

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

KALI MYERS,  
an individual,  
  
Plaintiff,  
  
vs.  
  
THE CITY OF SIOUX CITY,  
IOWA; ROBERT PADMORE, in  
his official capacity;  
and CINDY RARRAT, in her  
official capacity,  
  
Defendants. ) Case No. 5:16-cv-04107-LRR

DEPOSITION OF  
DAVID KRACKE

DATE: Wednesday, January 24, 2018  
LOCATION: Sioux City City Hall  
Legal Division, Suite 511  
405 Douglas Street  
Sioux City, Iowa  
(712) 279-6318  
TIME COMMENCED: 12:49 p.m.  
TIME CONCLUDED: 3:58 p.m.

A P P E A R A N C E S

For the Plaintiff:  
  
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I N D E X

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S T I P U L A T I O N S

It is stipulated and agreed by and between the parties hereto:  
  
1. That the deposition of DAVID KRACKE may be taken before Julie A. Pell, Registered Professional Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Certified Realtime Captioner, General Notary Public, at the time and place set forth on the title page hereof.  
  
2. That the deposition is taken pursuant to notice.  
  
3. That the original deposition will be delivered to Mr. Kamron Hasan, attorney for the Plaintiff.  
  
4. That all objections except as to form and foundation are reserved until time of trial.  
  
5. That the required elements of Federal Rules of Civil Procedure Rule 30(b)(5)(A) and (C) will be set forth within this transcript and, therefore, do not need to be stated aloud on the record by the court reporter.  
  
6. That the testimony of the witness may be transcribed outside the presence of the witness.  
  
7. That the signature of the witness to the transcribed copy of the deposition is not waived.

1 DAVID KRACKE,  
 2 Of lawful age, being first duly  
 3 cautioned and solemnly sworn as  
 4 hereinafter certified, was examined  
 5 and testified as follows:  
 6 (Witness' response to oath - "Yes.")  
 7 DIRECT EXAMINATION  
 8 BY MR. HASAN:  
 9 Q. Please state and spell your name for the  
 10 record.  
 11 **A. David Kracke, D-a-v-i-d, Kracke,**  
 12 **K-r-a-c-k-e.**  
 13 Q. Do you go by Dave or David?  
 14 **A. Doesn't matter.**  
 15 Q. Whatever you prefer. Is it okay if I call  
 16 you one of those?  
 17 **A. Doesn't matter.**  
 18 Q. Okay. Hopefully I don't switch it up, but I  
 19 will call you Dave or David. My name is Kamron,  
 20 Kamron Hasan. I am one of the attorneys for the  
 21 plaintiff in this case. Feel free to call me Kamron.  
 22 **A. Okay.**  
 23 Q. David, have you ever had your deposition  
 24 taken?  
 25 **A. Negative.**  
 Q. Okay. I will give you a little bit of an

1 idea of the process. It's essentially an interview,  
 2 a question-and-answer interview session between the  
 3 two of us where I will ask you questions and you  
 4 provide answers. The point of this is to provide the  
 5 facts, to give us information to prepare the case for  
 6 trial. Does that make sense?  
 7 **A. Yes.**  
 8 Q. Are you familiar with the lawsuit that's  
 9 going on right now?  
 10 **A. Vaguely, yes. I heard them talking about it**  
 11 **at the – at the shelter when I was employed there.**  
 12 Q. When did you end your employment?  
 13 **A. Back in November.**  
 14 Q. Okay. We'll kind of go over some of your  
 15 background going forward, but you understand you're  
 16 under oath today?  
 17 **A. Yes.**  
 18 Q. It's an oath to tell the truth?  
 19 **A. Yes.**  
 20 Q. Will you answer truthfully and fully for me  
 21 today?  
 22 **A. Yes.**  
 23 Q. It's important in depositions – because  
 24 Julie is taking down everything that we say, she's  
 25 transcribing everything, so it's important to try to

1 avoid uh-huhs or huh-uhs or head nods. I will try to  
 2 do my best to identify any times you say that, but  
 3 will you do your best to give audible answers?  
 4 **A. Yes.**  
 5 Q. Also it's tough during conversations not to  
 6 interrupt one another, but it's important we try our  
 7 best not to interrupt one another because Julie has a  
 8 tough time taking down two people talking at the same  
 9 time. Anyone has a tough time of taking down that.  
 10 I will do my best not to speak over you. Will you do  
 11 your best not to talk over me?  
 12 **A. Yes.**  
 13 Q. Thank you. I try to avoid them, but I may  
 14 ask some bad questions, ones that you don't  
 15 understand or maybe you're confused by the way that I  
 16 have worded something. So I ask that if you don't  
 17 understand my question or if you're confused by the  
 18 way it's worded, let me know, and I will do my best  
 19 to reword it or restate it so that it's easier for  
 20 you to understand. Is that fair?  
 21 **A. Yes.**  
 22 Q. If you – I am going to assume that if you  
 23 don't say anything that you understand my question.  
 24 So it's important that you let me know. Okay?  
 25 **A. Okay.**

1 Q. If you need a break during this – I hope it  
 2 won't take too long, but if you do need a break at  
 3 any point let me know. And I may finish my line of  
 4 questioning, but I am more than happy to take a break  
 5 if you need it. Just let me know. Okay?  
 6 **A. Okay.**  
 7 MR. HASAN: Are you guys representing Dave  
 8 during this or...  
 9 MS. DuBOIS: Yes.  
 10 MR. HASAN: You are representing him in –  
 11 during this deposition?  
 12 MS. DuBOIS: Yeah. The city's position  
 13 with current employees and former employees is that  
 14 we continue with representation unless there is a  
 15 reason to not.  
 16 Q. (By Mr. Hasan) Okay. Okay. Well, then  
 17 your attorneys for today may lodge objections to some  
 18 of my questions. However, unless the city instructs  
 19 you not to answer along with that objection, you're  
 20 under an obligation to answer my question. Is  
 21 that – do you understand that?  
 22 **A. Yes.**  
 23 Q. Anything about your physical or emotional or  
 24 mental conditions that will not allow you to  
 25 understand my questions?

1 **A. There should not be.**  
 2 Q. Okay. Will you let me know if it changes?  
 3 **A. Okay.**  
 4 Q. Anything about your physical, emotional or  
 5 mental conditions that will keep you from giving  
 6 truthful and complete answers?  
 7 **A. Shouldn't be.**  
 8 Q. Okay. Will you let me know if that changes?  
 9 **A. Okay.**  
 10 Q. Are you on any medication or alcohol that  
 11 will not allow you to understand my questions?  
 12 **A. No.**  
 13 Q. Any medication or alcohol that will keep you  
 14 from giving truthful and complete answers?  
 15 **A. No.**  
 16 Q. So you mentioned you ended your employment  
 17 back in November. What do you do for a living now?  
 18 **A. I am a merchandiser at LinPepCo.**  
 19 Q. What do you do – what is – what does that  
 20 job entail?  
 21 **A. Basically, I am a merchandiser for LinPepCo**  
 22 **up in Sioux Center, Le Mars, and Orange City. I go**  
 23 **to various stores and stock our product on the**  
 24 **shelves.**  
 25 Q. And what is the entity again?

1 **A. LinPepCo. Pepsi Company.**  
 2 Q. Oh, okay. I just didn't understand you.  
 3 Okay. When did you start that job?  
 4 **A. November 13th.**  
 5 Q. You mentioned earlier – did you do anything  
 6 in between jobs?  
 7 **A. No.**  
 8 Q. How long were you an animal control officer?  
 9 **A. Six years.**  
 10 Q. So that would have been about 2011?  
 11 **A. Roughly, yes.**  
 12 Q. What was your title when you were an animal  
 13 control officer?  
 14 **A. Just animal control officer.**  
 15 Q. Who did you work for?  
 16 **A. Cindy Rarrat.**  
 17 Q. Anyone else?  
 18 **A. She's the facility manager.**  
 19 Q. I know Chris Wall is also involved. Was he  
 20 one of your bosses, or was it just Cindy?  
 21 **A. He is Cindy's husband, slash, co-owner now.**  
 22 Q. Okay. But it's mainly Cindy?  
 23 **A. Yes.**  
 24 Q. Okay. What's your education background?  
 25 **A. I – as in animal control or just...**

1 Q. Let's just do more general at first. What's  
 2 your general education background?  
 3 **A. I was – went through the military for**  
 4 **navigation electronics technician. Afterwards I got**  
 5 **out of the military and got into animal control.**  
 6 Q. Well, thank you for your service.  
 7 **A. Thank you.**  
 8 Q. When was that? Was there anything in  
 9 between?  
 10 **A. I did a couple years at Rochester Armored**  
 11 **Car and a year at Bomgaars doing small engine repair**  
 12 **deliveries.**  
 13 Q. Okay. So what's your education and history  
 14 with regard to animal control?  
 15 **A. They sent us to a week-long training with**  
 16 **NACA.**  
 17 Q. Is that the National Animal Control  
 18 Association?  
 19 **A. Yes, sir.**  
 20 Q. What did that training entail?  
 21 **A. Just general knowledge over care of the**  
 22 **animals, identification, identifying some breeds,**  
 23 **just general knowledge. That's all I had.**  
 24 Q. What was the identification of breeds  
 25 training like?

1 **A. Just showing us different dog breeds and**  
 2 **helping us to identify certain characteristics of**  
 3 **certain types of breeds.**  
 4 Q. How did they show you the dogs?  
 5 **A. Um...**  
 6 Q. Was it in person? Was it...  
 7 **A. A little bit of both. A little bit of**  
 8 **in-person. A little bit of pictures. The breeds**  
 9 **that look similar to each other they do in person.**  
 10 Q. Okay. And what breeds would those be?  
 11 **A. They were pits, pit bulls, Bull Terriers,**  
 12 **re – the Boxer breeds, stuff like that that has**  
 13 **similar characteristics to the other breeds.**  
 14 Q. Okay. And I want to talk about those  
 15 characteristics a little more in-depth. We'll kind  
 16 of circle back to that. So you went through this  
 17 NACA week-long training. Did they give you any  
 18 training materials?  
 19 **A. A book, yes.**  
 20 Q. Did you read the book?  
 21 **A. Yes.**  
 22 Q. Did you – were you required to pass any  
 23 tests or anything along with that?  
 24 **A. At the end of the one week, yes.**  
 25 Q. Was it a certification?

1 **A. Yes.**  
 2 Q. What was the certification?  
 3 **A. I believe I did a level-one certificate.**  
 4 Q. You ever attend seminars or conferences  
 5 related to that animal control job outside of this  
 6 NACA training?  
 7 **A. No.**  
 8 Q. Ever go to dog shows?  
 9 **A. Nope.**  
 10 Q. Any additional training that you received  
 11 related to your job as an animal control officer?  
 12 **A. Just on-the-job training.**  
 13 Q. Nothing else formal?  
 14 **A. No.**  
 15 Q. So shadowing and the NACA course?  
 16 **A. Yes.**  
 17 Q. Did anyone, Cindy or any of your other  
 18 bosses, give you any other form of – aside from  
 19 those, any other form of training or instruction?  
 20 **A. No.**  
 21 Q. Did you have any other experience coming in  
 22 with dog identification?  
 23 **A. Not before the NACA and not before**  
 24 **on-the-job training.**  
 25 Q. What were your job duties when you were an

1 animal control officer?  
 2 **A. Enforce the city codes.**  
 3 Q. Just in general? Was there any – was it  
 4 you were handed a book and said enforce this?  
 5 **A. We were given the city – a copy of the city**  
 6 **ordinance. We were to read over it and keep our**  
 7 **minds refreshed on the ordinances so we can properly**  
 8 **enforce the laws.**  
 9 Q. Okay. So like day to day, what would you do  
 10 as, like, a day-to-day function? I understand you're  
 11 enforcing the city code, but, like, tell me about  
 12 what your day-to-day functions would be.  
 13 **A. When I wasn't on calls, I would patrol and**  
 14 **basically look for dogs running loose, things along**  
 15 **that – those lines.**  
 16 Q. Okay. So is it fair for me to say that the  
 17 realm of your knowledge for animal identification  
 18 comes from that NACA course and your on-the-job  
 19 experience?  
 20 **A. Yes.**  
 21 Q. Nothing else?  
 22 **A. No.**  
 23 Q. You mentioned the Sioux City code. Are you  
 24 familiar with the pit bulls prohibited portion of the  
 25 code?

1 **A. I have read that a few times, yes.**  
 2 Q. Were you quizzed or anyone check that you  
 3 had an adequate knowledge of that before going out  
 4 into the field?  
 5 **A. We just went over all of the ordinances**  
 6 **briefly.**  
 7 Q. It was just like a brief, here's what you  
 8 have to do?  
 9 **A. Exactly.**  
 10 Q. Did they give you any specific training  
 11 materials related to the pit bull ordinance?  
 12 **A. No. Just what we've gone over – what we**  
 13 **went over. And basically, with the identification of**  
 14 **the pit bulls, it's not just one person. It's if –**  
 15 **if I have a question, I am free to ask other officers**  
 16 **and Cindy for more clarification if the – if I have**  
 17 **questions on the breed.**  
 18 Q. Okay. You said you're free to. Were you  
 19 required to do that or was it kind of up to you?  
 20 **A. It's – it was more if I think it is, it's**  
 21 **more re- – not required, but it's highly advised to**  
 22 **get a second opinion before I impound the dog if I**  
 23 **think it's just for a pit bull, but nine out of ten**  
 24 **times if it was a pit bull case it was normally**  
 25 **running loose or stuff like that.**

1 Q. Okay. You said that you were highly  
 2 advised. Who was giving that advice?  
 3 **A. Cindy.**  
 4 Q. So if you suspected it was a pit bull, you  
 5 were advised to get a second opinion?  
 6 **A. Yes.**  
 7 Q. Are you familiar with the other sections of  
 8 the Sioux City Municipal Code?  
 9 **A. Yeah, pretty much.**  
 10 Q. Specifically related to animals, I should  
 11 say, because I know the code is pretty sprawling.  
 12 But specifically related to animals are you familiar  
 13 with the municipal code?  
 14 **A. Very – pretty familiar, yes.**  
 15 Q. Are you familiar that there's a definition  
 16 for a dangerous animal?  
 17 **A. Yes.**  
 18 Q. Familiar that there is a definition for a  
 19 high-risk animal?  
 20 **A. Yes.**  
 21 Q. Familiar that there is a definition for a  
 22 vicious animal?  
 23 **A. Yes.**  
 24 Q. What's your understanding of the dogs that  
 25 are prohibited under the pit bull ban?

1 **A. The pit bull ban for prohibited animals,**  
 2 **they have the characteristics of listed animals that**  
 3 **are in the ban. Staffordshire Bull Terrier, American**  
 4 **Bull, pit bull, dogs along that breed lines.**

5 Q. I am sitting here scrambling trying to find  
 6 you the reference material. There's one to you – I  
 7 am not going to assume that you have got that  
 8 memorized. You have got it. But it is right there  
 9 if you need to refer to the ordinance.

10 **A. Uh-huh.**

11 Q. 7.10.010. Do you see that?

12 **A. Yes.**

13 Q. And where it says American Pit Bull Terrier,  
 14 American Staffordshire Terrier and Staffordshire Bull  
 15 Terrier?

16 **A. Yep.**

17 Q. Great. So you said you started – I guess  
 18 it would have been a little more than six years ago  
 19 is when you started with animal control?

20 **A. Yes.**

21 Q. How was it that you would identify a  
 22 situation where the pit bull ban may apply?

23 **A. How do you mean?**

24 Q. I mean in what circumstances, like what are  
 25 the possible circumstances where you would come

1 across a dog that would require you to determine  
 2 whether or not this ordinance applied?

3 **A. A lot of times with – when – with – at**  
 4 **least with my knowledge...**

5 Q. Can I interrupt you real quick?

6 **A. Right.**

7 Q. I should have mentioned at the very  
 8 beginning. I am only asking about your knowledge  
 9 here. I don't want you to speculate. I don't want  
 10 you to guess at things. I just want you to tell me  
 11 what you know, you know, your – based on what you  
 12 have experienced, based on what's in your head.  
 13 Okay?

14 **A. Okay.**

15 Q. Is that fair?

16 **A. Yes.**

17 Q. Okay. So going back, those circumstances –  
 18 I think you were about to describe those  
 19 circumstances where you may have to decide whether or  
 20 not this code section was implicated.

21 **A. Most of the time when we – at least with**  
 22 **me, when I had to deal with this, a lot of people**  
 23 **were questioning dogs were being pit bulls. Most of**  
 24 **the time they weren't pit bulls, but due to the fact**  
 25 **that so many dogs do share similar re –**

1 **appearances, but not the appearance of the dogs,**  
 2 **they're just commonly mistaken as pit bulls. That's**  
 3 **generally most of the time when we come across**  
 4 **enforcing the law, and then the periodically times we**  
 5 **do catch them running loose.**

6 Q. So the circumstances would be a citizen or  
 7 an individual calling saying, hey, I think this dog  
 8 is a pit bull or an at-loose dog?

9 **A. Yes.**

10 Q. Anything else? Any other circumstances?

11 **A. That's generally what my experience...**

12 Q. And you said that people were – when they  
 13 had called to say, hey, I think this dog's a pit  
 14 bull, will you tell me a little bit more about that,  
 15 please?

16 **A. Okay. It – well, there was numerous times**  
 17 **when someone would be walking a dog down the road and**  
 18 **a person – a lot of citizens don't – aren't**  
 19 **familiar with the dog breeds. They're like, hey,**  
 20 **that dog is a pit bull. We're calling it in. And by**  
 21 **the – we have to go get there and see if it truly is**  
 22 **a pit bull or if it's not a pit bull.**

23 Q. How quick do you make that determination?

24 **A. Depends on how much similar the dog breed is**  
 25 **to that breed.**

1 Q. Well, I mean, how is it that you make that  
 2 call? Do you have reference materials at the time?

3 **A. Just what we remember due to characteristics**  
 4 **of these breeds. They're more of a squattier,**  
 5 **shorter breed dog, more masculine. The jaw lines,**  
 6 **the shapes of the head.**

7 Q. So the speed at which you determine whether  
 8 a dog fits the pit bull determination varied  
 9 depending on the physical features that it exhibited?

10 **A. Correct.**

11 Q. Is it fair to say, then, that the  
 12 determination was based only on visual features?

13 **A. Yes.**

14 Q. So you mentioned a couple, there, traits or  
 15 outward physical characteristics. I want to go  
 16 through all of the physical characteristics that you  
 17 would take into consideration. Is that fair?

18 **A. Correct. Yes.**

19 Q. So you mentioned a couple of them. I want  
 20 to go through more. And if you think of any more,  
 21 just please let me know if there are any other ones.  
 22 Okay?

23 **A. Okay.**

24 Q. Do you ever consider – did you ever  
 25 consider the dog's coloring?

1 **A. There are some dog breeds that do have**  
 2 **similar colors. Pit bulls, it depends on if it's a**  
 3 **pit bull mix or pit – addi- – other colorations**  
 4 **than a nontraditional purebred pit bull would have.**  
 5 **So color is not the first thing I go for.**

6 Q. So before getting into the rest, you  
 7 mentioned pit bull mix. How would you identify a dog  
 8 as being a purebred if you were called to go out and  
 9 figure out is this dog a pit bull? How would you  
 10 identify if it was a purebred?

11 **A. Basically, it would show all of the signs of**  
 12 **a regular just pit bull, American Pit Bull,**  
 13 **Staffordshire Terr- – Bull Terrier. Those breeds**  
 14 **have their own unique characteristics, but for the**  
 15 **most part we don't deal with just purebreds due to**  
 16 **most of the dogs are mixes any more.**

17 Q. Would it be fair for me to say that when you  
 18 encounter the dog out there, unless you have  
 19 confirmation of the dog's parentage, that you don't  
 20 know whether it's a purebred or a mixed breed?

21 **A. Correct.**

22 Q. So when you say that if you think it's a pit  
 23 bull, that's only based on the physical  
 24 characteristics?

25 **A. Correct.**

1 Q. And those physical characteristics, you  
 2 don't know whether it's a mixed breed that happens to  
 3 be displaying some of those outward characteristics  
 4 or if it happens to be an actual purebred. Is that  
 5 fair?

6 **A. That's fair. We're just going off what the**  
 7 **ordinance states is it has the characteristics of**  
 8 **those animals.**

9 Q. Sure. And let's kind of go over a little  
 10 more of that. So we stopped off on coloring. How  
 11 about, like, the pattern of the color, like if it's  
 12 spotted or bindle or something like that? Does that  
 13 factor in?

14 **A. Minimally.**

15 Q. Does the coat itself factor in, the length  
 16 of the coat?

17 **A. It could, due to the fact that pit bulls**  
 18 **are – if it's a purebred, it's shorthaired. But,**  
 19 **again, if it's a mixed breed it's a – it could**  
 20 **potentially have longer fur.**

21 Q. Are you familiar just -- or, getting into  
 22 outward appearances, have you ever had any training  
 23 or experience dealing with genetically how an animal  
 24 will display outward appearances, like just  
 25 biologically, genetically, how they'll exhibit...

1 MS. DuBOIS: Object -- objection as to  
 2 form.

3 Q. (By Mr. Hasan) Do you have any training or  
 4 experience on, like, the scientific or the genetic  
 5 biological mechanisms on how dogs display outward  
 6 appearances?

7 **A. Just the on-the-job training.**

8 Q. So just, like, looking at dogs?

9 **A. Correct.**

10 Q. Okay. I am no scientist either. But going  
 11 through more of those visual identifications, you  
 12 said coat length. How about the texture of the fur,  
 13 or I guess hair, it could be?

14 **A. Most of them, by the time – before we would**  
 15 **actually make that determination we'd have to**  
 16 **actually get our hands on the dog, and that doesn't**  
 17 **always happen until after we make the determination.**

18 Q. Okay. So it may come into play, but it  
 19 probably wouldn't happen until after you have, like,  
 20 gotten the dog?

21 **A. Correct.**

22 Q. And you usually make the determination  
 23 before you grab the dog?

24 **A. Possibly.**

25 Q. Okay. Sometime?

1 **A. Correct.**

2 Q. It just varies depending on the  
 3 circumstance?

4 **A. Yes.**

5 Q. What would the circumstances -- what  
 6 circumstance would cause it to be one or the other?

7 **A. Let's say if we were chasing the dog, it**  
 8 **show – while we can see within a few feet of it –**  
 9 **of being at the dog it looks like it has the**  
 10 **chara- – other characteristics of said breed and the**  
 11 **owner comes, grabs it, takes it inside before we can**  
 12 **get our hands on it, if it was running loose.**

13 Q. Okay. That would be a circumstance where  
 14 you made the determination without actually getting  
 15 your hands on it?

16 **A. Correct.**

17 Q. In other circumstances you'll grab the dog,  
 18 and then you have a chance to check the code?

19 **A. Correct.**

20 Q. How about the body size, the overall body  
 21 size?

22 **A. That is one of the big key determinations**  
 23 **due to those breeds are more of a shorter breed dogs,**  
 24 **not small breed, but the – more the medium-sized**  
 25 **dogs.**

1 Q. Are you talking about all parts of the body  
2 or are you specifically talking about, like, the  
3 torso?  
4 **A. The height.**  
5 Q. Okay. How about the torso of the dog, like  
6 the overall size of the torso?  
7 **A. Are you talking about length?**  
8 Q. Yeah. What factors into it?  
9 **A. We normally look at the front part because**  
10 **it's – those dogs are more muscular in compare of**  
11 **the thinner breed dogs.**  
12 Q. Okay. But you said mostly the front part.  
13 Do you also take into account, like, the overall size  
14 of the body?  
15 **A. Yes.**  
16 Q. You mentioned length. That includes length?  
17 **A. Yeah, because it's – it's not like it's a**  
18 **Dachs- – Basset Hound type, because Basset Hounds**  
19 **are longer dogs, while pit bulls are just standard,**  
20 **more of the proportionate-type dogs.**  
21 Q. Do you ever factor in weight?  
22 **A. There – it – it's ideal weight, yes.**  
23 **It – but then again, you're taking in consideration**  
24 **if it's obese or...**  
25 Q. If it's a table scrap dog, if it's – if

1 it's going...  
2 **A. Exactly.**  
3 Q. Yeah. Okay. You mentioned the size of the  
4 front end. Does that include, like, the muscle mass,  
5 how muscly the dog is?  
6 **A. Correct.**  
7 Q. Chest size?  
8 **A. Yes.**  
9 Q. How about like the – the topline angle, the  
10 angle from the shoulders back to the hips? Do you  
11 factor that in at all?  
12 **A. Okay. Are you – are you talking about –**  
13 **can you clarify what...**  
14 Q. Sure. Yeah. I believe the term – and I  
15 will admit I just looked this up. I am not a  
16 connoisseur of dogs. I am not a dog show person.  
17 But I believe the term is topline angle, where it is  
18 the slope and the angle from the shoulders back to  
19 the hips. Like is it straight? Is it angled  
20 downward? That's what I am talking about.  
21 **A. We could take that in consideration, but**  
22 **most of what we deal with are mixed breeds. So it**  
23 **may not have those chara- – that specific**  
24 **characteristic.**  
25 Q. Okay. And, yeah, since I am talking

1 about – we are generally talking about mixed breeds  
2 since you're not going to be able to determine  
3 whether it's a purebred unless you have the parentage  
4 stuff; right?  
5 **A. Correct.**  
6 Q. Okay. So since we're talking about mixed  
7 breeds for all of these dogs you're picking up,  
8 would – is that something that you would take into  
9 consideration for a dog that's, let's say, at large?  
10 **A. We could, but a lot of times they don't**  
11 **pursue all of the characteristics of the breed that**  
12 **you're – we're questioning right now.**  
13 Q. Right. They wouldn't – a dog at large  
14 wouldn't have all of the characteristics of the  
15 purebred?  
16 **A. Correct.**  
17 Q. Because it's mixed breed?  
18 **A. Yes.**  
19 Q. Okay. So other characteristics. You said  
20 height. That would mean leg length, like how long  
21 the legs are?  
22 **A. From the ground to the top of the shoulders**  
23 **is where they standardly measure the dog's height to.**  
24 Q. Okay. So it's not so much the size of the  
25 legs, but how high it is from the ground up to the

1 top of the body?  
2 **A. Correct.**  
3 Q. The head shape?  
4 **A. Yes. I – it can be a key determination,**  
5 **yes.**  
6 Q. A key determination?  
7 **A. Yes.**  
8 Q. What goes into the head shape to make it a  
9 key determination?  
10 **A. Specifics, shape of it. It looks a lot**  
11 **different than, let's say, a Boxer, but those are**  
12 **commonly confused together. People – we constantly**  
13 **got calls for people thinking Boxers were pit bulls,**  
14 **but their heads are totally different.**  
15 Q. The Boxer breed and one of the purebreds  
16 that's listed in the statute there are com- --  
17 **A. Correct.**  
18 Q. – completely different heads?  
19 **A. Yes.**  
20 Q. How did you – just before we keep going  
21 through the traits, how was it that you became  
22 familiar with that, that fact?  
23 **A. Just on-the-job training.**  
24 Q. So...  
25 **A. Dealing with those many pit bulls we've**

- 1 **picked up.**
- 2 Q. In your experience, then, it was your
- 3 experience that leads you to say that the Boxer head
- 4 is sig- -- is different than the pit bull head?
- 5 **A. Yes.**
- 6 Q. Okay. When you say the -- you said the
- 7 shape. How about the length of the head?
- 8 **A. That can be a determination, yes.**
- 9 Q. Like how long the snout is?
- 10 **A. Yes.**
- 11 Q. How about the width, the overall width of
- 12 the head?
- 13 **A. Yeah, that can be a determination due to**
- 14 **some breeds presume more of a boxier jowl, while**
- 15 **other ones are more narrow and streamlined.**
- 16 Q. When you say "some breeds," are you
- 17 specifically talking about the three breeds that are
- 18 listed under the ordinance or are you talking about
- 19 dog breeds in general?
- 20 **A. Yes, on both, due to these breeds are more**
- 21 **of a -- fall in line with ea- -- all three together**
- 22 **more of a square jawline, unlike maybe other breeds.**
- 23 **Like let's take a German Shepherd. They're more long**
- 24 **and slender.**
- 25 Q. Okay. Like Greyhounds or something like

- 1 that?
- 2 **A. Correct.**
- 3 Q. Where you think of a purebred, where it's a
- 4 nice long -- so that's more like the length of the
- 5 head?
- 6 **A. And width of the head.**
- 7 Q. Okay. It's like a slender -- okay. What
- 8 about the muzzle shape?
- 9 **A. That is a determination, yes.**
- 10 Q. That's in there?
- 11 Eye color?
- 12 **A. It can be.**
- 13 Q. Under what circumstances?
- 14 **A. Due to our -- there are some breeds that are**
- 15 **bi-eyed, where other ones generally aren't unless**
- 16 **they're mixed breed with that other breed.**
- 17 Q. With the other breed of dog?
- 18 **A. Yep.**
- 19 Q. Like Huskies?
- 20 **A. Huskies, American Bulldogs, which American**
- 21 **Bulldogs are commonly confused with pit bulls.**
- 22 Q. Why is that?
- 23 **A. They're real similar. They're more of a**
- 24 **masculine dog. They're taller than a -- the dogs**
- 25 **that are in question, but they're more masculine.**

- 1 **They're a bully breed type dog.**
- 2 Q. Okay. We were just talking about the eye
- 3 color. How about the ears? Do you look at shape of
- 4 the ears?
- 5 **A. That's -- most, actually, we don't really**
- 6 **take that into consideration due to most people when**
- 7 **they get pit bulls they dock the ears, crop the ears.**
- 8 **They cut them.**
- 9 Q. Okay.
- 10 **A. They aren't born with those pointy ears like**
- 11 **we -- everyone thinks about pit bulls.**
- 12 Q. Okay. So you don't consider it in your
- 13 determination? So if it's floppy ears versus cropped
- 14 ears or prick ears that doesn't factor in?
- 15 **A. Not really because that's a surgical**
- 16 **procedure that people get done to make their dogs'**
- 17 **ears look like that.**
- 18 Q. Is that -- are you then just kind of
- 19 assuming that owners do that to their pit bulls?
- 20 **A. Yes. That's one of the common breeds that**
- 21 **gets done, yes.**
- 22 Q. Okay. Does the overall size of the ear, not
- 23 the shape, but the size, does that factor in?
- 24 **A. It all depends on how much they -- the**
- 25 **owners got trimmed off.**

- 1 Q. So -- but you don't know whether a dog would
- 2 have had that procedure done when you encounter it?
- 3 **A. Correct.**
- 4 Q. One way or the other?
- 5 **A. Correct.**
- 6 Q. So if the procedure hadn't been done and the
- 7 ear size and shape were the natural state, would that
- 8 factor in to a determination?
- 9 **A. Not really.**
- 10 Q. No?
- 11 **A. Due to most of the pit bulls of -- most**
- 12 **people get -- do get their dogs' ears cropped, and**
- 13 **there's very few actual pit bulls that I have ran**
- 14 **across that had its ears intact.**
- 15 Q. So in your opinion most of the dogs that you
- 16 have seen that you have said are pit bulls have the
- 17 cropped ears?
- 18 **A. Yes. It's a common practice for pit bulls.**
- 19 Q. How about the neck of the dog? Do you take
- 20 the way the neck looks into consideration?
- 21 **A. Most of the time by the time -- this time I**
- 22 **have gotten to the neck, it's -- it's pretty obvious**
- 23 **if it's -- assumes enough characteristics by the**
- 24 **ordinance.**
- 25 Q. So does that mean that you have made your



1 determination – you say by the time you got to the  
2 neck. Does that mean that you have started at the  
3 face and by the time you get to the neck you have  
4 made your determination, or what do you mean by that?

5 **A. Okay. I first make a determination – I**  
6 **come across the dog, you can see approximately the**  
7 **size of the build, the head shape, size, if it meets**  
8 **the cor- – the city ordinance with its – with the**  
9 **wording of the city ordinance, it displays a majority**  
10 **of the characteristics of the listed breeds.**

11 Q. Right. And we're going through those  
12 characteristics right now. So -- or the physical  
13 outward characteristics and appearance of a dog,  
14 we're going through that right now. So I guess I am  
15 asking you when you say that by the time you have  
16 gotten to the neck you have already made that  
17 determination, so how is it that you have made that  
18 determination based on the predominant  
19 characteristics? Like, what are those predominant  
20 characteristics?

21 MS. DuBOIS: Objection as to form.

22 Q. (By Mr. Hasan) Yeah. Go ahead.

23 **A. Basically how I make the determinations,**  
24 **like I was saying, the size of the dog, how the head**  
25 **is shaped and how it looks, basically.**

1 Q. Okay. So the size and the head and just  
2 your image of that's the dog, that's what it is. So  
3 does that mean that you won't go through this list of  
4 traits that we're going through and, like, evaluate  
5 each one of them?

6 **A. It – we can, yes. Just once I meet the**  
7 **requirements of a majority of characteristics.**

8 Q. So that's kind of what I am trying to focus  
9 on. What is it that makes it a majority? Because, I  
10 mean, we stopped right there at neck. And I will  
11 come back – I will come back to the question about  
12 the what makes it a majority, but like do you also  
13 consider the jawline?

14 **A. Yes.**

15 Q. Do you consider, like, tongue color?

16 **A. Most of the time we don't get to see the**  
17 **tongue.**

18 Q. Okay. How about the shape of the tail?

19 **A. Yes. If the person – because if they want**  
20 **to disguise the breed of the dog they'll – they will**  
21 **get it – they'll either have it docked or not**  
22 **docked.**

23 Q. Okay.

24 **A. That's another one of the key features that**  
25 **can be – that has people – people have altered.**

1 Q. So the tail size, like if it's been chopped  
2 off, if it's a short tail?

3 **A. Been docked, yes.**

4 Q. Docked. Okay. So that's something you  
5 would consider, if it's been docked?

6 **A. Yeah, because normally pit's not one of the**  
7 **breeds, but people can, if they want to, try to hide**  
8 **the tail and get it docked.**

9 Q. Okay. So the tail is something that you  
10 would consider?

11 **A. Could, yes, if it's still intact.**

12 Q. Could. Okay. How about like how it moves  
13 around? Do you look at its gait, how it walks?

14 **A. That could be a consideration, yes.**

15 Q. What about, like, agility? Do you see how  
16 it moves around?

17 **A. It could be a consideration.**

18 Q. Okay. So, you know, as we're sitting here  
19 talking, that's approximately 20 different  
20 indicators, approximately, that you and I just went  
21 through. And you said those are potential  
22 considerations.

23 And earlier when we stopped on neck you said  
24 that usually by that point you have already made the  
25 determination and you said that it's based on the

1 majority of the characteristics or the majority of  
2 the characteristics.

3 So I am trying to figure out how you say  
4 this is the majority – a majority of these traits  
5 are of a pit breed. I am trying to figure that out.

6 **A. It's just...**

7 MS. DuBOIS: Objection as to form. I am  
8 not sure that that was a question.

9 Q. (By Mr. Hasan) How do you figure out what  
10 the majority of the traits are?

11 **A. Just by the appearance, how the dog looks.**

12 Q. Yeah, I know. You're saying appearance and  
13 how the dog looks, but we just went through 20  
14 different attributes about how a dog looks. It has  
15 ears and eyes and a head and maybe a docked tail,  
16 maybe cropped ears, a muzzle shape.

17 We've got all of these things on how a dog  
18 looks. So I am asking you out of how a dog looks,  
19 how do you determine that the majority of the  
20 appearance and characteristics are of one of these  
21 specific breeds? How is it that you make that  
22 determination?

23 **A. Are you trying to get me to describe the**  
24 **exact what a purebred one of these dog breeds –**  
25 **exact what they're supposed to look like? Or I am**

1 **just trying to clarify what you're trying to get at.**  
 2 Q. Yeah. No. But -- and, I mean, I am trying  
 3 to figure this out. So you have got a mixed-breed  
 4 dog.  
 5 **A. Yep.**  
 6 Q. And you talked about mixed breeds are going  
 7 to display different characteristics of the different  
 8 breeds that are in its DNA; right?  
 9 **A. Yes.**  
 10 Q. So it's displaying all of these different  
 11 characteristics. How is it that you determine that  
 12 the majority of those characteristics are of one of  
 13 these breeds? What makes it a majority of one of  
 14 these breeds?  
 15 **A. Okay. Basically how we go about it, each of**  
 16 **these breed dogs, they -- those three are very**  
 17 **similar in look. They all are roughly around the**  
 18 **same height, same jaw structure, the same build.**  
 19 **There are -- they're a little bit different**  
 20 **than other breed of dogs. If they have**  
 21 **characteristics that matches these three dogs,**  
 22 **majority of -- if they look more like these three**  
 23 **dogs than other breeds, then it's most likely one of**  
 24 **these breed dogs.**  
 25 Q. Yeah. I guess maybe if I ask it a different

1 way because right there you said height, jaw  
 2 structure and build; right?  
 3 **A. Yes.**  
 4 Q. What I am asking is that -- is there like an  
 5 objective way you come up with, this is a majority?  
 6 Is it, you know, if it meets these specific criteria,  
 7 then, yes, it's a majority? Is that how you  
 8 determine?  
 9 **A. Basically on the -- out in the field --**  
 10 **Q. Yeah.**  
 11 **A. -- if it looks like these three dogs, I**  
 12 **will -- we will impound the dog and like you -- you**  
 13 **have more of the chance to get your dog back. We'll**  
 14 **take it back to the shelter. I will get a second**  
 15 **opinion, third opinion. And it -- we all decide,**  
 16 **yes, it looks like they -- these dogs. Then we have**  
 17 **them sign the dog out of the city.**  
 18 Q. Okay. I will come back to the group  
 19 determination part in just a minute here, but for  
 20 your determination out in the field is there an  
 21 objective way to do this or is it just based on your  
 22 subjective belief?  
 23 MS. DuBOIS: Objection as to form.  
 24 **A. Basically if it -- if we think the dog**  
 25 **appears to be in line with these dogs, it's**

1 **subjective to the ordinance. That's why we get a**  
 2 **second opinion.**  
 3 Q. (By Mr. Hasan) Well, before we get to the  
 4 second opinion, I am talking about you out in the  
 5 field. You're out in the field. How is it that you  
 6 make that determination? Is it -- like, do you have,  
 7 like, a checklist that you need to check off to see  
 8 now it is a majority? Do you have a checklist like  
 9 that?  
 10 **A. No.**  
 11 Q. So is it just subjective, you believing I  
 12 think this is one of those breeds?  
 13 **A. Yes.**  
 14 Q. And there's no set characteristic or trait  
 15 that the dog has to exhibit for you to make that  
 16 determination?  
 17 **A. Not one set. If it looks like it could be**  
 18 **potentially one of these breeds.**  
 19 Q. Okay. If it looks like it could be one of  
 20 these breeds?  
 21 **A. Yes, because I am -- without knowing for**  
 22 **sure, I -- the lineage or whatever you want to call**  
 23 **it, if it's a mixed-breed dog, it will have these**  
 24 **con-- these considerations, but we won't know for**  
 25 **sure unless you have lineage, what the parents were.**

1 **And some people don't even have that.**  
 2 Q. So you don't know what breed is in a dog  
 3 unless you have the lineage, what's in its blood?  
 4 **A. Besides that, we -- all we go off is**  
 5 **characteristics of said dogs and if it meets what the**  
 6 **stand- -- the standard position of these dogs, then**  
 7 **it most likely is a mix of these dogs.**  
 8 Q. What makes you say most likely it is a mix  
 9 of one of these dogs?  
 10 **A. It all depends on the -- how genetics works**  
 11 **and...**  
 12 Q. Well, I thought you said earlier you didn't  
 13 have any of the background on how genetics works?  
 14 **A. Well, I don't, but some dogs look similar to**  
 15 **said dogs. If certain breed dogs are bred together,**  
 16 **it could have the appearance. But according to the**  
 17 **ordinance, if it has the characteristics, it meets**  
 18 **the requirement of the pit bull ban.**  
 19 Q. Okay. I don't want to get too far into the  
 20 weeds on that, but I do want to make sure that I am  
 21 understanding you correctly in saying that when  
 22 you're out there it's a subjective determination that  
 23 you think it falls under the definition of the  
 24 statute -- of the ordinance?  
 25 MS. DuBOIS: Objection as to form.

- 1 Q. (By Mr. Hasan) I want to make sure that  
2 when you're out in the field and you look at a dog,  
3 it's a subjective determination that you think it  
4 falls under the definition in the ordinance?  
5 MS. DuBOIS: Objection as to form.  
6 Q. (By Mr. Hasan) Yeah. Please continue.  
7 **A. Yes, it falls underneath our determination.**  
8 Q. I am specifically asking you when you were  
9 in the field, when you make the call that you think a  
10 dog falls under the ordinance, it's based on your  
11 subjective determination?  
12 MS. DuBOIS: Objection as to form.  
13 **A. Yes. It – underneath my – my – when I**  
14 **was in the field, it was up to my determination out**  
15 **in the field.**  
16 Q. (By Mr. Hasan) Right. And that wasn't –  
17 there were no outcome-determinative factors or  
18 characteristics of the dog that made you determine  
19 it's a majority one of these three purebreds?  
20 MS. DuBOIS: Objection as to form.  
21 **A. Like I would – kept saying, it's – if it**  
22 **looks like these breeds, according to the city**  
23 **ordinance it falls within the ordinance of the pit**  
24 **bull ban.**  
25 Q. (By Mr. Hasan) So if you think it looks

- 1 like one of those breeds?  
2 **A. Like I keep saying, yes.**  
3 Q. Okay. Now, you mentioned earlier that if  
4 there's a question there, there's a group  
5 determination; is that accurate?  
6 **A. Yes.**  
7 Q. How did that process play out?  
8 **A. Basically, when we impound the car – the**  
9 **dog, we fill out an impound card. We put the dog in**  
10 **the kennel and we're like, okay, I believe this dog**  
11 **is a pit bull. I would like a second opinion. And**  
12 **they'll have another animal control officer, Cindy**  
13 **Rarrat, someone go back there and look.**  
14 Q. And what if there were differences of  
15 opinion?  
16 **A. We would get another opinion.**  
17 Q. What if there were – I mean, if there were  
18 different opinions, how would you guys reach a  
19 determination?  
20 **A. Normally after I bring it in and I tell them**  
21 **like, hey, I think it's a pit, it's generally what**  
22 **they decide up in the office.**  
23 Q. So if they disagreed with you, what they say  
24 goes?  
25 **A. I wouldn't – I wouldn't argue.**

- 1 Q. Why?  
2 **A. I – ultimately, it's up to the pen – the**  
3 **kennel – the poundmaster to make the determination.**  
4 Q. So, ultimately, deciding whether a dog falls  
5 under the ordinance is Cindy Rarrat's decision?  
6 **A. Yes. It's up to the poundmaster. She's the**  
7 **final say.**  
8 Q. So if there are differences of opinion, it's  
9 her call?  
10 **A. And normally she takes our opinions**  
11 **underneath advisement.**  
12 Q. Okay. But it is her call?  
13 **A. Ultimately, yes.**  
14 Q. Were you ever involved in any cases where  
15 you picked up a dog and people did disagree as to the  
16 predominant breed, not just specifically with pit  
17 bulls, but any dog in general?  
18 **A. No.**  
19 Q. You guys always agreed on the predominant  
20 breed of a mixed-breed dog?  
21 **A. Generally within the breed types, yes.**  
22 Q. What do you mean by that?  
23 **A. If it's a bully breed, if it's – let's say**  
24 **there is the terrier breed, but since the wire**  
25 **terrier is a different terrier, so they look real**

- 1 **similar, but a little bit of differences.**  
2 Q. Well, let's use the bully breed as an  
3 example because you mentioned earlier that, like, a  
4 Bulldog is in the bully breed.  
5 **A. Yes.**  
6 Q. Are the purebreds that are listed in the  
7 ordinance also in that bully breed?  
8 **A. They are a type of bully breed, yes.**  
9 Q. Okay. So when you said that everyone agreed  
10 as to the general type of dog, that means that they  
11 could agree that they're a bully breed, but one of  
12 those bully breeds is not part of the ordinance and  
13 the other is part of the ordinance; right?  
14 **A. We generally all agreed when it comes down**  
15 **to – let's say it's an American Bulldog compared to**  
16 **a pit bull. They are quite a bit different in**  
17 **appearance.**  
18 Q. Okay. So you said "generally." Were there  
19 circumstances where that didn't happen?  
20 **A. Well, like how do you mean?**  
21 Q. Yeah. Where there's one of you thinks this  
22 is one of the three purebreds and someone else says,  
23 no, it's not, it's a different breed?  
24 **A. Generally that hasn't...**  
25 Q. I am talking about specifically, not

1 generally. Did that happen?  
 2 **A. Not to my knowledge.**  
 3 Q. With – under your experience that never  
 4 happened?  
 5 **A. Not to my knowledge.**  
 6 Q. How about other breeds where you said  
 7 there's a category of breed – what was the term you  
 8 used? Like for bullies or terriers, what was the  
 9 term you used? A group?  
 10 **A. Oh, I believe I was – the type of breeds.**  
 11 **There was the terriers, like the wire terrier, the...**  
 12 Q. Is that a group? Is that a subgroup? Is  
 13 that a – what is that?  
 14 **A. Wire-haired terrier is a breed of its own,**  
 15 **but it's a terrier. They look similar to other**  
 16 **terriers, but they have the longer, wirier hair,**  
 17 **while the other terriers don't.**  
 18 Q. So are you – are – were there  
 19 circumstances where people would disagree on the  
 20 breed of terrier?  
 21 **A. Yes, at times, due to they look real**  
 22 **similar.**  
 23 Q. So if dogs look similar, you have  
 24 disagreements as to what the predominant breed of  
 25 that dog is?

1 **A. Possibly, yes.**  
 2 Q. Did that ever happen?  
 3 **A. Not very often, but due to the fact that**  
 4 **terriers, the wire terrier, the Jack Russell terrier,**  
 5 **the terriers along that breed, they are real similar,**  
 6 **just minute differences in appearance.**  
 7 Q. Different characteristics?  
 8 **A. Minutely, yes.**  
 9 Q. But different characteristics?  
 10 **A. Yes.**  
 11 Q. How about mixed-breed dogs between  
 12 different – that showed characteristics that are of  
 13 different groups, so terrier and bully, shared –  
 14 had – showed characteristics of both?  
 15 **A. Depends on how we define it. That's one or**  
 16 **the other. Does it look more like, let's say, a pit**  
 17 **bull or more like a Jack Russell? Jack Russell**  
 18 **terriers are – fall in the small-breed category,**  
 19 **while a pit bull is a medium-sized dog.**  
 20 Q. Did you ever – Dave, have you ever read the  
 21 breed standards under the United Kennel Club?  
 22 **A. It's been a while.**  
 23 Q. But have you read those?  
 24 **A. Yes.**  
 25 Q. Have you read the breed standard for the

1 American Pit Bull Terrier specifically?  
 2 **A. It's been a while.**  
 3 Q. But you did read that?  
 4 **A. At one time, yes.**  
 5 Q. When would that have been?  
 6 **A. Four or five years ago.**  
 7 Q. After you started?  
 8 **A. Yes.**  
 9 Q. Why did you do that?  
 10 **A. Because I knew I would be in – perhaps be**  
 11 **making decisions on if a dog is – is or is not a pit**  
 12 **bull.**  
 13 Q. Wouldn't you have had to make that  
 14 determination before that? You said it was four or  
 15 five years ago and you started six years ago; so  
 16 there would have been a period of time there. Why  
 17 did you decide to read it two years into your job as  
 18 opposed to at the beginning?  
 19 **A. That was the last time I read it.**  
 20 Q. Did you read it before you started enforcing  
 21 the ban?  
 22 **A. Yes.**  
 23 Q. When?  
 24 **A. It was part of the training that we've**  
 25 **received at NACA.**

1 Q. So the NACA course provided you with the  
 2 breed standards?  
 3 **A. It was part of – to be able to identify**  
 4 **different breeds, yes.**  
 5 Q. But did they actually provide you with the  
 6 breed standards from the United Kennel Club?  
 7 **A. I am not for sure when it became a**  
 8 **recognized breed, to be hundred percent honest.**  
 9 Q. Well, let's take a different example then.  
 10 How about the American Kennel Club breed standard for  
 11 the American Staffordshire Terrier?  
 12 **A. It's been a while since I have studied up on**  
 13 **breed standards.**  
 14 Q. When was the first time you read it? Did  
 15 you read it?  
 16 **A. At one time, yes. It was...**  
 17 Q. So when was the first time?  
 18 **A. I want to say right around when I started.**  
 19 Q. Was that part of that training?  
 20 **A. I believe it was more – because I actually**  
 21 **bought a book on different breeds of the dogs, and I**  
 22 **was more curious about – make sure I knew what**  
 23 **breeds that I would be enforcing laws on that were**  
 24 **banned.**  
 25 Q. When did you buy that book?

- 1 **A. To be honest, it's been six – it's**  
 2 **within – when I first started. So I can't really**  
 3 **tell you exactly month and date I have made that**  
 4 **purchase.**  
 5 Q. But it was before you started?  
 6 **A. It was within the first few weeks of me**  
 7 **starting.**  
 8 Q. What was the book?  
 9 **A. It was dog breeds. It was basically overall**  
 10 **breeding, dog breeds.**  
 11 Q. Teaching you how to identify breeds of dogs?  
 12 **A. Yes.**  
 13 Q. So it was in a book. That means it was  
 14 based on pictures?  
 15 **A. Pictures and descriptions.**  
 16 Q. Okay. So it said, look for these general  
 17 characteristics, and it described them in words?  
 18 **A. Yes.**  
 19 Q. Did it also have pictures?  
 20 **A. Yes.**  
 21 Q. Pictures that you cross-referenced to be  
 22 able to identify a breed?  
 23 **A. I don't really go off pictures.**  
 24 Q. So did you disregard the book's instructions  
 25 on here's what a breed looks like?

- 1 **A. I go by what it described. And it pointed**  
 2 **out certain things, but I don't look at pictures**  
 3 **overall as a charact- -- a determining factor -- a**  
 4 **determining factor of what a dog breed is.**  
 5 Q. Okay. So answer my question. Did you  
 6 disregard the pictures in the book for identifying  
 7 dogs?  
 8 **A. No.**  
 9 Q. So you took them into consideration?  
 10 **A. Took them into consideration, but it's not a**  
 11 **fact of I am comfortable making on determining a dog**  
 12 **breed.**  
 13 Q. Okay. But you took the pictures in  
 14 consideration when determining – let me rephrase  
 15 that.  
 16 For purposes of helping identify dogs, you  
 17 took the pictures in that dog book into  
 18 consideration?  
 19 **A. For pre- -- yes, due -- but it's limited due**  
 20 **to those are all purebred dogs that they have**  
 21 **pictures of.**  
 22 Q. Okay. So the dog book was to identify  
 23 traits in purebred dogs?  
 24 **A. Yes.**  
 25 Q. Have you also read the American Kennel Club

- 1 breed standard for the Staffordshire Bull Terrier?  
 2 **A. It's been a long time. Yes.**  
 3 Q. Was it before or after you started with  
 4 animal control?  
 5 **A. It was within the first few weeks.**  
 6 Q. Have you ever read the – whether it's UKC  
 7 or AKC, have you ever read the reason why they put  
 8 out these breed standards?  
 9 **A. I believe I did. I just can't recall when**  
 10 **it was.**  
 11 Q. Would you agree with me that they are put  
 12 out for purposes of certification of those breeds?  
 13 **A. Yes.**  
 14 Q. So they are standards to allow these  
 15 organizations to certify that a dog is a purebred?  
 16 **A. Yes.**  
 17 Q. They are not used to identify mixed-breed  
 18 dogs?  
 19 **A. Correct.**  
 20 Q. Do you ever use photographs – when you were  
 21 an animal control officer, would you ever use  
 22 photographs to help you reference whether a dog  
 23 exhibited characteristics of a certain breed?  
 24 **A. Oh, yes, if I was in question on what the**  
 25 **breed was. I – it – a few years back we started**

- 1 **getting a whole bunch of Catahoulas, which before**  
 2 **that I had never really dealt with a Catahoula.**  
 3 Q. What's a Catahoula?  
 4 **A. It's a breed of dog that was – is more of a**  
 5 **herding-type dog that came from Australia, if I**  
 6 **remember right.**  
 7 Q. So if there's a question as to what breed a  
 8 dog is, you may refer to a picture as a reference?  
 9 **A. Yep, if that – yes. If Cindy Rarrat or**  
 10 **another person was not available, like, i.e., on the**  
 11 **weekends.**  
 12 Q. Okay. So you may refer to a picture when  
 13 helping to make the determination?  
 14 **A. Yes.**  
 15 Q. Did you say you read the training manual  
 16 from NACA?  
 17 **A. NACA. Yes.**  
 18 Q. NACA. Did you specifically read the portion  
 19 of the training manual related to dog identification?  
 20 **A. Yes.**  
 21 Q. Are you familiar that NACA states that  
 22 visually identifying the heritage of a mixed-breed  
 23 dog is nearly impossible?  
 24 **A. Yeah, I am aware of that.**  
 25 Q. Do you agree with that?

1 **A. Oh, it is nearly – it is extremely**  
 2 **difficult due to you don't know what the parents are,**  
 3 **but on a do- – the dogs do have characteristics that**  
 4 **can lead you to believe what the dog is.**

5 Q. Okay. But do you disagree with that  
 6 statement, that it's nearly an impossible task?

7 **A. It is extremely difficult, yes.**

8 Q. That was the group that provided you with  
 9 your formal training, wasn't it?

10 **A. Yes.**

11 Q. Are you familiar with the current science  
 12 related to an individual's ability to accurately  
 13 identify a dog's predominant breed based on visual  
 14 identification?

15 **A. No. When did that come out?**

16 Q. Are you aware of any of the science over the  
 17 past 10 to 15 years that indi- – that relates to an  
 18 individual's ability to accurately identify the  
 19 predominant breed of a dog?

20 **A. I really haven't kept up on science in that**  
 21 **aspect.**

22 Q. So if you were to learn, hypothetically –  
 23 since you haven't kept up with it, hypothetically, if  
 24 you were to learn that the scientific studies show  
 25 that an individual is incapable of identifying the

1 predominant breed of a dog over 60 percent of the  
 2 time, what would you say?

3 MS. DuBOIS: Objection as to form.

4 **A. Yes, it – unless you had training, most**  
 5 **people do not – most common people do not know dog**  
 6 **breeds. They didn't study it. They didn't have**  
 7 **any – they don't have any type of training.**

8 **But I don't go for – when I was trying to**  
 9 **find breeds, basically what I am trying to say is**  
 10 **when I see a dog, I look at him like, okay, looks**  
 11 **like this breed of dog. Is this part of the ban or**  
 12 **is it not. If it has the characteristics of those**  
 13 **three dogs, then it could possibly fall within the**  
 14 **ban.**

15 Q. (By Mr. Hasan) Right. So you're looking at  
 16 visual identification?

17 **A. Yes.**

18 Q. So if I told you, going back to my  
 19 hypothetical, that the current state of the science  
 20 shows that individuals, including trained  
 21 individuals, are wrong 60 percent of the time, what  
 22 would you say?

23 **A. It's very well possible. That's why we get**  
 24 **opinion – second opinions.**

25 Q. Possible that visual identification is

1 wrong?

2 **A. It is – it is possible, yes, but that's why**  
 3 **we get second opinions.**

4 Q. Okay. But it is possible that it's wrong?

5 **A. It is possible. That's why we get second**  
 6 **opinions.**

7 Q. Yeah, I know. You mentioned that. And  
 8 setting aside the second opinion, it's possible for a  
 9 person to get the visual...

10 MS. DuBOIS: Objection as to form.

11 MR. HASAN: All right. I am going to  
 12 finish my question first, Nicole.

13 Q. (By Mr. Hasan) Setting aside the second  
 14 opinion, it's possible for the individual to get the  
 15 visual identification wrong?

16 MS. DuBOIS: Objection as to form.

17 **A. That is why we – like I say, it is**  
 18 **possible, but that's why we have procedures –**

19 Q. (By Mr. Hasan) Okay.

20 **A. – to get a second – to have a second**  
 21 **opinion.**

22 Q. Yeah. Dave, I know you keep on wanting to  
 23 say second opinion, and I am saying set aside the  
 24 second opinion.

25 **A. I understand what you – what you're getting**

1 **at. And I am saying yes, it is possible.**

2 Q. Okay. Thank you. So if you determined,  
 3 when you were an animal control officer, that a dog  
 4 was a pit bull, what would you do next?

5 **A. Like I stated earlier, we would impound the**  
 6 **dog, bring him to the shelter, inform the individual,**  
 7 **A, your dog meets the requirements of said ordinance.**  
 8 **You still have the possibility of getting your dog**  
 9 **back. If it meets the requirements that is decided,**  
 10 **you would have to sign the dog outside the city.**

11 Q. So specifically what – I want to focus on  
 12 what you would tell the dog owner. What exactly  
 13 would you tell them?

14 **A. That unfortunately your dog meets the**  
 15 **requirements of said ordinance. We would require**  
 16 **them to come down to the shelter, sign the dog out of**  
 17 **the city, and you would be able to get the –**  
 18 **potentially get his dog back.**

19 Q. If you impounded a dog in general, not just  
 20 under the pit bull ordinance, if you impounded a dog,  
 21 would you tell the dog owner of their ability to  
 22 appeal?

23 **A. Yes.**

24 Q. Every time?

25 **A. Yes.**

1 Q. Were there ever instances where you were  
2 given instructions not to do that?  
3 **A. I can't think of any.**  
4 Q. In your experience you were never given such  
5 instructions?  
6 **A. I cannot think of any.**  
7 Q. And you can never remember those  
8 instructions ever being given to another animal  
9 control officer?  
10 **A. I can't think of any.**  
11 Q. Would you take pictures of the dogs?  
12 **A. That is – I generally didn't take a picture  
13 of the dog unless it was a – I – a neglect case, a  
14 welfare of the dog case, and then I would take  
15 pictures at the site because I wouldn't be able to  
16 remove the dog.  
17 But generally when we get back to the  
18 shelter if it was deemed to be a pit bull, we  
19 started – I can't remember when we started, but  
20 the – on the facility staff started taking pictures  
21 to document that the dog, hey, has been here. It  
22 goes into its file.  
23 And like at – we even microchip said dog,  
24 you know, i.e., for the pit bulls. It was part of  
25 the ordinance, our procedure. So if for some reason**

1 **they didn't take the dog out of the city or brought  
2 it back, we picked it up. We scanned it. If it's  
3 been – so we can trace that chip number. It throws  
4 up a red flag. Okay. The dog's been here. It's  
5 been signed out of the city. And we go with however  
6 they normally do it at the shelter from there.**  
7 Q. So for future enforcement purposes?  
8 **A. Exactly.**  
9 Q. Did you ever give dog owners different  
10 options other than what you just described?  
11 **A. To my knowledge the – what we – our  
12 procedures are, if it's a pit bull we give the owners  
13 one chance to sign the dog out of the city and for it  
14 not to come back.**  
15 Q. In your opinion are certain breeds more  
16 aggressive than others?  
17 **A. It all depends on how the dog is raised.  
18 That's my – based on my personal opinion.**  
19 Q. So it's not based on the breed. It's based  
20 on how it was raised?  
21 **A. My personal opinion, yes, because I have met  
22 bad other breeds. I have met good pit bulls. It all  
23 depends on the dog in particular.**  
24 Q. Sure. In your experience are physical  
25 features or characteristics predictive of how the dog

1 is going to behavior?  
2 **A. How do you mean?**  
3 Q. Well, if a dog has a certain physical  
4 feature, long legs, is it going to behave a certain  
5 way?  
6 **A. Not generally.**  
7 Q. So in general are – in your experience are  
8 a dog's physical features, its outward physical  
9 appearance, is it predictive of how that dog is going  
10 to behave?  
11 **A. Not generally.**  
12 Q. Are you familiar with Kali Myers?  
13 **A. I have heard of her. Heard of her, yes.**  
14 Q. Specifically Kali Myers' dogs?  
15 **A. I have picked up them running loose.**  
16 Q. Right. You were the person that picked them  
17 up; right?  
18 **A. Yes.**  
19 Q. So do you know who let the dogs out?  
20 **A. No.**  
21 MS. DuBOIS: Classy.  
22 Q. (By Mr. Hasan) You picked them up at large,  
23 though?  
24 **A. Yes.**  
25 Q. Is that the circumstance that led you to

1 those dogs?  
2 **A. Yes.**  
3 Q. Tell me about that.  
4 **A. Which incident? Because there was – I  
5 impounded – I – a few – I impounded a few  
6 different ones that ended up being hers.**  
7 Q. Let's talk about her first dog, Tink.  
8 **A. Okay. The last time I impounded that one  
9 was on the – I want to say the 21- or 2200 block of  
10 Myrtle Street –**  
11 Q. That's...  
12 **A. – running loose.**  
13 MR. HASAN: Okay. Julie, let's mark this.  
14 (Exhibit Number 6 was  
15 marked for identification.)  
16 Q. (By Mr. Hasan) All right. I handed you a  
17 stack of documents that's been marked as Exhibit 6  
18 collectively. And each of these documents, if you  
19 take a look at the bottom right, have labels on them  
20 saying Sioux City records followed a numeric – a  
21 six-digit numeric. Do you see that?  
22 **A. Yes.**  
23 Q. I will represent to you that these are  
24 documents that we obtained in the enforcement records  
25 from the city. Let's just start off at the

1 beginning. So the first page there, Sioux City  
 2 records, 835, the officer here is BTS?  
 3 **A. Brought to shelter.**  
 4 Q. Brought to shelter. Were you the individual  
 5 who authored this?  
 6 **A. Negative.**  
 7 Q. You...  
 8 **A. Brought to shelter means someone – someone,**  
 9 **i.e., let's say – let's say you find a dog and bring**  
 10 **it down to the shelter, hey, I found this dog.**  
 11 Q. So BTS isn't initials for an individual. It  
 12 means brought to shelter?  
 13 **A. Yes.**  
 14 Q. So if I see in these records something that  
 15 says BTS, it's brought to the shelter?  
 16 **A. Correct.**  
 17 Q. Okay. Let's flip forward two pages to 837.  
 18 Officer here, is that you?  
 19 **A. Yes.**  
 20 Q. Okay. So the date here it looks like is  
 21 12/4/14; is that right?  
 22 **A. Correct.**  
 23 Q. Cause of impoundment says at large; right?  
 24 **A. Yes.**  
 25 Q. Tell me about when you picked up the dog

1 that day.  
 2 **A. It's hard to remember in particular, but it**  
 3 **looks like I was – I – it was probably either**  
 4 **patrolling or had a call for a dog running loose on**  
 5 **the 2500 block of Military Road, which I believe is a**  
 6 **few blocks further west from said owner's address.**  
 7 Q. So there's two different handwritings on  
 8 here. Do you know who wrote the other part of this  
 9 card?  
 10 **A. It's most likely one of the kennel staff's**  
 11 **due to it's the owner's information. When I pick up**  
 12 **a dog, I generally don't have that information.**  
 13 Q. So at the time you picked up Tink, you  
 14 didn't know who the owner was?  
 15 **A. Correct.**  
 16 Q. So you have written down here, descriptions  
 17 and markings, pit bull; is that right?  
 18 **A. Yes.**  
 19 Q. What made you determine it was a pit bull?  
 20 **A. By the characteristic, pursuant...**  
 21 Q. What characteristics?  
 22 **A. Its height. Its head structure. Its body**  
 23 **build.**  
 24 Q. Anything else?  
 25 **A. Without see – physically seeing the dog,**

1 **that's all I can think of at the moment.**  
 2 Q. Okay. Let's keep flipping forward. Let's  
 3 look at 841. Are you with me?  
 4 **A. Yes, I am.**  
 5 Q. Okay. So it looks like you're the officer  
 6 here also; is that right?  
 7 **A. Yes.**  
 8 Q. Looks like a lot more of the handwriting is  
 9 yours on this form; is that true?  
 10 **A. Yes, it looks like it.**  
 11 Q. Most of the black handwriting?  
 12 **A. Yep.**  
 13 Q. The date on this is 10/31/15?  
 14 **A. Yes.**  
 15 Q. Halloween. So cause of impoundment here is  
 16 in custody. What does that mean?  
 17 **A. Someone called us because they found the**  
 18 **dog. They had it at their house, and they had it**  
 19 **contained when I got there.**  
 20 Q. So I am confused as far as cause of  
 21 impoundment, in custody. Is -- what's the cause? If  
 22 it's in custody, if it's in someone's house, what's  
 23 the cause?  
 24 **A. They don't want the – they no longer want**  
 25 **the dog because it's not their dog. It was running**

1 **loose. And they're relying on us to try to – to**  
 2 **try – to come impound the dog so they don't have to**  
 3 **have it – someone's dog at their house, i.e.,**  
 4 **within...**  
 5 Q. Who was it here?  
 6 **A. To be honest, I cannot recall. We'd have to**  
 7 **look at the – at the report, if they even gave us**  
 8 **their information.**  
 9 Q. What do you mean by, "we'd have to look at  
 10 the report"?  
 11 **A. With in-custody calls, 95 percent of the**  
 12 **time it's someone – an individual that lives inside**  
 13 **the city borders that calls our dispatch to get us to**  
 14 **come out to handle animal calls.**  
 15 Q. So what's the actual report?  
 16 **A. It would be our complaint numbers, the**  
 17 **report we fill whenever we get a call.**  
 18 Q. Is that different than this right here  
 19 (indicating)?  
 20 **A. This is the impound card. It's what we fill**  
 21 **out when we get to the shelter.**  
 22 Q. Do you fill out those reports you're  
 23 describing every time?  
 24 **A. Every call that we go on, yes.**  
 25 Q. Every call, it has a report?



- 1 **A. Yes.**  
 2 Q. Did you fill one out for this?  
 3 **A. Yes.**  
 4 Q. It says the area of pickup is the 2300 block  
 5 of Collins. Where is that?  
 6 **A. It is the street before – okay. You know**  
 7 **where – on Military Road, West 21st Street, where**  
 8 **the golf course is?**  
 9 Q. No, but continue.  
 10 **A. Okay. It's by the golf course, which is**  
 11 **east of Kali Myers' residence.**  
 12 Q. Was it close in proximity to Kali Myers'  
 13 residence?  
 14 **A. Within a couple of blocks.**  
 15 Q. Within a couple of blocks. Okay. When you  
 16 went out to pick up Tink this time, did you speak to  
 17 the person who had it in custody?  
 18 **A. Yes.**  
 19 Q. What did they tell you?  
 20 **A. That they found this dog and they wanted us**  
 21 **to remove it from their property.**  
 22 Q. So I noticed that you wrote down the color,  
 23 brown. This is just me asking. Is that different  
 24 than fawn?  
 25 **A. Fawn and brown are real similar colorations,**

- 1 **and it depends on the lighting. They can be**  
 2 **mistaken.**  
 3 Q. So you can – I mean, it's the same dog,  
 4 wasn't it?  
 5 **A. According to the chip number, yes.**  
 6 Q. So you can interpret it the way that it –  
 7 it looks, the coloring, you can interpret it  
 8 differently one day versus the next?  
 9 **A. Depending on the lighting.**  
 10 Q. Yeah. Right.  
 11 **A. Yes.**  
 12 Q. What does "cannot go home due to it was  
 13 signed over" mean?  
 14 **A. Okay. Basically, by how I re – interpret**  
 15 **that, the dog was either signed over to us or was**  
 16 **signed out of the city and it cannot go back to that**  
 17 **person due to it's already previously been signed**  
 18 **out.**  
 19 Q. Flip forward to 843 for me, please.  
 20 **A. 843. Okay. Radar.**  
 21 Q. Radar. Do you know Radar?  
 22 **A. Without seeing the dog, I wouldn't be able**  
 23 **to be for sure.**  
 24 Q. Okay. It looks like this was signed on –  
 25 on the next page there, 10/26/16. So that's about a

- 1 year later, isn't it?  
 2 **A. Roughly, yes.**  
 3 Q. On page 846, which looks like another one of  
 4 those impound cards – are you with me?  
 5 **A. Yep.**  
 6 Q. So that's also 10/25/2016?  
 7 **A. Yes.**  
 8 Q. Are you the officer that picked up this dog?  
 9 **A. Yes.**  
 10 Q. You have got a description here, blue pit  
 11 bull. What does that mean?  
 12 **A. I have – a – it's a different – it's a**  
 13 **pit bull, but it's another type because they like**  
 14 **having the different – because a blue pit bull, it's**  
 15 **a little bit different coloration of the muzzle.**  
 16 **It's a grayish color. It's just a pit bull within a**  
 17 **pit bull grouping.**  
 18 Q. So it's a different type of pit bull?  
 19 **A. It's just another way of – because people**  
 20 **like to call them – have them – they have blue –**  
 21 **the blue pit bulls, which is just a grayish pit bull.**  
 22 Q. So you wrote down, color, grayish. Is that  
 23 what you mean by that?  
 24 **A. It's grayish, yes.**  
 25 Q. Tell me about when you picked up Radar.

- 1 **A. I – okay. It was running loose, 2200 block**  
 2 **of Myrtle. Okay. That's – it was running loose on**  
 3 **Myrtle Street. I had – at that day I had several**  
 4 **calls of running – of a pit bull running loose**  
 5 **between the golf course and Myrtle Street. I finally**  
 6 **came across it on Myrtle.**  
 7 Q. So what happened?  
 8 **A. It was running loose. I walked up. It came**  
 9 **to me, and I put a leash on it and put it in the**  
 10 **truck.**  
 11 Q. When did you determine it was a pit bull?  
 12 **A. Pretty quickly due to it had the**  
 13 **characteristics, a squatty dog with the other**  
 14 **features of a pit bull.**  
 15 Q. But I mean specifically here, what other  
 16 features of a pit bull did Radar have?  
 17 **A. The size, the build, the head. It looks**  
 18 **like a pit bull.**  
 19 Q. I noticed that under Tink and here for  
 20 Radar – you wrote down pit bull for Tink; right?  
 21 **A. Yes.**  
 22 Q. And you wrote down blue pit bull for Radar;  
 23 right?  
 24 **A. Yes.**  
 25 Q. You didn't write down any of the specific

1 breeds that are listed in the ordinance, did you?  
 2 **A. Well, pit bull is a – just the char- – the**  
 3 **term we use for things that fall within the pit bull**  
 4 **ban that looks like that American Staffordshire –**  
 5 **what's the exact wording there?**  
 6 Q. Yeah. Take your time.  
 7 **A. American Pit Bull Terrier. We just drop off**  
 8 **the American and the Terrier, so it's a pit bull.**  
 9 Q. Okay. So when you say pit bull, do you only  
 10 mean the American Pit Bull Terrier?  
 11 **A. I mean, that's generally what we deal with.**  
 12 **If we run into a Staffordshire Bull Terrier, we put**  
 13 **Staffordshire Bull Terrier. If we run into a pit**  
 14 **bull, we put it – American Staffordshi- – American**  
 15 **Pit Bull Terrier, we just put pit bull.**  
 16 Q. So every time that you write down pit bull  
 17 on one of these impound cards you're – you say it  
 18 looks like the American Pit Bull Terrier?  
 19 **A. Yes.**  
 20 Q. Not the Staffordshire Bull Terrier?  
 21 **A. They're a little bit different, yes.**  
 22 Q. Not the American Staffordshire Terrier?  
 23 **A. They look a little bit different, yes.**  
 24 Q. So you are restricting it to the American  
 25 Pit Bull Terrier?

1 **A. That's what I believed at that time that it**  
 2 **looked most like.**  
 3 Q. Why didn't you write down American Pit Bull  
 4 Terrier?  
 5 **A. It's just what we generally put down is pit**  
 6 **bull.**  
 7 Q. Did you think they were purebreds?  
 8 **A. No.**  
 9 Q. Did you think that both Radar and Tink were  
 10 predominantly American Pit Bull Terrier?  
 11 **A. They matched the – in my opinion they**  
 12 **looked like the pit bull terrier, yes.**  
 13 Q. Okay. I will have you flip to page 832.  
 14 **A. 832.**  
 15 Q. Yes. It should be back just a handful of  
 16 pages. It's a Word document.  
 17 **A. Okay.**  
 18 Q. Okay. Do you recognize this?  
 19 **A. Okay. Okay. It looks like something that**  
 20 **was typed up at the shelter that – describing on all**  
 21 **of the different instances we've dealt with Tink and**  
 22 **the one time that we dealt with Radar.**  
 23 Q. Okay. Do you see under the – where it says  
 24 Tink, Tinker, second impound, that heading?  
 25 **A. Yes.**

1 Q. Do you see where it says in that second  
 2 sentence there the dog was approximately two and a  
 3 half years old?  
 4 **A. Yeah.**  
 5 Q. It was now obvious the dog was indeed,  
 6 quote, too much pit, end quote?  
 7 **A. Yes.**  
 8 Q. What's that mean, too much pit?  
 9 **A. Well, Cindy, when she makes the ultimate**  
 10 **decision, determination, if it has predominating**  
 11 **characteristics of a pit bull, she – then it's too**  
 12 **much pit, but if it has some of the characteristics**  
 13 **of a pit bull but not enough to be a – that's a pit.**  
 14 Q. So too much pit means predominantly –  
 15 **A. Correct.**  
 16 Q. – one of those – the characteristics of  
 17 one of those breeds?  
 18 **A. Correct.**  
 19 Q. So that means that here with Tink at one  
 20 time it was not predominant – Tink did not look  
 21 predominantly one of these breeds?  
 22 **A. When they're still a young pup, they could**  
 23 **still – with how other breeds look similar to a pit**  
 24 **bull, it might – it – we would – we don't – we**  
 25 **don't want to say, hey, that's a pit bull, and let's**

1 **say two years down the road it doesn't look like a**  
 2 **pit anymore, enough pit anymore.**  
 3 Q. Okay. So here, it looks like the first  
 4 pickup it was Boxer mix?  
 5 **A. Boxers are one of the characteristics of**  
 6 **dogs that are commonly confused as pit bulls, yes.**  
 7 Q. Okay. So at first it was, per the city,  
 8 deemed a Boxer mix?  
 9 **A. Due to – I would assume whoever made that**  
 10 **determination didn't want to have the dog removed**  
 11 **from the city due to a mistake that, hey, it**  
 12 **wasn't – it didn't look like a pit enough at that**  
 13 **time due to it hadn't charac- – grown into its adult**  
 14 **features.**  
 15 Q. Okay. But you don't know any of that.  
 16 You're just assuming that?  
 17 **A. I am assuming it.**  
 18 Q. Okay. But what we do know is that it was –  
 19 Tink was deemed a Boxer mix as of the first pickup?  
 20 **A. At – at eight months old, before it grew**  
 21 **into the characteristics of an – the adult**  
 22 **characteristics.**  
 23 Q. Okay. At eight months old, before it grew  
 24 into those characteristics that were adult  
 25 characteristics, it was deemed a Boxer mix?

1 **A. Yes. At eight months old, before it grew**  
 2 **up.**  
 3 Q. Yes. And then later deemed to have too much  
 4 pit. So later deemed to be predominantly one of  
 5 those breeds?  
 6 **A. Yep. Once it grew into its adult features,**  
 7 **it looked to be a pit bull.**  
 8 Q. So then you would agree with me that the  
 9 characteristics change over time?  
 10 **A. Just like with people, as animals age, they**  
 11 **get – they grow into their features.**  
 12 Q. Okay. Which means those features will  
 13 change?  
 14 **A. Potentially, yes.**  
 15 Q. I mean, yeah. I mean, that's what the city  
 16 determined here?  
 17 **A. Yes.**  
 18 Q. I mean, your boss determined that?  
 19 **A. Yep. I am not arguing with that.**  
 20 Q. Will you look at the last page for me, 834?  
 21 **A. Okay.**  
 22 Q. Are you familiar with this document?  
 23 **A. Looks like it's something else that Cindy**  
 24 **wrote up.**  
 25 Q. Do you see in the -- I think it's the third

1 paragraph there that Kali protested the breed of dog?  
 2 **A. Yes.**  
 3 Q. Were you involved in that process?  
 4 **A. I was the individual that picked up Radar,**  
 5 **and to me it looked like to be an American Pit Bull**  
 6 **Terrier. Cindy Rarrat and everyone else agreed with**  
 7 **me it was American Pit Bull Terrier. But Kali,**  
 8 **obviously the -- stated it was an American Cattle**  
 9 **Dog -- Australian Cattle Dog, so -- mixed with**  
 10 **Australian Shepherd mix. That's about as much**  
 11 **information I have on it is what I am reading here.**  
 12 Q. So you -- were you involved at that time  
 13 when she was disputing, though?  
 14 **A. No.**  
 15 Q. Okay. Just wondering if you were involved  
 16 in that process.  
 17 **A. No. I spend most of my time out on the**  
 18 **streets. So I have -- what goes on in the office**  
 19 **most of the time I am not aware of.**  
 20 Q. Were you ever involved in -- when an owner  
 21 would have disputed a determination, are you ever  
 22 involved in the process of resolving that?  
 23 **A. Only if they want to talk to the officer**  
 24 **that picked up the dog.**  
 25 Q. Only if Cindy wants to talk to you?

1 **A. Yes, or the owner of the dog because**  
 2 **normally -- it depends on the day -- I am generally**  
 3 **patrolling the streets or doing calls.**  
 4 Q. Sure. Okay. I am going to hand you this  
 5 binder and have you flip to Exhibit 1. Since you  
 6 said you have -- well, have you ever reviewed that?  
 7 **A. Reviewed this?**  
 8 Q. It's a collection of 25 pictures.  
 9 **A. Okay.**  
 10 Q. Have you ever reviewed it?  
 11 **A. This particular photograph -- pictures, I**  
 12 **don't recall seeing these -- this particular series.**  
 13 Q. Okay. I will represent to you that I --  
 14 it's pulled from the NACA training manual --  
 15 **A. Okay.**  
 16 Q. -- specifically on the identification of  
 17 breeds. And I'd like to ask you for breeds, the dogs  
 18 listed as one through 25, tell me what you think the  
 19 predominant breed of those dogs are.  
 20 **A. Okay. Unfortunately, I don't feel**  
 21 **comfortable making a determination off of photographs**  
 22 **due to they can be misleading on some of the**  
 23 **characteristics, like height and distinguishing**  
 24 **factors like that.**  
 25 Q. Okay. So this is from the manual that you

1 read?  
 2 **A. Yes.**  
 3 Q. The company, the organization that trained  
 4 you?  
 5 **A. Yep.**  
 6 Q. Using this material?  
 7 MS. DuBOIS: Objection as to form. Are you  
 8 making a professional statement that that's where  
 9 those document -- or, photographs originated?  
 10 Q. (By Mr. Hasan) I will represent to you that  
 11 this is from that manual. So using this material,  
 12 this was something that was presented to you during  
 13 your training?  
 14 **A. Potentially, yes.**  
 15 Q. In fact, it's a quiz to identify as part of  
 16 that training; is that right? Do you recall being  
 17 asked to identify different dogs during your training  
 18 with NACA?  
 19 **A. Vaguely, yes.**  
 20 MS. DuBOIS: Can I ask you a question?  
 21 MR. HASAN: Sure.  
 22 MS. DuBOIS: Just for my own reference? Is  
 23 the training manual black and white?  
 24 **A. Yeah.**  
 25 MS. DuBOIS: Okay. Thank you.

1 Q. (By Mr. Hasan) Yeah. This is a copy of  
2 that training manual. So are you telling me that you  
3 are unable to give me your opinion on what you think  
4 the predominant breed of each of the dogs identified  
5 here are?

6 **A. I don't feel comfortable making a  
7 determination of a dog breed from a photograph. I  
8 mainly make the determination of a dog breed in  
9 person –**

10 Q. Well, you said "mainly."

11 **A. – due to...**

12 Q. And earlier you said you do rely on pictures  
13 as a reference to determine dog breeds. So are you  
14 telling me you are unable to determine or give me an  
15 opinion on what you believe your opinion is on a  
16 predominant breed on one of these?

17 MR. CHRISTOPHERSON: Object to form.

18 MS. DuBOIS: Objection as to form.

19 **A. I do not – like I said, I will use them for  
20 references, but I do not make determinations from  
21 photographs on a dog breed due to photographs cannot  
22 show all of the particular breed specifications that  
23 we use.**

24 Q. (By Mr. Hasan) Okay. So you use them as  
25 references, though?

1 **A. We use them for references.**

2 Q. And as far as identifying a given breed of  
3 dog, again, this is from the organization that you  
4 took your training from, isn't it?

5 **A. As – if that's where you got it from, yes.**

6 Q. From NACA. I am telling you if this came  
7 from NACA, that's the organization that trained you?

8 **A. Correct.**

9 Q. So are you saying that you were – and I am  
10 asking you right now whether you are unable to give  
11 me your opinion on what you think each one of these  
12 dogs – the predominant breed of that dog is? Are  
13 you unable to do that, or are you unwilling to do  
14 that?

15 **A. I do not feel comfortable making a decision  
16 from a photograph. I prefer to make a determination  
17 of the dog in person.**

18 Q. I understand that your comfort level – you  
19 may be, you know, stepping on comfortable level here.  
20 But I am not asking you whether you're comfortable or  
21 not. I am asking you whether you are unable to do so  
22 or whether you are unwilling to do so.

23 **A. I am able to make a rough guesstimate,  
24 but...**

25 Q. Great. Let's go through rough guesstimates

1 then. Based on – if you're able to give me your  
2 guesstimate as to what the predominant breed of each  
3 one of these photographs is, please do so.

4 MS. DuBOIS: Objection as to form.

5 Q. (By Mr. Hasan) I will start off. Number  
6 one?

7 **A. That appears to be either a Boxer or  
8 American Bulldog. You can't see all of its features.**

9 Q. Number two?

10 **A. It could be that Old English or Cane Corso,  
11 which you can't see all of the features.**

12 Q. And I want to clarify here. When you're  
13 saying it could be, this is your guesstimate?

14 **A. Yes, because you can't see all of the  
15 features of said dog.**

16 Q. Okay. So when you're giving the answers,  
17 this is your guess as to the predominant breed of  
18 these pictures, the dog's picture?

19 **A. From – from what I can see, which...**

20 Q. Great. Then number three?

21 **A. That picture is too blurry to make a  
22 determination.**

23 Q. Number four?

24 MS. DuBOIS: Objection as to form.

25 MR. HASAN: I am asking...

1 MS. DuBOIS: Are you having a standard  
2 question for each of these photographs?

3 MR. HASAN: Yes. Yes.

4 MS. DuBOIS: If you could clarify that for  
5 the record, I would appreciate it.

6 Q. (By Mr. Hasan) For the record, every one of  
7 these photographs that I am going through right now,  
8 based on your testimony that you were able to give  
9 your best guess as to the predominant breed of the  
10 dog depicted in the number that I will be reading out  
11 loud, please provide me with that guess as to the  
12 predominant breed of the dog pictured.

13 Now, number four?

14 **A. It looks like it could be a Rot mix,  
15 Rottweiler mix, but, again, it does not show enough  
16 of the features to make a proper determination.**

17 Q. (By Mr. Hasan) And if you want to save some  
18 time, you don't have to – I will assume that you're  
19 going to give that as part of your answer if you want  
20 to just speed things up.

21 Number five?

22 **A. Too blurry to really make a good  
23 determination.**

24 Q. Number six?

25 **A. Some kind of Australian Shepherd possibly,**

1 **but it's only the head.**  
 2 Q. Number seven?  
 3 **A. Without proper picture of it here, it's hard**  
 4 **to make a determination of what that is. It's real**  
 5 **blurry. Don't – can't tell how tall it is.**  
 6 Q. Are you saying you're unable to give an  
 7 opinion on that one?  
 8 MS. DuBOIS: Objection as to form.  
 9 Q. (By Mr. Hasan) Are you saying you're unable  
 10 to give...  
 11 **A. The picture is – the picture is not clear**  
 12 **enough.**  
 13 Q. So you're unable to, based on the picture  
 14 quality?  
 15 **A. Due to the picture quality, yes.**  
 16 Q. Number eight?  
 17 **A. Picture quality is real bad. Only the head.**  
 18 **So I can't make the proper determination.**  
 19 Q. Unable to based on picture quality?  
 20 **A. Correct.**  
 21 Q. Number nine?  
 22 MS. DuBOIS: Objection as to form. Can we  
 23 go off the record for a second?  
 24 (At 2:15 p.m. an  
 25 off-the-record discussion  
 was had.)

1 MR. HASAN: Let's go back on the record so  
 2 we can make sure that we're clear on the objection  
 3 here. So go ahead.  
 4 MS. DuBOIS: All right. Objection as to  
 5 form, but I would just point out that the witness has  
 6 indicated that he can't see certain parts of the  
 7 dogs, of the animals, in these photographs. You're  
 8 going back and asking him questions related to  
 9 picture quality. I think there are several issues  
 10 that are being confused here, and I would ask for  
 11 clarification.  
 12 MR. HASAN: Sure.  
 13 Q. (By Mr. Hasan) Dave, when we go through  
 14 this, I mentioned earlier the basis for your giving  
 15 your opinion to these. It's based on your testimony  
 16 that you were able to give a guess. Do you remember  
 17 that?  
 18 **A. Yes.**  
 19 Q. If you are unable to give that opinion for  
 20 any of these photographs, I would like you to say the  
 21 reason why you are unable to give your guess. Is  
 22 that fair?  
 23 **A. That's what I've been doing.**  
 24 Q. Okay. So if you – and so we don't go over  
 25 and we don't have to fight about every single

1 picture, if you say, I am unable to give you an  
 2 opinion as to dog number whatever, please say the  
 3 reason why. If you are able to give me your guess as  
 4 to the dog depicted, please do so. Is that fair?  
 5 **A. That's fair.**  
 6 Q. All right. Number eight?  
 7 **A. Unable to due to not enough picture of the**  
 8 **dog. It's only the head.**  
 9 Q. Number nine?  
 10 **A. Without seeing anything to pre- – tell me**  
 11 **what – how – what the size the dog is, it might be**  
 12 **a Pug. It might be another breed.**  
 13 Q. Does that mean that you're unable to or is  
 14 that your guess?  
 15 **A. I am unable to make a definitive con-...**  
 16 Q. Well, I know we're not doing anything  
 17 definitive here.  
 18 **A. I know, but I am saying –**  
 19 Q. But just your guess. Now, is that...  
 20 **A. – my personal opinion, I am unable to**  
 21 **definitively decide what that is due to I don't know**  
 22 **the size of the dog due to there's nothing to help me**  
 23 **make that determination.**  
 24 Q. So unable to do so. Is that – number nine?  
 25 **A. Correct.**

1 Q. Okay. How about number ten?  
 2 **A. Which one of the two dogs?**  
 3 Q. Let's start with the dog that's lower.  
 4 **A. Not clear enough on – for the picture for**  
 5 **that one, and the other dog in the picture is hidden**  
 6 **too much by the first dog.**  
 7 Q. So is that an unable to do so?  
 8 **A. Unable to due to picture quality and...**  
 9 Q. Number 11?  
 10 **A. With it just being the head, I would have to**  
 11 **say a Mastiff, but not enough information in the**  
 12 **picture.**  
 13 Q. Number 12?  
 14 **A. Unable to make the determination due to it's**  
 15 **only a picture of the head. It could possibly be**  
 16 **anything from a Rottweiler to a type of Mastiff.**  
 17 Q. Number 13?  
 18 **A. Unable to make a determination due to it's**  
 19 **only a picture of the head. If I would have to**  
 20 **guess, it could be a Mastiff or it could be a Cane**  
 21 **Corso.**  
 22 Q. Okay. Number 14?  
 23 **A. Looking at the picture here, not know- –**  
 24 **not knowing the ta- – how tall the dog is, not being**  
 25 **able to see it from the profile, it could be anything**

- 1 from a Boxer to a pit bull without cropped ears.  
 2 Q. Number 15? There's two dogs there.  
 3 A. **Yep. They both look to be about the same**  
 4 **breed. They could be anything from a Cane Corso to a**  
 5 **pit bull, depending on how tall the dogs are.**  
 6 Q. Okay. Number 16?  
 7 A. **I am really not clear enough on the face.**  
 8 **It could be anything from a pit bull without cropped**  
 9 **ears to a type of Mastiff.**  
 10 Q. Number 17?  
 11 A. **I can't see the face very good in the**  
 12 **picture. The picture quality is not good enough to**  
 13 **make a determination.**  
 14 Q. Okay. Number 18?  
 15 A. **Picture quality is not very good at all. It**  
 16 **could be anything from a Saint Bernard to a Mastiff**  
 17 **without proper perspective or anything.**  
 18 Q. Okay. Number 19?  
 19 A. **I couldn't tell you with that picture**  
 20 **quality. It could be a Catahoula. It could be**  
 21 **another type of cattle dog.**  
 22 Q. Okay. Number 20?  
 23 A. **That looks to be a bull terrier, but the**  
 24 **picture is pretty fuzzy. So low picture quality and**  
 25 **not – I am not able to make a good de – good**

- 1 **choice.**  
 2 Q. Twenty-one?  
 3 A. **Picture quality is not good enough really.**  
 4 **I wouldn't be able to hundred percent say what that**  
 5 **dog is with the picture quality.**  
 6 Q. Well, again, I mean, we're not talking about  
 7 a hundred percent here. We're talking about your  
 8 guess.  
 9 A. **I am not comfortable saying what that dog is**  
 10 **without a better-quality picture.**  
 11 Q. So this is an unable, unable to answer?  
 12 A. **Yeah.**  
 13 Q. Okay. Twenty-two?  
 14 A. **Not good enough picture quality. It could**  
 15 **be a Cane Corso. It could be a pit bull. It's hard**  
 16 **to tell with that picture quality.**  
 17 Q. Twenty-three?  
 18 A. **Can't really – can't see the body. So it**  
 19 **could be a Lab. It could be a Rhodesian Ridgeback.**  
 20 **It's hard to tell.**  
 21 Q. Okay. Twenty-four?  
 22 A. **That looks like an Am Staff, but the picture**  
 23 **quality is kind of fuzzy and really no perspective to**  
 24 **see exactly how high – how tall that dog – how tall**  
 25 **that dog is.**

- 1 Q. How about 25?  
 2 A. **Unable to tell because I don't know how tall**  
 3 **that dog is.**  
 4 Q. Okay. So we just went through all of those  
 5 that were from the NACA book. And obviously there  
 6 were a lot that you said that you were unable to give  
 7 your guess as to the predominant breed. Is that  
 8 fair?  
 9 A. **Due to – yes, due to the fact that the**  
 10 **pictures are not good enough to...**  
 11 Q. Yeah. For the reasons that you articulated,  
 12 you were unable to do so based on all those reasons;  
 13 right?  
 14 A. **Yes.**  
 15 Q. Under what circumstances would you be able  
 16 to for a picture?  
 17 A. **Depends on if the picture shows – able to**  
 18 **determine how tall the dog is. We would need**  
 19 **multiple pictures because a side profile – you need**  
 20 **to see the side. You need to see the face. You need**  
 21 **to see multiple parts of the dog, which normally a**  
 22 **picture cannot show.**  
 23 Q. Okay. So when you refer to pictures to make  
 24 a determination on what the predominant breed is, how  
 25 many pictures do you rely on?

- 1 A. **As many as I can get ahold of.**  
 2 Q. One ever? Is there a minimum number?  
 3 A. **I – to be honest, if I have a question of a**  
 4 **dog breed, if one looks like it could be, I will**  
 5 **actually get on my phone and Google it so that I can**  
 6 **get more of an idea of what that breed actually looks**  
 7 **like.**  
 8 Q. So if you're unsure, you'll Google pictures  
 9 of the dog?  
 10 A. **Exactly.**  
 11 Q. Let's flip over to Exhibit 2. Dave, I am  
 12 going to represent to you that in each of these  
 13 photographs, do you see those black lines depicting  
 14 the squares behind the dog?  
 15 A. **Yes.**  
 16 Q. I will represent to you that each one of  
 17 those is exactly one square foot. Okay?  
 18 A. **Okay.**  
 19 Q. So to give you an idea, this dog goes up to  
 20 the second – top of the second square. That's two  
 21 feet high.  
 22 A. **So it's a medium-sized dog, roughly.**  
 23 Q. And it's the same thing for width. Each one  
 24 of those is one foot, to give you an idea for the  
 25 size of dog. And have you reviewed – these pictures

1 came from a study of Dr. Victoria Voith. Have you  
 2 reviewed these photographs ever before?  
 3 **A. Never heard of that doctor.**  
 4 Q. Okay. So have you ever reviewed these  
 5 photographs, to the best of your knowledge?  
 6 **A. No.**  
 7 Q. Okay. So I want to go through, and under  
 8 the same premise as earlier that if you're able to  
 9 give me your guess as to the predominant breed of the  
 10 dog depicted. Okay?  
 11 **A. Okay.**  
 12 Q. All right. For number one?  
 13 **A. It does have some characteristics of stated**  
 14 **breed, but...**  
 15 Q. Of what stated breed?  
 16 **A. Of a breed that matches the pit bull ban,**  
 17 **but it also has breeds of other dogs which I can see,**  
 18 **but not enough pictures. I can't see the full face.**  
 19 **I would not be – feel comfortable to say this is a**  
 20 **pit bull. I wouldn't feel comfortable to say it's**  
 21 **not a pit bull from the picture.**  
 22 Q. Yeah. So my first question will be: What  
 23 do you believe the predominant breed of this dog is?  
 24 **A. From this picture I could not – I would not**  
 25 **be willing to say what I believe the – without**

1 **seeing the dog more.**  
 2 Q. Unable to do so or unwilling to do so?  
 3 You're unable to give me your guess as to the  
 4 predominant breed of this dog?  
 5 **A. I would prefer – I would want to see more**  
 6 **pictures of this dog so I can make a...**  
 7 Q. Okay. That's fair. I am just making sure I  
 8 understand you correctly. Now, did you say that you  
 9 believe that it displays characteristics that are  
 10 shared with one of those prohibited purebreds?  
 11 **A. Due to it has – about the size, right size,**  
 12 **but I can't see enough of the face to see if it's –**  
 13 **the jawline on the head is the right shape. Can't**  
 14 **make enough determination.**  
 15 Q. So instead of going after the things that  
 16 you're unable to see, tell me what characteristics in  
 17 this photograph you believe are shared with one of  
 18 the prohibited purebreds.  
 19 **A. Right now it's – looks to be about the same**  
 20 **height, about the – that's about the only thing I**  
 21 **can see without having a frontal view of the dog.**  
 22 Q. Okay. So you think that this dog could have  
 23 one of those breeds that have – based on height?  
 24 **A. Because I do not – I don't eliminate any of**  
 25 **dog breeds from a side view due to a lot of dogs have**

1 **the – look the same from the side. Without seeing**  
 2 **the full dog, I am not willing to make a**  
 3 **determination of what the dog is.**  
 4 Q. Okay. Then you can't – are you also saying  
 5 then that you can't say this – that you think it is  
 6 a pit bull because of height because so many  
 7 different breeds have the same height?  
 8 **A. Without seeing more information, I am not**  
 9 **willing to make a determination of this breed of dog.**  
 10 Q. Well, you did say earlier that you think it  
 11 has characteristics of that breed?  
 12 **A. It could, yes.**  
 13 Q. It could. And that – could it also have --  
 14 that height is the characteristic that you think  
 15 could be from that breed?  
 16 **A. From this picture that's about all I can**  
 17 **definitively say. It's about the same height.**  
 18 Q. That height could be shared across any  
 19 number of breeds that could also be that same height?  
 20 **A. Correct. That's why from a picture like**  
 21 **this I am not willing to make a deci- – a choice.**  
 22 Q. Okay.  
 23 **A. A selection yet.**  
 24 Q. Let's look to number two.  
 25 **A. Okay. That looks to be...**

1 MS. DuBOIS: Objection. Is there a  
 2 question?  
 3 Q. (By Mr. Hasan) Yeah. Same question as  
 4 before. I'd like you to give me your best guess as  
 5 to the predominant breed of this dog.  
 6 **A. It could be American Eskimo. It's one of**  
 7 **those small breeds like American Eskimo-type dog**  
 8 **breed.**  
 9 Q. Do you believe that this dog has any  
 10 characteristics that are shared by one of the three  
 11 prohibited purebreds in the code?  
 12 **A. From what I can see from this picture, no, I**  
 13 **do not.**  
 14 Q. Okay. Let's go to number three. Same first  
 15 question. What do you believe the predominant breed  
 16 of the dog depicted is?  
 17 **A. It could be either a Spaniel mix or a**  
 18 **Retriever mix.**  
 19 Q. When you say "mix," so what do you think the  
 20 predominant breed is?  
 21 **A. It's – the ears aren't – I – doesn't look**  
 22 **too floppy, so it wouldn't be – it could be flop- –**  
 23 **real floppy.**  
 24 Q. You said ears. Earlier didn't you testify  
 25 that you don't consider whether the ears are floppy

1 or cropped when determining the breed of a dog?  
 2 **A. It could be, I said.**  
 3 Q. Okay. So you could look at the ears, the  
 4 ear size and the ear shape?  
 5 **A. Just for pit bulls they are normally**  
 6 **cropped, but not always.**  
 7 Q. Okay.  
 8 **A. Because that is an optional surgery that a**  
 9 **lot of owners do get on their dogs.**  
 10 Q. Okay. So then going back to what we said  
 11 earlier, generally when you're trying to determine  
 12 the breed of a dog, you do consider the shape and the  
 13 size of the ears?  
 14 **A. It can weigh into helping with the**  
 15 **determination.**  
 16 Q. Okay. So those can help in the  
 17 determination?  
 18 **A. Yes.**  
 19 Q. Okay. Okay. So – sorry. What did you say  
 20 that you thought the predominant breed was here?  
 21 **A. Either a Spaniel or a Retriever mix.**  
 22 Q. Do you believe that this dog shares any of  
 23 the characteristics of any of the three prohibited  
 24 purebreds?  
 25 **A. What I can see in this picture, no, I do**

1 **not.**  
 2 Q. Let's look at number four. Same first  
 3 question. What do you believe the predominant breed  
 4 of this dog is?  
 5 **A. It looks to be a Pug, Puggle mix-type dog.**  
 6 Q. Do you believe that this dog shares any of  
 7 the characteristics that are shared by any of the  
 8 three identified purebreds?  
 9 **A. No.**  
 10 Q. Okay. Number four. What do you believe the  
 11 predominant breed of this dog is?  
 12 **A. It looks to be either a Shepherd or – a**  
 13 **Shepherd mix or a Shepherd Husky mix.**  
 14 Q. Do you believe this dog shares any of the  
 15 same features or characteristics of any of the three  
 16 identified purebreds in the code?  
 17 **A. Really, no.**  
 18 Q. Number six. What do you believe the  
 19 predominant breed of this dog is?  
 20 **A. That looks like a shorthair without a docked**  
 21 **tail.**  
 22 Q. What's a shorthair?  
 23 **A. A German Shorthair.**  
 24 Q. So you think that's – your opinion is that  
 25 it's predominantly a German Shorthair except for

1 there's no docked tail?  
 2 **A. That's what it looks like to me.**  
 3 Q. Do you believe that this dog has – shares  
 4 any of the appearance or characteristics as any of  
 5 the three identified breeds?  
 6 **A. No.**  
 7 MS. DuBOIS: Objection as to form. Are you  
 8 asking him still based on his best guess?  
 9 Q. (By Mr. Hasan) Yeah. I mean, your opinion.  
 10 I am asking you your opinion. I am asking your  
 11 opinion. Do you believe this dog shares any of the  
 12 characteristics of or appearance of the three  
 13 identified breeds?  
 14 **A. Not that I can see in this picture.**  
 15 Q. Photo number seven. What do you believe the  
 16 predominant breed of this dog is?  
 17 **A. It appears to be a Schipperke.**  
 18 Q. Say that again.  
 19 **A. A Schipperke.**  
 20 Q. Is that a mix?  
 21 **A. It's a small-breed dog.**  
 22 Q. Do you believe that this dog shares any of  
 23 the appearance or characteristics of any of the three  
 24 dogs listed in the ordinance?  
 25 **A. No.**

1 Q. Number eight. What do you believe the  
 2 predominant breed of this dog is?  
 3 **A. With the limited information I have, I would**  
 4 **not be comfortable saying with this breed of dog due**  
 5 **to I can't see more of the features.**  
 6 Q. We went over the comfort question earlier.  
 7 So I am going to ask you, are you unable to identify  
 8 what you think the predominant breed is here or are  
 9 you unwilling to give me that testimony?  
 10 **A. I am unable to definitively say what my**  
 11 **opinion is –**  
 12 Q. Okay.  
 13 **A. – without seeing more information.**  
 14 Q. Yeah. Dave, I know we've been – you know,  
 15 you're definitively, but I think we're past that.  
 16 Are you unable to give me your guess as to what the  
 17 predominant breed of this dog is?  
 18 **A. I won't give the – without seeing more**  
 19 **information –**  
 20 Q. I am...  
 21 **A. – from this picture I am not willing to**  
 22 **give what I feel – believe what this dog is due to**  
 23 **there's not enough information.**  
 24 Q. So do you have a belief that you're  
 25 unwilling to give me or are you unable to form that



1 belief?

2 **A. There's not enough information to form a**

3 **good belief what this dog is.**

4 Q. Okay. So you're unable to do so then?

5 **A. Not enough information from this picture.**

6 Q. Right. You're unable to do so because you

7 say there's not enough information in this picture?

8 **A. Yes.**

9 Q. What infor- -- what other traits would you

10 like to see? What other features here? Because

11 would you agree with me that it's the same camera

12 angle as all but one of the other dogs that we've

13 seen, or all but maybe two of the other dogs that

14 we've seen?

15 **A. With A dog with this body structure, I...**

16 Q. Actually, let me pause you there. Would you

17 agree with me that this is the same angle as...

18 **A. As a majority, yes, but...**

19 Q. And the same backdrop?

20 **A. Yep. But with some dogs I would rather see**

21 **more of the face, which other pictures, they had more**

22 **of the dog's face than this picture also.**

23 Q. So sometimes you can offer your guess to a

24 determination based on one angle but not for all

25 dogs?

1 **A. Due to some dogs, part of the...**

2 Q. Well, before you give me the explanation, is

3 that true?

4 **A. Yes, due to some of the key features of**

5 **identifying the breed of dog is its face. With a**

6 **pro- -- side profile picture of a dog, you're**

7 **eliminated half of the -- potentially half or more**

8 **than half of the face. So you can't get a good view**

9 **of what the dog is.**

10 Q. So here you're saying you can't give me your

11 opinion because you don't see the face?

12 **A. Not enough of the face. I am not going to**

13 **say what the dog is or not due to the fact I don't**

14 **have enough information.**

15 Q. Right. But that information you're saying

16 is the face?

17 **A. Face, the front of the dog, because it could**

18 **be a few different breed dogs due to this looks to be**

19 **more of a mixed-breed dog. I would want to see more**

20 **of the features.**

21 Q. Do you think that the ones that I have shown

22 you before are purebred dogs?

23 **A. No, but they looked similar -- closer to**

24 **what I could see in other breed dogs. I am not**

25 **saying I am correct on those other breeds, but they**

1 **looked to be closer to those breeds.**

2 Q. Okay. So you said that you can see

3 characteristics from certain breeds. What

4 characteristics from certain breeds do you see here?

5 What breeds?

6 **A. It could be a Boxer. It could be an**

7 **American Bulldog. It could be -- or, I should say**

8 **American Bull-- I should say a younger American**

9 **Bulldog. It could be an Old English Bulldog that's**

10 **not real muscular yet. It could be a few different**

11 **breeds. Without seeing more information, I cannot**

12 **make a determination.**

13 Q. Okay. Do you believe that the dog shown

14 here has any of the appearance or characteristics of

15 the three dogs -- purebreds identified in the code?

16 **A. Cannot make a determination from this**

17 **picture.**

18 Q. Well, from what you can see, do you believe

19 that it shares any of the characteristics of any of

20 the three identified breeds?

21 **A. Not one I would make a -- say yes or no to**

22 **it being one of those breeds.**

23 Q. I know. I am not asking you for your

24 opinion as to whether it is one of those breeds. I

25 am asking you whether you are able to say that this

1 dog shares any of the characteristics or appearance

2 of those dogs listed in the code?

3 **A. It could, but I don't see it. I don't have**

4 **no...**

5 Q. No. No. No. I am not asking you for if

6 your opinion is if this is one of those breeds.

7 That's not what I am asking you. I am asking you

8 whether there are any characteristics or appearance

9 of this dog that share those same characteristics

10 of -- or appearance as the three dogs listed in the

11 code?

12 **A. Looking at it, it looks a bit short, not**

13 **enough muscular, but I don't have a good picture of a**

14 **dog from the front view to make the determination.**

15 Q. So are you saying the height and the muscle

16 build are shared characteristics and appearance as

17 those other...

18 **A. I am saying it's -- looks to be maybe a bit**

19 **short, but not with -- without enough information,**

20 **I...**

21 Q. Yeah. Chris, I am -- I am sorry. I --

22 Dave, I...

23 **A. I know what you're getting at, but, I**

24 **mean...**

25 Q. Well, you have to -- you have to understand

1 here, you know, you're under an oath, and you have to  
2 answer my questions. And my question here is pretty  
3 simple. It's a yes-or-no question.

4 Based on this picture, the picture you're  
5 looking at, can you tell me whether this dog shares  
6 the same characteristics or appearance as any of the  
7 three breeds that are identified in the code?

8 **A. What I was trying to get at, I am going  
9 through...**

10 Q. I am -- again, can -- are you able to do  
11 that?

12 **A. Not from this picture.**

13 Q. Okay. Let's move forward. Number nine?

14 **A. It looks to be a -- it could be a Dalmation  
15 mix that's mixed with a shorter breed dog, but from  
16 this, I can't be for sure what the dog is.**

17 Q. Okay. Do you believe that this dog shares  
18 any of the appearance or characteristics of any of  
19 those three breeds that are identified in the  
20 statute?

21 **A. It could due to the fact it's -- looks like  
22 it had some Staffordshire Terrier due to the small  
23 stature of it, the big chest.**

24 Q. The -- so you think that the height and the  
25 chest are shared characteristics of appearance?

1 **A. It could.**

2 Q. Okay. Number ten. What do you believe the  
3 predominant breed of the dog depicted here is?

4 **A. Some type of terrier mix.**

5 Q. Do you believe that this dog has any of the  
6 shared appearance or characteristics of one of the  
7 prohibited breeds?

8 **A. No.**

9 Q. Number 11. What do you believe the  
10 predominant breed...

11 **A. It could be Malinois.**

12 Q. A what?

13 **A. Mal -- Malinois.**

14 Q. How do you -- I am trying to visualize how  
15 that word is spelled.

16 **A. Oh, I am not good at spelling.**

17 Q. Okay.

18 **A. It's similar to a German Shepherd, along the  
19 lines, but it's -- doesn't have the same coloration.  
20 It's -- they say to be a little bit smarter. They're  
21 used for police K-9 units also.**

22 Q. Okay. Do you believe that this dog shown  
23 here shares any of the appearance or characteristics  
24 of the three dogs identified in the code?

25 **A. Not that I can see.**

1 Q. Let's look at number 12. What do you  
2 believe the predominant breed of that dog is?

3 **A. The head looks like it could be Italian  
4 Grey- -- a Greyhound. It's too tall to be Italian.  
5 I would say just a Greyhound mix of some sort.**

6 Q. Do you believe this dog depicts any of the  
7 same appearance or characteristics as any of the  
8 shared...

9 **A. Not that I can see.**

10 Q. Number 13. What do you believe the  
11 predominant breed of that dog is?

12 **A. I couldn't tell you offhand. There's not  
13 enough information.**

14 Q. Do you believe that this dog has any of the  
15 appearance or characteristics that -- the same as  
16 those three listed in the code?

17 **A. By what I can see, I don't believe so.**

18 Q. Number 14. What do you believe the  
19 predominant breed of that dog is?

20 **A. A Shepherd mix of some sort.**

21 Q. Do you believe that this dog shares any of  
22 the same appearance or characteristics as any of the  
23 three breeds identified in the code?

24 **A. Without a better picture of the muzzle, I  
25 don't believe so, but...**

1 Q. So any -- I am not just asking about the  
2 face here. I am asking about a...

3 **A. I am saying without a view of the muzzle, I  
4 don't believe so.**

5 Q. Okay. Number 15. What do you believe the  
6 predominant breed of that dog is?

7 **A. Is looks to be a Lab mix.**

8 Q. Do you believe that this dog shares any of  
9 the same appearance or characteristics as those three  
10 dogs listed in the code?

11 **A. It's a bit short for a Lab. So it --  
12 possibly there, but besides that, what I can see in  
13 the picture, no.**

14 Q. Okay. How about number 16? What do you  
15 believe the predominant breed of that dog is?

16 **A. Definitely I cannot say what it is due to  
17 I don't have enough information in the picture.**

18 Q. Okay. Do you believe that this dog shares  
19 any of the same appearance or characteristics as any  
20 of the three purebreds identified in the code?

21 **A. Not that I can really tell. It's a  
22 shorter-breed dog.**

23 Q. So does that shorter-breed dog mean it  
24 shares the same characteristic or appearance as one  
25 of those three other breeds?

- 1 **A. Its fur is too long. Fur doesn't look right**  
 2 **for those breeds.**  
 3 Q. Okay. I am not asking for distinguishing  
 4 characteristics. I am asking for similar  
 5 characteristics.  
 6 **A. I am just -- yeah. I am just going through**  
 7 **in my head, verbalizing out loud.**  
 8 Q. Okay. Sorry. You were just thinking out  
 9 loud. Okay. My apologies.  
 10 **A. What I can see here, I do not see those**  
 11 **three dogs.**  
 12 Q. How about number 17? What do you believe  
 13 the predominant breed of that dog is?  
 14 **A. It looks like to be a Chihuahua mix.**  
 15 Q. Do you believe that this dog possesses any  
 16 of the same appearance or characteristics of any of  
 17 the three dogs listed in the code?  
 18 **A. Negative.**  
 19 Q. Number 18. What do you believe the  
 20 predominant breed of that dog is?  
 21 **A. A -- like a wire-haired terrier-looking dog.**  
 22 Q. Do you believe this dog possesses any of the  
 23 same appearance or characteristics as any of the  
 24 three dogs identified?  
 25 **A. No.**

- 1 Q. Look at number 19. What do you believe the  
 2 predominant breed of that dog is?  
 3 **A. I am -- from this picture I am not for sure.**  
 4 Q. Do you believe that that dog possesses any  
 5 of the same appearance or characteristics of any of  
 6 the three breeds identified in the code?  
 7 **A. Not that I can see.**  
 8 Q. What about number 20? What do you believe  
 9 the predominant breed of that dog is? Which I think  
 10 that dog only has three legs. I just now realized  
 11 that. Sorry.  
 12 What do you believe the predominant breed of  
 13 that dog is?  
 14 **A. It looks like a Shih Tzu.**  
 15 Q. Do you believe that dog shares any of the  
 16 same appearance or characteristics as the three dogs  
 17 identified in the code?  
 18 **A. No.**  
 19 Q. David, why did you leave animal control?  
 20 **A. For benefits.**  
 21 Q. What do you mean?  
 22 **A. We don't -- at animal controls we didn't**  
 23 **have any health insurance. So I left to get health**  
 24 **insurance, stuff like that.**  
 25 Q. Just a better pay and opportunity?

- 1 **A. Oh, yeah.**  
 2 Q. Let's flip to the next tab. Some of these  
 3 have been blown up. So I am going to skip through  
 4 some of them that I think you'll probably agree with  
 5 me are a little too dark to really give me any kind  
 6 of detail, but I will skip around. Do you see how  
 7 they're labeled with a UF and then a two-digit  
 8 numeric?  
 9 **A. Yes.**  
 10 Q. Have you reviewed -- I am trying to remember  
 11 the scientist. It's an individual who's a professor  
 12 down at the University of Florida -- that professor's  
 13 study on an individual's ability to identify dog  
 14 breed based on a visual identification?  
 15 MS. DuBOIS: Objection as to form.  
 16 **A. No.**  
 17 Q. (By Mr. Hasan) Have you looked at -- I'd  
 18 like to ask you just to scan through this and ask you  
 19 if you have looked at any of these photographs  
 20 before?  
 21 **A. I have not seen any of those pictures**  
 22 **before.**  
 23 Q. Thanks for scanning through them. Do you  
 24 agree with me that the photographs here -- there are  
 25 two photographs on each page, one of kind of a front

- 1 profile and one of a side profile?  
 2 **A. Yes. It looks like to be a head shot and a**  
 3 **side profile.**  
 4 Q. Yes. I would agree with you. I am laughing  
 5 because I am thinking of dog head shots. Let's take  
 6 a look through some of these. It's going to be the  
 7 same questions as I asked you earlier. I'd like to  
 8 start off with UF03 and tell me, what do you believe  
 9 the predominant breed of the dog depicted here is?  
 10 **A. With the quality of the picture, I would say**  
 11 **a Shepherd mix of some sort, but the quality is**  
 12 **pretty bad.**  
 13 Q. Okay. Do you believe that this dog shares  
 14 any of the characteristics or appearance as any of  
 15 those three dogs identified in the code?  
 16 **A. Without being able to tell the height of the**  
 17 **dog, I cannot say.**  
 18 Q. So except for the height, are you able to  
 19 say any of the other ones?  
 20 **A. The face picture is too dark to really say**  
 21 **anything. So you're...**  
 22 Q. Okay. So you can't identify any...  
 23 **A. Due to picture qualities, no.**  
 24 Q. That's fair. Yeah. Due to picture  
 25 qualities, but you can't identify any shared -- okay.

1 Let's flip forward to dog UF09. What do you  
2 believe the predominant breed of that dog is?

3 **A. It's a bully breed dog. That's about as**  
4 **much as I can tell from the side view. Face view, I**  
5 **can't tell what the dog is due to the picture quality**  
6 **is pretty bad.**

7 Q. Do you believe that this dog shares any of  
8 the same or similar characteristics or appearance as  
9 any of the three dogs identified in the code?

10 **A. It does have some, but I can't say if it's**  
11 **enough to meet the...**

12 Q. That's fair, but what are some of those  
13 shared or similar characteristics?

14 **A. By what I can see, the build of the body**  
15 **possibly could be. The head is the bigger, fatter**  
16 **head, but I can't tell if it's – could be one of the**  
17 **three particular dogs due to the picture quality is**  
18 **not really that great.**

19 Q. Well, I know, but, again, the  
20 characteristics that I am looking for –

21 **A. Yep.**

22 Q. – the ones you say that are shared. You  
23 said it's the build and the shape of the head?

24 **A. Yes.**

25 Q. Anything else?

1 **A. What I can see, that's all I can see really.**

2 Q. Okay. Let's look at UF16. What do you  
3 believe the predominant breed of the dog depicted in  
4 UF16 is?

5 **A. I want to say a Bulldog mix, like American**  
6 **Bulldog mix, but not enough information due to I**  
7 **can't tell the height.**

8 Q. Okay. Do you believe that this dog depicted  
9 here shares any of the same appearance or  
10 characteristics as those three breeds identified in  
11 the code?

12 **A. It has a bigger head. So that's about the**  
13 **only thing I can definitely tell, but not enough to**  
14 **say it's a pit bull.**

15 Q. I understand. But "about the only thing."  
16 Is that the only thing, or are there other  
17 characteristics that are shared?

18 **A. That I can see definitively, yes.**

19 Q. That's the only one?

20 **A. That's the best I can see.**

21 Q. What about UF 17? What do you believe the  
22 predominant breed of that dog is?

23 **A. I want to say it's a Bulldog mix, possibly**  
24 **an American, pos- – it's hard to say exactly what**  
25 **type of Bulldog mix. It has the broader body like –**

1 **the more muscular body. It's not the narrow, slender**  
2 **like Boxer. It's more of a solid muscular body with**  
3 **a bigger head.**

4 Q. So those characteristics that you're  
5 describing, are those characteristics that you  
6 believe are shared with the three breeds that are  
7 identified in the code?

8 **A. Similar, but not quite.**

9 Q. So different?

10 **A. Little bit different, yes.**

11 Q. Do you think that there are similar or the  
12 same characteristics as those dogs identified?

13 **A. Similar.**

14 Q. What – anything other than the ones you  
15 just mentioned?

16 **A. That's about all I can tell, yes.**

17 Q. And you think they're similar, not the same?

18 **A. Correct.**

19 MS. DuBOIS: I apologize. Can we go off  
20 the record real quick?

21 (A recess was taken from  
22 2:50 p.m. to 3:14 p.m.)

23 (The previous testimony was  
24 read by the court  
25 reporter.)

25 Q. (By Mr. Hasan) All right. Let's start

1 flipping forward here, Dave. There are some dark  
2 ones that I will kind of skip past. Let's do 42. Do  
3 you have 42? Let me know when you're there.

4 **A. There.**

5 Q. All right. What do you believe the  
6 predominant breed of dog depicted here is?

7 **A. It's hard to say without a clear picture of**  
8 **the face. It could be a Shar-Pei mix without the**  
9 **wrinkles, but the face, I can't see if there's any**  
10 **wrinkles there. The body type is similar.**

11 Q. Similar?

12 **A. To a Shar-Pei mix.**

13 Q. Do you believe that the dog depicted in UF42  
14 has the same appearance or characteristics of any of  
15 the three breeds that are identified in the code?

16 **A. With what I can see in the picture, about**  
17 **the only thing is height I can see.**

18 Q. Okay. Let's go to the next one, 47. And I  
19 understand that the side profile, it just looks like  
20 a silhouette, but with the face shot on the left,  
21 what do you believe the predominant breed of that dog  
22 is?

23 **A. It could be a retriever, Lab mix. Without**  
24 **better pictures it's hard to tell.**

25 Q. Okay. Do you believe that, again, based on

1 the face shot on the left that that dog has any of  
2 the same characteristics or appearance of any of the  
3 three breeds identified in the code?

4 **A. From the face shot, no, I do not.**

5 Q. Number 54. What do you believe the  
6 predominant breed of that dog is?

7 **A. From the picture it could possibly be a pit  
8 bull.**

9 Q. Okay. So my next question – and I assume  
10 the answer is going to be yes, but any of the same  
11 appearance or characteristics of any of the three  
12 breeds?

13 **A. From the quality of the picture, it does  
14 look like it does exude some of the features, yes.**

15 Q. What...

16 **A. Enough to be classified as a pit.**

17 Q. Okay. What are those characteristics or  
18 appearance features that you're – you're...

19 **A. The body shape, how it – masculine up  
20 front, goes down to a slenderness in the back but not  
21 as much as a Boxer would. And the face looks to be  
22 having the characteristics, which I could tell, but  
23 the coloration – I mean, but the quality of the  
24 picture does eliminate some of the saying yes it is  
25 for sure.**

1 Q. Yeah. I understand that. I don't think we  
2 really hit on this earlier when we were talking about  
3 body type, but you mentioned kind of the starting at  
4 the chest and working its way, back kind of like a  
5 slendering. Would you – how would you describe  
6 that? Almost like an hourglass or...

7 **A. I am not for – it's not really an hourglass  
8 due to it does not bow back out at the end. It's  
9 just more of a slendering down to – I wouldn't know  
10 exactly how to put it in words.**

11 Q. So when you talked about, earlier, body type  
12 being one of the characteristics, will you describe  
13 the body type that you think that these pit bulls  
14 have?

15 **A. They are broader in the chest, and it  
16 slenders down from about – after the chest, about  
17 around the gut area.**

18 Q. So kind of big in chest and ribs and then  
19 slenders down quite a bit towards the – like the  
20 back hips?

21 **A. Not – yes, but not as much as other breeds.**

22 Q. Okay. You mentioned Boxers earlier.

23 **A. Yes.**

24 Q. What other breeds?

25 **A. You have the – of course, the Boxers. You**

1 **have, oh, Weimaraners. They – they slender down.  
2 There's a – there's a number of breeds that have the  
3 more slendered down at – after the ribs but more –  
4 some are more predominant. You can tell it just  
5 slenders down real quick.**

6 Q. Okay. So how can you tell the severity or  
7 the degree of that slimming down? How do you  
8 distinguish those?

9 **A. It's just how it looks. Pits just look like  
10 there's more to them, while other breeds people,  
11 think they're extremely anemic – I mean, not  
12 anemic – emaciated for a dog.**

13 Q. Because of that kind of slimming profile?

14 **A. Exactly.**

15 Q. So if those other breeds you talked about  
16 like the Boxer, the Weimaraner – what are the other  
17 ones?

18 **A. That's the two I can come up with off the  
19 top of my head right at the moment.**

20 Q. Okay. So for those, if it's an overweight  
21 dog, wouldn't the – that tapering, that slendering  
22 not be as severe?

23 **A. Correct.**

24 Q. So if the Weimaraner or Boxer was an  
25 overweight dog, it could have the same slendering or

1 slimming as what you're describing a pit would have?

2 **A. Potentially, but the – that's why we go by  
3 more than just one characteristic of the dog.**

4 Q. Okay. I understand. That makes sense. But  
5 if it is an overweight dog, then that would be kind  
6 of a red herring characteristic? If there is that  
7 slimming profile that's not as bad as a Weimaraner or  
8 a Boxer, you know, not as severe, but it's because  
9 it's overweight, that would be kind of like a red  
10 herring characteristic?

11 **A. Correct. But their facial stre- –  
12 structures are different than a pit bull's.**

13 Q. Okay. But setting aside the other  
14 characteristics, for the body type, that can happen?  
15 There can be the red herring because of weight?

16 **A. Yes.**

17 Q. Okay. Flip the page to 57. What do you  
18 believe the predominant breed of that dog is?

19 **A. It could be a Lab mix of some sort.**

20 Q. Do you believe that this dog has any of the  
21 same appearance or characteristics of any of the  
22 three breeds identified in the code?

23 **A. What I can see is no.**

24 Q. Is this the type of tapering or slendering  
25 that you're describing? I am just trying to

1 visualize what you're talking about as far as the  
2 severity going from, like, the chest down to the  
3 hips.  
4 **A. This one is not really too bad. As you  
5 noticed with the last one, you can tell that it comes  
6 down even a little bit more than what 57 does in the  
7 back end.**  
8 Q. And you're talking about the chest?  
9 **A. Yep. Chest to right before the hind legs  
10 it's...**  
11 Q. Okay. So "it comes down." You mean like  
12 the tapering, the slendering?  
13 **A. Yeah. The slendering, how the – the 54,  
14 it's a lot bigger in the chest. And when it gets to  
15 the – right before the hind legs you – it looks to  
16 be like it's missing something there, as in detail.**  
17 Q. Kind of like that – almost like webbing of  
18 the skin area right there?  
19 **A. Exactly.**  
20 Q. Is that webbing of the skin something that  
21 you'd consider when you're looking at a dog to  
22 determine what breed it is?  
23 **A. Not really. It's just where the muscle –  
24 it's – that could be caused from different things,  
25 but it's just how the muscle forms there. It – for**

1 **Labs, they're – they're not – they don't slender as  
2 much as pits do.**  
3 Q. All right. So we went over 57. Let's go to  
4 58. What do you believe the predominant breed of the  
5 dog depicted in that photo is?  
6 **A. It looks to be a Mastiff or a Great Dane.  
7 It's hard to tell without proper – being able to see  
8 how tall the dog is.**  
9 Q. Do you believe it shares any of the same  
10 appearance or characteristics as any of the three  
11 breeds identified in the code?  
12 **A. The muzzle is – the head is a bigger head  
13 but does not quite match what you would expect from a  
14 pit bull.**  
15 Q. What are the differences?  
16 **A. This is bigger.**  
17 Q. The overall size?  
18 **A. Overall size looks bigger.**  
19 Q. Are you able to discern the size of this dog  
20 based on the photograph?  
21 **A. No. I can't tell the height of the dog  
22 enough, no.**  
23 Q. So what do you mean by the overall size of  
24 the head being bigger?  
25 **A. At least in the picture it – accord – the**

1 **head looks basically as big as the body, at least in  
2 the picture.**  
3 Q. Okay. So when you're talking about  
4 generally identifying a dog and you – when you're  
5 utilizing the size of the head, are you talking about  
6 the...  
7 **A. Overall how big the head – Cindy calls it a  
8 catfish head. You know how big, wide a catfish's  
9 heads are?**  
10 Q. Yeah. So you're talking about  
11 proportionality versus the rest of the body, or are  
12 you talking about the gross size?  
13 **A. A little bit of both. Gro- – pit bulls  
14 have the bigger heads, but Great Danes, their heads  
15 look a little bit different. This could be a  
16 Mastiff, Great Dane mix. It's hard to tell from the  
17 picture.**  
18 Q. Are you – which picture are you looking at  
19 to...  
20 **A. Looking at a little bit of both.**  
21 Q. Okay.  
22 **A. Just trying to get the size compared to the  
23 head size. It's hard to tell from the picture what  
24 this breed of dog is.**  
25 Q. Yeah. No, I understand that. I am just

1 trying to go through – like, I am trying to get on  
2 your level, like, as far as how you're looking at the  
3 head to influence your decision as to the  
4 characteristic indicative of a breed. Does that make  
5 sense?  
6 **A. Yes. I understand exactly.**  
7 Q. So let's use the one on the left because I  
8 am still trying to determine the proportionality  
9 versus the gross size. Using the picture only on the  
10 left, what about the head in that photograph tells  
11 you what breed you think it is?  
12 **A. The jawline. The jawline is – I am trying  
13 to get – get it out in words better for you.**  
14 Q. Yeah. I understand.  
15 **A. It just – while pit bulls, their head is  
16 big, it's just the jawline and – is different than  
17 what this Mastiff, Great Dane looking dog is. It's  
18 just different.**  
19 Q. So the picture on the left, then, it's not  
20 so much the overall size of the head? It's the  
21 jawline?  
22 **A. Jawline is different. It – both have big  
23 heads. Just – it just doesn't say pit bull to me.**  
24 Q. Okay. And how about on the right? Are  
25 you – are you discerning the size of the head based

1 on the picture on the right also?

2 **A. It helps with seeing how tall the head is,**

3 **how large the head is, but it's just – it looks to**

4 **be a big-breed dog, going off the head.**

5 Q. Okay.

6 **A. A larger breed instead of the medium-sized**

7 **breed, what a pit bull would be.**

8 Q. Okay. Let's go to the next one. Thank you

9 for explaining that.

10 UF63. What do you believe the predominant

11 breed of that dog is?

12 **A. Cannot really tell. It looks like it could**

13 **be possibly Border Collie that's not – doesn't have**

14 **the long fur.**

15 Q. Okay. Do you believe that this dog shares

16 any of the same characteristics as those three breeds

17 identified in the ordinance?

18 **A. From pictures, no.**

19 Q. Go to 67. It's the next one. What do you

20 believe the predominant breed of that dog is?

21 **A. It's hard to tell with the pictures.**

22 **It's – from the pictures I cannot tell. It's just**

23 **too blurry and...**

24 Q. Okay. Do you think there are any appearance

25 or characteristics that are the same here versus the

1 three dogs listed in the ordinance?

2 **A. According to these pictures, it – with the**

3 **quality, it – I would have to say no. It's just –**

4 **just not good enough pictures.**

5 Q. Remember earlier we were talking about an

6 overweight dog potentially being a red herring?

7 **A. Yeah.**

8 Q. I just now thought of it because this dog

9 looks like maybe it had puppies. Is that – can

10 you...

11 **A. It looks like it's had puppies, yes.**

12 Q. So when I am looking at it, I see where the

13 back end where normally would taper is hanging down

14 because it had puppies?

15 **A. Yeah. It looks like it recently had had**

16 **puppies. It could possibly be weaning them or**

17 **feeding them. Who knows.**

18 Q. So could whether a dog is pregnant and,

19 because pregnant, heavier also impact the body shape?

20 **A. It could, yes. That's why we go by majority**

21 **of characteristics. If one is – and that's honestly**

22 **another reason why – let's take an example. That**

23 **eight-month-old puppy we gave the benefit of the**

24 **doubt and said it's a Boxer mix because we don't want**

25 **to unjustly categorize a dog as a breed that it would**

1 **be kicked out of the city.**

2 Q. Okay. Okay. For UF68, are you able to tell

3 me what you think the predominant breed of that one

4 is?

5 **A. With the quality of the pictures, it looks**

6 **like some type of Shepherd mix.**

7 Q. Yeah. I understand. It's a little – it's

8 a little bit dark there. Do you think it has any of

9 the same characteristics or appearance as any of the

10 breeds listed in the statute?

11 **A. With what I can see in the picture, I would**

12 **say no.**

13 Q. Okay. What about 73? It's the next photo.

14 What's the predominant – what do you believe the

15 predominant breed of the dog in 73 is?

16 **A. I want to say some type of a Lab, possibly**

17 **Lab/Shepherd mix.**

18 Q. Do you think there are any of the appearance

19 and characteristics that are shared by the three

20 purebreds identified in the code?

21 **A. With how the pictures look, no.**

22 Q. It's – UF79. What do you think the

23 predominant breed of that dog is?

24 **A. Possibly a Boxer – overweight Boxer mix or**

25 **a Boxer/Bulldog mix.**

1 Q. You said an overweight...

2 **A. Overweight Boxer or a Boxer/American Bulldog**

3 **mix.**

4 Q. Does the dog depicted here have any of the

5 same appearance or characteristics as any of those

6 three prohibited purebreds?

7 **A. What I can see, doesn't look like it.**

8 Q. What about UF83? What do you think the

9 predominant breed of that dog is?

10 **A. With the quality of the pictures, I would**

11 **say a Shepherd mix of some sort.**

12 Q. Okay. Do you think that that dog has any of

13 the same appearance or characteristics as any of the

14 three breeds?

15 **A. With the quality of the pictures, I would**

16 **say no.**

17 Q. What about 88, the next one? What do you

18 think the predominant breed of that dog is?

19 **A. It looks to be a – it could be an American**

20 **Bulldog.**

21 Q. Okay. Does the dog depicted in UF88 have

22 any of the same appearance or characteristics as the

23 three breeds listed in the statute – ordinance?

24 Excuse me.

25 **A. With the quality of the pictures, I would**

- 1 **say similar, but not what I would expect to see of**  
 2 **those three breeds.**  
 3 Q. What are the similar characteristics?  
 4 **A. The head is a bit bigger, but it's kind of**  
 5 **hard to see exactly how big it is. It's kind of**  
 6 **blurry. It's hard to tell exactly the height of the**  
 7 **dog.**  
 8 Q. Okay. But what about similarities? Are  
 9 those what you're saying, that those head -- the head  
 10 and the height look similar?  
 11 **A. Similar, but not quite what I would expect.**  
 12 Q. Okay. Are there other characteristics that  
 13 look similar?  
 14 **A. With the quality of the picture, it's hard**  
 15 **to say.**  
 16 Q. How about here with the body type tapering?  
 17 What would you say about that?  
 18 **A. It's similar. It -- it's just with the**  
 19 **quality of the picture, it's hard to say, be precise.**  
 20 Q. Okay. Will you -- keep your thumb on that  
 21 one, but will you flip back to 54 for me, please?  
 22 Because this is the one that I think we started  
 23 talking about body type.  
 24 **A. Yep.**  
 25 Q. And this is the one that you said you

- 1 think -- and obviously with the clarification with  
 2 the picture quality, but you said this one could be a  
 3 pit bull based on body type?  
 4 **A. Yep.**  
 5 Q. Will you tell me the -- sorry.  
 6 **A. It does start tapering, but you can't see**  
 7 **the degree of tapering in 88 compared to 54 due -- it**  
 8 **could be how the dog's weight is or it could be the**  
 9 **quality of the picture. It -- without seeing the dog**  
 10 **in person, you can't tell.**  
 11 Q. Okay. Thanks. Let's go to 95. What do you  
 12 believe the predominant breed of that dog is?  
 13 **A. It looks like it could be a -- some type of**  
 14 **Shepherd mix. The floppiness of the ears. It's hard**  
 15 **to say with...**  
 16 Q. Do you believe that dog has any of the same  
 17 appearance or characteristics as any of those three  
 18 breeds?  
 19 **A. With the quality of picture, with how blurry**  
 20 **it is, I would say no.**  
 21 Q. Let's go to the next one, 96. What do you  
 22 believe the predominant breed of that dog is?  
 23 **A. With the quality of the picture, I really**  
 24 **couldn't say.**  
 25 Q. Do you believe that dog has any of the same

- 1 appearance or characteristics as any of those three  
 2 breeds?  
 3 **A. With the quality of the pictures, the head**  
 4 **could be similar, but with the quality of the**  
 5 **picture, I won't say.**  
 6 Q. Yeah. How -- what makes the head similar?  
 7 **A. It's a bigger head, but with the quality of**  
 8 **picture, I --**  
 9 Q. Yeah.  
 10 **A. -- can't see how similar it is.**  
 11 Q. Okay. But when you said it's the bigger  
 12 head, does that mean -- are you looking at the left  
 13 picture or the right picture?  
 14 **A. The left, just the head shot.**  
 15 Q. Okay. So for the head shot, when you say a  
 16 bigger head -- because that left picture doesn't have  
 17 much of the body in it.  
 18 **A. Yeah.**  
 19 Q. Are you talking about, like, the width of  
 20 the head?  
 21 **A. The width with the -- it just looks -- to me**  
 22 **it looks bigger in the picture, but it could be the**  
 23 **quality of the picture -- of the picture. It's hard**  
 24 **to say.**  
 25 Q. Okay. Are those the ears you're talking

- 1 about? Is that what you mean by cropped ears?  
 2 **A. No. That's not cropped ears. That's just**  
 3 **ears that are standing up. Cropped ears will come to**  
 4 **be more of a triangle. They cut it, the ear, so that**  
 5 **it will be more triangular.**  
 6 Q. That sounds not fun.  
 7 **A. They do them when they're young, just like**  
 8 **with the docking the tails, which they cut the tail**  
 9 **off.**  
 10 Q. Okay. So have you seen any in here that had  
 11 cropped -- I don't want to take the time. We're  
 12 running short on the hard cutoff today.  
 13 **A. I believe the one I pointed out as possibly**  
 14 **a pit bull did have cropped ears.**  
 15 Q. That was 54. Can you skip back to that one?  
 16 **A. No, it didn't. I -- it -- just thought**  
 17 **possibly...**  
 18 Q. Okay. Well, going forward just if you spot  
 19 what cropped ears are, will you please let me know?  
 20 **A. Okay.**  
 21 Q. Let's flip forward to number 99. I think  
 22 you're on it right there.  
 23 **A. Yep.**  
 24 Q. Yep. Okay. What do you believe the  
 25 predominant breed of that dog is?



1 **A. I really couldn't tell with the quality of**  
 2 **the pictures. It's...**  
 3 Q. Do you believe that dog has any of the same  
 4 characteristics or appearance as the dogs identified  
 5 in the ordinance?  
 6 **A. With the quality of the pictures, I can't**  
 7 **say they do.**  
 8 Q. All right. Let's flip forward to 108.  
 9 Looks like a puppy to me.  
 10 **A. Yep.**  
 11 Q. What do you believe the predominant breed of  
 12 that dog is?  
 13 **A. It could be a Bulldog puppy. It could be a**  
 14 **Boxer puppy. It's hard to say.**  
 15 Q. Do you think it has any of the same  
 16 characteristics of one of the three breeds identified  
 17 in the code?  
 18 **A. At puppies, well, they look real similar at**  
 19 **this – at this point of time.**  
 20 Q. What look real similar?  
 21 **A. Bulldogs, Boxers, American – American Pit**  
 22 **Bull Terriers. They look real similar as puppies.**  
 23 **So we generally – at least Cindy generally**  
 24 **doesn't – won't say it's a pit bull until they're**  
 25 **older due to the fact that when they're puppies they**

1 **can grow into their features.**  
 2 Q. Okay. That makes sense. Will you flip  
 3 forward one for me, please? This is number 111.  
 4 What do you believe the predominant breed of that dog  
 5 is?  
 6 **A. It looks like a – it could be English**  
 7 **Bulldog, maybe English Bulldog mix.**  
 8 Q. Do you believe it has any of the same  
 9 appearance or characteristics as the dogs identified  
 10 in the ordinance?  
 11 **A. No.**  
 12 Q. What about 116? What do you believe the  
 13 predominant breed of that dog is? This is the second  
 14 to last one, by the way.  
 15 **A. Yeah. I couldn't tell you from the**  
 16 **pictures.**  
 17 Q. Do you think it has any of the same  
 18 appearance or characteristics as any of the breeds  
 19 listed in the ordinance?  
 20 **A. With the quality of the picture, I'd say no.**  
 21 Q. Next one, number 117. This is the last one  
 22 in this binder. What do you believe the predominant  
 23 breed of that dog is?  
 24 **A. To be honest, I couldn't identify from the**  
 25 **quality of the pictures. Just the side view is too**

1 **blurry, and the head just – I am just not for sure.**  
 2 Q. Do you believe that this dog has any of the  
 3 same appearance or characteristics as any of those  
 4 dogs listed in the ordinance?  
 5 **A. With the quality of the pictures, I would**  
 6 **say no.**  
 7 Q. So we obviously went through a lot of  
 8 pictures. And thank for you going through all those.  
 9 You know, obviously, you raised a lot of, you know,  
 10 quality of the pictures and camera angles. There  
 11 were a few other things. Feel free jump in and tell  
 12 me if there were other things that you said were  
 13 issues with identifying these pictures.  
 14 **A. I can't think of anything at the moment.**  
 15 Q. Okay. So when you were an animal control  
 16 officer and you encountered a dog, would it be fair  
 17 to say that you know a pit when you see a pit?  
 18 **A. A – it's – once you see one, it sticks out**  
 19 **like a sore thumb. It's just something about it**  
 20 **just, okay, that shows more pit than what this other**  
 21 **dog does.**  
 22 Q. Something about it that you – maybe isn't  
 23 easy to articulate but it's like, I see that dog, I  
 24 know it's a pit?  
 25 **A. Exactly.**

1 Q. Okay. And that's all based on visual  
 2 identification?  
 3 **A. Yes.**  
 4 Q. What do you think of DNA analysis?  
 5 **A. I don't really think much of it.**  
 6 Q. In terms of you don't give it much thought  
 7 or you think it's not valid?  
 8 **A. I have really no opinion on it. When I was**  
 9 **an animal control officer I just went off what the**  
 10 **ordinance stated, and that's not part of what the**  
 11 **ordinance stated.**  
 12 Q. So let's say you looked at a dog that you  
 13 thought was a pit bull and the dog owner presented  
 14 you with a DNA test that showed that the dog was  
 15 80 percent not one of those three breeds listed in  
 16 the ordinance. What would you do?  
 17 **A. Unfortunately, I have to follow what the –**  
 18 **exactly what the ordinance states. DNA – according**  
 19 **to the ordinance, DNA test is not a valid – how it**  
 20 **is – I would advise that person to come down to the**  
 21 **shelter, maybe they can do more for you, but,**  
 22 **unfortunately, I am bound by what the law states.**  
 23 Q. And are you specifically talking about where  
 24 it says – let's separate it because the three  
 25 purebreds, the statute says – do you have a copy of

1 it in front of you? I want to make sure we're  
2 tracking. I will start over.

3 The definition says, "A pit bull" – and  
4 that term is in quotes –

5 **A. Yep.**

6 Q. – "is defined as any dog that is an  
7 American Pit Bull Terrier, American Staffordshire  
8 Terrier, Staffordshire Bull Terrier." And I'll pause  
9 there. So those are purebreds; right?

10 **A. Yes.**

11 Q. So the statute is prohibiting those  
12 purebreds?

13 **A. Yep.**

14 Q. So it's not based on those purebreds'  
15 appearance. It's if that's a purebred, they're  
16 banned?

17 **A. Yeah. It also goes on to, "or any dog which  
18 has the" –**

19 Q. Right.

20 **A. – "appearance and characteristics of  
21 predominantly"...**

22 Q. Right. Yeah. Let's get to that in a  
23 second. But before we get to that, the three  
24 purebreds that are banned, they're banning the breed,  
25 not the appearance of the breed; right?

1 **A. The breed. Yes.**

2 Q. And then it goes on to say, as you just  
3 identified, "or any dog which has the appearance and  
4 characteristics of being predominantly one of those  
5 breeds."

6 **A. Correct.**

7 Q. So when you said that, unfortunately, I have  
8 to enforce the code –

9 **A. Yep.**

10 Q. – when you say that, do you mean that  
11 because it says the appearance and characteristics of  
12 being predominantly one of those breeds? Is that  
13 what you're talking about?

14 **A. Yes.**

15 Q. So is it fair to say that your opinion of  
16 the visual characteristics is more important than the  
17 DNA of that dog?

18 **A. Well, all I can do is go off what the  
19 ordinance states. If I didn't enforce the law  
20 evenly, regardless if they – another person – I  
21 mean, I have a DNA that says my dog is – I have had  
22 it done. I can't show you, but I have it. I am  
23 like, take it up with the shelter, just like I would  
24 a person with the DNA tests. The law does not state  
25 anything about a DNA test. Unfortunately, with**

1 **enforcement, I have to go by what the law says.**

2 Q. So if the owner did tell you, hey, here's  
3 proof, DNA proof that the dog is not predominantly  
4 one of these breeds, you would have to say, sorry, I  
5 see that, but the visual characteristics in my mind  
6 meet the statute, I have to go with the...

7 **A. Because I can't prove that DNA test was  
8 taken from that particular dog.**

9 Q. What if the city ordered the DNA test?

10 **A. That would be a different situation, but  
11 still at that time, until I could get that verified,  
12 I would still have to impound the dog.**

13 Q. What happens if the city verified that DNA  
14 test – like if Cindy ordered the DNA test on a dog  
15 and the DNA test came back showing 80/20 and the 80  
16 is, I don't know, Rottweiler, let's use that as an  
17 example, but the visual characteristics, in your  
18 mind, still meet the appearance and characteristics  
19 of being predominantly...

20 **A. Well, that would – all that stuff would  
21 have to come out after the impoundment. There would  
22 be more than – we would be more than willing to turn  
23 the dog back over, but we have to enforce the law how  
24 it's written.**

25 Q. So would you change your determination based

1 on the DNA result after the fact? I am not – I am  
2 talking about after you have impounded.

3 **A. If I was told that was acceptable I would  
4 have to, but according to the ordinance, how it's  
5 written right now, it is not acceptable.**

6 Q. So you wouldn't do it unless one of the  
7 bosses said you can do it, you can put it as a  
8 different breed?

9 **A. Have to go by what the ordinance states  
10 first, and anything beyond that goes – it goes on  
11 them. I would enforce the law how it's written.**

12 Q. Great. Okay. You said you ended your  
13 employment back in November. Since November have you  
14 had any discussions with anyone at animal control?

15 **A. No.**

16 Q. Cindy?

17 **A. No.**

18 Q. You haven't had any conversations with her  
19 since November?

20 **A. Huh-uh. Nothing instead of going down there  
21 and seeing how they're doing and picking up my W-2s.**

22 Q. How about Chris?

23 **A. Nothing beyond saying hi and picking up my  
24 W-2s.**

25 Q. Any of the other animal control officers?

1 **A. Casual talk. Nothing about work.**  
 2 Q. How about the staff members in the kennel?  
 3 **A. I just seen them at the shelter when I went**  
 4 **to pick up my W-2s.**  
 5 Q. Have you discussed the contents of this  
 6 case – and we'll get to your attorneys here in a  
 7 minute, but have you discussed the contents and the  
 8 subject matter of this case with anyone other than  
 9 the city's attorneys?  
 10 **A. All I was – they contacted me last week,**  
 11 **asked me if I'd received the subpoena. And beyond**  
 12 **that, no.**  
 13 Q. But I am not talking about – specifically  
 14 about the city's attorneys. I am talking about  
 15 anyone else. Have you discussed this case with  
 16 anyone else?  
 17 **A. No. Nope.**  
 18 Q. Have you hired the city's attorneys to be  
 19 your attorneys in this case?  
 20 **A. To my knowledge they represent – are**  
 21 **representing me due to I am a former employee of**  
 22 **animal control, due to the nature of this case.**  
 23 Q. Now, did you hire them, though?  
 24 **A. I haven't had a meeting with them until**  
 25 **today.**

1 Q. I know. That's not what I asked, though.  
 2 **A. I haven't spoken with them. I haven't done**  
 3 **anything with them. They...**  
 4 Q. You said they called you last week, though.  
 5 **A. The shelter did asking if I received a**  
 6 **subpoena.**  
 7 Q. So what was the contents of that call?  
 8 **A. Just asking if I had received a subpoena,**  
 9 **and I told them no. They told me it was about the**  
 10 **pit bull ban. I am like, okay, I will let you know**  
 11 **when I – when and if I receive it.**  
 12 Q. And when did you get that call?  
 13 **A. Oh, let me see what day it was from my**  
 14 **texts.**  
 15 Q. Yeah. So was it a call or a text?  
 16 **A. First it was a text and then it was a call**  
 17 **because I was currently working, and then I told them**  
 18 **I would call when I would get done with the store I**  
 19 **was at.**  
 20 Q. Okay.  
 21 **A. The 17th. What – no. That's the day I...**  
 22 Q. Is that the day you received the text?  
 23 **A. No. That's the day I told them I would –**  
 24 **the 16th is when I received the text. The 17th is**  
 25 **when I got the subpoena.**

1 Q. What time – will you keep that open for me?  
 2 What time did you receive that text on the 16th?  
 3 **A. 8:50 a.m.**  
 4 Q. When did you text them back?  
 5 **A. It was practically right away since I didn't**  
 6 **have time.**  
 7 Q. So the 17th is when you called them?  
 8 **A. The 17th is when I informed them that I got**  
 9 **my subpoena.**  
 10 Q. What time was that?  
 11 **A. I got it at 1:40 p.m.**  
 12 Q. Did you have a conversation with the shelter  
 13 before or after that?  
 14 **A. About the subpoena?**  
 15 Q. Or anything.  
 16 **A. I haven't really talked to them at all about**  
 17 **this at all.**  
 18 Q. Well, you said they called you, though.  
 19 **A. Just I called them back to see what – why**  
 20 **they were asking me about a subpoena on the 16th.**  
 21 Q. So when was that call?  
 22 **A. The 16th. Let me see exactly what time it**  
 23 **was. 10:02 a.m.**  
 24 Q. On the 16th?  
 25 **A. Yep.**

1 Q. Did you speak to anyone at the shelter after  
 2 that?  
 3 **A. No. Not about this case or anything.**  
 4 Q. About it – you didn't speak to them again  
 5 after that, anyone from the shelter?  
 6 **A. Just went down there to pick up the W-2**  
 7 **after that. That was about – that's it.**  
 8 Q. What did you talk about on that call on the  
 9 16th?  
 10 **A. Just to see why I would be subpoenaed, and**  
 11 **they told me it was for this case. And beyond that,**  
 12 **I didn't go beyond that.**  
 13 Q. Because I am going to ask you to give me the  
 14 contents of that entire – everything that was said  
 15 on that conversation. I want you to do your best to  
 16 tell me what it was. And I will remind you that you  
 17 are under oath to tell the full truth, and it's the  
 18 same oath that would be given in court if a judge  
 19 were to administer.  
 20 So I will ask you, what was the entire  
 21 contents of that phone call?  
 22 **A. All I can remember, I called them when I got**  
 23 **done with Hy-Vees Le Mars, and I asked them what was**  
 24 **the subpoenas going to be for. He told me that there**  
 25 **was going to be a subpoena for the pit bull ban. And**

1 I am like, okay, I will let you know. To my  
2 knowledge, I will let you – I can remember saying, I  
3 will let you know when I receive it. And that was  
4 basically the end of the conversation that I can  
5 remember.

6 Q. Following up with that, when was the first  
7 time – and I am not asking you for the subject  
8 matter of the conversation, but when was the first  
9 time you had contact with the city's attorneys?

10 A. For this case?

11 Q. Yes.

12 A. Today.

13 Q. Approximately when today?

14 A. 12:40-something when – right before I came  
15 in here.

16 Q. So when you walked in?

17 A. Yep.

18 Q. So when you say that it's your impression  
19 that they are your attorneys because you're a former  
20 employee, is that based on my conversation with  
21 Nicole earlier today?

22 A. It – to – it was to my knowledge since  
23 I – that the city legal department represents the  
24 city animal control officers and/or any city officers  
25 for anything that they've done during their time at

1 work that is for the legal enforcement of their jobs  
2 since I have been working with animal control.

3 Q. Right. But since you have quit animal  
4 control have you had your own attorney?

5 A. No.

6 Q. Have any private attorney?

7 A. No.

8 Q. Did you engage – sounds like you didn't  
9 speak to the city attorney until we walked in here  
10 today, basically?

11 A. Correct. They were – I – if I remember  
12 right, Chris told me – texted me – what day – on  
13 the 17th saying there – the city attorney was going  
14 to meet with everyone at a time period which I was  
15 at – I was working at that time. So I wasn't able  
16 to make it during that.

17 Q. Who was on that text message?

18 A. Chris Wall.

19 Q. No. I mean, who all was going to be part of  
20 that meeting?

21 A. Let me see if he listed it.

22 Q. And, David, I am going to ask you, don't  
23 delete any of these text messages. I am formally  
24 giving you a litigation hold request here.

25 A. Okay.

1 Q. And I will ask you to produce those to us.  
2 You can do that as simply as forwarding the text  
3 message chain in its entirety to both the city and to  
4 us, but don't delete anything, please. It's –  
5 you – there's a duty not to destroy now.

6 So I will ask that you produce that. And if  
7 you want us to give you a formal –

8 MR. HASAN: You guys also.

9 Q. (By Mr. Hasan) -- if you want us to issue a  
10 formal subpoena for these text messages, happy to do  
11 that.

12 MS. DuBOIS: I think that would be advised.  
13 Additionally, if he wishes to produce it directly  
14 through us, we can provide it to you.

15 MR. HASAN: Yeah, and I guess since we're  
16 on the record here I will tell you, kind of like I  
17 mentioned earlier with Kylie, you know, I don't think  
18 that you guys are legally his attorney right now. I  
19 think I...

20 MS. DuBOIS: And you can argue that –

21 MR. HASAN: I know. I am just going to put  
22 it on...

23 MS. DuBOIS: -- but I have been doing this  
24 for a long time and I can assure you that there –  
25 we've had rulings in our favor regarding that. So...

1 MR. HASAN: Okay. That's fine. But I am  
2 going to put on the record here that we're  
3 challenging any potential assertion of  
4 attorney-client privilege due to the cessation of his  
5 employment with the animal control department back in  
6 November and not going to be seeking communications  
7 with attorneys prior to or related to the events  
8 while he was an employee, but for events following  
9 the termination of his employment, we're going to be  
10 seeking those communications.

11 A. Okay. That must have been on a phone call,  
12 not – the two...

13 THE WITNESS: Was it two o'clock that – on  
14 what day you guys met with the animal control?

15 MS. DuBOIS: I am sorry. We can't answer  
16 this question for you.

17 MR. CHRISTOPHERSON: We're not going to  
18 answer.

19 Q. (By Mr. Hasan) Yeah, they can't answer.

20 A. It – I don't have that in a text message.  
21 It must have been over the phone.

22 Q. So you said earlier that the phone  
23 conversation ended just with did you receive the  
24 subpoena, but it sounds like there was more to that  
25 conversation?

1 **A. What I remember is very – was maybe a**  
 2 **three-minute phone conversation.**  
 3 Q. Okay. But part of that three-minute phone  
 4 conversation, then, was a discussion about getting  
 5 together to talk about getting together as a group to  
 6 talk about the case?  
 7 **A. I was told that, if I remember right – if I**  
 8 **remember right, Chris was saying city legal wanted to**  
 9 **speak with us, and they were supposed to be making**  
 10 **some time available at the shelter on a day. I –**  
 11 **and it was a day I was working. So I...**  
 12 Q. So Chris told you that legal wanted to meet  
 13 with – when you say you, who do you mean?  
 14 **A. The individuals that were going to be**  
 15 **subpoenaed.**  
 16 Q. Is that what Chris told you, the individuals  
 17 who were subpoenaed?  
 18 **A. Yes. It was before when I even got my**  
 19 **subpoena.**  
 20 Q. Just for the record –  
 21 MR. HASAN: So you can object on the  
 22 record.  
 23 Q. (By Mr. Hasan) – what did – what did you  
 24 and the city – well, first off, did you speak to the  
 25 city attorneys at all leading into today?

1 **A. No.**  
 2 MS. DuBOIS: Okay.  
 3 MR. HASAN: I am just asking for a yes or  
 4 no, whether he spoke...  
 5 MS. DuBOIS: Sure. And I want him to  
 6 understand that that's what is requested, a yes-or-no  
 7 answer.  
 8 Q. (By Mr. Hasan) Yeah. I just want a yes or  
 9 no. Did you speak to any of the city attorneys  
 10 before walking in here today?  
 11 **A. No.**  
 12 Q. Have you had any communications – again,  
 13 yes or no. Have you had any communications with the  
 14 city attorneys since showing up here today related to  
 15 this case?  
 16 **A. No.**  
 17 Q. Have you had any conversations with anyone  
 18 else in animal control, excluding the attorneys, on  
 19 how to answer questions here today?  
 20 **A. No.**  
 21 MR. HASAN: Okay. I think that the  
 22 record's probably okay right now. You guys – I  
 23 mean, it's 3:50. Do you want to call it, or do you  
 24 want to do your follow-up, or what do you want to do?  
 25 MS. DuBOIS: I don't have any questions for

1 this witness.  
 2 MR. HASAN: Okay. Let me just check, then,  
 3 and make sure I am actually – actually, I think I am  
 4 done, but I just want to double-check then.  
 5 MS. DuBOIS: Well, I am just stating that I  
 6 base that on the fact that you were done.  
 7 MR. HASAN: Yeah. Okay. If I have  
 8 follow-up, you can obviously follow up.  
 9 MS. DuBOIS: Okay.  
 10 MR. HASAN: I am not going to pull – come  
 11 on, Nicole. Give me some credit.  
 12 MS. DuBOIS: It's late in the day, and I  
 13 haven't eaten all day. So...  
 14 MR. CHRISTOPHERSON: Yeah, same.  
 15 Q. (By Mr. Hasan) Did anyone give you any  
 16 documents prior to coming in here today?  
 17 **A. No.**  
 18 MR. HASAN: All right. Subject to that  
 19 call with the magistrate about all of the then  
 20 former – if we can just resolve it for all of the  
 21 former animal control officers, all of the former  
 22 employees, it's going to be that same objection for  
 23 all of them. If you're going to be asserting  
 24 attorney-client privilege over them, we'll reserve  
 25 that argument for the magistrate.

1 MS. DuBOIS: Yes.  
 2 MR. HASAN: Okay. Then we'll adjourn. You  
 3 have – we're not – potentially not done. We're  
 4 going to continue this deposition, leave it open.  
 5 Meaning next week we may get together and finish this  
 6 if there are some follow-up questions that I'll be  
 7 asking depending on this call that we're going to be  
 8 having with the magistrate judge, and we are...  
 9 MS. DuBOIS: Can I – can we go off the  
 10 record for one second?  
 11 MR. HASAN: Sure. Yeah.  
 12 (At 3:54 p.m. an  
 13 off-the-record discussion  
 14 was had.)  
 15 MR. HASAN: Then what I was going to say,  
 16 if we wind up closing the deposition here today,  
 17 Dave, Julie's transcribing everything here. You have  
 18 the opportunity to read and sign the transcript of  
 19 your deposition testimony. You have the ability to  
 20 waive that also.  
 21 Feel free to look to the city's attorneys  
 22 if you have any questions about whether to read or  
 23 sign or waive that right. It's completely up to you.  
 24 THE WITNESS: Okay.  
 25 MR. HASAN: Would you like to read and  
 sign? Would you like to waive that? Essentially,

1 in -- they can explain it also. It's essentially...

2 MS. DuBOIS: I don't know if he can answer

3 that question yet because you haven't closed the

4 deposition.

5 MR. HASAN: Right. So, again, if it's

6 going to be closed, that's it. And what it is is

7 it's a process where you get to go through and look

8 to see if any answers you gave me are incorrect, if

9 you'd like to make any changes to it, anything like

10 that.

11 THE WITNESS: Okay.

12 MR. HASAN: That is -- I mean, how are we

13 going to formally close -- will we call Julie and

14 close it if it is for sure closed? Is that how we go

15 about procedurally closing the deposition? Is that

16 how you want to do it?

17 MS. DuBOIS: I -- from my perspective it

18 would be closed today, but that's your preservation

19 as -- to leave it open. So...

20 MR. HASAN: Okay. Then I will just tell

21 you that's what it's going to wind up being. And

22 we'll call. And if we -- if I don't have follow-up

23 questions for you based on my call with the

24 magistrate judge, I will -- we'll close it, but then

25 you'll get a transcript if you want to read and sign.

1 THE WITNESS: Okay.

2 MR. HASAN: Do you want to advise him on

3 whether he should read and sign or not?

4 MS. DuBOIS: Yeah. I think that's fine,

5 what you have said. It's your right.

6 THE WITNESS: Yeah. That would be fine.

7 If you send that to me, I will read and make sure.

8 It's always best to have a copy.

9 MR. HASAN: Okay. We'll be happy to do

10 that. So when Julie gets it prepared, we'll get you

11 a copy. And we'll send it to the city, and the city

12 can send it to you.

13 Also, again, I want to let you know, don't

14 delete any text messages, nothing like that. We're

15 going to subpoena you so that you can produce those

16 to us. And we'll make it as convenient as you want.

17 You don't have to, like, formally print them. We can

18 make it available electronically.

19 We'll put that in the subpoena. But we

20 will send you a subpoena to produce those text

21 messages to us.

22 THE WITNESS: Okay.

23 MR. HASAN: Okay? All right. Thank you.

24 (The deposition concluded at 3:58 p.m.)

25

1 C E R T I F I C A T E

2 I, Julie A. Pell, RPR, CRR, CSR, CRC, duly

3 commissioned, qualified, and acting under a general

4 notarial commission within and for the State of

5 Nebraska, do hereby certify that:

6 DAVID KRACKE

7 was by me first duly sworn to tell the truth, the

8 whole truth, and nothing but the truth; that the

9 foregoing deposition was taken by me at the time and

10 place herein specified and in accordance with the

11 within stipulations; that I am not counsel, attorney,


12 or relative of either party or otherwise interested

13 in the event of this suit.

14 IN TESTIMONY WHEREOF, I have hereunto set my

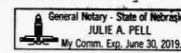
15 hand officially and attached my notarial seal at

16 Lincoln, Nebraska, this 2nd day of February, 2018.

17 

18 Julie A. Pell, RPR, CRR, CSR

19 Nebraska Notary Public

20 

21

22

23

24

25

1 AMENDMENT TO DEPOSITION

2 CASE: Kali Myers v. City of Sioux City, et al.

3 WITNESS: DAVID KRACKE \_\_\_\_\_ No Changes

4 The Witness herein states that he/she wishes

5 to make the following changes in his/her deposition:

6 PAGE	7 LINE	8 CURRENTLY READS	9 SHOULD READ	10 REASON FOR CHANGE
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17 \_\_\_\_\_ DEPONENT'S SIGNATURE \_\_\_\_\_

18 ACKNOWLEDGEMENT State of \_\_\_\_\_

19 County of \_\_\_\_\_

20

21 The foregoing instrument was acknowledged

22 before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

23 \_\_\_\_\_

24 ^ Affix Seal Here ^ GENERAL NOTARY PUBLIC

25

Julie A. Pell, RPR, CRR, CSR, CCR

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