

1 STATE OF NEVADA

2 Commission on Peace Officer Standards and Training

3 Wednesday, February 12, 2020

4 1:00 PM - 5:54 PM

5
6 SOTO: All right. We're going to call this
7 meeting to order. This is the POST Commission Meeting and
8 workshop. Today is February 12th, at 1:00, for the record. And
9 I'm going to throw it over to Scott Johnston, for information on
10 the legal postings and Open Meeting compliance.

11 JOHNSTON: Thank you, Mr. Chairman. This Meeting
12 is brought here today in compliance according to the NRS 241.020.
13 The Commission Meeting and Workshop here, the notices were posted
14 at the POST Administrative Office in Carson City, Nevada State
15 Capitol in Carson City, Blasdel Building, Carson City, Nevada
16 State Library and Archives, Carson City, Carson City Sheriff's
17 Office, White Pine County Sheriff's Office, POST website at
18 post.nv.gov, and on the State Notice Page, at notice.nv.gov, all
19 in conformity to the requirements for holding this workshop and
20 regular meeting.

21 SOTO: Thank you, Scott. I'm going to start
22 off with roll call, start with myself, Jason Soto, Reno Police -
23 Reno Police Department. And I'm starting on the right, and we'll
24 just work our way around.

25

1 KETSAA: James Ketsaa, Chief, Clark County
2 School Police.

3 TROUTEN: Ty Trouten, Chief, Elko Police
4 Department.

5 FREEMAN: Michele Freeman, Chief, Department of
6 Public Safety for City of Las Vegas.

7 MCGRATH: John McGrath, Deputy Chief, Metro.

8 GOOLSBY: Gordon Goolsby, Lead Senior Deputy
9 Attorney General, the Office of the Attorney General.

10 TOGLIATTI: George Togliatti, Director, Nevada
11 Department of Public Society.

12 SHEA: Tim Shea, Chief, Boulder City.

13 FREEMAN: Michele Freeman.

14 MCKINNEY: Kevin McKinney, Lieutenant, Elko
15 County Sheriff's Office.

16 SHERLOCK: Mike Sherlock, the Executive Director,
17 POST.

18 JOHNSTON: Scott Johnston, POST.

19 JENSEN: Mike Jensen, with the Attorney
20 General's Office.

21 SOTO: Okay. Before we get started on the new
22 Board workshop, I just want to let everybody in attendance know,
23 items number four and five are going to be moved to the back of
24 this meeting. We've got a lot of things that we can get through
25

1 quickly, and then, we'll get to items number four and item number
2 five.

3 We're going to start with the Workshop. The purpose of the
4 Workshop is to solicit comments from interested persons on the
5 following general topic that may be addressed in Proposed
6 Regulations (Workshop has been previously noticed pursuant to the
7 requirements of NRS Chapter 233(b)).

8 A: The Commission to discuss revisions to its regulations
9 to comply with annual continuing education requirements
10 established in NRS 289.510(1)©(2) mandating all peace officers
11 annually complete not less than 12 hours of continuing education,
12 training in courses that address racial profiling, mental health,
13 the well-being of officers, implicit bias recognition, de-
14 escalation, human trafficking, and firearms.

15 Under NAC 289.230(1), and I'm going to hand this over to
16 Mike Sherlock for an explanation.

17 SHERLOCK: Thank you, Mr. Chairman. Mike
18 Sherlock, for the record. As the Commission will recall, we
19 spoke about this at the last meeting, with AB-478 put into
20 statute the 12-hour requirement for continuing ed for certified
21 officers. There's a bit of a conflict, then, with the
22 regulation, by that Bill. And after working with the Attorney
23 General's Office, it appears that the best move would be, in our
24 opinion, to remove that conflict and have the regulation reflect
25 the statute, to reduce confusion for the agencies. And so,

1 that's why we're here, at this point, at a Workshop level, to
2 solicit comments.

3 SOTO: Okay. So, I'll turn it over to our
4 Commissioners, then, for any questions or comments that you have,
5 and then public comment on the issue. Anything from our
6 Commissioners? Any questions or clarification that you need, in
7 regards to what Mr. Sherlock has brought forward? All right. Do
8 we have any public comment, anybody that wants to speak on this,
9 public comment? All right. No public comments. I don't think
10 we need anything else on this, unless somebody has something.
11 So, I'm going to close this Workshop.

12 We're going to begin our regularly scheduled meeting.
13 Starting with item number one, discussion, public comment, and
14 for possible action, approval of minutes from the November 4th,
15 2019, regularly scheduled POST Commission Meeting. Any comments
16 from Commissioners? Any public comment? Seeing as there's none,
17 I'm looking for a motion to approve the minutes.

18 MCKINNEY: Kevin McKinney. I move we approve the
19 minutes.

20 SOTO: Do I have a second?

21 KETSAA: Jim Ketsaa, for the record. I second.

22 SOTO: I have a motion and a second. All
23 those in favor, say "aye".

24 SPEAKERS: Aye.

25 SOTO: Opposed? Motion carries.

1 Item number two, Executive Director Report. And again,
2 this'll go over to Mike Sherlock.

3 SHERLOCK: Thank you. Mike Sherlock, for the
4 record. I'll try to be real quick here. So we've had some
5 movement in terms of Commissioners. Deputy Chief McGrath is
6 going to be moving on. I saw him in the hallway earlier. He
7 seemed a little too happy about it, but we do appreciate your
8 service, Chief, and your voice on the Commission. You'll be
9 missed.

10 On the flip side of that, Deputy Chief Kelly McMahill has
11 been nominated and approved by the Governor, I believe at this
12 point, to take Chief McGrath's spot as Metro's representative on
13 the Commission.

14 We have here today Chief Trouten from Elko PD. He was
15 nominated and approved and appointed by the Governor. Chief
16 Trouten is fulfilling one of the Rural Cat I spots on the
17 Commission. We always feel it's important to also include the
18 rural incorporated cities, and I'm sure Chief Trouten will be a
19 good representative for them.

20 The other thing, I'd like to thank Director Togliatti. As
21 many of you know, it's a bit slow sometimes getting our nominees
22 appointed. And I don't - I'm not sure what you did, Director,
23 but you certainly helped speed things up, and that helps for -
24 helps us here on the Commission.

25 TOGLIATTI: Thank you.

1 SHERLOCK: And I - and I thank you for that. I
2 gave a quick spiel on AB-478. We have some confusion out there
3 for the agencies. I did a poor job of it [laughs] yesterday.
4 I'm gonna put a document out to Sheriffs and Chiefs, to try to
5 help explain that, next week.

6 And in two weeks I've been asked to speak at the Sentencing
7 Commission on implementation of the crime Bill, AB-236. You
8 know, that's a - we didn't receive any budget for that particular
9 Bill. We've had to slow down our advance training development,
10 to change nearly every single lesson plan and basic training, as
11 that Bill really changes definitions of crimes and changes the
12 penalties on those. So, I'll be speaking to that on the
13 Sentencing Commission, here, in a couple weeks.

14 And that's about what's going on at this point, Mr.
15 Chairman.

16 SOTO: Thank you, Mr. Sherlock. And I really
17 want to echo what he said about Commissioner McGrath, and I want
18 to thank him for being here and for all the work he's put forward
19 on the Commission. He really got into a lot of these things and
20 asked a lot of pertinent questions. And we're going to miss him,
21 but we're looking forward to our new Commissioners.

22 So with that, we'll move on to item number three,
23 discussion, public comment, and for possible action. The
24 Commission to consider continuing the rule-making process and
25 start developing final language for adoption to NAC 289.230. The

1 language is to provide for the requirements of continuing
2 education, to include 12 hours on the following topics: racial
3 profiling, mental health, officer well-being, implicit bias, de-
4 escalation, human trafficking, and firearms. Do we have any
5 comments from the public? Any public comment on this? Any
6 comments from the Commissioners? Okay. Seeing as though there's
7 none, I'm looking for a motion to continue this rule-making
8 process.

9 MCGRATH: John McGrath. I'll make a motion.

10 SOTO: Okay. We have a motion. Do I have a
11 second?

12 FREEMAN: I'll second. Michele Freeman.

13 SOTO: Okay. We have a motion and a second.
14 All those in favor, say "aye".

15 SPEAKERS: Aye.

16 SOTO: Opposed? The motion carries
17 unanimously.

18 Again, as I stated, items four is going to be moved, and
19 item five is going to be moved to the end of this. On to item
20 number six, discussion, public comment, and for possible action.
21 The Commission to conduct a blind review of an agency request to
22 revoke the Basic Certificate of a former employee, based upon
23 court documents and conviction for harassment - First Offense,
24 Misdemeanor, NRS 200.571. The Commission to decide to move

25

1 forward with a revocation hearing at a future meeting. I'm going
2 to throw this over to Mike Sherlock first, for an explanation.

3 SHERLOCK: Thank you. Mike Sherlock, for the
4 record. So, as the Commission knows, under current regs, the
5 Commission can revoke a Basic Certificate for gross misdemeanors,
6 felony convictions, and now, domestic violence misdemeanor
7 convictions, among other things. But in terms of convictions,
8 this does not fall under one of those definitions, although it's
9 within the Commission's authority to revoke.

10 So at this point, we are looking for direction from the
11 Commission, as to whether or not they would be amenable to go to
12 a revocation hearing for the facts outlined in your book. If you
13 look behind that agenda item, there is a synopsis, basically,
14 including the original criminal complaint listing the original
15 charges and the ultimate conviction for harassment. And so,
16 staff would be looking as to whether this is something that the
17 Commission would like to address at a later Commission Meeting,
18 in terms of a revocation hearing.

19 SOTO: Okay. Any Commissioner have any
20 comments on that? Or questions?

21 MCGRATH: John McGrath, for the record. Is this
22 coming from the Agency? Where is this originating from?

23 SHERLOCK: Mike Sherlock, for the record. The
24 Agency did provide us with this information and is supportive of
25 revocation.

1 FREEMAN: Michele Freeman. So, do we have any
2 guidance from Counsel?

3 JENSEN: Mike Jensen, for the record. Just a
4 couple of things I would add to what Mr. Sherlock said. First of
5 all, this process of blind review was set up a number of years
6 ago, primarily for situations with misdemeanor convictions
7 because of the broad variety of misdemeanors that we have in the
8 state of Nevada. We wanted to make sure that if the Commission
9 wanted to move forward on some of these misdemeanor convictions,
10 before we actually served the individual and made their name
11 public through that process.

12 In terms of direction on what are the appropriate types of
13 convictions to move forward on, a couple of things, I think, are
14 important. The first is the type of conviction that would affect
15 or disqualify a person from being a Peace Officer, going to
16 things like integrity, honesty. Those sorts of things are the
17 types of convictions that we would normally go forward on.

18 And so, I think that should probably be taken into
19 consideration and is - it has to tie to the ability of the person
20 to be a Peace Officer, to be a conviction that would satisfy the
21 requirement.

22 SOTO: Any other questions or comments from
23 the Commission? Do we have any public comment on this? Okay.
24 Can I get a motion, then, on moving forward with a revocation
25 hearing at a future Meeting?

1 KETSAA: Jim Ketsaa, for the record. Make that
2 motion.

3 SOTO: I have a motion. Get a second?

4 SHEA: Tim Shea. I'll second.

5 SOTO: Okay. So, we have a motion and a
6 second. All those in favor, say "aye".

7 SPEAKERS: Aye.

8 SOTO: Opposed? Motion carries unanimously.

9 Okay. Item number seven, discussion, public comment, and
10 for possible action. Request from the Carson City Sheriff's
11 Office requesting a 6-month extension pursuant to NRS 289.550,
12 for their employee, Deputy Robert Routon, to meet certification
13 requirements. The request would extend the time period to meet
14 certification to August 22nd, 2020. And I'm going to turn this
15 over to Scott Johnston for details.

16 SHERLOCK: Mike Sherlock, for the record. Mr.
17 Chairman, I spoke to Sheriff Furlong, who regrettably could not
18 be here today. And I think the Commission knows that Sheriff
19 Furlong is pretty good about coming before the Commission when he
20 has an agenda item, but he couldn't do it today. He asked me to
21 kind of explain what's going on.

22 He actually has two extension requests today. In this
23 first one, again, because of staffing needs and, frankly, the
24 limitations of the POST Academy, in terms of numbers, and the
25 fact that he had already put other people in the Academy, he was

1 unable to get this person, Mr. Routon, into the most recent
2 Academy. And failure to do so will put him over the one-year
3 time limit requirement.

4 And with that information, Staff would recommend the
5 extension on this particular person.

6 SOTO: Okay. So, any public comment on this?
7 Any comment from our Commission? All right. So, again, I'm
8 looking for a motion to allow that - this extension of time to be
9 certified for Mr. Routon. Can I get a motion?

10 TROUTEN: Ty Trouten. Make a motion.

11 SOTO: I have a motion. Can I get a second?

12 MCGRATH: John McGrath - oh.

13 SPEAKER: No, go ahead.

14 MCGRATH: John McGrath. I'll second.

15 SOTO: I have a motion and second. All those
16 in favor, say "aye".

17 SPEAKERS: Aye.

18 SOTO: Opposed? Motion carries unanimously.

19 Item number eight, discussion, public comment, and for
20 possible action. Request from the Carson City Sheriff's Office
21 requesting a 6-month extension, pursuant to NRS 289.550, for
22 their employee, Deputy Jared Blue, to meet certification
23 requirements. The request would extend the time period to meet
24 certification to August 22nd, 2020. Again, did you have any
25 further on this, Mr. Sherlock?

1 SHERLOCK: Mike Sherlock, for the record. Yes,
2 thank you, Mr. Chairman. Again, coming from Sheriff Furlong, so,
3 Deputy Blue is one that was in the Academy in front of Deputy
4 Routon [laughs]. And Deputy Blue failed the entrance physical
5 fitness requirement to enter the Academy, but was too late to get
6 his other prospective recruit into the Academy.

7 So, it's really the same situation, that Deputy Blue is
8 unable to complete the requirements within the one year. Sheriff
9 Furlong has ensured us that, while Deputy Blue is in the jail,
10 they have him on a physical fitness improvement plan, and he will
11 be enrolled in the July Academy at POST. Given that information,
12 Staff would recommend the extension for Deputy Blue.

13 SOTO: Thank you, Mr. Sherlock. Any public
14 comment on item number eight? Any comment from the Commission?
15 All right, I'm looking for a motion to allow this extension of
16 time to be certified, for Mr. Blue. Can I get a motion?

17 MCKINNEY: Kevin McKinney. I move.

18 SOTO: We have a motion. Can I get a second?

19 SPEAKER: Second.

20 SOTO: I have a motion and a second. All
21 those in favor, say "aye".

22 SPEAKERS: Aye.

23 SOTO: Opposed? Motion carries unanimously.

24 Item number nine, we have discussion, public comment, and
25 for possible action. Request from the Eureka County Sheriff's

1 Office requesting a 6-month extension, pursuant to NRS 289.550,
2 for their employee, Undersheriff James R. Clark, to meet
3 certification requirements. The request would extend the time
4 period to meet certification to July 17th, 2020. Again, I'm gonna
5 throw this over to Mr. Sherlock for details.

6 SHERLOCK: Thank you. Mike Sherlock, for the
7 record. And I believe the Sheriff's here, to inform the
8 Commission.

9 WATTS: I am. Good morning, ladies and
10 gentlemen of the Board.

11 SOTO: All right. Turn it over to Sheriff
12 Watts.

13 WATTS: As the letter that I wrote states, we
14 were extremely short staffed in the first part of 2019, to the
15 point that we had 4 - 4 of us covering the entire County,
16 including the jail, myself, Undersheriff Clark, and 2 Sergeants.
17 And for the first six months of the year, it was a real rough
18 struggle for staffing and getting that accomplished.

19 Undersheriff Clark, who's here, was not able to get
20 prepared for the PPFT, to complete it. At the later part of
21 July, he ended up having a very serious medical issue and was in
22 the hospital for an extended time and off work for an extended
23 time and was unable to get prepared for the PPFT. I will tell
24 you, the date's for extension's to July, but we have already made
25 it an internal document, for it to be completed before then.

1 SOTO: Okay.

2 WATTS: And he has completed all the online
3 reciprocity, and we're just waiting for the POST exam - you have
4 to do the PPFT in the POST exam.

5 SOTO: Thank you, Sheriff. Do - does any -
6 do we have any public comment on item number nine? Any questions
7 or comments from the Commission? With that, I'm looking for a
8 motion to allow the extension of time to be certified for Mr.
9 Clark. Can I get a motion?

10 TOGLIATTI: A motion, George Togliatti.

11 SOTO: I have a motion. Can I get a second?

12 FREEMAN: Michele Freeman, second.

13 SOTO: I have a motion and a second. All
14 those in favor, say "aye".

15 SPEAKERS: Aye.

16 SOTO: Opposed? Motion carries unanimously.
17 Okay.

18 WATTS: Thank you, gentlemen. Thank you,
19 gentlemen.

20 SOTO: All right. Item number 10.
21 Discussion, public comment, and for possible action. Request
22 from the North Las Vegas Police Department for their employee,
23 Chief Pamela A. Ojeda, for an Executive Certificate. Again, I'm
24 going to turn this over to Mr. Sherlock.

25

1 SHERLOCK: Mike Sherlock, for the record. Thank
2 you, Mr. Chairman. Staff received and reviewed an application
3 for the Executive Certificate for Chief Pamela Ojeda. Staff
4 found that Chief Ojeda meets the requirements of the Executive
5 Certificate, and Staff recommends the issuance of that Executive
6 Certificate to Chief Ojeda.

7 SOTO: Thank you. So, do we have any public
8 comment on item number 10? Any comment from the Commission?
9 With that, then, I am looking for a motion to approve the
10 issuance of an Executive Certificate to Chief Ojeda.

11 SHEA: Tim Shea. I'll make a motion to
12 approve.

13 SOTO: Have a motion, looking for a second.

14 SPEAKER: I'll second.

15 SOTO: Motion and a second. All those in
16 favor, say "aye".

17 SPEAKERS: Aye.

18 SOTO: Opposed? Motion carries unanimously.

19 Item number 11, discussion, public comment, and for
20 possible action. Request from the Humboldt County Sheriff's
21 Office for their employee, Sheriff Mike Allen, for an Executive
22 Certificate. Again, I'll turn this over to Mr. Sherlock.

23 SHERLOCK: Thank you. Mike Sherlock, for the
24 record. Mr. Chairman, Sheriff Allen asked that I pass along his
25 apologies for not being here today. He was unable to make it

1 today and asked that I represent him. Again, Staff received and
2 reviewed an application for the Executive Certificate for Sheriff
3 Allen, and found that the Sheriff - that Sheriff Allen meets all
4 the requirements for the Executive Certificate, and would
5 recommend the issuance of that Certificate.

6 SOTO: All right. Any public comment on item
7 number 11? Any comments from the Commission? With that, I'm
8 looking for a motion to approve the issuance of an Executive
9 Certificate to Sheriff Mike Allen.

10 KETSAA: Jim Ketsaa, make a motion.

11 SOTO: I have a motion. Can I get a second?

12 TROUTEN: Second.

13 SOTO: I have a motion and second. All those
14 in favor, say "aye".

15 SPEAKERS: Aye.

16 SOTO: Opposed? Motion carries unanimously.

17 Item number 12, discussion, public comment, and for
18 possible action. Request from the Las Vegas Metropolitan Police
19 Department for their employee, Captain Larry R. Clark, for an
20 Executive Certificate. Turn it over to Mr. Sherlock.

21 SHERLOCK: Thank you, Mr. Chairman. Mike
22 Sherlock, for the record. Once again, Staff received an
23 application and reviewed that application for Captain Clark, for
24 an Executive Certificate, found that Captain Clark meets the
25 requirements established for that Certificate. And Staff would

1 recommend the issuance of that Executive Certificate to Captain
2 Clark.

3 SOTO: Do I have any public comment on item
4 number 12? Any comments from the Commission. All right, I'm
5 looking for a motion to approve the issuance of an Executive
6 Certificate to Captain Clark.

7 MCGRATH: John McGrath. I'll make that motion.

8 SOTO: I have a motion. Can I get a second?

9 FREEMAN: Michele Freeman, second.

10 SOTO: I have a motion and second. All those
11 in favor, say "aye".

12 SPEAKERS: Aye.

13 SOTO: Opposed? Motion carries unanimously.

14 All right. Now, we're going to go back to item number
15 four. This is going to be discussion, public comment, and for
16 possible action. Hearing pursuant to NAC 289.290(1)(e), on the
17 revocation of Earl T. Mitchell, formerly of the Henderson
18 Constable's Office, certification based on a conviction for
19 Fraudulent Conveyance (Gross Misdemeanor - NRS 205.330). The
20 Commission will decide whether to revoke Mr. Mitchell's Category
21 I Basic Certificate. And I'm going to turn this over to the
22 Attorney General's Office, to begin the hearing.

23 JENSEN: Thank you, Mr. Chairman. This is Mike
24 Jensen, for the record. As with our [inaudible] hearings, just
25 wanted to deal with a couple of housekeeping items, up front.

1 First is, of course, the hearing today is being held pursuant to
2 NRS 289.510, which provides that the Commission is to adopt
3 regulations setting minimum standards for the certification and
4 decertification of Peace Officers. Pursuant to that authority,
5 the Commission has adopted regulations. The one that's relevant
6 today is NAC 289.290, which provides for the causes for
7 revocation or suspension of a Certificate, specifically,
8 subsection E, which provides for revocation for a conviction or
9 entry of a plea of guilty, guilty but mentally ill, or nolo
10 contendere, to a gross misdemeanor. And upon criminal indictment
11 or filing of a criminal indictment, suspension may be imposed.
12 So this hearing today is being held pursuant to that authority,
13 both in the NRS and the NAC. There are a couple of housekeeping
14 things that I was hoping we could deal with, up front. The first
15 is dealing with the admission of some of the non-witness
16 exhibits. And so, what I need to do, just real quick, and maybe
17 we can take a recess so I can do this, I need to hand out the
18 proposed exhibits to all the Commissioners and then, I'd like to
19 attempt to admit the non-witness type exhibits that we have.

20 RISMAN: The only thing I would say, Mr.
21 Jensen, is -

22 SOTO: And say your name for the record,
23 please.

24 RISMAN: -- oh, I'm sorry. Marc Risman,
25 representing Mr. Mitchell. By way of introduction, I was POST

1 certified in 1992, still remember the lessons from my lead
2 instructors, Nick Wallen and Tom Carpaccio and John Lukens, very,
3 very well, that I've carried with me through these years. And
4 also served on the Clark County Board of the IPOF, Injured Police
5 Officers' Fund.

6 I'm here today representing Mr. Mitchell. And I also want
7 to thank Mr. Jensen for his pre-hearing courtesy and
8 professionalism. It's been outstanding. But what I would ask,
9 and I think would be more appropriate is, before these exhibits
10 are handed to the Commissioners to review and see, if maybe, as
11 you were sorting them, we had a chance to review them, to see if
12 there were any proper evidentiary objections, before they were
13 viewed.

14 JENSEN: Sure. And Mr. Chairman, for the
15 record, we've provided these exhibits in advance to Mr. Risman.
16 So, you have had them in advance. I know we've talked a little
17 bit about which ones you may have objections to. What I'd like
18 to do then, is give the original exhibits to the Chairman, so he
19 can see what we're talking about, at least. And then, I've got
20 copies of the exhibits that I'll provide, that are the same as
21 what I provided to you in advance.

22 RISMAN: Correct.

23 SPEAKER: Thank you.

24 SPEAKER: These are the originals.

1 JENSEN: The ones that I just gave to the
2 Chairman are the original certified copies of the documents. So,
3 those would be the ones that, if they're admitted, would be made
4 part of the record. Then, I want to have some copies for the
5 witnesses. Think the way we're gonna be set up in here is having
6 the witnesses right in front of the Commission, at this table.
7 And we left you some room over there, if you want to be over at
8 that table to work.

9 SOTO: Okay. Did you have anything else, Mr.
10 Jensen, before we take a short recess? Was that your
11 recommendation? You want to take a recess, or you want to just
12 hand it out?

13 JENSEN: Yeah. I would prefer to just hand 'em
14 out. I mean, I don't think there's an issue with -

15 SOTO: Okay. That's fine.

16 JENSEN: -- the Commissioners' having them in
17 front of them.

18 SOTO: Okay. No, that's fine.

19 JENSEN: I mean, this isn't a jury trial, and -

20 SPEAKER: It's kinda like putting the milk back
21 in the bottle, though, after it's filled. So -

22 JENSEN: -- no, I understand that. And maybe
23 what we can do is, they'll have them in front of them and -

24 SPEAKER: We won't look at them.

25

1 JENSEN: -- and ask them not to review them
2 until we're down through our first part of the hearing.

3 SOTO: That's fine.

4 SPEAKERS: [whispering]

5 JENSEN: All right.

6 SOTO: All right. Everybody have the
7 exhibits?

8 JENSEN: All right, so, Mr. Chairman, what I
9 would do then is, just real briefly, explain what the exhibit is.
10 And I guess maybe the most efficient way to deal with that would
11 be, if you have an objection to the exhibit, we talk about that,
12 one at a time. Does that work for you, Mr. Risman?

13 RISMAN: That's fine with me. Thank you.

14 JENSEN: Okay. The first exhibit you'll be
15 looking at is Exhibit A. These are basically the POST documents,
16 the first visit and Notice of Intent to Revoke. This is the
17 document that we send out whenever there's a potential for
18 revocation, to give notice of the Commission's intent to
19 potentially revoke. And this is a certified copy. It provided
20 to Mr. Mitchell with an advance notice of this hearing, of the
21 basis for the hearing, the opportunity to appear, which,
22 obviously, he's taken today. And so, I would ask that Exhibit A
23 be admitted. It's a certified copy of the public record of the
24 POST Commission.

25 RISMAN: No objection.

1 SOTO: We'll admit it [inaudible].

2 JENSEN: Exhibit B is our Affidavit of Service,
3 just showing that the Notice of Intent to Revoke was served on
4 Mr. Mitchell, so that he has had notice of this particular
5 hearing and has been given the opportunity to appear today and
6 know what the basis for the hearing is. Again, it's a certified
7 copy of a public record, and we would ask that that be admitted.

8 RISMAN: No objection.

9 SOTO: Exhibit B, then, so admitted.

10 RISMAN: No objection to Exhibit C, either.

11 JENSEN: Exhibit C, no need to explain that.

12 That's Mr. Mitchell's request for a hearing, that he - he sent to
13 the Commission.

14 RISMAN: No objection to D, either.

15 SOTO: So, we have one, C - no objection to
16 C.

17 JENSEN: D is the letter that was --

18 SOTO: Exhibit [crosstalk]

19 JENSEN: -- written to Mr. Mitchell - Mr.
20 Mitchell, that outlines the procedures for the hearing today,
21 which essentially come from NRS 233B, the Administrative
22 Procedures Act.

23 RISMAN: No objection to E and F.

24 SOTO: So, no objections to D. D is so
25 admitted.

1 JENSEN: Did you say no objection to E as well?

2 RISMAN: D, E, and F.

3 JENSEN: Okay. Again, E is the Personnel
4 Action Report, showing that Mr. Mitchell left employment and the
5 date of that and also provides a "yes" to the question of whether
6 or not there's a potential to move forward for revocation,
7 indicating that; it just says, "Currently under Grand Jury
8 indictment". Exhibit F is the - is the POST Certification that
9 is the subject of this hearing today, for Mr. Mitchell.

10 SOTO: Okay. Exhibits E and F, so admitted.

11 JENSEN: As we're going forward here, the next
12 several exhibits are court documents. These are the documents
13 related to Mr. Mitchell's court proceeding, and starting off with
14 the first being the indictment, which is the original indictment
15 that was issued -

16 RISMAN: And -

17 JENSEN: -- go ahead.

18 RISMAN: -- I don't - I don't want to interrupt
19 you, as you're trying to introduce G, but I do have an objection
20 to G.

21 JENSEN: You do have a - an objection?
22 Essentially, what this is, Mr. Chairman, it's a certified copy of
23 the indictment, certified copy of a court record. It is related
24 to the crime that was potentially ended up as a conviction in
25 this case, in the sense that this shows the pattern of how this

1 particular court proceeding moved through the court system. And
2 we believe it's relevant to this Commission's determination,
3 today.

4 RISMAN: And I have no objection to
5 acknowledging that there was an indictment issued by a Grand Jury
6 in Clark County. But I think the prejudicial effect of the
7 indictment, which contains many charges which were not eventually
8 pursued, and the nature of a Grand Jury proceeding, I think the
9 prejudicial effect of that on this hearing body exceeds its
10 probative value, particularly since we're here today under, as
11 you said earlier, 289.290, involving a gross misdemeanor.

12 JENSEN: Mr. Chairman, I would respond to that
13 with a couple of points. First is that we aren't making an
14 allegation today that Mr. Risman [sic] was convicted on any of
15 these particular charges.

16 RISMAN: I wasn't convicted of anything
17 [laughs].

18 JENSEN: Not Mr. Risman, Mr. Mitchell. I'm
19 sorry, Mr. Risman. [laughs] I'm not trying to convict you of
20 anything here. Mr. Mitchell was not convicted of any of these.
21 Just like every revocation proceeding that we have, we start with
22 the beginning documents in the court proceeding and move through,
23 and you'll see as we move through these documents that it was a
24 later charge that he was convicted of.

1 And so, it's being admitted just for the purpose of showing
2 the process that this particular court proceeding went through.
3 And I think it's appropriate for the Commission to have that
4 before you, for that purpose.

5 RISMAN: And again, I acknowledge that there
6 was an indictment issued, but because 95 percent of the contents
7 of it were not pursued by the Clark County District Attorney or
8 the Nevada Attorney General, that the prejudicial nature of the
9 accusations in it, which were never proved, clearly outweighs its
10 probative value that there was an indictment, which we recognize
11 and stipulate to.

12 SOTO: Any comments from any of our
13 Commission Members? Any comments from the Commission?

14 MCGRATH: John McGrath. I just have a question.
15 So, as these exhibits are opposed, this is probably the first
16 one, are we voting on that? Is that the Chairman's job to rule
17 on that? I'm just not familiar with how that's gonna work.

18 JENSEN: Mr. Goolsby is here to help advise on
19 evidentiary issues. The rules, though, provide that, for the
20 most part, exhibits are accepted, and they're subject to any
21 objections that have been made. But it's up to the Chairman, to
22 make a decision on whether or not the exhibit is admissible or
23 not.

24 SOTO: So, I heard the objections, and we'll
25 - so admitted. It will be admitted. I think that this

1 Commission can certainly look and read for themselves, as to what
2 was and, you know, what Mr. Risman states, in terms of what
3 didn't move forward, in terms of that admission.

4 JENSEN: Moving on to Exhibit H, that is the
5 Guilty Plea Agreement that -

6 RISMAN: No objection.

7 JENSEN: -- all right.

8 SOTO: So, no objection to Exhibit H. So
9 admitted.

10 SPEAKER: The title is [inaudible]

11 JENSEN: Exhibit I is the Amended Indictment.
12 Amended Indictment is the document that's referenced in the
13 Guilty Plea Agreement. It's the charge for which -

14 RISMAN: No objection to Exhibit I.

15 SOTO: No objection to Exhibit I. So
16 admitted.

17 JENSEN: Exhibit J is a certified copy of the
18 Judgment of Conviction in this case, pursuant to PLTP [crosstalk]
19 Alford.

20 RISMAN: No objection.

21 SOTO: No objection to Exhibit J. So
22 admitted.

23 JENSEN: The next two exhibits are the
24 transcripts of the Grand Jury proceeding that took place here in
25 Clark County. They were received and are actually filed in the

1 District Court, here in Clark County. They are court documents
2 that we received from the court. Just like any of the other
3 court documents that we've introduced, they're self-
4 authenticating, certified copies of a public record.

5 The objection that I understand, and Mr. Risman will, I'm
6 sure, give us more detail on this, is that they contain the
7 testimony of multiple witnesses who appeared before the Grand
8 Jury. Two of those witnesses are the keys ones for us, today,
9 one of which is Colin Haynes, who is the investigator for the Las
10 Vegas Metropolitan Police Department, who did the investigation
11 on this case.

12 He's a financial analyst who looked through the documents
13 here and determined what he determined through his investigation.
14 He is here and subject to - not only to direct, but cross-
15 examination, concerning any of his testimony at the Grand Jury
16 proceeding. The other individual that is key here - it - has
17 some value here. I'm not going to say she's key, is Stacy
18 Calvert, who was Mr. Mitchell's bookkeeper, who kept the records
19 in this particular case.

20 And she may - she had certain testimony about what she did
21 with regard to the records that she kept for the - for the
22 Constable's Office, in terms of payroll and other bookkeeping
23 services that she did for them. She is not going to be a witness
24 here today. We, as you know, don't have the authority to
25 subpoena witnesses, on this Commission, and so, don't really have

1 the ability to compel a witness to appear before you. I would
2 point out, however, that her testimony appears to be consistent
3 with other documents that you'll see today, that I believe Mr.
4 Risman has the opportunity to contest those particular documents.

5 In addition to that, I have not heard that Mr. Mitchell is
6 claiming that his bookkeeper was dishonest or untrustworthy in
7 her testimony at that Grand Jury proceeding. And given the fact
8 that it's under oath, it was done here in Clark County, under
9 oath, we believe it has the indicia of trustworthiness.

10 There are a couple of things that are important, in terms
11 of our introduction of evidence today, when it comes to
12 administrative proceedings. The first is that the Technical
13 Rules of Evidence are not required to be followed in an
14 administrative proceeding.

15 So, when you hear objections to hearsay and other things
16 like that, that we would argue that those don't apply, that the
17 requirements for introduction of evidence in an administrative
18 proceeding are, number one, authentication. This document has
19 been authenticated. Both of these Grand Jury transcripts are
20 self-authenticating, because they are certified copies of record.
21 The second is that it should have reliability and trustworthiness
22 to it.

23 And we would submit that these were witnesses who were at a
24 Grand Jury, under oath, and were subject to perjury if they were
25 dishonest. I would point out that if Mr. Mitchell wants to call

1 into question the veracity of his bookkeeper and the testimony
2 that she gave at that proceeding, we would certainly be willing
3 to attempt to get her as a witness, if that's where you're going
4 with this, and if that's the reason for your objection.

5 And so, we believe that these are documents of the type
6 that are admissible in a proceeding like this and that the
7 Commission can give the testimony the weight that you feel is
8 appropriate, which is how, generally, it works in these
9 proceedings. You would admit it, subject to what weight you
10 would give to it.

11 RISAMAN: My objection is based on the very
12 purpose and structure of a Grand Jury proceeding. It is done in
13 secrecy. The witnesses are told multiple times that this is not
14 a matter of public. The accused is not allowed to be present
15 when a Grand Jury is conducted, nor is he allowed to have any
16 legal representation. There's no opportunity for background
17 checks into the witnesses. There's no opportunity for the - an
18 investigator on behalf of the defendant to look into the facts.

19 It - there is no proceeding involving any kind of penalty,
20 in my understanding, in the history of this state, that has allow
21 - and certainly not in any criminal or civil cases that go before
22 a court, but none before any administrative body, either, that a
23 challenged Grand Jury transcript has been admitted. It just
24 rocks the very foundation of fairness to have a proceeding where
25 the person isn't even aware there is such a proceeding. That's

1 why, later, you have the rest of the judicial system, including
2 these administrative hearings.

3 Certainly, the witness who you will have here has the right
4 to testify to anything within his personal knowledge. And if
5 something comes up that's hearsay, this Commission can then
6 determine it. But to have an entire Grand Jury proceeding
7 admitted, I think, not only - I think it violates fundamental
8 fairness and due process and could even jeopardize the results
9 and findings. But I leave it up to the Chief and the Commission
10 to decide what they want to do.

11 JENSEN: Mr. Chairman, let me say this. What I
12 would ask is that we - we reserve a ruling on this, until the end
13 of the hearing, after we've put all the evidence on, and we can
14 talk about it again, at that point. I think that would make
15 sense.

16 RISMAN: That's fine, as long as [laughs] - and
17 I trust everybody on this Board to just not peruse it [laughs] at
18 their leisure, during regular testimony. That's fine.

19 JENSEN: Absolutely, yeah. And I - I agree
20 with that. It's several hundred pages long, so I think they'd
21 have a hard time [laughs] perusing during the course of this
22 hearing. But -

23 RISMAN: Except for the yellow highlights you
24 marked there, Mike.

1 JENSEN: -- [laughs] for the record, there are
2 no yellow highlights in there.

3 SPEAKERS: [laughter]

4 RISMAN: True.

5 JENSEN: I want that on the record.

6 SOTO: Okay. So, I will - any comments from
7 the Commission on this? I'll ask the Commission not go through I
8 guess it's Exhibit K?

9 JENSEN: There - there are two exhibits that
10 are Grand Jury transcript. I think it's K and the next in line.

11 SOTO: K and L?

12 JENSEN: Yes.

13 SOTO: Okay. So, I would ask the Commission
14 not to go through K and L. And we will reserve that, and we will
15 move on.

16 JENSEN: And then, the next housekeeping item,
17 Mr. Chairman, would be that we would ask that the witnesses for
18 this proceeding be excluded from the room while testimony is
19 occurring.

20 RISMAN: I have no objection to that, either.

21 SOTO: Okay.

22 JENSEN: So anyone who's a potential witness
23 needs to wait out in the hall.

24

25

1 SOTO: All right. I'd ask any witnesses that
2 - leave the room, for now. We'll close the - close the door, and
3 we'll move forward. [pause]

4 SPEAKERS: [whispering]

5 SOTO: Okay. Do we have any other witnesses
6 in the room? Okay.

7 JENSEN: The procedure that we had set out in
8 the letter was that we would start off with opening statements,
9 and I'm happy to do a short opening statement, if you want to do
10 those, Mr. Risman.

11 RISMAN: I - I am, but who would go first, is
12 appropriate?

13 JENSEN: We would go first.

14 RISMAN: After you, my friend.

15 JENSEN: Mr. Chairman, Members of the
16 Commission, the evidence in this case will show that former
17 Henderson Constable Earl Mitchell was originally indicted on
18 multiple felony counts of Theft and a felony count of Fraudulent
19 Appropriation of Property by a Public Officer, that the
20 indictment was handed down by a Grand Jury in Clark County,
21 Nevada. Through a guilty plea agreement, dated July 23rd, 2019,
22 Mr. Mitchell agreed to plead guilty pursuant to *North Carolina*
23 *versus Alford*, to the crime of Fraudulent Conveyance, a Gross
24 Misdemeanor, in violation of NRS 205.330.

25

1 As part of his plea agreement, Mr. Mitchell agreed to pay
2 \$82,000 -- \$82,660 to Clark County for restitution, prior to
3 entry of his plea. As stated in the guilty plea agreement, an
4 Alford plea does not require the defendant to admit guilt, but is
5 based on the belief that the state has sufficient evidence, at
6 trial, that a jury would return a verdict of guilty on a greater
7 offense or on more offenses than the offense he's pleading guilty
8 to.

9 On July 23rd, 2019, an Amended Indictment was filed,
10 charging Mr. Mitchell with the crime of Fraudulent Conveyance, a
11 Gross Misdemeanor. The factual basis is stated in the Amended
12 Indictment, which you have in your exhibits. States that on or
13 between June 1st, 2015, and March 26th, 2018, he fraudulently
14 appropriated \$82,660, which was entrusted to him, having
15 requested the funds from Clark County, through misrepresentation,
16 and then, appropriating the funds for his own, personal use.

17 The investigation that led to the criminal charges
18 disclosed how Mr. Mitchell fraudulently appropriated the funds
19 from Clark County through misrepresentation and then,
20 appropriated the funds for his own use. You will hear from Colin
21 Haynes, who is with the Las Vegas Metropolitan Police Department,
22 who conducted the investigation. He looked at financial
23 documents for the time period that started in June of 2015
24 through March 26th of 2018.

1 The reason that he selected that time period was, beginning
2 in January of 2015, the way the Constable's Office was funded had
3 changed. Clark County created an Enterprise Fund, in which
4 revenue from the Constable's Office was deposited. Also, Mr.
5 Mitchell began getting a salary from Clark County at that time.
6 Mr. Mitchell would request funds from the Enterprise Fund to pay
7 the Deputies' salaries and cover office expenses. He used a
8 voucher to request the funds from the County.

9 The evidence will show that by inflating the amount of
10 payroll, payroll tax withholdings, and office expenses, he was
11 able to obtain money from Clark County, which he ultimately used
12 for his own purposes. Mr. Haynes will explain the scheme used to
13 obtain additional funds from the County through misrepresentation
14 and how he appropriated those funds for his own use. Mr.
15 Mitchell used a fraudulent scheme to get that money from Clark
16 County.

17 The Henderson Constable's Office bank account became, I
18 would argue, Mr. Mitchell's personal ATM. These actions occurred
19 while Mr. Mitchell was the head of -

20 RISMAN: I'm going to -

21 JENSEN: -- a law enforcement entity -

22 RISMAN: -- Mike, no offense, but I think we
23 can have a little drama in an opening statement, but it's what
24 you're going to prove. And is it your intent to prove it was his
25 own personal ATM?

1 JENSEN: -- I think you'll find, from the
2 exhibits that are presented to you through this hearing, that Mr.
3 Mitchell withdrew thousands of dollars in cash withdrawals from
4 that fund. And I think that's the appropriate way to
5 characterize what he was doing.

6 RISMAN: Certainly colorful.

7 JENSEN: These actions occurred while Mr.
8 Mitchell was the head of a law enforcement entity, in which the
9 public had placed significant trust. The evidence will show Mr.
10 Mitchell violated that public trust and has disqualified himself
11 from acting as a Peace Officer in the future. Based on the
12 evidence presented, I will, at the end of this hearing, ask the
13 Commission to revoke Mr. Mitchell's POST Certificate.

14 RISMAN: Good afternoon. I already introduced
15 who I am. So, let me summarize what I believe Mr. Mitchell and I
16 are here for this afternoon and taking up your valuable time.
17 The Nevada Revised Statutes address misconduct of a police
18 officer, only to the extent that when a Peace Officer commits a
19 Felony, he or she is to have their Certification revoked. It's
20 clear, and we're not here on that issue today.

21 What we're here today on is Nevada Administrative Code
22 289.290, which gives this Commission authority and jurisdiction
23 to do three things when somebody is convicted of a Gross
24 Misdemeanor. The first -- because 289.290 is discretionary, the
25

1 first option, of course, is not to act at all. And if that road
2 had been taken, we wouldn't be here today.

3 But the three things that happen after a Notice of
4 Revocation has been submitted is to find no action needs to be
5 taken after the hearing, that a suspension should be imposed upon
6 the Certificate holder, for revocation. I think we can all agree
7 that revocation is the highest form of punishment. It is the
8 death penalty to a Peace Officer or law enforcement officer,
9 because, at least for the next five years, that person cannot
10 serve the community or cannot act in law enforcement.

11 I think the first of the four options is already left and
12 is behind. So now, we're looking at the other three. While I
13 would like to sit here and argue that no action should be taken,
14 I'm not sure I could convince the majority of you of that. But I
15 think by showing the circumstances of the plea, the punishment
16 imposed on Mr. Mitchell, and the value he's given the community
17 at both the general public and law enforcement, throughout his 35
18 years as a Peace Officer, will allow you to consider the exercise
19 of your authority and invoke a reasonable suspension.

20 And what that suspension - what the time would be, what the
21 conditions would be, we can save for after the presentation of
22 evidence. But I think you'll find that, for the reasons I just
23 said, our evidence will show, this is not one that calls for the
24 death penalty [laughs] - the professional death penalty on
25 someone who's served by your side for 35 years.

1 SOTO: Any comments from the Commission?
2 What I will say to those in the room, this Commission, we will
3 certainly take into consideration whether or not there was a
4 misappropriation of funds and what that misappropriation of funds
5 was or was not. And certainly, listen to Mr. Mitchell and his
6 counsel as to what and why.

7 JENSEN: Thanks, Mr. Chairman. I would, then,
8 call our first witness, Colin Haynes.

9 SOTO: Okay. Colin --

10 RISMAN: Could we have, like, about a 30-second
11 recess?

12 SOTO: -- yes.

13 RISMAN: I need to speak to somebody outside.

14 SPEAKER: 30-second recess [laughs].

15 RISMAN: [laughs] And -

16 SOTO: I'll give you - I'll give you two
17 minutes.

18 RISMAN: -- thank you. Chief Soto, also --

19 SPEAKER: [inaudible]

20 SOTO: Go ahead.

21 RISMAN: -- Chief Soto? Off - off the record,
22 my condolences on the passing of the former Reno Mayor.

23 SOTO: Oh, thank you. Thank you.

24 SPEAKER: Can we move this and [inaudible] need
25 to move them over.

1 SPEAKER: Yeah.

2 SPEAKERS: [whispering]

3 SPEAKER: Say he's been indicted for four
4 counts, plea to a [whispering] [inaudible]

5 SPEAKERS: [whispering]

6 SOTO: Okay. I think we have concluded our
7 recess, and we can move forward.

8 JENSEN: Mr. Chairman, we would call Colin
9 Haynes. I'll go get him.

10 SOTO: And Colin Haynes, again, is -

11 SPEAKER: Metro's financial -

12 JENSEN: With Las Vegas Metro.

13 SOTO: -- thank you. Thank you, Mr. Haynes.
14 You can have a seat right here.

15 HAYNES: Thank you.

16 SOTO: Detective Haynes.

17 JENSEN: Mr. Chairman, and have you guys
18 discussed administering oaths to the witnesses, at all?

19 SOTO: Yeah. One moment.

20 SPEAKER: [whispering]

21 SOTO: Okay. Mr. - Mr. Haynes, can you
22 please stand and raise your right hand?

23 HAYNES: Certainly.

24 SOTO: Do you swear to tell the truth, the
25 whole truth -

1 HAYNES: Yes, sir.

2 SOTO: -- so help you, God?

3 HAYNES: Yes, sir.

4 SOTO: Okay. Thank you. Oh, can I get your
5 name spelled for the record, please?

6 HAYNES: Yes, my name is Colin Haynes. That's
7 spelled C-O-L-I-N, H-A-Y-N-E-S.

8 SOTO: Thank you.

9 JENSEN: Thank you, Mr. Haynes. To let you
10 know where people are, here, I'll be asking you the questions
11 [laughs] from over here. Mr. Mitchell's attorney will be asking
12 you questions from over on that side of the room.

13 HAYNES: Certainly. Certainly.

14 JENSEN: So, you can get oriented in the room
15 here. Are you currently employed?

16 HAYNES: Yes, I am.

17 JENSEN: And by whom?

18 HAYNES: By the Las Vegas Metropolitan Police
19 Department.

20 JENSEN: And in what capacity?

21 HAYNES: I'm a Senior Financial Intelligence
22 Analyst.

23 JENSEN: And how long have you been so
24 employed?

25

1 HAYNES: Since June of 2010. So, a little
2 under ten years.

3 JENSEN: Can you briefly describe to the
4 Commission your duties in your position?

5 HAYNES: Yes, I provide specialized
6 investigation support on criminal investigations that have a
7 significant financial component. I assist detectives to locate
8 financial information, gather that information, analyze it, and
9 generate reports and evidence from it.

10 JENSEN: Can you briefly describe to the
11 Commission the training and education that you've received to
12 help you in your position?

13 HAYNES: Yes, sir. I've been in this position
14 for 10 years. Altogether, I have about 30 years law enforcement
15 experience, 20 of that, working white-collar fraud, as a
16 commissioned officer at the state level, with the Attorney
17 General's Office and the Secretary of State's Office, and also
18 with Metro, as a Abuse and Neglect Specialist. I'm a Certified
19 Fraud Examiner, have been for 13 years, and also a Certified
20 Anti-Money Laundering Specialist.

21 Most of my training experience has been on the job,
22 attending training classes offered by various agencies. I teach
23 financial analysis and money-laundering classes, and I testify as
24 an expert - as a money-laundering expert.

25

1 JENSEN: Were you assigned to be involved in an
2 investigation regarding former Henderson Constable Earl Mitchell?

3 HAYNES: Yes, I was.

4 JENSEN: And about when did that occur?

5 HAYNES: March of 2018.

6 JENSEN: And did your investigation cover a
7 specific time period?

8 HAYNES: Yes, I reviewed financial records and
9 business records for the period of 2015, '16, and '17, through to
10 March of 2018.

11 JENSEN: And was there a reason that you chose
12 that particular time period?

13 HAYNES: Yes. The Henderson Constables, in
14 fact, all of the Constables' Offices, and the Henderson Constable
15 Office, particularly, was changed at the beginning of 2015, in
16 January, on January 5th, 2015, to what was referred to as an
17 Enterprise Fund. Prior to that date, the rules governing Mr.
18 Mitchell's payroll and his operation of the Henderson Township
19 Constable's Office were different. So, we selected a start date
20 of January 5th, 2015, to coincide with when that rule change
21 occurred.

22 JENSEN: When you talk about an Enterprise
23 Fund, could you just real briefly describe what that is, to the
24 Commission?
25

1 HAYNES: Yes. From our investigation, I
2 learned that, in the case of the Constable's Office, in January
3 of 2015, the handling of revenues and money coming into the
4 office was changed. Prior to that date, Mr. Mitchell had
5 received and handled the revenues, the payments and the
6 garnishments through his own accounts, as essentially a private
7 business, that he was the head of.

8 After that date, the funds coming into the office, the
9 revenues, were redirected directly to the County. They were no
10 longer deposited to Mr. Mitchell's accounts or to his business,
11 and they were actually directed to the County, one of the County
12 accounts. The office was set up as a budget. They received a
13 County budget. Many of their overheads were paid directly by the
14 County, as many departments are. And Mr. Mitchell was required,
15 as the head of this private enterprise, to remit claims to the
16 County, every two weeks, to pay those expense that were not
17 covered directly by the County.

18 JENSEN: Can you tell us what expenses those
19 were, primarily?

20 HAYNES: They - based on the documents I
21 reviewed, they were primarily payroll for Deputy Constables who
22 were not - they were not County employees. Some of them were
23 independent contractors, 1099 employees. Some of them were
24 employees of the Henderson Township Constable, as its own
25 separate business, but not County employees.

1 It also included, every two weeks, a claim for payroll
2 taxes that were owed on the payroll for those employees, and also
3 some small incidental fees to pay the bookkeeper, who was
4 preparing payroll.

5 JENSEN: During that time, the new time frame
6 that you were looking into, do you know if Mr. Mitchell was paid
7 a salary by the County?

8 HAYNES: Yes, he was. That was one of the
9 changes in January of 2015. Prior to that, the - Mr. Mitchell's
10 salary had not been set by the County. The NRS covering the
11 Constable's Office allows that the Constables could either keep
12 the - pay themselves from the revenues that their office earned,
13 or the County could set their salary, one or the other. In
14 January of 2015, the County set Mr. Mitchell's salary. I think
15 it was a little over \$103,000, and, at that point, he was no
16 longer allowed to pay himself from his revenues.

17 SPEAKER: What date was that, did you say?

18 HAYNES: January 5th of 2015.

19 JENSEN: Did the Henderson Constable's Office,
20 based on your investigation, have any bank accounts?

21 HAYNES: Yes, they did. There had originally
22 been three. One closed. So, during the time frame under review,
23 there were two bank accounts that were titled to the Henderson
24 Township Constable's Office. They were both held at Bank of
25 Nevada, and Mr. Mitchell was the sole signer on those accounts.

1 JENSEN: At the beginning of the time period
2 that you reviewed as part of your investigation, what was the
3 balance in the Henderson Constable bank account?

4 HAYNES: Well, on January 5th, when we started
5 looking, the balance was still quite high. There was what we
6 considered residual money from the operations of the office,
7 prior to this change-over. It didn't happen overnight. So, in
8 reviewing the bank accounts, we determined that the bank balance
9 on these two combined accounts dropped to about \$1,400 by June of
10 2015.

11 So, about six months into this change, the money that was
12 in that account, that had been earned under the prior system, had
13 essentially been removed. The accounts had effectively zeroed
14 out, and there was \$1,400 left. So, that was the balance, and
15 for the purpose of the analysis, we began the analysis from that
16 date, in June of 2015, through March of 2018.

17 JENSEN: During that time frame, what was your
18 understanding, based on your investigation, how the bank account
19 was supposed to be used?

20 HAYNES: Effectively, based on what I learned,
21 the account was a zero-balance account. Mr. Mitchell was
22 supposed to submit bi-weekly claims to the County, requesting
23 money be deposited to this account to pay the expenses related to
24 the Henderson Township Constable, the business, the private side
25

1 of this. That was for these payroll expenses, payroll taxes, and
2 the bookkeeping fees.

3 Effectively, when that money was transferred, once those
4 expenses were paid, there would be nothing left in this account.
5 The claims were supposed to be for the amount of money that was
6 needed to run that enterprise.

7 JENSEN: So, then, what was the primary source
8 of the funds coming into the bank account, based on your
9 investigation?

10 HAYNES: Principally, it was the submissions to
11 Clark County. There was one every two weeks. They varied in
12 amount. About 94 percent of the money that came into this
13 account came from those submissions to Clark County, those
14 expense claims.

15 JENSEN: Do you know if the Constable's Office
16 had Deputies at the time that you looked at?

17 HAYNES: Yes. There were a number of
18 individuals. Some of them were independent contractors. Some of
19 them were actually employees of that business.

20 JENSEN: And do you know how those Deputies
21 were paid?

22 HAYNES: Yes. Mr. Mitchell would calculate
23 their payroll, or his staff would calculate their payroll, would
24 submit that claim to the County, in this bi-weekly vendor claim
25 voucher, asking for that amount of money, to pay those Deputies.

1 And then, he would cut checks from the business account to pay
2 the Deputies.

3 JENSEN: Do you know if Mr. Mitchell had a
4 bookkeeper that assisted him during this time frame that you
5 investigated?

6 HAYNES: He did. A lady by the name of Stacy
7 Calvert, the business was Anavassi Group.

8 JENSEN: And can you just briefly describe to
9 the Commission the services that you learned she performed
10 through your investigation?

11 HAYNES: She would receive the payroll
12 information from Mr. Mitchell. She would then calculate federal
13 tax withholdings, Social Security taxes, Medicare, for each of
14 the employees. She would calculate that. She would calculate
15 the employer match, the amount of money that the employer had to
16 pay to match the employee's Social Security and Medicare taxes.
17 And she would prepare pay slips for those employees and then,
18 remit that information back to Mr. Mitchell.

19 She also assisted with submitting or remitting the tax
20 withholdings that were withheld from these employees to the
21 federal government.

22 JENSEN: During the course of your
23 investigation, did you obtain certain records that you used as
24 part of your investigation?

25

1 HAYNES: Yes, I obtained - from the County, I
2 obtained copies of all of the bi-weekly vendor claim vouchers,
3 the submissions that Mr. Mitchell was making to request funds. I
4 also, through the use of subpoenas, obtained the records that
5 Anavassi Group, Stacy Calvert, had, her work documents and her
6 own papers, for the preparation of the payroll. I subpoenaed the
7 bank records for the Henderson Township Constable bank accounts
8 and also some records from Mr. Mitchell's personal accounts.

9 JENSEN: In your investigation, in reviewing
10 those documents, did you find any irregularities?

11 HAYNES: Yes, a number of irregularities. The
12 first challenge in this investigation was to determine - we could
13 see that there were a number of checks coming out of the
14 Henderson Township Constable's bank account that were payable to
15 Mr. Mitchell and were deposited to his personal account. None of
16 the vendor claim vouchers, none of the claims, indicated that he
17 was requesting funds from the County for himself. All of the
18 claims were for employee payroll, the Anavassi Group invoice, and
19 the federal employer match for the taxes.

20 So, based on that, there should not have been checks going
21 to Mr. Mitchell from that bank account. We also saw that there
22 were a number of cash withdrawals, using an ATM - various ATM
23 machines. These were principally conducted at casinos and bars,
24 often multiple withdrawals at the same location, consecutively,
25 one after the other, you know, 200, 200, 200, that sort of thing.

1 Obviously, that's very irregular for a business account and for
2 one that is funded principally with County funds.

3 So, the initial thing was to determine how could there be
4 money coming out of this account to Mr. Mitchell or in the form
5 of cash withdrawals, when the account was effectively supposed to
6 be a zero-sum account. There shouldn't have been any money in
7 there to take, if the money that was being obtained from the
8 County was in fact being used for the purpose for which it was
9 claimed. Those were the initial irregularities.

10 JENSEN: Were you able to, through your
11 investigation, determine how money was coming into the account,
12 that he was able to withdraw?

13 HAYNES: Yes. The first thing that I noted, I
14 was comparing the submissions to the County, to request money
15 every two weeks, the vendor claim voucher, with the supporting
16 document for that, against the work papers for Stacy Calvert. I
17 noted that Stacy Calvert, every two weeks, would calculate the
18 employer match for the federal income tax withholdings, for the
19 Medicare and that, and these were calculated - appeared to be
20 calculated correctly, from June through November of 2015.

21 Starting in November of 2015, I noted that, on her work
22 papers, underneath where she would calculate the amount of
23 employer match taxes, there was a new entry began to appear. And
24 it would be something, it would say, 'Per Earl', 'Per E.M.',
25 'Extra tax per Earl', some - some statement like that, a short

1 statement, and there would be an amount entered there. The first
2 one I noted was \$400, and every 2 weeks after that, there was a
3 matching entry that said, 'Per Earl', or 'Per E.M.', or something
4 like that, with an amount of money.

5 The amount varied. Sometimes it was as low as a few
6 hundred dollars. The highest, I think, was about \$2,300, or just
7 under. And this amount was then being added into the employer
8 payroll taxes that were being requested from the County. So,
9 based on those calculations, this amount was not employer payroll
10 taxes. The amount of employer payroll taxes was already
11 documented, and this was added in as an extra amount. The County
12 were remitting that money or transferring that money to Mr.
13 Mitchell's account, based upon that request.

14 The investigation revealed, during my interviews with Stacy
15 Calvert, that that particular entry was that Mr. Mitchell was
16 directly her, verbally, and sometimes via text, to just add an
17 arbitrary amount into that figure. She confirmed that that was
18 not payroll taxes. It was not employer match payroll taxes. It
19 was just a figure that Mr. Mitchell was telling her to add and
20 that she was adding, based on his direction. That was then being
21 submitted to the County. They were putting that money in.

22 So, that was the first thing that I noticed, in terms of,
23 why was there extra money in this account.

24

25

1 JENSEN: During your investigation, were you
2 able to confirm whether or not those additional amounts were ever
3 paid out to the federal government?

4 HAYNES: I was, and they were not. The amount
5 of employer match taxes, the correct amount that Ms. Calvert had
6 been calculating, that's the amount that was paid. This
7 additional amount that was being requested from the County for
8 that purpose was not being paid to the federal government.

9 JENSEN: Was there any other way that you found
10 through your investigation that money was coming into this
11 account?

12 HAYNES: Yes, I did a comparison between the
13 Henderson Township Constable's bank account and the pay slips,
14 the payroll for each of these Deputy Constables. And I think
15 there were some civilian staff that were also employees. And I
16 compared what the records reflected these employees should
17 receive as their net pay against what they were actually paid in
18 - by check.

19 And what I found was, there was additional funds that many
20 of these employees were underpaid. So, their paycheck reflected
21 a certain amount of money that was due to them, but the actual
22 payment to them was less, and that happened quite a number of
23 times.

24

25

1 JENSEN: And in your investigation, then, did
2 you confirm that the employee had actually not been paid the
3 inflated amount that you were finding?

4 HAYNES: Yes, I did. I confirmed the amount of
5 money, that the checks were paid to them was the amount that they
6 were being paid, as payroll, and not the amount reflected on
7 these paychecks.

8 JENSEN: Was there any other way that you found
9 that there was money coming into the account?

10 HAYNES: Yes, there was two other things that
11 were somewhat linked. On the vendor claim voucher, there was
12 just a couple of categories. One was wages, for the employee
13 wages. The worksheet that Stacy Calvert would prepare, which
14 would go with the vendor claim voucher, to the County, these two
15 documents went together. That broke down the wages into three
16 groups, employee wages, employee mileage, and employee expenses,
17 other expenses for the employees.

18 What I found in reviewing the mileage and in reviewing the
19 other expenses was that, for the most part, with a few
20 exceptions, the mileage amount that was being claimed as employee
21 mileage was not being paid to those employees. They were not
22 receiving it. One employee, Ron Maxwell, I believe his name was,
23 he was receiving his mileage, and that was accounted for. But
24 all of the others, there would be an amount that would say,
25

1 'Employee Mileage'. That would then be lumped in with employee
2 wages, but that mileage was not being paid to those employees.

3 And the same was true with the other expenses. For the
4 most part, there would be other expenses. They were not being
5 paid to those employees. So, that was two more ways that they
6 would increase the amount. On some of the work papers that were
7 not remitted to the County, Stacy Calvert would document that
8 some of that mileage and those expenses related to Mr. Mitchell,
9 who at this point was a County employee and was payrolled by the
10 County.

11 But on the documents that would go to the County, it would
12 reflect that this was employee mileage and employee expenses, and
13 it would be added into this employee wage group.

14 JENSEN: Okay. Now, you've talked about how
15 money was coming into the account. Can you describe to the
16 Commission what you found in terms of how Mr. Mitchell was taking
17 money out of the account?

18 HAYNES: Firstly, there were the checks that
19 were paid from the Henderson Township Constable's Office, to Mr.
20 Mitchell. I'd need to refer to my report to give you the exact
21 figures.

22 JENSEN: Sure.

23 HAYNES: But it was approximately \$107,000 in
24 checks that were paid from the Constable's account, to Mr.
25 Mitchell and deposited to his personal account. In addition, the

1 ATM - the cash withdrawals, which were principally at bars and
2 casinos, was about another 50 - I think \$56,000 in withdrawals.

3 Then, there was an additional - about a \$50,000, \$53,000 in
4 debit card usage, where other expenses were being paid for, from
5 the Henderson Township Constable's account, using a debit card,
6 like a point-of-sale transaction. So that's how the money was
7 coming out.

8 JENSEN: I'll have you grab that binder that's
9 right next to you, there, and towards the back of that binder
10 there are some exhibits. I'm gonna go through these, real
11 quickly. First one I wanted you to start with would be the
12 Exhibit R.

13 HAYNES: Okay.

14 JENSEN: Do you recognize that exhibit?

15 HAYNES: Yes. These pages are the work papers
16 prepared by Stacy Calvert. These were obtained from Ms. Calvert,
17 subject to a Grand Jury subpoena served on her for her work
18 records. This first one relates to a single pay period, November
19 5th of 2015.

20 JENSEN: So, it - yeah. Looking at that
21 exhibit, you'll see there's pieces of paper between multiple sets
22 of documents.

23 HAYNES: Yeah.

24 JENSEN: Do those appear to be the documents
25 related to different pay periods?

1 HAYNES: Yes, this is several - obviously, I
2 obtained identical types of records for each pay period from 2015
3 through March of '18. These reflect only some of them. But you
4 can see the first ones are March 5th - sorry. Excuse me.
5 November 5th, then November 19th, December 31st. This is just a
6 selection of those documents.

7 JENSEN: Would you look through those quickly,
8 and see if they appear to be true and accurate copies of the
9 documents that you reviewed in your investigation?

10 HAYNES: They are, yes, sir.

11 JENSEN: Have there been any changes or
12 alterations to those documents?

13 HAYNES: Not that I can see, no.

14 JENSEN: They appear to be accurate?

15 HAYNES: Yes, these are a sample of that I
16 obtained from Stacy Calvert, and they're accurate to that.

17 JENSEN: Ask that Exhibit R be admitted.

18 SOTO: So admitted, Exhibit R.

19 JENSEN: Looking through those documents,
20 you've talked a little bit about the - generally about the
21 process of how money was coming into the account. Can you just
22 briefly describe to the Commission, looking at those documents,
23 what on there showed you that there were additional amounts being
24 added?

25

1 HAYNES: Certainly. If you look through the
2 first four pages, for the November 5th pay period, you can see on
3 that first page the amount of gross pay, the federal withholdings
4 for the employees are \$819, the Medicare and the Social Security
5 tax withholdings, which add up to \$2,191. There's some other
6 reimbursement amounts there. And then, down the bottom, under
7 the section titled 'Employer Taxes and Contributions', you can
8 see a final figure of \$472.09.

9 So, that would be the amount that was required for the
10 employer match on the employee taxes. That would go onto the
11 second page, there. You can see, the fourth line down is
12 employer contribution, the same amount, \$472.09. So, the third
13 page just reflects the same thing. And then, the last page is
14 part of the spreadsheet that Ms. Calvert would use, as she was
15 calculating these. You can see her own notations on there.

16 So, that was submitted to the County as it is. There was a
17 match, and I was able to match that to a matching payroll
18 submission, and that was all correct. If you look to the second
19 set of documents, for the date range of November 19th, 2015, you
20 can see the first page is a very similar calculation, with the
21 last figure on there, the last typed figure on there is the
22 employer taxes and contributions, of \$493.05.

23 But you can see, if you look to the second page there, the
24 fourth line down, where it says, 'Employer Contribution', it's
25 now \$893.05. It's gone up by \$400. That second page would

1 accompany the vendor claim voucher that went to the County, to
2 request money. So, if you look to the third page and the fourth
3 page, you can see on the third page, underneath the types of -
4 that ends, '\$493.05', you can see, 'Per Earl, add \$400, totaled
5 up to \$893.05.'

6 Again, on the last page of that set, in the bottom right-
7 hand corner, you can see the ER tax, \$493.05, and then, the 'Per
8 Earl, \$400'. I began to see that, 'Per Earl', or 'Per E.M.', or
9 some other notation, with an amount of money added. That started
10 on the November 19th, 2015, paycheck, and thereafter, a similar
11 notation was included with every payroll submission.

12 If you look to the next set, December 31st, 2015, you can
13 see the payroll - the employer match for the payroll taxes is
14 \$539.79, but the amount that was remitted to the County,
15 requesting money from the County, was actually \$1,300 - I'm
16 sorry, \$1,039.79. And on the very last page for that pay period,
17 you can see the plus, in a circle, 'Plus Earl, \$500'. So, on
18 that pay period, \$500 was added in.

19 That pattern continued. The third one has the same. You
20 can see the 'Per Earl' amount. This one says, 'Plus \$1,300, per
21 E.M.', on the very last page of the next set. So, each paycheck
22 - or each pay period, a certain amount of money was being added
23 to the employer payroll taxes, 'Per Earl Mitchell', or 'Per
24 E.M.', or 'Per Earl'. It was an - it seems to be an arbitrary
25 figure.

1 It had no relation to the actual payroll taxes. It was not
2 needed for payroll, for the employer match of the payroll taxes.
3 And it was not remitted to the federal government as an employer
4 match. It just remained in the account.

5 JENSEN: I'll have you now look at Exhibit S.
6 Do you -

7 SOTO: Before we move on, I have two things
8 that I want to clarify.

9 JENSEN: -- yes, sir.

10 SOTO: One, the payroll summary, there's
11 several of them that you talked about.

12 JENSEN: Mm-hmm.

13 SOTO: That is the payroll for, to your
14 understanding, for the - for the employees, for the office,
15 essentially. Correct?

16 HAYNES: That's correct. The employees of the
17 Henderson Township Constable's Office, those that were actually
18 employees and not independent contractors, and they were not
19 County employees.

20 SOTO: And then, also, through your
21 understanding, the notes that are written on all of these are in
22 whose handwriting?

23 HAYNES: These were Stacy Calvert. She - we
24 went over these - I went over these with her. She identified
25 this as her work product. These were her notes.

1 SOTO: Okay. Thank you.

2 JENSEN: All right. I'll have you turn to
3 Exhibit S. Do you recognize the documents behind Exhibit S?

4 HAYNES: Yes, again, these are a sample. I
5 obtained all of the vendor claim vouchers that were submitted to
6 the County by Mr. Mitchell. This is a sample of them. Every two
7 weeks, a - the first page, you can see it's titled as a 'Vendor
8 Claim Voucher with Clark County, Nevada'. This one is dated
9 November 2nd, 2015. This - these are the documents that were
10 remitted to the County, the Accounting Department, for the
11 Comptroller, requesting payment of funds by Mr. Mitchell for the
12 expenses of his office, the payroll expenses.

13 Each submission would contain generally - there are a few
14 variations, but pretty much each submission would contain a
15 vendor claim voucher, the -- Anavassi's payroll summary, which
16 matches the one we were looking at a moment ago, prepared by
17 Anavassi Group, and then, a FAX coversheet, which would request
18 the payment to Mr. Mitchell's account. And there would be some
19 of them, sometimes, had a few extra pages. But generally, those
20 three pages would be sent to the County, requesting money, every
21 two weeks.

22 JENSEN: Now looking at the first page of that
23 Exhibit S, it has the category, 'Wages, Taxes, and Anavassi
24 Group'. Through your investigation, were you able to determine
25 what each of those were for?

1 HAYNES: Yes. So, the - the wages amount, the
2 - on this first page, \$12,697.50, that was made of - if you look
3 to the second page, you'll see payroll for the employees, mileage
4 reimbursement employee, other reimbursement employee. If you add
5 up those three categories, they add up to the \$12,697.50 that is
6 grouped into wages. So, the amount that was under wages was the
7 payroll for the employees, mileage reimbursement for employees,
8 and other expenses for employees.

9 JENSEN: I'll have you go through those
10 documents in Exhibit S and see if they appear to be true and
11 accurate copies of the documents that you received from Clark
12 County?

13 HAYNES: Yes, they are. Again, this is a
14 sample. There were a lot more. There was one for every pay
15 period, one set for every pay period. So, this is a sample.

16 JENSEN: Do you see any changes or alternations
17 to those documents?

18 HAYNES: I don't.

19 JENSEN: Okay. I would ask that Exhibit S be
20 admitted.

21 SOTO: Exhibit S, so admitted.

22 JENSEN: Through your investigation, after
23 reviewing these vendor claim forms, can you briefly describe to
24 the Commission what you were able to determine, that was
25 irregular?

1 HAYNES: Well, following review of these, the
2 answer to the question of how - how was there money in this
3 account, that could be used to pay checks to Mr. Mitchell,
4 nothing on here reflects payments to Mr. Mitchell or expenses for
5 Mr. Mitchell or reimbursements for Mr. Mitchell. And yet, I was
6 seeing checks come out of the Constable's bank account, to Mr.
7 Mitchell and being deposited to his personal account. Nothing on
8 here matches for the cash withdrawals that were occurring at
9 these bars and casinos.

10 So this answered the question of, how was there money in
11 this account to fund those payments, since it should have been a
12 zero-sum account. If this \$12,697 was required for wages, and
13 this \$472 for payroll, for employer match taxes, and \$150 for
14 Anavassi Group, and those expenses were paid, that \$13,319.59
15 would be gone. But each week, there was money there, that Mr.
16 Mitchell could draw.

17 From the comparison of what was sent to the County, what we
18 obtained from Stacy Calvert, and the comparisons between those,
19 the pay slips for the employees, and the checks that were coming
20 out of the account to the employees, we were able to see that
21 that was the funding source for why there was money in this
22 account that, you know, really should not have been there, based
23 upon these requests. Mr. Mitchell, you know, signed or notated
24 all or most of these, indicating that that's what this money was
25 needed for, yet, clearly, that wasn't the case.

1 JENSEN: And when you talk about Mr. Mitchell
2 signing those voucher forms, where is that located on the
3 document?

4 HAYNES: So, on the bottom, left of the vendor
5 claim voucher, there's a certification block. The - it's
6 actually two certification blocks. One is for the claimant, the
7 person who is submitting this, essentially, to the County, and
8 the second one for the person at the County who is receiving
9 this. The interesting thing with this set-up was that Mr.
10 Mitchell was effectively wearing both hats. He was both the
11 vendor, the Henderson Township Constable, the owner of this
12 vendor, this third-party entity, and he was the head of the
13 department to whom the claim was being made.

14 So he was making the claim, and he was approving the claim.
15 These were being remitted by him, to him. And then, from there,
16 once he had authorized these and authorized that the expense
17 claim was accurate, this was then sent to the Controller's
18 Office, to pay this money. So effectively, you had a situation
19 where the person making the request for money was the same person
20 who was approving the request for the money. And there was no
21 other oversight of that, other than the entity that was paying
22 it.

23 My investigation revealed that they were not required to
24 review these. They were simply accepting the claim of the
25

1 department head, Mr. Mitchell, that these were accurate and true,
2 and paying them, based upon that.

3 JENSEN: Based on your investigation, did you
4 find that the information that was being placed on these vendor
5 claim forms and certified to by Mr. Mitchell were, in fact,
6 accurate and correct?

7 HAYNES: No. No. In those four ways that I
8 explained earlier, no, they were not correct.

9 JENSEN: And in that particular certification,
10 if I could have you just read what he's certifying to?

11 HAYNES: It says, 'I certify that the foregoing
12 claim is correct and just, that the articles specified have been
13 received by the proper officials of the County, or the services
14 stated have been performed, that they were necessary for and have
15 been or will be applied to County purposes, and that, to the best
16 of my knowledge and belief, the prices charged are reasonable and
17 just.'

18 JENSEN: I'll have you look at Exhibit O.

19 SOTO: Before we go to O, I do have one
20 question that I'd like to know. And maybe I missed it. Through
21 your investigation, the withdrawals that you spoke of, in terms
22 of at bars and casinos and something that - explain that process.
23 Is that a debit card? Is that with a - how did - how did -

24 HAYNES: An ATM card, a debit card.

25 SOTO: - an ATM card.

1 HAYNES: A - with a -

2 SOTO: It belonged to the -

3 HAYNES: -- Henderson Township Constable

4 account, of which Mr. Mitchell was the sole signer.

5 SOTO: -- okay.

6 JENSEN: Have you turn to Exhibit O.

7 HAYNES: Yes, sir.

8 JENSEN: Through the course of your

9 investigation, were you able to create a summary of the 'Per
10 Earl' amounts that were indicated for each pay period?

11 HAYNES: Yes, I did. I went through all the
12 records I obtained from Ms. Calvert and created a small
13 spreadsheet that laid out, for each pay period, the amounts that
14 were specifically requested for the employer match of the payroll
15 taxes and then, any amounts that were added, per Earl, to that
16 figure, to arrive at the amount that was requested from the
17 County. This document is that spreadsheet.

18 JENSEN: So what were the - what was the
19 information that you used to create this summary document?

20 HAYNES: It was the payroll taxes, the employer
21 match to the payroll taxes. That came from the working documents
22 prepared by Stacy Calvert and cross-referenced to the submissions
23 to the County.

24 JENSEN: Okay. And specifically looking at
25 this document, when you're talking about the amounts that you

1 found on those documents that were the additional 'Per Earl' or
2 'Per E.M.' amounts, where do you find those amounts on this
3 document?

4 HAYNES: So, you can see, in the first series
5 of entries, going down to paycheck dated 11/5, there are no 'Per
6 Earl's. So, from June through November, this 'Per Earl' addition
7 wasn't there. Starting on the paycheck dated November 19th, you
8 can see, on the first page, about a third of the way up, you can
9 see, there's a - it's broken into two amounts, the employer
10 contribution taxes.

11 There, you can see the \$493.05 is the first one, and the
12 'Add per Earl', \$400, for the total employer contribution taxes
13 of \$893. So, the \$893 was what was submitted to the County,
14 requesting money. The actual amount that was employer match was
15 the \$493. The amount added per Earl was the \$400. And
16 thereafter, you can see, with pretty much every paycheck, a
17 similar format.

18 The amount of the actual employer payroll taxes that were
19 calculated by Stacy Calvert, the amount that she was instructed
20 to add, per Earl. That amount varies. You can see there's, on
21 the second page, the second entry is \$1,851, \$1,500, \$1,400,
22 \$1,300. So, it varied every paycheck. It wasn't a set amount.
23 It was just whatever she was told to add. And you can see, I
24 added those in, broke them out that way, to total them, at the
25 end of this document.

1 JENSEN: And what was the total that you came
2 up with, with - for the increased amounts, 'Per Earl'?

3 HAYNES: So the additional amounts that were
4 requested from the County, 'Per Earl', was \$70,904.76. You can
5 also see this final paycheck, on 3/22. There is no 'Per Earl'
6 entry. This coincided with the commencement of this
7 investigation, the media attention to the allegations of what was
8 happening. So, from that point forward, the final few pay -
9 vendor claim vouchers that I reviewed, there were no more 'Per
10 Earl' additions. They stopped when this investigation began.
11 Those requests stopped.

12 JENSEN: So when the investigation began,
13 you're saying, you no longer saw the 'Per Earl' added amount to
14 those employer contributions?

15 RISMAN: Asked and answered.

16 HAYNES: Yes.

17 JENSEN: [laughs] I -

18 SOTO: Can I ask a - I have - I want to
19 clarify one more thing. You've probably already spoken to it,
20 but I want to understand it. We're talking about Exhibit O. But
21 the employer contribution taxes, can you explain to me what -
22 that, one more time?

23 HAYNES: Yes. When a - an employer who has
24 employees - as employees, we pay a Medicare tax, we pay Social
25 Security taxes, we pay federal income tax. The employer has to

1 pay Medicare taxes, a match, up to a certain amount, that matches
2 what the employee pays. The employer also pays a certain amount
3 into Social Security that matches what the employee pays. So, if
4 I'm paying \$100 into Social Security from my paycheck, the
5 employer would be paying \$100, in addition to what I'm paying.

6 As an employee, I don't see that money. It's not given to
7 me. It's a requirement that the employer has to pay to Social
8 Security, to match what the employee pays. And that's capped. I
9 don't know the full regulations as where it's capped. So the
10 employer contribution taxes, this was the calculation of how much
11 the employer, in this case, the Henderson Township Constable's
12 Office, not Clark County, the actual entity, how much they were
13 required to pay to the federal government, to match these Social
14 Security and Medicare taxes that their employees were paying to
15 the federal government.

16 So that was their amount. So, that was being obtained --
17 since it's an employee expense, it's the employer expense, that's
18 being obtained from the County, in order to, then, make that
19 payment to the federal government.

20 SOTO: Thank you.

21 JENSEN: Ask you to review this document, and
22 does this particular document fairly and accurately and correctly
23 contain the information that you found during the course of your
24 investigation, with regard to these 'Per Earl' amounts?

25 HAYNES: Yes, it does.

1 JENSEN: Has it been changed or altered in any
2 way that you can see?

3 HAYNES: Not as far as I can tell. It's
4 accurate.

5 JENSEN: We would move to admit Exhibit O.

6 RISMAN: No objection.

7 SOTO: So admit, Exhibit O.

8 JENSEN: I ask you to turn to Exhibit P. Do
9 you recognize that document?

10 HAYNES: I do.

11 JENSEN: And what is that?

12 HAYNES: This is another small spreadsheet that
13 I prepared. These were the checks that were drawn on the
14 Henderson Township Constable's Office account, that were payable
15 to Earl Mitchell, and that, for the most part, were deposited to
16 Mr. Mitchell's Clark County Credit Union account. You can see
17 the check number, the check amount, the date paid, and the amount
18 of each check.

19 JENSEN: When you say, 'Paid to Mr. Mitchell',
20 what do you mean by that?

21 HAYNES: The checks were made payable to Earl
22 Mitchell.

23 JENSEN: What was the total amount for the time
24 period that you investigated, for checks that were made payable
25 to Mr. Mitchell?

1 HAYNES: \$107,322.

2 JENSEN: Would you please review that document,
3 and tell me if it clearly and accurately reflects the information
4 that you found during the course of your investigation?

5 HAYNES: It does.

6 JENSEN: Has it been changed or altered in any
7 way?

8 HAYNES: I don't believe so, no.

9 JENSEN: We would ask that Exhibit P be
10 admitted.

11 SOTO: These checks came - explain to me
12 where these checks - which account this was.

13 HAYNES: These were from the Henderson Township
14 Constable account, the one that was owned and controlled by Mr.
15 Mitchell.

16 SOTO: So admitted.

17 JENSEN: Right. I'll have you turn to Exhibit
18 Q. Do you recognize that document?

19 HAYNES: I do. This is another spreadsheet I
20 prepared that itemized the ATM cash withdrawals that occurred on
21 the Henderson Township Constable bank account, the one that
22 belonged to Mr. Mitchell.

23 JENSEN: Belonged to the Henderson Constable's
24 Office, or to -

25 HAYNES: Yes, sir.

1 JENSEN: -- Mr. Mitchell, personally?

2 HAYNES: Sorry. To the Henderson Township
3 Constable's Office, on which Mr. Mitchell was the sole signer.
4 Sorry.

5 JENSEN: Okay. Looking through that document,
6 does that fairly and accurately reflect the information that you
7 found with regard to cash withdrawals from the Henderson Township
8 Constable's Office account?

9 HAYNES: Yes, it does.

10 JENSEN: Has it been changed or altered in any
11 way, that you can see?

12 HAYNES: No, sir.

13 JENSEN: We would ask that Exhibit Q be
14 admitted.

15 SOTO: So admitted.

16 JENSEN: Were there any irregularities that you
17 saw, at least to you, in investigating these cash withdrawals?

18 HAYNES: Well, they - as you can see, I noted
19 with each one of them, where I could discern it, I noted the
20 location of the cash withdrawal, which is under the heading
21 there, 'Location of Withdrawal'. You can see that many of them
22 were at bars and casinos. Frequently, there would be multiple
23 withdrawals on the same day.

24 So, if you look down to the first entry for Hammer's Bar &
25 Grill, about a third of the way down, on August 19th, you can see

1 there were 3 cash withdrawals made at that bar and grill, for
2 \$102.50, 2 of them at \$142.50, for a total of \$347.50 [sic]. And
3 that occurred a number of times. Again, you can see, on 10/26 of
4 2015, another 3 withdrawals at that bar and grill. \$711 on
5 4/1/2016. There was a number of occasions where multiple
6 withdrawals occurred on the same day, at the same location.

7 JENSEN: And what was the total amount of cash
8 withdrawals that you found through the course of your
9 investigation from the Henderson Township Constable Office
10 account?

11 HAYNES: \$56,629.15. And that did, in fact,
12 include ATM fees. You can see where on the withdrawal reflects,
13 it's \$102.50. That's actually \$100 withdrawal. \$2.50 is an ATM
14 fee, but that's what's taken out of the bank account at that
15 withdrawal. \$100 cash is the [inaudible], \$2.50 comes out of the
16 account but doesn't go to the person making the withdrawal.

17 JENSEN: Did you find a pattern of multiple
18 withdrawals from a bar or casino in a single day?

19 HAYNES: Yes, that's what I was -

20 RISMAN: Objection. Asked and answered, and
21 the document speaks for itself, since you've had it admitted.

22 SPEAKER: [laughs]

23 JENSEN: -- right.

24 RISMAN: Well, can I get a ruling on that
25 [laughs], rather than -

1 SOTO: Yeah. I - I think it's clear that
2 there's been multiple times, there's been multiple withdrawals
3 from the same location. I think we can ascertain that.

4 RISMAN: -- so -

5 JENSEN: All right. Wanted to confirm that
6 we've admitted Exhibit Q.

7 SOTO: Yes, we have. It's so admitted.

8 JENSEN: Ask you to take a look at Exhibit N.
9 [pause] Do you recognize that document?

10 HAYNES: I do.

11 JENSEN: And what is that document?

12 HAYNES: This is a representation of the
13 movement of funds in and out of this account, in comparison to
14 funds that may have or appeared to belong to Mr. Mitchell. One
15 of the things that I found in looking in the Henderson Township
16 Constable's account was that, in addition to the funds that were
17 coming in from the County, which it was made of about 94 -- \$1.3
18 million from the County. That was the bulk of the deposits.

19 But there were other deposits to this account. The other
20 five percent of the money that was deposited to this account -
21 [clears throat] excuse me. First of all, I found that Mr.
22 Mitchell had actually been putting some of his own money into
23 this account, in the form of checks drawn on his personal Credit
24 Union account. So, there was some of his money going into this
25 account.

1 And you can see one of the entries there, about the sixth
2 one down, 'Deposit of Mitchell's own funds, \$58,645'. There was
3 \$58,000, 645 of Mr. Mitchell's money, that came out of his Credit
4 Union account and went into this Henderson Township Constable's
5 account. I have no information as to why Mr. Mitchell was
6 putting his personal money in this account, but, regardless of
7 why, that was his money. And so, in determining money that was
8 removed from this account, I wanted to give Mr. Mitchell an
9 offset for his own money. I don't know why he was putting it in,
10 but he was certainly entitled to take his own money back out.

11 So, what I did is, I was examining this account to identify
12 any funds that went into this account during this time frame,
13 that were not from the County, that were not attributable to
14 these vendor claim vouchers or directly as County funds. So, I
15 added in the \$58,000 that Mr. Mitchell put in the account. There
16 were some cash deposits to this account. I couldn't verify the
17 source of those deposits. To do an analysis that is the most
18 beneficial to, I guess, the defendant, to the person subject to
19 the analysis, if I don't know where it's from, I'll just make an
20 assumption that it's his money and that he's entitled to take
21 that out.

22 So, the cash deposits, since I had no information as to why
23 that went in there, I just assumed that that was Mr. Mitchell's
24 money as well. There were about \$6,000 in additional deposits
25 that, at the conclusion of this investigation, I had not yet

1 verified the purpose of that money. There were some checks that
2 were coming into this account. Again, because I didn't know why
3 that money went in the account, I couldn't say that it was County
4 money.

5 I just made the assumption that was most beneficial to Mr.
6 Mitchell and assumed that that \$6,000 was his money as well. You
7 can see the last entry, the \$1,429.50, that was the beginning
8 balance on this account, when I started the analysis. Again, the
9 way this account had been running prior to this period, an
10 argument could be made that any money in the account belonged to
11 Mr. Mitchell.

12 Since that was the only money in the account, I just,
13 again, did the analysis that was most beneficial to him and
14 assumed that was his money. The first entry there, the top entry
15 that says, 'Mitchell claimed expenses', during the course of this
16 investigation, we did a search warrant on Mr. Mitchell's office
17 and on Mr. Mitchell's home. Seized, during that search warrant,
18 were a number of documents from his home where, that appeared, on
19 their face, to be an attempt to reconstruct expenses, these were
20 handwritten notes on notepads. They were dated.

21 So, they would say, 'July 2015', 'August 2015',
22 'September', and so on, through each of the years, through 2015,
23 '16, '17, and the first part of '18. They would contain
24 notations that said things like, 'Gas', it would have a date, you
25 know, say, 'July 8th, gas, \$22'. There were no receipts with any

1 of these. But it was clear, on the face of them, that they
2 appeared to be an attempt by Mr. Mitchell to recreate expenses
3 that he might subsequently claim he paid, on behalf of the
4 office.

5 Since the basis of this investigation was that Mr. Mitchell
6 was taking money from the Henderson Township Constable's account,
7 that was funded by the County, principally, I wanted to look at
8 this and, again, give the benefit of the doubt, and look at these
9 expenses, even though they were not supported by any
10 documentation. They were never remitted to the County, as
11 expenses, and the County were unaware.

12 I just took them on their face value and made the
13 assumption that if, in fact, these were expenses, if, in fact,
14 Mr. Mitchell had incurred these expenses on behalf of the office
15 and was subsequently going to claim that he was entitled to that
16 reimbursement, I just gave him that, along with his own cash, his
17 own checks. So, I just made that assumption that, 'Okay.
18 \$148,000 of the money that Mr. Mitchell has taken out of this
19 account could be his, potentially, if these expenses were to be
20 believed.'

21 However, in looking at the money that was actually taken
22 out of the account, the figure was \$235. So, even during an
23 analysis based on the records I have, that was most beneficial to
24 Mr. Mitchell, and just took him at his word that these were, in
25 fact, expenses, even though they hadn't been handled properly,

1 and even though there was no proof of them, there was still
2 \$87,233.60 taken from this account by Mr. Mitchell in the form of
3 checks, cash withdrawals, and the use of the account in checks to
4 third parties or debit card transactions that were not in any way
5 accounted for.

6 So, even if you were to do this, and this is, you know, an
7 analysis that is most beneficial and makes the assumption that
8 these were, in fact, expenses, there was still \$87,000 missing
9 from this account.

10 JENSEN: Does that document fairly and
11 accurately reflect the information you gathered in your
12 investigation?

13 HAYNES: That reflects that part of it -
14 summary of that part of the investigation. Again, that was
15 principally done to allow for - we found these documents. I did
16 not know what they were, but they appeared, on the face of them,
17 that they were an attempt to reconstruct expenses. And I just
18 wanted to see what would happen, if I allowed those expenses, and
19 just assumed that, 'Yeah. These were expenses.'

20 Again, they were not supported by any underlying
21 documentation. They were never remitted to the County in any
22 form, whatsoever. The other thing that I was trying to do with
23 this, in this part of the analysis, was, I compared these
24 expenses on a monthly basis, to see, did they match what Mr.

1 Mitchell was documenting or appeared to be documenting as monthly
2 expenses, against the money he was taking.

3 I was looking for any correlation between the checks he was
4 taking, the cash withdrawals he was taking, and the notes he was
5 making, to say, 'This was my expense'. These things just didn't
6 match. There was no correlation, whatsoever, between these
7 handwritten notes and any of the transactions on the Henderson
8 Township Constable's account.

9 JENSEN: Okay. We would ask that Exhibit N be
10 admitted.

11 SOTO: Again, one more question.

12 HAYNES: Sir.

13 SOTO: These notations that you speak of, or
14 these written notes that you came across, what are they - what
15 are they documented? Is that - would that be his claimed
16 expenses?

17 HAYNES: No, sir, because there were no claimed
18 expenses.

19 SOTO: Okay.

20 HAYNES: These were just notes that, purely on
21 the face of them, look like they might be -

22 SOTO: Right. But where does that reflect,
23 on this - on this -

24 HAYNES: On this one document -

25 SOTO: -- yes.

1 HAYNES: -- it doesn't.

2 SOTO: Okay.

3 HAYNES: The term, 'Mitchell's claimed
4 expenses', this was designed to make the representation that if,
5 in fact, at a subsequent date Mr. Mitchell claimed that these
6 notes he had made reflected money -

7 SOTO: Okay. I understand.

8 HAYNES: -- he was owed -

9 SOTO: Okay.

10 HAYNES: -- how would that impact the money
11 that was removed from this account?

12 SOTO: Okay.

13 HAYNES: They were never actually claimed.
14 They were never remitted to the County. The County were unaware
15 of any of these. It was just what we found, during the search
16 warrant.

17 SOTO: I understand. Thank you. Exhibit N,
18 so admitted.

19 JENSEN: [pause] Do you know if Mr. Mitchell -
20 well, at the end of your investigation, did you find that, based
21 on your investigation, Mr. Mitchell had engaged in any criminal
22 conduct?

23 HAYNES: Yes. The case was submitted to the
24 District Attorney. The evidence -- in my opinion, the evidence
25 supported that Mr. Mitchell had remitted a number of false claims

1 to the County, had obtained, through those false claims, several
2 hundred thousand dollars. I'd have to look at my report to see
3 the figure.

4 I think it was - sorry, 160-something thousand dollars,
5 that had been obtained and deposited to this account, based upon
6 these false representations made to the County that this was
7 needed for payroll, for employer taxes. And then, having
8 obtained this money, Mr. Mitchell then removed that money from
9 the account, for his own personal benefit.

10 JENSEN: And do you know if Mr. Mitchell was
11 ever convicted of a crime, based on the things that you found in
12 your investigation?

13 HAYNES: Mr. Mitchell was charged with several
14 felony counts. My understanding is, he pled guilty to one count.
15 I'd have to -

16 RISMAN: We're going to object, unless this
17 witness wants to explain to the Commission that he has personal
18 knowledge of an Alford plea and what legal consequence that has.
19 You have, in evidence, the Plea Agreement, the conviction from
20 the court, and I'm not sure this is the right witness to ask that
21 question.

22 JENSEN: I agree. We'll move on from there.
23 We do have them in evidence. Based on your evidence, did the
24 amounts of funds that went into the account through the methods
25

1 we've talked - you've testified to today, did those appear to you
2 to be bookkeeping errors or innocent mistakes by Mr. Mitchell?

3 HAYNES: No, sir, not at all. No. These were
4 - the investigation revealed that the bookkeeper had been
5 specifically instructed. I found some text messages, where Mr.
6 Mitchell said things like, you know, 'Don't forget. Add \$400,
7 every 1,200.' She was being told to add in the 'Per Earl'
8 amounts, specifically by Mr. Mitchell.

9 The submissions to the County were clearly represented that
10 this money was needed for employee wages, employee mileage, or
11 employee expenses. None of those submissions ever mentioned Mr.
12 Mitchell, or Mr. Mitchell's expenses, or Mr. Mitchell being owed
13 any money, or Mr. Mitchell's mileage. The County got what they
14 got and made these payments, based upon those representations.
15 These are not clerical errors. This was a consistent pattern
16 that, every two weeks, this happened.

17 There were quite a number of checks, where the employee
18 check did not match the payroll they were supposed to get. They
19 were not paid their mileage. This was a regular pattern of
20 activity. Interview with employees identified that, with the
21 exception of one or two, they didn't receive mileage, even if
22 they put in for it, or they didn't know mileage had been claimed.
23 So, this was not clerical errors.

24 JENSEN: Nothing further.

25 RISMAN: Good afternoon.

1 HAYNES: Hello, sir.

2 RISMAN: First, you had characterized
3 underpayments of salaries and monies owed to employees and
4 independent contractors.

5 HAYNES: That's correct.

6 RISMAN: Okay. But, in fact, in your
7 investigation, you did not find any instance where a Constable,
8 an employee, or independent contractor who had made a mileage
9 claim to the office, or a salary claim to the office, or a wage
10 claim to the office, or had withholding be made, there was no
11 actual instance of underpayment by the office to any of their
12 Deputies or contractors. Isn't that correct?

13 HAYNES: No, that's not correct.

14 RISMAN: You're saying, for example, a
15 Constable who was owed a week's salary did not get that week's
16 salary?

17 HAYNES: The Constable did not get the amount
18 of money in the payroll check that was matched to the payroll
19 submission.

20 RISMAN: Let me explain my question.

21 HAYNES: Okay.

22 RISMAN: I don't speak the King's English
23 [laughs], so, I apologize. But did any - forgetting the
24 submissions, on the vouchers -

25 HAYNES: Okay.

1 RISMAN: -- was any employee or independent
2 contractor not paid what he or she earned or was entitled to?

3 HAYNES: Based on this investigation, yes, a
4 number of them. There were expense claims for mileage and other
5 expenses that didn't - there was no payments from the Constable's
6 account to those employees. So, the amount they received from
7 the Constable's account, was not the amount that was due to them,
8 based on their payroll. Am I misunderstanding?

9 RISMAN: Yeah.

10 HAYNES: I'm sorry.

11 RISMAN: Based on your investigation -

12 HAYNES: Yeah.

13 RISMAN: -- was there ever a mileage - let's
14 start with mileage.

15 HAYNES: Okay.

16 RISMAN: Did you ever see or hear of, in your
17 investigation, anybody entitled to mileage reimbursement, who was
18 not reimbursed from the Henderson Constable account?

19 HAYNES: I'll have to - I think I've answered
20 that. There were - there were claims for mileage -

21 RISMAN: And that -

22 HAYNES: -- that were not given to them.

23 That's not -

24 RISMAN: -- I don't - and who made those
25 claims?

1 HAYNES: -- Mr. Mitchell made those claims to
2 the County.

3 RISMAN: That isn't my question.

4 HAYNES: Okay.

5 RISMAN: My question is, did a -

6 SPEAKER: [laughs]

7 RISMAN: -- Deputy make any claims for mileage
8 to the office that went unpaid?

9 HAYNES: There were several - yes. During the
10 interviews, there were several Deputies that said that they had
11 incurred mileage, or they had put in for mileage, but the mileage
12 was not paid to them.

13 RISMAN: Okay. Do you recall the names of any
14 of those Deputies?

15 HAYNES: I don't, off the top of my head, but
16 there's a record of interviews with the Deputies that we
17 interviewed, who said that. But I couldn't tell you which ones
18 said it.

19 RISMAN: Okay.

20 HAYNES: But there is a record of the interview
21 with them.

22 RISMAN: So, a Deputy told you that he or she
23 was shortchanged.

24

25

1 HAYNES: Yes, Deputies said that. Several
2 Deputies said that in regard mileage, you're asking, that they
3 had mileage, that they were just never paid the mileage.

4 RISMAN: Did any Deputy or employee or vendor
5 ever tell you that they were shortchanged, as far as salary or
6 money owed, as an independent contractor?

7 HAYNES: No.

8 RISMAN: Okay. So, as far as wages, or salary,
9 or payments to independent contractor, nobody who worked for that
10 office was ever shortchanged.

11 HAYNES: Well, in regard to the mileage, yes.

12 RISMAN: Other than by mileage -

13 HAYNES: Yeah.

14 RISMAN: -- okay. Did you do an investigation
15 into the history of the subject Constable's account?

16 HAYNES: I'm not sure I understand.

17 RISMAN: Do you know when that account was
18 opened?

19 HAYNES: Back in 1999, I think. It was a long
20 time. It was very long.

21 RISMAN: And do you know what either Social
22 Security number or EIN number was used to open that account and
23 maintain that account?

24 HAYNES: Off the top of my head, no. But I did
25 obtain that. So, we have - there was one number, EIN number,

1 that was used some years ago, and then, a second EIN number was
2 set up after the transition.

3 RISMAN: Okay. On that bank account, during
4 the course of your investigation, was it Mr. Mitchell's personal
5 Social Security number or an EIN that was used?

6 HAYNES: EIN.

7 RISMAN: Okay. And did you ever investigate
8 who the holder of that EIN was?

9 HAYNES: The Henderson Township Constable.

10 RISMAN: Okay. And was that registered with -
11 is that a County entity, or was it an individually-owned entity?

12 HAYNES: Well, it was never actually formed, as
13 far as I could tell, as an entity. There was a - an LLC formed
14 many years ago, Ent LLC. Or it might have been Ent Inc. But
15 that was some years ago. The - at the time this investigation
16 was going on, and shortly preceding that, the Henderson Township
17 Constable was filed as, like, a trade name, with the Secretary of
18 State's Office. There was no LLC, and it wasn't a Fictitious
19 Name Certificate, a dba, on file, that I could find for that.

20 RISMAN: And who was the trade name registered
21 to?

22 HAYNES: Mr. Mitchell.

23 RISMAN: Okay. So, it wasn't registered to the
24 County.

25 HAYNES: No, sir.

1 RISMAN: It was registered to Mr. Mitchell.

2 HAYNES: That's correct.

3 RISMAN: And the bank account was in the name
4 of this fictitious business name.

5 HAYNES: This entity, yes.

6 RISMAN: Which is owned by Mr. Mitchell.

7 HAYNES: That's correct.

8 RISMAN: Okay. Do you have testimony to
9 indicate that this bank account was owned by any entity or
10 government agency, other than Mr. Mitchell, personally?

11 HAYNES: No. No, it was owned by Mr. Mitchell.
12 Or it was owned by the business, but he was - effectively, the
13 business.

14 RISMAN: Okay. In conducting this
15 investigation, did you review or study any statutes, as it
16 pertains either to the Constable's Office or Enterprise Funds?

17 HAYNES: The Constable's Office, yes, NRS 258,
18 I think, off the top of my head.

19 RISMAN: [inaudible]

20 HAYNES: Sorry?

21 RISMAN: Never mind.

22 HAYNES: The statute that applies to the
23 formation of the Constable's Offices.

24 RISMAN: Okay. And I think you stated in your
25 testimony that that statute provided that the Constable may

1 either maintain all the money earned as compensation, or a salary
2 can be set, by the County.

3 HAYNES: Yeah. The statute says that the
4 County gets to decide -

5 JENSEN: Just a second. I'm objecting, because
6 I think that misstates testimony. I don't believe he ever
7 testified to that.

8 RISMAN: He did. He said, 'You can take a
9 salary, or you can keep the proceeds.' If I'm mischaracterizing,
10 please tell me.

11 HAYNES: -- the statute says that the County
12 can either allow the Constable to retain the revenues of the
13 office, or the County can set the Constable's salary, one or the
14 other. But it's not the decision of Mr. Mitchell. It's not the
15 decision of the Constable. It's the County's choice.

16 RISMAN: Okay. As far as salary, is that
17 correct?

18 HAYNES: Yes, the Constable, the person can be
19 paid either by salary or by retaining the fees.

20 RISMAN: But isn't it true that that same
21 statute does not convey the excess money to the County, but, in
22 essence, still retains it, in the Constable's Office?

23 HAYNES: No, it states that on the 4th of each
24 month, or 5th of each month, that all funds should be remitted to
25 the County.

1 RISMAN: It says that in the State Statutes, or
2 County Ordinance?

3 HAYNES: No, no, in the State Statutes. 258, I
4 believe, something like it. I'd have to look at my report, to be
5 able to reference the exact statute.

6 RISMAN: Did you, in your investigation, study
7 any written materials regarding the procedures that the
8 Constables should take, beginning January 5th, 2015?

9 HAYNES: There were some documents obtained. I
10 didn't study them, if that's what you mean. I have interviewed
11 several members of the County, the Controller's Office, the
12 Auditor's Office, regarding the transition.

13 RISMAN: My question is, did you review any
14 written documents that explain the procedures -

15 HAYNES: None.

16 RISMAN: -- on how this - to the best of your
17 knowledge, isn't it true that those documents do not exist?

18 HAYNES: I'm not aware if they do or they
19 don't.

20 RISMAN: Okay. Would you also agree, as a
21 Financial Analyst, that the changeover was quite drastic, as far
22 as accounting procedures, from December 31st, 2014, to January
23 5th, 2015?

24 HAYNES: Absolutely. Yeah. It was a big
25 change. Yeah.

1 RISMAN: And, based on your experience as a
2 Financial Analyst, wouldn't some form of written protocol or
3 procedure accompanying that change, with instructions, be either
4 necessary or helpful?

5 HAYNES: Helpful, certainly. Yeah.

6 RISMAN: Okay. Finally, I'm going to call your
7 attention Exhibit O. And what I'm going to first ask you, isn't
8 it true that Exhibit O, along with some references in Exhibit N,
9 is the only summary that we've talked about today, that
10 discusses, or that puts in writing, how much Mr. Mitchell
11 allegedly took from the Enterprise Fund, into the Constable's
12 funds through inflated vouchers?

13 HAYNES: Were you asking, is it the only exhibit we
14 looked at, reference what we've discussed?

15 RISMAN: That summarizes - that you drafted,
16 that has been summarized and been admitted into evidence.

17 HAYNES: Yes, this is the only exhibit that has
18 been admitted into evidence, based on -

19 RISMAN: And on the -

20 HAYNES: -- what I've discussed.

21 RISMAN: -- and on the last page, page seven,
22 can you repeat what that amount is, that - at the bottom of page
23 seven?

24 HAYNES: The 'Per Earl' amount is \$70,904.76.

25

1 RISMAN: Okay. Now, going back to the previous
2 exhibit, Exhibit N -

3 HAYNES: Mm-hmm.

4 RISMAN: -- isn't it true that, in that
5 account, \$148,000 and \$500 - more than double the amount in
6 Exhibit O was probably or possibly Mr. Mitchell's money, that he
7 is or was entitled to?

8 HAYNES: Yeah. That's double - well, no, I
9 would - I wouldn't testify to that. I would testify that
10 \$148,000, the figure that Mr. Mitchell may or may not have been
11 entitled to, was approximately double the 'Per Earl' amount.

12 RISMAN: Okay.

13 HAYNES: If that's what you're asking.

14 RISMAN: But the exhibit amount that's been put
15 in -

16 HAYNES: Yeah. The amount in this exhibit is
17 approximately double the amount at the end of this exhibit.

18 RISMAN: -- and you did not review or study
19 what an Enterprise Fund is, based on statutory -

20 HAYNES: Not statutorily, but just discussions
21 with the witnesses.

22 RISMAN: -- okay. So, you have no personal
23 knowledge, even from your own research, who owns the funds in an
24 Enterprise Fund, what happens to excess funds, et cetera? I

25

1 shouldn't say, 'Enterprise Funds', in general, but this
2 particular Enterprise Fund.

3 HAYNES: Yes, I do have some knowledge, based
4 on my interviews with the staff, who manage -

5 RISMAN: That's - I'm not - I'm not asking
6 [laughs] for some staff person who's not here, what their
7 interpretation of the statute is. I'm asking, do you,
8 personally, have any interpretation, based on your review of a
9 statute, about -

10 HAYNES: -- based on a review of statute, no.

11 RISMAN: -- okay. No further questions.

12 JENSEN: Nothing further.

13 SOTO: Okay. Thank you.

14 JENSEN: We take a quick break?

15 SOTO: Let's take a 10-minute recess. All
16 right, let's get back at it, because I know that everybody's got
17 probably just as busy agendas as I do, and we got a lot of stuff
18 to get through. So, let's start.

19 SPEAKER: Think Chief Ketsaa's getting a drink,
20 Chief [inaudible].

21 SOTO: We're waiting on one more?

22 SPEAKER: Yeah. He's coming.

23 SOTO: Okay.

24 SPEAKER: Just saw him go by [inaudible].

25 SPEAKERS: [whispering]

1 SPEAKER: Are you sure you don't want to leave
2 it on and let it ring a couple more times?

3 SPEAKER: Oh, yeah. [laughs] Might as well
4 [laughs].

5 RISMAN: Because I think he's gonna call.

6 SPEAKER: Next [inaudible] look at your phone
7 [laughs].

8 SPEAKERS: [whispering, laughing]

9 SPEAKER: Like it's my fault.

10 SPEAKER: Turn that phone off.

11 SPEAKER: So, that update [inaudible]

12 SOTO: So, my real reason [inaudible] -
13 little fun.

14 SPEAKER: So, I have a Bluetick Coonhound puppy,
15 and last night at Westminster, her daddy won the best thing for
16 Coonhounds.

17 SPEAKER: Really?

18 SPEAKER: Yeah. I saw him on TV [inaudible]
19 was.

20 SPEAKERS: [whispering]

21 SOTO: Just send an email.

22 SPEAKER: Yeah. His - didn't even know it was
23 her dad, right?

24 SPEAKER: No.

25 SPEAKER: She came from North Carolina.

1 SPEAKER: Wow.

2 RISMAN: Chief Shea?

3 SPEAKER: Another one I used to use up in
4 [inaudible] is a search and rescue dog. She died, and - that was
5 a great dog. She used to fly with me. I'd haul her up on a
6 hoist, and she would sit there, and, you know, she couldn't have
7 cared less.

8 SPEAKER: You - if you want - if you want
9 something [inaudible], just email me.

10 SPEAKER: She'd just hunker down on the deck of
11 the helicopter and just lay there.

12 SPEAKER: I want you to go up there and walk.

13 SPEAKER: Well, remember, I was a cannon
14 Officer, so, my main dog, I wasn't picking him up for anything.

15 SPEAKER: Yeah. But you love me, right?

16 SPEAKER: Because then, the fight was on.

17 SPEAKER: No.

18 SPEAKER: The only thing about [inaudible]

19 SPEAKER: We have hours of [inaudible]

20 SPEAKER: If you could teach the dog to drive,
21 we wouldn't need the [inaudible]

22 SPEAKER: Oh, there's no doubt about that. I
23 totally agree.

24 SPEAKER: Need that one, for sure.

25 SPEAKER: That's true.

1 SOTO: Okay. Think we have everybody. Mr.
2 Jensen? You want to [inaudible]

3 JENSEN: Yeah. [inaudible] Thank you, Mr.
4 Chairman. We would rest, at this point.

5 RISMAN: All right. Appreciate that. Just -
6 point of clarification. I mentioned there were three things that
7 we were going to go over, the circumstances of the plea, the
8 punishment, and his overall career as a policeman and Peace
9 Officer. We're going lead off. We only have one witness for the
10 first two items, and that would be Mr. Dayvid Figler, who's out
11 in the hall. We can bring him in.

12 JENSEN: Just ask Mr. Haynes to stick around,
13 maybe, for rebuttal, if necessary.

14 RISMAN: Dave?

15 SOTO: Sir, if you'd stand, and raise your
16 right hand. Do you swear to tell the truth, the whole truth, so
17 help you, God?

18 FIGLER: I do.

19 SOTO: Thank you. Would you please state and
20 spell your name, for the record?

21 FIGLER: Sure. My name is Dayvid Figler.
22 First name is spelled uniquely, D-A-Y-V-I-D. Last name Figler, F
23 like in Frank, I-G-L-E-R.

24 SOTO: Thank you.

25

1 RISMAN: Mr. Figler, could you briefly tell us
2 what you do for a living, and how long you've done it, and then,
3 I'll ask some specific questions about what you've done in that
4 capacity.

5 FIGLER: Sure. I am an attorney, licensed in
6 the state of Nevada since 1991. My practice has taken some
7 interesting twists and turns over the last almost 30 years.
8 However, I've emphasized practice in criminal and administrative
9 law. I worked for a lot of interesting names in the community,
10 but -

11 RISMAN: Let's - let's - I don't mean to cut
12 you off, but -

13 FIGLER: -- yeah.

14 RISMAN: -- at one time, were you an employee
15 of Clark County?

16 FIGLER: I was an employee of Clark County, for
17 almost seven years, and I was an employee of the City of Las
18 Vegas, as a Municipal Court Judge, for 18 months, full-time, and
19 7 years after that, part-time.

20 RISMAN: And did you have a chance to represent
21 Earl Mitchell?

22 FIGLER: I did. Earl was one of my clients, in
23 a matter that was charged as a criminal offense.

24

25

1 RISMAN: Okay. And was that the case in which
2 he eventually entered an Alford plea, that is the subject matter
3 of these hearings?

4 FIGLER: That's correct.

5 RISMAN: Okay. So, real briefly, can you tell
6 us, in layperson's terms, although this is a sophisticated panel
7 here, involving law enforcement, but the uniqueness of an Alford
8 plea versus a no contest plea or a straight guilty plea?

9 FIGLER: Sure. This actually has a couple of
10 different interesting components to it. But generally speaking,
11 an Alford plea is so named after a Supreme Court case, *Alford*
12 *versus North Carolina*. It allows an individual to have a case
13 resolved, without ever admitting guilt to an offense, simply
14 wanting to avoid the uncertainty of going through an entire
15 criminal proceeding, through trial. And so, the Alford plea
16 allows the person to move forward with a potential resolution of
17 the case, without ever having to admit to a single fact as being
18 true in that case.

19 In this particular case, it was modified, in that we also
20 had a fictional plea, where we waived defect to the factual
21 allegations in support of the charge as well. So, this was an
22 Alford plea, on a fictional charge.

23 RISMAN: Okay. Without going into detail, did
24 you have a reasonable belief that the original charges under the
25

1 indictment were defensible and could've resulted in a not-guilty
2 verdict?

3 JENSEN: I'm going to object to that question.
4 I don't believe it's relevant to this proceeding, what Mr.
5 Mitchell's criminal attorney thought, with regard to whether this
6 was a defensible plea or not.

7 RISMAN: Well, it's preliminary and a question
8 to further go into the basis of the Alford plea, go into the
9 basis for the reason of the plea, and what Mr. Mitchell was told,
10 regarding his ability to keep his POST Certification. So - and I
11 think that's all -

12 JENSEN: I would just add to that, that in
13 terms of my understanding of relevance, in this particular
14 proceeding, that attempting to undermine the conviction in this
15 proceeding is improper, that the conviction, itself -

16 RISMAN: -- I'm - I'm not -

17 JENSEN: -- stands for and is conclusive
18 evidence of the conduct stated in the conviction.

19 RISMAN: -- and I agree. But you just got
20 through the witness for an hour and a-half, going into the
21 details of the alleged crime. We're not going to go into that.
22 We're not trying to vacate the Alford plea. We're just trying to
23 go into the circumstances behind the plea, which I think are
24 extremely mitigating, if allowed to be presented, in helping this
25 Commission make a decision on what the appropriate action is.

1 JENSEN: And I would agree to that, in terms of
2 admissibility to the extent it's limited to that purpose.

3 RISMAN: Yes, sir. Was it, in your opinion,
4 reasonably defensible for an acquittal?

5 FIGLER: If given the opportunity to go into
6 detail, I will.

7 RISMAN: Right.

8 FIGLER: The short answer to your question is,
9 in my almost 30 years of practice, I would say that the charges
10 in this particular case, handed down by the indictment, were the
11 most defensible and most inappropriate charges that I have seen
12 in my entire career.

13 RISMAN: Okay.

14 JENSEN: Again, I'm going to object to that.
15 It's irrelevant what his opinion is on the charges, in this case.

16 SOTO: Yeah. I'll sustain that objection. I
17 think we can determine - let's move forward.

18 RISMAN: Okay. Mr. Figler, prior to entering a
19 plea, was Mr. Mitchell concerned about his ability to retain his
20 POST Certification and serve the law enforcement community?

21 FIGLER: He had expressed that to me, during
22 the course of both the discussions with the prosecution about a
23 fundamentally fair resolution, as well as the pending litigation
24 to dismiss the entirety of the case, which was still pending at
25

1 the time of the negotiation. In other words, we had challenged
2 even the probable cause of the indictment, by way of a writ.

3 That writ was extraordinarily briefed. It had all the
4 arguments of both the State and the Defense, and supplemental
5 briefs. It was hundreds of pages of attack on the indictment
6 itself. Before Judge Hardy was able to rule upon that, we were
7 able to come to the resolution. But certainly, in answer to your
8 question, Mr. Mitchell, throughout the proceedings, expressed
9 great interest in maintaining his POST Certification.

10 RISMAN: Mm-hmm. And -

11 JENSEN: Mr. Chairman, just a point of
12 clarification, here. If we're going to get into what the
13 discussions were between his criminal attorney and Mr. Mitchell,
14 I need to know whether or not Mr. Mitchell has waived his
15 attorney-client privilege.

16 MITCHELL: Yes.

17 JENSEN: On the record.

18 MITCHELL: Yes, I have. Yes, I have.

19 RISMAN: -- okay.

20 SOTO: Okay. So, he's waived that.

21 RISMAN: And did you, at the time, state to Mr.
22 Mitchell that the plea that was proposed, if he entered a plea to
23 it, would not affect his ability to be a Peace Officer?

24 FIGLER: So, I told Mr. Mitchell that if the
25 judge accepted - because the judge had seen - the judge had read

1 all the transcripts, the judge had read all the briefings, the
2 judge had heard all the arguments, that if the judge accepted
3 this fictional plea, where we waived the defect, on an Alford
4 decision, and did what we expected him to do, which was to impose
5 zero days of punishment. No requirement on a Gross Misdemeanor
6 for a PSI, no requirement for any supervision under parole and
7 probation.

8 No requirement for classes, sub-zero requirements, less
9 than you get in a Misdemeanor. And that the only requirement
10 would be to restore the contested amount of money to the status
11 quo, back to the Enterprise Fund, that that could not reasonably
12 be considered to be a violation of his POST Certification,
13 despite the fact that a conviction for a Gross Misdemeanor could
14 be considered. But it absolutely shouldn't be, under those
15 conditions. And I told him that.

16 RISMAN: Okay. And was that, to the best of
17 your knowledge, one of the bases for his accepting the plea
18 agreement?

19 FIGLER: Once we got through the exposure
20 issues and what could potentially happen at trial, even with the
21 greatest defense and the experts that we had lined up with regard
22 to the County's overreach, with regard to how they were tagging
23 the funds, that once he was assuaged, that there would be no
24 punishment onto that and no Felony attached to it, which would be
25

1 an automatic loss of his Certification, his primary concern was
2 about the POST Certification.

3 And my professional opinion, which I shared with him, was
4 that it would be unlikely that it would ultimately result in the
5 permanent revocation of his Certification, based on these
6 circumstances.

7 If somebody were to look at the actual plea itself and how
8 it was entered, if someone were to read the briefings and were to
9 read the transcripts of Judge Hardy's comments, that this is not
10 a crime of moral turpitude, that this is not a Felony, that this
11 is absolutely something that simply was a means for both parties,
12 meaning the District Attorney and the Defense, to resolve the
13 matter and restore the funds at issue, to the status quo, where
14 Mr. Mitchell still has the authority and the ability to pursue
15 through civil means, which, in my opinion, should have been done
16 in the first place. But we just had to go a round-about way to
17 get there.

18 RISMAN: Okay. Have you read the statutes
19 pertaining to Enterprise Funds and to the Constable's Office?

20 FIGLER: Yes. I would note that they have been
21 recently amended, in 2019. But as they existed at the time of
22 the litigation, from 2014, I believe, which was the time -

23 JENSEN: Your Honor, or --

24 FIGLER: -- to 2016, I did.

25

1 JENSEN: -- Mr. Chairman. I'm going to also
2 object to this line of questioning. Mr. Figler has not qualified
3 himself as an expert in County Enterprise Funds, such that he
4 should be able to testify as to what the legal consequences of an
5 Enterprise Fund are. If you want to argue those, as -

6 RISMAN: Well -

7 JENSEN: -- as Mr. Mitchell's attorney, you can
8 argue those things.

9 RISMAN: -- here's -

10 JENSEN: But we don't need a witness attorney
11 to come in and testify about that.

12 RISMAN: -- well, I - I will say - I will
13 humbly say, Mr. Jensen, that because of his work on this case
14 through the years, he is much more familiar with those statutes
15 than I am. And certainly, we had your witness testify, regarding
16 ownership of those funds and who they belong to, and he said he
17 hadn't even read the statute. So, I'd certainly think somebody
18 who was a County employee and who's been practicing law for over
19 30 years is qualified to say he read the statutes and what his
20 reasonable interpretation of the statutes is, subject to your
21 cross-examination, of course.

22 SPEAKER: Gentlemen, could you please address
23 your - your objections to the Commission and not to each other?

24 RISMAN: Certainly. I'm sorry [inaudible]

25 SPEAKER: [laughs]

1 RISMAN: And I'm sorry, Chief.

2 SOTO: Yeah. I'm going to sustain your
3 objection on this piece. We have a lot of knowledge up here,
4 too, and I've certainly looked at the rules. I understand the
5 rules, and I'd like to hear what else he has to say -

6 RISMAN: Okay.

7 SOTO: -- in terms of this case.

8 RISMAN: Is it your interpretation that this
9 Enterprise Fund did not belong to the County but belonged to Earl
10 Mitchell?

11 FIGLER: That the funds that were passed
12 through the Enterprise Fund, because of the ordinance that the
13 County promulgated, were the property of the Constable. Yes,
14 they were not County funds, because they didn't go into the
15 General Fund. And they weren't allowed to go into the General
16 Fund, because they were, essentially, held for the Constable.
17 And we made that argument to Judge Hardy, in the writ, but it was
18 not ruled upon yet.

19 JENSEN: You're - Mr. Chairman, I - I'm going
20 to object, because we're going, again, into trying to undercut
21 the conviction here -

22 RISMAN: I - I - I agree -

23 JENSEN: -- as opposed to -

24 RISMAN: -- I agree, when he mentioned the
25 writ, and Judge Harding [sic], but would ask that the portion

1 about that the Enterprise Fund belongs to the Constable's Office
2 and not the County be allowed. Because that does not go into the
3 underlying conviction. So that's a mitigating factor to be
4 considered by this Commission.

5 FIGLER: But they do have the authority to be
6 the administrator, basically, of holding those funds, but the
7 province of those funds was never conceded, at any point, whether
8 by plea or otherwise, that they belong -

9 RISMAN: Now, forget the - don't refer to this
10 case. My question is -

11 FIGLER: Okay.

12 SPEAKER: [laughs]

13 RISMAN: -- because I don't want to have to
14 argue, or rather, put the burden on Chief Soto. I mean, sustain
15 or overrule an objection. My question, in general, okay, not
16 relating to this plea. Can the County take the Enterprise Funds
17 from the Constable's Office and use it for road improvement?

18 FIGLER: No.

19 RISMAN: Can they use it for airport
20 improvements?

21 FIGLER: No.

22 RISMAN: Can they use it for any General
23 Purpose Fund?

24 FIGLER: No, they cannot.

25

1 RISMAN: Is it exclusively, as the holder,
2 bailee, trustee, whatever, for the Constable's office?

3 FIGLER: That is correct.

4 RISMAN: Okay. [pause] In your understanding
5 of an Alford plea, can that, as opposed to a no-contest plea or
6 any other type of plea, be used by an administrative body to
7 determine punitive action, and if not, why not?

8 JENSEN: And again, I'm going to object to
9 testimony where he's here claiming to be an expert on an Alford
10 plea and how to -

11 SOTO: Sustained. I understand that. We've
12 gone over this, and I don't want to go over it again. If you
13 want to ask him a question, a specific question, I don't need his
14 opinion. I think that's what this Commission here is for,
15 listening to you today. So, I appreciated the way you set it up
16 before that.

17 RISMAN: Okay.

18 SOTO: What I don't want you to do is, I
19 don't want you to lead him. If you have a specific question for
20 him, ask him the specific question.

21 RISMAN: All right. Have you read Nevada
22 Administrative Code 289.299?

23 FIGLER: I - I did, upon request of Mr.
24 Mitchell.

25

1 RISMAN: Okay. And we are here today because,
2 under that Code, this Commission can revoke or suspend or take no
3 action, based on a conviction, a guilty plea, a guilty but
4 mentally plea, or no-contest plea.

5 FIGLER: Correct.

6 RISMAN: Correct? Was there any mention of an
7 Alford plea?

8 FIGLER: Obviously not.

9 RISMAN: Was there no mention of an Alford
10 plea?

11 FIGLER: No, there is no mention of an Alford
12 plea, which is a unique plea.

13 RISMAN: Is the Alford plea distinguishable
14 from a conviction from a guilty, from a no-contest, or not guilty
15 by reason of mental illness?

16 FIGLER: It is distinguishable, and courts
17 recognize it as such. In other words, if you had a guilty plea
18 for a theft case, and there is an attendant civil case, so, the -
19 the victim also sued civilly -

20 RISMAN: My question -

21 FIGLER: -- you couldn't use the Alford plea to
22 do the prove-up. In other words, it's not automatic, whereas,
23 with a criminal conviction, otherwise, that's not an Alford plea,
24 it would be used as proof of liability. So, Alford pleas are

25

1 treated differently than the ones that you have mentioned. And
2 there's precedent of that.

3 RISMAN: -- and the only punishment
4 administered by the court was not jail time, probation, anything
5 like that? It was strictly restitution.

6 FIGLER: I would say that the court determined
7 that the only condition of closing the case would be to restore
8 the \$84,000-plus to the Enterprise Fund, for whatever further
9 happens to it. That was the only requirement with regard to
10 punishment that Judge Hardy imposed, in this case.

11 RISMAN: And is -

12 FIGLER: And the record states that.

13 RISMAN: -- and to the best of your knowledge,
14 was that paid?

15 FIGLER: Oh, yes, absolutely. It was summarily
16 paid, at the time of the entry. It was all done on that one day.

17 RISMAN: Okay. Now, as you may or may not
18 know, since the entry of the plea and up to today, Mr. Mitchell
19 has been deputized and has served in a law enforcement capacity,
20 on an intermittent basis. Are you aware of that?

21 FIGLER: I am aware of that.

22 RISMAN: Okay. Should he have made an arrest
23 and been required to testify, would a defense attorney be able to
24 impeach his testimony, based on what happened to him, in - before
25 Judge Hardy?

1 JENSEN: Mr. Chairman, again, I'm going to
2 object. You're asking him to give a legal opinion on the
3 application of Brady, potentially in the future, at some time?

4 RISMAN: Well, no, I said, during that time.
5 And I believe we qualified, without going into as much detail or
6 experience, your witness, as an expert in financial analysis,
7 without knowing where he was educated, what his background in
8 financial analysis was, because I didn't want to take this
9 Commission's time in it.

10 I certainly think Mr. Figler is equally qualified in the
11 field of a criminal defense lawyer - law, based on his jobs with
12 the County, based on his service as a judge, and based on what
13 he's doing in private practice, to be able to say if somebody in
14 his field could impeach Mr. Mitchell on a witness stand. Because
15 one of the concerns, I'm sure, of this Commission has to be, what
16 would happen if we allow him to continue to be a Peace Officer or
17 suspend him, and he is reinstated as a Peace Officer, and he
18 needs to testify?

19 I think that's of concern, either towards their decision
20 for him or against him. So, I think this witness is the only
21 body who's going to be here today, who has qualified, and, yes,
22 has expertise and can give an opinion on that.

23 JENSEN: Yeah. I'm just - I'm -

24 MCGRATH: Except for Mr. Mitchell.

25 RISMAN: Pardon?

1 MCGRATH: Except for Mr. Mitchell, if he wanted
2 to testify.

3 RISMAN: Well, what I'm saying is, he wanted to
4 know -

5 MCGRATH: But the questions you're asking are
6 for Mr. Mitchell to answer to us.

7 RISMAN: -- well, the - the question I'm asking
8 Mr. -

9 MCGRATH: He's going to give us his opinion.
10 Sorry to keep interrupting. This is Deputy Chief McGrath.

11 RISMAN: -- no, and that - that's -

12 MCGRATH: For the record.

13 RISMAN: -- that's fine. I'm just saying, Mr.
14 Mitchell would not know if a defense attorney could impeach his
15 testimony, on an arrest, based on the conviction. Mr. Figler
16 does have the qualifications and the expertise to give that
17 opinion, and I think his opinion coming in will take a lot less
18 time and -

19 JENSEN: And I would just add to my objection
20 that, number one, whether or not this conviction could be used
21 for impeachment purposes for Brady, an opinion on whether it
22 could or couldn't is pure speculation. Until a judge makes a
23 determination on that, it's pure speculation. It's irrelevant,
24 unless he had a discussion with Mr. Mitchell about Brady, that
25 he's going to share with us, that's helpful to the Commission

1 understanding and maybe mitigating the circumstances of this
2 particular situation.

3 RISMEN: -- well, if you're telling me that
4 it's not a concern of this Commission whether, if there's - if
5 Mr. Mitchell continues serving as a Peace Officer, that that's
6 not a concern of this Commission, and as much a concern as what
7 happened before, in making a final decision, okay.

8 But I'm just saying, you basically presented your witness,
9 both as an eyewitness, but primarily as an expert witness, and
10 now, you're saying that either Mr. Figler isn't qualified to give
11 an expert opinion or shouldn't be allowed to. And now, we've got
12 a due-process issue again.

13 JENSEN: I'm saying that it's speculation for
14 him to opine on how a judge is going to look at this, as a Brady
15 issue.

16 RISMEN: And I think the scope of an expert
17 witness' testimony is to get an opinion, based upon a
18 hypothetical.

19 SOTO: Objection sustained. I don't need to
20 hear that from him.

21 RISMEN: Mr. Figler, is there anything that you
22 think would be relevant for this Commission to hear that you have
23 not addressed yet or has not been objected to yet?

24 FIGLER: I would just say this. Having been
25 very intimately involved with the details both pre-indictment,

1 post-indictment, and resolution of the matter, that the documents
2 that I know you have in front of you, you have the Guilty Plea
3 Agreement and the Judgment Conviction. These things don't happen
4 in a vacuum, of course.

5 If you look at the language of the Guilty Plea Agreement,
6 which I know is one of your exhibits, it does indicate that he
7 has to waive defects in the pleading. And I think that should
8 speak volumes to the nature of the proceeding, that it's an
9 admission from the Prosecution. These are not standard. That
10 language is not in every guilty plea. That this was a defective
11 - even the resolution that we had was defective.

12 Certainly, if you were to compare this to every other case,
13 of Gross Misdemeanor, Felony, or Misdemeanor, you don't see these
14 type of resolutions. So, not only was it an Alford decision, it
15 was an Alford decision with a defective complaint upon it.
16 That's the judgment conviction that this Board is evaluating. It
17 says that on line 23 of the first page of the Guilty Plea
18 Agreement.

19 And if you were to pull up the minutes, you would also see
20 that the waiver is done orally, at the time of the entry of plea
21 and imposition of sentencing. And that just speaks volumes of
22 the abandonment by the District Attorney's Office, with regard to
23 the initial charges. The only last thing that I would suggest is
24 that the province, or, again, the ownership of the funds at issue
25 were always the primary issue.

1 The ultimate resolution, short of going to trial, and Mr.
2 Mitchell and I discussed this at length, was that, while his own
3 personal bookkeeping is sloppy, at best, that the vehicle upon
4 which the investigation began, which is - I'm sure you heard from
5 the Detective about the vouchers, was merely the ineffective
6 vehicle to obtain back the funds that belonged to Mr. Mitchell.

7 So, whereas other cases of fraud that are in the title
8 could often implicate moral turpitude, it is about the
9 intentional fraud upon to obtain something that does not belong
10 to one. This is about a fraudulent conveyance. This was the
11 compromise that we came up with, as a fiction, because the
12 language of the Fraud Statute talks about being a party to a
13 conveyance that is, in essence, inexact. And that's exactly what
14 we have here.

15 So, with regard to Mr. Mitchell intentionally doing
16 something to obfuscate, he did not, because everything was done
17 in the light of day. Nothing was hidden away or in any manner of
18 sophisticated method to try to get something that didn't belong
19 to him. What it was, was an attempt to respond to an action that
20 was taken by the County, which was to impose an Enterprise Fund
21 to create a degree of transparency to the flow of money of the
22 Constable's Office.

23 There was lots of public comment, with regard - sorry, not
24 public comment, rather, but Commission comment, which is all
25 encaptured [sic] in the public record, as to why they were doing

1 that. And essentially, and we put this in our pleadings as well,
2 they thought that the Constable's Office, under the statutes that
3 go back to the 1920s, was just simply making too much money.

4 And what I would say is that, by implementing an Enterprise
5 Fund, as opposed to what other jurisdictions have done. If you go
6 through the Nevada Statutes, about every 10 years, there's a
7 fight between the County and their Constable, with regard to the
8 fees.

9 JENSEN: Mr. Chairman, he's starting to go into
10 areas that you've already sustained objections on.

11 FIGLER: Let me just sum it up this way, then.
12 The Enterprise Fund was a new experiment, to try to do what
13 others had done before. But there were other ways to do it, with
14 regard to the designation of fees and the compensation structure.
15 But ultimately, those funds did not belong to the County and
16 never have belonged to the County. And that was the main issue
17 of contention and why, ultimately, the charges of theft and
18 fraudulent appropriation by a public official were dropped by the
19 County.

20 What we were left with was a fictional plea that my client
21 was allowed to plead by way of Alford, so he did not have to
22 admit any of the underlying facts, where he was assessed by a
23 judge to be given essentially zero punishment and was able to
24 restore the case back to its original form. To me, that is
25 something that does not rise to the level, and I conveyed this to

1 my client, with regard to his ability to proceed with his POST
2 Certification, to do the types of things that he could be
3 employed to do, after an exemplary career in the Navy, after an
4 exemplary career in the Constable's Office, because - and I'll
5 leave on this note.

6 There was never even an allegation, not one, that a single
7 penny that went into that Enterprise Fund ultimately was not
8 absolutely earned by Mr. Mitchell and his Deputies. That that
9 was all legitimate funds, that were raised under our Nevada
10 structure of incentivized revenue drive, and the Constable's
11 Office is different. It just is, and that's the way Nevada does
12 it. And this fight will go on, between Counties and Constables,
13 for a long time.

14 The last fix, in the 2019 legislature, didn't really change
15 it, and it certainly wouldn't have changed it for Earl. Had he
16 gone about it in a different vehicle, it's the same result. We
17 wound up having to go through the criminal court to get to,
18 basically, a non-resolution resolution, to be able to move on,
19 and that Mr. Mitchell would be able to rightfully - if he chooses
20 to, pursue the claim against the funds that belong to him, as
21 Constable, under Nevada Statutes.

22 So, yes, if it turns out that I gave him very bad advice,
23 with regard to his POST Certification, and I hope that doesn't
24 turn out to be the case. But it was informed advice. It was
25 informed advice, based on my years of experience in dealing with

1 these type of matters. Because, ultimately, anyone who looks at
2 this, outside of the vacuum, who looks beyond the mere judgment
3 of conviction, and looks at everything else that is even
4 available now in this case, would hopefully come to that same
5 conclusion. And that's my position, and I told that to Mr.
6 Mitchell.

7 RISMAN: One last question. The witness before
8 you, for Mr. Jensen, had made continual references to Mr.
9 Mitchell inappropriately taking money from the County. Is it -
10 from what I'm hearing, your position is, the money he took,
11 although administered by the County, did not belong to the
12 County, but belonged to the Henderson Constable's Office, under -

13 FIGLER: It was an extraordinarily wonky way to
14 get the funds back to the Constable's Office, that caused a
15 concern by all the parties, that we were able to work out. But
16 it was not the County's money that Mr. Mitchell took. It was not
17 belonging to the County. It was earned by the Constable's
18 Office, under the statutes, which are very clear, and that was
19 money that belongs to the Constable's Office and for Mr. Mitchell
20 to spend on Constable things, as well as his own personal
21 compensation.

22 JENSEN: Mr. Chairman, again, we're going right
23 down the same road that we've already gone down. You've
24 sustained the objections.

25

1 SOTO: I think we have a pretty good - I have
2 a clear picture -

3 RISMAN: I have no further questions --

4 SOTO: -- thank you.

5 RISMAN: -- Chief Soto.

6 SOTO: Thank you.

7 JENSEN: Just a couple of quick questions -

8 FIGLER: Sure.

9 JENSEN: -- Mr. Figler. With regard to the
10 advice that you gave to Mr. Mitchell regarding the effects of the
11 Administrative, on his POST License, what research did you do,
12 with regard to the case law and Alford pleas and their effect on
13 professional licenses?

14 FIGLER: So, having been in the position for
15 many years, based on my own experience, with regard to -

16 JENSEN: You're not answering the question.
17 I'm asking, what research did you do, in this instance, to
18 determine whether or not an Alford plea had an effect on the
19 ability to revoke a professional license?

20 FIGLER: -- based on my training and
21 experience, and reviewing the statutes themselves, and based on
22 my experiences in other cases, with other Boards, with licensed
23 individuals, that the issuance of an Alford plea puts a person in
24 a far greater person than a straight guilty plea or any of the

25

1 other pleas that are explicitly enumerated in the ordinance or in
2 the statute.

3 JENSEN: Did you do any case research?

4 FIGLER: Specific to my advice with Mr.
5 Mitchell, I did not do any updated case research. As much as I
6 will still stand by the idea that, since it is not a mandatory
7 revocation, based on his Gross Misdemeanor conviction under
8 Alford, and knowing that the case law allows that to be
9 represented as mitigation, as to any Board, that the advice was
10 sound.

11 But in short answer to your question, I did not do
12 independent research with regard to that position, with Mr.
13 Mitchell, in the time that Mr. Mitchell was asking about that.

14 JENSEN: Were you aware, or are you aware, that
15 the majority view in the United States is that you can use an
16 Alford plea, a conviction on an Alford plea, to take
17 administrative action on someone's professional license?

18 FIGLER: The short answer is, yes, I'm aware of
19 that. That can be done, under circumstances, but it is not
20 automatic, and it certainly does create somewhat of a gray area,
21 where there is room for argument and mitigation.

22 JENSEN: So, essentially, your opinion today is
23 based on your experience, without having done any legal research
24 on that specific question of whether or not an Alford plea could
25 be used by a body like this to revoke someone's Certificate.

1 FIGLER: Could it be considered, versus is it
2 automatic? Is that your question? Yes, it could be considered.
3 No, it's not automatic.

4 JENSEN: No, my question was, you did that,
5 without doing any legal research of case law that dealt with that
6 issue.

7 FIGLER: That - that's not accurate. I did not
8 do any independent, specific research, with regard to Mr.
9 Mitchell's question. I have done much research in the past. And
10 I stand by that position, that this Board obviously can consider
11 anything that it finds to be relevant under Administrative Law,
12 which is very broad.

13 But with regard to a specific Alford law, that is not
14 enumerated in a statute. It could be considered by this same
15 Board to be a mitigating factor with regard to an action that the
16 Board wants to take. And I think you would probably agree with
17 that opinion as well.

18 RISMAN: And before we get too back-and-forth
19 on this, and I certainly want Mr. Jensen to continue with his
20 cross, I think one of the key points that we brought up in Mr.
21 Figler's testimony was Mr. Mitchell's state of mind when he
22 accepted the Alford plea, when he accepted the plea, what advice
23 was he going on, on what the consequences would be.

24 And was that contemplated within the scope of the
25 punishment that he was aware of, when he had a way between going

1 to trial or accepting a deal, which was a Gross Misdemeanor with
2 no punishment, whatsoever? I think that's the point for which it
3 was introduced, not to say that this Board couldn't consider it
4 as mitigating or probative. And so, I think that that was
5 [crosstalk]

6 JENSEN: But to be fair, that's what he
7 testified to today, and I'm -

8 RISMAN: -- I - I'm - I understand.

9 JENSEN: -- questioning about that and what the
10 basis for that opinion is, in terms of whether or not he did any
11 research to support that. In terms of your reading of Chapter
12 289, you determined, based on your own interpretation, that an
13 Alford plea could not be used, or wasn't mentioned in 289. Did
14 you ever pick up the phone and call the POST Commission and ask
15 them whether or not an Alford plea could be used to revoke
16 someone's POST Certification?

17 FIGLER: So, again, I think we're parsing
18 words.

19 JENSEN: No, you can answer the question.

20 SPEAKER: [laughs]

21 JENSEN: It's a pretty clear question. Did you
22 ever call the POST Commission and ask them whether or not this
23 Alford plea could be used to revoke Mr. Mitchell's POST
24 Certification?

25

1 FIGLER: Okay. In response to that specific
2 question, no, I did not.

3 JENSEN: Okay. And that's all I'm asking.

4 FIGLER: Okay. The first part of it implied
5 something different.

6 JENSEN: Okay. In terms of your testimony
7 about the Enterprise Fund and what your review of the statutes
8 was, with regard to the Enterprise Fund, would you agree that
9 there might be differing opinions on how that Enterprise Fund
10 works?

11 FIGLER: The case law in Nevada is sparse.

12 JENSEN: That was not my question. I said,
13 would you agree -

14 FIGLER: Would there be differing opinions?

15 JENSEN: -- that - could there be differing
16 opinions between lawyers on how that Enterprise Fund should work?

17 FIGLER: On how the Enterprise Fund would
18 interact with the Constable's Office, yes, there could be
19 differing viewpoints on that.

20 JENSEN: So what you shared with the Commission
21 today is just your personal opinion about the Enterprise Fund and
22 how it works, correct?

23 FIGLER: I like to think it's my informed
24 opinion, based on my training and experience.

25 JENSEN: I - and I appreciate that.

1 FIGLER: Thank you.

2 JENSEN: In terms of your interpretation of the
3 Enterprise Fund and that the money that was in that fund was Mr.
4 Mitchell's to use however he wanted, if I understood the way you
5 testified today, did you share that advice with Mr. Mitchell,
6 prior to the activities that form the basis of the criminal
7 charges in this case?

8 FIGLER: I did not.

9 JENSEN: With regard to the other issues with
10 regard to how the Constable's Office can work and ways that he
11 might get money from the Enterprise Fund into his Constable Fund,
12 that would enable him to use the fund in the way you believed he
13 could, did you ever have any discussions about that with him,
14 prior to him engaging in the conduct that he engaged in, that -

15 FIGLER: Prior to the investigation, might be a
16 better way to phrase it, as a timeline. Is that fair?

17 JENSEN: I phrased it the way I wanted to
18 phrase it, which is, did you have that discussion with him prior
19 to the - the activity for which he was charged and convicted?

20 FIGLER: Thank you for that clarification. I
21 did not.

22 JENSEN: Just one last thing. With regard to
23 the plea agreement, I'll just have you turn to that Exhibit
24 that's in that binder, that --

25 FIGLER: I brought mine. It's the same.

1 JENSEN: -- well, I'd ask you to look at the
2 exhibit, please.

3 FIGLER: Certainly. Which exhibit number?

4 JENSEN: Okay. We're looking at exhibit number

5 -

6 FIGLER: Or letter.

7 JENSEN: -- go to Exhibit H.

8 FIGLER: Yes.

9 JENSEN: [inaudible] myself. Go to the second
10 page of that exhibit, under 'Consequences of the Plea.'

11 FIGLER: Mm-hmm.

12 JENSEN: In that first bold paragraph,
13 underneath 'Consequences of the Plea', could you read that?

14 FIGLER: Certainly. And this is standard
15 language with Alford pleas. 'By pleading guilty pursuant to the
16 Alford decision, it is my desire to avoid the possibility of
17 being convicted of more offenses or of a greater offense if I
18 were to proceed to the trial, and the original charge,
19 parenthetical as for plural, and of also receiving a greater
20 penalty.'

21 JENSEN: And continue.

22 FIGLER: 'I understand that my decision to
23 plead guilty by way of Alford decision does not require me to
24 admit guilt, but it is based upon my belief that the State would
25 present sufficient evidence at trial that a jury would return a

1 verdict of guilty or a greater offense or offenses more than that
2 to which I am pleading guilty.' Continue, or -

3 JENSEN: So, with regard to that language that
4 you just read, where it says that he's admitting that -- his
5 'belief that the State could present sufficient evidence at trial
6 that a jury would return a verdict of guilty or to a greater
7 offense or more offenses to which' - than to which he's pleading
8 guilty, was that something that Mr. Mitchell had to agree with,
9 in order to enter his guilty plea?

10 FIGLER: As Alford - yes, that's exact language
11 from Alford. That comes from the Alford decision, and it's
12 required in order to then pursue that type of plea, as I'm sure
13 you know.

14 JENSEN: Would you agree that that language
15 means that he's agreeing that the State had sufficient evidence
16 to be able to get a guilty verdict against him, if they went to
17 trial?

18 FIGLER: And if the jury believed it,
19 absolutely.

20 JENSEN: Okay. Would you agree that, in your
21 Certification, on page seven, that you've agreed, in your
22 Certification, that you've also explained to him the charges and
23 the consequences of an Alford, and that you've explained to him
24 that an Alford plea means that he's agreeing there's sufficient
25

1 evidence - the State has sufficient evidence to prove the charge,
2 if it were to go to trial?

3 FIGLER: Yes, I believe, they - they - at - so,
4 the bases - and not to get too parsed into the lingual - legal
5 language, but that there would be, if believed, a sufficient
6 basis. Yes, that's what we agree to, in an Alford. If believed,
7 that there would be a sufficient basis. We have to agree to
8 that, to move forward.

9 JENSEN: And I'd ask you to turn to the Amended
10 Indictment, which is Exhibit I.

11 FIGLER: Mm-hmm.

12 JENSEN: This is the conviction that you're
13 calling a fictitious conviction.

14 SPEAKER: [laughs]

15 FIGLER: It's an indictment that both sides
16 admit has defects in it, that were required to be waived, by the
17 language. The language of the plea and the language of the entry
18 of the plea.

19 JENSEN: Would you agree, on page two of that,
20 when the conduct is described, after the 'To wit', it states,
21 'Fraudulently appropriated \$82,660.25, which was entrusted to
22 him, and having requested the funds from Clark County through
23 misrepresentation, and then appropriating the funds for his own
24 use', that was the conduct that he has been convicted of,
25 correct?

1 FIGLER: On the plain language, yes.

2 JENSEN: Nothing further.

3 RISMAN: Real quickly, you mentioned earlier
4 you thought this was defensible. You were not appointed as a
5 Public Defender or Special Public Defender in this case, were
6 you?

7 FIGLER: I was retained by Mr. Mitchell.

8 RISMAN: Okay. Had you gone to trial, would
9 there have been additional fees incurred by Mr. Mitchell?

10 FIGLER: There would have been.

11 RISMAN: And do you have an approximation what
12 those fees would have been, and were those conveyed to Mr.
13 Mitchell at the time?

14 FIGLER: Yes. Without getting too deep into
15 it, I told him that if we were to actually do a full-blown trial
16 on this, along with experts, et cetera, that he should be looking
17 at a - an additional 6-figure retainer to us, and somewhere
18 \$100,000 and \$200,000.

19 RISMAN: And is a trial stressful on the
20 participants? Not the lawyers, but the participants.

21 FIGLER: Everyone involved, especially when I'm
22 in that trial, comes away with stress.

23 RISMAN: And did the fact that the cost to
24 defend was going to be at least one and a-half to two times or
25 more larger than the amount under the plea, and that there was

1 absolutely no jail time or probation required under the plea, was
2 that, in addition to your advice that there'd be no ramifications
3 to his profession, was that a consideration that Mr. Mitchell
4 made with your advice and counsel, in accepting the plea?

5 FIGLER: The cost is always a concern to my
6 clients, and it was a concern to Mr. Mitchell as well, as where
7 he would come up with that additional funding. And that was part
8 of his decision-making process, that he revealed to me.

9 RISMAN: And at the time, to the best of your
10 knowledge, he was no longer Constable at Henderson, correct?

11 FIGLER: He was winding down his Constable,
12 when he first retained my services. Most of the work that was
13 done, so we're talking about starting in 2019, and moving
14 forward, he was already - had voluntarily - not required, but
15 voluntarily resigned from the Constable's Office. Or, he didn't
16 resign at all. He just chose not to run for re-election.

17 RISMAN: And so, at the time the plea was
18 presented, he was not full - was not employed as a full-time
19 employee at any place, to the best of your knowledge.

20 FIGLER: To my knowledge, no.

21 RISMAN: No further questions here.

22 SOTO: Okay. Thank you.

23 FIGLER: Thanks.

24 JENSEN: Thank you.

25

1 RISMAN: As we call our next witness, I'm gonna
2 ask a favor of Mr. Jensen. We provided you with a copy of a
3 Sworn Affidavit or statements from Officer Hatch. I did not, I
4 apologize, make copies of that. I don't know if you distributed
5 that already to this Commission -

6 JENSEN: No.

7 RISMAN: -- or there's a way to get copies, so
8 we can. But we did notify it as our one and only exhibit, and I
9 would like them to have the benefit of having it.

10 JENSEN: No objection to the letter.

11 RISMAN: Do we have a way to make copies?

12 JENSEN: I don't know.

13 SPEAKER: I can see if I can try to get that
14 done. We're going to take -

15 RISMAN: Thank you very much, Deputy Chief.

16 SPEAKER: -- we gonna take a break?

17 SOTO: Yeah. We can take a break and get
18 that, real quick.

19 RISMAN: And -

20 SPEAKER: You can pass that to Deputy Chief.

21 RISMAN: -- thank you.

22 SOTO: Take a break until you get the copies.

23 SPEAKERS: [laughing]

24 SPEAKER: Be quick. Should do a background

25 [inaudible]

1 SPEAKERS: [multiple speakers inaudible]

2 SOTO: Okay. Think we have everybody back.

3 Let's get started.

4 RISMAN: All right, real quickly, the rest of
5 our case is going to be to show the type of policeman and Peace
6 Officer Earl Mitchell has been, for the last 35 years, both among
7 his coworkers and in being an aide to the community, and why that
8 record would carry over, if at some - if currently or sometime in
9 the near future he's allowed to resume that career. That's what
10 this evidence is being presented for.

11 SOTO: Okay. Would you please stand and
12 raise your right hand for me. Do you swear to tell the truth,
13 the whole truth, so help you, God?

14 AVERETT: I do.

15 SOTO: Thank you. Would you say and spell
16 your name, for the record.

17 AVERETT: My name is Ronald Cameron Averitt, A-
18 V-E-R-E-T-T.

19 SOTO: Thank you.

20 RISMAN: And Mr. Averett, is there a title I
21 should address you by, that - Lieutenant or -

22 AVERETT: Ron.

23 RISMAN: -- [laughs] okay. Ron.

24 AVERETT: Mm-hmm.

25

1 RISMAN: Could you tell us briefly your history
2 in law enforcement?

3 AVERETT: I started with Henderson PD in July of
4 1976, as a Reserve Officer. I went full-time with the Henderson
5 PD in September of '77, and I retired in March of 2012. That's a
6 total of, the city, somewhere around 36 years.

7 RISMAN: And what was the highest rank you
8 achieved, while in Henderson, at -

9 AVERETT: I was a Deputy Chief, when I retired.

10 RISMAN: -- okay. And are you familiar with
11 Earl Mitchell?

12 AVERETT: Yes, I am.

13 RISMAN: And how do you know Mr. Mitchell?

14 AVERETT: I met him at work.

15 RISMAN: Was he a Henderson Police Officer,
16 like yourself?

17 AVERETT: Yes, he was.

18 RISMAN: And did you work together? Was he
19 under your command? What was the professional relationship?

20 AVERETT: I don't know what rank I was at, when
21 Earl came onboard. Was probably a Sergeant or a Lieutenant. I
22 believe he worked as a Patrol Officer, when I was a Lieutenant
23 over day shift, and he may also have been a Sergeant, for a brief
24 period of time when I was a Lieutenant. But there was some
25 distance between the ranks. I did not work the street as a

1 Patrol Officer with him or as a direct Sergeant over him, that I
2 recall.

3 RISMEN: Did you become familiar with his work
4 as a policeman?

5 AVERETT: To some degree. There was - you know,
6 if I was the Lieutenant, there was a Sergeant between me and him
7 and his work, but as far as, like, hearing or doing anything just
8 with him, personally, I didn't do a whole lot of street work with
9 Earl.

10 RISMEN: Did Earl have a reputation within the
11 Henderson Police Department, that you know of?

12 AVERETT: Yes.

13 RISMEN: Okay. I know I'm never supposed to
14 ask -

15 SPEAKER: [laughs]

16 RISMEN: -- a question I don't know the answer
17 to, but go ahead and tell us what that reputation was.

18 AVERETT: Well, that he was not a fireball, and
19 he wasn't the go-getter, but he was a Steady Eddie, is, I guess,
20 the best way to describe it.

21 RISMEN: And are those good or bad traits in a
22 policeman?

23 AVERETT: Maybe, you know, a little of both. I
24 never worried about the work, if I was - I'm recalling with I was
25 a Lieutenant, and there was a Sergeant. And I wouldn't worry

1 about the work that he would do, just that he would do something.
2 When I say that, you know, there's others, well, this officer
3 produced this much, and this one produced that much. Well, it
4 was not a quota, but it's a type in the quality of work that
5 comes through.

6 RISSMAN: And do you have an opinion, based on
7 your own personal knowledge and the reputation of Earl, of his
8 qualities as a policeman, while you and he were both at the
9 Henderson Police Department?

10 AVERETT: I never had any issues with the work
11 that he did, and again, work that he would do as an officer would
12 go through a Sergeant. And then, I supervised Sergeants. So,
13 that work wouldn't get through me, but there were never any
14 occasions, that I recall, that came to my attention, that the
15 work he did was poor.

16 RISSMAN: Did you have - ever have any reason to
17 question his honesty?

18 AVERETT: No.

19 RISSMAN: Did you ever have any reason to
20 question his ability to perform his job?

21 AVERETT: No.

22 RISSMAN: Are you aware of any complaints,
23 either by citizens or Internal Affairs, while you and he both
24 served in the Henderson Police Department?

25 AVERETT: No.

1 RISMAN: Have you remained in contact with Mr.
2 Mitchell, since your retirement?

3 AVERETT: I have.

4 RISMAN: And can you tell us what the scope of
5 that relationship is?

6 AVERETT: We attend church together on
7 occasions. He comes to our Monday night Men's Group. I think
8 that he may have attended one our church Men's Retreats, and -
9 other than that, we don't see each other a whole lot. We text
10 and just keep in touch a little bit, but that's how - that's
11 where I'm familiar from him - or with him from.

12 RISMAN: And do you have an opinion of what his
13 ability would be to perform as a Peace Officer or policeman -
14 well, let's make it Peace Officer, from this point forward?

15 AVERETT: Based on my past experience, I would
16 have to assume that he would continue to do an honorable job, to
17 go out there and do police work. I don't have anything in the
18 past that to me, that would indicate otherwise.

19 RISMAN: Do you have any concerns about his
20 honesty in performing the job?

21 AVERETT: I don't.

22 RISMAN: Are you familiar with the troubles he
23 experienced that's the subject of this hearing, i.e., the
24 criminal charges that were brought against him, and the eventual
25 resolution of those criminal charges?

1 AVERETT: Pretty much. There might be a point
2 or two that I'm not familiar with, but overall, I would say, yes.

3 RISMAN: And even with that knowledge, you
4 still think he is both a man of honor, honesty, and able to
5 perform the duties of a Peace Officer.

6 AVERETT: This might be a long-winded answer.
7 When Earl explained to me what was going on and what was taking
8 place, it was confusing to me, the flow of money that ran through
9 the Constable's Office. I remember I told him, you'd have to
10 get, like, a Reman flowchart to even understand it and follow it.

11 So, for me to say that he did something wrong and that he
12 would not be capable of working on the street, I can't say that.
13 I don't know all the details of the case. So, I would have to go
14 off of the Earl that I worked with and knew in patrol.

15 RISMAN: Thank you. No further questions.

16 JENSEN: Just a couple of real quick questions.
17 Would you agree that there's a great deal of trust placed in
18 Peace Officers --

19 AVERETT: Absolutely.

20 JENSEN: -- by the public?

21 AVERETT: Yes, sir.

22 JENSEN: And would you agree that they should
23 be held to a high standard as - in terms of their conduct?

24 AVERETT: Absolutely.

25

1 JENSEN: Would you agree that honesty and
2 integrity are a critical part of being a Peace Officer?

3 AVERETT: Yes, sir, I would.

4 JENSEN: In your training and through your
5 career as a Peace Officer, what was your understanding with
6 regard to the consequences of being dishonest?

7 AVERETT: My opinion, they should not wear a
8 badge. That that's an integral part of being a police officer.

9 JENSEN: And why was it your understanding that
10 if you have been dishonest that you shouldn't be a Peace Officer?

11 AVERETT: There's a trust the public gives us.
12 A lot of power and authority that the public allows us to have
13 over their actions, and if they can't have that trust in us, then
14 we can't perform properly.

15 JENSEN: You said you hadn't looked or seen
16 much with regard to the criminal case. Do you know what the
17 charge that he was convicted of is?

18 AVERETT: Fraudulent use of money, or something.

19 JENSEN: That's close. That's good.

20 AVERETT: Okay.

21 JENSEN: That's great. As part of that, the
22 name of that is a Fraudulent Conveyance. That's what his
23 conviction is for -

24 AVERETT: Okay.

25

1 JENSEN: -- which includes the word 'fraud'.

2 Would you agree that 'fraud' is a term that involves dishonesty?

3 AVERETT: I would.

4 JENSEN: And if a conviction for fraud of a
5 Peace Officer occurred, that that should be something that should
6 disqualify them from being a Peace Officer?

7 AVERETT: I would have to say yes.

8 JENSEN: Nothing further.

9 RISMAN: I mean, I just heard your answers on
10 cross-examination. Has your opinion that you rendered on direct
11 examination changed at all? In other words --

12 AVERETT: Sorry. I didn't get that.

13 RISMAN: -- all right. In direct examination,
14 you stated that you thought that Mr. Mitchell, based on your
15 knowledge of him, the past, and despite the fact of the charges
16 involving fraud, could capably continue on as a Peace Officer
17 from this day forward. Yet you were asked some questions about -
18 other questions, but similar questions, by Mr. Jensen. Do you
19 still think Mr. Mitchell could perform his duties as a Peace
20 Officer, properly?

21 AVERETT: I think the way I tried to answer that
22 was, my past experience working with Earl, on the street. And I
23 didn't work in the Constable's Office, and I didn't understand
24 all the details and the facts of, maybe, what's in here. So, I
25 don't know what all took place in that. And I understand that an

1 Alford plea is something that would say that I think there's
2 enough in here to convict me, although I didn't do this.

3 So, that's what I'm - I don't know. I'm saying, from what
4 I worked with Earl, I could say, yes, he could go back out and do
5 police work today. With a conviction of fraud, the Board
6 decides, and I think it's highly important for officers to have
7 that bit of trust. So, I know that's kind of an ambiguous
8 answer, there, for you, and I'm trying to be as honest and open
9 as I can.

10 RISMEN: I appreciate that.

11 AVERETT: And yes, Earl is a friend of mine.
12 But the public trust in police officers, I think, has to be held.
13 But again, I don't know all what's in here. I don't know what
14 the Grand Jury heard. I don't know all the intricate details.
15 So, 30 years ago, 25 years ago, when I worked with him, and the
16 Earl I knew, yeah. What's in here, I don't know. But I do know
17 integrity is an integral part of being a police officer.

18 RISMEN: And you still find, as a friend and a
19 former co-worker, Earl to have been honest in all relation - all
20 encounters you've had with him.

21 AVERETT: Yes.

22 RISMEN: Okay. And is it your belief that in
23 making the determination whether he is fit to continue to serve,
24 there's a difference between what your understanding of an Alford

25

1 plea is, versus an outright conviction or outright plea of
2 guilty?

3 AVERETT: If I'm understanding your question
4 correctly, the person that pleads to an Alford's plea says, 'I
5 didn't do this, but there's enough evidence that looks like
6 people would convict me, because I can't explain it.' I'm not
7 sure how to describe it, but where I'm torn is that, if this
8 conviction is on that Alford's plea, says that he did all these
9 things, and I'm not aware of them -

10 RISMAN: Mm-hmm.

11 AVERETT: -- then, that would be - that would be
12 hard for me to say that, 'Yes, he should be police.' From the
13 Earl that I know, from police work with Henderson, the Earl that
14 I've stayed in contact with, he's never led me to believe any
15 reason that he was dishonest with the stuff. So --

16 RISMAN: Okay. Thank you very much. I have no
17 further questions.

18 JENSEN: Nothing further.

19 SOTO: Thank you.

20 RISMAN: [inaudible]

21 SOTO: Thank you very much.

22 RISMAN: All right. While we're waiting for
23 the next witness, which will be the penultimate witness, may I
24 formally move to have this -

25 JENSEN: Oh, sure.

1 RISMAN: -- letter from - or notarized
2 statement from Officer Hatch -

3 JENSEN: No objection.

4 SOTO: Okay.

5 SPEAKER: That will be Exhibit T or Exhibit 1.

6 SOTO: Okay.

7 SPEAKER: Do you have a preference on that? Mr.
8 Risman?

9 RISMAN: No, I don't, Mr. [inaudible]
10 whatever's best and easiest for the Commission. It's our only
11 exhibit, as far as I know, right now. So -

12 SPEAKER: Okay.

13 SOTO: So [inaudible]. Good afternoon.

14 BAGWELL: Good afternoon.

15 SOTO: Could you please stand and raise your
16 right hand for me. Do you swear to tell the truth, the whole
17 truth, so help you, God?

18 BAGWELL: I affirm.

19 SOTO: Thank you. And would you please state
20 and spell your name, for the record.

21 BAGWELL: John Bagwell, B-A-G-W-E-L-L.

22 SOTO: Thank you.

23 RISMAN: Please state - oh, I'm sorry. Go
24 ahead.

25 SPEAKER: I got it.

1 RISMAN: Okay. Thank you very much for
2 appearing here today. Could you please tell us your experience
3 in law enforcement.

4 BAGWELL: I'm a police Chaplain, since 2002.

5 RISMAN: And with several departments?

6 BAGWELL: With the jail, 10 years, and on call
7 for other reasons, such as suicides or family grievances or other
8 death notifications.

9 RISMAN: And Chaplain, have you had an
10 opportunity - do you know Earl Mitchell?

11 BAGWELL: I met him in '95 or '96. He was at a
12 meeting with then, Dave Wilson, as a Community Policing Service.
13 And we were at a community meeting, which was a HACA, H-A-C-A,
14 and that was Henderson Allied Community Advocates. They've since
15 changed their name to HopeLink. But a group of us got together,
16 and we tried to do the good of the community.

17 RISMAN: And do you remember what capacity Earl
18 Mitchell was at that meeting in? Was it as a representative of
19 the Police Department, or just something he wanted to go to, if
20 you know?

21 BAGWELL: No, I don't think it was required, but
22 he was just a meeting - in general, to represent the Police
23 Department.

24

25

1 RISMAN: Okay. And after that meeting, can you
2 describe the growth and expansion of your relationship, and your
3 familiarity with Earl Mitchell?

4 BAGWELL: He just stopped by once a month at our
5 church, maybe every so often, when he had time, just to see how
6 we were doing and how he was doing. There's really no connection
7 with us, any other way. That's it.

8 RISMAN: Did you have a chance to see him or
9 observe him in his duties as a police officer, other than that
10 one meeting that I think you said was in 1995?

11 BAGWELL: Oh, yeah. We - not as a official
12 capacity, but in the personal capacity.

13 RISMAN: We'll get into that in a minute.

14 BAGWELL: Okay.

15 RISMAN: But in his official capacity, did you
16 have a chance to observe him, after that one - in his official
17 capacity, after 1995?

18 BAGWELL: No.

19 RISMAN: Okay. You say, though, that you've
20 know him, personally, since then.

21 BAGWELL: Yes.

22 RISMAN: And can you describe how that
23 relationship continued and the scope of it, please?

24 BAGWELL: We just developed as a friendship and,
25 because of our [inaudible], that he came and visited. And we've

1 met in other occasions and, you know. I had a stroke in 2010 or
2 '11, can't remember. But - so, I can't remember - recall some
3 things.

4 RISMEN: Did you ever observe Earl's work as a
5 policeman, in the community, as a community relations-type
6 person?

7 BAGWELL: Not officially. I don't know.

8 RISMEN: Okay.

9 BAGWELL: I don't understand. It's -

10 SPEAKER: [whispering]

11 RISMEN: I guess - all I'm asking is, did you
12 ever see him in outreach to the community, how he reacted to the
13 victims, how he reacted to suspects, how he acted to just
14 citizens of the community of Henderson, while in uniform or
15 acting in the capacity as a policeman?

16 BAGWELL: As a policeman?

17 RISMEN: Mm-hmm.

18 BAGWELL: I really didn't - I think he retired
19 before we had much communication, but I don't recall. You know,
20 I've seen him in uniform and seen him out of uniform, and -

21 RISMEN: Have you had an opportunity to make a
22 determination about Earl's character?

23 BAGWELL: As far as I know, it's what, you know,
24 just a normal police officer, and no problems whatsoever.

25

1 RISMAN: Have you ever encountered any problems
2 directly or heard anything regarding his honesty?

3 BAGWELL: Just what I've heard in the newspapers
4 or by Earl. No other dealings.

5 RISMAN: Okay. And have you followed the
6 newspaper articles about -

7 BAGWELL: No.

8 RISMAN: -- okay.

9 BAGWELL: I don't even subscribe.

10 RISMAN: Okay. Do you know that Earl entered a
11 plea to a charge of Fraudulent Conveyance?

12 BAGWELL: I - I don't know what he called it,
13 but he just - in confidence, as a pastor, he came to me for
14 prayers. So, I did that.

15 RISMAN: Anything else you want me to ask?

16 SPEAKER: [whispering]

17 RISMAN: Is there any community contributions
18 that you have seen Earl engaged in, like feeding veterans at
19 Thanksgiving, or any feeding - helping out with the homeless, or
20 parishioners in need? Have you observed him helping the
21 community out -

22 BAGWELL: He's - he's donated to us.

23 RISMAN: -- okay. Other than financial, are
24 you familiar with any time donations he's made?

25

1 BAGWELL: Yeah. At Thanksgiving time, I think
2 he helped out, and Christmastime, he helped give out toys, and so
3 forth.

4 RISMAN: Okay. I have no further questions,
5 and thank you for your time, Chaplain. But Mr. Jensen might have
6 some questions.

7 JENSEN: Yeah. No questions.

8 SOTO: Thank you.

9 BAGWELL: Thank you.

10 RISMAN: Thank you [inaudible].

11 BAGWELL: Okay.

12 RISMAN: Thank you for your time, sir. Thank
13 you.

14 SPEAKERS: [whispering]

15 RISMAN: [pause] And this is our last witness.
16 I don't know if that'll help on the 6:10 flight or not [laughs].
17 But -

18 SOTO: Could you please stand and raise your
19 right hand for me. Do you swear to tell the truth, the whole
20 truth, so help you, God?

21 DELUGO-OWEN: I do.

22 SOTO: Thank you. Would you please state and
23 spell your name for the record.

24 DELUGO-OWEN: Shannon P. DeLugo-Owen. Last name is
25 D-E-L-U-G-O, hyphen, Owen, O-W-E-N.

1 SOTO: Thank you.

2 RISMAN: May I call you Shannon?

3 DELUGO-OWEN: Of course.

4 RISMAN: Shannon, could you briefly tell us
5 your background in law enforcement?

6 DELUGO-OWEN: I was employed by Henderson Police
7 Department, from 1994 until 2008.

8 RISMAN: And in what capacity?

9 DELUGO-OWEN: I worked in patrol, initially. And
10 then, I was assigned to - as a D.A.R.E. Officer. And after being
11 assigned as a D.A.R.E. Officer, I was then assigned as the
12 Assistant Accreditation Manager for the Police Department, under
13 Lieutenant Thompson. We went through the initial accreditation,
14 in 2002.

15 RISMAN: And when you say -

16 DELUGO-OWEN: I wrote -

17 RISMAN: 'accreditation' -

18 DELUGO-OWEN: -- oh. Mm-hmm.

19 RISMAN: -- I - I'm sure everybody on the
20 Commission understands it. But for my clarification and maybe
21 Mike's [laughs], tell us real briefly what that means.

22 DELUGO-OWEN: I wrote the policies and procedures
23 for the Department, from 2000 to 2002.

24

25

1 RISMAN: And since 2008, have you had any
2 interaction or work with either law enforcement agencies or law
3 enforcement charities?

4 DELUGO-OWEN: Yes. I am currently the Treasurer for
5 FOP, for Fraternal Order of Police, Henderson Lodge 3. I've been
6 in that position for almost three years. I'm also one of the
7 Directors for Las Vegas Metro Police Wives, wives' group.

8 RISMAN: All right. And to be a Director for
9 that organization, does that mean you're married to a police
10 officer?

11 DELUGO-OWEN: No. Well, yes, to be -

12 SPEAKER: [laughs]

13 DELUGO-OWEN: -- I'm sorry. Yes. Sorry [laughs].
14 Yes.

15 SPEAKERS: [laughing]

16 DELUGO-OWEN: I'm - I'm currently married to Captain
17 Jack Owen.

18 RISMAN: I - and when you say, 'currently' -

19 DELUGO-OWEN: I'm sorry. [inaudible]

20 RISMAN: -- there's not any - any -

21 DELUGO-OWEN: No. [laughs] Yes.

22 RISMAN: -- new circumstances expected soon.

23 DELUGO-OWEN: No. No.

24 RISMAN: Okay. And - no surprises, there.

25 Thank you. How do you know Earl Mitchell?

1 DELUGO-OWEN: Earl and I worked together at
2 Henderson. He was on, I think, for a few years, maybe three or
3 four, before I was hired. He was one of the first officers I
4 met, at Henderson.

5 RISMAN: And could you describe in what
6 capacities you two worked together, during your times at
7 Henderson Police Department?

8 DELUGO-OWEN: Sure. Earl and I both worked
9 primarily at the - at the time, we only had one station. So, it
10 was the East - now, it's called the East Substation, I guess. He
11 was one of my mentors, really. When I had any issues at the
12 Department, he's one of the people that I would go to, and I
13 would trust his decisions to help me get through any issues I
14 had, when - you know, whether it'd be during field training or
15 when - when I was first hired or even after.

16 He's one of the people that I would call, if I had any
17 issues, anything I couldn't figure out on my own. Earl's one of
18 the people I would go to. We worked on the same shift, for many
19 years. After the West Substation was opened, I was assigned to
20 the West Substation. So, even after going to the West Sub, I
21 still would call him and ask him questions and ask for his
22 advice.

23 So the last few years of my career, after I was assigned to
24 the Office of Accreditation, I went back to patrol, I still would
25 call him and ask for his advice.

1 RISMAN: And is that because you trusted his
2 advice?

3 DELUGO-OWEN: Absolutely.

4 RISMAN: At - when you worked with him, did you
5 form an opinion as to his character?

6 DELUGO-OWEN: Yes.

7 RISMAN: And can you tell us what your opinion
8 is or was, and if it's changed?

9 DELUGO-OWEN: No. It hasn't changed. I mean, I
10 still think that Earl is a very honest person. I still think
11 he's very trustworthy. I still see - I see Earl on a regular
12 basis, today. FOP meets once a month, the second Saturday of
13 every month. I see him at these meetings, today. As I said, I'm
14 the Treasurer of FOP, Lodge 3.

15 I've entrusted Earl with our bank. The many times, we
16 bring in over \$1,000, I've asked him to watch the bank. There
17 aren't - I don't ask everybody to watch our bank. I mean, I'm
18 responsible for the money. I've asked him to do so. I've asked
19 his advice on many things. I do consider him to be a trustworthy
20 individual.

21 RISMAN: On his handling of the money of FOP -

22 DELUGO-OWEN: Mm-hmm.

23 RISMAN: -- have you ever noticed any
24 indiscrepancies [sic]?

25

1 DELUGO-OWEN: No. In fact, I - we just conducted an
2 audit, last Saturday, and it was absolutely perfect.

3 RISMAN: And are you aware that Mr. Mitchell
4 had criminal charges against him and entered a plea to one of
5 those charges, or an amended charge?

6 DELUGO-OWEN: Yes.

7 RISMAN: Okay. And you still trusted him with
8 assisting you in holding FOP money.

9 DELUGO-OWEN: Yes.

10 RISMAN: And did the entry of that plea and
11 those charges affect the opinion you rendered a few minutes ago,
12 as to his honesty?

13 DELUGO-OWEN: No. And, in fact, I'm responsible,
14 ultimately responsible, for the funds in our Lodge. But I'm not
15 the only one that trusts him. Our Lodge members trust him.
16 Obviously, they can see who - they're aware of what happened as
17 well. And they can see who I'm asking to watch our bank.

18 If I have to step out and do something else, they see that
19 I'm saying, 'Hey, Earl, do me a favor. Watch the bank for me.'
20 So, it's not just me, because one of them, like, could stand up
21 at any moment and say, 'Hey, why are you asking Earl to do it?'
22 That's never occurred, either.

23 RISMAN: Now, tell me, and really briefly,
24 because I know what it is, and I'm sure everybody on this
25 Commission what it is, but -

1 DELUGO-OWEN: Mm-hmm.

2 RISMAN: -- tell me a little bit about the work
3 that FOP does, its purpose and that sort of thing.

4 DELUGO-OWEN: Well, FOP is the largest Police Union
5 in the nation. We have over 300 - and I believe it's 380,000
6 police officers, sworn officers, both active and retired, in the
7 nation, right now. There's fraternal organizations, where we
8 just do - like, ours is a fraternal, where we just get together.
9 We have breakfast, we have lunch, we do fundraising events, to
10 help out officers that are injured in the line of duty, to help
11 out veterans, things like that.

12 That is the purpose of our Lodge. Basically, it's
13 fraternal. Other Lodges are the Union for their departments.
14 Our Lodge is not like that.

15 RISMAN: On the fraternal end, has Earl done
16 things voluntarily to help the organization, to help any injured
17 officers or their families, that you're aware of, through FOP?

18 DELUGO-OWEN: Yes. We raise money, like I said, to
19 help injured officers, after 1 October. We went to Ground Zero,
20 I guess you would call it, at the church right across from where
21 the event occurred. We were there the day it happened, or the
22 day after it happened, I guess, with our trailer, feeding the
23 officers that had been - we contacted people that we knew, to get
24 food donated, to get water donated.

25

1 We were there from, actually, I guess, about 7:00 in the
2 morning, to about -

3 RISMAN: And when -

4 DELUGO-OWEN: -- I think, 6:00 at night, or so.

5 RISMAN: -- when you say, 'we', do you mean you

6 and -

7 DELUGO-OWEN: -- our Lodge.

8 RISMAN: -- Officer - but -- all right. I'm

9 asking you about what -

10 DELUGO-OWEN: Yes.

11 RISMAN: -- in furtherance of those efforts -

12 DELUGO-OWEN: Yes. Earl -

13 RISMAN: -- what had -

14 DELUGO-OWEN: -- as well.

15 RISMAN: -- Mr. Mitchell done, that time, other

16 times, for -

17 DELUGO-OWEN: Yes, Earl as well. We raise money for

18 veterans, Earl as well, to donate to veterans that are injured,

19 One Hero at a Time.

20 RISMAN: -- and is that - when you say, you

21 raise money, is that by the members' contributing, or phone

22 banks, or door-to-door? What has Earl done to help raise money

23 for those current -

24 DELUGO-OWEN: Members contributing, going out,

25 purchasing - we have a program, a Scripps program, where we all

1 purchase credit cards, and we ask our family, friends, and go out
2 and ask people we don't know to do it as well, purchase credit
3 cards from various entities. And a portion of that credit card
4 goes back to our organization, into a fundraising fund.

5 And then we donate that money to, like, One Hero at a Time,
6 which is a veterans' - there's - there's a veteran that's picked
7 that - that our money is donated to those individuals that have
8 been injured. And yes, Earl's been a part of that as well,
9 raising that money, purchasing those cards. Those are just
10 things we've done in recent years. Every year, we do different
11 fundraising things. Those are the ones that come to the top of
12 my head.

13 RISMAN: Through your familiarity with Earl,
14 through Fraternal Order of Police, would it be safe to say that
15 Earl demonstrates a great deal of concern and passion, followed
16 up by action, for his fellow officers?

17 DELUGO-OWEN: Yes.

18 RISMAN: And for members of the community?

19 DELUGO-OWEN: Yes.

20 RISMAN: Are there any instances that stand out
21 in your mind that you'd like to relay to this Board that show
22 that part of Earl, show his connection with the community and his
23 fellow officers?

24 DELUGO-OWEN: Well, I think the things I've just
25 talked about. I mean, when I worked with him, going back to that

1 time, you could always count on Earl to be there, and - not just
2 me, but officers that we worked with. You could always count on
3 him to be there for you, put -- anything that was going on with
4 him - if he had issues going on with him, personally, he would
5 put that aside. He always had a smile on his face. He would
6 always be there to give you the information you needed.

7 And he would always be there for his community. It didn't
8 - as you guys know, you go from call to call. And you'd have -
9 you could have a very bad call. You could go to a death call,
10 and the next call, you know, could be a neighbor complaining
11 about a cat peeing on their lawn. It didn't matter. He was
12 always there for his community. He was always there for our
13 Department.

14 Being the Constable, I mean, they called on him constantly
15 to do things for them. And morning, noon, or night, it didn't
16 matter. He was always there for our Department as well. I know
17 him to be an honest, trustworthy individual. I can tell you
18 this. If - if there was a position open, on my husband's, you
19 know - my husband would want him working for him. He is a - he
20 is an amazing person.

21 RISMAN: Now, you mentioned that, for many
22 years, you were in Accreditation.

23 DELUGO-OWEN: Yes.

24 RISMAN: You - which -
25

1 DELUGO-OWEN: I was the Assistant Accreditation
2 Manager.

3 RISMAN: -- and that deals with Standards, not
4 on the level -

5 DELUGO-OWEN: Yes.

6 RISMAN: -- POST does, but within a Department.

7 DELUGO-OWEN: Yes.

8 RISMAN: It's not IAB, but it's setting
9 standards, correct?

10 DELUGO-OWEN: Yes.

11 RISMAN: Okay.

12 DELUGO-OWEN: The standards are set, already. You
13 have to meet those Standards.

14 RISMAN: All right. Knowing what you know
15 about the charges that were brought against Mr. Mitchell and how
16 they were resolved, would you have any hesitation of having him
17 work either in the Henderson Police Department or as your
18 husband's partner, or under your husband, at - at your -

19 JENSEN: I'm going to object, just on the lack
20 of foundation.

21 SOTO: I'll sustain that. I know where
22 you're going.

23 RISMAN: Okay.

24 SOTO: I think that her testimony is
25 appropriate, has been appropriate.

1 RISMAN: Okay. [pause] You mentioned that,
2 back more than ten years ago, Earl was a mentor to you.

3 DELUGO-OWEN: He was, yes. He was one of the first
4 officers I met.

5 RISMAN: And, like Nick Wallen was to me, or
6 Tom Carpaccio, you carried lessons learned from him on forward in
7 life, correct?

8 DELUGO-OWEN: That's correct.

9 RISMAN: And do you think he would be a good
10 mentor for future rookies or new police officers, despite the
11 allegations and the plea in the matters dealing with finance at
12 the Constable's Office?

13 DELUGO-OWEN: Well, I think the most important thing
14 is honesty. I've never known Earl to be anything but honest. I
15 don't believe that anybody in law enforcement is worth anything
16 if they're not honest. So, yes, I do.

17 RISMAN: And despite those charges, despite the
18 plea, you believe him still to be an honest man and have
19 entrusted him with funds from FOP Lodge?

20 DELUGO-OWEN: Yes, because I've never known Earl to
21 ever be dishonest.

22 RISMAN: No further questions.

23 JENSEN: I --

24 DELUGO-OWEN: Hi.

25

1 JENSEN: -- I'm Mike Jensen, with the Attorney
2 General's Office. Just had a couple of quick questions for you.
3 Sounds like you've had a number of years working as a Peace
4 Officer. Would you agree that there's a great deal of trust
5 placed in Peace Officers by the public?

6 DELUGO-OWEN: Absolutely.

7 JENSEN: And that Peace Officers should be held
8 to a high standard of conduct?

9 DELUGO-OWEN: I do believe that.

10 JENSEN: I think you've already said that a
11 Peace Officer should not engage in dishonest conduct. Would you
12 agree with that?

13 DELUGO-OWEN: I do.

14 JENSEN: And in your years working on policy
15 and procedure, and just within your Department, what was your
16 understanding of the consequences of dishonesty or dishonest
17 conduct?

18 DELUGO-OWEN: That there's a progressive discipline
19 tier. So, it could be up to termination, but it could also be,
20 'Hey, don't do that again!' So, there's a progressive discipline
21 tier that they worked with. So, it could be a counsel, or it
22 could be a termination.

23 JENSEN: Is it your understanding, though, that
24 dishonesty is not acceptable for Peace Officers?

25 DELUGO-OWEN: Absolutely.

1 JENSEN: And that generally, if a Peace Officer
2 engages in dishonesty, that that dishonesty that's sustained
3 could potentially be used to impeach them, in any -

4 DELUGO-OWEN: Yes.

5 JENSEN: -- trial that they're a witness. Are
6 you aware of that?

7 DELUGO-OWEN: Of course.

8 JENSEN: And what was your training on that,
9 with regard to the Brady Rule?

10 DELUGO-OWEN: That, yes, if your - your testimony,
11 then, could later not be used at trial. So, you don't do that
12 [laughs].

13 JENSEN: So, is that part of the reason why
14 it's so important to be -

15 DELUGO-OWEN: Right. Of course.

16 JENSEN: -- honest? And you - you talked a
17 little bit about the charges and the conviction. Do you - have
18 you ever seen any of the court documents related to -

19 DELUGO-OWEN: No, I have not.

20 JENSEN: -- the conviction? Do you know what
21 the underlying facts are with regard to this - the particular
22 conviction?

23 DELUGO-OWEN: I believe that he accepted an Alford
24 plea for one Gross Misdemeanor charge.

25

1 JENSEN: In terms of the - the factual basis
2 for those charges, are you aware of the facts that underlie the
3 conviction?

4 DELUGO-OWEN: I do not.

5 JENSEN: Just real quickly, you've got a - a
6 binder in front of you, there.

7 DELUGO-OWEN: Mm-hmm.

8 JENSEN: I just ask you to look at Exhibit -
9 Exhibit I. [pause] Just take a second and look at that, and I
10 would ask you if you've ever seen that document, before.

11 DELUGO-OWEN: I have not.

12 JENSEN: Okay. Represent to you that that's
13 the indictment or the charge that Mr. Mitchell was convicted of.
14 Would you look on the second page of that document, after the
15 words, 'To wit'. Do you see that, on the second page? It's
16 right above the signature line. It's - there - 'Defraud others,
17 to wit', and then, it has some factual allegations.

18 DELUGO-OWEN: [inaudible]

19 JENSEN: The first line on that page.

20 DELUGO-OWEN: Yeah.

21 JENSEN: Do you see where it says, 'To wit'?

22 DELUGO-OWEN: Yes.

23 JENSEN: Do you see what it says the conduct
24 was, that Mr. Mitchell has been convicted of?

25 DELUGO-OWEN: Yes.

1 JENSEN: Were you aware of that?

2 DELUGO-OWEN: No.

3 JENSEN: Is that the type of conduct that you
4 believe is appropriate for a Peace Officer?

5 DELUGO-OWEN: No.

6 JENSEN: Nothing further.

7 RISMAN: Shannon?

8 DELUGO-OWEN: Yes.

9 RISMAN: Now that you've read that, has your
10 opinion of Mr. Mitchell's character changed?

11 DELUGO-OWEN: No. I believe him to be an honest
12 person.

13 RISMAN: Now that you've read that, will he
14 still be allowed to handle funds at your Lodge?

15 DELUGO-OWEN: Yes.

16 RISMAN: Now that you've read that, would that
17 change your testimony of him being a good mentor, still?

18 DELUGO-OWEN: No.

19 RISMAN: Would that change your opinion of your
20 husband wanting to work with him?

21 DELUGO-OWEN: I can't speak for my husband.

22 RISMAN: Okay.

23 SPEAKER: [laughs]

24 RISMAN: I respect that [laughs]. I'll
25 withdraw the question.

1 DELUGO-OWEN: [laughs]

2 RISMAN: I - I apologize.

3 DELUGO-OWEN: Nor would he speak for me.

4 SPEAKER: [laughs]

5 RISMAN: [laughs]

6 DELUGO-OWEN: But I can speak for myself.

7 RISMAN: Okay.

8 DELUGO-OWEN: What I said was, I believe that he
9 could definitely work for my husband. My husband knows him as
10 well. My husband is the President of the FOP Lodge, Henderson
11 Lodge 3. So, he works with him every day as well. Well, every -
12 every month, everything we do. Yes, he could still work for my
13 husband, I believe, in my opinion.

14 RISMAN: Would the following be safe to say?
15 Would your personal knowledge of Mr. Mitchell and his character
16 override the accusations in the indictment, which led to a plea
17 agreement?

18 DELUGO-OWEN: Yes.

19 RISMAN: No further questions.

20 JENSEN: Nothing further.

21 SOTO: Thank you very much.

22 DELUGO-OWEN: Thank you.

23 FREEMAN: May I ask a clarifying question?

24 Michele Freeman, for the record.

25 SOTO: Yes.

1 FREEMAN: You said that -

2 DELUGO-OWEN: Hi, Michele.

3 FREEMAN: -- hi. How are you?

4 DELUGO-OWEN: Good.

5 FREEMAN: You said that he watches the bank.

6 What does that mean?

7 DELUGO-OWEN: [laughs]

8 RISMAN: [laughs]

9 DELUGO-OWEN: Sorry. So, at our meetings, I collect
10 the dues. We have breakfasts once a month. So, people have to
11 pay for their breakfasts. So, I have to collect the money for
12 the breakfast. And basically, the bank is laid out. I have to
13 watch the bank, basically keep an eye on all the money that we
14 have. Our dues are \$80 a year, and we also collect money for
15 other things, parties we're having, things like that.

16 So, last Saturday, I had \$600 or something like that on the
17 table. So if I have to get up, use the restroom, or if I have to
18 get up and do something else, I don't leave that money right
19 there, for any reason, because it's not just us, the members,
20 that are in that room. Some - you know, servers come in and out
21 and whatnot. So, 'watching the bank' means watching the money
22 that's right there on the table.

23 So I have to have somebody come and, you know, sit and keep
24 an eye on the money that's right there, because if any of it's
25 gone, it's on me. So, someone -

1 FREEMAN: Okay.

2 DELUGO-OWEN: -- physically sitting there, making
3 sure that the amount of money that I've left there was there.

4 FREEMAN: Thank you. So, you just - he just
5 stands by for you, for a moment. He doesn't take the money with
6 him.

7 DELUGO-OWEN: Yes. Sometimes, it's not just a
8 moment, though [laughs].

9 FREEMAN: Okay.

10 DELUGO-OWEN: It's - literally, because I'm - I have
11 to run out, talk to people that are out there, the Manager of -
12 like I said, I have to plan parties and things like that as well.
13 So run out, talk to the Manager for 20 minutes, yeah. He's
14 responsible to make sure nothing disappears from my bank.

15 FREEMAN: One more follow-up question.

16 DELUGO-OWEN: Mm-hmm.

17 FREEMAN: So, is there an inventory, as money's
18 coming in, that you're taking log on how much money's there, or
19 is it just, you do that at the end of the day?

20 DELUGO-OWEN: There is. As far as the breakfast
21 goes, yes. So they sign in, they say how much the - if they're
22 having breakfast, coffee, things like that. And the dues as
23 well, who's paying dues, and I write a receipt for the dues. So
24 yes, there is.

25

1 FREEMAN: So, there's inventory in addition to
2 him standing, watching -

3 DELUGO-OWEN: There's - yes.

4 FREEMAN: -- the bank. So, you know that
5 there's a checks and balance -

6 DELUGO-OWEN: Yes.

7 FREEMAN: -- with you and the money you left.

8 DELUGO-OWEN: Absolutely.

9 FREEMAN: Thank you.

10 DELUGO-OWEN: Yes.

11 SOTO: Any other questions? Okay. Thank you
12 very much.

13 DELUGO-OWEN: Thank you.

14 RISMAN: I don't have any other witnesses, but
15 I would ask the Commissioners to indulge for a moment, to read
16 what I guess is Exhibit 1, because I think it's important, and it
17 is a notarized statement. I have never met or spoken with
18 Officer Hatch -

19 SPEAKER: Lieutenant.

20 RISMAN: -- Lieutenant Hatch, excuse me. So
21 this is not something that came from my office or any suggestions
22 from me. So - but I think it - it's -

23 SOTO: Yes, I will give the Commission a
24 moment to read this. [pause] Okay. Everybody have a chance to
25 read it? And thank you. No more witnesses, correct?

1 RISMAN: -- correct.

2 SOTO: Okay. What I want to do, real quick,
3 is just give both Mr. Jensen and yourself a -

4 RISMAN: Thank you.

5 SOTO: -- closing, if you will. And then, go
6 from there.

7 JENSEN: Thank you, Mr. Chairman. Just a
8 couple of housekeeping things, I guess, before we - we move to
9 those, if you would indulge me. There were two exhibits that I
10 did not ask to be admitted, I think three, actually, that I would
11 withdraw as exhibits. There are the two Grand Jury transcripts,
12 and there's the Police Report. I would withdraw those three
13 exhibits from -

14 SOTO: Okay.

15 SPEAKER: Do you have those exhibit numbers
16 handy?

17 JENSEN: The letters are Exhibit K -

18 SPEAKER: L and M.

19 JENSEN: -- L, and M.

20 SPEAKER: Thank you.

21 SOTO: Okay. And assuming there are no
22 objections to that.

23 RISMAN: No.

24 SOTO: So removed.

25

1 JENSEN: Thank you. Thank you, Mr. Chairman,
2 Members of the Commission. Try to keep this brief, because I
3 know the hour is late. I think the evidence has been pretty
4 clear today in showing that Mr. Mitchell engaged in conduct that
5 has disqualified him from being a Peace Officer in the state of
6 Nevada. What you've seen through the evidence is that, although
7 originally charged with a number of theft offenses, that Mr.
8 Mitchell finally did plea under Alford to a Fraudulent
9 Conveyance.

10 That particular offense, however, is a serious offense,
11 involving fraud, misrepresentation, and clear dishonesty by a
12 Peace Officer. As you heard from the evidence today, this was
13 not a situation where Mr. Mitchell made a bookkeeping error, or
14 he made an innocent mistake. He intentionally provided to Clark
15 County vouchers where he had changed amounts, unknowing to Clark
16 County, in an intentional way to get money into an account that
17 he used for his personal purposes.

18 You saw the exhibits that show how he used those amounts
19 that he had in that particular account. For purposes of this
20 case, what this hearing is based on, is a conviction for a Gross
21 Misdemeanor. And that conviction is clearly the type of
22 conviction that involves dishonesty and a violation of the public
23 trust that was placed in Mr. Mitchell.

24 It's the kind of activity that we've seen over the years on
25 many different cases, with different Peace Officers who have

1 engaged in this type of conduct, who have had their POST
2 Certificates revoked, from situations where people have used
3 their gas card to fill up their personal car or used the credit
4 card for the Sheriff's Office to buy personal items. Those were
5 a few hundred-dollar cases.

6 This is an \$82,000 case, where Mr. Mitchell used the
7 account in a way that allowed him to essentially use it as his
8 personal ATM, to use that at bars and casinos, multiple times in
9 tens of thousands of dollar amounts. Just would point out that
10 this is conduct that is done by a head of a law-enforcement
11 entity. It's completely inconsistent with the conduct that's
12 expected of Peace Officers, especially a Peace Officer at the
13 head.

14 You would hold your line level officers to a standard of
15 conduct, with the gas card. We should hold Mr. Mitchell
16 accountable as a head of an agency for the kind of conduct that
17 he was involved in and the misrepresentation and fraud that he
18 engaged in in order to get money for his own use. And that is
19 the conduct for which he was convicted.

20 In the Amended Indictment, the language is that he
21 'willfully, unlawfully, feloniously, acted as a party to a fraud,
22 with the intent to deceive and defraud. Specifically, on or
23 between June 1st, 2015, and March 26th, 2018, he fraudulently
24 appropriated \$82,000, which was entrusted to him, having
25

1 requested the funds from Clark County through misrepresentation,
2 and then appropriating the funds for his own personal use.'

3 That is the conduct that's at issue on his conviction,
4 today, that the Commission has to decide whether or not Mr.
5 Mitchell should continue to be able to be a Peace Officer. We
6 know that he - he engaged in that misrepresentation in a willful
7 way, an intentional way. We also, I would argue, know that Mr.
8 Mitchell cannot be a witness in a future case. Any argument that
9 this particular conviction -

10 RISMANN: I'm going to object to that argument,
11 when I normally would not interrupt Mr. Jensen. But our witness
12 was specifically - our expert witness was specifically excluded
13 from testifying whether he could or could not testify without
14 being impeached. You objected to that testimony, and now, you're
15 offering evidence as a fact in your close statement.

16 SPEAKER: -- it's a closing argument, sir.

17 SPEAKER: It's not evidence he's offering.

18 RISMANN: Well -

19 SPEAKER: He's closing his argument.

20 RISMANN: -- I - he said, 'I know that he could
21 not', and that was his statement. You cannot -

22 SPEAKER: It's his closing argument.

23 RISMANN: -- I understand it's his closing
24 argument, Mr. Goolsby, and I understand your role as DAG in the
25 situation. But, I mean, again, I don't see how you could say Mr.

1 Figler's not qualified to give his opinion whether Mr. Mitchell
2 would be impeached or not, on this, and yet, in closing argument,
3 which is supposed to be a summary of the facts before this
4 Tribunal, and say, 'He cannot' - 'I know he can't do it.'

5 There was evidence ready to be proffered, to show that he
6 could. I'm not sure which would win out. But since we weren't
7 allowed to present that, I don't think it's fair -

8 JENSEN: Can I - can I respond? This certainly
9 is closing argument. And my argument, when objecting to that,
10 was that you and I can make the legal argument, Mr. Risman, but
11 your witness shouldn't make that argument. We can make the
12 argument that, under the law, either he can or can't be a witness
13 under Brady. And I think that's appropriate as a basis for this
14 Commission to look at, whether or not, legally, you believe that
15 he can be a credible witness in the future, going forward.

16 And I think it's appropriate, and so, I would ask that I
17 be able to continue to argue.

18 SOTO: You can continue, and you'll have a
19 closing argument as well.

20 RISMAN: -- thank you.

21 JENSEN: As the evidence showed, Mr. Mitchell
22 engaged in a scheme to earn, almost every pay period, throughout
23 the entire investigatory period, he changed numbers, right? It
24 was intentional conduct. It wasn't a mistake on his part. The
25 conduct in this case took place while, again, Mr. Mitchell was

1 the head of the agency. It was a significant violation of the
2 public trust, and, given its intentional nature, disqualifies him
3 from future employment as a Peace Officer. And I would recommend
4 that the Commission revoke his Certificate.

5 SOTO: Thank you.

6 RISMAN: Thank you. Just briefly, addressing
7 the Brady issue, what Brady requires would be a disclosure, if
8 Mr. Mitchell needed to testify, of that conviction. And then, it
9 would be up to the judge, whether the Defense counsel could ask
10 questions in an attempt to impeach him. It wouldn't disqualify
11 him as a witness. It would go to the weight of the conviction.

12 And I have spoken to judges, and I'm sure you have, and the
13 ones I've spoken to said they won't allow cross-examination on
14 that because it was irrelevant to the current case. And I'm
15 sure, if I canvassed twice as many judges, I might've gotten
16 opinions on the opposite side. So I think that is a bit of a red
17 herring. Brady requirement would require disclosure of this
18 conviction, but it's not determinative of whether Defense counsel
19 could cross-examine on that.

20 We also always know that, in most arrests, there are more
21 than one officers involved, and a case can be put on very
22 strongly, if one officer would hurt the case. We also know there
23 are many, many jobs that require POST Certification that the
24 likelihood of the officer ever going in front of a judge or a
25

1 jury to testify is very remote, including the Constable's Office
2 and in various other jobs, Tribal, whatever.

3 But I did not come here to defend the underlying charges
4 against Mr. Mitchell. And I understand the case in chief that
5 was put on by Mr. Jensen. And the purpose of having Mr. Figler
6 here wasn't for him to show the defenses Mr. Mitchell had, but it
7 was to show mitigating factors that I think are proper for this
8 Board to hear, regarding why a plea was entered into and also to
9 know that there were defenses to it, both factual and statutory.

10 And I don't think we're going to resolve today, whether the
11 Enterprise Fund belongs to the Constable's Office or is a quasi-
12 state fund. I think the only importance to it is that there's
13 not a sharp, clearly-defined line. I think that's exemplified
14 not only against Mr. Mitchell by the plea, but for Mr. Mitchell,
15 based on the fact that the plea involved no jail time, no
16 probation, none of the normal things that would be involved with
17 a Gross Misdemeanor.

18 So, I really want to focus on Nevada Administrative Code
19 289.290, which again, gives four options to this Commission on
20 how to act. One is not to have a hearing, whatsoever, and let it
21 slide by. That's passed. The other is to not take any action.
22 The other is to suspend. The other is to revoke. Just as Mr.
23 Jensen has given examples of Peace Officers who had their
24 Certification revoked for certain Gross Misdemeanors, and he gave
25 examples, gas cards and other such examples, there are, as this

1 Commission well knows, other Peace Officers who've been charged
2 with Gross Misdemeanors, who have either never appeared before
3 this Board or for which there was no action taken.

4 One of the things that puzzles me, a little bit, is once a
5 hearing is ruled on properly to take place, that we jump to
6 revocation. And I think very, very rarely is suspension ever
7 given the full weight that it should be given. And I say that
8 because, when you look at what the Administrative Code says, it
9 doesn't indicate any preference toward revocation over
10 suspension, or suspension over revocation. They're both remedies
11 that are to be used.

12 And this Commission holds a very interesting dual role.
13 One role is to protect the public from bad apples, bad apples
14 that would affect tomorrow's law enforcement, but everybody on
15 this Commission serves in some law-enforcement capacity, vetting
16 -- this Commission has, not as far as these charges are
17 concerned, but worked with hundreds or thousands of officers who
18 had exemplary careers, much like Earl Mitchell. And you are
19 judging your peers.

20 You guys are - this is more so than any imperfect jury or -
21 you're judging your peers. And I think Mr. Figler raised enough
22 points to maybe make you think, despite the evidence that was put
23 on by the first witness, that there may've been some
24 circumstances why this never went to trial, or some circumstances
25 why these acts were defensible.

1 So, I then ask you to take a look at the service that Earl
2 Mitchell has done for the Henderson Police Department, the
3 service he has put forward for his fellow officers, through FOP,
4 and even the service that he's done since leaving the Henderson
5 Police Department, and the work he's done for other Sheriff's
6 Departments in this state, including some Cow County Sheriffs.
7 Pardon the reference to - I'm using that as a reference that's
8 traditionally used here in Nevada.

9 It's no slight made to Elko and Ely and Winnemucca and
10 other places. But when they were short-handed for major events
11 like Burning Man, they called upon Earl to come and give a hand,
12 and he was exemplary in his performance of his duties, and worked
13 well with his fellow Deputies, and helped maintain about as much
14 order as is possible in that environment.

15 I think he's paid a strong price, the price that was
16 contemplated by him and his counsel, by entering this plea. His
17 name has been dragged across the newspapers. He chose not to run
18 for office that he held for many, many years. He took the
19 accounting of the Metropolitan Police Department's forensic
20 expert and has repaid every penny of that. And nobody wants to
21 see him just get a slap on the wrist, but I'm not sure full
22 revocation is the proper remedy.

23 What I would suggest and actually plead for is a suspension
24 of two years, with whatever restrictions to come back, this
25 Commission decides to impose, and the only thing I would say that

1 it could be shortened, is if Mr. Figler's argument about it not
2 being the County's money, but it being the Constable's money is
3 proven by some either stipulation, court document, or judicial
4 ruling. And realistically, I don't think that's going to happen
5 within the next two years. The wheels of justice grind pretty
6 slowly.

7 But I think Lieutenant Troy Hatch's one-page letter, which
8 wasn't solicited by me, wasn't worded by me, really says it all.
9 He is a decorated police officer, retired police officer. He's
10 asking you not to revoke. He's basing it on 30 years of personal
11 experience with Earl Mitchell as a police officer. He's basing
12 it on experience that all of you have, about how the justice
13 system works and how, in a case like this, where one of your
14 fellow officers is faced with spending \$200,000 in legal fees, or
15 paying \$86,000, and going home and sleeping at night, you swallow
16 your pride, sometimes, and take that decision.

17 I ask you to consider that. There's enough evidence
18 presented by Mr. Jensen, where, again, not talking about a slap
19 on the wrist. We're not talking about letting him skate. But,
20 again, there've been a lot - as many officers who have been
21 revoked, there've been a lot of officers who have not been
22 revoked, for these same things. And I say, exercise the power
23 that's given you under NAC 289.290, in the fair and even way it
24 says to do it. Suspension or revocation.

25

1 And I think a two-year suspension with conditions satisfies
2 the needs for justice, the public. And when Earl Mitchell
3 returns to law enforcement, I think you'll see a man who walks
4 that line as straight as anybody ever has in the state of Nevada.
5 Thank you.

6 SOTO: Thank you. Okay. Seeing as though
7 this is a public hearing, do we have any public comment? Okay.
8 Seeing as there's no public comment, I want to turn it over to
9 the Commission to see if we have any comment from any of our
10 Commissioners.

11 MCKINNEY: Kevin McKinney. I have a few
12 comments. Based upon the evidence that I have seen - I've been a
13 background investigator. I've been an administrator for several
14 years, now. If I were to receive this background investigation,
15 with this information on it, he would be automatically
16 disqualified from employment with my agency. I believe that most
17 agencies in the state would automatically disqualify him.

18 Second point, there was a lot of discussion here about
19 honesty. However, I didn't hear a lot about integrity. In my
20 opinion, integrity is doing the right thing, at the right time,
21 for the right reasons. I believe that his actions showed little
22 integrity. That's what I wanted to say.

23 SOTO: Any other comments from any of the
24 Commission?
25

1 SHEA: Tim Shea. So, I've been in law
2 enforcement a very long time. As I was saying today, I'm
3 entering my 50th year, in large agencies, and most of them quite a
4 bit larger - well, not quite as big as Metro, but close. And in
5 many cases, I have been surprised, many times, especially as a
6 ranking officer, of people who had two lives going. They had the
7 life we saw, and then, there was this other one. And the other
8 one usually brought the downfall of the officer, Sergeant,
9 Lieutenant, some of whom are in prison right now.

10 And to every one I ever look at and just shake my head and
11 say, 'We all started out the same. We all had the same goals and
12 ideals, and something happened along the way.' Hard to explain,
13 but it does happen. And I think, when you talk about honesty and
14 Brady and all these kind of things, are there officers working
15 today, that have been Brady'ed? Yes. At one point, I talked to
16 the SAC in Seattle, and there were FBI Agents still working, who
17 were Brady'ed.

18 So, the Brady thing to me is neither here nor there. It's
19 just an argument you overcome in court. But what I really look
20 at is, if an officer who has the trust of not only the community
21 that entrusts him with the enormous power we have, and has made
22 all these promises, not only to them, but himself and his family
23 and his coworkers, and if things go sideways, that's what I look
24 at.

1 And when I had to put handcuffs on a Sergeant who I had
2 always admired, for crimes that he had committed on duty, that
3 none of us ever remotely supposed he would've done, it was a
4 heartbreak. And it's always a heartbreak when this happens. I
5 wish I could explain why it does. But it goes back to the core
6 of what we do.

7 And like I told one guy, people have to trust us. They
8 have to know that when there's a problem and we show up,
9 everything's fine. They don't have to worry about the bad things
10 that happen. When bad things do happen with those of us with
11 badges, they take a little bit of that away from all of us. And
12 that's what I think about when I look at - and the military side,
13 I did 20 years, also, on the military side. So, I understand all
14 of these things.

15 But, once again, it comes down to honesty, integrity, and
16 motive. You know, why were these things done? And that's what
17 it boils down to for me.

18 SOTO: Thank you. Any other comments from
19 our Commissioners?

20 MCGRATH: John McGrath, for the record. I was
21 thinking exactly the same about a background investigation. And
22 having overseen our Human Resources the last three years, that's
23 exactly what I was thinking, is, there's things that we can
24 overcome and hire people, but this is not the standard that we
25 would even consider to hire someone.

1 And so, when you bring someone back or decide to revoke
2 their POST Certificate, I think that's a standard that is
3 analogous. So besides the argument that a breach of the public
4 trust is what we're really meant to hold dear, and it was
5 violated, here, so, I don't see how I can support keeping his
6 Nevada POST.

7 SOTO: Any other comments from any Commissioners?
8 I have a few thoughts that I would like to share. During this
9 hearing today, I purposely allowed both sides to give me a little
10 bit more information, because I wanted to hear the entirety of
11 this discussion. Because I understand the paramount
12 responsibility that the Commission's given, to consider such
13 matters, especially when we're talking about the revocation of
14 someone's POST, especially somebody who's served for their
15 community for so many years.

16 So that was done on purpose, and I think that, you know,
17 both sides brought some interesting points up, that I didn't
18 have, initially. But I also understand that, as an executive for
19 an agency, that there are certain responsibilities that we have
20 to protect. And I think that some of that just didn't happen. I
21 can't say why, but it causes me a lot of concern, and I think it
22 causes our public a lot of concern.

23 And you need to understand that, as the lead and as the
24 head of an agency, you do. Because it's our job. It's what
25 we're, you know, put in place to do. Also want this Commission

1 to understand what we're looking at, today, which is NAC 289.290.
2 And what that says is, 'Denial, revocation, suspension, and
3 reinstatement of Certificate, NRS 289.510, each of the following
4 constitutes cause for the Commission to revoke, refuse, or
5 suspend the Certificate of a Peace Officer.'

6 So that's what we're talking about today, and what I am
7 looking for, from this Commission, is a motion to revoke or
8 action on Mr. Mitchell's Category I Basic Certificate. Can I get
9 a motion?

10 SHEA: I'll make a motion to revoke the
11 Certificate.

12 MCGRATH: I'll second, John McGrath.

13 SOTO: So, I have a motion and a second. All
14 those in favor, say "aye".

15 SPEAKERS: Aye.

16 SOTO: Opposed? Motion carries unanimously.

17 RISMAN: I wanted to thank everybody for their
18 time and attendance here, today. I truly appreciate it.

19 SOTO: Okay. Thank you for the decorum.

20 Okay. We're going to move on to item number five, discussion,
21 public comment, and for possible action. Hearing pursuant to NAC
22 289.290, on the revocation of Brian Wilk, formerly of the
23 Department of Public Safety, Certification based on a conviction
24 for Domestic Violence. The Commission will decide whether to
25

1 revoke Mr. Wilk's Category I Basic Certificate. I'm going to
2 turn it over to AG Mike Jensen.

3 SPEAKER: You're not ready, Mike?

4 SPEAKERS: [laughter]

5 SPEAKER: He's a little winded.

6 SPEAKER: Yeah [laughs].

7 JENSEN: Yeah. I think you guys heard enough
8 from me today. I will make this quick. This is the time and
9 place set for the hearing for - to consider revocation of the
10 Certificate for Brian Wilk. Again, the revocation being brought
11 pursuant to 289.510 and 289.290, which specifically provides for
12 revocation for a Misdemeanor.

13 If you look through your exhibits behind this particular
14 item, you'll see Exhibit A is the Notice of Intent to Revoke,
15 which informs Mr. Wilk of the time and place for this hearing and
16 his opportunity to appear and the reason for the potential
17 revocation of his Certificate. Exhibit B is a Certified Mail
18 Receipt, indicating that at least it was sent to his [laughs]
19 last known address. Exhibit C is a Personnel Action Report,
20 showing that Mr. Wilk's Peace Officer employment was terminated,
21 effective December 30th of 2019.

22 Exhibit D is the certified copy of his Basic Certificate,
23 which is at issue today. Exhibit E is the copy of the Criminal
24 Complaint that charged Mr. Wilk with Battery, constituting
25

1 Domestic Violence, a Misdemeanor, in violation of NRS 200.45 and
2 NRS 33.018.

3 The complaint alleges that 'Mr. Wilks [sic] did willfully,
4 unlawfully use force or violence upon the person of his spouse.
5 To wit, he did pull her hair, dragged her into the hallway, threw
6 her, caused her to fall, and, or struck her face several times.
7 The Defendant did willfully and unlawfully also use force or
8 violence against person of a minor child of his spouse, that said
9 Defendant grabbed J.G., the minor child, by the face, forced one
10 or more fingers into his eye sockets, and one or more times
11 grabbed him in the torso.'

12 Exhibit F is the Waiver of his Constitutional Rights,
13 signed by Mr. Wilks [sic] and his attorney, indicating the
14 consequences of a Domestic Battery conviction, including his
15 understanding that he shall own or possess any firearms or
16 control any firearms. Exhibit G is the Reno Justice Court
17 Misdemeanor Judgment, showing that Mr. Wilk was convicted of
18 Battery, which constitutes Domestic Violence, on November 20th of
19 2019.

20 He was sentenced to ten days in the Washoe County Jail,
21 with credit for time served, and the jail sentence was suspended,
22 not to exceed 12 months. His conditions included 2 days in jail,
23 credit for time served, Domestic Violence counseling of not less
24 than 1-½ times per week, a \$200 fine, an \$85 assessment fee,
25 administrative assessment.

1 The evidence in this particular case shows that Mr. Wilks
2 [sic] has been convicted of Battery constituting Domestic
3 Violence. As we know from past cases, that that's the type of
4 conviction that leads to a revocation, that it disqualifies the
5 individual from being a Peace Officer in the future, and that
6 they can no longer possess or have transferred to them a firearm
7 or ammunition.

8 Based on this conduct, he's disqualified himself from the
9 position of Peace Officer in the state of Nevada. And with that,
10 I'd ask that Exhibits A through G be admitted into the evidence
11 to support any action the Commission may take today and would
12 recommend that Mr. Wilk's POST Certificate be revoked.

13 SOTO: Okay. So admitted. Do we have any
14 public comments on this? Any comments from the Commission?
15 Seeing as though there's none, I'm looking for a motion to revoke
16 Mr. Wilk's POST Certificate.

17 TOGLIATTI: George Togliatti. I'll make a motion.

18 SOTO: Okay. Second?

19 SPEAKER: Second.

20 SOTO: I have a motion and second. All those
21 in favor, say "aye".

22 SPEAKERS: Aye.

23 SOTO: Opposed? Motion carries unanimous.

24 Okay. Do we have any public comments as this ends? Okay.

25 Seeing as they're none, we'll move on to item number 14,

1 discussion, public comment, and for possible action. Schedule
2 upcoming Commission Meeting May 7th, 2020, at 8:30 AM, at the
3 Commission of Peace Officers Standards and Training, 5587 Wa Pai
4 Shone Avenue, Carson City, Nevada, 89701. And I'm going to turn
5 it over to Mr. Sherlock.

6 SHERLOCK: Thank you, Mr. Chairman. Mike
7 Sherlock, for the record. Just sort of a [inaudible], that's the
8 day of the Memorial. So, most of you are already up there. The
9 Memorial's at 1:00, like we always do, and the reason we do it at
10 8:30 is to make sure you make the Memorial by 1:00. So - or at
11 least get out for lunch, assuming that Mr. Jensen doesn't have
12 anything to present. We'll -

13 SPEAKERS: [laughter]

14 SHERLOCK: -- we'll - we will make sure that you
15 get to the Memorial. So, that's the date of that, and I'll send
16 out reminders.

17 SOTO: Okay. So, thank you. Just give me a
18 motion to approve that date, which is May 7, 2020. Can I get a
19 motion?

20 SPEAKER: Make a motion.

21 SOTO: I have a motion. Can I get a second?

22 FREEMAN: Second. Michele Freeman.

23 SOTO: Motion and a second. All those in
24 favor, say "aye".

25 SPEAKERS: Aye.

1 SOTO: Opposed? Motion carries unanimously.

2 And last, I am looking for a motion, item number 15, motion to

3 adjourn.

4 SPEAKER: I'll make a motion to adjourn.

5 SOTO: I have a motion to adjourn.

6 SPEAKERS: [laughter]

7 SOTO: Second?

8 SPEAKER: Same.

9 SPEAKER: Second.

10 SOTO: I have a motion and second. All those

11 in favor, say "aye".

12 SPEAKERS: Aye.

13 SOTO: Adjourned. Thank you for all your

14 time today.

15 SPEAKERS: [inaudible] Over the years, so many
16 guys lead double lives. [inaudible] A whole second life. I had
17 one guy, his father was an FBI Agent. He was a [inaudible]
18 soldier, and he had a whole other life we didn't know about.

19

20

21

22

23

24

25