by her actions she
12 waived it but we never -- it never elevated to that,
13 you know, detail.

14 Q. Got it. On page 4 you make the point
15 that starting at line 12 you say -- and previous to
16 that you're talking about the Attorney General
17 exposing the body-worn camera tape to the Prude
18 family lawyers. Starting on line 12 you say, "So the
19 fact that they had to go into the Attorney General's
20 Office to review the tape is a pretty good indication
21 that we were not allowed to release the tape."

22 You see that?

23 A. Yep.

24 Q. And do you believe that's accurate,
25 that the City of Rochester was not allowed or

1 permitted to release the body-worn camera tape, that
2 you were legally prohibited from doing so?

3 A. We were asked not to.

4 Q. Okay. So in this particular quotation
5 what you say is "We were not allowed to". Do you
6 think that's inaccurate as you sit here today?

7 A. I think, you know this, when judges
8 politely ask you to do things, they're not really
9 asking you, they're instructing you in polite terms.
10 So that's what I took from the Attorney General's --
11 that she was very respectful and asked us not to but
12 it was the equivalent of an order under the executive
13 order. So I think that that's accurate but you have
14 to take it one step further and discuss the
15 enforceability of 147 and the enforceability of Jenn
16 Sommers' statements. But, you know, other than the
17 semantics, I think that that's where I took this to
18 and maybe I drew a conclusion that I shouldn't have
19 or that you don't think I should have but this is the
20 statement that I made.

21 Q. Thank you. Has anybody raised with you
22 before -- and I'm not talking about in preparation
23 with your lawyer for this deposition, but other than
24 that -- the suggestion that this particular comment
25 was not accurate by you?

1 A. No.

2 Q. Has anybody said, you know, look, it's
3 not that we weren't allowed to release the tape, it's
4 that we were asked not to release the tape and there
5 is a big difference?

6 A. No. I don't know anyone that even
7 watched the press conference, so I don't know anyone
8 that heard this.

9 Q. Okay. So, let's go to page 5, focusing
10 on line 7. You say, "The mayor pretty much can do
11 whatever she wants to do. My role as her attorney is
12 to give her advice and my very strong advice to her
13 was not to make public comments."

14 Now, there you're referring to advice
15 that you gave to the mayor not to make public
16 comments about the Prude matter prior to September
17 2nd, right?

18 A. Correct.

19 Q. And then you go on to say "We weren't
20 going to release the tape. We were going to defer to
21 the family." Can you explain that passage?

22 A. We weren't going to do a media release.
23 We were going to release the tape to the family and
24 they could release in their discretion.

25 Q. Okay. And then further down in the

1 transcript at line 17 you say "My advice to the mayor
2 at that point in time after we reviewed the tape was
3 not to make any statements, not to involve the media
4 as requested by the Attorney General until the
5 Attorney General's investigation had been completed."

6 Do you see that?

7 A. Yes.

8 Q. And when did the Attorney General's
9 Office request of the City of Rochester not to
10 involve the media in the Prude matter?

11 A. They asked us not to release the tapes.

12 Q. Okay.

13 A. We only have one communication with the
14 Attorney General and it's interpreted and confirmed
15 that there is no -- you know, the Attorney General
16 never said, Hey, Tim don't release the tape. They
17 never said, Hey, Tim don't whatever this says. There
18 was one communication and you have it.

19 Q. And that says we can't tell you what to
20 do but we prefer that you not release any records,
21 right?

22 A. Well, I think it says information,
23 including the body-worn camera footage.

24 Q. So at the bottom of 5 there is a male
25 voice, I presume it's a reporter, who says,

1 "(Indiscernible) there is no legal reason why the
2 mayor couldn't have gone public with you all the
3 details." And you respond, "Well, there is Executive
4 Order 147 which indicates that the Attorney General
5 shall have sole and exclusive discretion, sole and
6 exclusive control over any and all proceedings. So
7 any and all in my opinion means any and all and I
8 don't think it would be appropriate."

9 Do you see that?

10 A. Yep.

11 Q. Was the language from Executive Order
12 147 that referred to the AG having control over any
13 and all proceedings, is that what caused you to
14 conclude that the City of Rochester should not make
15 public comments about the Prude matter?

16 A. That along with the attorney general's
17 advice. So the combination of the two.

18 Q. And then you say at line 8 on page 6,
19 "Anybody can make a comment about anything but it was
20 my advice to the mayor that she not make public
21 comments until after the Attorney General's report
22 had been completed."

23 What did you mean when you said
24 "anybody can make a comment about anything"?

25 A. I guess that -- you know, I'm not

1 really sure what exactly I was referring to but now
2 rereading it, the mayor was certainly -- could make
3 comments with her discretion irrespective of my
4 advice, so the mayor doesn't have to follow my advice
5 but in this case she chose to follow my advice and I
6 said it was my advice not to make public comments. I
7 don't have, you know, gag orders over the mayor. If
8 I tell her not to do it, I say it's my advice not to
9 do it. She can say thank you very much but I'm going
10 to do it anyway.

11 Q. Fair enough. And if the mayor had --
12 from your point of view if the mayor had made public
13 comments about the Prude matter at any point in time
14 prior to the conclusion of the AG's investigation,
15 that would be a violation of Executive Order 147?

16 A. If she released non-public information.

17 Q. Including the fact that there had been
18 an arrest of Mr. Prude?

19 A. That's non-public information.

20 Q. So as we sit here today, the comments
21 that the mayor made publicly from your point of view
22 about the Prude matter are in contravention to
23 Executive Order 147?

24 MS. COHEN: In the abstract, Andy, I
25 don't know that he knows every comment she made, so

1 that's a little unfair.

2 MR. CELLI: He can answer.

3 A. I think certain things I would have
4 told her not to release non-public information. I
5 guess I don't know exactly what she said, so some of
6 it may have been public information and after Elliot
7 released the tapes to the media, a whole bunch of
8 things were public information. So she could have
9 commented on any of those without violating Rule 147
10 because it was -- or Executive Order 147 because it
11 was all public information based on Elliot's release.
12 So I guess I would have to look at the specific
13 comment and the specific date that she said it.

14 Q. On page 6 and at line 20, I think I
15 know the answer to this but just to ask, you say "And
16 we have emails from the Assistant Attorney General
17 which confirms that she lived up to the deal that
18 they offered us."

19 What are you referring to there?

20 A. I was very proud of the fact that
21 Elliot and Don Thompson went into her office and
22 looked at the tapes that she told us not to release
23 to the public.

24 Q. Turning to page 8, a male voice, again
25 I presume it's a reporter, at line 10 says "When the

1 medical examiner sent the findings to the Attorney
2 General's Office which included the finding of
3 homicide, was that not a call for action by the City
4 or by the police department or by the City
5 investigator?" And then you respond by saying,
6 "Well, it was sent to the Major Crimes Unit and they
7 did, that was part of their investigation." And then
8 the male voice says, "But there was no evidence at
9 that point between your perspective to make?" It's
10 not clear what he's saying there. And you respond,
11 "No, not at that point" -- you said "No, not -- at
12 that point we had an agreement with the Deputy
13 Attorney General that we would not make any public
14 comments."

15 My question to you having read that
16 long passage is, when you say "at that point" in that
17 passage, are you referring to the point at which the
18 Major Crimes Unit was investigating the Prude matter?

19 A. I don't know.

20 Q. Okay. That's a perfectly legitimate
21 answer. Can you tell me what you were trying to
22 communicate here in this passage?

23 A. Well, I think that the medical
24 examiner's report was taken into account by the Major
25 Crimes Unit and the Major Crimes Unit found that

1 there was no wrongdoing. And then they sent their
2 findings to the DA and then was intercepted obviously
3 by the AG. So in terms of a call for action based on
4 the M.E.'s report, that was something that the Major
5 Crimes Unit took into consideration. I don't have
6 any knowledge of their process or their -- you know,
7 how they came to that ruling, but they came to the
8 finding that there was no wrongdoing on behalf of
9 those officers.

10 Q. Fair enough. I'm focusing on a
11 slightly different point which is when you say that
12 "at that point we had an agreement with the Deputy
13 Attorney General that we would not make any public
14 comments," at what point in time are you referring to
15 there?

16 A. I guess I was referring to June 4th and
17 beyond.

18 Q. Okay. But you were aware when you made
19 this statement on September 4th that the Major Crimes
20 Unit had completed its investigation --

21 A. Yes.

22 Q. -- by April 27th?

23 A. Yes.

24 Q. Okay.

25 MS. COHEN: So, Andy, he said he was

1 guessing, so...

2 MR. CELLI: All right.

3 Q. Were you aware by the time you gave
4 this statement that on April 27th that Major Crimes
5 Unit had completed its investigation?

6 A. Yes.

7 Q. All right.

8 MS. COHEN: I was referring to the
9 prior answer, not to that one.

10 MR. CELLI: Okay.

11 Q. Page 10. So on page 10 of the press
12 conference transcript you're talking with the press
13 about the fact that there were settlement
14 negotiations between your office and the Prude
15 family's counsel, right?

16 A. Yes.

17 Q. And at line 10 you say, beginning at
18 line 10, "Had they accepted it and the matter with
19 Mr. Prude's family had come to an end, we would -- I
20 would have advised the mayor that she was free to
21 make whatever public statements she wanted to at that
22 point. There would be no restraints. There wouldn't
23 be any Attorney General's restraint and there
24 wouldn't be a confidentiality agreement restraint, so
25 that at that point in time the mayor could have said

1 whatever she thought was appropriate under the
2 circumstances."

3 Can you explain that answer to that
4 question?

5 A. Well, now that I read it, I think it's
6 a misstatement because I don't know why I thought the
7 Attorney General's investigation would go away by
8 reason of our settlement. So, I believe -- and
9 again, we were thrown into this at the last second, I
10 think that that's a misstatement because if I think
11 about it, the Attorney General's investigation would
12 still be going on whether or not I settled the matter
13 and, you know, discipline against the police officers
14 would really be independent of any monetary agreement
15 we reached with the Prude family. So that's probably
16 just flat out wrong.

17 Q. I only have a few more items to cover
18 with you. You've been very patient.

19 I'm going to take you now to what we've
20 previously marked as Curtin 31.

21 (Curtin Exhibit 31, email chain, was
22 deemed marked for identification.)

23 Q. And I'm really going to focus -- this
24 is an email chain that has an attachment but I'm not
25 interested in the attachment. I'm interested in the

1 email chain.

2 So at the top we have a message from
3 Stephanie Prince to you on September 9th forwarding a
4 series of messages about Daniel Prude death. Do you
5 see that?

6 A. Yep.

7 Q. And if you go down, you see Captain
8 Umbrino in conversation by email on August 26th with
9 two other folks from the RPD about Daniel Prude
10 death. Do you see that?

11 A. Yes.

12 Q. First of all, how did you come to have
13 possession of this email chain? I mean, obviously
14 Ms. Prince sends it to you. I didn't mean it in that
15 way. Do you have an understanding as to why she sent
16 it to you? Is it something you requested or that she
17 sent on her own or some other basis?

18 A. Stephanie gets a bit overwhelmed by
19 things. She sends things to me to explain to her.
20 So I don't know if this is one of those. I don't
21 recall this but a lot of times I will just get random
22 emails from Stephanie about things she doesn't
23 understand.

24 Q. Okay. Well, do you recall reading this
25 August 26th email when you received it on the 9th or

1 thereabouts?

2 A. I don't. If I would have read it, I
3 would have thought that this is just another attempt
4 for RPD to, you know, delay things like we had
5 earlier. I don't know that I would have given this
6 much credence. I probably never even responded to it
7 directly to Stephanie. I'm not sure what his point
8 is now that I'm even reading it, I can't understand
9 what his point is.

10 Q. Well, let me ask this question: Did
11 you understand when you read Captain Umbrino's August
12 26th note, did you understand that he did not appear
13 to be aware that the body-worn camera footage had
14 been sent to the family of Daniel Prude?

15 A. It -- now that I read it I'm making --
16 I'm guessing that as well. But at the time I, to be
17 honest, may have not even read it. I get, like
18 everybody else, hundreds of emails a day. I don't
19 know that I ever read this.

20 Q. Okay. Do you have any -- can you offer
21 any explanation for why Stephanie Prince other than
22 what you have already said, why Stephanie Prince
23 would send you an email on September 9th or
24 thereabouts that was forwarding an internal
25 discussion from the RPD that suggests that they did

1 not know or were not aware that by August 26th the
2 body-worn camera footage had been released to the
3 Prude family?

4 A. I have no idea.

5 Q. You would agree that in general the PD
6 was pretty much opposed to the release of the
7 body-worn camera footage in the Prude case, right?

8 A. I agree that in general they are on
9 almost every case.

10 Q. And in particular --

11 A. Including this case.

12 Q. I'm sorry?

13 A. Including this case.

14 Q. Right.

15 A. This is not inconsistent with what they
16 normally do.

17 Q. I just want to do one more. So I'm
18 just showing you what we've previously marked as
19 Curtin Exhibit 33.

20 (Curtin Exhibit 33, email chain, was
21 deemed marked for identification.)

22 Q. It bears the Bates numbers Curtin 210
23 through 215 and I'm going to take it a little bit out
24 of order. So if you look at page Curtin 214 --

25 MS. COHEN: Andy, can you enlarge it?

1 Sorry.

2 MR. CELLI: Yeah. Sure.

3 Q. So 214 appears to be an email from
4 James Smith to you at 9:09 p.m. on August 4th, right?

5 A. Correct.

6 Q. And in that he is forwarding -- what do
7 you understand this email to be?

8 A. This was as a result of the debate we
9 had whether or not the chief was going to be
10 terminated or, you know, warned. And when James lost
11 that debate, he took it upon himself to write this
12 letter on behalf of the mayor giving him that stern
13 warning that he was initially opposed to.

14 Q. I thought I understood from your
15 previous testimony that the debate that you described
16 took place on or about September 3rd. Am I wrong
17 about that?

18 A. Oh, yeah, you are wrong about that.
19 That whole debate -- no, wait. No, I may be off.

20 Q. Just to refresh --

21 A. No, this was, this was before James
22 lost the debate. This was the night of August 4th
23 after we had that meeting in the mayor's office.
24 Right. This is all prior to that debate I was
25 describing earlier.

1 Q. Right. About a month prior, right?

2 A. Yeah. Yeah.

3 Q. Okay. And did you understand Mr. Smith
4 to be forwarding to you a draft letter that he had
5 prepared for Mayor Warren to send to Chief
6 Singletary?

7 A. James called me and said that he had
8 sent a very strongly worded letter to the mayor for
9 review and the mayor watered it down substantially
10 and this was the watered down version.

11 Q. So let's go back a minute. Was there a
12 discussion on August 4th about disciplining Chief
13 Singletary?

14 A. Not that I was involved in. Now, you
15 know, we ended -- whatever we did, we ended whatever
16 time we ended, but James and the mayor were still
17 hanging around together.

18 Q. Got it. And what else did Mr. Smith
19 say to you that would have been on the night of --
20 strike that.

21 When did you have this conversation
22 that you just testified about?

23 A. That evening. So late -- so whatever
24 time he sent this, you know, between nine and 10:00
25 at night he sent it to me and then he called me and

1 explained, you know, the back story.

2 Q. Right. On August 4th?

3 A. Correct.

4 Q. Okay. And this version that we have in
5 front of us on pages 214 and 215, is that the watered
6 down version as described by deputy mayor?

7 A. Well, I think so. That's why I made
8 the statement up above that I'm not sure which draft
9 I'm reviewing but according to James I was reviewing
10 the watered down version.

11 Q. Okay. So let's -- yeah, again, I don't
12 want to confuse you here. So the previous page is
13 where you say at 9:29 p.m. to Mr. Smith "I'm not sure
14 whose version is below. My comments are in red. I
15 think it's good"?

16 A. Correct. Correct.

17 Q. And those are in fact your comments
18 that are in the red ink, right?

19 A. Correct.

20 Q. Okay. And those comments are built
21 into the version that is at Curtin 214 and 215,
22 right?

23 A. Yes.

24 Q. That was sent over to you at 9:09?

25 A. Yes, that was the final draft that he

1 sent me.

2 Q. Right. And now looking at Curtin 210
3 and 211, and I'll represent to you that this is
4 something that came from the deputy mayor's
5 managerial review report, have you seen this version
6 of the letter that Mr. Smith drafted for Mayor Warren
7 to Chief Singletary?

8 A. Is it simply that the final version of
9 my red inserts or is it different?

10 Q. No, I'm suggesting that it's
11 substantially different and maybe prior in time. I
12 don't know.

13 A. I would have to check but this may be
14 James' first draft that the mayor watered down.

15 Q. I think that's what the managerial
16 report suggests. And my question, I guess, is --

17 A. So James probably wrote a very critical
18 letter that the mayor didn't like and she watered it
19 down, sent it back to James for review and then James
20 sent it to me for my review.

21 Q. Right. So my question is --

22 A. I don't believe I ever saw James' first
23 version.

24 Q. Okay. That was my question. Now, Mr.
25 Curtin, you were suspended from your employment by

1 the mayor, right?

2 A. Yes.

3 Q. What is your understanding of why you
4 were suspended?

5 A. My understanding is based on James
6 Smith's allegations in his report.

7 Q. And which allegations are those?

8 A. Well, I haven't been able to find any.
9 I've read it a couple times but it doesn't really
10 allege anything.

11 Q. Okay. So as you sit here today you're
12 saying that the mayor -- well, first of all, how did
13 you learn that you were being suspended?

14 A. Got a text from the mayor Sunday night
15 saying can I meet with you 9:00 tomorrow in the
16 morning and to Justin and I. And I said sure and I
17 went down to her office at 9:00 that Monday morning.

18 Q. And did you meet with the mayor
19 one-on-one or with Mr. Roj or something else?

20 A. The mayor, James, Justin and I.

21 Q. And what happened in that meeting?

22 A. The mayor said based on this report I'm
23 unsatisfied with your performance and I don't know
24 what else to do but you two are suspended for 30
25 days. I will give you the option to resign but your

1 suspension starts immediately.

2 Q. And --

3 A. She said your suspension starts at the
4 end of the day because I had a lot of work to do.

5 Q. Got it. And was there any other
6 conversation or discussion on the topic?

7 A. She said, "Based on the report I
8 received from James," and I said, "Will we have an
9 opportunity to review the report?" And she said,
10 "Yes, and then you can decide whether you're going to
11 resign or not." I said, "Well, I'd like to review
12 the report but I can tell you whatever you think is
13 best for the circumstances and I'm not going to, you
14 know, make a stand and resign. I'll just take the
15 suspension if you think that's the right thing for
16 you to do."

17 Q. And what did she say to that?

18 A. She just said thank you.

19 Q. Did -- were there any other -- was
20 there any other conversation in this meeting among
21 the four of you?

22 A. No.

23 Q. Did Deputy Mayor Smith make any
24 remarks?

25 A. At the meeting, no.

1 Q. How about after the meeting?

2 A. He came up to my office and asked me if
3 I would read the report and give him any comments I
4 had on it.

5 Q. And did you do that?

6 A. Yes, I read the report and I went down
7 to his office and said "It's absolutely replete with
8 factual errors and allegations that no way on earth
9 you can prove." And he said, "Like what problems?"
10 And I showed him a couple problems and he said, "I
11 don't really have time to revise these. I've got to
12 get this back to the mayor."

13 Q. So at the time you had that
14 conversation with him, the managerial report had not
15 been made public; is that correct?

16 A. Correct. Correct.

17 Q. What were the problems that you
18 identified in the draft report that you saw?

19 A. Well, the only allegation aimed at me
20 was the fact that I should have personally reviewed
21 the body-worn camera footage four to five months
22 earlier than I did.

23 Q. And you felt that was incorrect?

24 A. Based on the dates, it was an
25 impossibility. It was a body-worn camera footage

1 before the body-worn camera was turned on. It was
2 some date that was before March 23rd.

3 Q. I see.

4 A. There was a physical impossibility. It
5 didn't exist.

6 Q. Got it. And you pointed that out to
7 him and --

8 A. Yeah.

9 Q. And did he change that for the final
10 report?

11 A. I don't believe so.

12 Q. What other errors or problems did you
13 identify in the report?

14 A. There were probably 10 or 20
15 misconceptions. I don't know how much inside
16 baseball but he didn't write the report, somebody in
17 the Communications Department wrote the report. And
18 the person in the Communications Department that
19 wrote the report didn't really have an understanding
20 of the FOIL process and didn't have an understanding
21 of the Law Department. So it was his premise in
22 writing the report that the Law Department received
23 the initial FOIL request back in April and the Law
24 Department had ignored the FOIL report for 60 days,
25 when factually speaking his own Communication

1 department had received the FOIL report and his
2 department ignored the FOIL request for 60 days.

3 Q. And you pointed that out to Deputy
4 Mayor Smith?

5 A. Yes. And he brought in the guy who
6 wrote the report and I challenged the guy who wrote
7 the report and he said "I'm really sorry. I did my
8 best."

9 Q. And who was that guy?

10 A. Patrick Flanagan.

11 Q. Any other errors or omissions or
12 mistakes?

13 A. I would have to reread it. There were
14 probably 20. I had a marked up version I have
15 sitting around somewhere but then at some point I
16 just thought it would be best just to leave it alone
17 because it really didn't matter what the report said
18 in my opinion.

19 Q. Why not?

20 A. I think the whole show was strategic.
21 I think it was to take focus off the mayor. I think
22 that was James' objective and this was as far as he
23 could offer, this was a way to take the focus off the
24 mayor.

25 Q. And so you served your suspension for

1 30 days and then you returned to your post, right?

2 A. Yes.

3 Q. And have you had any conversations with
4 the mayor since returning to your post about the
5 reasons for which you were suspended?

6 A. No.

7 Q. Have you talked to her about -- strike
8 that.

9 Did you feel that your suspension was
10 unjust?

11 A. I thought it was absolutely unfounded.
12 There wasn't even a credible allegation.

13 Q. And that's not something that you
14 raised with your boss, the mayor?

15 A. No.

16 Q. Why not?

17 A. She has other problems.

18 Q. You said that you have a marked up
19 version of the managerial review that reflects what
20 you thought were the concerns that you had with it.
21 Is that still in your possession?

22 A. I don't know. It's been quite a while.
23 I think it was marked up that day. So however long,
24 that's probably 60 days, it may be there. I may have
25 thrown it out. I really -- I mean, I could reread it

1 if you really wanted to and I can point out all the
2 factual errors all over again.

3 Q. If you have the document, I think it
4 would have been properly called for in the subpoena,
5 so I would just ask that it be produced that way.

6 A. That document, my markup was in your
7 subpoena?

8 Q. If it --

9 MS. COHEN: So, Mr. Curtin, if you
10 could just look for the markup and let me know if you
11 have it.

12 MR. CELLI: Yes, Carrie can deal with
13 that with us.

14 THE WITNESS: Okay.

15 Q. So you were going to close out a bunch
16 of items on your computer to see the date of the
17 undated documents. Maybe you can do that now.

18 A. If you'll give me a minute. I've got
19 to go off this screen to go on to the G drive but I
20 can still hear you.

21 Q. Right. Why don't we take literally
22 five minutes. I want to call my colleagues and see
23 if there is anything I missed and you can use the
24 time to look for that document. Okay?

25 A. Okay. Actually you pop up on a little

1 screen. I don't know the system that well but you
2 popped up on home Web page. If we take a five-minute
3 break, I'll see if I can find it.

4 MS. COHEN: Right. Let's do that.

5 (Recess taken.)

6 BY MR. CELLI:

7 Q. Mr. Curtin, I have no further
8 questions. Thank you for your time today.

9 A. If you can hear me.

10 Q. One more answer. I almost left without
11 it.

12 A. I cannot find that. If you took it off
13 this G drive, I don't know why I can't find it but I
14 cannot find it. I'll keep looking and I'll have my
15 secretary, she'll be able to find it. I can just
16 send you a date just so you know.

17 Q. Yeah. Just let Carrie know and she'll
18 let us know but for the moment we will just say on
19 the record that you're going to try to determine the
20 date on which you created and if you edited the
21 document that we've marked --

22 A. I got it. September 4th.

23 Q. Oh, okay. So that would have been the
24 date of your press briefing. Do you think you did it
25 after you delivered the press conference or before?

1 A. Certainly if I did it all before
2 because the press conference is at three and then we
3 had things after, so I wouldn't have -- if I did it,
4 it would have been before. Maybe I did it to collect
5 my thoughts for the press conference but I didn't
6 know about the press conference. I think my
7 recollection is I did it just to have -- because I
8 had offered the night before to make a statement. So
9 I think I drafted that in contemplation of actually
10 making a more formal statement rather than having a
11 press conference.

12 Q. Got it. And then the next day to your
13 surprise you were -- on five minutes' notice you
14 were --

15 A. Right.

16 Q. -- running a news conference.

17 Did you use that document as talking
18 points at all when you got up to speak to the press?

19 A. No. I mean, perhaps I should have but
20 I didn't.

21 Q. Did you have any other written remarks
22 or notes in front of you when you spoke to the press
23 that day?

24 A. I did not.

25 Q. Okay.

1 A. Again, I should have.

2 Q. Right. Okay. All right. Well, thanks
3 for your time and patience.

4 MR. CELLI: Thank you, Carrie and
5 Celeste.

6 (Witness excused.)

7 (Time noted: 5:08 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

:ss.

I, CELESTE A. GALBO, a Registered Professional Reporter, Register Merit Reporter and Notary Public of the State of New York and State of New Jersey, do hereby certify:

THAT TIMOTHY CURTIN, the witness whose deposition is hereinbefore set forth, was remotely duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of January 2021.

CELESTE A. GALBO, RPR, RMR

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DEPOSITION ERRATA SHEET

Case Caption: In re: Independent Investigation into
the City of Rochester's Response

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have
read the entire transcript of my Deposition taken in
the captioned matter or the same has been read to me,
and the same is true and accurate, save and except
for changes and/or corrections, if any, as indicated
by me on the DEPOSITION ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath.

Timothy Curtin

Subscribed and sworn to on the ____ day of _____,
20__ before me.

Notary Public,
In and for the State of New York

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