

IN RE:)
)
 INDEPENDENT INVESTIGATION)
)
 INTO THE CITY OF ROCHESTER'S)
)
 RESPONSE, et al.)
 -----)

VIDEOCONFERENCE DEPOSITION OF
 JAMES SMITH
 New York, New York
 Friday, October 9, 2020

Reported by:
 TAMI H. TAKAHASHI, RPR, CSR
 JOB NO. 20732
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October 9, 2020
 11:05 a.m.

Videoconference Deposition of JAMES SMITH, held via Zoom remote video conferencing software in New York, pursuant to Notice, before TAMI H. TAKAHASHI, a Registered Professional Reporter and Notary Public of the State of New York.

1
2 A P P E A R A N C E S:
3 (All parties appearing remotely)
4
5 Representing the Independent Investigation
6 Team:
7 EMERY CELLI BRINCKERHOFF ABADY WARD &
8 MAAZEL LLP
9 600 Fifth Avenue
10 New York, New York 10020
11 212.763.5000
12 BY: ANDREW G. CELLI, JR., ESQ.
13 acelli@ecbawm.com
14 KATHERINE ROSENFELD, ESQ.
15 krosenfeld@ecbawm.com
16 SCOUT KATOVICH, ESQ.
17 skatovich@ecbawm.com
18
19
20
21
22
23
24
25

1
2 A P P E A R A N C E S (continued):
3 (All parties appearing remotely)
4
5 Representing the City of Rochester:
6 MORRISON & FOERSTER
7 250 West 55th Street
8 New York, New York 10019-9601
9 212.468.8000
10 BY: CARRIE H. COHEN, ESQ.
11 ccohen@mofo.com
12 LILY VALENTINE WESTERGAARD, ESQ.
13 lwestergaard@mofo.com
14 AMANDA L. GAYER, ESQ.
15 agayer@mofo.com
16
17
18
19
20
21
22
23
24
25

1 Smith
 2 arrest, correct?
 3 A. Correct. Yeah, yeah.
 4 Q. And as you sit here today, just to
 5 be clear, you still think that's the first
 6 time she saw it, right?
 7 A. I do. Yes, I do.
 8 Q. Okay. And the timeline also
 9 reflects that it's September 4th -- this is
 10 the last page of your timeline -- that the
 11 video of the mental health arrest from the
 12 body-worn camera footage is -- was made
 13 public by the Prude family lawyer, right?
 14 A. I believe that's -- yeah, that's
 15 what it says in the report. I believe the
 16 date is correct. I hate to think I made a
 17 mistake, but --
 18 Q. And we've talked about you were
 19 involved in a meeting on August 4th -- we're
 20 going to talk about that in more detail
 21 later -- involving the Prude incident, right?
 22 A. Correct, yeah.
 23 Q. And that was a meeting between
 24 whom?
 25 A. The Corporation Counsel, Tim

1 Smith
 2 discussion of the fact that there was a
 3 criminal investigation by anybody -- strike
 4 that. Let me ask it a different way.
 5 To your knowledge, on or before
 6 August 4, 2020 was the mayor aware that there
 7 was a criminal investigation of officers at
 8 the RPD in connection with the Prude mental
 9 health arrest?
 10 A. Not that I'm aware of. Not that I
 11 recall.
 12 Q. Were you aware, as of that meeting,
 13 that there was such a criminal investigation
 14 that was opened?
 15 A. The meeting on August 4th?
 16 Q. Yes.
 17 A. Yes, I know that, as part of the
 18 ensuing conversation about whether officers
 19 would be -- or an officer or officers would
 20 be suspended or other things, that was --
 21 that was brought up. The chief talked about
 22 that and so did the Corporation Counsel.
 23 Q. In the August 4th meeting?
 24 A. Correct.
 25 Q. Is that the first you heard of it?

1 Smith
 2 Curtin, the mayor, myself and the chief --
 3 the mayor asked the chief to attend.
 4 Q. Okay.
 5 A. And I -- no, I was trying to think
 6 if Alex Yudelson was there, but Alex was not
 7 there. He was not there. I believe that was
 8 everyone that was there.
 9 Q. You, the chief, the mayor and the
 10 Corp. Counsel?
 11 A. Yeah.
 12 Q. Got it. So I'm just -- I'm
 13 focusing on that meeting a little bit more as
 14 a marker for now. We'll come back and talk
 15 about it in detail.
 16 But can you tell me, as of that
 17 meeting, as of the end of that meeting on
 18 August 4th, was Mayor Warren aware that the
 19 Attorney General's Office, special
 20 investigations and prosecutions unit, was
 21 conducting a criminal investigation of
 22 officers from the RPD in connection with the
 23 Prude arrest?
 24 A. I can't answer that. I'm not sure.
 25 Q. Okay. Well, was there any

1 Smith
 2 A. That's the first I recall hearing
 3 of it, yes.
 4 Q. Did the mayor express any
 5 particular reaction to a discussion of the
 6 fact that there were officers of the RPD who
 7 were under criminal investigation in that
 8 meeting when you guys were talking about it?
 9 A. So, as I recall, I believe that
 10 there was an automatic referral that was
 11 triggered by the -- a new -- I don't know if
 12 it's a state law or if was an executive order
 13 by the governor required that.
 14 I think the mayor was -- I'll be
 15 honest, whether she brought that up or not, I
 16 can't remember, per se. I just remember that
 17 she was very angry and very heated and very
 18 upset that this was the first time she was
 19 seeing this body-worn camera footage.
 20 And she not -- not -- she was --
 21 she was quite disturbed and upset about the
 22 incident in general. So that's what I recall
 23 from that meeting, was just her being very
 24 upset, very angry and displeased.
 25 Q. Well, did she express surprise when

1 Smith
 2 4th, which according to your timeline is when
 3 the Prude family released the body-worn
 4 camera footage, was there any consideration
 5 given to disclosing to the public that
 6 Mr. Prude's death had been the result of a
 7 restraint as opposed to an overdose or
 8 something else?
 9 A. I -- so my recollection is that
 10 some of that was discussed, but that the
 11 Corporation Counsel's Office had said that it
 12 would be -- that -- that we really weren't in
 13 a position to do that given the -- the
 14 Attorney General's investigation.
 15 Q. So tell me what Mr. Curtin said, as
 16 best you can recall, on that subject.
 17 A. I think -- I think I just -- about
 18 as best as I recall, that's basically what --
 19 what I just said.
 20 Q. Okay. Did Mr. Curtin tell you that
 21 the Attorney General's Office had directed
 22 that there not be a public announcement of
 23 the fact that Mr. Prude had died as a result
 24 of a restraint as opposed to --
 25 A. I don't recall -- I don't recall

1 Smith
 2 how Mr. Curtin expressed that thought
 3 verbatim. I don't recall.
 4 Q. Well, did you come away from his
 5 comment on this with the understanding that
 6 it would be improper to disclose the fact
 7 that Mr. Prude had died as a result of a
 8 restraint?
 9 A. I came away -- I came away from
 10 those discussions that it would not be proper
 11 for us to discuss the case at that time.
 12 Q. In public?
 13 A. Correct.
 14 Q. And what --
 15 A. I had also -- I had also mentioned
 16 that that made sense to me because in past
 17 practices in these instances the District
 18 Attorney's Office would handle these cases.
 19 And that would be the way that they were
 20 handled.
 21 The Attorney General handling this
 22 matter is a somewhat new construct of a
 23 change, as I said, either in state law or it
 24 might be executive order. But in the past,
 25 the way that the district attorney handled

1 Smith
 2 that was -- was that -- that we would be
 3 precluded from talking about it.
 4 Q. Well, if there were -- just to ask
 5 a hypothetical question, maybe there's an
 6 example in the past. Well, strike that.
 7 Were there criminal investigations
 8 in connection with the Pate and Gregory
 9 incidents?
 10 A. With Pate for sure, yes.
 11 Q. And --
 12 A. The conviction, I believe a
 13 conviction.
 14 Q. Officer was charged and tried and
 15 convicted, right?
 16 A. I'm -- I believe so, yes.
 17 Q. And prior to the officer having
 18 been charged, was it a publicly known fact
 19 that there was a criminal investigation of
 20 the officers in that case?
 21 A. I don't recall.
 22 Q. Was there something in particular
 23 that either Mr. Curtin or somebody else said
 24 about the fact that it was an Attorney
 25 General investigation as opposed to a DA

1 Smith
 2 investigation that made it -- made it
 3 improper for there to be a public disclosure
 4 of the fact that there was a criminal
 5 investigation in the Prude matter?
 6 A. I don't recall anything in
 7 particular.
 8 Q. Okay. You mentioned that in the
 9 context of your answer and I just wondered
 10 how that was relevant, if it was.
 11 A. Yeah, I don't -- I don't -- I
 12 mentioned the DA only because we were used to
 13 how they did business. So it didn't -- to
 14 me, I didn't -- you know, I like to think I'm
 15 someone who asks questions. You know, I
 16 don't just say, oh, okay, great, that's how
 17 we have to do it.
 18 And I -- it didn't occur to me to
 19 question any of, you know, that because I --
 20 it sounded like exactly how we normally
 21 operated when -- when we were dealing with a
 22 district attorney, which is why I brought it
 23 up. I guess I'm trying -- since you just
 24 said it. That's why I brought it up.
 25 Q. Did anyone in city government, to

1 Smith
 2 your knowledge, take the view prior to
 3 September 4th that there ought to be a public
 4 announcement of the fact that there was a
 5 criminal investigation of Rochester police
 6 officers in connection with the Prude
 7 incident?
 8 A. As you're asking me at this moment,
 9 I'm not -- I don't recall that there was.
 10 Q. Did anyone explain to you, other
 11 than what you've already said, why it would
 12 be improper to make such an announcement?
 13 A. No. As I said, I do -- you know,
 14 the Corporation Counsel's Office was pretty
 15 adamant that -- that we, you know, were not
 16 able to just freely discuss these -- these
 17 issues or to release information.
 18 Q. When you say the "Corporation
 19 Counsel's Office," you're -- are you
 20 referring to Mr. Curtin specifically?
 21 A. I am, yeah. Mr. Curtin would have
 22 been the one -- the person that I spoke to
 23 from the Corporation Counsel's Office.
 24 Q. I want to ask the same questions
 25 about disclosure of a criminal investigation

1 Smith
 2 or the existence of a criminal investigation
 3 to the City Council.
 4 Did the mayor, at any point,
 5 consider disclosing the existence of a
 6 criminal investigation of Rochester police
 7 officers to members of the City Council prior
 8 to September 4, 2020?
 9 A. I believe she did. I'm -- I'm not
 10 saying -- you asked did she consider it.
 11 What I'm saying is I believe that she did
 12 make that disclosure.
 13 Q. Okay. To whom did she make that
 14 disclosure and when?
 15 A. My belief is she made that to
 16 Loretta Scott.
 17 Q. Okay. And when was that?
 18 A. I would not know the date. The
 19 mayor would be better able to clarify that.
 20 Q. Okay. Is it -- to your knowledge,
 21 was it prior to the body-worn camera footage
 22 being made public by the Prude family lawyer?
 23 A. I believe it was, yes.
 24 Q. Okay. And what do you know about
 25 how that disclosure was made?

1 Smith
 2 A. All I know is -- is that she called
 3 the City Council president and relayed the
 4 details of this to her. And it occurred -- I
 5 don't -- I can't say the date. Again, you'd
 6 have to ask the mayor. But it occurred in
 7 the day or days that followed the mayor's
 8 viewing of the video.
 9 Q. Okay. And do you have an
 10 understanding, whether it's firsthand or
 11 secondhand or thirdhand, I suppose, of what
 12 reaction, if any, Council President Scott had
 13 to this information?
 14 A. I don't.
 15 Q. Was there a request from Council
 16 President Scott or anybody on her staff to
 17 learn more about what occurred in response to
 18 hearing this from the mayor?
 19 A. I'm not aware if there was or was
 20 not.
 21 Q. If there were such a request, do
 22 you think you would know about that?
 23 A. I could answer that very -- in the
 24 affirmative with the answer possibly, because
 25 I want to say that specifically. Not

1 Smith
 2 necessarily would I be aware of that
 3 information.
 4 Q. I may have asked you this. And if
 5 I did, I apologize, but I want to make sure I
 6 get it clear.
 7 Between August 4th and September 4,
 8 2020, was there any consideration given to
 9 making a public announcement that Mr. Prude
 10 had died as a result of a restraint by the
 11 police as opposed to an overdose or something
 12 else?
 13 A. There essentially may have been.
 14 I'm not necessarily certain if there was or
 15 was not.
 16 Q. Okay. Well, do you recall anything
 17 about that? Was there a discussion or a
 18 debate, people take positions on this, was a
 19 decision made?
 20 A. Yeah, so there was some, you know,
 21 conversation, as I mentioned, that -- that --
 22 that the attorneys interjected that it
 23 wouldn't be possible. So the conversation
 24 didn't go very far.
 25 Q. Right. So -- so right. This is