

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENNIS BALL-BEY,

Plaintiff,

vs.

KYLE CHANDLER, et al.,

Defendants.

Cause No. 4:18-cv-01364

VIDEOTAPED DEPOSITION OF LIEUTENANT COLONEL MICHAEL SACK
Taken on behalf of the Plaintiff
July 19th, 2023

9:12 a.m. to 1:43 p.m.

Jamie Jo Kinder, CCR 842, CSR 084.003306

1 A Yes.

2 Q Was it ever an -- Was it the practice for it
3 to be an oral statement?

4 A No, it was -- The practice was for it to be
5 written out or typed out.

6 Q Why was that the case?

7 A It was just what they would do. It was what
8 they were doing when I arrived, and so we just continued
9 that practice.

10 Q Okay. Did that change at all in the time
11 period when you were there before FIU?

12 A I -- I don't remember.

13 Q When an officer -- When a civilian shoots
14 another civilian, is it typically the case that the only
15 thing you asked from that shooting civilian who is a
16 suspect is a -- is a written statement?

17 A No, there -- that would be oral statement.

18 Q Am I correct to understand that, generally if
19 a civilian shoots a civilian, the shooting-suspected
20 civilian is -- you attempt to ask that person questions;
21 correct?

22 A Yes, sir.

23 Q Why is that the case?

24 A Well, that was just the practice. You want to
25 talk to them directly if they're willing to talk. You

1 know, obviously we would Mirandize them, depending on the
2 circumstances at the scene, whether we presume it to be
3 self-defense or we think that it was a criminal act. And
4 then if they elect to talk to us, then we would be able to
5 elicit information from the citizen as close to the time of
6 the event whenever we get them in about what happened.

7 Q And why is it important to elicit -- to elicit
8 not testimony, but -- but oral -- an oral recitation of
9 what happened from the suspect?

10 A To get their side of the story and to put that
11 into the report.

12 Q Okay. Why did police officers who were
13 involved in officer-involved shootings not get questioned
14 in that same way?

15 A It was just our practice to do it in a written
16 statement. I -- I don't know where that came from.

17 Q Based on your experience within the
18 department, would you agree that it was -- it would be
19 preferable to try to get from any suspect both a written
20 statement as well as an interview statement?

21 MR. PRATT: Objection. Improper hypothetical,
22 and calls for speculation. Subject to that, you can
23 answer.

24 A So can you ask that again?

25 Q (By Mr. Waldron) Yeah.

1 MR. WALDRON: Jamie, would you mind reading it
2 back?

3 (The requested portion of the
4 record read by the reporter.)

5 A If it's possible.

6 Q (By Mr. Waldron) It would be preferable;
7 correct?

8 A Yes.

9 Q Okay. And you may have said this already, so
10 forgive me. Your testimony is that -- that you don't know
11 why it was the case that shooting officers in the pre-FIU
12 era were not asked interview questions?

13 A Correct. Yeah. I don't know why.

14 Q Did you take any steps to change that process
15 during your tenure as the captain?

16 A So as the years went by, I brought it to the
17 attention of my supervisors, hey, we probably need to do
18 this differently. But it did not change until late '14.

19 Q Okay. And that was with the FIU; correct?

20 A Yes, sir.

21 Q Okay. Can you tell me about what you told
22 supervisors about -- about that -- that initial -- and if
23 I'm understanding you correctly, we're talking about the
24 fact that shooting officers were not interviewed after the
25 shooting, whereas a civilian suspect who shoots somebody

1 Q Okay.

2 A I don't -- I don't remember.

3 Q You said you raised this issue about
4 officer-involved shootings to Isom?

5 A Yes.

6 Q What was Isom's response?

7 A I don't recall what his response was exactly.
8 I mean, I don't know that he was too overly concerned.

9 Q Okay. Do you know why there was not something
10 like FIU initiated under Isom after you were concerned
11 about this in late 2009?

12 MR. PRATT: Objection. Speculation. Subject
13 to that, you can answer.

14 A I was told that there was pushback from the
15 police unit.

16 Q (By Mr. Waldron) Who told you that?

17 A I don't remember.

18 Q Okay. So your understanding was that the
19 obstacle in starting an FIU was the police unit?

20 A Well, not in starting an FIU, but like I said,
21 audit advisor. I said, I don't care where it goes, but
22 there should be somebody independent objective who does
23 only this.

24 Q Okay.

25 A So to -- to go somewhere else, not just to get

1 rid of it. I mean, it was our responsibility. We were
2 capable of doing it and doing an honest job of it. I mean,
3 we watched it, but it needed to go somewhere.

4 Q Okay. Once Dotson took over around 2013, did
5 you express the same concern to Dotson?

6 A Yes.

7 Q Okay. What did Dotson say about it?

8 A I think it was the same thing, the -- the
9 union wasn't in favor of it. It didn't go anywhere.

10 Q Okay. Do you know how Dotson went about
11 creating FIU once it finally began to be created, I think,
12 2013 and '14?

13 A I don't recall what the -- set it off, but
14 somewhere in late '13 or early '14, he agreed to do
15 something, to create some unit, because he assigned a
16 sergeant to the unit to go train, I want to say, in early
17 '14 maybe. And by -- By the fall of '14, I cannot remember
18 the name of the citizen that was shot. I believe it was on
19 North Florissant. He was armed with a knife.

20 Q Kajieme Powell?

21 A Yes. That's -- Thank you. So it was after
22 that event that Dotson actually activated and started
23 transferring people down to what was known at that time as
24 the Force Investigation Unit.

25 Q Were you involved -- And if I understand

1 out, what do we owe the circuit attorney's office, if
2 anything? So Chief Hayden can push back saying, hey, you
3 can prove we delivered these reports.

4 So that's when I asked if we could do some
5 kind of audit of the unit to look at all the reports that
6 they had done and what they're doing down here and see if
7 we're right or if the circuit attorney is right or if we
8 owe somebody something or if we could do a better job with
9 this.

10 Q Before we talk about the audit, I want to talk
11 about -- about that period you described before the audit
12 where you started to look at some reports and you didn't
13 like, I think you said, the way they were structured. Am I
14 correct that during this initial period, Roger Engelhardt
15 was still running FIU?

16 A Yes.

17 Q Was it your decision to get rid of Roger
18 Engelhardt?

19 A It was my decision -- my recommendation that
20 he be removed.

21 Q Okay. And -- And why did you make that
22 decision?

23 A So he was stuck on the belief that the report
24 should include a lot of ancillary information that wasn't
25 germane to what happened at this particular time and place.

1 So if there were a police shooting and some -- for some
2 reason a stolen auto was involved in it and a stolen purse
3 from a separate event, they would scan in everything having
4 to relate to that stolen auto, lab reports, interviews,
5 everything. The same thing for the purse. And so that
6 just made the report cumbersome, more difficult to read and
7 follow because you're look -- because I'm looking at
8 property. I'm counting the property screens and how they
9 relate to the narrative, where are they at in the
10 narrative. It's a meticulous process. It just complicated
11 everything, and it took forever just to get that one
12 report.

13 So I didn't -- I didn't know why it took so
14 long for him -- I mean, weeks for them to -- to deliver the
15 report. So it just -- that kind of thing, I just -- it
16 was -- It was time for a separation to bring somebody else
17 in, somebody who I worked with before and trusted would be
18 able to pick this up and get it to run right, what I
19 believed to be right.

20 Q That person became -- was John Green; right?

21 A Yes, sir.

22 Q And we'll talk about --

23 A He's a friend of mine, but he's a responsible,
24 conscientious guy, and if he couldn't do it, I wouldn't
25 pick him.

1 Q Okay. You talked about the fact that there
2 were numerous additional forms in the FIU investigations
3 from the Engelhardt era. Do you remember what -- what we
4 were discussing?

5 A Reports.

6 Q Yeah.

7 A Yeah.

8 Q And -- and that there -- there was lots of --
9 lots of extra documentation; correct?

10 A Yes.

11 Q Would you agree that -- that part of the
12 difficulty with that sort of style is that it makes it more
13 difficult to get to the heart of the shooting or the -- the
14 incident at issue?

15 MR. PRATT: Objection. Speculation. Improper
16 hypothetical. Subject to that, you can answer.

17 A Having read it myself, yes.

18 Q (By Mr. Waldron) Were you ever concerned that
19 the purpose of doing that was to obfuscate what actually
20 went on?

21 MR. PRATT: Same objection. You can answer.

22 A Yes.

23 Q (By Mr. Waldron) Okay. Did you ever have a
24 conversation with Engelhardt after you made the decision to
25 recommend his transfer?

1 A From the internal investigation.

2 Q Okay. Did you ever see evidence from the
3 internal investigation as to whether or not Lieutenant
4 Colonel Jones routinely met with Engelhardt?

5 A I don't remember what was -- I don't -- I
6 don't remember. I know that -- that those were things that
7 would have been discussed or questioned of her, but I don't
8 recall what her response was.

9 Q Do you know whether or not anybody during
10 either the FIU audit or the IAD investigation talked with
11 Rochelle Jones?

12 A She was interviewed, yes. Yes.

13 Q Do you know who interviewed her?

14 A Lieutenant Brown and myself.

15 Q Was this part of the IAD investigation or part
16 of the FIU audit?

17 A The IAD investigation.

18 MR. PRATT: And that's a good point because I
19 am going to object to any question that has to do with the
20 IAD investigation. Depending on the question, probably
21 instruct the witness not to answer because Lieutenant
22 Engelhardt still has a pending matter with the City.

23 MR. WALDRON: So what would be the grounds?

24 MR. PRATT: Well, involved in his discipline.
25 So it's an ongoing in which the City is the defendant. So

1 that would get into attorney-client privilege, that would
2 get into potentially litigation strategy. Likewise, above
3 and beyond that, Lieutenant Engelhardt has an expectation
4 of confidentiality with regard to issues of discipline and
5 things like that. At a minimum, I think he would have to
6 have an attorney here or need to be present in order to be
7 able to consent to that so that we are not exposed to
8 potential liability for discussing those confidential
9 matters.

10 MR. WALDRON: Okay. So you --

11 MR. PRATT: I think the -- I think the FIU is
12 fair game. I think the IAD investigation is not.

13 MR. WALDRON: Okay.

14 MR. PRATT: To give you some guidance.

15 MR. WALDRON: You've said a lot, and I
16 appreciate that.

17 THE WITNESS: Can I -- Can I ask a question?
18 May I ask --

19 MR. WALDRON: Let me -- Can I respond to this?

20 THE WITNESS: Sure.

21 MR. WALDRON: Just so that we've got it all
22 clear. My understanding is that the FIU -- that the IAD
23 investigation is going to relate to Engelhardt's tenure
24 running the Force Investigation Unit, so I think it's
25 relevant. If there are conversations that Lieutenant

Colonel Sack is going to relate that involve -- that involve counsel, I agree that those are attorney-client privilege. I'm willing to designate this entire section of testimony as confidential under the protective -- protective order, which means that anything that's filed related to it or presented in court will have to be done pursuant to the protective order. What I would prefer not happen is that we have to cut this off, we have to litigate it, and then we have to come back and do it again because I think that it's highly relevant to the core issues at the heart of this case, which is, to what extent was Roger Engelhardt supervised, and to what extent did Roger Engelhardt supervise the -- the FIU.

So I'm more than happy to designate it as confidential. I'm more than happy to make sure that we've got that on the record so that it is under seal or that is confidential in the transcript.

MR. PRATT: Let's take a break so that I can talk to the witness. Here's what I am attempting to do: I'm attempting to allow you to inquire to the fullest extent that will not violate attorney-client privilege on behalf of my client, the City, or get into litigation strategy regarding my client, the City. Specifically, your point is well-taken about the expectation of confidentiality. That may solve that piece of it.

1 objection is.

2 MR. PRATT: Okay. If your -- Ask your
3 question, if you would, please.

4 MR. WALDRON: Would you mind, Jamie?

5 (The requested portion of the
6 record read by the reporter.)

7 MR. PRATT: If your -- If your answer is it
8 went into IAD, I think you can give that answer. Beyond
9 that, no.

10 A So there were some discussions regarding some
11 IAD matters, and I consulted with legal. So we don't have
12 a law department at the police department, so the city
13 counselor's office represents us, and we have some
14 attorneys embedded in our building, but they don't --
15 they're not the police department employees, they're city
16 counsel employees. So I consulted with their legal
17 department as to how to proceed, and I was instructed to
18 make three copies of everything. And then one copy of
19 the -- All the materials, more than one box, went to IAD,
20 one went to the FBI and one went to the legal department.

21 Q (By Mr. Waldron) Okay. And these -- You said
22 it was more than one box; correct?

23 A Yes.

24 Q And these -- these materials did not solely
25 relate to the IAD investigation against Engelhardt,

1 correct, but rather they were about this whole FIU audit?

2 A Everything that was produced was -- was put
3 into these boxes.

4 Q Okay. Very good. Would you remember who you
5 provided that box to at the IAD?

6 A So that would have gone to -- I mean,
7 officially, I guess it belongs to Lieutenant Brown.

8 Q Do you remember that, doing that, or do you
9 just know that it probably happened because you would have
10 done it?

11 A I -- I remember put -- I had to -- so I put
12 them on chairs with wheels and I had to wheel it down. So
13 there were six boxes so I had to wheel them down and then
14 gave them to Will.

15 Q Six total boxes or six boxes multiplied by
16 three?

17 A Six total -- Six boxes multiplied by three.

18 Q Okay.

19 A 18 boxes. Six went to Lieutenant Brown, six
20 went to legal to be retained if nothing changed or taken
21 out, and then the other six I held, and then I forget which
22 one it was, but when -- The FBI didn't want to take all six
23 boxes, so when they wanted a document, I think it came out
24 of mine and then -- So mine was sixfold minus this or that.
25 They didn't want the whole thing.

1 Q Right. And I'd ask you to look at -- at the
2 bottom of 8176 and the top of 8177. And this relates to
3 IAD allegations.

4 MR. WALDRON: And, Larry, this sort of brings
5 this back to the unworkability because it -- the IAD issues
6 themselves appear to be embedded within the FIU audit.

7 Q (By Mr. Waldron) Do these -- do these -- What
8 does this section mean?

9 A So these are all separate allegations within
10 our -- our either police manual, in Rule 7 probably, or our
11 special orders.

12 Q Okay. And what did -- What did this section
13 mean as it related to the whole FIU audit?

14 A So I mean, like any audit, here's our
15 findings, here's what -- what needs to be looked at. So
16 it's like a letter to IAD, hey, here's the allegations, we
17 did the legwork. You know, there may be more, dot, dot,
18 dot here, like they have, but here's what we found. And so
19 they listed the allegations that they believe occurred but
20 needed to be investigated and either sustained, not
21 sustained or whatever.

22 Q Okay. And -- And am I correct to understand
23 that the allegations were going to be against Roger
24 Engelhardt?

25 A Yeah. I think -- I think all of these would

1 Q No, I'm still confused, but --

2 A Yeah.

3 Q I think the reason I'm confused is, why would
4 there be shootings that are just being investigated by IAD
5 now that go back to 2016 and 2017?

6 A I don't know. I -- I -- I wasn't down there
7 at the time. I know they got backed up. I couldn't tell
8 you why they weren't done. But I'm getting them -- They're
9 being completed now. And so according to our special
10 order, IAD will investigate and they have to look at
11 particular things.

12 Those are -- Those ARTS will include so-and-so
13 attended firearms training such a day. They reviewed and
14 signed for the use of force special order. The last time
15 they did it, was it a month ago, was it eight months ago.
16 Eight months ago, that's a violation. That first offense
17 is a written reprimand. You know, so they would go
18 through, you know, the -- the orders and everything, if
19 there is no criminal violation or anything associated with
20 it, and they would look at is there anything wrong with it,
21 did they go -- Like I said, did they go to training, did
22 they use an approved weapon, did they use approved
23 ammunition, that -- that kind of thing.

24 So the ARTS might only be three pages long.
25 So it's -- it's not some big all-inclusive thing. They're

1 relying on the FIU report. And I understand the Engelhardt
2 era calls a lot of that into question, the -- the quality
3 of the report in the investigation. So it's kind of a
4 tough thing to go back and look at.

5 But they're working through those now, and
6 then eventually, this current circuit attorney has agreed
7 to review and provide some kind of determination, not
8 saying, hey, the officer's completely clear, but they
9 agreed to say, hey, if we don't see any cause to pursue
10 this, we'll tell you we don't see any cause to pursue it.
11 So we would then be able to say, okay, well, you can always
12 open that case up again. Our internal policies, you know,
13 were followed and the case could be solved or maybe they
14 weren't. There's some discipline.

15 Q Okay. Let's go back to, let's say, 2015.

16 A Okay.

17 Q Okay. We're in the Engelhardt area for FIU;
18 correct?

19 A Yes.

20 Q I'm an officer who is involved in an
21 officer-involved shooting, and not only am I involved,
22 I'm -- I'm the officer who shoots somebody; correct?

23 A Right.

24 Q I know that that case is going to be
25 investigated by FIU for any criminal matters; correct?