

EXHIBIT 3

Plaintiffs are filing excerpted portions of this voluminous document.
Counsel for Plaintiffs will provide the entire document upon request.



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Transcript of Robert D. MacLean

Date: July 24, 2020

Case: Ghaisar, et al. -v- The United States

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JAMES GHAI SAR, et al.,

Plaintiffs,

Civil Action No.

1:19-cv-01224

v.

UNITED STATES OF AMERICA,

Defendant.

/

Remote Videoconference Deposition of

ROBERT D. MacLEAN

Friday, July 24, 2020

10:12 a.m.

Job No.: 309335

Pages: 1 - 165

Reported by: Toni R. Thompson, RMR

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1	A	The names were eventually provided based	10:35:29
2		on the Solicitor's Office guidance and process.	10:35:32
3	Q	That was after a judge ordered them, the	10:35:37
4		names provided; correct?	10:35:39
5	A	I don't recall the exact process that was	10:35:45
6		implemented and when that occurred.	10:35:48
7	Q	Well, it's not as if you changed your mind	10:35:50
8		and decided after two years that we should release	10:35:52
9		the names of these officers; correct?	10:35:54
10	A	Correct, that was based on the FBI's call.	10:35:55
11	Q	Did you impose any discipline any of kind	10:36:02
12		on Officer Amaya for his conduct in shooting Bijan	10:36:06
13		Ghaisar?	10:36:10
14	A	I did not.	10:36:10
15	Q	Did you impose any discipline on Officer	10:36:15
16		Vinyard of any kind for his shooting Bijan Ghaisar?	10:36:17
17	A	I did not.	10:36:20
18	Q	And is that because you believed their	10:36:22
19		actions were justified?	10:36:26
20	A	No, it's because the criminal	10:36:30
21		investigation had to take its course, and the	10:36:33
22		administration, administrative investigation then	10:36:36

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1 the officer-involved shooting team that is 10:42:30
2 maintained in our Criminal Investigations Branch, in 10:42:35
3 combination with our Internal Affairs Unit, 10:42:39
4 investigate officer-involved shootings. So that 10:42:42
5 occurred initially. 10:42:45

6 Q That occurred initially. It occurred 10:42:47
7 approximately for about three days; is that correct? 10:42:48

8 A Correct, until Monday. 10:42:53

9 Q Okay. And on Monday what happened? 10:42:55

10 A On Monday members of the Criminal 10:42:59
11 Investigations Branch met with the Eastern District 10:43:01
12 of Virginia to determine the jurisdiction of the 10:43:04
13 investigation? 10:43:09

14 Q Okay. And then what happened in that 10:43:11
15 meeting? 10:43:12

16 A I was not present; however, it was decided 10:43:14
17 that the Eastern District of Virginia would take the 10:43:17
18 primary lead on the investigation of the shooting. 10:43:20

19 Q Okay. How did the FBI get involved? 10:43:24

20 A Upon determination that the Eastern 10:43:29
21 District of Virginia would be the primary lead on 10:43:32
22 the investigation, I decided as chief to ask the FBI 10:43:36

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1	to conduct an objective and impartial investigation	10:43:41
2	in collaboration with the U.S. Attorney's Office.	10:43:44
3	Q And that was a decision that you made?	10:43:48
4	A Yes, it was.	10:43:51
5	Q Why did you make that decision?	10:43:53
6	A Because it was a use of force by members	10:43:57
7	of the U.S. Park Police that involved the death of a	10:44:02
8	human being, and that was the first time that	10:44:05
9	occurred in my tenure as chief of police, so to	10:44:09
10	ensure an impartial and objective investigation I	10:44:13
11	decided that it would be in the best interest of our	10:44:18
12	organization and the public and all involved that an	10:44:21
13	outside entity to the U.S. Park Police should be the	10:44:26
14	lead on the investigation.	10:44:28
15	Q At the time that you had made that	10:44:31
16	decision, had you seen the videotape from the	10:44:32
17	Fairfax County police cruiser of the incident?	10:44:34
18	A I had not.	10:44:37
19	Q Have you reviewed it?	10:44:38
20	A I have viewed it.	10:44:42
21	Q How many times?	10:44:45
22	A Several times. I would say in excess of	10:44:52

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1 Q Mr. MacLean, do you see a document up on
2 the screen now, Subject: Vehicular Pursuits?

3 A I do.

4 Q And do you have that document in front of
5 you?

6 A I do; however, it's not in color, but --

7 Q That's okay. That's okay.

8 At the bottom of the document it's marked
9 US-00011666; correct?

10 A That's correct.

11 Q Okay. And so we are in agreement now that
12 the document that you have in front of you is this
13 General Order and it's going to be marked as Exhibit
14 2 in this deposition.

15 MR. CONNOLLY: In light of that, Sarah,
16 you need not have it on the screen any longer.

17 (MacLean Deposition Exhibit 2 was marked
18 for identification and is attached to the
19 transcript.)

20 BY MR. CONNOLLY:

21 Q So what's a General Order?

22 A A Park Police General Order is how we

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1 establish policy within the organization.

2 Q And is a General Order issued by the
3 chief?

4 A Yes, it is.

5 Q Okay. Is it expected to be followed by
6 all personnel within the United States Park Police?

7 A Yes, all sworn members of the United
8 States Park Police.

9 Q Okay. And are they trained on the General
10 Orders? Are United States Park Police officers
11 trained on the General Orders?

12 A Yes, they are.

13 Q Is that training repeated routinely?

14 A Yes.

15 Q Okay. Do you expect every United States
16 Park Police officer to be familiar with General
17 Order No. 2205 regarding vehicular pursuits?

18 A Yes.

19 Q Okay. Have you seen this document before?

20 A Yes, I have.

21 Q Are you familiar with its contents?

22 A Yes, generally.

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1 Q So that's fair enough. I'm not expecting
2 you to be omniscient. I'm asking you about what you
3 saw on the video. Did you see anything on the video
4 that would constitute a felony that would justify
5 pursuit?

6 A I did not.

7 Q And we've already established that the
8 policy was the act of fleeing or and eluding the
9 police shall not itself be a pursuable offense.
10 That was the policy in place; correct?

11 A That's correct.

12 Q So these officers would not have been
13 justified to engage in a vehicle pursuit of Bijan
14 Ghaisar merely because he didn't stop for them;
15 correct?

16 A Correct.

17 Q I'd like you to turn to page 3 of this
18 exhibit and I'd like you to take a look at paragraph
19 4. I want to talk to you about when a pursuit
20 actually takes place what are the obligations of the
21 police officers under this General Order to notify
22 either supervisory command or communications. So

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1 right?

2 A He's the assistant chief.

3 Q Assistant chief.

4 Have you spoken to him about his review of
5 the radio runs?

6 A I have not.

7 Q I'd ask you to turn to page 5 of this
8 exhibit, the section entitled Vehicle Pursuits
9 Outside of Force Primary Jurisdiction. Now, again,
10 these are words, police words, but force
11 jurisdiction means your primary jurisdiction on the
12 parkway and so forth; correct?

13 A That's correct.

14 Q And you understand this particular chase
15 actually went outside the primary force jurisdiction
16 into Alexandria; correct?

17 A Yes.

18 Q And that's normally patrolled by Fairfax
19 County Police?

20 A Alexandria City Police patrol like the Old
21 Town area.

22 Q Yep.

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1 THE WITNESS: Okay. I have it in front of
2 me.

3 MR. CONNOLLY: Okay. So, Sarah, since he
4 has it in front of him we no longer need it on
5 the screen and we'll go off the paper document.

6 THE TECHNICIAN: (Complied.)

7 BY MR. CONNOLLY:

8 Q In front of you marked as Exhibit No. 3,
9 do you see a document that says, Subject: Use of
10 Force, Number: 3615?

11 A Yes, I do.

12 Q Is this also a General Order?

13 A Yes, it is.

14 Q Is this a General Order that guides the
15 policy of the use of force for the United States
16 Park Police?

17 A Yes, it was at the time, yes.

18 Q Was it issued and ratified by you?

19 A It was not. It was issued and ratified by
20 Chief Robert Langston during the issuance of the
21 policy.

22 Q And was this policy in effect at the time

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1 that Bijan Ghaisar was shot?

2 A Yes, it was.

3 Q All right. Did you review this policy in
4 advance of today's deposition?

5 A I did.

6 Q Okay. So you are familiar with it?

7 A Yes.

8 Q Did you expect the officers of the United
9 States Park Police office to be familiar with this
10 document?

11 A Yes.

12 Q And the policies contained therein?

13 A Yes.

14 Q Were they trained on this General Order?

15 A Yes, they were.

16 Q Were they continually trained on this
17 General Order?

18 A Yes, at the annual in-service training.

19 Q Okay. Did you expect your officers to
20 understand this policy?

21 A Yes, I did.

22 Q And to adhere to it?

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1 A I did.

2 Q Okay. If they violated this policy could
3 they be disciplined?

4 A Yes, they could.

5 Q Okay. Let's go under the first page under
6 Policy: The type and level of force used must be
7 reasonable, depending on the dynamics of the
8 situation. Do you see that?

9 A Yes.

10 Q This is an expression of what reasonable
11 force can be used; is that correct?

12 A That is correct.

13 Q It says a few sentences down: Once a
14 level of force is no longer required, it must be
15 decreased or discontinued.

16 Was that the U.S. Park Police policy?

17 A Yes, it was.

18 Q Last sentence: An officer shall escalate,
19 deescalate, or maintain that level of force
20 necessary to control the situation.

21 Is that also part of the policy?

22 A Yes, it is.

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1 investigation aspect to this. It's the due process
2 to understand the totality of the circumstances
3 based on all the available and relevant facts and
4 circumstances and information from all witnesses and
5 all investigative parties.

6 Q Chief, I've asked a very specific
7 question, so I'd ask you to listen to it and answer
8 my question. Under your command when you were the
9 chief, under the use of force policy was a United
10 States Park Police officer justified in shooting and
11 murdering somebody because that person had committed
12 traffic violations?

13 A Under the policy if it was just for a
14 traffic violation in general, no, they would not be
15 allowed to use that level of force.

16 Q Okay. Next question: Under the policies
17 when you were the chief, when the buck stopped
18 there, under your policies in terms of use of force
19 would it have been justified for a United States
20 Park Police officer to shoot somebody because they
21 were eluding these police officers from a traffic
22 violation?