

*** CONFIDENTIAL ***

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IN RE:

INDEPENDENT INVESTIGATION INTO THE
CITY OF ROCHESTER'S RESPONSE, et al.

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January 8, 2021

9:36 a.m.

Videoconference deposition of MARK SIMMONS
taken via Zoom remote video conferencing software,
pursuant to Notice, before CELESTE A. GALBO, a
Registered Professional Reporter, Registered Merit
Reporter and Notary Public within and for the State
of New York.

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1 would you prefer that if an officer did something
2 wrong, that we let you see even if that's the reason
3 the officer gets off or would you let us prosecute it
4 and make sure the officer is held accountable and let
5 you see later, I would hazard to say people would
6 want the officer to be held accountable and that's
7 what I citing on.

8 Q. Did you ever reach out to Tim Curtin to
9 request a meeting about the release of materials via
10 FOIL?

11 A. In earlier conversations than this, no.
12 If that's what you're asking.

13 Q. Not just with respect to Daniel Prude.
14 Is there any prior precedent for you recommending to
15 Chief Singletary that he request a meeting with the
16 Law Department to discuss a FOIL release?

17 A. Yes, there were times -- I think in one
18 of your exhibits you have an email between me and
19 Shani Mitchell where I talk to her about releasing
20 operational plans and how, you know, there may be
21 FOIL exemptions to protect the safety of the officers
22 in the community. There was times even when I was
23 acting chief back in 2019 or 2018, that period where
24 I had one-on-one conversations with Tim Curtin
25 regarding the release of a cold case file that there

1 was a point of contention between our MCU or homicide
2 unit and the Law Department about what information
3 could be released and I had to mediate and make sure
4 that we were all on the same page.

5 So, yes, this is not a new instance
6 where, you know, this was because we were trying to
7 cover up the Prude case; no, this is routine, this is
8 part of the policy and procedure and I was following
9 policy and procedure and not trying could cover the
10 release of the video.

11 Q. Did you and the chief subsequently then
12 on that day have a Zoom meeting with Mr. Curtin and
13 Mr. Beath?

14 A. Not that day. I think it was the next
15 day.

16 Q. Yeah, excuse me, the next day, did the
17 four of you meet via Zoom?

18 A. We did.

19 Q. And do you recall how long that meeting
20 was approximately?

21 A. It wasn't very long. I want to say it
22 was probably less than 15 minutes.

23 Q. Okay. And what was discussed amongst
24 the group in that meeting?

25 A. If I recall, I think Tim Curtin had

1 talked about or Patrick, Corporation Counsel had
2 talked about the fact that they were in
3 communications with the AG's Office and the AG's
4 Office was working with the FOIL request of I believe
5 it was Elliot Shields to allow him to see the video
6 footage and that most likely we would not be
7 releasing it publicly. They were still working with
8 the AG's Office to make that determination. At that
9 meeting I think we concluded with, okay, well, if
10 anything changes can you please let us know, and
11 going back to that had first half of my email, so we
12 can prepare for public safety. In the event that
13 there may be some potential violence because it is
14 released, give us an opportunity, if you know you're
15 going to release it, to start preparing and putting
16 people in place to protect this community. And that
17 was the conclusion.

18 So it wasn't really a decision that was
19 made in that meeting where they told us definitively,
20 well, it will not be released or it will be released;
21 they were working with the AG's Office.

22 Q. Did the corporation counsel on that
23 call give you their legal view on whether the
24 body-worn camera footage should be withheld because
25 of the pending criminal investigation?