

1 STATE OF NEW YORK  
2 MONROE COUNTY GRAND JURY

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4 DAY 6:

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6 Investigation into the death of Daniel T. Prude

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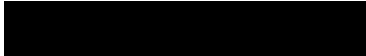
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9 Transcript of the Proceedings held before  
10 the Monroe County Grand Jury, at the Monroe County,  
11 Hall of Justice, 99 Exchange Blvd., Rochester, New  
12 York, 14614, on December 17th, 2020.

13

14 APPEARANCES: Letitia James, ESQ.  
15 New York State Attorney General  
16 Appearing for the People  
17 BY: JENNIFER SOMMERS, ESQ.  
18 Deputy Chief of Special Investigations  
19 BY: MICHAEL SMITH, ESQ.  
20 NYS Office of the Attorney General

21

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I N D E X T O W I T N E S S E S

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I N D E X T O E X H I B I T S

FOR THE

PEOPLE	DESCRIPTION	ID	EVD
GJ 52	Power Point		88
GJ 53	DT Instructor Manual		17
GJ 54-59	Proficiency test forms		97

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1 (Proceeding reconvened.)

2 MS. SOMMERS: Okay. At this time, we will  
3 be calling [REDACTED].

4 (Whereupon, the witness entered the Grand  
5 Jury room at a time of 9:51 a.m.)

6

7 S G T. [REDACTED] [REDACTED], after being  
8 duly called and sworn, testified as follows:

9

10 **EXAMINATION BY MS. SOMMERS:**

11 Q. Where do you work? Sorry. I'm sorry. First of  
12 all, could you state and spell your first and last  
13 names?

14 A. Sure. My name is [REDACTED]. [REDACTED].

15 Q. Thank you. Where do you work?

16 A. I work for the Rochester Police Department.

17 Q. In what capacity?

18 A. I'm a Sergeant for the patrol division at the  
19 Goodman Section on the midnight shift.

20 Q. Thank you. How long have you been employed by  
21 the Rochester Police Department?

22 A. I was hired in July of 2007, so 13 years.

23 Q. When did you become a Sergeant?

24 A. July of last year.

25 Q. Do you hold any special positions within the

1 Rochester Police Department?

2 A. I do.

3 Q. And, can you just briefly tell the Grand Jury  
4 what those are?

5 A. Sure. I'm the Assistant Team Leader on the  
6 Police SWAT Team, I am a member of the CIT, Crisis  
7 Intervention Team, I'm a Field Training Officer, I'm a  
8 Defensive Tactics Instructor and a General Tops  
9 Instructor.

10 Q. Okay. I'd like to -- specifically, talk to you  
11 this morning about DT, Defensive Tactics.

12 A. Sure.

13 Q. Just using very broad strokes, can you explain to  
14 the Grand Jury what is the -- what is what we hear  
15 about DT or Defensive Tactics?

16 A. Sure. Defensive Tactics are verbal, and physical  
17 skills, that are taught to police officers so that  
18 they can both defend themselves and also gain custody  
19 and control of subjects.

20 Q. And, when is it that police officers are first  
21 introduced to Defensive Tactics?

22 A. In the Police Academy.

23 Q. Is that, you know, a one hour block or is it one  
24 of the larger blocks?

25 A. It's one of the larger blocks of instruction in

1 the Academy?

2 Q. And, what are in-service trainings?

3 A. In-service trainings can be a number of things,  
4 but essentially, sometimes quarterly, sometimes  
5 yearly. Officers come off the road from their regular  
6 assignments, they go back to the Police Academy and  
7 they get taught either new skills or refreshed on old  
8 skills.

9 Q. Is Defensive Tactics or DT ever a part of the  
10 in-service training?

11 A. Occasionally.

12 Q. Okay. Thank you. Can you explain for the Grand  
13 Jury the process to become a DT Instructor?

14 A. Sure. Well, there's a couple of minimum  
15 qualifications. You have to be a General Topics  
16 Instructor and you have to have at least three years  
17 with the Police Department. Once you've met those  
18 minimum qualifications, you can write an  
19 intra-departmental correspondence letter to the --  
20 through the chain of command to the Chief; and, if the  
21 Chief likes your written submission, he can select you  
22 to attend the two week Defensive Tactics Instructor  
23 School.

24 Q. And, when did you become certified as a DT  
25 Instructor with the Rochester Police Department?

1 A. 2015.

2 Q. Thank you. What is the New York State Division  
3 of Criminal Justice Services?

4 A. DCJS is an agency that assists law enforcement  
5 and police departments around the state with things  
6 like data collection and training.

7 Q. And, you said DCJS?

8 A. Division of Criminal Justice Services.

9 Q. Thank you. You indicated that DCJS assists with  
10 training?

11 A. Yes.

12 Q. Does the State Department of the Criminal Justice  
13 Services actually implement and certify training  
14 protocols?

15 A. They do.

16 Q. Did there come a point in time when you became a  
17 Defensive Tactics Instructor who is certified by DCJS?

18 A. Yes.

19 Q. When is that?

20 A. In August of 2017, members of DCJS and their  
21 contractors came to Monroe County and they put on a  
22 couple of two a day instructor level courses, where  
23 they taught members who were already Defensive Tactics  
24 Instructors how to teach the new program.

25 Q. Okay. And, we'll get to the new program in a

1 second. And, was it through that process that you  
2 became certified by DCJS?

3 A. It was, yes.

4 Q. And, what did that certification through DCJS  
5 enable you to do?

6 A. Well, after that certification course they asked  
7 me and a few other members of the Rochester Police  
8 Department to become contractors for DCJS and travel  
9 around the state teaching this new DCJS curriculum to  
10 instructors all around the state.

11 Q. Okay. Thank you. Before we get to the new  
12 curriculum, I just want to talk about general  
13 principles. In defense -- what is the goal of  
14 Defensive Tactics, what is the end result goal that is  
15 taught?

16 A. The goal of Defensive Tactics is to gain custody  
17 and control of a combative subject.

18 Q. Are custody and control the same thing?

19 A. No.

20 Q. Can you give the Grand Jury an example or explain  
21 what you mean by that?

22 A. Sure. So, for example, if -- if I were to  
23 observe an individual commit a larceny at a gas  
24 station, I watched with my own eyes. I now have  
25 probable cause to arrest that person for stealing. If

1 I approach them and say, you're under arrest, they are  
2 now in my custody but I don't yet have control of  
3 them. If I handcuff them and I'm holding my  
4 handcuffed prisoner who's not resisting me, I now have  
5 custody of them and control of them. But, I take a  
6 phone call and turn by back to this person, they're  
7 still wearing handcuffs, but I'm no longer in control  
8 of them because they can just walk away. So, somebody  
9 can be in your custody but not under control.

10 Q. Is it also possible for people in custody to end  
11 up not in custody?

12 A. Sure. Yes.

13 Q. Okay.

14 A. Many suspects have run from the police after  
15 being lawfully arrested, both in handcuffs and not in  
16 handcuffs.

17 Q. Thank you. Is there any sort of defined rule  
18 that determines when an individual is in control for  
19 purposes of Defensive Tactics?

20 A. No. The textbook definition of control is a  
21 perception based on the officers' training and  
22 experience. So, two officers can be fighting the same  
23 combative subject, and one officer is seeing one thing  
24 and the other officer is seeing something completely  
25 different. Maybe I'm controlling one arm, and I think



1 that we're doing a great job and this is under  
2 control, and the other officer is controlling the  
3 other arm and he sees that the subject is accessing a  
4 firearm in his pants and he's about to draw it on us.  
5 So, that's two completely different interpretations of  
6 how the same altercation is going. So, that's why  
7 it's not so much a hard fast rule and more a  
8 perception based idea.

9 Q. Are there -- have you, yourself, been a part of  
10 -- I'd like to withdraw that. Is it possible, even,  
11 that somebody who's handcuffed and doesn't have access  
12 to a weapon could not be that -- that that person  
13 could not be in the control of an officer?

14 A. Yes. In my personal experience, over the past 13  
15 years, I've seen handcuffed individuals kick officers,  
16 spit on officers, attempt to bite officers, I've seen  
17 handcuffed individuals move the handcuffs from behind  
18 their back out to in front of their bodies, whether it  
19 be based on flexibility or double jointedness. I've  
20 seen individuals pull one hand out of the handcuffs  
21 and be swinging the other handcuff around. I've seen  
22 a handcuffed individual kick out the back window of a  
23 police car, dive out the open window and run down the  
24 street. I even once saw a naked handcuffed man run  
25 from the entire SWAT Team and made it about three

1 blocks before he got caught.

2 Q. All right. Thank you. Is it also possible that  
3 someone could be handcuffed with no access to weapons  
4 and be under control?

5 A. Yes.

6 Q. Those are both possibilities, correct?

7 A. For sure, one hundred percent.

8 Q. Thank you. Can you explain to the Grand Jury  
9 what are pre-contact indicators or pre-contact cues?

10 A. Yeah. Pre-contact cues are physical displays  
11 that someone might show an officer prior to launching  
12 an assault or an attack on the officer. So, some kind  
13 of examples of that might be the person clenching  
14 their fists, their jaw clenching and tensing, somebody  
15 blading their stance, like a boxer would stand, moving  
16 their right foot, or their strong foot back, dipping  
17 their shoulder forward, as if they're about to through  
18 a punch, looking at your weapon could be a pre-contact  
19 indicator to somebody trying to take your weapon. It  
20 could even go as far as somebody actually saying  
21 verbal cues, like, somebody saying, you know, I'm not  
22 going to jail this time, you're not going to take me  
23 back to jail, what kind of gun is that, give me your  
24 gun, give me your gun. All that stuff is stuff that  
25 either has been said to officers at some point or is

1 taught in the Academy as pre-contact indicators and  
2 the list is pretty exhausted.

3 Q. And, this is also, these -- is the recognition of  
4 or an awareness of these types of indicators taught as  
5 a part of Defensive Tactics?

6 A. Yes. We're always trying to re-enforce these  
7 small signals to look for to give you any sort of  
8 advantage, should somebody launch an attack and/or  
9 assault on you.

10 Q. Thank you. You mentioned, previously, that there  
11 was a change in the curriculum by DCJS in 2017. Do  
12 you recall that?

13 A. I do.

14 Q. Can you explain what you meant by that? What was  
15 that?

16 A. So, prior to 2017, the Defensive Tactics Program  
17 relied -- I guess, the change was, kind of, two fold.  
18 One, it was the content that was being taught and the  
19 other was the way in which it was taught. So, prior  
20 to 2017, most of the content of the Defensive Tactics  
21 Program was based around something called pain  
22 compliance techniques. Essentially, it was the use of  
23 small joint manipulations, like, wrist locks, pressure  
24 points, strikes, pepper spray, baton use. All these  
25 things were meant to invoke pain on the subject in

1 order to get them to comply. These techniques were  
2 also taught using, I guess, what you -- in the martial  
3 arts world, they call it kiai, where the officers  
4 practice the techniques either by themselves or  
5 against a willing opponent.

6 So, the change in 2017 was two fold. One,  
7 we moved away from pain compliance techniques and  
8 towards a systematic control of the human body. It  
9 was found that pain compliance techniques were greatly  
10 increasing the risk of injury to both the subject and  
11 the officer and largely were ineffective. In fact,  
12 it's been my personal experiences that people fight  
13 harder when you try to use a pain compliance technique  
14 to subdue them.

15 So, they moved to this systematic control  
16 system and they also moved away from this, kind of,  
17 kiai, where you would practice the technique on a  
18 willing opponent, and they moved toward a system where  
19 you would practice all these techniques on a  
20 graduating system of resistance drills.

21 So, the people you are trying it on are  
22 actually trying to prevent you from doing it; and,  
23 eventually, you work your way up to applying  
24 techniques to somebody who is fully resistant. And,  
25 they'd say, you don't really know the technique unless

1 you can do it under that kind of stress and duress and  
2 physical exertion.

3 Q. Just a second. So, I just want to make sure that  
4 I understand. So, the reason that, sort of, DT that  
5 had been implemented was changed, was be -- was it,  
6 just in summary, why? What were the reasons?

7 A. I think two fold. One, retention for the  
8 officers was low. People weren't remembering it.  
9 There were too many techniques.

10 To give you an example, if I was teaching in  
11 the old program, if you have your gun out and a  
12 subject tries to talk your firearm from you, there was  
13 one technique that you'd use, if the subject grabbed  
14 the barrel of your weapon, but a different technique,  
15 if the subject grabbed your wrist, and then a  
16 different technique, if the subject grabbed you with  
17 the opposite hand, and then a different one, if they  
18 grabbed it with two hands.

19 So, now you're asking an officer, who's been  
20 out of the Police Academy for maybe seven or eight  
21 years under the stress and duress of somebody trying  
22 to steal his duty weapon, to remember these techniques  
23 that he hasn't done or practiced in years. So, they  
24 changed that and now, it's one technique, no matter  
25 how the person grabs your firearm. And, that's just

1 one example. They reduced the overall number of  
2 techniques that were being taught and they developed  
3 these four, kind of, core concepts that the officers  
4 could fall back on. If the techniques were to fail,  
5 they could fall back on these four core concepts and  
6 still be successful.

7 Q. And, what were the -- what are the four core  
8 concepts?

9 A. Sure, yeah. The four core concepts are angles,  
10 mobility, engage/disengage, and transition. Just,  
11 kind of, to give you, like, a sense of what that means  
12 when I talk about mobility. Essentially, the officer  
13 needs to try to maintain the ability to retreat, if he  
14 needs to retreat, right, like, so if an officer is  
15 knocked off his feet and now he's on the ground, he's  
16 lost his mobility.

17 Now, he needs to do so something to gain his  
18 mobility back. When you talk about angles, what I'm  
19 talking about is, essentially, if my hips face my  
20 subject's hips, and we're looking at each other, all  
21 of our personal weapons, our hands and feet are, in  
22 play. I don't have any strategic advantage over my  
23 opponent. Whoever is bigger, stronger, more athletic  
24 is going to win that altercation. But, if I change my  
25 angle, so that my hips face my subject and his hips

1 face away from me, I gain an advantage. It's kind of  
2 similar to the reason why boxers circle in a ring.

3 For engage/disengage, it's -- it kind of  
4 goes hand in hand with mobility. Officers always need  
5 to maintain the ability to, either engage with more  
6 techniques from a position of advantage and strength  
7 or disengage, if a third party, or an animal, or  
8 something comes out and they discover that they're out  
9 of their depth or out of control of the situation.

10 And then, transition. And, that just means,  
11 if you're using a technique that doesn't work,  
12 transition to a different technique. If you -- it  
13 could also mean transition from one tool to the next.  
14 If you have your firearm out and the person has a gun  
15 and they drop the gun, you put your firearm away, they  
16 put their fists up, you can access a different tool, a  
17 taser, or a baton. So, transitioning from tool to  
18 tool or transitioning from technique to technique.

19 Q. Does transitioning also include the amount of  
20 force that's actually being applied?

21 A. Yeah, sure.

22 Q. So, could you give an example of that?

23 A. So, if I am doing a pressure point on an  
24 individual, and I say, put your hands behind your  
25 back, and they put their hands behind their back, I

1 transition away from the pressure point. I might  
2 maintain the position so that, if he starts to resist  
3 again, I can re-apply the pressure point; but, if you  
4 continue to hit that pressure point after the person  
5 has complied, they're not going to be compliant for  
6 much longer. So, you put the pressure point on, check  
7 and engage for compliance, and then you release and  
8 you monitor.

9 Q. So, just -- I actually was going to get to that  
10 shortly, but pressure points, what are they?

11 A. Pressure points are certain places on an  
12 individual's body where there's a bundle of nerves;  
13 and, if you press on the bundle of nerves, it inflicts  
14 pain on the individual. It's one of the pain  
15 compliance techniques that I referenced earlier.

16 Q. Okay. So, just to be clear, were all pain  
17 compliance techniques eliminated in the new DCJS  
18 curriculum?

19 A. No.

20 Q. Were pressure points -- are pressure points still  
21 taught as acceptable techniques to use?

22 A. Yes.

23 Q. Does -- the hypoglossal nerve technique, is that  
24 a pressure point technique?

25 A. It is.



1 Q. Could you explain to the Grand Jury what that is?

2 A. Sure. If you follow your jawline down, just  
3 behind your jaw, you can feel a little ridge, and if  
4 you put your fingers in that ridge and pull up toward  
5 to the sky and out, you should be able to feel, like,  
6 a little bundle of nerves. And, if you apply pressure  
7 to it, I'd say roughly, half of the population will  
8 feel that and half of the population won't. It's one  
9 of those things where, sometimes it works and  
10 sometimes it doesn't, but there's a bundle of nerves  
11 there that, if you press on it, some people it can  
12 inflict pain on them.

13 Q. Okay. I'm approaching with what has been marked  
14 for identification Grand Jury Exhibit Number 53. Do  
15 you recognize that?

16 A. Yes.

17 Q. What is that?

18 A. That is the Defensive Tactics Instructor Manual  
19 for the refresher training I took in 2017.

20 Q. Okay. And, is that an exact duplicate of the  
21 actual Manual provided by DCJS?

22 A. Yes.

23 MS. SOMMERS: Thank you. I'll offer 53,  
24 please.

25 (Whereupon, Grand Jury Exhibit Number 53 was

1 then received into evidence.)

2 BY MS. SOMMERS:

3 Q. So, 53 is in evidence if you need to refer to it.

4 A. Thank you.

5 Q. Was a technique called segmenting included in the  
6 new DCJS curriculum?

7 A. Yes.

8 Q. Can you please explain for the Grand Jury what  
9 segmenting is?

10 A. So, when you're talking about controlling a  
11 grounded subject, you want to -- what I talked earlier  
12 about, a systematic approach to controlling the human  
13 body as opposed to pain compliance, when you're taking  
14 the systematic approach to control a human body, you  
15 want to try to control their hips, their legs, their  
16 shoulders and their head.

17 So, in a perfect world, if two officers were  
18 engaged with the subject, the first officer would  
19 control the subject's hips and there's a technique for  
20 doing that, it's called knee on top. I can talk about  
21 that.

22 Q. We'll, get to that.

23 A. Then, there's a technique called a low anchor.

24 So, the low anchor, essentially is, an officer would  
25 bear hug the subject's legs around the knees, and they

1 would put their body in a teepee with their butt in  
2 the air and they would apply downward pressure with  
3 their shoulder into the hamstrings or the quads of the  
4 subject. So, this controls the lower hemisphere of  
5 their body. The other officer is controlling their  
6 hips. There's a variety of reasons you might not want  
7 to do the low anchor position. For example, if the  
8 subject is naked, you might not want your head that  
9 close to the subject's rear end. If the subject has  
10 bodily fluids, blood, urine, feces on them, you might  
11 not want to wrap your arms around their legs, there's  
12 broken glass on the ground. If you're in a tight  
13 hallway and you can't get down to where the legs are,  
14 based on the geography and the environment of the  
15 fight. There's another technique called segmenting,  
16 which is implemented to be a secondary option for a  
17 two officer control system.

18 Q. Let me stop you for a second.

19 A. Sure.

20 Q. So, under normal circumstances, if for instance,  
21 what you just described did not exist, you were  
22 dealing with somebody in a relatively clean state,  
23 clothed, the low -- is the low anchor, that would be  
24 an appropriate tool to use?

25 A. Yes.

1 Q. Okay. But, the low anchor, if I understand you  
2 correctly, brings the officers's head close to a  
3 subject's buttock?

4 A. Yes.

5 Q. I'm sorry. Go ahead.

6 A. It's okay. So, if based on the totality of the  
7 circumstances of the incident, you don't feel  
8 comfortable to do the low anchor, for whatever reason,  
9 the option is given to segment. Segmenting is the  
10 application of pressure on the head of a subject. You  
11 take your hands and put them on the top of the head,  
12 right above the ear, turn the head to the side, and  
13 apply downward pressure. You put your body in the --  
14 kind of, a shape, like, a push up position, and you  
15 apply steady downward pressure.

16 Q. What effect does the segmenting position have on  
17 a subject's ability to breathe, generally speaking?

18 A. So, when you're talking about controlling a  
19 person, breaking the person's posture is important.

20 When human beings have their spine aligned,  
21 they're strong. If I'm standing upright and my spine  
22 is aligned, I'm very difficult to knock over. But, if  
23 you take my head -- if my head is above my shoulders,  
24 above my hips, above my knee, my spine is straight, I  
25 can -- I'm not easily pushed over. But, if you take

1 my head and bring it outside my shoulders, my hips and  
2 my knees, it's a lot easier to knock me down.

3 If somebody is on the ground, if they're  
4 grounded, breaking their posture weakens the entire  
5 structure of the human body. So, by turning the head  
6 and applying that downward pressure, it makes it much  
7 more difficult for the person to turn, to do a  
8 push-up. Obviously, where the head goes, the body  
9 must go. So, a person, with pressure being applied to  
10 their head, it's going to be very, very difficult for  
11 them to stand back up. Does that answer your  
12 question.

13 Q. Thank you. So, actually, is there any way that  
14 you could demonstrate -- is there a way that you're  
15 able to demonstrate this using a human being in the  
16 standing up position?

17 A. Yes.

18 Q. So, I'm going to ask Mike -- Mr. Smith to come  
19 up -- can you come around? Everyone is going to  
20 remain standing. This is -- so, I just want to note  
21 for the record, you guys are approximately the same  
22 height.

23 A JUROR: You guys look like twins.

24 THE WITNESS: I take that as a compliment.

25 BY MS. SOMMERS:

1 Q. So, is Mr. Smith's head, related to his body in  
2 the position that you were just saying, is not  
3 desirable?

4 A. Yeah. He has good posture here. His spine is in  
5 alignment, he's standing up straight, his head is  
6 above his shoulders, above his hips, above his knees.  
7 He's at a position of relative strength from here.

8 MS. SOMMERS: Just for the record, Mr. Smith  
9 is standing up straight with arms down and looking  
10 straight ahead.

11 Q. Is there any way that you can test how -- how  
12 posturally stable he is?

13 A. Sure. So, if you put your arms out 90 degrees to  
14 the floor.

15 MS. SOMMERS: Okay. So, for the record,  
16 that's what Mr. Smith is doing now. Go ahead.

17 THE WITNESS: So, I'm going to apply  
18 downward pressure to your arms, and I want you to try  
19 to resist me pushing your arms down to your sides.

20 MS. SOMMERS: All right. So, just for the  
21 record, Sergeant [REDACTED] just tried to bring Mr. Smith's  
22 arms down by applying downward pressure and was unable  
23 to do so beyond just an inch or two.

24 THE WITNESS: So, now, what I'm going to do  
25 is take you head and I want you to tuck you chin into

1 your shoulder there. So, now, I've broken his posture  
2 and when I apply that same downward pressure on his  
3 arms, it weakens the entire anatomical structure of  
4 his body.

5 MS. SOMMERS: Okay. So, for the record --  
6 thank you. You can go sit down. I just want to make  
7 a record of this.

8 BY MS. SOMMERS:

9 Q. So, for the record -- and, Sergeant [REDACTED], please  
10 correct me if I'm wrong. You took Mr. Smith's head,  
11 you brought his chin towards his chest and directed it  
12 out to the right, is that correct?

13 A. Correct.

14 Q. And, when you did that what, if anything,  
15 happened when you pressed on -- when you applied  
16 pressure to Mr. Smith's arm?

17 A. It was much easier to push his arms down to his  
18 sides.

19 Q. Thank you. Are these principles taken from any  
20 type of martial arts?

21 A. Yeah. Most of these techniques are derived from  
22 Brazilian jiu-jitsu, which came from judo.

23 Q. And, have you been practicing Brazilian jiu-jitsu?

24 A. I have, yes.

25 Q. Since when?

1 A. I have been training Brazilian jiu-jitsu for about  
2 ten years. Obviously, COVID, kind of, hurt me on that  
3 front. But, yeah, for about ten years I've been doing  
4 Brazilian jiu-jitsu. That's part of the reason why I  
5 was chosen to be a contractor for DCJS.

6 Q. So, applying this to, what you were describing  
7 before, segmenting, is the fact that the head is  
8 turned taking the body out of that straight alignment  
9 that you were speaking about?

10 A. Yes.

11 Q. Among other things?

12 A. Yes.

13 Q. As part of teaching through DCJS, are the  
14 subjects who are learning these techniques also  
15 required to have them performed on them?

16 A. Yes.

17 Q. Okay. During your time as a DT Instructor, have  
18 you also had segmenting performed on you?

19 A. I have had segmenting performed on me probably  
20 upwards of hundred times.

21 Q. Okay. Is it -- generally, do they try to make  
22 sure that you're paired with someone who is the same  
23 size as you?

24 A. No. We intentionally rotate out partners so that  
25 you can try it on and have it done to you by people of



1 varying body types and sizes. I've had people that  
2 outweighed me by hundreds of pounds doing it. I've  
3 had older people, younger people. And, we also ensure  
4 that the technique is performed, not just on the  
5 matted floor in the Defensive Tactics Laboratory, but  
6 also on hardwood floors, tile floors, concrete floors,  
7 so that the officers know what it feels like on a  
8 variety of surfaces from a variety of different body  
9 types.

10 Q. Okay. Is there any way that segmenting can be  
11 enhanced or decreased, or the amount of force involved  
12 through the process of segmenting?

13 A. Yes. So, when you're in that push-up position,  
14 when you're doing segmenting, your relationship to  
15 your hips and the ground determines how much pressure  
16 you're putting on the individual. So, if your hips  
17 are high in the air, you're putting less pressure, if  
18 your hips are neutral, you're putting less pressure  
19 and if you sag your hips, you apply even more  
20 pressure. And, obviously, another way to decrease  
21 that pressure is to put one or both of your knees on  
22 the ground. Any one of those things will take some of  
23 the pressure off of the subject.

24 Q. The knee on top position that you mentioned  
25 previously, was that also a part of the new DCJS

1 curriculum?

2 A. It is.

3 Q. And, is that -- does that compliment segmenting,  
4 as well as the low anchor position?

5 A. Yes.

6 Q. Could you explain for the Grand Jury what the  
7 knee on top position is?

8 A. Sure. So, the knee on top position is, you take  
9 your shin, the target area of the knee on top position  
10 is your subject's hips or beltline, and it doesn't  
11 matter if they're laying on their back, or on their  
12 side or on their belly, the target area is always the  
13 same.

14 So, you're going to take your shin bone,  
15 you're going to apply downward pressure on the  
16 subject's hips. Your other leg that's not applying  
17 pressure on the hips should be out, so that you're in  
18 an athletic stance. From here, you're going to -- if  
19 the other officer has low anchor, you're going to  
20 apply pressure to the subject's face and head, similar  
21 to segmenting. If your second officer is segmenting,  
22 you don't need to do that, obviously. But, that is,  
23 in a nutshell, what the knee on top position looks  
24 like. You're pinning the subject's hip to prevent  
25 them from being able to stand or easily roll/turn.

1 Q. So, different people might have different hips.  
2 Is there a particular area of the body that is to be  
3 avoided?

4 A. Yeah. Obviously, you want to avoid putting  
5 pressure on the lungs and the diaphragm. So, anything  
6 up in the chest region you want to try to avoid.  
7 You're trying to keep, like I said, the target area of  
8 the beltline. However, in the dynamics of a fight,  
9 someone rolling, twisting, other officers involved  
10 bumping into you, whatever the case may be. The  
11 technique might be a little bit higher than the belt,  
12 a little bit lower than the belt, down in the  
13 buttocks. It doesn't always look perfect in real  
14 life.

15 Q. Are either of the two techniques that you just  
16 discussed, segmenting and knee on top, forbidden for  
17 use, taught to not be used on handcuffed subjects?

18 A. No.

19 Q. Okay. Is there anything in the DCJS curriculum  
20 that forbids using those techniques on a handcuffed  
21 subject?

22 A. No. Forbidding the use of a Defensive Tactics on  
23 a handcuffed subject doesn't make any sense. Like I  
24 said, handcuffed subjects have a great ability to  
25 continue to resist. So, if I were to tell an officer,

1 hey, you're not allowed to shoot a handcuffed person,  
2 and then that handcuffed person accesses a firearm  
3 that they had secreted in the back of their pants that  
4 wasn't found on the search and they start shooting at  
5 that officer and he's not allowed to return fire, it  
6 just doesn't really make sense. So, we don't do that.  
7 We teach the technique. We teach them Graham versus  
8 Connor in Article 35 and all those things. It's on --  
9 incumbent on them to take into account the totality of  
10 the circumstances and how they apply those techniques.

11 Q. So, I just want to be clear. It's not forbidden  
12 to use on a handcuffed subject?

13 A. Is it not forbidden to use on a handcuffed  
14 subject.

15 Q. But also, I think you would agree there would be  
16 times that it would be inappropriate to --

17 A. Correct.

18 Q. -- to use on a handcuffed subject?

19 A. Correct.

20 Q. Thank you. What is taught to recruits, or in  
21 refreshers, relative to when force should be ceased?

22 A. Force is ceased when you have custody and  
23 control.

24 Q. Okay. And how -- in terms of the knee on top and  
25 the segmenting, how would you be able to visually --

1 well, I'd like to withdraw that. Is -- is -- when  
2 custody and control are achieved, is it something that  
3 happens, like, very quickly? I'm just wondering if  
4 you could, perhaps, clarify or elucidate that for the  
5 Grand Jury?

6 A. Well, like I said, custody and control is  
7 perception based. So, different officers are going to  
8 come to those conclusions at different rates and  
9 different officers feel different things. There's a  
10 concept we teach in Defensive Tactics called resistive  
11 tension.

12 So, when you're engaged with the subject,  
13 physically, when you're touching the subject, you can  
14 feel the level of agitation in their body, you can  
15 feel their muscles contracting. So, one officer might  
16 be feeling resistive tension and feeling resistance  
17 from the subject, and the other officer might not be  
18 feeling it. Generally speaking, when the officer  
19 feels that they have control, that's when they would  
20 move onto whatever's next, a medical assessment,  
21 moving the person to a police car, or an ambulance or  
22 whatever is appropriate for the given situation.

23 Q. Are there any things that can be looked for when  
24 looking at either the knee on top or the segmenting  
25 that would indicate that force is either being

1 enhanced or decreased?

2 A. Yes. Like I said, with segmenting, if the  
3 officer puts his butt up in the air or puts his knees  
4 on the ground, that typically indicates that he's  
5 decreasing force, probably evaluating what he needs to  
6 do next, whether he needs to do a follow-up technique  
7 or whatever the next phase of the arrest is. With  
8 knee on top, if you're -- sorry. This is the very one  
9 of those things that's very easy to show and very  
10 difficult to describe. So, bear with me.

11 Q. Let's see how you do.

12 A. When you're in the knee on top position, like I  
13 said, your shin is across the hips, your other foot is  
14 kicked out away from the subject. If that foot comes  
15 closer to the subject, or if your knee of your  
16 opposite foot touches the ground, you're reducing  
17 pressure on the subject.

18 Q. So, those would be visual cues that force is  
19 changing?

20 A. Yes.

21 Q. When are officers taught to no longer have an  
22 individual in a prone position? Is that taught as --  
23 was that -- is that a part of this curriculum?

24 A. There's no -- there's nothing in the Academy  
25 where we say, if the subject is in the prone position

1 for one minute you must change the position, or two  
2 minutes or ten minutes. When the subject is no longer  
3 resistive, and you feel that you have control, you  
4 roll the subject to the recovery position, you conduct  
5 your pat frisk or your search, or if that's  
6 appropriate, you evaluate them for medical issues and  
7 then you move onto the next portion of the arrest.

8 Q. And, what is the quote, unquote, recovery  
9 position?

10 A. Rolling the person on to their side.

11 Q. Okay. Thank you. Is there anything in the DCJS  
12 curriculum that precludes the use of these techniques  
13 on individuals who may be experiencing some type of a  
14 drug or intoxication?

15 A. No. And, I would say that these techniques would  
16 be more effective on somebody who is intoxicated than  
17 pain compliance techniques because they don't rely on  
18 pain. People who are on drugs or intoxicated tend to  
19 feel pain less. These techniques that control an  
20 individual through body mechanics and leverage tend to  
21 work a lot better.

22 Q. And just -- who was it that you learned these  
23 techniques from?

24 A. A man named [REDACTED]. He's a Jamestown  
25 Police Officer and Brazilian jiu-jitsu black belt.

1 Q. And, just, to your knowledge, was Mr. [REDACTED]  
2 or Officer [REDACTED] responsible for working with the  
3 DCJS to implement the program state-wide?

4 A. Yes.

5 Q. And, you were also a part of that?

6 A. Yes.

7 Q. Once you became certified?

8 A. Yes.

9 Q. Can you explain how the program has been rolled  
10 out at the Rochester Police Department? Who learned  
11 it first, if you know?

12 A. So, first, it went out to a handful of Defensive  
13 Tactics Instructors. After there were some Defensive  
14 Tactics Instructors, including me and a few members of  
15 the SWAT Team, the Commander of the SWAT Team saw that  
16 this program was, in his opinion, superior.

17 Q. Let me -- so, maybe setting aside what other  
18 people may have said.

19 A. Oh, gotcha.

20 Q. So, if you could just tell me who was -- so, was  
21 the SWAT Team the first team that was trained in this?

22 A. Sorry, I'm long winded. Yes, the SWAT Team was  
23 the first team that was trained in this.

24 Q. And, how did that occur?

25 A. We broke the curriculum up into a series of four



1 hour blocks and we conducted it over a few months  
2 during our regular SWAT training review evolution.

3 Q. And, as you described before, did this involved  
4 demonstrating -- having these techniques demonstrated  
5 on the individuals involved?

6 A. Yeah. So, we taught the techniques. The  
7 individuals involved would perform the techniques and  
8 then perform them under a graduating series of  
9 resistance up until they can perform the techniques  
10 under full resistance. And, at the end of the  
11 curriculum, they took a proficiency test, where they  
12 performed the techniques in front of an Instructor who  
13 evaluated whether or not they performed the techniques  
14 to an acceptable level. And then, pass or fail based  
15 on that test.

16 Q. What about the Academy? So -- so, does it go  
17 without saying that this is a different way of  
18 Defensive Tactics than what you've learned 13 years  
19 ago when you went through the Academy?

20 A. Yes.

21 Q. Okay. So, first of all, are these now taught in  
22 the Rochester Police Department Academy?

23 A. Yes.

24 Q. All right. What about the people like you, who  
25 might not be DT Instructors, but went through the

1 Academy some time ago, how were those members taught  
2 these techniques?

3 A. So, before COVID hit we started to roll out the  
4 number of in-service trainings, where officers would  
5 come off from their regular assignments, whether it be  
6 in patrol on the road or Detectives, they'd come off  
7 from their regular assignments, come to the Academy,  
8 and they would learn these new techniques. And then,  
9 as they would learn them, we would certify them to use  
10 those techniques they learned after the training.

11 MS. SOMMERS: I don't think I have any other  
12 questions, but do any grand jurors have questions  
13 they'd like to ask? Yes, sir?

14 A JUROR: The concept of segmenting on the  
15 head with somebody that's prone, specifically, in this  
16 incident, with this case, while you're training the  
17 people learning these techniques, have you observed  
18 that maybe the face is turned to the side and down to  
19 where it's restricting oxygen getting in? So, in  
20 other words, the person is struggling or you're  
21 teaching the techniques and someone might not have it  
22 right and the head goes too much?

23 MS. SOMMERS: So, did you understand the  
24 question?

25 THE WITNESS: Yes.

1 BY MS. SOMMERS:

2 Q. So, in the course of teaching segmenting, if I  
3 understand correctly, has anyone had breathing  
4 problems?

5 A. That's a really good question and I'm sorry I  
6 didn't cover that earlier. So, when segmenting was  
7 created it was specifically designed to -- the reason  
8 we target the top of the head up near the ears is  
9 because it was designed to avoid covering the nose and  
10 the mouth with hands and fingers to preclude somebody  
11 from being able to breathe. The reason the head is  
12 turned to the side, one of the reasons to include  
13 breaking the posture is also, so if you're in dirt or  
14 in grass, you're not pushing the person's face  
15 straight down into the mud or dirt or the grass.  
16 You're turning their head so that their mouth and  
17 airway are open and free to breathe. I have never  
18 seen an injury. I've instructed hundreds of people.  
19 I've never seen an injury. I've never seen anybody  
20 complain to anything other than a little bit of  
21 discomfort from segmenting. But, that is a really  
22 good question. I'm sorry I didn't cover that earlier.  
23 Q. So, as a follow-up for a moment, what about the  
24 -- if somebody is not doing it right, is it -- is it  
25 possible to get into, like this, instead of this,

1 like, this kind of situation? Would the --

2 A. I've never seen that. I've never seen that  
3 happen in -- in teaching it to hundreds of people.  
4 But, I'm not a doctor. I don't know enough about the  
5 anatomy of the throat to know if that would be the  
6 problem. I don't think it would, but that's just my  
7 opinion.

8 MS. SOMMERS: Does that answer your  
9 question?

10 A JUROR: Yes.

11 MS. SOMMERS: Thank you. Anybody else?

12 A JUROR: Just on the concept of resistive  
13 tension. If I'm struggling to get air or struggling  
14 to breathe or a drowning person starts flailing,  
15 starts fighting, is that able to be discerned between  
16 resistance and being combative versus fighting for  
17 one's life for air?

18 THE WITNESS: That's a very fine line. You  
19 make a good point, you know, the officer's constantly  
20 trying to make those evaluations throughout, you know,  
21 sometimes stressful encounters. But, it is a fine  
22 line. Somebody's body could be tensing because  
23 they're experiencing pain or their body could be  
24 tensing because they're attempting to hurt the  
25 officer, inflict pain on the officer or to get away

1 from the officer. Like I said, it's a fine line that  
2 is monitored throughout. That's all I can really  
3 speak on it. I don't -- I don't -- I wasn't there the  
4 night of this particular incident, so I can't speak to  
5 the specifics of it, but that's a good question too.

6 MS. SOMMERS: Does anyone else have any  
7 other questions? Sergeant, you're all set, thank you.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness left the Grand Jury  
10 room at a time of 10:37 a.m.)

11 MS. SOMMERS: So, we are going to take five  
12 minutes. Thank you very much.

13 (Whereupon there was a short break off the  
14 record.)

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1 (Proceeding reconvened.)

2 MR. SMITH: Ladies and gentlemen, we are  
3 back on the record. At this time, we're going to call  
4 Professor [REDACTED]. I'm going to record --  
5 start recording the video and ask at this time,  
6 Professor [REDACTED], the foreperson is going to swear you  
7 in.

8 JURY FOREPERSON: Good morning, [REDACTED].  
9 Please raise your right hand.

10 MR. SMITH: Looks like you're frozen on our  
11 end here, [REDACTED], for a second.

12 Okay. Go ahead.

13

14 **P R O F E S S O R** [REDACTED] [REDACTED]  
15 [REDACTED], after being duly called and sworn, testified as  
16 follows:

17

18 **EXAMINATION BY MR. SMITH:**

19 Q. [REDACTED], I want to make sure they can hear you.  
20 Will you go ahead and speak, [REDACTED]? I want to make  
21 sure they can hear you on the speaker.

22 A. Yes, good morning.

23 Q. Good morning. Professor [REDACTED] I'm going to do  
24 one more thing too. I'm going to ask if you could  
25 also affirm in keeping with the Grand Jury secrecy,

1 that there are no people in the room with you and that  
2 you are in a secure location with no other people?

3 A. That's correct.

4 Q. And, Professor ██████████, as we've discussed, we are  
5 recording this examination. And, I would also note  
6 for the record that we do have a court order  
7 permitting this electronic testimony. Can you tell us  
8 how you're employed, sir?

9 A. I'm a Professor of Criminology and Criminal  
10 Justice at the University of South Carolina.

11 Q. And, before we go on any further, Professor  
12 ██████████, could you tell us what -- explain for the  
13 grand jurors what criminology is?

14 A. Sure. Criminology is -- is a social science  
15 where it focuses on -- on the causes of crime, the  
16 reasons for crime, and -- and society's response to  
17 crime. In other words, the police, the courts and  
18 corrections and beyond. So, criminology really,  
19 overall, looks at crime holistically from a variety of  
20 perspectives and topics and covers not only, as I  
21 said, why people commit crime, and how they commit  
22 crime and the statistics behind it, but society's  
23 response to the criminal justice system.

24 Q. This must be a redundant question, Professor  
25 ██████████, but I'm wondering then, with that in mind, if

1 you could explain, sort of, briefly, for the grand  
2 jurors what is it that a criminologist does?

3 A. A criminologist, at least at the University, we  
4 -- we focus on, obviously, teaching students,  
5 undergraduate and graduate level. We have a PhD  
6 Program here, and that's where I focus most of my  
7 teaching. We certainly do research. My research is  
8 focused on the police, as part of society's response  
9 to crime, and my focus even within the police is on  
10 high risk police activities, and use of force, use of  
11 deadly force and the training and accountability that  
12 goes along with that. And, we do, as part of our  
13 criminology service University, we work with agencies,  
14 Police Departments particularly, in terms of setting  
15 up policies, training and accountability systems. So,  
16 we look at the whole, how -- what police do and how  
17 they're controlled.

18 Q. I'm going to get into some of that specific stuff  
19 in a minute, Professor [REDACTED], but I'm just wondering,  
20 and generally, how long have you been teaching  
21 criminology whether it's been at the University of  
22 South Carolina or in general?

23 A. Probably 40 years.

24 Q. And, how long at the University of South  
25 Carolina?



1 A. I've been at the University of South Carolina for  
2 30, and I was at the University of Miami before that  
3 for about 10 years.

4 Q. And, have you had administrative positions in the  
5 area of criminology at those two Universities,  
6 Professor [REDACTED]?

7 A. Yes, sir. I was head of the Center for the Study  
8 of Law and Society at the University of Miami and I  
9 was head of the Research Division at the School of  
10 Criminology here before we were a department, I was  
11 the inaugural Chair of the Criminology Department here  
12 at the University of South Carolina.

13 Q. Professor [REDACTED], do you still teach classes in  
14 this topic to this day?

15 A. Yes. Obviously, most of them are online at this  
16 point. We just ended our semester.

17 Q. And, you're testifying this morning from South  
18 Carolina, Professor [REDACTED]?

19 A. Correct.

20 Q. And, we're not going to ask you how the weather  
21 is, sir. We are going to ask about your education.  
22 Can you tell the grand jurors about your educational  
23 background?

24 A. Yeah. I received a Bachelors and a Masters  
25 Degree from the University of Oregon, my Bachelors

1 Degree was in community service and public affairs.  
2 My Masters Degree was in sociology and I went out and  
3 worked a few years in the criminal justice system and  
4 then earned my PhD at Washington State University in  
5 Poland, Washington.

6 Q. Sir, so as we've discussed, you're a doctor then?

7 A. I have a Doctorate, yes.

8 Q. Not a Medical Doctor, however?

9 A. No.

10 Q. I just want to make that clear. How is it that  
11 you became involved in, specifically, criminology and  
12 police practice, Professor [REDACTED]?

13 A. I guess it started when I was at the University  
14 of Miami in 1980. I guess it was when they had riots,  
15 the Police Department, I think, had bludgeoned an  
16 African American who had driven by them and there were  
17 riots that occurred, civil disturbances, very similar  
18 to what we've seen in the last year or so here.

19 But, I was asked by the Data Association of  
20 the Chiefs of Police as an independent surveyor to  
21 evaluate the police uses of force and create an after  
22 action report on the riot. Well, unfortunately, there  
23 were several police involved shootings, where -- where  
24 young black suspects were -- were killed and more  
25 riots. So, I ended up doing three or four of the

1 after action reports for the riots in Miami during the  
2 1980's. And, that kind of, started me on my path and  
3 got me very interested in what was going on. I can  
4 explain -- do you want me to go through some of the  
5 things I did down there.

6 Q. Yeah, if you can briefly, Professor [REDACTED]?

7 A. So, as part of that work, working with the Police  
8 Department, the then State's Attorney, Janet Reno, who  
9 became our Attorney General, asked me to head up the  
10 research part of her Grand Jury. So, in Florida, the  
11 Grand Juries are -- are empowered and funded to do  
12 civil presentments. So, I helped her. We -- we were  
13 focused on the use of force civil presentment to do  
14 that. Sorry, I have a puppy and if she keeps it up, I  
15 will move her. So, I -- I worked with -- with Janet  
16 Reno's Grand Jury for about two years and we did a lot  
17 of civil presentments on uses of force. In fact, I  
18 took the Grand Jury to the Police Training Academy and  
19 had them look at what the officers were trained to do.  
20 And, I worked with the Dade -- the Dade Chiefs for 30  
21 years and, you know, a lot of my research in Miami  
22 Dade Police Department over the years down there and  
23 then moved up here.

24 Q. Thank you. I want to get into some of that  
25 specific research in a second, Professor [REDACTED]. But,

1 I -- you mentioned your specialization. And, I  
2 believe you said, sir, correct me if I'm wrong, that  
3 your specialty -- one of your specialties is -- your  
4 specialty is high risk police activity and police uses  
5 of force. Can you explain for the grand jurors, I  
6 guess, first, what you -- what you mean by high risk  
7 police activity?

8 A. Yeah. I ended up specializing in uses of force  
9 because they're --they're relatively low frequencies  
10 but high risk in the sense of injury and the --  
11 there's two fold places.

12 I also focused on police emergency driving,  
13 where also it's a relatively low frequency and high  
14 risk in the sense of the injured and killed, and --  
15 and they do. So, for whatever reason I think, was  
16 because the Department -- Police Department back then  
17 asked me to look at those things. They were the most  
18 concerned about uses of force again, back in the 80's,  
19 when people were getting hurt, officers were getting  
20 hurt and civilians were getting hurt and killed. So,  
21 they asked me to focus my efforts for them on those  
22 particular topics, and I developed a -- an interest in  
23 them and carried through for the last 30 some years.

24 Q. So, within the larger field of criminology, in  
25 the past 30 years, you've been specializing within the

1 smaller sub genre of police use of force and police  
2 practice?

3 A. Yes, sir.

4 Q. I want to talk a little bit about your research  
5 now, Professor [REDACTED], and ask, have you been awarded  
6 research grants to study some of these police  
7 practices and police uses of force?

8 A. Yes, sir. Well, I started in Miami with the  
9 local government. They funded my time to work on  
10 these projects with them, gosh, maybe five or six  
11 projects. Again, the Grand Jury gave me some, I was  
12 given that money to manage the uses of force studies  
13 with them. And then, up here, since 1992, I've been  
14 consistently funded by the Federal Government and  
15 other State Governments to conduct research. The  
16 Federal Government has funded me, specifically, to  
17 look at the uses of force, to look at the uses of  
18 tasers, to look at officer involved -- (inaudible,  
19 internet interruption).

20 So, 30 years, I guess, I've consistently  
21 been funded by, mainly the National Institute of  
22 Justice, Criminal Justice Systems to -- to do this  
23 research and I put together a team of people, and we  
24 -- we have done quite a bit of it.

25 Also, a -- two years ago, we looked at the

1 City of Phoenix, their officer involved shootings.  
2 They had spiked with 42, I believe, that one year,  
3 which was 20 more than they had the year before. So,  
4 they wanted us to come in and look at all their uses  
5 of deadly force, why it happened, against whom it  
6 happened and why it spiked so much. So, those are the  
7 kinds of things I've been doing; and, yes, they've  
8 been funded by mostly, by the Federal and by State --  
9 State and local governments.

10 Q. And, without getting too much in the weeds,  
11 Professor [REDACTED], just sort of generally, what's the  
12 process by which you go about that research and  
13 publish those -- those research articles?

14 A. For the most part, the government puts out what's  
15 called a request for proposal. They have a general  
16 idea of an area that they're interested in looking at.  
17 We put together a very lengthy and comprehensive  
18 proposal stating what we would do, how we would do it,  
19 and if we're fortunate enough to be awarded that  
20 grant, then we go about and actually do the research.  
21 So, it's a very lengthy, complex and -- and difficult  
22 process. We have been fortunate to be awarded quite a  
23 few grants. I guess because we have a good record and  
24 we do good work. But, it's a difficult process and  
25 very stressful.

1 Q. Thank you, sir. I want to next ask, Professor  
2 [REDACTED], about some publications and ask whether or not  
3 you've had books published on police practices, and  
4 specifically, police uses of force?

5 A. Yes, sir. Out of some of the grants that we've  
6 had, we ended up -- we write a lot of the peer review  
7 articles. We do it both, for the academic audience  
8 but also for the professional audience. We publish  
9 quite a bit in the National Association of Chiefs of  
10 Police Magazines and -- and the FBI law enforcement  
11 bulletin. But, when we summarize our work, overall, I  
12 published a book, I guess, it was 2005, 2006,  
13 something like that, evaluating police use of force  
14 with Cambridge University Press and just this year, we  
15 published an updated, a more legal analysis of police  
16 uses of force with New York University Press. So, of  
17 my, I think about 15 or 18 books are specifically on  
18 police use of force.

19 Q. Again, you mentioned peer review scholarly  
20 articles, Professor [REDACTED]?

21 A. Yes, sir.

22 Q. Do you know how many of those approximately  
23 you've published in this area?

24 A. Maybe 75 to a 100 on -- on high risk activity and  
25 probably 30 to 40 on uses of force.

1 Q. I think you mentioned previously, Professor  
2 [REDACTED], working with Police Departments, and I want to  
3 ask, have you had the opportunity during the last 30  
4 to 40 years in this field to work directly with Police  
5 Departments in the area of policy development and  
6 officer training?

7 A. Oh, absolutely. I spent a good portion of my  
8 time helping departments formulate their policies,  
9 analyzing some of their statistics, individual  
10 departments with whom I have relationships, either  
11 with the command staff or Chief, I do quite a bit.  
12 And then, recently, I've been on the International  
13 Association Chiefs of Police Policy Committee, where  
14 we review their model policies for dissemination to  
15 the 18,000 Police Departments and with the Police  
16 Executive Research Fund. I'm on their research  
17 advisory board, where we do the same type of thing.

18 So, overall, I've worked with a lot of  
19 individual departments and then, with these national  
20 organizations, developing the same types of policies  
21 for -- for -- they end up being the models.

22 Q. Are -- some of those policies, have they been  
23 implemented, Professor [REDACTED]?

24 A. Oh, absolutely. These are ones -- for the most  
25 part, with the individual agencies, when they're --



1 they go through a period on an update. So, they ask  
2 for your review and be part of their -- their team  
3 that updates the policy. And, yes, absolutely,  
4 they're implemented and then they're re-reviewed in a  
5 couple years and many times they ask me to re-review  
6 them for them.

7 So, it's been a long history of -- of  
8 implementing changes and adding things. We -- for  
9 example, recently, in the last few years, we have  
10 gotten every department that I've ever worked with to  
11 look at the responsibility of officers to intervene  
12 when another officer is not doing the right thing.  
13 Having this, what we call, courageous conversation  
14 even to a higher ranking officer, you can't do this,  
15 this isn't right, I'll take over from here, sort of  
16 thing. And, there's been a lot of training around the  
17 country now and this accurate bystandership that --  
18 that is kind of, relatively new for the police, at  
19 least, in terms of policy.

20 Q. Can you just give the grand jurors a sense of  
21 some of the recent examples of the Police Departments  
22 you've worked with, Professor [REDACTED]?

23 A. Well, we just -- here, in South Carolina with  
24 Charleston and Greenville and the City of Columbia,  
25 I'm on the citizen advisory board for the Richland

1 County Sheriff's Department, and we worked with their  
2 policies. Outside of the State of South Carolina, we  
3 just did their big project in Phoenix. I've work with  
4 metropolitan -- well, Maryland in Balt -- in  
5 Montgomery County, the City of Baltimore. And, one of  
6 the things I do, is I'm a federal monitor for the City  
7 of New Orleans.

8 Q. I was just going to ask you about that, Professor  
9 [REDACTED]. If you could --

10 A. Yeah.

11 Q. If you could --

12 A. As a federal monitor, my area has been focused on  
13 these high risk activities. So, we analyze the data.  
14 We've done public opinion surveys to see what the  
15 public wants. We've done surveys of officers to see  
16 what they're looking at. And, we've re-written all  
17 their policies that have to go through this very, very  
18 strict scrutiny for, not only a monitoring team and  
19 me, in that sense, but also from the Department of  
20 Justice Civil Rights Attorneys and the Department.

21 So, it ends up being a -- a very  
22 comprehensive review that we've done with all our  
23 policies but aren't very influential with their --  
24 their pursuit policy, their use of force policy. And,  
25 also, a federal -- among the team that does the

1 compliance for the Portland, Oregon Police Bureau.  
2 And, their -- their decree is focused solely on use of  
3 force and mental illness.

4 So, we've been looking quite a bit at their  
5 policies and training that -- broader than that, but  
6 the decree is -- is focused, specifically, on use of  
7 force and people in crisis.

8 Q. I want to just get back to that -- the federal  
9 monitor that you mentioned, Professor [REDACTED]. Just  
10 for the grand jurors here, can you explain what a  
11 federal monitor is and how you got to be a federal  
12 monitor for the New Orleans Police Department?

13 A. Under the Obama Administration, particularly, the  
14 Civil Rights Division of the Department of Justice  
15 investigated Police Departments that they felt were  
16 either unfair or had done things that were violating  
17 the civil rights and constitutional rights, therefore,  
18 of the citizens.

19 So, they went to the agency and basically,  
20 said we're going to sue you and we're going to take  
21 you to court to change these policies unless you  
22 negotiate with us, what is a consent decree, in other  
23 words, unless you consent to making these changes.  
24 And, those departments consented and the Federal  
25 Government said, well, you're going to have to have

1 someone looking over your shoulder because you've  
2 failed so far, so, we want to make sure you do what  
3 you say. And then, they -- they -- there have been  
4 applications for monitoring teams. And, we have been  
5 doing this in New Orleans for a long time.

6 And, I will say that when we first started  
7 there in New Orleans, it was a horrible, horrible  
8 Police Department, and I think it's -- it's improved  
9 dramatically because of the changes they've made.  
10 And, what we did to answer your question, as a  
11 monitor, we make suggestions to them and say, well,  
12 here's where you have to improve on this part of the  
13 use of force or this part of the policy. We oversee  
14 to make sure that they do it, and then we follow up  
15 with statistical audits to make sure that what they've  
16 done makes a difference.

17 So, that's been our process. We write very  
18 lengthy reports. We're really working with the  
19 community, the City of New Orleans, and -- and  
20 Portland. We're over -- the overseeing authority is  
21 the Federal Court. So, we have a Federal Judge who,  
22 basically, oversees what we do.

23 Q. And, I guess the final question, [REDACTED], before we  
24 move on, how did you get to be -- who -- who asked  
25 you, or how did you become a monitor in New Orleans

1 and a compliance team member in Portland?

2 A. I was asked by the manager prior to the -- well,  
3 when they submitted their applications, in both cases,  
4 they asked if I would join the team. It was mainly, I  
5 didn't know the one in New Orleans. I did know the  
6 one in Portland. But, it was mainly based on my  
7 reputation and what I've been doing and they looked at  
8 the literature and saw my name pop up quite a bit.  
9 And, one of the former Chiefs, who was on that team.  
10 I worked with him in Charlotte, North Carolina,  
11 suggested that they bring me on board to focus on  
12 these -- these tasks. So, it was, for the most part,  
13 based on my reputation and on some part, based on my  
14 relationship.

15 Q. And, are you a member of any professional  
16 associations or advisory groups in this field,  
17 Professor [REDACTED]?

18 A. Yes, sir. I mentioned the International  
19 Association of Chiefs of Police. I've been on their  
20 Policies Committee, which oversees all the model  
21 policies that come out. I've worked very directly  
22 with the major city chiefs (internet interruption,  
23 inaudible) in the largest (internet interruption,  
24 inaudible) departments in the country. And, I've  
25 talked at the National Academy at the FBI and the

1 Federal Law Enforcement Training Center and I'm on the  
2 FBI National Academy Board for -- for their academic  
3 teaching. So, all the things that are taught through  
4 the FBI Academy, we kind of oversee in terms of their  
5 structure.

6 Q. Professor [REDACTED], I'm going to ask you about  
7 court appearances. Have you testified -- testified as  
8 an expert in the area of police practice and police  
9 use of force previously?

10 A. Yes, sir. I've testified -- I can start. I  
11 testified in Congress several years ago on -- on  
12 pursuit driving and some use of force issues came up.  
13 I've testified in several State Legislatures, looking  
14 at reform issues. I've testified in many Grand Juries  
15 around the country looking at deaths caused by  
16 officers and whether or not criminal -- they were  
17 criminal. And, I've testified in several criminal  
18 trials. Mostly, again, looking at uses of force and  
19 high risk driving.

20 Q. Have you testified in other countries, Professor  
21 [REDACTED]?

22 A. Yes, sir. In Canada, I -- I testified to a  
23 coronial hearing on pursuits and on use of force.  
24 And, I've done quite a bit of work in Australia, where  
25 I testified in criminal trials and the coronial

1 inquest, where both on deadly force and use of force.  
2 So, I guess, in the United States, in Canada, and  
3 Australia, I've done quite a bit of work.

4 Q. I want to focus, just for a second, Professor  
5 ██████████, on your testimony in State Courts, and Grand  
6 Jury work. In those instances, sir, have there been  
7 occasions when you've been called to testify against  
8 the police?

9 A. Well, the criminal cases, the Grand Juries, to  
10 me, they're not for or against, they're just kind of,  
11 going through what happened. And, I think, for most  
12 of my testimony, and that's what I do, I call it like  
13 I see it. I've been hired by the a lot of law firms  
14 and told them, you don't have a case or it's nothing  
15 that I can testify to because I don't think the  
16 officers did anything wrong. Or, in some cases,  
17 behind the defense saying, I think what the officers  
18 did was inappropriate and I can't testify for what  
19 they did. So, I think my work is really characterized  
20 and my reputation is kind of calling it like I see it  
21 as opposed to being an advocate.

22 Q. I think that's a better way to -- thank you,  
23 Professor ██████████. That's, I guess, a better question  
24 that you sort of -- you don't testify for one side or  
25 the other, you testify to what your opinion is?

1 A. Yes, sir.

2 Q. And, I think -- I think you said in total, sir,  
3 about 40 years in this area?

4 A. Yes, sir.

5 Q. And, during that time, sir, as a result of your  
6 training and your experience and your research, do you  
7 know about how many individual cases of police use of  
8 force that you've had the opportunity to look at or  
9 review?

10 A. Overall, my research, there's been thousands.

11 Q. Okay.

12 A. We see in New Orleans, for example, they -- you  
13 know, a couple hundred a year, three or four hundred a  
14 year. And, when we were doing the work in Miami, it  
15 started as sometimes four hundred, five hundred uses  
16 of force. Most of them were very minor, but out of  
17 the million and a half contacts when you have several  
18 hundred, it's -- it's a very rare event, generally  
19 speaking, but over the years it's added up.

20 And, a lot of my work -- early work, is  
21 based solely on police reports that we had to read  
22 manually and then enter into the computer. And then,  
23 recently, we reported -- you not only have the reports  
24 that people write, but we have body worn cameras, we  
25 have surveillance cameras, CCTV's that provide, not



1     only the language that officers use and their written  
2     reports, but their videos of we can see partially,  
3     what they did. As there's a mentality out there, that  
4     even a good body worn camera, it doesn't give the  
5     whole story. So, you can't rely on a hundred percent,  
6     I certainly don't rely a hundred percent on the  
7     camera. But, it certainly gives you a better  
8     perspective, a neutral perspective, of what happened  
9     as opposed to either what one side or the other is  
10    saying.

11    Q.    Thank you, Professor ██████. And, I want to ask  
12    one -- one more thing before we move onto this  
13    specific case. And, I think this would be a better  
14    way of asking what I've tried to before. Have there  
15    been instances, sir, in these reviews, when you've  
16    testified, where you've found that the police conduct  
17    or the police use of force was proper?

18    A.    Oh, absolutely.

19    Q.    And, have there been times when you found that  
20    the police conduct or the police use of force was not  
21    proper?

22    A.    Yes, sir.

23    Q.    Okay. And, generally, Professor ██████, when you  
24    do review one of these cases, and if you could just  
25    explain for the grand jurors, is there a process you

1 go through or what's the process involved in analyzing  
2 one of these uses of force?

3 A. Well, I like to see what the question is first.  
4 In other words, if it's a -- if it's a legal case,  
5 what the allegation is, what the -- what the suspected  
6 crime is or what the civil case is all about. And  
7 then, I try to read and look at and see every bit of  
8 evidence I can find to create the story of what  
9 happened. And, many times, you get different  
10 versions, you get the police version, you get the  
11 suspect version or a -- you get a civilian version  
12 who's not involved, uninvolved persons. So, you have  
13 to look at all these different versions. I can't  
14 speak to the veracity or the truthfulness of anyone.  
15 I've got to look at see what I read, what I reviewed  
16 from the video, and I come to a conclusion, and I try  
17 to write up my -- my observations as to what happened.  
18 And then, come to the conclusions of -- of whether I  
19 think it was appropriate or reasonable and not  
20 appropriate or not reasonable.

21 Q. And, in doing that analysis, Professor [REDACTED], is  
22 one of the things that you look at whether or not the  
23 officer had, in the use of force case specifically,  
24 other options or other force options?

25 A. Absolutely. Most policies state very

1 specifically, that the use of force and certainly the  
2 use of deadly force is the last option. And, now,  
3 we're starting to see -- I had mentioned earlier that  
4 active bystandership. Well, we're also seeing the  
5 word de-escalation is -- I'm not sure exactly what it  
6 means, but it's being used quite a bit. And, really  
7 just says to the officers, you don't need to rush, you  
8 need to try to figure out what's going on. Look at  
9 your best options before you use force, before you  
10 take action physically, see what your other options  
11 are. And, absolutely that -- that becomes part of  
12 what happens, and many times what their discretion may  
13 not be illegal, it just may be improper. So, that's  
14 the -- and, the law, and I'm not a lawyer, but I did  
15 go to law school as part of my PhD so I understand  
16 some of these aspects, and certainly understanding the  
17 law, which I rely on the lawyers to tell me is part of  
18 my analysis.

19 Q. We'll get to that, I think -- I think, right now,  
20 Professor [REDACTED], we're going to move to this case  
21 here, the investigation into the death of Daniel  
22 Prude. Professor [REDACTED], were you asked to review  
23 some various aspects of police actions and police use  
24 of force in -- in that case, in this specific case?

25 A. Yes, sir.

1 Q. And, were you asked to provide your opinion on  
2 whether those specific police actions and use of force  
3 were consistent with accepted police practice?

4 A. Yes, sir.

5 Q. Okay. And, I guess, before we move on, Professor  
6 [REDACTED], you talked about working with Police  
7 Departments. Have you previously had any involvement  
8 or worked with the Rochester Police Department?

9 A. No, sir.

10 Q. Do you know anybody that's employed or works at  
11 the Rochester Police Department?

12 A. No, sir.

13 Q. As it relates to this specific case, sir, can you  
14 just, sort of, generally for the grand jurors tell  
15 them what you were asked to do?

16 A. Well, I was asked to review the incident, which  
17 starts with -- by the way, to me, starts with what the  
18 officers knew and when they knew it. So, to try to  
19 figure out what the call for service was, what they  
20 were told, and, in the case, when they went to Mr.  
21 Prude's, I think, his brother's house, what they were  
22 told, what the radio was -- was providing, what  
23 information the radio was providing, what they learned  
24 from the citizens in this case, particularly, a tow  
25 truck driver, anyone else who was there. So, to learn

1 what they knew and the threat level they -- they  
2 perceived that they were running into, what they knew  
3 about this person. And then, look and see how they  
4 responded to the call, how this subject, and the  
5 subject is Daniel Prude, responded to them. And then,  
6 the, what we call, the interactive process, where one  
7 does something and the other responds, and there's  
8 iterations of how that continues until the person is  
9 either controlled and taken into custody, or -- or  
10 unfortunately, in this case, ends in a tragedy.

11 Q. Were there some things that you were asked not to  
12 do? What were you not asked to do, Professor [REDACTED]?

13 A. Well, I wasn't asked to determine whether or not  
14 this was criminal, was a crime. I was asked, very  
15 specifically, to look at whether it violated common  
16 police practice or -- or, what a well trained officer  
17 would do.

18 Q. So, you weren't asked to make any kind of legal  
19 determination, Professor [REDACTED], is that correct?

20 A. That's correct.

21 Q. You weren't asked to determine if a penal law  
22 violation occurred?

23 A. No, sir.

24 Q. And, you were also not asked to make any medical  
25 determinations, is that correct?

1 A. Well, I certainly couldn't do it, even if I was  
2 asked. So, no, sir.

3 Q. Why is that, Professor [REDACTED]?

4 A. As you mentioned, my -- my Doctorate is in  
5 sociology and not in medicine.

6 Q. And, with, sort of, that in mind, again,  
7 Professor [REDACTED], you also were not asked to make any  
8 cause of death determinations, is that correct?

9 A. Correct.

10 Q. You're not opining on how Mr. Pride died, is that  
11 correct?

12 A. No, sir. And, I did read the documentation, I  
13 did read what was provided. But, no. It's not --  
14 that's outside of my purview.

15 Q. And, let's talk about what was provided. You --  
16 you reviewed some materials as part of this process,  
17 Professor [REDACTED]?

18 A. Yes.

19 Q. Did you review the body worn cameras of the  
20 incident?

21 A. Yes, sir. I certainly reviewed your videos that  
22 were taken, both a body worn, I think there was some  
23 CCTV or -- or security videos that were taken, and --  
24 and, I saw the combination. And, I think your office  
25 put together, but I'm not hundred percent sure where

1 it came from, but the five cameras synched together,  
2 which was very helpful to, kind of, get a sense of  
3 what -- what happened. And then, I read a fairly  
4 lengthy set of documents on -- on the reports and the  
5 depositions and all the -- the documentation that was  
6 put together about what -- what the case was about,  
7 and then, again, what the different parties did and --  
8 and how they responded to each other and these  
9 iterations.

10 Q. And also -- did you also have the chance to  
11 review those audio files, Professor [REDACTED], and the  
12 911 calls and the police dispatches?

13 A. Absolutely. That was probably my first part,  
14 where you've got to learn what -- what the officers  
15 were respond -- what they knew and when they knew it.

16 Q. And, did you also, I should mention, review some  
17 of the training materials, specifically, to the new  
18 in-service training as it related to the segmenting,  
19 the hypoglossal, the knee on top type techniques that  
20 we see in the video?

21 A. Yes, sir. I -- I read those training documents  
22 and read the statements and depositions by the  
23 officers who provided that training.

24 Q. Professor [REDACTED], when you're reviewing a police  
25 use of force, is the officers' training, what they

1 were trained on, is that important to play a role in  
2 your analysis?

3 A. Well, it is to a certain extent because we see  
4 it, and quite often, we see officers saying they  
5 weren't trained or don't remember their training when  
6 they've done something that may not be proper. And  
7 then, we see that they actually were trained. Whether  
8 they don't remember what they were trained, or they  
9 weren't provided it well, I can't tell you. But,  
10 yeah, it's certainly important to see what actually  
11 happened and compare that to what they say happened.

12 Q. Sir, I want -- I want to move on to your -- to  
13 your findings and opinions in this particular case,  
14 Professor [REDACTED]?

15 A. Yes, sir.

16 Q. I want to start -- start first and ask you, have  
17 you formed any opinions or conclusions about whether  
18 the decision initially, to take Daniel Prude into  
19 custody, handcuff and arrest him was consistent with  
20 accepted police practice?

21 A. Yes, I have.

22 Q. And, what was that opinion?

23 A. I felt that the police response initially to go  
24 after him, based on the call for service, based on the  
25 information from the brother and everything else they



1 had -- they had learned was -- was proper. I'm not  
2 sure to what point you want me to go but --

3 Q. Just that specific thing and I'll ask the next  
4 question.

5 A. Yes, sir.

6 Q. And, did the observations that you made of Mr.  
7 Prude and his presentment play a role in that opinion?

8 A. Well, the overriding conclusion I made was yes,  
9 he was in crisis, and yes, he was a danger to other  
10 people, based on what they knew he did and what they  
11 saw him do and to himself by -- by his actions. So,  
12 yes, taking him into custody, getting him some help,  
13 getting him some -- you know, look, it was very  
14 freezing, it was snowing, he was naked. Yes,  
15 absolutely he needed to be -- he needed to be taken  
16 care of.

17 Q. My next question, Professor [REDACTED], then, is  
18 whether you formed any opinions or about whether the  
19 use of the spit mask on Mr. Prude was consistent with  
20 accepted police practice?

21 A. Yes, sir. I did form an opinion.

22 Q. And, what was that opinion?

23 A. Well, a spit mask is -- it -- it's -- I've had  
24 them on in training before and they don't constrict  
25 you, they don't really stop you from breathing in any

1 way, and they do protect officers. My first  
2 experience with spit masks was during the AIDS crisis,  
3 where officers were scared to death, literally, of  
4 being spat upon with someone who had AIDS. The spit  
5 mask is a reasonable tool in that situation and now,  
6 with COVID, it becomes just as important. So, yes. I  
7 felt the -- the officers were -- were proper because  
8 of what Mr. Prude was claiming, that he had COVID and  
9 his spitting. I'm not sure he was really spitting at  
10 the officers or was just, kind of, spitting. But,  
11 yes, it was appropriate and there's no downside to the  
12 spit mask except if you're spitting. So, yes, I think  
13 it was appropriate.

14 Q. Professor [REDACTED], did you form any opinions about  
15 whether the act of taking Mr. Prude to the ground, and  
16 that's -- just again, that initially, going hands on  
17 was consistent with acceptable police practice, sort  
18 of, based on the totality of the circumstances?

19 A. Yes, sir.

20 Q. What was that opinion?

21 A. Well, first of all, Mr. Prude was very compliant  
22 when asked to get on the ground and be handcuffed. I  
23 didn't see any force really at that point. And --  
24 and, cops are always trained, the ground is your  
25 friend. The ground doesn't give in. The ground,

1 especially, a freezing street like that is going to be  
2 a solid place where you can get control of someone  
3 easier. So, yes, the ground is your friend and no use  
4 of force looks good on video including, obviously,  
5 this one. But -- but, yes. They were appropriate in  
6 taking him to the ground, getting him on the ground  
7 and handcuffing him because he was a threat to them  
8 and to himself.

9 Q. Thank you, Professor [REDACTED]. Did you form any  
10 opinions of whether the use of the head segmenting  
11 technique and the hypoglossal techniques,  
12 specifically, by Officer [REDACTED] were consistent with  
13 acceptable police practice?

14 A. Yes, sir.

15 Q. And, what was that opinion?

16 A. Well, let me preface my opinion by saying, I was  
17 not familiar with -- with those tactics. I did a  
18 little research on them and found that they're --  
19 they're used appropriately in different departments.  
20 It's more of a north eastern thing than we see on the  
21 west coast or even in the south. But, the way they  
22 described the training, the way they described the  
23 pressure on and off when someone is resisting you put  
24 more pressure, and when someone is not resisting you  
25 use less pressure. Yes, those are appropriate. Those

1 are appropriate procedures.

2 But, I will add a footnote; this ground was  
3 frozen. Mr. Prude's head was being pushed into a  
4 frozen cement roadway. So, I had some concerns about  
5 the specific applications of -- of those techniques.  
6 But, overall, the techniques were reasonable and  
7 accepted police practice.

8 Q. And, I don't know if this is -- let me ask you  
9 this, Professor [REDACTED]. Do you know, to that point,  
10 do you know whether or not the Rochester Police  
11 officers have blankets in their cars, or jackets in  
12 their cars?

13 A. They -- I would assume jackets, but they said  
14 they did not have blankets. But, one of my concerns  
15 overall, was, you know, it's snowing and freezing and  
16 -- and the man is naked, why didn't they put something  
17 under his head or cover him, or do something that  
18 would make him a little bit more comfortable. But,  
19 that's kind of a discretionary thing, but it just  
20 didn't seem quite right.

21 Q. I want to ask next, but I guess, just to follow  
22 up, the use of those specific techniques by Officer  
23 [REDACTED], those were not unreasonable in your opinion?

24 A. That's correct. He was trained to use them in  
25 the way the training officer explained them, and I did

1 a little research on them and found that that's  
2 exactly what's done in other places, although rare.  
3 It's not a -- it's not a well used technique, but it  
4 certainly is a safe one if used properly.

5 Q. Finally, Professor [REDACTED], I want to ask if you  
6 formed any opinions or conclusions about the prone  
7 restraint; and, specifically, I guess, the amount of  
8 time or the length or time that Mr. Prude was kept in  
9 a prone position on his stomach?

10 A. Yes, sir.

11 Q. And, what -- what was that opinion?

12 A. Well, again, the ground is your friend. While  
13 you're having to get someone under control, as a  
14 police officer, you -- you have to put him on his  
15 stomach to handcuff him, and once he's handcuffed --  
16 and, he's not always totally controlled when he's  
17 handcuffed, but he's certainly -- he can't harm you  
18 with his hands. He can still spit on you.

19 Now, in this case, Mr. Prude had a spit mask  
20 on him. He can kick you and you want to control his  
21 legs. But -- but, my point is, once he is relatively  
22 well controlled, police officers know or should know  
23 that you get him off the stomach as quickly as  
24 possible because of the dangers of compression or  
25 positional asphyxia. And -- and, I think, that in the

1 beginning, as they were dealing with him, having him  
2 on his stomach was reasonable, but the instant he was  
3 not resisting, they should have turned him over.

4 Q. So, it is your opinion, Professor [REDACTED], that  
5 initially, the prone restraint was acceptable within  
6 the standards of -- you know, the standards of police  
7 practice, but at a certain point, it became not  
8 acceptable?

9 A. Yes, sir.

10 Q. Can you just, again, specify for the grand jurors  
11 what that point was, Professor [REDACTED]?

12 A. Well, it -- conceptually, that point is when the  
13 officers -- and, in this case, there were plenty of  
14 officer to control his legs. So, in this specific  
15 situation, as soon as he knew his whereabouts,  
16 particularly, (inaudible, internet interruption)  
17 instead of keeping him in that particular position,  
18 where they're pushing his face to the ground, where  
19 they're putting pressure on his -- his back, they  
20 should have rolled him over. And -- and, I think we  
21 see in the videos, we see in the timing that he was  
22 kept on his stomach for, I think, over three minutes.  
23 And, he was on his side for almost, I think, a minute  
24 after he started, I think the term was puking,  
25 throwing up that clear liquid, or whatever it was.

1 So, I think the -- the decision to keep him on his  
2 stomach for that period of time was -- was  
3 unreasonable and against police practice.

4 Q. And again, Professor [REDACTED], would it be from the  
5 point then -- just so I'm clear, from the point then,  
6 the Grand Jury's clear, that the officers noticed or  
7 there was some observation of the puking from Mr.  
8 Prude, is that the point then that they should have  
9 turned him over in your opinion?

10 A. Well, that's the last moment. I mean, there's no  
11 excuse after that. I think even before that, as I  
12 said, there was plenty of officers to control his legs  
13 while he was kicking or control his body from his  
14 shoulders if he's on his side. But, to -- the whole  
15 point of this compression asphyxia is so well known  
16 and has been around for such a long time, there's no  
17 reason to keep him on his stomach, unless there's an  
18 articulable reason, and I certainly didn't see one  
19 here.

20 Q. With that in mind, Professor [REDACTED], is there a  
21 generally accepted standard then, for how long  
22 somebody should be kept -- kept prone?

23 A. Well, that's why I said earlier the conceptual  
24 standard is easier to understand. Once the person is  
25 controlled and not violently resisting, roll them

1 over.

2 Now, if you're by yourself, maybe not, but  
3 when you have plenty of officers there and if I stood  
4 particularly to control his legs from kicking, he --  
5 he can't really spit at you but to control his head to  
6 a certain extent. There was no reason to keep him on  
7 his stomach. It doesn't serve any function that you  
8 can't control with -- with the number of officers they  
9 had on the scene. And, it protects the subject at  
10 this point from the compression or positional  
11 asphyxia, and it just keeps getting worse in this case  
12 and when he's starting to throw up and this clear  
13 liquid is coming out, the minute they kept him on the  
14 stomach after that, there's just -- there's no -- I  
15 don't see any law enforcement purpose in doing that.

16 Q. Was it your -- is it your opinion then, sir, that  
17 at that point, Mr. Prude was under control?

18 A. Yes, sir. And, let me add to that as a follow  
19 up. Had he started kicking, had he started doing  
20 something else, there were plenty of officers to take  
21 him, and as I say, control his legs, which are  
22 probably the most dangerous at that point.

23 And, if he keeps trying to get up, there's  
24 certainly enough officers to hold his shoulders down.  
25 He's handcuffed, he's got a spit mask on. They --



1 they're just -- they have alternatives to keeping him  
2 on his stomach that would keep him a lot more safe.

3 Q. And, I just want to, I guess, one follow up, sir.  
4 I just want to make sure I'm clear. You're not  
5 saying, or are you saying, Professor [REDACTED], that had  
6 he been rolled over sooner, he would have lived?

7 A. I can't give you a cause of death, but certainly  
8 the -- the delay in rolling him over it -- it --  
9 without giving you an opinion on the cause of death, I  
10 can tell you, without rolling him over was dangerous  
11 to his health.

12 Q. And again, that's -- that's your opinion, not as  
13 a medical doctor, Professor [REDACTED]?

14 A. That's my opinion based on the thousands of -- of  
15 these cases where I see -- and, sometimes they do roll  
16 them over and -- and sometimes they don't. But --  
17 but, after reviewing all of these cases and  
18 interviewing officers and watching the training, with  
19 that many officers on the scene, yes, they could have  
20 rolled him over without any risk to them and  
21 controlling him very well, yes.

22 MR. SMITH: I don't believe I have any  
23 further questions for Professor [REDACTED]. I see some  
24 hands. Wondering if any of the grand jurors have any  
25 questions.

1           A JUROR: One thing I haven't heard yet, if  
2 there's anything, he saw all the videos when the EMTs  
3 arrived toward the end and what not. What are your  
4 thoughts on the amount of time that it took the cops  
5 to come up with a handcuff key? If they could have,  
6 you know, provided CPR properly, quicker, should an  
7 officer have a handcuff key on them at all times or --  
8 do you know what I'm trying to say with that?

9 BY MR. SMITH:

10 Q. Did you hear the question, Professor [REDACTED]?

11 A. He broke up.

12 Q. I guess the predicate question would be, did you  
13 notice any -- any delays related to a handcuff key at  
14 the -- at the end of the body worn camera video when  
15 the EMS arrived? Did you hear that, Professor [REDACTED]?

16 A. No, I did not.

17 Q. I guess I've got to turn this. The question was,  
18 Professor [REDACTED], whether or not, and I guess the  
19 predicate, whether or not you noticed on the body worn  
20 camera any delay regarding the retrieval of the  
21 handcuff key after the arrival of EMS?

22 A. I think, at that point, I really -- there was --  
23 there was a huge delay in getting him on the gurney.  
24 I don't think officers knew the gurney was there. I  
25 don't think EMS informed them or did with -- within a

1 timely manner to -- to -- in fact, I remember the one  
2 young woman stating that, you know, her comment about,  
3 he was -- the excited delirium and they did everything  
4 right, but -- but, I think, the delay in getting him  
5 on the gurney was not necessarily on them, as it was  
6 on EMS.

7 MR. SMITH: Did that answer the question?  
8 Thank you, Professor [REDACTED].

9 A JUROR: I'd like an opinion on this. When  
10 this COVID thing first came out and throughout the  
11 video, Officer [REDACTED] and the gloves and the spitting,  
12 blood all over the subject. With this COVID thing,  
13 they didn't know much about it, and I'd like to get  
14 his opinion on, has he taken into consideration, maybe  
15 that's why he was laying on him stomach for so long  
16 because they didn't want him to move because of the  
17 virus.

18 MR. SMITH: Could you hear that, Professor  
19 [REDACTED]?

20 THE WITNESS: No.

21 BY MR. SMITH:

22 Q. I didn't think so. One of the grand jurors  
23 wanted to know and I think, related to your -- to your  
24 last opinion, your opinion that the, sort of, length  
25 of time and the delay of getting him turned over was

1 the -- was the unreasonableness. One of the grand  
2 jurors wants to know, in making that opinion and  
3 forming that opinion, Professor [REDACTED], whether or not  
4 you considered, again, the fact that the -- the COVID  
5 pandemic and the fact that the officers and the other  
6 factors with Mr. Prude that he may be covered in other  
7 bodily fluids? Did you consider that -- those facts  
8 in that analysis, and maybe they didn't want to --  
9 that that was a reason why he wasn't moved sooner or  
10 touched sooner?

11 A. Yes, sir. I did consider that and it is a very  
12 important -- it's a really good question. They had  
13 gloves on and I noticed several of them weren't  
14 wearing gloves and the effect from their hands. But,  
15 they had gloves, they were all dressed for the  
16 weather, wearing proper, I guess we call it, PPE at  
17 this point. But, they had the proper equipment. None  
18 of the -- they're touching him with gloves and with --  
19 with coats and everything else they had protecting  
20 themselves is important, absolutely. But, they had  
21 the ability to do that and still roll him over.

22 A JUROR: The term compression asphyxia was  
23 used, and I'm just wondering in what medical documents  
24 did he read that or is that his opinion that the  
25 asphyxia was compression asphyxia.

1 BY MR. SMITH:

2 Q. Did you hear that one, Professor [REDACTED]?

3 A. I did hear that one.

4 Q. And again, prefacing it with, you know, not  
5 asking for your medical opinion and not a medical  
6 doctor --

7 A JUROR: But, did he read it somewhere?

8 BY MR. SMITH:

9 Q. -- if you could answer, if you -- if you -- in  
10 the materials you provided, if you ever read the term,  
11 quote, positional asphyxia?

12 A JUROR: He said compression.

13 THE WITNESS: I mentioned positional  
14 asphyxia a few minutes ago. We -- we are using that,  
15 and again, not in a medical term, but in a law  
16 enforcement term, we're using positional and  
17 compression as synonymous, as the same thing, because  
18 the point of -- of the compression -- and, we learned  
19 this early on. The example that the medical doctors  
20 have said in the conferences where I've been, is -- is  
21 with babies. Even with babies, you don't let them  
22 sleep on their stomachs because of the compression,  
23 which is the position they're in. So, it's kind of  
24 the same thing. And, they tell us, that -- that when  
25 -- especially, if you're a very large person, if

1 you're obese, if you're laying on your stomach, the  
2 more pressure on your -- your organs stops you from  
3 breathing properly. And -- and, we see that research  
4 that's done.

5 Your question is a good one because the  
6 research that is done isn't often on obese people, on  
7 unhealthy people, on people in crisis. It's done on  
8 healthy individuals, and even with healthy  
9 individuals, there is a -- a findings that laying on  
10 your stomach is -- is compression, that makes it hard  
11 to breathe and, therefore, is (inaudible, internet  
12 interruption.)

13 Q. So, I guess the specific question, Professor  
14 [REDACTED], as a follow up, in this specific case -- well,  
15 let me withdraw that. Let me ask you this. And  
16 again, that's your opinion as a criminologist based on  
17 your experience?

18 A. Yes.

19 Q. And, part of the materials that you reviewed in  
20 this case, did you review the underlying medical  
21 records for Mr. Prude?

22 A. Yes.

23 Q. You did or you did not review the medical  
24 records?

25 A. I did not review the medical. I looked at the

1 autopsy report, but that was it.

2 Q. To the extent that you didn't read the full  
3 report and the diagrams, did you -- Professor [REDACTED],  
4 was the cause of death that was given to you as part  
5 of this material?

6 A. I -- I did see the conclusion in the autopsy  
7 report, yes.

8 Q. And, that conclusion was, complications of  
9 asphyxia in the setting of physical restraint due to  
10 excited delirium, due to acute phencyclidine  
11 intoxication. Is that -- that's what you were given  
12 as part of your material, the cause of death from  
13 the --

14 A. Yes, sir.

15 Q. -- Monroe County. So, in that definition, sir,  
16 was the term positional or compression asphyxia used,  
17 I guess is the specific question?

18 A. Oh. No, sir.

19 Q. Thank you, Professor [REDACTED]. I just wanted to  
20 make sure that -- that part was clear.

21 MR. SMITH: Go ahead, ma'am.

22 A JUROR: Actually, I have a two part  
23 question. First of all, in the normal training for --  
24 especially, for the RPD since 2017, is it typical for  
25 them, for what you've taught, to train them to hold

1 segmentation, or whatever, I forgot the name, to hold  
2 a person down until they're in control, in their  
3 opinion and then let them go and then have to go back  
4 and do it again. Is this something that they're  
5 trained in?

6 Q. Did you catch that first part, Professor [REDACTED]?

7 A. Not at all.

8 Q. We've heard some testimony, one of the grand  
9 jurors referenced that we've heard some testimony from  
10 the Rochester Police regarding -- regarding the  
11 training, and specifically, as it relates to the head  
12 segmenting and that the officers were trained to keep  
13 pressure and maintain pressure only for so long, until  
14 the person is under control, and at that point, they  
15 are trained, we heard some testimony, I think is the  
16 question, to let up, and if the person resists more,  
17 they can go back. Is that the question?

18 A JUROR: Yes. Is that how they're trained  
19 to do it or hold them until they feel comfortable or  
20 is -- does he teach people to contain them, hold them  
21 down, and let them go and try again. Is that safe for  
22 the officers?

23 BY MR. SMITH:

24 Q. Is that -- is that training that I just  
25 described, Professor [REDACTED], is that training



1 consistent with acceptable police practice and how you  
2 would train officers?

3 A. Yeah. I testified earlier that -- that, if done  
4 properly, which they said they did. I have no  
5 evidence one way or the other and I'm not certainly  
6 going to speak to the veracity of the officer. But --  
7 but, yes. As they explained it, when someone is not  
8 resisting, you remove the pressure and someone starts  
9 to resist, you can reapply. And, that's what I said  
10 earlier that, rolling them over, they could certainly  
11 do the same. If he started to resist, there were  
12 enough of them where they could -- they could continue  
13 control. So, yes. The answer to the question is yes.  
14 The way they testified about the resistance and force  
15 is actually good police work.

16 A JUROR: He also mentioned the asphyxia and  
17 he mentioned about compressed organs. In the videos,  
18 what part of the body cam did he see of the organs  
19 being compressed between the head and the lower back  
20 and -- I forgot what he called it, the knee and the  
21 lower back. What part of his organs were actually  
22 compressed?

23 BY MR. SMITH:

24 Q. One of the grand jurors wants to know, Professor  
25 [REDACTED], and again, I guess, view the body cam, not as

1 a medical doctor, whether or not you did see, and if  
2 so, at what point, whether Mr. Prude's organs were  
3 being compressed in any way?

4 A. Well, again, the police training that I've been  
5 through and observed is that the explanation is when  
6 you're on your stomach, particularly, if you're a  
7 heavier set individual, it is going to put pressure on  
8 your organs and any additional pressure on your back  
9 is -- is going to be detrimental. I saw him on his  
10 stomach. Most the body cams and officers admitted he  
11 was on his stomach and yes, that is going to be the  
12 position he's in and that's going to influence the  
13 compression. Now, I cannot speak to the specific  
14 influence of him. But, in -- in the aggregate, all  
15 the research that we've done, shows that when you're  
16 on your stomach in that position, you are more  
17 compromised than on your side.

18 A JUROR: I was wondering if he's familiar  
19 with the knee on top procedure and placement of the  
20 leg, especially, since in the RPD training had changed  
21 the way they restrained in 2017; is he familiar with  
22 how the knee on top is and where the actual leg  
23 placement is?

24 BY MR. SMITH:

25 Q. Are you -- I guess, are you familiar, Professor

1 [REDACTED], with the knee on top maneuver that was  
2 performed by Officer [REDACTED] as it relates to the --  
3 the mid torso section of Mr. Prude? And, I guess, the  
4 question would be whether or not you have any opinions  
5 on whether that was reasonable?

6 A JUROR: I'm just wondering if he's  
7 familiar with it because they had changed --

8 THE WITNESS: As I understand, as he  
9 described it, it was -- it was to put minimal pressure  
10 while he's not resisting.

11 BY MR. SMITH:

12 Q. Are you fam -- are you familiar with that  
13 technique, Professor [REDACTED], previously?

14 A. I've not heard it termed that way, but I've seen  
15 it used under different labels, yes.

16 A JUROR: I just wondered because when you  
17 talk about placement on the back, from what the  
18 trainer said earlier, the placement was on the  
19 beltline -- yeah, on the belt line to avoid lung and  
20 diaphragm compression. So, I didn't know if he was  
21 familiar with that when he was looking at the  
22 findings.

23 BY MR. SMITH:

24 Q. Did you make any opinion, sir, as to whether or  
25 not Officer [REDACTED] followed that procedure properly

1 and -- and kept his knee in the area of Mr. Prude's  
2 belt line?

3 A JUROR: I just want to make sure he  
4 understands what that procedure is and if he saw that  
5 in the video?

6 MR. SMITH: Is there a question? I need a  
7 question. Whether he understands, I don't know --

8 A JUROR: Is he -- is he -- is he familiar  
9 enough with where the leg actually gets placed and  
10 could he depict that in the video that he watched? Do  
11 you know what I'm saying?

12 MR. SMITH: I think so.

13 BY MR. SMITH:

14 Q. Professor [REDACTED], are you -- are you familiar  
15 with where Officer [REDACTED]'s knee was in the video and  
16 whether or not it was in the proper place?

17 A. If I recall properly, it was down lower on his --  
18 on his back, even below the small of the back. And,  
19 yes, that's -- that's certainly, the lower the better.

20 A JUROR: And, the second question to that  
21 is, wouldn't it -- would it be detrimental to roll  
22 someone over if they were vomiting than the fact that  
23 if they rolled him over, he could have then asphyxiate  
24 by choking on his own vomit?

25 MR. SMITH: I think we're now getting past

1 the point of --

2 A JUROR: I'm just wondering.

3 MR. SMITH: -- Professor [REDACTED] --  
4 Professor [REDACTED]'s purview of knowledge. So, I think,  
5 I'm not going to ask him that --

6 A JUROR: I'm just thinking timing.

7 MR. SMITH: -- on a relevance ground. [REDACTED]

8 [REDACTED]?

9 A JUROR: Wondering, is he familiar with  
10 what seems to be new medical, based with COVID, that  
11 people are actually with COVID, I have actually  
12 personally spoken with two people who had COVID, and  
13 they were actually put on their stomachs to help them  
14 breathing. That doesn't make sense to me, but -- and  
15 I know medically, that is what they were treated in  
16 the hospitals, and I was wondering if you are familiar  
17 with that? Have you heard of that?

18 BY MR. SMITH:

19 Q. Did you hear that question, Professor [REDACTED]?

20 A. She broke up.

21 Q. One of the grand jurors wants to know whether or  
22 not you're familiar with the idea that -- again, this  
23 is the grand juror has some -- indicated she has some  
24 knowledge that people being treated for COVID are  
25 being turned on their stomachs, and whether or not you

1 have any knowledge of -- of that being --

2 A JUROR: To actually help them breathe?

3 BY MR. SMITH:

4 Q. -- knowledge of that or familiarity with that  
5 procedure to help COVID patients breathe being moved  
6 to their stomach, if you know, if it's true or you  
7 have any knowledge of that?

8 A. I'm sorry, you were breaking up.

9 Q. Sorry.

10 A. I didn't understand the question.

11 Q. One of the grand jurors has indicated that she  
12 has knowledge that they're moving people with COVID to  
13 their stomach to help them breathe. And, the question  
14 is, whether or not you're familiar -- have you heard  
15 that, Professor [REDACTED], or are you familiar with, sort  
16 of, that technique for that purpose?

17 A. No. I've not heard that. Not that it isn't  
18 true. I'm not familiar with it.

19 MR. SMITH: Any of the other grand jurors  
20 have any other questions for Professor [REDACTED]? Seeing  
21 as there are no other questions, Professor [REDACTED], you  
22 are excused to sign off at this time and get back to  
23 that puppy.

24 THE WITNESS: She went to sleep. Thank you.

25 MR. SMITH: Appreciate your time, Professor

1 [REDACTED]. Thank you.

2 THE WITNESS: Thank you. Bye, bye.

3 (Whereupon, the witness was excused at a  
4 time of 11:46 a.m.)

5

6 MR. SMITH: You guys want to take a five  
7 minute break? We have one more brief witness.

8 (Whereupon, there was a short break off the  
9 record.)

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1 (Proceeding reconvened.)

2 MR. SMITH: Ladies and gentlemen, we have  
3 one last witness this afternoon, Sergeant [REDACTED]  
4 [REDACTED]. However, before we call Sergeant  
5 [REDACTED], I have to -- one administrative thing to  
6 correct here. Yesterday, during the testimony of  
7 Sergeant [REDACTED], I marked Grand Jury Exhibit 51  
8 identified by Sergeant [REDACTED] as an emotional and  
9 distress power point that he gives at the Academy.  
10 That was moved into evidence again, under Grand Jury  
11 Exhibit 51. There already was a Grand Jury Exhibit 51  
12 as the grand jurors pointed out to me. I have now  
13 placed a Grand Jury Exhibit sticker on this, marked  
14 this Grand Jury Exhibit Number 52 and I'm going to ask  
15 that at this time, the stenographer mark this into  
16 evidence and cross out the old sticker. And, the  
17 record should reflect that, during Sergeant [REDACTED]'s  
18 testimony, all references to Grand Jury Exhibit 51 are  
19 here now by corrected, and should reflect what is  
20 actually Grand Jury Exhibit 52.

21 (Whereupon, Grand Jury Exhibit Number 52 was  
22 then received into evidence.)

23

24

25



1 (Whereupon, the witness entered the Grand  
2 Jury room at a time of 11:57 a.m.)

3

4 **S G T.** [REDACTED],  
5 after being duly called and sworn, testified as  
6 follows:

7

8 **EXAMINATION BY MR. SMITH:**

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. Could you please state and spell your first and  
12 last names for the record, please?

13 A. [REDACTED]. [REDACTED]. [REDACTED].  
14 [REDACTED].

15 Q. How are you employed, sir?

16 A. City of Rochester Police Department.

17 Q. What's your current rank?

18 A. Sergeant.

19 Q. How long have you been a Sergeant?

20 A. 22 and a half years.

21 Q. How long total with the Rochester Police  
22 Department?

23 A. Just over 31 years.

24 Q. How long total in law enforcement experience?

25 A. Total, 34 and a half years.

1 Q. Where were you before RPD, sir?

2 A. NYPD.

3 Q. What's your current assignment?

4 A. I'm one of the training Sergeants assigned to the  
5 Professional Development Section, which is the  
6 training unit.

7 Q. Are you the Defensive Tactics Coordinator?

8 A. I am.

9 Q. Can you, just generally, describe for the grand  
10 jurors, Sergeant [REDACTED], the duties and  
11 responsibilities of the Defensive Tactics Coordinator  
12 at the Rochester Police Department?

13 A. I oversee all of the recruit training for the RPD  
14 and, generally speaking, I oversee most of the recruit  
15 training for the Academy. So, that's where I'm  
16 stationed.

17 I do all the in-service training for  
18 Defensive Tactics in the area of Defensive Tactics. I  
19 am the use of force expert for the Department. I  
20 review all of the use of force in the Department. I  
21 implement and create remedial training programs,  
22 remedial training strategies, I review training  
23 conducted by other DT Instructors, I assist  
24 Supervisors, both DT Instructor Supervisors and non-DT  
25 Supervisors with remedial training, with use of force

1 review with creating any type of curriculums in  
2 regards to use of force and/or Defensive Tactics.

3 Q. And, let me ask the follow up. What you teach,  
4 again, to the new recruits at the Academy, the  
5 in-services as it relates to the Defensive Tactics,  
6 who comes up with the content of what you teach?

7 A. So, for recruit training, it's generally,  
8 implemented by the Department of Criminal Justice  
9 Services and the Public Safety Training Facility,  
10 which is our Regional Academy. For in-service  
11 training, if it has to do with Defensive Tactics,  
12 generally, I create a form that can implement the  
13 in-service training with the permission of the Chief's  
14 Office.

15 Q. And, as part of your duties then, sir, do you  
16 teach at the Academy?

17 A. I do.

18 Q. How much time do you teach Defensive Tactics at  
19 the Academy?

20 A. I do. Not as much as I used to, but I do.

21 Q. In total, how much time is devoted to Defensive  
22 Tactics at the Academy?

23 A. For the recruit training, it's in excess of a  
24 hundred and twenty hours.

25 Q. And, some of the in-service that you referenced

1 that the sworn officers do, do any of those trainings  
2 ever relate to Defensive Tactics, sir?

3 A. Yes.

4 Q. And, do you again, sort of, oversee that process,  
5 the administration of that training, the evaluation of  
6 the training?

7 A. Yes.

8 Q. Sergeant [REDACTED], was there an update to  
9 Defensive Tactics, some updated training in the winter  
10 of 2020?

11 A. There was.

12 Q. Can you just talk, generally, about what that  
13 was, sir, and what that plan was?

14 A. So, back on January 1st of 2018, the Department  
15 of Criminal Justice Services revamped their principles  
16 of control, which is the Defensive Tactics Program,  
17 and put together a 40 hour program, that's the minimum  
18 for all recruits in New York State that answer to DCJS  
19 Academy's, to meet the minimum standard of Defensive  
20 Tactics because some of the tactics were different  
21 than members prior to January 1st of '18 were taught.

22 We did our first in-service in January,  
23 February of 2020 to introduce the foundational  
24 principles of the new program and to teach them about  
25 ten or so of the new techniques.

1 Q. And, how long were those trainings going to be,  
2 Sergeant [REDACTED], if you didn't say?

3 A. They were eight hour days, but they were split  
4 session. So, if we had a group of 24 people come,  
5 they would do a half day Defensive Tactics, and then a  
6 half day, I think it was firearms, the other part, and  
7 then they would switch. So, you would get a four hour  
8 training block.

9 Q. Did those trainings occur in the winter of 2020,  
10 in January and February?

11 A. They did.

12 Q. Were there any officers at the Rochester Police  
13 Department that got that training twice, Sergeant  
14 [REDACTED], or who would have gotten it before that  
15 winter 2020 update?

16 A. Yes. The summer of 2019, the SWAT Team had -- I  
17 learned that the SWAT Team was going to implement --  
18 during the course of their training days, they were  
19 going to implement some of the tactics and the  
20 techniques from the DCJS program in their training  
21 program.

22 Q. Was that training live, in person training?

23 A. To the best of my knowledge, yes.

24 Q. And, were the sworn officers and the SWAT  
25 officers evaluated on that training?

1 A. They were.

2 Q. Was that evaluation sort of recorded on a -- on a  
3 form?

4 A. It was. A proficiency test was created.

5 Q. How was the -- how are they evaluated? Was it  
6 pass/fail, acceptable/unacceptable?

7 A. The techniques were listed and then it was  
8 acceptable, unacceptable with the -- with the SWAT  
9 operator's name and the DT Instructor that tested and  
10 ten the DT Instructor would circle either acceptable  
11 or unacceptable for each technique, and they would  
12 have the opportunity to make comments if deemed  
13 necessary.

14 Q. Was it written forms, Sergeant [REDACTED] ?

15 A. Yes, sir.

16 Q. I'm going to approach, sir, and show you what's  
17 -- I guess, first been marked as Grand Jury Exhibit  
18 Number 54, which is a two-page document, could you --  
19 do you recognize those two pages, sir?

20 A. I do.

21 Q. And, what do you recognize the two pages of Grand  
22 Jury Exhibit 54 to be?

23 A. So, the first page is a proficiency test that was  
24 performed in August of '19.

25 Q. And, who does that pertain to?

1 A. To [REDACTED], who's a SWAT member, tested by  
2 [REDACTED], who's also a SWAT member.

3 Q. What about page two?

4 A. The second page is the winter in-service  
5 techniques. [REDACTED] was the -- a student in the  
6 class. He was tested by one of my DT Instructors,  
7 [REDACTED].

8 Q. And, why does Officer [REDACTED] have two proficiency  
9 tests, if you know, Sergeant [REDACTED]?

10 A. Because they went -- they went through the  
11 training in the summer of '19. We just figured it  
12 would be extra training, extra repetition, just have  
13 everybody come though whether they were a recruit and  
14 got the training or the SWAT Team went through it.  
15 So, they went through the second time and they were  
16 re-evaluated so that it would be better than nothing.

17 Q. Specific to Officer [REDACTED] was Officer [REDACTED] on  
18 the SWAT Team?

19 A. He is.

20 Q. Is that why he took the training twice?

21 A. Yes, sir.

22 Q. Showing you next, sir, Grand Jury Exhibit 55 and  
23 ask if you recognize this document, sir?

24 A. Yes, sir. This is from the winter in-service and  
25 the trainee was, or the officer in-service was Officer

1 [REDACTED] and he was tested by DTI [REDACTED].

2 Q. Again, this is the proficiency test related to  
3 the training that was given, the winter 2020 update?

4 A. Yes, sir.

5 Q. And, I'm going to ask you the same question about  
6 Grand Jury Exhibit 56, do you recognize that document,  
7 sir?

8 A. Yes, sir. This is the same type of document and  
9 it was given to Officer [REDACTED]. Again, he  
10 was tested by Officer [REDACTED].

11 Q. I'm going to hand you Grand Jury Exhibit 57, it's  
12 a two-page document, and ask if you recognize those  
13 two pages, sir?

14 A. Yes, sir. The first page is from the SWAT  
15 proficiency test for Sergeant [REDACTED], he was  
16 tested by SWAT Operator DTI [REDACTED], and the  
17 second page is from the in-service, again, [REDACTED]  
18 [REDACTED] tested by DTI [REDACTED].

19 Q. Was [REDACTED] tested and evaluated -- trained  
20 and evaluated twice because he's on the SWAT Team?

21 A. Yes, sir.

22 Q. Grand Jury Exhibit 58, sir, do you recognize that  
23 document?

24 A. Yes, sir. From the winter in-service for [REDACTED]  
25 [REDACTED]. Again, tested by DTI [REDACTED].



1 Q. And again, same question for Grand Jury Exhibit  
2 59?

3 A. Yes, sir. Winter in-service for Officer  
4 [REDACTED]. Again, tested by DTI [REDACTED].

5 Q. I'm going to ask you, sir, for all these Grand  
6 Jury -- all these Exhibits, sorry, Grand Jury Exhibits  
7 54 through 59 inclusive, did you create these forms,  
8 Sergeant [REDACTED]?

9 A. I did.

10 Q. Were they created in the normal course of  
11 business at the Rochester Police Department?

12 A. Yes, sir.

13 Q. As part of your duties as the coordinator of the  
14 DT, are you responsible for maintaining and keeping  
15 records of evaluations?

16 A. I am.

17 Q. And, were these forms, Grand Jury 54 through 59  
18 inclusive, kept according to those duties?

19 A. Yes, sir.

20 Q. And, these are exact copies of those evaluations?

21 A. Yes, sir.

22 MR. SMITH: At this time, I'm going to move  
23 Grand Jury Exhibits 54 through 59 in evidence.

24 (Whereupon, Grand Jury Exhibit Numbers 54  
25 through 59 were then received into evidence.)

1 BY MR. SMITH:

2 Q. Sergeant [REDACTED], handing you the two-page  
3 document, Grand Jury Exhibit 54, and drawing your  
4 attention to the first page. Does that indicate when  
5 [REDACTED] received his training and took his  
6 proficiency test the first time?

7 A. Yes, sir.

8 Q. As part of the SWAT duties?

9 A. Yes, sir.

10 Q. And, when was that date?

11 A. August 13th, 2019.

12 Q. And, was Officer [REDACTED] evaluated -- did he take  
13 a proficiency test as it related to the eight  
14 techniques that were trained and that are listed on  
15 that form?

16 A. Yes, sir.

17 Q. Does that include segmenting?

18 A. It does.

19 Q. Knee on top?

20 A. Yes, sir.

21 Q. Leg staple?

22 A. Yes, sir.

23 Q. Leg anchor?

24 A. Yes, sir.

25 Q. Does it indicate whether or not Officer [REDACTED]

1 performance was acceptable or unacceptable for all  
2 eight of those techniques?

3 A. All eight techniques were circled acceptable.

4 Q. Drawing your attention to page two of Exhibit 54,  
5 sir, does it indicate what date Officer [REDACTED] was  
6 trained and evaluated the second time on the winter  
7 in-service?

8 A. Yes, sir.

9 Q. What day was that?

10 A. February 10th, 2020.

11 Q. Does it indicate whether or not his performance  
12 on what was now, ten techniques including segmenting  
13 and the knee on top, acceptable or unacceptable?

14 A. All ten techniques were circled acceptable.

15 Q. Handing you Grand Jury Exhibit 55, sir, and ask,  
16 does that indicate when [REDACTED] --

17 MR. SMITH: Ms. Sommer's to the rescue  
18 again. We're going to put this on the screen so the  
19 grand jurors can see.

20 BY MR. SMITH:

21 Q. Drawing your attention to what's on the screen as  
22 Grand Jury Exhibit 55, does it indicate when Officer  
23 [REDACTED] was trained and took the proficiency test?

24 A. Yes, sir.

25 Q. Does it indicate whether or not his performance

1 was acceptable or unacceptable for the ten techniques  
2 listed, which includes the knee on top?

3 A. Yes, sir. All ten were circled acceptable.

4 Q. I'm going to display Grand Jury Exhibit 56 in  
5 evidence, sir, and ask if this Exhibit indicates when  
6 Officer [REDACTED] took that training and was  
7 evaluated?

8 A. Yes, sir.

9 Q. What date was that?

10 A. February 14th, 2020.

11 Q. And, of the ten techniques listed, which includes  
12 leg anchor and staple, figure four leg lock, knee on  
13 top and segmenting, was Officer [REDACTED] performance  
14 acceptable or unacceptable for the ten techniques  
15 listed in Grand Jury Exhibit 56?

16 A. Acceptable.

17 Q. Sir, I'm going to draw your attention to the  
18 first page of Grand Jury Exhibit 57, which is now on  
19 the monitor, and does that tell you when Sergeant  
20 [REDACTED] was trained and took the proficiency  
21 test the first time per his SWAT duties?

22 A. Yes, sir. The date was August 13th, 2019.

23 Q. And, of the eight techniques that he was trained  
24 on, was his performance proficiency acceptable or  
25 unacceptable?

1 A. Acceptable.

2 Q. Drawing your attention to page two of that  
3 document, sir, I'm going to ask the same question.  
4 Does it indicate when Sergeant [REDACTED] took that test  
5 the second time?

6 A. Yes, sir. January 24th, 2020.

7 Q. And, of the ten techniques that he was trained on  
8 that date, sir, was his proficiency acceptable or  
9 unacceptable for again, those ten techniques?

10 A. Acceptable.

11 Q. Drawing your attention to Grand Jury Exhibit 58  
12 on the screen. Does that indicate when Officer [REDACTED]  
13 took the training and his proficiency test?

14 A. Yes, sir. February 5th, 2020.

15 Q. And, of ten techniques Officer [REDACTED] was trained  
16 and tested on, was his proficiency acceptable or  
17 unacceptable?

18 A. Acceptable.

19 Q. For all ten?

20 A. Yes, sir.

21 Q. Finally, sir, displaying Grand Jury Exhibit 59,  
22 I'm going to ask you for Officer [REDACTED].  
23 Does that Exhibit indicate the date at which time  
24 Officer [REDACTED] took this training and received his  
25 proficiency test?

1 A. Yes, sir, February 7th, 2020.

2 Q. And, of the ten techniques that he was trained  
3 and tested on, was his proficiency acceptable or  
4 unacceptable?

5 A. It was acceptable.

6 Q. For all ten?

7 A. Yes, sir.

8 Q. Thank you, sir. Just a last question, Sergeant  
9 [REDACTED], do recruits at the Academy receive any  
10 training as it relates to prone restraint, positional  
11 asphyxia?

12 A. Yes, sir.

13 Q. When does that training take place?

14 A. Generally, it's early in the Defensive Tactics  
15 Program when we get into the hands on training. It's,  
16 generally, the early part of the Academy, we start to  
17 show how to control individuals on the ground, and  
18 once we start to put recruits and Instructors in the  
19 prone position, which is belly down on the ground,  
20 from then on, we pretty much cover positional asphyxia  
21 and the -- the cautions and the things that they need  
22 to look for while someone is being contained and  
23 controlled on the ground, on their chest.

24 Q. What are those cautions? What are the officers  
25 told and trained?

1 A. So, we -- we explain what positional asphyxia is.  
2 Basically, the definition, we go over with them, which  
3 is death as a result of body position, which  
4 interferes with the person's ability to breathe. And,  
5 you know, we explain verbally what it means.

6 And then, in the course of them practicing  
7 on each other and on Instructors and being the subject  
8 and being the officer, and being on the bottom and  
9 having weight, you know, put on their -- their upper  
10 torso, and their head and legs, they can feel the  
11 pressure, and we talk about things to look for, you  
12 know, signs of physical duress, signs of verbal  
13 distress. If they start to hear someone say, you  
14 know, that they're in pain or can't breathe or they're  
15 having trouble, change in breathing pattern, change in  
16 conversation, change or sensation of movement.

17 We teach them signs of submission, you know,  
18 what the body might do to try to offset pain, lifting  
19 the hips, lifting the shoulders, grimacing with their  
20 face.

21 We talk about the vicious cycle that kind of  
22 happens when -- when someone is on the bottom and  
23 they're having pressure on their chest and they can't  
24 open their lungs, they're going to try to struggle for  
25 air. And, they're going to struggle for air by trying

1 to lift their body to get their lungs to open. And  
2 then, they would be trying to roll, trying to push up,  
3 trying to lift their hips, trying to lift their  
4 shoulders and that officers can sometimes perceive  
5 that struggle, to get air as resistance, and officers  
6 may now apply more force and more pressure because  
7 they're perceiving it and believing it to be  
8 resistance.

9           However, it may not be and it almost becomes  
10 a vicious cycle. So that they need to recognize that  
11 and be aware of it and that's why we don't just show  
12 them data and explain it to them, but we put them in  
13 the positions with different sized individuals, with  
14 multiple people so that they can experience that and  
15 -- or recognize that once.

16           So, what we teach them is, once the person  
17 is controlled and taken into custody and it's safe,  
18 for them to be able to move them in a position of  
19 recovery, which is, generally, rolling them to their  
20 side so that their lungs can open up and/or seat them  
21 or bump them onto their butt.

22 Q. And, is there a standard definition, Sergeant  
23 [REDACTED], of what's safe?

24 A. So, that -- that would be a case-by-case basis,  
25 right? Because an officer would have to determine



1 that by a lot of things, right? They -- you know,  
2 what their senses are telling them, right? What  
3 they're feeling, touching the subject, are they  
4 feeling resistance? Are they feeling resistive  
5 tension? Are they feeling an attempt to access a  
6 weapon?

7           Generally speaking, once they're restrained,  
8 once they safely start to go through a search, but  
9 they probable are not searching yet for weapons. So,  
10 what are they feeling? What does their sense of touch  
11 tell them? What are they seeing? What are they  
12 seeing from the individual? What does their sense of  
13 hearing tell them? What do they hear the individual  
14 saying or not saying, or not complying or refusing?  
15 If the sense of smell -- if you smell a foul odor or  
16 something like that, the -- the emotions of what's  
17 going on, the weather conditions, the time of day, the  
18 number of people, the distractions that may be around,  
19 the radio traffic, the pedestrian traffic, the vehicle  
20 traffic.

21           There's so many things that play into the  
22 totality of the circumstances that would really be the  
23 individual officer's training and experience,  
24 everything that's going on when he or she deems that  
25 safe time and that control time is to get them into

1 the recovery position.

2 Q. And, with that in mind, Sergeant [REDACTED], are  
3 the officers trained that when they do get a sign or  
4 observe some submission or medical distress, would  
5 that be the appropriate time to roll them over to the  
6 recovery position?

7 A. Yes, sir.

8 Q. I guess, finally, Sergeant [REDACTED], do recruits  
9 or the sworn officers get any stand alone  
10 de-escalation, sort of, communication based training?

11 A. So, the short answer is no, we don't have a stand  
12 alone, just de-escalation training. It's a topic  
13 that's taught, you know, at the very early stages and  
14 all the way through and de-escalation has become such  
15 a big buzz word but, you know, de-escalation comes in  
16 many forms. De-escalation is, you know, there's  
17 verbal de-escalation. There's non-verbal  
18 de-escalation, just by your posture and the way you  
19 stand and your eye contact and, you know, you showing  
20 that you're relaxed is a form of de-escalation to make  
21 the other person relax. There's physical  
22 de-escalation, there's emotional de-escalation,  
23 there's -- there's all types of forms of  
24 de-escalation. So, we talk about it in the earlier  
25 stages and we constantly are testing and re-testing

1 and showing de-escalation.

2 Q. And, that includes verbal de-escalation?

3 A. Yes, sir.

4 Q. But, no stand alone?

5 A. No stand alone de-escalation training in and of  
6 itself.

7 MR. SMITH: I have no further questions for  
8 Sergeant [REDACTED]. Do any of the grand jurors have  
9 questions?

10 A JUROR: I wanted to know if he knows of  
11 any -- any of the officers whose training, did they  
12 receive unacceptable, like, it seems like everyone was  
13 acceptable.

14 MR. SMITH: Not just in this case, but in  
15 general?

16 A JUROR: Yeah.

17 BY MR. SMITH:

18 Q. Do you know whether or not, Sergeant [REDACTED],  
19 anybody that took that winter 2020 -- anybody, meaning  
20 any sworn officer at the Rochester Police Department,  
21 who took that 2020 winter in-service update, was  
22 anybody deemed unacceptable?

23 A. Not to my knowledge.

24 A JUROR: In regards to that training  
25 session, there's only acceptable and unacceptable?

1 They don't get graded? So, if they barely passed,  
2 that would be acceptable?

3 THE WITNESS: That's correct. If they met  
4 all the standards of the techniques and were able to  
5 show the Instructors that were assessing them, that  
6 they could perform the techniques based on DCJS  
7 standards, they would be deemed acceptable.

8 A JUROR: I have a question regarding  
9 de-escalation. In a situation where a police officer  
10 is trying to assume custody and control of a person,  
11 and de-escalation might be called for under the  
12 circumstances, is the officer the only one in that  
13 situation who decides whether de-escalation is  
14 successful or not?

15 THE WITNESS: I guess that would depend, if  
16 the officer is the only person there or if there's  
17 multiple other people there.

18 A JUROR: I guess, what I'm asking, I didn't  
19 ask the question well. If you're trying to arrest me  
20 and I'm resisting to that, I'm not -- and I'm showing  
21 a certain level of resistance, a certain level of  
22 force, for lack of a better term, but you want to try  
23 and -- you know, as a police officer, you want to try  
24 to use the appropriate amount of force, you want to  
25 de-escalate, if possible, but I don't want that to

1       happen, can you de-escalate without my cooperation?

2               THE WITNESS:  So, our goal is to always  
3       generate voluntary compliance.  We try to get people  
4       to comply with what we want, right?  And, there's --  
5       there's all kinds of forms of resistance.  Again,  
6       resistance is a real generic term, but people can  
7       verbally resist by saying no or by using other choice  
8       words, people cannot respond and not say anything and  
9       just stand there and that's a type of resistance.

10              Then, we talk about avoiding custody, where  
11       they're not physically assaultive, but they don't want  
12       to get handcuffed.  So, that could be running, fleeing  
13       away from the officer, that could be sitting in the  
14       chair, dead weight and refusing to stand up, refusing  
15       to put your hands behind your back, it could be  
16       holding on to a fixed object, holding on to a fence or  
17       to a railing.  It could be me simply grabbing my own  
18       clothing and squeezing as tight as I can and making it  
19       very difficult for you to get my hands behind my back.  
20       It could be me using the ground as leverage, getting  
21       on my belly and locking my arms under my body tight  
22       and making you work really hard to get my hands behind  
23       my back, non-assaultive, or obviously, assaultive,  
24       punches and kicks.

25              So, depending on what level the individual

1 is creating that resistance, we're going to try to  
2 de-escalate them to get to voluntary, generate  
3 voluntary compliance. If you're at one of those  
4 avoiding custody levels and I'm verbally telling you,  
5 I'm trying to use lower end physical restraint and you  
6 won't comply, then probably at that point, I may not  
7 need to escalate, but de-escalation is not working  
8 anymore, so I have to meet you at that level. Does  
9 that make sense.

10 A JUROR: It does. Thank you.

11 A JUROR: I guess, I was understanding  
12 de-escalation when they were talking about, I think,  
13 if the officers were more trained on mental health,  
14 where it's less hands on and, kind of, try to engage  
15 verbally and, kind of, de-escalate the event verses  
16 hands on. So, I might not -- if that's the way that  
17 I'm understanding it is correct, I'm wondering about  
18 the in-service trainings that you said dealt with  
19 de-escalation, if they have documentation, such as,  
20 showing as evidence for the other in-service training,  
21 where these officer is updated or it was part of their  
22 in-service they deemed that it was acceptable?

23 BY MR. SMITH:

24 Q. I'll clarify. I think part of that was of my  
25 last question. I don't think -- let me ask you, does

1 such a proficiency test exist for a stand alone  
2 de-escalation class?

3 A. No.

4 Q. There wasn't a separate -- and, I guess, that's  
5 what I mean as a stand alone, they weren't -- such as  
6 there was a block of training and a proficiency test  
7 administered regarding this Defensive Tactics update,  
8 was there such a same thing for a de-escalation class?

9 A. No.

10 Q. So, when you say that they get their  
11 de-escalation training, I guess, can you maybe be more  
12 specific when that occurs, Sergeant, and how?

13 A JUROR: I think referring to the Crisis  
14 Intervention Team, is there a credential or  
15 certification that they get that would more define  
16 de-escalation?

17 MR. SMITH: Is that your question?

18 A JUROR: It was the first one, yes.

19 THE WITNESS: So, de-escalation training  
20 happens all through the Academy, you know, we -- we  
21 evaluate it during the training program while they're  
22 doing the repetitions and how they -- how they talk,  
23 how they verbally engage, how they try to control with  
24 the verbal skills.

25 We put them through role plays where we give

1       them simulated scenarios and the role plays are  
2       Instructors. So, we generally, have a script that we  
3       follow and sometimes we will try to bait them verbally  
4       and see if they verbally de-escalate us and bring us  
5       down. So, again, we try to always use verbal first  
6       because we want to generate that voluntary compliance.

7               And, one of the things we teach our recruits  
8       is, your best tool is your brain and mouths, so try to  
9       talk people into generating voluntary compliance.  
10       That's always our first task when we can, when  
11       applicable.

12              MR. SMITH: Does that answer the question?

13              A JUROR: Yes.

14              A JUROR: So, in regards to successful  
15       completion of training, are all recruits that go  
16       through the Academy accepted or are there some that  
17       fail the training, in totality, not just in regards to  
18       this.

19              THE WITNESS: No. Not everyone completes  
20       the Academy.

21              MR. SMITH: Questions?

22              A JUROR: Is the prone position a suggested  
23       method for all subjects, or are there alternative  
24       methods that are taught for those who have certain  
25       medical conditions?



1           THE WITNESS: So, generally speaking, when a  
2 physical confrontation ends up on the ground, either  
3 intentional or unintentional, the position is the  
4 prone position because we -- so, we cuff behind the  
5 back, unless there is a medical exception that  
6 individual can't be cuffed behind the back, then we  
7 would either cuff them in the front or we have some  
8 other -- we have some other tools that may be an  
9 option to cuff them in the front if they're physical  
10 unable to bring their hands behind their back.

11           A JUROR: As far as the training goes, is  
12 that trained?

13           THE WITNESS: We actually do cover it.  
14 We -- again, most of the times -- so, a lot of times,  
15 the officer may not know that the individual can't be  
16 cuffed behind their back until they're trying to get  
17 their arms behind their back and they verbally tell  
18 them they can't or they have some type of a medical  
19 condition, or it's very obvious, they're missing a  
20 limb or part of a limb or something like that. So, we  
21 do talk about it.

22           We do teach them alternative methods,  
23 cuffing in the front, the danger of cuffing in the  
24 front because they still have access to use those  
25 cuffs as a weapon, they can still grab and they can

1 still access weapons. We do have waist chains, which  
2 are available, where you can put the chain around  
3 their waist so you have a lot of different movements.  
4 We cover it in the basis Academy.

5 When the Academy is done, RPD has what we  
6 call a post Academy, where we keep just the RPD  
7 recruits and we go into some additional things and our  
8 department has waist chains, so we'll cover that and  
9 they'll actually practice the waist chains and we tell  
10 them where we keep them and when they need to use  
11 them. So, that would be an alternative method if they  
12 can't be handcuffed behind their back.

13 A JUROR: Thank you.

14 A JUROR: In your testimony, you had  
15 mentioned indicators of positional asphyxia. Could  
16 you please expand, specifically, on the verbal  
17 distress and changes in voice?

18 THE WITNESS: So, they may be very clear in  
19 saying that they can't breathe or that they feel pain,  
20 or get off of me, or things like that. They could be  
21 wincing, they could be high pitched or low pitched,  
22 depending on pressure, they could be fatigued, they  
23 could be cardio drained. So, they may be hard to  
24 understand, you know, depending on the surface, you  
25 know, if it's outside, you know, it's snowing or their

1 face could be in the snow, or their face could be in  
2 the grass, or could be -- again, depending if it's  
3 interior, if their face is close to a wall, it may be  
4 muffled. So, these are all things that we, kind of,  
5 look for the verbal.

6 But, we spend a lot of time reminding them  
7 that people can't always verbally speak, especially,  
8 after a physical confrontation, because they may be,  
9 you know, gassed cardio wise and they may not be able  
10 to speak, but that's why we talk about looking at the  
11 body because they may be trying to tell you, but it  
12 may not be coming out because of the cardio condition.  
13 So, we look for the physical signs also.

14 A JUROR: Thank you.

15 MR. SMITH: Any further questions?

16 A JUROR: When you do your tactical  
17 training, do they -- and, you said they do it one on  
18 one, the trainers will interact with the trainees.  
19 You guys do it on each other. Is there a point where  
20 you do purposely fight, where the officers have to  
21 hold you down, as anybody would, like, if you're  
22 chasing me and I'm fighting not to be held down, do  
23 you do that with each other to a point where you have  
24 to force them down either by the head or lower back.  
25 Is this something that -- or do you just go in and

1 say, hey, this is how to do it. Or do you purposely  
2 have someone on the other -- the other end fighting  
3 the way you would if you had to defend someone?

4 THE WITNESS: No. The short answer is, we  
5 definitely make them earn it. So, throughout the  
6 course of the Academy, we do a lot of drills, a lot of  
7 one on one drills, sometimes two on one drills, and  
8 then, we do those role plays that I was talking about.  
9 So, the role plays, we do many of them throughout the  
10 Academy. Some of them are practice.

11 At the very end of the Academy, after they  
12 take their DT proficiency test and we know that they  
13 can do all the techniques statically in the air  
14 against a heavy bag, or something, we then do rated  
15 role plays. So, you actually have to pass a set  
16 amount of role plays at the end.

17 We design role plays for all types of levels  
18 so they don't know what's coming. We do  
19 non-resistive, we do non-arrest, we'll do arrest with  
20 no resistance, we'll do verbal, but no physical  
21 resistance. We'll do physical resistance, where it's  
22 the simpler, person just sitting in the chair and  
23 won't get up or a person holding on or locking their  
24 arms under their body, and they're not fighting to  
25 hurt you, but they -- they don't want to get

1 handcuffed.

2           Then, we'll have higher end ones, where they  
3 will actually fight, assaultive behavior. We also  
4 create deadly physical force scenarios, where the  
5 subject may have a firearm, and the subject may have  
6 an impact tool or edged weapon and we're looking for  
7 them to respond to that.

8           And then, that's where we do a lot of our  
9 de-escalation training. So, it may come in very high,  
10 with a high end robbery call or a -- an individual  
11 with a knife or a crowbar. We're looking for the  
12 officers to respond to that, create distance,  
13 coverage, a challenge, and then the subject will maybe  
14 drop the knife or crowbar and then not be taken into  
15 custody, either encroach on the officers and  
16 physically start fighting. So, now, we're looking for  
17 them to de-escalate their tools, and go hands on.  
18 Then, they'll de-escalate down to just avoiding  
19 custody. We're looking for the recruits to  
20 de-escalate down to recognizing that they're no longer  
21 assaultive or we've got to get them into custody.  
22 Once they get them into custody and controlled, they  
23 know that we need to stop our use of force.

24           A JUROR: Am I able to ask if there's ever  
25 been an incident in training with asphyxia or death?

1 MR. SMITH: Has anyone --

2 A JUROR: How is -- I guess, does anyone  
3 ever get hurt?

4 THE WITNESS: So, part one is, in my  
5 experience, there's never been a death. And, yes,  
6 sometimes they get banged up pretty good. Again, we  
7 wear protective gear. They wear head gear and mouth  
8 guards and protective gear. But, you know, we don't  
9 use any real weapons. So, it's all simulated weapons.  
10 But, they get knocked around, if their hands are down  
11 and not paying attention, then we'll take a shot.  
12 They'll get banged up a little bit.

13 We want to teach them, but we also want to  
14 keep them safe, right? We don't want any training  
15 deaths or training -- you know, again, injuries  
16 happens to a degree, but we don't want anything  
17 serious or severe. So, we have safety officers, we  
18 have safety protocols. The role plays are Instructors  
19 and -- and they are scripted, and they really can't go  
20 off script, whether they want to or not and that's my  
21 job to get on them and to make sure that if something  
22 is going -- either it's going unsafe, or it's not  
23 meeting the goal of what we want for that particular  
24 recruit, we'll time out it. We'll adjust it and we'll  
25 fix it.

1 MS. SOMMERS: During your time as the  
2 Defensive Tactics Coordinator for the Rochester Police  
3 Department, you said you had the opportunity to review  
4 all uses of force that rise to a level where they are  
5 reviewed. Did I understand that correctly?

6 THE WITNESS: Yeah. I review every single  
7 force report by every member of the Department.

8 MS. SOMMERS: In the time that you have been  
9 the training coordinator for the Rochester Police  
10 Department, up to this incident that you're here for  
11 today, have there been a prior case of a restraint  
12 related death that was contributed to asphyxia?

13 THE WITNESS: In the course of my time at  
14 the RPD, I -- I am aware that there have been a couple  
15 of incidents where there has been in-custody deaths.  
16 But, I -- I don't recall the particulars of each one.  
17 There was a couple that happened throughout the course  
18 of my time at the Police Department.

19 MS. SOMMERS: So, I just want to be clear.  
20 By the couple, is that two that you can --

21 THE WITNESS: Two that I can, kind of,  
22 remember.

23 MS. SOMMERS: Okay. And, you're not sure if  
24 they were deemed asphyxial deaths or not?

25 THE WITNESS: I don't know. I don't

1 remember all the details. I was not directly involved  
2 in either of them.

3 MS. SOMMERS: Okay. You -- you would have  
4 reviewed them though?

5 THE WITNESS: I don't remember all the  
6 details, so I don't know if it involved a use of  
7 force.

8 MS. SOMMERS: I see. Okay. Thank you.

9 MR. SMITH: Any grand jurors have any more  
10 questions? Seeing as there are none, you are excused,  
11 sir. Thank you.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness left the Grand Jury  
14 room at a time of 12:39 p.m.)

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1 MS. SOMMERS: All right. You're free and  
2 clear until Monday at noon. Thank you so much. Is  
3 there anything else you need to say or do?

4 GRAND JURY POOL: (All jurors indicating a  
5 negative response.)

6 MS. SOMMERS: All right. All right. Have a  
7 wonderful weekend everyone. Drive safely.

8 (Proceeding adjourned at 12:39 p.m.)

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1           **S T E N O G R A P H E R    C E R T I F I C A T I O N**

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3           I DO HEREBY CERTIFY as a Notary Public in and  
4 for the State of New York, that I did attend and  
5 report the foregoing proceeding, which was taken down  
6 by me in a verbatim manner by means of machine  
7 shorthand.

8           Further, that the proceeding was then  
9 reduced to writing in my presence and under my  
10 direction. That the proceeding was taken to be used  
11 in the foregoing entitled action. That the said  
12 deponent, before examination, was duly sworn to  
13 testify to the truth, the whole truth, and nothing but  
14 the truth, relative to said action.

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[Redacted signature]

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Notary Public.

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