

Gregory O`Brien
Continued deposition

LEONARD MAZZOLA v. ANTHONY TOGLIATTI, et al.

October 20, 2020



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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 LEONARD MAZZOLA,)
5 Plaintiff,)
6 vs.) Case No. 19-CV-02519
7 ANTHONY TOGLIATTI, ET AL.,)
8 Defendants.)
9 CONTINUED VIDEOTAPE DEPOSITION OF GREGORY O'BRIEN
10 TUESDAY, OCTOBER 20, 2020
11

12 The continued deposition of GREGORY O'BRIEN,
13 called by the Plaintiff for examination pursuant
14 to the Federal Rules of Civil Procedure, taken
15 before me, the undersigned, Aimee N. Szinte,
16 Notary Public in and for the State of Ohio, taken
17 via Zoom, commencing at 1:12 p.m., the day and date
18 above set forth.

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1 APPEARANCES:
2 On behalf of the Plaintiff:
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4 Jessica Savoie, Esq.
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13 Gregory O'Brien and Chief Michael Kilbane:
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ALSO PRESENT:
Leonard Mazzola, Plaintiff
Anthony Togliatti, Defendant
Alex Cook, Videographer

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1 GREGORY O'BRIEN DEPOSITION INDEX
2
3 EXAMINATION BY: PAGE NO.
4 MS. CHANDRA 116
5 MR. McLANDRICH 180
6 MS. CHANDRA 185

7 EXHIBITS PREVIOUSLY MARKED AND INTRODUCED

8 Plaintiff's Exhibit

9 6
10 22
11 23
12 24
13 25
14 26
15 56

16 Defendant's Exhibit

17 A

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1 THE VIDEOGRAPHER: We're on the
2 record. The time is 1:12.
3 GREGORY O'BRIEN, of lawful age, called
4 by the Plaintiff for examination pursuant to
5 the Federal Rules of Civil Procedure, having
6 been first duly sworn, as hereinafter
7 certified, was examined and testified as
8 follows:

9 MR. STRANG: This is
10 Mr. O'Brien's lawyer.

11 Before we get started, I'm going to enter
12 an objection for the record.

13 We object to the taking of this
14 deposition. Magistrate Greenberg entered an
15 order on October 15, 2020 finding that
16 privilege had been waived to the underlying
17 facts of all five subject areas based on the
18 testimony of Defendant O'Brien's clients.

19 We filed objections to the Magistrate's
20 order pursuant to Federal Rule 72-A on
21 October 16, 2020.

22 The October 14 order explicitly limited
23 the scope of the waiver to the underlying facts
24 themselves, but we do not believe it compels
25 Mr. O'Brien to talk about specific

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1 communications with his clients.
2 As to the underlying facts, reference
3 Judge Greenberg's order which limits, we
4 believe, the scope of this deposition to the
5 underlying facts regarding five specific areas,
6 specifically; A, whether the City of
7 Independence considered demoting Plaintiff;
8 B, the reasons why the City of Independence
9 intended to pursue discipline against
10 Plaintiff; C, whether Defendant O'Brien
11 prepared a public statement dated October 28,
12 2019 to then Mayor Defendant Togliatti; D, the
13 factual basis for the disciplinary charges
14 listed in Defendant O'Brien's March 28, 2019
15 e-mail to Fraternal Order of Police attorney
16 Robert Phillips; and E, all City discussions
17 regarding whether and how to pursue discipline
18 against Plaintiff.
19 We would like to constructively mark a
20 copy of the October 14 order as Defendant's
21 Exhibit A for the record. Maia is going to
22 share that via chat.
23 - - - - -
24 (Defendant's Exhibit A was marked.)
25 - - - - -
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1 MR. STRANG: I object to the
2 attempt to seek testimony beyond the matters
3 that are specifically set forth in the
4 October 14 order or beyond the scope of the
5 five specific subject matters outlined therein.
6 We note though that the Court orally
7 ordered the continued deposition of Mr. O'Brien
8 during the October 15, 2020 final pretrial
9 conference.
10 We filed an emergency motion to stay all
11 proceedings, including this deposition, on
12 October 16, 2020.
13 We further sought clarification from the
14 Court as to the scope of today's deposition.
15 We have not received a ruling on that, nor have
16 we received a written ruling relating to our
17 objections to the Magistrate's Report and
18 Recommendations.
19 We want clarified that Mr. O'Brien's
20 testimony today is being provided pursuant to
21 Ohio Rule of Professional Conduct 1.6-D(6) as
22 in pursuant to a Court order, but we do not
23 intend it to be construed as a waiver or
24 further waiver of the attorney/client
25 privilege.
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1 I enter the foregoing as a continuing
2 objection to all questions asked in this
3 deposition. And I would prefer, Mr. Chandra,
4 if we could agree before the deposition that
5 instead of me responding to every question of
6 yours with an attorney/client objection, that
7 which I recognize could be both annoying and
8 difficult to do, especially in Zoom format,
9 that we agree beforehand that I have a standing
10 attorney/client objection to all of the
11 questions posed and that I may also object from
12 time to time additionally with attorney/client
13 when I feel it's going beyond the scope of
14 Magistrate Greenberg's order.
15 Is that acceptable to you?
16 MR. CHANDRA: So we are fine
17 with preserving all objections based on
18 attorney/client privilege on a standing,
19 continuing objection basis; all of them will be
20 considered preserved for purposes of this
21 deposition and there's no need to state that
22 after each question.
23 MR. STRANG: Yes. Okay. So for
24 every question constructively we can operate as
25 I have asserted an attorney/client objection,
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1 which it is my belief that all of the questions
2 today will likely encroach somehow on
3 attorney/client privilege?
4 MR. CHANDRA: Correct.
5 MR. STRANG: Thank you.
6 MR. CHANDRA: You're welcome.
7 May we begin?
8 MR. STRANG: Please.
9 MR. CHANDRA: Okay.
10 EXAMINATION OF GREGORY O'BRIEN
11 BY-MR.CHANDRA:
12 Q Director O'Brien, thank you for appearing again
13 pursuant to the Court order.
14 What I would like to do is I'm going to,
15 by and large, structure my questioning around
16 the various topics that were authorized in
17 Magistrate Judge Greenberg's order and
18 effectively reaffirm my objection we'll enter
19 in our final pretrial.
20 I will do my best, as I'm introducing a
21 new topic, to just sort of signal to you that
22 that's the topic we're talking about. If you
23 have any questions about that as we go, if you
24 get confused at all, please let me know.
25 A Okay.
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1 Q But I'll be asking questions, at least
2 initially, organized by topic and then, you
3 know, I may have follow-up questions that
4 relate to one or more topics, because some of
5 these topics are inner-related.
6 All right. So let's begin, Director
7 O'Brien, with topic A from the Court's order,
8 the topic of whether the City of Independence
9 considered demoting Plaintiff. And I'm
10 referring you now to the time period between
11 March 1 to April 1, 2019 and a question that
12 was asked during your previous deposition that
13 drew an objection and an instruction not to
14 answer, and I'm simply going to ask that
15 question again.
16 Factually was the City considering
17 demoting Lieutenant Mazzola during that time;
18 that is, the time period between March 1 to
19 April 1, 2019?
20 A It's my understanding that the City was having
21 discussions about disciplining Lieutenant
22 Mazzola which included, among other things,
23 demotion or as a possibility demotion.
24 Q Okay. Now I'm going to show you a document
25 that is going to be marked as Plaintiff's
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1 Exhibit 22. And this is a two-page document
2 that is Bates stamped Kilbane.M_temp_265.
3 A Can you expand it a little bit? I'm looking on
4 my screen, so --
5 Q Sure.
6 MR. CHANDRA: Why don't we scroll
7 down to the bottom so that -- I mean scroll it
8 to the top so he can see what it is.
9 Q Do you need us to zoom in on the top portion a
10 little bit for you?
11 A I can see it. I have terrible eyesight, so I
12 apologize.
13 Q We'll make it a little bit bigger for you at
14 the top.
15 The question is simply is this a true and
16 correct copy of an e-mail you sent on March 25,
17 2019 at 2:41 p.m.?
18 I'll bring it back up again. Just a
19 moment.
20 A I lost my screen.
21 Q There it is.
22 A Yes.
23 MR. CHANDRA: Jessica, one way to
24 expand it is command plus. You should be able
25 to expand it if you bring it back up.
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1 MS. SAVOIE: Wait just one
2 moment. Would it be easier if I put it in the
3 chat window --
4 MR. CHANDRA: I don't think so.
5 MS. SAVOIE: -- so you can
6 enlarge it on the screen?
7 MR. CHANDRA: Yeah. Why don't
8 you try that. That way we can try it either
9 way.
10 MS. SAVOIE: Okay.
11 A Okay. The document is up.
12 Q The question is --
13 A How do you expand it?
14 Q Are you on a Mac?
15 A I got it.
16 Q There you go.
17 A Okay. Very good. Thank you.
18 Q Okay. So the question was is this a true
19 and correct copy of the e-mail you sent on
20 March 25, 2019 at 2:41 p.m.?
21 A Yes.
22 Q And you sent this e-mail to Police Chief
23 Michael Kilbane, copying Letitia Linker and
24 Anthony Togliatti, correct?
25 A Yes.
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1 Q And Letitia Linker is who?
2 A The Human Resource Director of the City of
3 Independence.
4 Q Anthony Togliatti is the Mayor, correct, or was
5 the Mayor at this time, correct?
6 A Was the Mayor, correct.
7 Q Now, the subject line of the e-mail is,
8 "Telephone conference with Robert Phillips."
9 Correct?
10 A Correct.
11 Q And are you aware that this e-mail was produced
12 to Plaintiff's counsel yesterday, October 19,
13 2020, at about 4:00 p.m., one week before the
14 scheduled trial in this matter?
15 A Am I aware that you received a copy of this
16 yesterday? It's my understanding, yes.
17 Q Okay. And that was by order of Magistrate
18 Judge Greenberg and Judge Gwin, correct?
19 A Yes.
20 Q Now, and previously until that order, you were
21 aware that Defendants withheld this document
22 from Mr. Mazzola and his counsel, correct?
23 MR. STRANG: Objection.
24 A Previously, and as a lawyer, I would expect
25 them to hold this back. This is communication
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1 to my client, direct communication from the
2 Law Director to City employees. Yes, I was
3 aware that they marked it as attorney/client
4 privilege.
5 Q Okay. But my question was you were aware that
6 until that order, Defendants withheld this
7 document from Mr. Mazzola and his counsel? The
8 answer to that is yes, correct?
9 A The answer to that is no. I was aware that
10 certain documents were removed from discovery
11 based upon the privilege of attorney/client
12 privilege. I wouldn't say I went over each
13 document to determine which documents were
14 asserted and which document -- I left that up
15 to the attorneys who are handling this case.
16 Q So, to be clear, so the record is clear, were
17 you aware that until yesterday, Defendants had
18 not provided this document to Mr. Mazzola and
19 his counsel?
20 MR. STRANG: Objection.
21 A To move this along, Mr. Subodh, presuming that
22 you did not receive a copy of this based upon
23 attorney/client privilege and based upon my
24 understanding, Judge Gwin and Judge Greenberg's
25 order that they ordered counsel for the City to
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1 provide this information over the objection of
2 attorney/client privilege, yes.
3 Q And did you look at Judge Gwin's order from
4 yesterday ordering that this particular
5 document be produced and was specifically
6 identified?
7 A I looked at the order, but I didn't focus on
8 which documents were identified in the order.
9 Q So since yesterday have you reviewed this
10 document?
11 A Yes, I have.
12 Q And when was that?
13 A About an hour ago.
14 Q And before that when was the last time you saw
15 this document?
16 A Gosh. I mean I don't recall exactly, but
17 perhaps the time I wrote it, but maybe through
18 this litigation. I don't recall specifically.
19 Q Okay. So I'm going to ask you a few follow-up
20 questions on that.
21 A Okay.
22 Q Did you review this document to prepare for
23 your previous deposition?
24 A I'll say I was provided with a copy of every
25 e-mail that the Court ruled over the objection
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1 of attorney/client privilege and I reviewed all
2 of those documents and this was one of those
3 documents I reviewed. I believe there was --
4 Q Sorry. Finish your answer.
5 A I believe there were multiple, many, more than
6 30, I believe.
7 Q Okay. So but my question was about this
8 particular e-mail and whether you reviewed it
9 before your last deposition in this case?
10 A No. I do not believe I reviewed this e-mail
11 before my last deposition in this case.
12 Q Well, you were aware before -- and I'm just
13 talking in the days and weeks approaching your
14 deposition, you were aware that you had written
15 this e-mail, correct?
16 A This particular e-mail?
17 Q Yes.
18 A I don't have a distinct recollection of this
19 particular e-mail versus other e-mails. I was
20 aware I wrote e-mails in this case that were
21 marked as attorney/client privilege.
22 Q And you were aware that you had written e-mails
23 that had memorialized at least one discussion
24 with Robert Phillips, the union's lawyer,
25 correct?
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1 A If you're asking me what I reviewed prior to
2 my last deposition, I cannot recall if I
3 reviewed any particular correspondence that was
4 marked as attorney/client privilege. I could
5 just tell you my mindset was I wouldn't want
6 to, at the time, confuse what's clearly
7 attorney/client privilege and what's not.
8 So if you're asking me what I recall to
9 the best of my recollection, I don't think I
10 would have reviewed e-mails that were marked
11 and not a part of this case and so that I
12 wouldn't be confused on what exactly precisely
13 I could testify to as the Law Director of the
14 City of Independence.
15 Q I'm going to go back and ask the court reporter
16 to read the particular question that I asked
17 you and ask you to please answer that question.
18 (Record read.)
19 Q And, to be clear, I'm referring to the time
20 period in the days and few weeks approaching
21 your deposition, previous deposition?
22 A If your question is was I aware that I had
23 communications with Bob Phillips through
24 e-mail, yes.
25 Q Well, no, that wasn't the question.
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1 The question is in the days and weeks
2 approaching your last deposition, you were
3 aware that you had memorialized in at least
4 one e-mail the contents of your discussion with
5 Robert Phillips reflected in this e-mail,
6 correct?

7 A You mean in my last deposition?

8 Q I mean that as your deposition was approaching,
9 you were aware that you had written an e-mail
10 memorializing the content of your discussion
11 with Robert Phillips, correct?

12 A Yeah. The answer to your question is no. I
13 don't have a distinct memory of reviewing this
14 or any other e-mail regarding memorialization,
15 to use your word, with Robert Phillips. I
16 don't have a distinct memory. I did review it
17 prior to this deposition.

18 Q Right. And my question wasn't about reviewing.
19 My question was about your awareness of its
20 existence.

21 And you were aware of its existence in
22 the days approaching your last deposition,
23 correct?

24 MR. STRANG: Object.

25 A Was I aware of it? Was I aware of this
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1 communication? I was aware generally of
2 communications.

3 You're asking me did I review, was I
4 aware at the last deposition regarding this
5 specific e-mail. And I'm telling you I was
6 aware of communications I had with
7 Mr. Phillips. I do not recall reviewing
8 documents that were not produced in this case
9 because of attorney/client privilege because,
10 in my thought process going into that last
11 deposition, you wanted to know to me, as a
12 Defendant in the case, my involvement in the
13 case but for attorney/client privilege.

14 I didn't believe that you could delve
15 into attorney/client privilege, so I'm just
16 telling you what I recall as I'm sitting here
17 today. I don't recall going over any documents
18 that were not produced in this case because --

19 Q Mr. O'Brien, I'm literally not asking you about
20 review. I am not asking you about review. I
21 am asking you about awareness of the existence
22 of a document memorializing the discussion, not
23 your review of it.

24 A Okay.

25 Q I mean I'm asking you for a yes or no.

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1 A Sure. I guess, yes.

2 Q Okay. Now, would you agree that this e-mail --
3 well, let me withdraw that.

4 I'm going to ask you one last time, at
5 any time between the time you wrote this
6 e-mail, March 25, 2019, and the time of your
7 last deposition, at any time in between did you
8 review this e-mail?

9 MR. STRANG: Objection. Beyond
10 the scope of the deposition.

11 A I don't recall if I did. No. I don't believe
12 I did.

13 Q All right. When you gave -- and I believe
14 you've already answered this, but let me ask it
15 this way.

16 When you gave your last deposition under
17 oath, at that time you assumed that we would
18 never see this document, correct?

19 A No. I didn't assume that you wouldn't see this
20 document.

21 Q So did you assume we would see this document?

22 A I didn't make any assumption. I wasn't
23 thinking about this document. I was thinking
24 about answering your questions in the
25 deposition.

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1 Q Now, does this e-mail dated March 25, 2019 and
2 authored by you accurately describe the content
3 of your conversation with Bob Phillips on that
4 day?

5 A This e-mail accurately generally describes
6 my conversation with Bob Phillips on March 25,
7 2019, yes.

8 Q And would you agree that the facts that you
9 say in this e-mail that you communicated to
10 Bob Phillips as reflected in the e-mail are
11 true?

12 A Well, no. I wouldn't believe I communicated
13 them. This is -- this involves Bob
14 communicating stuff to me. This is me
15 providing a quick, brief, general outline of my
16 conversation back and forth with Bob Phillips
17 on the 25th.

18 Q And that's not my question. My question is
19 only about those facts that in the e-mail you
20 relayed to your colleagues that you
21 communicated to Bob Phillips. I'm only talking
22 about the things that you say to your
23 colleagues that you said to him.

24 And my question is, are the facts that
25 you say in this e-mail that you communicated to

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1 Bob Phillips true?
2 A And I'm saying to you that the amount of
3 questions that you've asked me on this one
4 document is probably twice as long as it took
5 me to write this e-mail.
6 And number two is, I'm saying generally,
7 the general content of this e-mail is true.
8 The general content, whether it was
9 communicated by Bob to me and I inartfully put
10 forth my prose, but this is a general
11 discussion or general description of my
12 conversation with Bob Phillips on that day,
13 yes.
14 Q All right. So let's then go to specifics.
15 A Okay.
16 Q Look at paragraph 2 of the e-mail dated
17 March 25, 2019. Did you, in fact, "Inform Bob
18 the City would not be seeking Mr. Mazzola's
19 termination and provided that we would demote
20 Lenny to patrol officer."
21 A I don't know if I -- I'm trying to get down to
22 paragraph 2. Mine is locked. You're in
23 paragraph 1? Okay.
24 Q It's actually the second paragraph after,
25 "Chief."

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1 A Yes. In our discussion Bob brought up that he
2 sees no reason how the City would be able to
3 terminate Mr. Mazzola. And I remember telling
4 Bob you're assuming that there would be
5 termination or a request for termination of
6 Mr. Mazzola by the City.
7 And you have to understand, Mr. Chandra,
8 my involvement with this case involved a -- I
9 was not involved in the investigation. I did
10 not know the underlying facts. I was summoned
11 out to the Mayor's office the Friday before,
12 because I believe this was a Monday, because I
13 want to make sure my facts are right when I
14 looked at this today, and for the first time I
15 was informed of what the investigation of
16 Mr. Mazzola entailed.
17 And I was asked to -- or I offered, I
18 don't know who asked or offered, but I agreed
19 to approach Bob Phillips and see what he had to
20 say about this whole matter. So that is the
21 purpose of my communication with Bob Phillips
22 and this is a general description of that
23 communication.
24 Q So I'm going to ask the court reporter to read
25 you the particular yes/no question I asked and

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1 ask you to answer it.
2 (Record read.)
3 Q It's a yes or no. Did you, in fact, do that as
4 memorialized in this e-mail?
5 A Not specifically as represented by that
6 sentence, no.
7 We talked about demotion, amongst other
8 things, because Bob was doing what Bob does
9 about wanting to discuss the case, and I felt
10 very unprepared because I didn't know anything
11 about the investigation other than what I had
12 learned the Friday before.
13 Q So when you say, "Not specifically", I would
14 really like you to please explain to me what
15 about that single sentence that was read to you
16 in this e-mail is false?
17 A There's nothing word-wise that's false. You're
18 characterizing it as one thing and I'm telling
19 you that in the rush to send out an e-mail, it
20 doesn't take and encompass the whole
21 conversation that Bob and I had regarding that
22 issue. That's all.
23 Q Is there anything you can identify in that
24 sentence that is false?
25 MR. STRANG: Objection.

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1 A Only that I wish I used my words appropriately.
2 Said, "We would demote Lenny to patrol
3 officer." I wish I would have said, "Bob, in
4 response to your what if the City looked for
5 termination", I wish I would have put in there
6 exactly what Bob and I had spoken about; that
7 there's not been any determination thus far.
8 But given that set of facts that you want to
9 discuss, you know, why would the City go for
10 termination. Why wouldn't they seek to demote
11 Mr. Mazzola, and I believe at the time I said
12 to sergeant or patrol officer.
13 So if you're asking me, that's what we
14 discussed and I didn't put all of that in that
15 sentence.
16 Q Okay. Is there anything in that sentence that
17 is false?
18 MR. STRANG: Objection.
19 A No.
20 Q All right. Now, I would also like you to look
21 at the sentence in paragraph 2, and it is the
22 sentence at the very end. Did you discuss with
23 Bob Phillips, "An arbitration that included,
24 in part, dishonesty disqualifiers."
25 I'm sorry. I'm in the wrong place. I'm

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1 still in paragraph 2, the last sentence. Did
2 you and Bob Phillips then, "Discuss the viable
3 alternative of Lenny retiring at his current
4 grade without Bill Evans' report being
5 created"?

6 A Yes, we discussed that.

7 Q Okay. And then paragraph 3, did you discuss
8 with Bob Phillips, "An arbitration that
9 included, in part, dishonesty disqualifiers"?

10 A Yes. Bob mentioned dishonesty disqualifiers
11 and we discussed how I felt that whatever
12 discipline the City eventually when it decided
13 what those charges would be, it would
14 ultimately end up in an arbitration. So we
15 talked about what may be involved in
16 arbitration, yes.

17 Q Also in paragraph 3 did you take the position
18 to Bob Phillips that, "Brady disqualifiers
19 included arbitration over dishonesty"?

20 A Yes. As you can see with it being in quotes,
21 I'm trying to -- my intention, I guess, was at
22 the time to try and say that this was something
23 Bob raised, Brady disqualifiers, so I'm trying
24 to communicate that to my client, yes.

25 Q So it's your sworn testimony today that you
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1 never brought up the concept of a Brady
2 disqualifier for an officer and that
3 Bob Phillips brought it up himself without
4 you even mentioning it?

5 A No. What I'm trying to communicate to you is
6 why I have that in parentheses. Of course I
7 don't recall given the amount of time, but
8 generally it's my practice when someone says
9 something to me that's not my statement, I
10 would usually put it in quotes. But I'm not
11 representing to you who initiated Brady or
12 whatever that is, because I learned about it
13 for the first time in this case, candidly, what
14 that entails. I don't recall the exact
15 conversation on the back and forth that Bob and
16 I had in the hypothetical what-if's.

17 Q So to be clear about the actual question in
18 front of you, I'm actually asking you about the
19 next sentence, not the sentence which is
20 sentence two in paragraph 3 that has the words
21 Brady disqualifier in quotes.

22 I'm asking about the next sentence in
23 which you represent to your colleagues in this
24 memo dated March 25, 2019, this e-mail, you
25 say, "I reminded Bob that would include an
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1 arbitration in my opinion."

2 Now, first of all, the first question,
3 the "that" that you're referring to is the
4 concept of a Brady disqualifier, correct?

5 A Yeah. I assume so.

6 Q And then it's true then that you took the
7 position in the conversation with Bob Phillips
8 that Brady disqualifiers included arbitration
9 over dishonesty, correct?

10 A I mean I believe we're saying the same thing;
11 that I believe that if the City did come up and
12 formulate charges, that it would involve
13 dishonesty and that would be included in the
14 arbitration that would obviously follow because
15 of the Collective Bargaining Agreement, yes.

16 Our focus really was on the Collective
17 Bargaining Agreement and what rights and how we
18 saw that playing out, given because I started
19 my career with Bob.

20 Q All right. So also in paragraph 3, did you
21 tell Bob Phillips that, "If after an
22 arbitration it was found that Lenny could not
23 serve as a witness, then at that point the City
24 may take the position he cannot serve an
25 essential function of his position which could
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1 affect Lenny's employment."

2 A Yeah. Again --

3 Q It's a yes or no question, Director.

4 MR. STRANG: Objection.

5 A Well, first of all, please quit calling me
6 Director. You can call me Mr. O'Brien. I'll
7 call you Mr. Chandra.

8 If you're asking me what that sentence
9 was, then of course that sentence speaks for
10 itself and that's what it says. If you want to
11 know the context and the background behind it,
12 I can tell you that as well. But if you want
13 me to say that's what that sentence says,
14 that's what that sentence says, but that's not
15 what was meant by that sentence.

16 Q Mr. O'Brien, I'm going to ask the court
17 reporter to read you back the question and ask
18 you to answer that question and no other.
19 Okay? Go ahead.

20 (Record read.)

21 A Yes. If after the arbitration the City may,
22 but I didn't know what the City was
23 contemplating or not.

24 I was talking to Bob as far as a
25 hypothetical, and that's what we went round and
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1 round about. And so that sentence is accurate
2 to the point of the what-if's that Bob and I
3 were going back on, yes.
4 Q And you expected -- I believe you testified
5 this in your last deposition. You expected
6 Mr. Phillips to convey the substance of your
7 conversation to Mr. Mazzola, correct?
8 A I don't know what I said in my other
9 deposition, but I don't know what Bob was going
10 to communicate, but I believe I said -- I
11 assume Bob was going to do it, but I didn't
12 know what Bob was communicating with
13 Mr. Mazzola or not. At that point I thought
14 Bob was representing Mr. Mazzola, so.
15 Q But you assumed that Mr. Phillips was going to
16 convey the substance of your conversation to
17 Mr. Mazzola, correct?
18 A No. I'm telling you, Mr. Chandra, because you
19 want to state this, Mr. Phillips knew all about
20 this investigation, okay. I was at a
21 disadvantage because but for one short meeting,
22 I was not involved in this investigation.
23 So most of this back and forth that I'm
24 communicating about, even though it's inartful,
25 okay, and we spent more time on it than it took
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1 for me to write it, is Bob telling me the
2 things that he knew, which were far greater
3 than I knew, okay.
4 And I don't recall who said what and what
5 was said. I'm trying to communicate in a very
6 short period of time my conversation to my
7 client in this regard.
8 Q Is the answer to my question no, that you did
9 not assume that Mr. Phillips would convey this
10 to his client or to Leonard Mazzola?
11 A I assumed Bob would have a conversation with
12 Mr. Mazzola about our conversation, yes.
13 Q Okay. Now, next question. If you could take a
14 look at paragraph 5. Did Bob Phillips ask you
15 to "Provide him bullet points of the possible
16 charges so that he can sit down with Lenny"?
17 A That's what he said, yes.
18 Q All right.
19 A Again, bullet points in quotes because that's
20 the term that Bob used.
21 Q Okay. Now, again, and you can take a minute to
22 review the e-mail again if you need to, but are
23 the facts that you wrote in this e-mail true to
24 the best of your knowledge as you sit here
25 testifying under oath today?
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1 MR. STRANG: Objection. Asked
2 and answered.
3 A I don't know what you mean by facts, but the
4 topics and the subject matter of our discussion
5 generally, yes, it's true, of course. I
6 wouldn't communicate subject matter topics to
7 my client that's not true.
8 Q Okay. So it is true then that the City
9 intended to demote Leonard Mazzola from
10 lieutenant to patrol officer, as you told
11 Bob Phillips, correct?
12 A No. That is not true.
13 Like I said, the subject matter -- I
14 knew the City was contemplating disciplining
15 Mr. Mazzola. I was not part of any discussion
16 of what that discipline would look like or what
17 was the result. I wasn't even aware of the
18 underlying facts leading to any future actual
19 charges, if those actually were decided upon or
20 finalized or whatever your word.
21 But no. That is a bad, unintended word
22 that you're focusing on here. No.
23 Q Mr. O'Brien, I am doing my level best to ask
24 you yes or no questions. And I would
25 appreciate it if you could just sort of focus
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1 on the particular question I'm asking and
2 just answer that question if it's susceptible
3 to a yes or no. If there's some other further
4 explanation that I need for the answer, I'll
5 ask you for it.
6 But, as you know, the Court has allotted
7 us only 90 minutes to conduct this deposition.
8 And I've been asking a series of yes or no
9 questions and I've been getting these long,
10 narrative responses.
11 So I'm going to ask -- I'm going to --
12 the subsequent questions I'm going to ask I
13 believe are susceptible to yes or no or true
14 or false. Okay? So here is the next one.
15 MR. STRANG: Objection.
16 Q Is it true that the City intended to subject
17 Leonard Mazzola to an arbitration that would
18 render him disqualified as a witness because of
19 dishonesty, as you told Bob Phillips?
20 A No.
21 Q Okay. Now, the next question. Is it true that
22 the City planned to have Mr. Mazzola added to
23 the Brady Giglio list?
24 A Is it true that the City intended to have him
25 added to the list?
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1 Q Yes.
2 A If given that specific question, the answer is
3 no.
4 Q Okay. Is it true that the City planned to take
5 the position that Leonard Mazzola should be
6 terminated if he had been demoted and added to
7 the Brady Giglio list?
8 A No. That is not accurate.
9 Q And is it true that you provided the list
10 of bullet points of possible charges to
11 Bob Phillips that he requested so he could
12 sit down with Lenny to discuss his options?
13 A No. That's not true.
14 Q So what part of that question is not true?
15 A Bob called me up and told me before I sent the
16 bullet points to Bob that Lenny had decided to
17 retire. And I distinctly remember well, Bob,
18 you don't need me to put together those bullet
19 points you requested. And he said yes. So I
20 sent them after being notified that Mr. Mazzola
21 had already retired.
22 So I think I testified last time I don't
23 know why Bob would have to sit down with him
24 after I've already been informed that he wanted
25 to retire to answer your question.

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1 Q But at least in this conversation that's what
2 he stated as to the reason for his request,
3 correct?
4 A Yes. Yes. Bob wanted bullet points so that,
5 according to Bob, that he could sit down with
6 Mr. Mazzola.
7 Q Okay. So we're going to come back to -- do you
8 recall in your deposition there was a
9 Defendant's Exhibit 56 that was that list of
10 possible charges in a March 28, 2019 e-mail to
11 Bob Phillips? Do you recall that document?
12 A Only from reviewing the documents today, yeah.
13 I remember there was one to that effect, yes.
14 Q Okay. I'm going to turn now -- and we may come
15 back to this topic a little bit later, but I'm
16 going to turn now generally to topic B from the
17 Court's order; the reasons why the City of
18 Independence intended to pursue discipline
19 against Plaintiff.
20 And so I'm going to refer you now to the
21 same time period of March 1 to April 1, 2019.
22 And at that point why was the City intending to
23 pursue discipline against Mr. Mazzola?
24 A Based upon the facts as I knew them, which I
25 first learned on the Friday before that e-mail

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1 we were just looking at, that there were some
2 ongoing disciplinary issues with Mr. Mazzola,
3 both recent and in the past, and they were
4 contemplating bringing discipline action
5 against him.
6 Q And what specifically was your understanding of
7 what those reasons were in as much detail as
8 you can offer?
9 A Sure. Sure. Generally -- I don't know
10 specifically. I just know subject topics
11 because that's how it was conveyed to me. And
12 it was dishonesty, failing to follow -- failing
13 to follow procedures. I'm doing this on
14 memory. Insubordination.
15 There was incidents in the past of
16 Mr. Mazzola usurping the Chief when he was
17 instructed to deal with the Chief on
18 departmental issues and police issues, and
19 Mr. Mazzola was constantly going around the
20 Chief to other City officials for whatever
21 reason.
22 That's how I remember them generally.
23 Q Let's take each of those.
24 What was the alleged dishonesty, as you
25 understood it?

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1 A Well, I was aware of the polygraph results. It
2 was communicated to me there was an incident,
3 a previous incident where -- going on memory --
4 Mr. Mazzola or Lieutenant Mazzola usurped the
5 Chief and went to the Mayor directly and
6 represented, allegedly, something that was not
7 true. Those are the only two that I remember
8 at this point.
9 Q And you had an understanding at the time that
10 you wrote this e-mail of March 25, 2019 that
11 the polygraph results were centering around
12 whether Mr. Mazzola had disclosed information
13 to reporter Ed Gallek, correct?
14 MR. STRANG: Objection.
15 A I was aware of -- yes. I was aware of
16 Mr. Gallek's involvement and the fact that
17 policies or procedures were possibly not
18 followed, yes.
19 Q Well, but the question was whether you
20 understood that the polygraph was centering
21 around the question of whether it was
22 Mr. Mazzola who had disclosed information
23 about the alleged traffic ticket quota or
24 performance standard to reporter Ed Gallek,
25 correct?

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1 A No. Not around the time of writing that
2 e-mail. I was not involved in any of the
3 investigation. So I was aware that -- the only
4 item that I could distinctly remember in
5 addition to the other things I mentioned
6 regarding the polygraph, that Mr. Mazzola was
7 dishonest during the polygraph test.

8 Q Right. But what was your understanding, in as
9 much specificity as you could provide, as
10 you're conveying these thoughts to Mr. Phillips
11 about what the polygraph was specifically
12 intended to investigate?

13 A Are you talking about the e-mail that you and I
14 just went over?

15 Q Yes.

16 A Okay. I was aware -- the only fact that I was
17 aware of was that Mr. Mazzola miserably failed
18 a polygraph. Was communicated to me that many,
19 many areas of deception.

20 I don't have any familiarity with
21 polygraphs. So based upon that general fact.
22 And it wasn't explained to me. I didn't review
23 the polygraph. I didn't discuss in detail the
24 polygraph. Because of my past relationship
25 with Bob Phillips, I was asked to reach out to
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1 Bob to get his take on Mr. Mazzola and discuss
2 with him, you know, the best way to move
3 forward as far as potential discipline against
4 Mr. Mazzola, or if not.

5 I don't know if the discussion was to see
6 if Mr. Mazzola had any ideas. But mine was
7 kind of a fact finder. Bob knew more about the
8 investigation than I did at that time.

9 Q Mr. O'Brien, what was your understanding on
10 March 25, 2019 about the specific topic about
11 which Mr. Mazzola supposedly failed a
12 polygraph?

MR. STRANG: Objection.

13 A I wasn't aware of any topics. I just
14 distinctly remember the facts that I knew them
15 is he failed a polygraph on many levels, but I
16 don't recall any discussions specifically about
17 topics, questions. I've never seen any
18 questions. You know, it was just that he --
19 you know, I do remember the facts being that he
20 supposedly miserably failed the polygraph.

21 Q But as Law Director you weren't the least bit
22 curious about what the topic was on which
23 Mr. Mazzola had supposedly "miserably failed" a
24 polygraph?

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1 A No, I was not. Do you want to know why?

2 Q Was it true that the City intended as of
3 March 25, 2019 to have Mr. Mazzola disqualified
4 from testifying because of dishonesty?

5 A No. It's true that the facts, as I understood
6 them on that day, is that there is something
7 out there called Brady and disclosure
8 requirements to local prosecutors, but I didn't
9 know more beyond that.

10 You have to remember, the City had labor
11 counsel and they were involved in this whole
12 situation. I was being brought in for them to
13 bring me up to speed and for me to reach out to
14 Bob and discuss generally what his take was on
15 this case.

16 Q Who was the labor counsel who was involved in
17 this situation?

18 A Clemans Nelson.

19 Q Who was the lawyer specifically?

20 A I just remember his last name was Esposito.

21 Q Now, was it true that the City planned as of
22 March 25, 2019 to report Mr. Mazzola's
23 polygraph failure the County Prosecutor's
24 Office which then might disqualify him from
25 testifying?

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1 A I was not -- I'm not aware of any decision by
2 the City to report Mr. Mazzola to anyone.

3 Q Were you aware that that was being
4 contemplated?

5 A I'm aware of facts that where it was -- that
6 was one possible -- that was a discussion,
7 amongst many others, of what possibly could
8 happen in the future down the road.

9 Q And you related that to Mr. Phillips in your
10 conversation with him that day, on March 25,
11 2019, correct?

12 A Again, I've testified, I don't know if Bob
13 brought it up because he was more involved in
14 this matter than I was. But we did discuss it,
15 yes. I will say that.

16 Q All right. So I'm going to show you now a
17 document marked as Exhibit 23. And the
18 questions I'm going to ask you center around
19 topics B and A from the Court's order; the
20 reasons why the City of Independence intended
21 to pursue discipline against the Plaintiff, and
22 also topic A, whether the City of Independence
23 considered demoting Plaintiff.

24 MR. McLANDRICH: What is this
25 Exhibit Number, 23?

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1 MR. CHANDRA: Exhibit 23. It
2 should be coming up shortly.
3 A I hit on it and I get a world docs thing here.
4 Q Do you see it?
5 A Well, it's not on my screen, but I see this,
6 yes.
7 Q Okay. So is this a true and correct copy
8 of an e-mail you received from the Human
9 Resources Director for the City of
10 Independence, Letitia Linker, on Wednesday,
11 March 27, 2019 at 12:25 p.m. UTC?
12 A Yes.
13 Q And in case you're unfamiliar with it, you
14 understand that UTC is five hours ahead of
15 Eastern time?
16 A Until you mentioned it, no, I did not know.
17 Q All right. Just assume for the sake of our
18 discussion that that is correct and a
19 judicially noticeable fact. At that point, and
20 it may be -- depending on the time of year, it
21 may be four hours or five hours, but that would
22 put this e-mail at around 7:25 a.m. or 8:25
23 a.m.
24 Now, Ms. Linker sent this e-mail,
25 Exhibit 23, to both and you Chief Kilbane,
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1 correct?
2 A It appears that way, yes.
3 Q Was the subject line, "Hearing notice"?
4 A Yes. That's what it says.
5 Q And the e-mail itself simply read, "Here is
6 something to consider." Correct?
7 A Yes.
8 Q Now, if you turn to the next page of this
9 exhibit, we're scrolling to it, is that an
10 attachment to the e-mail?
11 A If you say it is, yes.
12 Q And this is a draft notice of pre-disciplinary
13 hearing prepared in late March 2019, correct?
14 A I don't know when it was prepared, but just
15 going on the e-mail, I received it, what was
16 that, the 27th?
17 Q Yes.
18 A Uh-huh.
19 Q 27th of March, 2019.
20 Now, in the fourth paragraph of the
21 attachment, the draft notice of
22 pre-disciplinary hearing, you see a list of
23 charges, correct?
24 A Yes.
25 Q And can you please read into the record the
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1 fourth paragraph beginning after, "A
2 pre-disciplinary conference is scheduled for"
3 and then there's a blank. Go ahead and read
4 the rest of that line and then all the way down
5 through the indented portion.
6 A Sure. It says, "The meeting will address
7 charges under General Order 502, Uniform
8 Standards of Conduct. 11, dishonesty or
9 untruthfulness. 12, displaying competent
10 performance and achieving competent performance
11 results. 16, insubordination. 17, knowing,
12 observing and obeying all directives, rules,
13 policies, procedures, practices and traditions.
14 General Order 601, records, security and
15 privacy. General Order 108, media relations."
16 And it goes on to say, "At issue is
17 Lieutenant Mazzola's repeated failure to follow
18 departmental regulations, as well as orders and
19 direction of the Chief including, but not
20 limited to; creating and implementing
21 performance standards inconsistent with the
22 Chief's directive and without his knowledge or
23 approval; communicating police operational
24 matters not known to the Chief with City
25 officials and departmental staff; violating
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1 order regarding communication of police
2 matters; dishonesty while participating in an
3 investigation conducted by a third-party, as
4 evidenced by failure of a polygraph, and a
5 failure to follow operational directives."
6 Q Now, you went on to read the fifth paragraph,
7 and that's fine because I have a question about
8 that.
9 It does state that one issue was
10 Mr. Mazzola, "Communicating police operational
11 matters not known to the Chief with City
12 officials and department staff." Correct?
13 Did I read that correctly?
14 A Yes.
15 Q Okay. Now, you understood that that refers to
16 Mr. Mazzola talking to then Mayor Togliatti in
17 late February of 2019, doesn't it?
18 A Oh, I don't know what I understood. I didn't
19 remember receiving this until I reviewed it,
20 you know, an hour ago.
21 Q Okay. Well, does this refresh your
22 recollection at all when you read the fifth
23 paragraph about what that allegation that
24 Mr. Mazzola was communicating police
25 operational matters not known to the Chief with
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1 City officials and department staff, what it
2 was referring to?
3 A No. It does not refresh my memory.
4 Q Okay. So as you sit here today testifying
5 under oath, you have no idea one way or the
6 other whether that's referring to Mr. Mazzola
7 talking to then Mayor Togliatti in late
8 February of 2019, correct?
9 A Whether I came to that understanding through
10 reading this or came to that understanding in
11 that meeting on that Friday, I don't recall.
12 But I knew that there was an issue or at least
13 a past issue of an occasion for Lieutenant
14 Mazzola to usurp the Chief and go directly to
15 Mayor Togliatti. And one occasion, at least it
16 was communicated the facts I have, that
17 Lieutenant Mazzola said something that was
18 untrue.
19 Q Well, but specifically encompassed in
20 Mr. Mazzola going to then Mayor Togliatti you
21 understood before Mr. Mazzola submitted his
22 retirement, it included speaking with Mayor
23 Togliatti about the City's traffic quota or
24 performance standard, whatever you want to call
25 it, correct?

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1 A I believe the issue was Lieutenant Mazzola's
2 performance standard metrics policy versus the
3 Chief's policy. Yes, I believe that was the
4 purpose of him going to see Mayor Togliatti.
5 Q Okay. And now also in the fifth paragraph of
6 Exhibit 23, the e-mail from Letitia Linker
7 dated March 27, 2019, that paragraph also
8 states that one issue was Mr. Mazzola,
9 "Violating order regarding communication of
10 police matters."
11 Did I read that correctly?
12 A That's what it says, yes.
13 Q Yeah. And you understood that that referred to
14 Mr. Mazzola supposedly providing information
15 and documents to the media, correct?
16 A No. I didn't understand -- at the time of
17 receiving this -- I don't even recall receiving
18 this. But I don't know what that -- this was
19 -- I believe, this is going on memory here, is
20 I sent the e-mail that we went over a few
21 minutes ago that Bob wanted bullet points,
22 Mr. Phillips wanted bullet points, and I
23 copied, in addition to Chief Kilbane, Letitia
24 Linker, and I believe this is her sending this
25 to me as a result of that e-mail.

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1 I don't recall having any communication
2 with Ms. Linker on this document or delving
3 into what this document said because of facts
4 that I received elsewhere other than this
5 document.
6 Q Well, when did Ms. Linker send you this e-mail,
7 to the best of your recollection, in relation
8 to you sending an e-mail to Bob Phillips laying
9 out potential charges? Did this come before or
10 after that?
11 A Oh, I don't recall. This is not the only
12 e-mail I received in response to my request.
13 Q In response to which request? I'm sorry.
14 A The facts -- the bullet points. Because,
15 remember, I want to make sure that you're
16 clear, I didn't have the underlying facts of
17 any investigation. I wasn't part of any
18 investigation. I wasn't part of any
19 discussion. I didn't delve into any reports
20 or any findings or anything.
21 So when Bob asked for bullet points,
22 again, he seemed more knowledgeable about it,
23 I reached out to the various individuals at
24 the City to acquire information to satisfy
25 his request.

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1 Q Well, it's been your contention all along and
2 your position in this litigation that the
3 communications that we're talking about are
4 attorney/client privileged because they relate
5 to the seeking and giving of attorney/client
6 privileged advice, correct?
7 A My position is that any communication between
8 an attorney and their client is privileged.
9 Q Well, let's take the sentence that you just
10 uttered because you're a seasoned, experienced
11 lawyer and litigator. I mean you know that's
12 not literally true. It's not every
13 communication between a lawyer and a client,
14 right? That's not how privilege works?
15 A I believe there's exceptions to it, but yeah,
16 that's how I -- I interpret the rule that way.
17 I've never litigated the issue. I've
18 never gotten into beyond the objections we do
19 in discovery reverses to attorney/client
20 privilege. So yes, that's my general
21 understanding of communications back and forth
22 with clients, that they're privileged.
23 Q Go ahead. I'm sorry. I didn't mean to
24 interrupt.
25 A They're privileged.

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1 Q Okay. But it's the communications related to
2 the giving and seeking of legal advice.

3 So, for example, if you and Mr. Strang
4 started communicating about the weather, that's
5 not privileged. Fair enough?

6 A If you say so. I take a different position on
7 it. Just always have. Sorry.

8 Q So you would take a different position even if
9 the two of you were communicating about the
10 weather and it doesn't relate to the giving or
11 seeking of legal advice, that that
12 communication is now somehow privileged?

13 A I take the position that any subject matter
14 that I talk to my clients with or I talk to my
15 lawyer with are privileged, yes. I've always
16 taken that position. Apparently, based upon
17 what the judge ruled in this, I'm slightly
18 incorrect on that.

19 Q So what I'm getting at, Mr. O'Brien, is I'm
20 just simply trying to understand, is it fair to
21 say that one of the roles that you were playing
22 with your clients during this situation with
23 Mr. Mazzola was to give them legal advice
24 relative to Mr. Mazzola's situation; is that
25 fair? Yes or no?

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1 A No. In this context with this e-mails that we
2 talked to, I was acting as a conduit between
3 Bob Phillips and the City in my role as
4 Law Director.

5 Q So I want to make sure that you're having an
6 opportunity to answer the question as
7 accurately as you can.

8 Is it your contention then that your
9 communications with your clients regarding
10 Mr. Mazzola preceding his retirement were not
11 for the purposes of giving legal advice to
12 them?

13 MR. STRANG: Object. Beyond the
14 scope of the deposition.

15 Go ahead and answer if you understand it.

16 A I believe I was acting in my role as the
17 Law Director communicating with my clients and,
18 at times, answering questions they may have or
19 providing guidance. But there is a certain
20 aspect in this matter where I was asked to
21 relay information to Mr. Phillips and to convey
22 information from Mr. Phillips to the City and,
23 in this regard, provide the context of
24 Mr. Phillips' request for bullet points and
25 discussions with my clients on what those

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1 ultimately would be if the City decided to
2 pursue them.

3 Q Is it your professional habit to want to have
4 knowledge of all relevant facts before you wind
5 up counseling your clients about how to
6 proceed?

7 A Sure. But I wasn't the only lawyer
8 representing the City in this matter.

9 Q Okay. Let's turn to topic D from the Court's
10 order. Actually, I'm sorry. I'm going to go
11 back to the previous topics A and B.

12 The fifth paragraph of the March 27, 2019
13 e-mail from Letitia Linker with the attachment,
14 the fifth paragraph of the attachment states
15 that, "One issue was Mr. Mazzola's dishonesty
16 while participating in an investigation
17 conducted by a third-party as evidenced by
18 failure of a polygraph."

19 Did I read that correctly?

20 A That's what it says, yes.

21 Q Okay. And then that paragraph also says that,
22 "Mr. Mazzola was creating and implementing
23 performance standards inconsistent with the
24 Chief's directive and without his knowledge or
25 approval." Correct? That's from the quote.

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1 A Yes.

2 Q So, now, that's referring to Mr. Mazzola's
3 attempts to return to his point system instead
4 of using the minimum ticket standard, correct?

5 A I don't know what it's referring to, but I have
6 facts and understanding that one of the issues
7 involving Lieutenant Mazzola was a conversation
8 he had with Mayor Togliatti about his point
9 system versus the point system that the police
10 department wanted to implement. And that he
11 represented that the Chief was in agreement
12 with Lieutenant Mazzola's point system. That's
13 how it was communicated -- that's the facts
14 that I have and my understanding of that
15 particular interaction.

16 Q Okay. Just one second here.

17 Just to sort of nail down the sequence of
18 events here, this pre-disciplinary draft from
19 Letitia Linker was sent to you a day before you
20 e-mailed the bullet points to Mr. Phillips,
21 correct?

22 A I mean if you say so. I don't have the bullet
23 points, but that sounds correct.

24 I know I received a communication from
25 the City. I don't recall receiving that one,

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1 but I know I received communication from the
2 City regarding responding to Mr. Phillips'
3 request.
4 Q Yeah. And is it fair to say that you relied,
5 at least in part, on this document from
6 Letitia Linker in what you then subsequently
7 communicated to Mr. Phillips?
8 A No. As I sit here today, I don't recall
9 receiving that e-mail. And I just saw it
10 today. If I did receive it -- I mean I'm sure
11 I received it, but I don't recall reviewing
12 it, and that is not the facts that I used to
13 formulate materially my response to
14 Mr. Phillips.
15 Q Okay. Well, let's do this. Let's turn to
16 Defendant's Exhibit 56 which is going to be
17 brought up now. And we're now going to be
18 talking about topic D from the Court's order,
19 the factual basis for the disciplinary charges
20 listed in your March 28, 2019 e-mail to
21 Fraternal Order of Police attorney Robert
22 Phillips.
23 A Yes.
24 Q And so -- I think we have some background noise
25 on the Zoom call.
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1 MR. STRANG: It remedied itself
2 from our standpoint.
3 MR. CHANDRA: Okay.
4 Q Could you please explain what the factual basis
5 is for the purported dishonesty charges?
6 A I'm sorry. What number is this you're on?
7 Q Defendant's Exhibit 56. And you see the
8 section, the bullet point that says,
9 "Dishonesty" with a number of sub bullet
10 points. It's an e-mail from you to Bob
11 Phillips dated Thursday, March 28, 2019 at
12 11:57 a.m., correct?
13 A The facts leading to all of the bullet points
14 on there are based upon communications that I
15 had directly with Chief Kilbane.
16 Q Right. And so the question is what's the
17 factual basis for these purported dishonesty
18 charges?
19 A I don't recall the factual basis. I recall
20 communications from Chief Kilbane, again, this
21 is -- from Chief Kilbane to me providing
22 information, the sum and substance is on that
23 sheet of paper.
24 Q So I'm not asking you about the communications.
25 I'm asking you as the Law Director, as a
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1 Defendant in this case, if you look, for
2 example, under dishonesty at sub bullet point
3 number 1, "Lying during a formal internal
4 investigation on the unauthorized dissemination
5 of departmental documents." Okay?
6 Did I read that correctly, first of all?
7 A Yes.
8 Q Okay. As to that sub bullet point, can we
9 agree that the factual basis for that
10 contention, it is your understanding that the
11 factual basis for that was a allegation that
12 Mr. Mazzola had lied during the investigation
13 on whether departmental documents were given to
14 reporter Ed Gallek. You understood that,
15 correct?
16 A Yes.
17 Q Okay. And now on the other sub bullet point,
18 "Lying as to whether he discussed the internal
19 investigation with another City employee,
20 despite and contrary to an order by his
21 superior not to do so."
22 Okay. That is referring to what? What's
23 that referring to?
24 A The facts as I know them, whether developed
25 at the time or throughout this case, was a
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1 conversation that Mr. -- or Lieutenant Mazzola
2 had with Rich Crane at his house.
3 Q And this is discussing the internal
4 investigation with Rich Crane, despite and
5 contrary to an order by a superior not to do
6 so.
7 Who is the superior being referred to
8 there?
9 A I'm presuming it was Chief Kilbane.
10 Q Okay. Next sub bullet point, "Lying to the
11 Mayor regarding performance measurement
12 standards allegedly approved by the Chief."
13 Okay. And, again, can we agree that that
14 is referring to Mr. Mazzola's discussion with
15 Mayor Togliatti about the traffic performance
16 standards issue, correct?
17 A Yes. That's what we talked about earlier where
18 Mr. Mazzola had his own way of -- his own
19 policy and the police department had a policy
20 and represented, purportedly, it's my
21 understanding of the facts, disingenuously that
22 the Chief had approved using Mazzola's or
23 something to that metrics.
24 Q All right. Now let's take a look at the
25 insubordination charges in the other major
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1 bullet in Defendant's Exhibit 56, the e-mail
2 dated Thursday, March 28, 2019 at 11:57 a.m.
3 from you to Bob Phillips.

4 There's one sub bullet point there. It
5 says, "Intentionally ignoring a previous
6 departmental order. Ten incidents of usurping
7 his superiors to directly communicate with City
8 officials and employees regarding departmental
9 staffing, training and policies and
10 procedures."

11 Did I read that correctly?

12 A Yes.

13 Q Okay. And was that -- what was the factual
14 basis for that insubordination charge?

15 A Other than that statement, the only facts that
16 I could recall were incidents where Mr. Mazzola
17 was going around Chief Kilbane and speaking
18 specifically to Letitia Linker and/or the
19 Mayor.

20 Q And that was specifically discussions with the
21 two of them about the traffic ticket quota or
22 performance standard, correct?

23 A That's correct as to the Mayor, as best as
24 I can recall. It's not correct regarding
25 Ms. Linker.

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1 Q Well, were you aware that Mr. Mazzola had
2 spoken to her about his concerns about the
3 traffic ticket policy?

4 A No. I was not aware about traffic ticket
5 policy discussions with Ms. Linker. I was
6 aware of other concerns Mr. Mazzola had.

7 Q So what did you believe that Mr. -- what
8 conversation did you believe that Mr. Mazzola
9 had with Letitia Linker that would merit a
10 charge of insubordination for having had that
11 conversation?

12 A I recall one prior to March, not within the
13 time frame that you said I'm supposed to stay
14 within, where there were facts where
15 Mr. Mazzola didn't like dealing directly with
16 the Chief and was going around the Chief and
17 trying to get a different decision or
18 commitments or what have you from Letitia
19 Linker and she felt that she was in the middle
20 of the whole thing and very uncomfortable.

21 Q About what? About what topic?

22 A The fact that Lieutenant Mazzola -- I think it
23 had to do something with training, either
24 off-site or something about a previous
25 disciplinary action that Mr. Mazzola had to

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1 participate in and he didn't feel it was
2 warranted and didn't feel it was necessary and
3 wanted Ms. Linker to weigh in, unbeknownst to
4 the Chief.

5 Q Well, in a functioning organization isn't the
6 had HR Director a place that an employee is
7 supposed to be able to go with concerns?

8 A It depends on what the topic is and the issue
9 is. If it's -- it depends on what the topic or
10 issue is.

11 Q All right. Let's turn now to topic E from the
12 Court's order, all City discussions regarding
13 whether and how to pursue discipline against
14 Plaintiff.

15 And I'm going to show you a document
16 that's labeled as Exhibit 24. And when we
17 bring that up, we'll read the Bates number into
18 the record too.

19 It's Bates number Kilbane_M_temp_2646.

20 This is an e-mail dated March 28, 2019 at
21 3:58 p.m.

22 MR. CHANDRA: Could you please
23 expand that a little bit? It's very hard to
24 read at this size. Okay.

25 Q And this is an e-mail from you to Mayor

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1 Togliatti as the first recipient, and then it
2 is cc'd to Chief Kilbane and to HR Director
3 Letitia Linker, correct?

4 A Correct.

5 Q And the subject is, "FW:", meaning forward,
6 "Lieutenant Mazzola." Correct?

7 A Correct.

8 Q Now, your statement in the e-mail is, "For your
9 file." Correct?

10 A Correct.

11 Q I'm going to scroll down now.

12 And does this e-mail thread show that you
13 forwarded an e-mail to Mayor Togliatti on the
14 date of forwarding, and it's an e-mail -- it's
15 the e-mail you sent to Bob Phillips on
16 Thursday, March 28, 2019, correct?

17 A Yes.

18 Q What was previously part of Exhibit 24,
19 previously we had talked about it as
20 Defendant's Exhibit 56, correct?

21 A I haven't been keeping track of exhibits, but
22 I'll take your word for it.

23 Q Okay. So the content of the e-mail, your
24 e-mail was, "For your file." And you're
25 forwarding the e-mail that you had sent to

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1 Bob Phillips laying out the planned charges.
2 Why did you send this to Mayor Togliatti
3 for his file?
4 A Well, I sent it to Mayor Togliatti and the two
5 others because those are the individuals that I
6 communicated with on this for their file.
7 Q Right. Why did you send it to them for their
8 file?
9 A I forward a lot of e-mails. It's usually my
10 practice, this is no different, to let them
11 know what I'm doing for the City. So I mean I
12 forward a lot of e-mails.
13 Q So your answer is that you were doing it to let
14 them know what you were doing?
15 A Yes.
16 Q I'm sorry?
17 A Yes.
18 Q Now, at this point in time, March 28, March 29,
19 all the way through Mr. Mazzola's resignation,
20 is it fair to say that you weren't anticipating
21 that Mr. Mazzola was going to sue the City?
22 A Yes.
23 Q In fact, you testified in your last deposition
24 that you weren't anticipating litigation
25 because, as far as you were concerned,
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1 Mr. Mazzola was just retiring, correct?
2 A Yes.
3 Q And I think you further testified you might
4 ordinarily want a release or waiver of claims
5 upon an employee's departure, but you decided
6 not to get one here, correct?
7 A I think it's accurate to say that I asked for
8 one. Bob said he was retiring and he's going
9 to be treated like every other retiring
10 officer. And I had no reason to believe that
11 this was anything other than a retirement, yes.
12 Q Okay. So I'm going to show you now an e-mail
13 marked as Exhibit 25. And this document, once
14 we get it up, I'll read the Bates number into
15 the record.
16 Could you please identify what this
17 document is from the top of it?
18 MR. CHANDRA: Expand it a little
19 bit, please.
20 Q This is an e-mail from Letitia Linker to you
21 and it's cc'd to Mayor Togliatti. I'm sorry.
22 It's an e-mail to you and to Chief Kilbane,
23 cc'd to Mayor Togliatti, dated March 28, 2019,
24 3:52 p.m. regarding Lieutenant Mazzola,
25 correct?
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1 A Yes.
2 Q Now, in the second e-mail on this thread
3 beginning at the bottom of the first page, is
4 this -- if you could scroll down, please -- is
5 this a true and correct copy of an e-mail you
6 sent to Chief Kilbane and, again, March 28,
7 2019 at 9:29 a.m.?
8 A Can you scroll down?
9 Q I think we've got it right at that point.
10 Let's go back up.
11 A Well, no, no, no. Go the other way because
12 there was --
13 Q You want to see the whole thing?
14 A Yeah.
15 Q Okay. Sure.
16 A What's below this e-mail?
17 Okay. Yeah. Other than the redacted
18 part, yes.
19 Q I couldn't make out what you said. Did you say
20 other than the redacted part?
21 A Other than the redacted part that's below my
22 e-mail saying, "After I hit sent to the e-mail
23 below", the e-mail below that I sent to the
24 Chief is redacted.
25 Q Okay. Now, the e-mail refers to a redacted
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1 e-mail you had sent below and says that you hit
2 sent for that e-mail before Bob Phillips
3 called, correct?
4 A Yes. I sent the Chief a communication which
5 him and I were communicating on and that I
6 wanted the Chief to review, and so prior to
7 receiving the Chief's feedback on the review of
8 that e-mail, I received a call from Bob
9 Phillips about Lieutenant Mazzola's decision to
10 retire.
11 Q Okay. Now, Bob told you he took good notes
12 from your previous discussion and met with
13 Mr. Mazzola, correct?
14 A Yes. That was in response to --
15 Q It's just a yes or no. We're running out of
16 time.
17 A Yes. Yes. Yes.
18 Q Now, your previous discussion was your
19 discussion memorialized Exhibit 22 which was
20 that March 25, 2019 e-mail, correct?
21 A I didn't follow your question there.
22 Q Well, so the previous discussion being referred
23 to is the one that we went over with your
24 March 25, 2019 e-mail at the beginning of this
25 deposition, correct?
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1 A No, I don't believe. Can I see it? I can tell
2 you if the -- if the end result of that
3 communication with my client, the Chief, was
4 that e-mail. Can I see it?

5 Q Yeah. We'll pull it up real quick.

6 A No. That was not the redacted e-mail.

7 Q Right. I think maybe we're talking past each
8 other. I'm just simply trying to understand is
9 that the reference to the previous discussion
10 is a reference to this discussion that's
11 memorialized in the e-mail, correct?

12 A I don't mean to be difficult, Mr. Chandra,
13 but I had subject matter conversations with
14 Chief Kilbane on several issues.

15 Q I'm talking about the conversation with Bob.
16 Bob is referring -- he's saying he took good
17 notes from the previous discussion and met with
18 Mr. Mazzola, okay. And then the previous
19 discussion he's referring to is that discussion
20 that we went over that e-mail.

21 A Yeah. Could be or if we had another discussion
22 after that, but it could be, sure.

23 Q All right. Now, Bob told you that based upon
24 that discussion, Lieutenant Mazzola has decided
25 to retire, correct?

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1 A Based upon his discussion with Lieutenant
2 Mazzola, he, Lieutenant Mazzola, decided to
3 retire, yes.

4 Q Okay. And you don't believe that the, "Based
5 upon that discussion" is a reference to your
6 discussion with Bob?

7 A No, I don't after listening to Bob's testimony.
8 I don't believe he even said he discussed it
9 with him, but I don't know what Bob spoke to
10 his client. We would have to refer to his
11 testimony.

12 Q All right. Let's look at -- you also wrote,
13 "I still need to send Bob the e-mail below as
14 he wants to share the information with
15 Lieutenant Mazzola to support their discussion
16 and his decision to retire." Correct?

17 A Yes. That's generally because I did ask him
18 like, "Bob, if he decided to retire, why would
19 you still need those bullet points?" He said,
20 "Well, you know, I would like to have them to
21 discuss them with Lieutenant Mazzola."

22 Q Okay.

23 A Which this turned out not to be accurate.

24 Q Well, again, this is what Bob Phillips told
25 you, correct?

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1 A At the time, yes, generally.

2 Q And Bob asked you for an e-mail explaining what
3 disciplinary charges the City intended to
4 pursue against Lieutenant Mazzola to support
5 their discussion, correct?

6 A Bob asked me for support of whatever discipline
7 action the City may pursue against Lieutenant
8 Mazzola and that's the reason for the bullet
9 points, yes.

10 Q Now, to support their discussion, meaning
11 support the discussion he was having with
12 Lieutenant Mazzola, correct? That's what you
13 reflected he said, correct?

14 A Yeah. Yep, I guess.

15 Q Okay. Now, Bob had asked you for communication
16 by the City that Lieutenant Mazzola is retiring
17 and that we wish him well, right?

18 A That's what it says, yes.

19 Q All right. Let's jump to Exhibit 26, and this
20 is an e-mail --

MR. CHANDRA: Zoom in it, please.

22 Q You ask Chief Kilbane, Letitia Linker,
23 Maggie Osysko and Anthony Togliatti to have a
24 call about Lieutenant Mazzola's retirement on
25 the morning of Friday, March 29, 2019, correct?

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1 A Yes.

2 Q Who is Maggie Osysko?

3 A She works in the finance department.

4 Q That's O S Y K O.

5 A It's Osysko.

6 Q Oh, I'm sorry. Osysko.

And did the call happen?

8 A I think it did, yeah. I don't have a distinct
9 memory of the call, but I guess it did. I
10 don't know if it happened on that date and
11 time. I mean if there's an e-mail referencing
12 the discussion, I assume it did.

13 Q Was there a discussion about whether to
14 discipline Mr. Mazzola on that call?

15 A No. I think the call was dealing mostly with
16 his benefits. It's already been communicated
17 he decided to retire, so that's why Ms. Osysko
18 was there, to talk about, you know, wanted to
19 make sure he had enough hours and all of that
20 sort of stuff. And then there was return of
21 property, binders and stuff. That's the reason
22 for that.

23 Q Let's look at Exhibit 29. And this is an
24 e-mail you sent on March 29, 2019 at 7:19 p.m.
25 to Michael Kilbane and Letitia Linker with a

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1 cc to Mayor Togliatti, correct?
2 A Yes.
3 Q And the subject is, "Robert Phillips."
4 Correct?
5 A Yes.
6 Q And the e-mail reads, "Message delivered to
7 Bob. He will mention it to Lenny about going
8 quietly into the night." Correct?
9 A Yes.
10 Q And what message did you deliver to Bob about
11 Lenny going quietly into the night?
12 A I communicated to Bob there was a concern that
13 Lenny would actively -- after his retirement
14 actively go out of his way to contact police
15 officers to disrupt the organization and
16 procedures of the City. And what he does as a
17 private citizen is fine, but wanted to make
18 sure that he didn't actively try to have the
19 officers in the police department, you know,
20 cause a ruckus. That was the concern there.
21 It was a 15-second phone call with Bob.
22 Bob said he's not going to do that. He's going
23 to go retire.
24 Q Let's take a look at Exhibit 6, Plaintiff's
25 Exhibit 6 from your original deposition. And
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1 I'm turning now to topic C of the Court's
2 order, whether Defendant O'Brien prepared a
3 public statement dated October 28, 2019 for
4 then Mayor Defendant Togliatti.
5 Did you prepare this public statement for
6 Mayor Togliatti?
7 A Which one are you talking about?
8 Q Plaintiff's Exhibit 6 from your original
9 deposition. Do we need to put it up on the
10 screen?
11 MR. STRANG: I don't mean to be
12 discourteous, but I have six minutes left in
13 Judge Gwin's order that you limit this to
14 90 minutes. I just wanted to note that for
15 the record.
16 A No. I did not prepare this document. I sent
17 it to Mayor Togliatti, but I did not prepare
18 it.
19 Q Who prepared it?
20 A Hennes Communications.
21 Q And who at Hennes Communications prepared this?
22 A I don't remember the individual who sent it to
23 me. I know it was not Bruce Hennes because --
24 it was not Bruce.
25 Q Was it a female?
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1 A Yes.
2 Q You don't recall the name?
3 A No, I don't.
4 Q Okay.
5 MR. CHANDRA: All right. What
6 I'm going to do is I know that Mayor
7 Togliatti's counsel may want to ask some
8 questions, so I'm going to reserve what little
9 time I have left for any redirect that's needed
10 after that or re-cross.
11 So why wouldn't be take -- It's 2:41 p.m.
12 Can we take like a five-minute break or
13 ten-minute break and then we'll come back and
14 give John his questions.
15 MR. STRANG: Yeah. Lets do that.
16 And then we can --
17 Alex, did you -- do you have a -- are you
18 keeping time on there? I have that we started
19 at 1:12. I talked for five minutes on the
20 record which I, of course, am not going to use
21 against you, Mr. Chandra. So I have the start
22 time of Mr. Chandra's questioning at 1:17.
23 THE VIDEOGRAPHER: I could do the
24 math as soon as we go off the record.
25 MR. STRANG: Thank you so much.
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1 THE VIDEOGRAPHER: Off the
2 record.
3 (Recess taken.)
4 MR. CHANDRA: Good afternoon,
5 Mr. O'Brien. As you know, I'm John McLandrich.
6 I represent Mr. Togliatti. I just have a few
7 questions for you.
8 EXAMINATION OF GREGORY O'BRIEN
9 BY-MR. McLANDRICH:
10 Q So in looking at these three exhibits that we
11 reviewed this morning, Exhibit 22, Defendant's
12 Exhibit 56 and Exhibit 23, it looks as if the
13 topics of potential discipline are all
14 essentially the same; those reflected on the
15 pre-disciplinary hearing draft notice, is that
16 fair?
17 A On the Linker correspondence you mean? Yes. I
18 didn't match them up, but I don't have a
19 recollection of the Linker e-mail. I have a
20 recollection of communications between me and
21 the Chief.
22 Q All right. And in terms of the source of
23 charges, the drafting of potential charges or
24 the ideas of what charges might be filed, did
25 any of those come from Mayor Togliatti?
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1 A No.
2 Q Are you generally involved in disciplinary
3 matters at the City or is that labor counsel?
4 A I was not involved in disciplinary matters
5 during Mayor Togliatti's administration. So
6 the answer would be if during the Mayor
7 Togliatti administration, the answer is no.
8 Q And I believe you testified earlier that the
9 information that you used to draft the bullet
10 points that you did write to Mr. Phillips, you
11 didn't get from Mayor Togliatti, you got those
12 from conversations with Chief Kilbane?
13 MR. STRANG: Objection.
14 Attorney/client.
15 A Yes. The answer is yes, I did not get them
16 from Mayor Togliatti.
17 Q All right. And let me just find which one of
18 these it is. And I apologize. Give me one
19 second.
20 In your e-mail that's exhibit, it's
21 Defendant's Exhibit 56, this e-mail to
22 Bob Phillips of March 28, 2019, the last
23 paragraph -- and I'll just read it since I'm
24 not in control of bringing these things up.
25 I'm sorry. It's the wrong document.
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1 Shows you what I know. Hold on a second,
2 please.
3 So no. I'm looking at Defendant's
4 Exhibit 22, and that's your e-mail to
5 Chief Kilbane with copies to others of
6 March 25, 2:42-ish.
7 You talk about in the last paragraph that
8 you say, "I informed Bob that I may not be able
9 to provide those to him if that in some way the
10 bullet points would limit the City with its
11 actual charges against Lenny and evidence
12 should the matter proceed to arbitration."
13 So that would reflect to me, and I just
14 want to know if you agree, that these bullet
15 points you provided to him were not the actual
16 charges. The actual charges, if any ever came,
17 might well be different?
18 A Correct. I think I've been consistent on that
19 throughout my deposition.
20 MR. CHANDRA: I just want to
21 lodge my objection to the question. Go ahead.
22 I didn't hear the answer. Could the
23 court reporter read it back, if you were able
24 to hear it.
25 (Record read.)
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1 Q And then Exhibit 24, which is this "For your
2 file" e-mail to Chief Togliatti, was there ever
3 any response to that e-mail in terms of the
4 "for your file" from Mayor Togliatti rather?
5 A No. But that would not be inconsistent -- I
6 would not expect a response unless he wanted to
7 follow up on something.
8 MR. CHANDRA: Mr. O'Brien, your
9 sound is dropping off for some reason. Yeah.
10 Lean forward a little bit. Maybe your mic will
11 pick it up a little better.
12 THE WITNESS: How is that,
13 better?
14 MR. CHANDRA: I don't know. It's
15 very distant and echoing.
16 MR. STRANG: Your microphone is
17 here.
18 THE WITNESS: Mine?
19 MR. STRANG: Yeah. We can't move
20 those.
21 THE WITNESS: How is that?
22 MR. CHANDRA: Much better.
23 THE WITNESS: Okay. I'll keep my
24 voice up.
25 Q And the e-mail that you were sending the Mayor
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1 on that occasion was to inform the recipients
2 of Mr. Mazzola's decision to retire?
3 MR. CHANDRA: Objection.
4 A No. Because I -- I'm sure that was one of the
5 communications, but I may have picked up the
6 phone and called them, I just got this phone
7 call from Bob about retiring. I'm not too sure
8 that -- I may have, yes, in addition to that
9 exhibit, but I may have picked up the phone and
10 called one or others on that list to let them
11 know that Mr. Phillips called me up with
12 Mr. Mazzola's decision.
13 Q Right. Because that's the first line of the
14 e-mail from you to Bob. "Bob, prior to our
15 telephone call today informing me Lieutenant
16 Mazzola has decided to retire at his current
17 rank", so forth and so on, and then it has the
18 bullet points that have been the topic of so
19 much discussion.
20 A Yeah. I wanted to reflect that Bob and I had a
21 previous conversation. He called me, sure.
22 Q And, again, these three topics; dishonesty,
23 insubordination, unauthorized release of
24 documents, I'll just short change it, those are
25 the same things that were part of the pre-D
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1 hearing, right?
2 A I'm sorry?
3 Q Those are the same things that are part of the
4 pre-disciplinary hearing notice, aren't they,
5 dishonesty, insubordination, unauthorized
6 release --
7 A I'm not aware of any pre-disciplinary hearing
8 in this case.
9 Q Well, the pre-D meeting I should say. I
10 misspoke.
11 MR. McLANDRICH: That's all I
12 have. That's all. Thank you. That's all.
13 MR. CHANDRA: Okay. I have a
14 handful of follow-up questions to that,
15 Mr. O'Brien.
16 FURTHER EXAMINATION OF GREGORY O'BRIEN
17 BY-MR.CHANDRA:
18 Q Were you present for your former client, former
19 Mayor Togliatti's testimony in this case in his
20 deposition?
21 A Yes. But like the other depositions, you know,
22 you get -- yes, but not all of it, I don't
23 believe.
24 Q You're a named Defendant in this case, right?
25 A Yes.

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1 Q And so you were there listening as both a named
2 Defendant as the Law Director of the City of
3 Independence, correct?
4 A Yes.
5 Q All right. Now, Mr. McLandrich was asking you
6 questions about the retirement.
7 Who decided to place the time restriction
8 of 5:00 p.m. on Friday on the retirement?
9 MR. STRANG: Objection.
10 A I don't remember a specific, you know, ultimate
11 deadline. I do remember a conversation with
12 Bob and I, like, "Bob, if he's decided to
13 retire, let's get that communication over to
14 the city. I think that's appropriate."
15 Q So you gave him a 5:00 p.m. deadline, right?
16 A Well, it was the end of the month. You know,
17 just naturally --
18 Q Is the answer yes?
19 A Yes.
20 Q Now I'm going to quote from you, and I'm just
21 going to ask you to accept my representation
22 given the time limitations here, from Mayor
23 Togliatti's deposition and I may have questions
24 for you. All right?

The first quote. This is from Mayor
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1 Togliatti's deposition, page 75. "I don't
2 handle the disciplinary matters of the police
3 department, so I can't speak to what avenues
4 would have gone down in this situation."
5 That's the end of the quote.
6 In point and in fact, Mayor Togliatti
7 was copied on communications relative to
8 Mr. Mazzola, correct?
9 A Yes.
10 Q And another question was asked, this is
11 Togliatti deposition page 31, question, "Is it
12 correct though that Mr. Mazzola indicated to
13 you that he was retiring to avoid discipline?"
14 The answer, "You know, I don't recall if he
15 stated that. He may have stated that. I don't
16 recall that. As I said, I do recall the
17 discussion about not having anything in his
18 disciplinary file. I do remember that
19 discussion. As far as him trying to avoid
20 something, I don't know."
21 Again, in fact, Mayor Togliatti was
22 copied on communications relative to the
23 possibility of discipline, correct?
24 A Through these e-mails that we talked about,
25 he's on there, yes.

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1 Q Okay. Mayor Togliatti's deposition page 89.
2 Question, "Did Chief Kilbane, Letitia Linker or
3 anyone else talk to you about possible
4 discipline against Mr. Mazzola?" Answer, "No."
5 In point and in fact, Mr. O'Brien, the
6 Chief -- there were, in fact, communications to
7 Mayor Togliatti about possible discipline
8 against Mr. Mazzola, correct?
9 MR. McLANDRICH: Objection. You
10 can answer.
11 A I didn't have any direct communications with
12 Mayor Togliatti except for these e-mails --
13 Q Right.
14 A -- and the meeting that I, you know, the
15 meeting I testified to earlier.
16 Q Right. And those included -- those included
17 communications involving the Chief, Letitia
18 Linker about possible discipline against
19 Mr. Mazzola, correct?
20 A Those included the response to Bob's request
21 for the bullet points, yes.
22 Q And, in fact, Mayor Togliatti participated in
23 at least one telephone call on that same
24 subject matter, correct?
25 A I know he was invited. I don't recall him

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1 particular in there. He may have been. I just
2 don't recall him there.

3 Q Okay.

4 A He may or may not have been.

5 Q And then question, Mayor Togliatti deposition
6 at page 89, "Did anyone talk to you about
7 taking discipline against Mr. Mazzola?"

8 Answer, "No."

9 In fact, again, Mayor Togliatti was a
10 part of communications about possible
11 discipline against Mr. Mazzola, correct?

12 MR. McLANDRICH: Objection. You
13 can answer.

14 A In these particular e-mails Mayor Togliatti was
15 included on, either cc'd or sent them, yeah.

16 MR. CHANDRA: Let's go off the
17 record. Just give me a minute and let me talk
18 to Ms. Savoie and we'll be right back if
19 there's anything more.

20 THE VIDEOGRAPHER: Off the
21 record.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Back on the
24 record.

25 Q Now, Chief Kilbane had testified as the City of
CADY REPORTING SERVICES, INC.

1 Independence's Rule 30(b)(6) representative.
2 On page 15 of that deposition he said, "We
3 never got to the point where we were discussing
4 specific charges." And he said that with
5 respect to Mr. Mazzola.

6 That, in fact, is not correct, true?

7 A I don't remember discussing any specific
8 charges, just general potential charges to be
9 discussed in the future.

10 Q Okay. Well, but in the bullet points, these
11 are specific categories of charges including
12 insubordination, correct?

13 A Yeah. They're subject -- yes. They're subject
14 matter charges. They're potential areas of
15 charges. But I don't know the context of what
16 Chief was referring to, but I was not part of
17 any discussions regarding specific charges
18 moving forward against Lieutenant Mazzola.

19 Q So it all depends on the meaning of the word
20 specific?

21 A I mean I'm just telling you the facts.

22 Q All right.

23 MR. CHANDRA: I have no further
24 questions. Thank you.

25 MR. STRANG: Thank you. He will
CADY REPORTING SERVICES, INC.

1 read. Thank you.

2 THE VIDEOGRAPHER: We're off the
3 record.

4 (Off the record at 3:08 p.m.)

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CADY REPORTING SERVICES, INC.

1 THE STATE OF OHIO, } SS:
2 COUNTY OF CUYAHOGA. }

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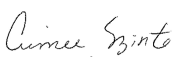
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I, Aimee N. Szinte, a Notary Public within and
for the State of Ohio, duly commissioned and
qualified, do hereby certify that GREGORY O'BRIEN
was first duly sworn to testify the truth, the
whole truth and nothing but the truth in the cause
aforesaid; that the testimony then given by him was
by me reduced to stenotypy in the presence of said
witness, afterwards transcribed on a
computer/printer, and that the foregoing is a true
and correct transcript of the testimony so given by
him as aforesaid.

I do further certify that this deposition
was taken at the time and place in the foregoing
caption specified, that I am not a relative,
counsel or attorney of either party, or otherwise
interested in the events of this action.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, on this 22nd day of October, 2020.


Aimee N. Szinte, Notary Public
within and for the State of Ohio
My Commission expires July 15, 2023.

CADY REPORTING SERVICES, INC.

1 THE STATE OF OHIO)
2 COUNTY OF CUYAHOGA) SS:

3
4 Before me, a Notary Public in and for said
5 state and county, personally appeared the
6 above-named GREGORY O'BRIEN, who acknowledged that
7 she/he did sign the foregoing transcript and that
8 the same is a true and correct transcript of the
9 testimony so given.

10 IN TESTIMONY WHEREOF, I have hereunto
11 affixed my name and official seal at
12 this day of
13 , 2020.

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18 Notary Public

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20 My Commission Expires:
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CADY REPORTING SERVICES, INC.

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23 SIGNATURE: DATE:

24 GREGORY O'BRIEN

25
CADY REPORTING SERVICES, INC.