

## Tim Burns interview, Amanda Lopez case

8-25-2011

Q. Goes to how this case is different than cases where the complainant goes first to the OPO.

Burns: explains that this case/complaint originated when an email was sent to the SPD and forwarded to internal affairs. And so the initial contact was then made by the internal affairs sergeant to the complainant. And as we found out it wasn't clear when the complaint was made because it was a family member of the complainant. It was signed off as though it was the complainant making the actual complaint, which led to some incorrect or non-factual information. For example, the allegation that she was struck in the back of the head with a gun, which was clearly incorrect, as she stated in a later, followup interview.

Q. And she disclosed in the followup interview that she was not the one who'd sent the email.

A. Correct.

Q. So you first learned of the complaint when IA notified you that the complaint had been made?

A. That's correct.

Q. So what steps did you take.

A. At that point I'm on stand-by "because the interviews then proceed, I'm invited to attend those interviews. In Ms. Lopez's case, the actual interview was conducted by telephone.

Q. So you never met her in person.

A. No. Wouldn't know her if I stood next to her.

Q. Is that true with the other non-officer interviews? Were those conducted in person?

2:00 A. I believe none of them were actually. I don't recall, but I believe most of them, if not all of them, were done by phone because of convenience to the complainant. And, in the complainants case, if I recall correctly, she's from the San Diego area of California, so she was down in that area. But I don't recall specifically on the others whether we did any in person or over the phone, and my sense is they were over the phone.

Q. Were you present during all of those interviews?

A. Yes.

Q. And that best that you recall, they were done by speaker phone.

A. Yeah. As we do in here we just put it over the speaker.

Q. I gather one difference, and let me know if I'm wrong, if she'd come to you under the current ordinance, you would have had the authority to go out and talk to witnesses.

A. Sure.

Q. Contact the independently of internal affairs.

A. Right.

Q. But in this case, inasmuch as the complaint was filed with internal affairs, they're the ones driving the process and setting up the interviews.

A. That's true.

Q. And you're there to take advantage, per the ordinance, too, to participate.

A. Exactly, and because it was an excessive force complaint and the consequences could have been serious had the officers been found to have committed the violations that were alleged, I would automatically be involved in those. As opposed to if it were a minor conduct related complaint potentially.

Q. Help me understand that a little better.

A. For example, let's say somebody got arrested and their complaint was that the handcuffs were applied too tightly. Or my wrists were bruised from the handcuffs, or the officer was rude to me in the arresting process. Those are typically minor conduct/policy and procedurally driven things and in those cases even if the officer were to have been found to have done what was alleged, if it was beyond what would have been acceptable, the officer might not necessarily face a suspension, termination or demotion.

Q. Okay, and these are typically the kinds of cases that internal affairs has been classifying as inquiries...

A. Often.

Q. Often.

A. Often.

Q. And that interrupts the process because it doesn't go any further than that, at that point. Once they make that determination.

4:30

A. Well, actually it's the Assistant Chief who makes that determination. And then what they do is they notice—they being internal affairs—notice me of what the potential classification is and then they ask if I agree or disagree. And it's always based on whatever facts they can then

articulate to corroborate their position on that. More often than not, I agree. But on occasions, I disagree. We've got one that's coming out in the public safety report for September where we disagree and the chief actually agreed to conduct an investigation. So occasionally we disagree, but not often.

5:12

TC: I should have invited you to jump in at any time Kiondra.

And then Kiondra asks about closing reports and gets into the whole issue of a complaint versus an inquiry.

TBurns says it's actually called "an investigative inquiry,"

"I always want to know what their thoughts are and how they arrive at that. And, again, if I disagree with that then I have the authority to appeal that to the chief. And if I disagree with the chief's position on it, I have the authority to appeal it to the mayor, and that's happened on an occasion, where the mayor said 'no,' police department do more work.' And so there's a process in place."

And says that's true under both ordinances.

KB:But I went back and read the ordinances. There's nothing in there talks about changing people's complaints

in to inquiries. (And she explains the problem, the perception of turning complaints into inquiries.

TBurns: “Maybe for clarification, we can do that.”

There’s an eruption of crosstalk, ending with TBurns saying “we can do that” meaning changing it from an inquiry to an investigative inquiry.

He then explains, at some length, the number of received complaints and how it breaks down and how he focuses on “the big number,” meaning the # of total complaints.

“Regardless of how it is resolved I think we need to focus on the fact that it is a complaint.”

KB: Says when he does his reports, if he would classify them as investigative inquiry’s “that would be a huge clarification.”

9:10

TBurns: “That’s easy.” “That’s an easy fix and it makes good sense.”

9:30

TC asks that it would be helpful to have the photos and a stipulated order of continuance.

He obliges, produces a black and white photo with the “u”

shaped bruise and a measuring tape, plus a signed stipulated order of continuance.”

11:27

Q. In your closing report, you make reference to four officer witnesses and three non-officer witnesses.

(And I take these are witnesses beside the complainant)  
Can you help me identify who those non-officer witnesses were? From your notes?

11:50

A. “I can but I can’t. I mean, are you looking for names?”

Q. “Yeah.”

A. “I can’t do that because, currently, this is a closed internal affairs investigation and the police department’s past practice, that we’ve all talked about, has been, in essence, it becomes a closed file. So I cannot disclose those names to you. IA may be able to, but I don’t have the authority to do that because...”

Q. Even in light of the Supreme Court decision?

A. “I’m still waiting for the City Attorney to tell us where we go and I will tell you, I will share with you both, that the day after I got that notice, and I got it from three different angles, because I wasn’t aware of it. I got it from

you. I got it from City Legal, and I got it from, maybe it was the office of the Mayor as well. And they're working at trying to figure it out. So my question was, and I will tell you the next day I put in a request for all IAs, period, since I got here, in 2009, forward. And so my question, and why I tell you this is because I'm not sure if it's going to be retroactive or moving forward. So, I don't know. Because this is closed, and the decision happened after that."

Q. Well I can give you my legal opinion, which I'm sure you're keenly interested in.

A. "Well, and I tell you, I'm hopeful that they'll acquiesce and say yes. But my sense is that it will be from the date of the order forward. So, I could, but I can't."

Q. "Okay, did any of them corroborate Amanda's claim that she was struck with the butt of a rifle?"

A. "No."

Q. "None of them did?"

A. "No."

Q. "Not even the sister-in-law?"

A. "Oh, I'm sorry, I thought we were talking officers."

KB: "No, we were talking about the other witnesses."



A. “No, I think in the letter, the sister-in-law, the woman that was with her said she was, clearly. And that’s clearly in the [8/24] letter, as well. My letter to you.”

Q. “Okay. In your letter to me you say that ‘[t]he complainant’s sister-in-law indicated that she witnessed the confrontation. Her account of the incident contradicts the officer’s account of the incident. She advised that she saw the accused officer physically strike the complainant.’ The accused officer is not contesting that he physically struck the complainant. So...

A. “No, she said ‘with a gun, with the butt of the rifle.’ Yeah.”

Q. “Okay, also from your letter, she, the sister-in-law, ‘also advised that another individual who was arrested with the complainant witnessed the officer’s actions.’”

A. “That’s correct.”

Q. “Any my question is, who is that other individual?”

A. “Again, I can’t release that name to you. But, again, it’s a guy who happened to be at the same location, at the same time. And he declined to come in, and we talked with him over the phone as well.”

Q. “Did the sister-in-law’s statements corroborate

Amanda's claim that she was struck by the butt of a rifle?"

A. "Sure."

Q. "Okay. This would be a good time to ask you why that's not in the closing report, and why it's not in your letter."

15:00

A. "Well, because I find that as conflicted... I mean, that's a good comment, I mean. They do, I mean the sister-in-law and the sister agree with that fact. But, frankly, I didn't see any reason to go into that, beyond that point."

Q. "But, in terms of the contradiction you wind up... I mean, by inference what you're saying is that both, you don't believe Amanda and you don't believe her sister-in-law."

A. "True. And I would tell you that the reason for that is the one individual that was with them at the time, but not...was with them as in the same location, the guy that we're talking about that we called, that didn't want to come in, and said that he didn't see that happen, will be contradictory as well as the officers' comments. So, you know..."

16:00

KB: "Can I ask one question?"

A. "Sure, go ahead."

KB: "This guy that you're talking about, that contradicts that, does he live in Spokane? (and so on)"

A. "You know, I don't have that information readily available but let me find out."

Q. "Are you saying that the sister-in-law's account is discredited because she referred you to a witness that she said would corroborate her account and that person did not corroborate her account? Is that the basis for discrediting her?"

A. "Well, that in conjunction with the officers that were present, that were right there and didn't see that happen either. In conjunction with the fact that the officer that had the rifle—that we all acknowledge happened—in his case, there was a three-point sling on it so it was physically impossible."

Q. "I want to come back to that, because I have a question about that."

A. "Right, that it would be physically impossible with that on to strike her with the butt of the gun."

Q. "Okay."

A. “And in conjunction with that, it’s clear that she was shoved or pushed. I mean, it’s been noted in the later as well as in the investigation that there was a straight arm that is acknowledged, so whether or not that caused the bruising that we have the picture of, or not, I mean that’s only open to speculation. So, I don’t know, but it’s clear that she was contacted by law enforcement.”

17:45

Q. So let’s turn to Doctor Chiu. Did you talk to her?

A. “No.”

Q. “Okay, so you, in your letter, well, you say, first of all, I mean, I guess you answer one of my questions, from the start, which is that Dr. Chiu’s medical report was part of the investigation that you oversaw.”

A. “True.”

Q. “Does that mean you had access to the report and remember seeing it?”

A. “Yes.”

Q. “Is there a reason you didn’t put her statement about the bruise in your closing report?”

A. “Sure, and again, part of that, recognizing that this is a

relatively new process, was trying to figure out what was or what was not appropriate. And I also think in the letter we talk about the fact that, you know, the closing report, without a doubt, in my expectation could have been more descript and definitive. But not knowing how much needed to be in there, I chose not to. It was a personal choice.”

A. “Well, let’s just go over that because I think this is an important question. This is from your closing report. ‘The investigation revealed that the officer that was forced to confront the complainant due to the complainant’s interference was in possession of a patrol rifle at the time of the incident. The injury reported by the Complainant was inconsistent with the type of injury the complainant would have received had the complainant been struck with the butt of the gun the officer was carrying at the time of the incident.’ But you knew at the time that this medical report existed with this doctor’s statement...”

A. “That’s true.”

Q. “Saying that, in her view, the bruise *was* consistent with a rifle strike.”

A. “True.”

Q. “Why not include the doctor’s statement in your closing report?”

A. “Because I believe, as in the follow-up letter that I sent

to you yesterday and we gave to you today, that the doctor's opinion was influenced based on what the complainant had told the doctor. And I think that the doctor took that into account to make that statement."

20:00

Q. "But why not disclose that in the closing report? And I gather it is your determination, well, I don't know, I'm not going to..."

A. "Okay."

Q. "Whose determination was it originally that the type of bruise inflicted was inconsistent with a strike from a rifle butt? Was it internal affairs's conclusion, or yours?"

A. "Well, I will tell you it was both of ours. And it was not only based on that, but it was also based on photographs of the rifle that was used in comparison to the bruise, and so I mean we looked at the photos of the...(pause).

KB: "While you look that up, thinking about, and I guess this is a yes or no, was there a...there is a doctor stating that the bruise appears to be consistent, as a part of the IA investigation, was there a medical professional who stated that it was inconsistent?"

A. "No."

KB. “Okay, so when you go to a doctor, one of the first things the doctor asks you is why are you here? You have to tell them why you’re here. So, no matter what she would have had to say I’m here because I was struck by a gun.”

A. “Right.”

KB: “So, one of the reasons why you discredited this doctor..”

A. “Right.”

KB: “And internal affairs discredited a medical professional who has, who actually, quite honestly, is more adept at assessing whether it was consistent or not, a medical professional is more adept at making that determination than internal affairs, and you. And you guys have discredited her based on the fact that her patient told her why she was there.”

A. “Well, in conjunction with the fact that the doctor hadn’t seen the gun; doesn’t necessarily have any background or experience in this. And, again, if you look at the bruise pattern, versus the butt of the gun, they’re inconsistent. So, and in addition to that you look at all the other witnesses statements. You have Ms. Lopez that says one thing. It’s reinforced by her sister, or sister-in-law. You’ve got another person that supposedly has seen it, that says, ‘I didn’t see that happen.’ You have four officers who say it didn’t happen. You also have the sling on the gun

that, if worn during the time of the incident, you physically, if you put this rifle and you hold it with the sling on the gun...

KB “Okay, stop with the sling because he [tc] wants to go to the sling later.”

23:00

A. “But my point is, all of those things in conjunction, and the fact that, yes, the patient told the doctor what happened. It’s certainly the doctor’s opinion and the doctor is a medical professional, but I don’t necessarily know what the doctor’s experience is beyond that point. So, having said that I don’t necessarily give a lot of credence beyond that to (pause). It’s clear that she has an injury, but I don’t necessarily...

KB: Can I follow through?

TC: Have at it.

KB: “Because you don’t know what experience the doctor has with guns and rifles and stuff like that..”

A. “Right.”

KB: “Can I ask, are you a medical professional?”

A. “Of course not. You know that.”



KB: So, I know, I'm just making a point. In internal affairs, of the people who did this investigation, do any of them hold a medical license?

A. "Not that I know of."

KB: "Okay, I just wanted to clarify that."

A. "Right."

KB: "And then another question was, when you were giving that explanation, um, one of the reasons why you're here is because the Spokane Police Department has done a great job of coming up with consistent stories."

A. "Sure."

KB: "So it doesn't really carry a lot of weight, especially with the public, to say 'four officers said that she wasn't struck.' (she then mentions the Zehm case).

A. "Understood, sure"

KB: So that's going to be a little bit of a concern as well. Tim has questions, and I'm going to stop.

TC: "The forensics of this are interesting to me. That gun butt, to me, to my untrained eye could cause a bruise like this (motioning toward the photograph) depending on the

angle.”

A. “Well, I think you and I are speculating though.”

25:00

TC: “We are speculating, no doubt about it, but I guess one of the tipping point issues for me on this, Tim, is that, I mean we know that there are ‘he said, she said,’ [cases] and I can’t decide who’s right and that’s the end of it.”

A. “Right.”

TC: “In this report, though, you’re clearly siding with the police and their account and dismissing the account of the complainant, and at least one witness who say that she was struck by a rifle. Now, maybe that’s the right call, I’m just trying to parse this out...”

A. “Right.”

TC: “I mean this is the first case like that that we’ve looked at and I just want to do my job. But, just in terms of the doctor’s opinion, certainly one of the questions I have was would a shove have been, would a hand be capable of inflicting this bruise, instead of a rifle butt? I don’t know, but it seems like the doctor’s opinion that this was a hard object rather than a flesh hand in terms of it being capable of causing a bruise might have been part of why she decided that this bruise was consistent with a rifle butt

strike and not...

A. "Sure. And, first of all, the doctor is certainly entitled to her opinion as a medical professional and as an individual as well. But I would suggest that the overwhelming information that I've been provided with, would not support that."

TC: And your argument is, your explanation is that the doctor's opinion was compromised by the fact that the complainant told the doctor that she believed she was struck with a rifle?"

A. "Sure."

TC: "And that's what comprised her?"

A. "Right."

KB: "I have another question. How many days after the incident did she go to the doctor?"

A. "I believe it was this night."

TC: "Well, there are actually at least three doctor visits that I see. And I do have some questions about those, further down the list."

A. "I can tell you that she was taken to the doctor's office, or to the hospital, by the sheriff's office after she was

booked. She then went back, as I recall, that same morning after she was released from custody. And then, as I understand it, when she was down, I believe it was in San Diego, she went back again for additional care.”

KB: At which visit was this photo taken?

TB: “I don’t recall.”

KB: “Was it the first night when the sheriffs took her? The next morning?”

TB: “I believe this was after the fact, as in down in San Diego.

KB: Question about if it was taken in SD a couple days after the incident “can we really, really use this bruise” that IA can use to say that’s not consistent with our rifle.”

TB: “That’s a good point.”

KB: Because it’s a couple days after... this is just me.

TB: “My sense is those were in fact sent after the fact.”

TC: “I just want to get closure on this. So what do you think caused the bruise?”

28:00

TB: "I'm not going to speculate Tim. I'm not going to get caught up in that. I think we've seen other people do that and it's not worked very well for them."

TC: "Okay. And I think we've covered my questions on the bruise pattern. In regards to the documents and the redactions, I want to ask you about that, because you write. Well, first, let's just make sure that we're talking about the same document."

TB: "Okay."

TC: "It was a little confusing because we didn't see any redactions in the earlier reports from Spokane."

TB: "Yeah."

TC: "These are the documents with the redactions."

TB: "All this stuff in here is, my understanding in talking to internal affairs, would have contained the bloodwork results for Ms. Lopez. And as I understand it, they were redacted at her request."

KB: "Who gave you that information?"

TB: "Uh, internal affairs."

TC: "And that gets to my second question. You also write, 'I've been told that the redacted information contains

results of the complainants bloodwork.' The question is, told by whom?"

TB: "Yeah, internal affairs."

TC: "Okay."

TB: "And I also believe that's well within her right to ask and continue to have that redacted. But I also believe, as I think the letter suggests, that if in fact this has the bloodwork results, that one of the things typically they do is they do alcohol screening. And, so, in the narrative of the arrest reports, as well as in the internal affairs investigation, it was frequently referred to the fact that she appeared to be under the influence. And so this would either support that, or refute it, but in this case I'll never know."

TC: "Well, it may or may not, because this report indicates to me that the blood draw here would have been blood drawn on January 4th."

TB: "Okay."

TC: "And my question is how would... [he intercepts the question.]

TB: "Sure, it would be not relevant at that point. If these records reflected from that date, clearly. So."

TC: "Yeah."

TB: “Yeah, that’s a fair comment. I absolutely agree.”

TC: [To Kiondra] do you have any more questions? I’m going to move on.

KB: So it would be natural to assume that at the time you wrote this letter, you were talking about that redacted information.

TB: “Right.”

KB: “You had not read the report and realized the date?”

TB: “No, I read the report. I just didn’t connect the two.”

KB: “The date.”

TB: “Yeah.”

KB: “Of the report.”

TB: “Sure.”

KB: “So, this is another piece of a puzzle that helped you come to the conclusion that Amanda Lopez’s story was not one that you would believe, so I just...”

TB: “Well, I would tell you that her either lack of sobriety or being intoxicated would certainly potentially skew her perception of the events.”

KB: “Okay.”

TB: “And having said that, not knowing but being told that she was under the influence by several officers that I sat in interviews of, the question then becomes, ‘was she or wasn’t she?’ And I think it is a relevant factor that could be either reinforced by blood tests, or refuted by blood tests. And if the blood test information exists, it would either speak to her credibility or the officers’ credibility and not know that, it leads me to question. And certainly if this information is specific to this date, then it wouldn’t be relevant to the comments I’ve made. However, if it is dated information that just happens to be placed on a document that is dated later, after the fact, well, then it would be relevant. But I won’t know because it is redacted and it’s well within the rights of Ms. Lopez to want to do that. That lends me to ask the question, ‘was she, or was she not, under the influence?’ And the only way to truly prove that beyond simply believing the officers would be the blood results, because Ms. Lopez will tell you she was not. So, again, I don’t know, who do you believe?”

32:32

TC: “In the IA interview with her, did she deny that she’d been drinking?”

TB: “No, but again simply consuming alcohol does not necessarily mean one is under the influence or impaired.



So, no, she acknowledged..

TC: “That she had been drinking..

TB: “That she had been drinking..

TC: “So she didn’t try to say she was a tea-totaller on New Years Eve...”

TB: “No, absolutely not.”

33:11

KB: Makes the observation that this was another case where in having to choose whom to believe, he sides with the officers. “We’ve had these conversations about these kinds of reports before.”

TC: A logical question of where you set the benefits of the doubts. That’s what we’re trying to explore.

TB: “And I understand that but again I think we have to refocus on really what my role is in the process. I’m not in a position where I’m there to judge the officers and I’m not there to judge the complainant in what happened. My role in the process is to confirm that the investigation was done in a timely, thorough, and objective manner. So maybe what we’re talking about more is the objectivity of it, or the thoroughness of it but certainly I’m not there, because the questions are asked and they’re answered, and really the

focus point for a closing report prior to the Washington Supreme Court's most recent ruling, was to try to provide a window or a snapshot into what has gone on behind the scenes. And as I've said earlier today, as well as I've talked about in the past, closing reports are clearly a work in progress and this one clearly could have been done better. And I will accept that. But it's not my role to try and establish whether the police are lawfully doing their job or not, that's internal affairs and that's the Chief of Police's decision to do." (sic) Mine is to ensure that the process was done thoroughly."

TC: "But here's my general question on this, and [then] I want to get back to the gun issue

KB: I have a question too, please.

35:30

TC: "It seems like in this report there was, that the information that you got from the officers, that was supportive of their account, is in your report, and in the letter. The information that would have been corroborative of her, of her side of the story, is altogether missing from the closing report. And I'll cite two things, the testimony of her sister-in-law, you cannot tell that she had at least one witness who was willing to corroborate..

TB: "No. Hindsight [is] twenty-twenty Tim, I would agree it should have been in there."

TC: “And the doctor’s...What was really confusing to us was to see that, ‘well, how did this come [about] when we’ve got a doctor saying..”

TB: “Right.”

TC: “That the bruise was, in her view, consistent with a rifle strike.”

TB: “Right.”

TC: “It may be that both of those things are true, they are true, and that they could have appeared in your report, and that you could have reached the same conclusion you did but by explaining why...”

TB: “Sure.”

TC: “Despite this evidence and these statements, that you came to a different conclusion. But it’s conspicuous by its absence.”

TB: “I agree. I agree with everything you’ve just said there and I would suggest that we can do better and we will do better as we move through this process.

TC: (Returning to the rifle issue) One of the things about this case that influenced you is your belief that the three point sling would have made the alleged rifle strike

impossible. (inflection on “impossible”)

TB: “True.”

TC: Can you explain?

TB: [Goes to the photograph to explain)

37:12

He explains the three point sling.

His point is: “Regardless of how loose it is, that sling, once it’s around your body and you’re using it to position the rifle, there’s no way you can take it. You just can’t get the leverage to do it. And probably the best way to answer that question would be to have a demonstration done for you at some time. And I will tell you that..”

TC: “Basically, Tim, what you’re saying is that the sling would have held the rifle so close to the officer’s body..

TB: “Right.”

TC: “that it would have made it impossible for him to manipulate the butt of the rifle away from his body with such force as to..

TB: “Exactly. Right. And in conjunction with that, officers are trained that if they’re going to get into some kind of

hand to hand confrontation with somebody who poses a threat to them, they will tuck it down on their side because, again, you know, this is deadly force. And so, if for some reason they get into a struggle and they have an accidental misfire it could have fatal consequences. So, actually in the officer's testimony in the interviews the officer talks about actually doing what they are trained to do."

38:51

KB: "Wouldn't it stand to reason that, no matter what, that pretty much would have been his testimony? Because he would have been shooting himself in the foot to say that he was doing something that he wasn't trained to do?"

TB: "Well, certainly, if in fact that was the case. But when you have..there's nothing to suggest that the officer wasn't telling the truth. So, it comes down to who do you believe. It's about the believability. And certainly if an officer lies in these interviews, that would be grounds for termination."

KB: "I have to go back because I have a question, because a few moments ago you were talking about your position and objectivity,

TB: "Right."

KB: "and the fact that the job isn't really about that,

exactly.”

TB: “Right, I’m not in place [of] the judge.”

KB: “Exactly. So, we go back and we look at that and I love the way when the ordinance was passed you put in the NACOLE—I know I’m off topic Tim—you put out the NACOLE code of ethics...And if you look at that code of ethics and your comment about the objectivity and the fact that you so clearly, you so clearly have decided to run with what the police say, at least in this case.”

TB: “Okay.”

KB: “Where’s the objectivity for the civilians? I mean, where is the objectivity for them? Because you have completely discredited Amanda Lopez, not just by not believing her, but even in writing the closing report and leaving out things that would have allowed other people to at least hear what she had to say as well...”

TB: “Sure.”

KB: “It seems as though you made the decision to believe the police and everything you’ve done beyond that has been to, once again, demonstrate why you believe the police. And that’s not really objective to civilians.”

TB: “Well, Kiondra, as I told Tim a couple minutes ago, I absolutely acknowledge and take ownership of the fact that

the closing report could have been more comprehensive, more in depth and could have contained some of those. And in the future we will strive to do that.”

KB: “I hate. I don’t want to interrupt you but if we go beyond the closing report, I mean even the letter that you sent out, I mean, it so clearly demonstrates not an objectivity, not even a, not even you being an independent person. Anyone actually reading this letter would almost say, ‘gosh, is he the next propaganda piece for the police?’”

TB: “Okay, okay.”

KB: “I mean in reading the letter, and I’m just asking that question...”

41:45

TB: “No. And that’s fair. But I think if you read the letter from the beginning, I think the letter said in context by, because what affords us the opportunity to have this conversation are a couple things. First of all, of course, you have Ms. Lopez’s authorization through her attorney Mr. Finer to do this, otherwise we wouldn’t be talking.

KB: “Exactly.”

TB: “In conjunction with that, though, based on the request it’s all controlled under the municipal code to see if there was something that would allow for this to be re-

opened. So that set the context for it and then it was based, the response to the letter, was based on the documents that were provided and points that were discussed, and we're trying to respond to. And so that set the tone of the letter. Now, I will tell you that I agree. I think the closing report, the original closing report, could have been done better and, quite frankly, had it been, we probably wouldn't necessarily still be here having this conversation. I take ownership for that. But I'm not the person that sits in judgment. When it's all said and done, the hardest part of my job quite frankly in doing my job as it relates to the totality of it is to figure out not whether the investigations were done timely, not whether they were done thoroughly, but whether they were done objectively. And the word 'objective' is objective in and of itself, and how you determine that. Those are, that's probably my greatest struggle internally, as I try to work through this, is to try and figure out how that occurs. So, in this case I think that my response letter was in response to the request that we consider re-opening the investigation based on new evidence which, clearly, having gone through the items I did not feel there was a reason or new evidence that would warrant making that recommendation to the Chief. And ultimately, when the IA investigation is done and completed, then of course it rests with Chief Kirkpatrick who is the one who determines what level of discipline may occur but more correctly what that means is that she sits in judgment of her officers. Not me. So, I know sometimes it gets a little blurry and as we know as it relates to the pre-existing and the revised ordinance, the



big thing that we need to stay out of is the discipline issue, and unfortunately sometimes people have a perception that I'm here to judge the officers and their performance when, in fact, I'm not.

KB: "Just so you know, I don't have that perception."

TB: "I understand."

KB: "What concerns me is that for complainants and for civilians there only extension really, independently, into asking for review of excessive force from officers is via you. And if the Chief stands in judgment of the officers, and you do not, and you're not objective, I mean you're not here to stand in judgement of anyone. And then we receive letters like this after you review a case and read the closing report and talk to you, and you so clearly didn't believe this complainant at any level In a lot of ways when you talk with and put these reports out to the Chief of Police and public safety, you stood in judgment of the civilians in a lot of ways. And I'm not saying that you do that purposely.

45:33

TB: "Sure, sure."

KB: "I'm not saying that you do that purposely. I'm saying that a lot of the reason why we're here is public perception" [she goes on about public perception] whether it's real or not, it's real.

45:47

46:10

TC: "There is in your letter, I believe it is Mr. Hughes, Mr. Hughes.

TB: "Right."

TC: "And Mr. Hughes we know from the letter is the individual that the sister-in-law said should be contacted to corroborate Amanda and the sister-in-laws account that she was struck by a rifle butt."

TB: "Right."

TC: "In the email, Mr. Hughes says that he saw the officer strike the complainant with a rifle."

TB: "Right."

TC: "That's from your letter."

TB: "Right."

TC: "In the internal affairs interview, which I gather was after the email, he's questioned about that. And says, according to the letter, 'I didn't actually see the strike but I saw Amanda fly to the ground, that's why I couldn't believe that, you know, Amanda was shoved down.'"

TB: "Right."

TC: "The construction of this is that Hughes is being used, by inference, to discredit himself, because he's giving two different stories.."

TB: "He's giving conflicting statements."

TC: "He's giving conflicting statements."

TB: "But in addition to that, in Lopez's comments, she never did go to the ground. So, again, it's a perceptual thing. And so, who do you, who do you, who's more believable?"

TC: "Well, by this construction he's not credible to back up the sister in law's claims and Amanda's claim that she was struck by a rifle butt. But he is credible enough to present a conflict between what Amanda said, and what he saw. So, again, it's like where's the tipping point here. Is he reliable or not? He seems to be..."

TB: "Well, I don't know. I would suggest he's giving conflicting comments so I don't know how you assign value to his comment versus others. It's just inconsistencies. And they're perceptions potentially. I don't know. Is he lying? I'm not saying he is. Is he not? I'm not saying he isn't. I don't know how you give certain value. But again, Tim, my point would be he was spoken with. I mean we did get statements from him that I heard,

and the email says one thing, the statements say another, so there's an inconsistency. So how do you assign value to that?"

TC: "Is the sister in law less credible because she said that there was somebody who could corroborate what she saw and he was unable to do that?"

TB: "I don't know the actual answer to that. And again those are questions that probably need to be asked at a higher level. If we again look at..."

TC: "But they won't be asked. Because, and I'll say for the sake of argument that I don't know and the lawyers can go do their thing, but in my view this process stops here. I mean, it stops with this letter and this interview. As you say in the letter, 'I don't see a basis for reopening this interview, [investigation] so it's closed..'"

49:30

TB: "Well, I clearly don't."

TC: "And based on our conversation today, I don't detect any...I hear you conscientiously taking responsibility for some deficiencies in the closing report,"

TB: "Clearly."

TC: "I hear you saying that."

TB: "Right."

TC: "I don't hear you saying that you see this differently based on our conversation, and I didn't come here to talk you out of it,"

TB: "No, I understand that, and I appreciate that."

TC: "But my point is there isn't going to be any higher level, it's going to end here."

50:00

TB: "Well, then, it will always be a perception for the people that attended it and again, but I think what's also important, and I don't know if we talked about this or not but I will tell you that probably ninety percent of the time people..I will tell you in all the people that come into this office that I hope that when they leave this office they're satisfied with the process. I can almost guarantee you in ninety percent of the cases they're not going to be satisfied with the end result. Because, again, it's not for me to sit in judgment of the officers as my role is currently defined by the city and by code in what I do. But procedurally I think you have to acknowledge that, even in this specific incident, if not others, information is starting to flow and it's becoming much better procedurally. And having said that, my role as it is currently defined, I'm here to determine whether or not things were done in a timely, thorough, and objective manner. And participate in those

processes, and when they're not, to raise my hand and say we need to do more."

51:17

TC: "But I think you would also agree and I think you just said as much, that when people come through this process they might not like the outcome.

TB: "Right."

TC: "But you want them to respect the result. I guess the problem I have with this case. And I accept all the baggage that I may have a bias because I work for the law firm that's representing her, I'll accept that baggage."

TB: "Okay."

TC: "But it's still leaves questions like, if I'm in Ms. Lopez's shoes, and I read this report, I know two things that are not even discussed in your report. I know what that doctor wrote in her report. And that's not even discussed. So I don't get the benefit of knowing from the closing report how you addressed that and came to the exact opposite conclusion."

TB: "Right."

TC: "That leaves me wondering, well, is this guy really on my side. The other thing is, I don't see you reporting in the

closing report that the sister-in-law corroborated her story of the rifle strike.”

TB: “Right.”

TC: “So.”

TB: “Right..

TC: “In terms of where you’re trying to get, I don’t know how you can expect that the complainant in this case could be satisfied...”

52:30

TB: “Of course. I absolutely understand that. I absolutely understand how it could her and her sister in law, her and her dad who could be in these chairs as opposed to you. And my sense is, maybe because she’s not local, she isn’t. And maybe because she thought I didn’t do as good a job as I coulda, woulda, shoulda, she chose to reach out to the Center for Justice. And I’m absolutely very comfortable with all of that. I don’t know if she chose to seek out you, or you chose to seek out her. I don’t know, and I don’t have a need to know.”

KB: “We didn’t know her.”

TB: “Well, because I knew you guys were reviewing the closing reports, so my sense is it may have drawn some attention for you.”

TC: “Well, what didn’t happen is I didn’t go to our attorneys and say do you know this woman.”

TB: “Right.”

TC: “What happened is the attorney, with the client, that I was working on this process, and said I’ve got a client.”

TB: “Right, okay.”

TC: “And at that point, I didn’t know that Amanda Lopez’s case was covered by a closing report. We didn’t go out fishing to get...”

TB: “Right, no, and I’m not suggesting that was the case, either, but the curiosity of course to try and figure this out more in depth because again, up until recently, I can’t wait until the point where I can take a closed file and hand it to the complainant and say ‘see the work, ask the questions.’ And I’m very much looking forward to that point because I think that will solve a lot of the questions that may be asked prior to that. I did want to focus on one thing you said, Tim, and because I didn’t write it down just now, one of the comments that you made, and I’m sure you’ll hear it on the tape, is something about Amanda thinking that I was on her side or something, and I want to be real clear that I’m not hired to be on anybody’s side. I’m here to be an advocate for the truth and the process, so again, I don’t sit, I’m not going to judge Amanda; I’m not going to judge



the officers' performance, that's really the processes' responsibility, the internal investigation, and the chief's decision to draw those conclusions."

54:30

TC: "Well, I'll go back and listen to the tape. I hope what I said is that, was to the point of her being heard about two pieces of evidence.."

TB: "Right."

TC: "that she would be..I haven't talked to Ms. Lopez, but I would expect that she would feel that she would want to read your closing report and see that this doctor's report was included.."

TB: "Agreed."

TC: "and acknowledged, and if you'd reached a conclusion opposite from the physician, that you said why."

TB: "Right."

55:00

TC: "But she wouldn't have gotten to see that. She would also not have gotten to see that, even though it was her sister-in-law, that there was at least one witness who was willing to corroborate her account that she was struck by a

rifle butt. Because what you did in both cases was to know this.

TB: "You're right."

TC: "In your own mind you reached a decision that this wasn't reliable or not persuasive..

TB: "Right."

TC: "And that's what framed the conclusion. Both in your closing report and the letter. I say it's a transparency issue but it really is an accounting issue because I just think on a human level that you would want, and I know you'd want, I actually believe that you're very sincere in wanting people even if they disagree with the outcome to respect the process. And I guess my question to you, as somebody who's an advocate for your office, and wants to be an advocate for your office is how can you reasonably expect that when the evidence that they bring forward that is their best evidence for their account is not even mentioned in your closing report."

56:00

TB: "You're right. And I think, again, it goes back to the closing report. Had I done a better job on the closing report there's a chance we might not be having this conversation and I think the follow up letter hopefully will answer those questions for Ms. Lopez. Now whether she

likes the answer or agrees with it, that's her call, not mine but I hope that at least she'll understand the process, and why I would hope that people would respect the process, I think that may be some...

TC: "You mean a followup letter that hasn't been written yet?"

TB: "No, no, this letter. I think when you share this with her attorney and her attorney has this conversation with her, well, then, they'll figure out what they're next steps are. But at least I think they should recognize that these were questions that were discussed and reviewed and the investigation would contain those and frankly if it becomes where it's retroactive, then she should have access to all this stuff. There's nothing more that I'd love to do than give this to her to review, quite candidly. Cover to cover. There's no reason not to in my mind and I've been pretty clear about that from almost day one. So, um, all things accounted though, I mean, a better closing report would have solved a lot of this concern."

TC: "I agree. I have other questions but I think that you've answered them. (I ask for a copy of the signed settlement..."

TB: She should have a copy of this because she signed it. And, see, all things considered, too, that's just another one of those comments where, in the intake form, where she talks about not wanting to sign off on this, but yet she does, and I understand the reality of the circumstance and

this is a process, the inference was that, and I don't know if this is true but as I read it, the inference was that this was a tool that if she agreed to do this, and stipulate to the accuracy of the reports, then she would lose her right to civilly litigate against them because in essence the reports speak for themselves. Okay? Well, first of all, if you believe strongly enough in that, then why do you still go ahead and sign off on it? But more importantly, what I think everybody needs to know, because this is the first time I've seen this here [Spokane]. This is business as usual in Spokane. They do this routinely with first time offenders, with people that have a good history and I kind of parallel it on a bigger plane to plea bargaining, quite frankly and so my bigger comment on this whole thing is this is not something that is created just for her to make her go away, or not sue the city, or the police department. It's just business as usual in Spokane, when people qualify, this is often offered."

TC: (looking at the document" "it does say what you say it does, that 'the defendant stipulates to the accuracy and admissibility of the police reports. And she signed this on the 14th of June."

1:00:00

KB: You asked the question, if she believed in that strongly enough, why would she sign that? (she explains). Many times the alternative is a costly process of fighting it.."

TB: "Sure."

KB: (explains reasons why Amanda would given that she doesn't live in Spokane)

TB: "Oh, I understand it's a business choice."

KB: (continues to explain why people would sign it) "there are reasons she would sign it and still believe in what she's doing."

TB: "Sure."

KB: Explains A.L. wouldn't want that threat of going to jail "hanging over her head."

TB: "And Kiondra, I don't know if you've had the benefit of reading this, or seeing this intake form."

KB: "Yes, I have."

TB: "Because one of the things that's in here is 'additionally the city prosecutor wants Amanda to sign a stipulated dismissal document by June 15th, in which the charge against her will be dismissed and, in return, she would have to agree to the police department's report of the incident. She does not want to sign it because she says the police report of the incident is not true. So, I get all that and I also understand, and I'm smart enough to recognize too, it's maybe a business decision but, I guess

the question or quandary I get is where do you draw the line between principle and practical?”

TC: “Well, I think it’s a good question as to.. Certainly had she refused to sign that, well, I guess, in your view it’s relevant whether or not someone signs a statement agreeing with the police accounts of..

TB: “Well sure, because, you know, it’s hard to figure out agenda, incentive and (pause) I get the business side of it too, absolutely, you know, to fly up here a number of times from San Diego is costly. I also know that she’s a federal..I don’t know that she actually is a federal employee but she actually works for a contractor of the federal government and so that may create an obstacle for her as well. I don’t know, there are a lot of things behind the scene that are at play. But my biggest concern is as I read this, versus what the reality is, this isn’t something that was just given to her. You and I and Tim could all find ourselves, hopefully never in this situation but if we met the requirements for this agreement, we too could have a similar opportunity. It wasn’t created for her in an attempt to get her to not pursue something potentially civilly against the p.d. And I think it’s important to recognize the bigger part of this because when I saw that, I go ‘really? I need to know more about this because I didn’t know anything about this before. I’ve been here two years and when I read it, it’s like it sounds kind of like a plea bargain in some regards and in a lot of cases you might do one crime but they’ll charge you with three or four things. Well, then it gives the prosecutor

an opportunity to negotiate away some of those to move it through the process and the system. And I get the business part of it but the way I read it, it was kind of like they're offering her something special, which in fact they didn't. And the business, I absolutely understand that.”

## END OF TAPED INTERVIEW

Afterwards, Burns explained, in the face of the criticism that he is “a work in progress.”

