

[00:00:00.000] - Speaker 2
Okay.

[00:00:00.860] - Speaker 1
It is September 13th, 2024 at 2: 50 PM. I am Emma Dill. I'm an auditor for IOLERO, the Independent Office of Law Enforcement, Review and Outreach. We're here on case number 22-AR-0002, and in the IOLERO conference room at 3333 Mendocino Avenue, Suite 204 in Santa Rosa for the interview of subject, Sergeant Nicholas Berg. This interview is being audio recorded, and Andrew, I see you're recording also. Correct. Sergeant, could you state your name and rank, please, for the record?

[00:00:36.280] - Speaker 3
That's Nicholas N-I-C-H-O-L-A-S Berg, B as in Boy -E-R-G. I'm a Sergeant at the Sheriff's office.

[00:00:43.060] - Speaker 1
Great. Is there an employee ID or badge number that you usually identify yourself by?

[00:00:47.060] - Speaker 3
My Sheriff's ID is 2224. My County ID is 20351. Thank you.

[00:00:54.300] - Speaker 1
Andrew, can you introduce yourself, please?

[00:00:56.090] - Speaker 2
Yes. My name is Andrew Ganz. G-A-N as in Nancy -Z as in Zebra, from the firm of Rains, Lucia Stern, St. Sil- St. Phalle and Silver.

[00:01:04.920] - Speaker 1
Thank you. Also with me today is IOLERO auditor, Matthew Chávez. If you can introduce yourself, please.

[00:01:11.100] - Speaker 2
Yes. My name is Matthew Chávez. I'm an auditor here with IOLERO.

[00:01:14.960] - Speaker 1
Great. I'll start with some admin before we get into any of the actual questions. IOLERO issued a subpoena to you for your testimony in this interview. I'm going to hand you a copy of it, which I'm just going to mark with the number one. If you can just take look and make sure that you were served with that subpoena that looks familiar to you.

[00:01:34.220] - Speaker 3
For the July date? Yeah. Not for today. I didn't get them for today.

[00:01:37.980] - Speaker 1
That's correct. We've just been rescheduling based on the same subpoena.

[00:01:45.640] - Speaker 3
The two first pages look familiar.

[00:01:47.840] - Speaker 1
Great. The proof of service on the third page is not something you got. Yeah. Got it. Okay, great. I can take that back if you don't want it in front of you. You are required to cooperate with the subpoena.
You're also You are required to provide honest and complete answers that are asked in this interview. This interview is part of IOLERO's administrative investigative process and could be used by the sheriff as the basis for discipline against you in your employment with the county of Sonoma. This interview is not part of any criminal investigation against you, but because you're required by this subpoena to answer questions in this administrative case

and because your failure to answer questions could result in discipline up to and including termination, we believe your answers here today cannot be used against brought against you in any criminal case brought against you on this same matter as described in the case, Leibarger versus City of Los Angeles from 1985, with a citation, 40 Cal third, 825. Do you have any questions about that before we begin? Okay, Andrew, I assume you would like to put something on the record at this point.

[00:02:48.700] - Speaker 2

I appreciate that. Yeah, I actually don't want to put a ton on the record because I believe there's been a significant record through various emails, communications. So I would just refer to those and just state our position is that I don't think that order, that statement protects him ultimately. I don't think that IOLERO has the ability to keep the district attorney's office or some other prosecuting agency from using these statements today. I've advised him accordingly, and we'll move forward with that.

[00:03:18.740] - Speaker 1

Understood. I assume that'll be a standing comment throughout the interview.

[00:03:24.110] - Speaker 2

Right. I mean, the standing comment, as we've, I think, discussed partially informally, and in some cases, formally, is that I've advised Sergeant Berg that there are certain answers that don't have any theoretical potential to incriminate him. Those are very basic background questions, and then there are some that do. I've advised him to invoke his Fifth Amendment right when those questions do have that potential.

[00:03:49.320] - Speaker 1

Understood. Thank you. I'll just make a comment also for the record that we do believe that Leiburger protects all of your statements in this interview from criminal prosecution. I understand that you've been otherwise by your attorney, and that's fine. But it is our belief that the subpoena requires you to respond to all questions. Rather than repeat this every time you assert the privilege, I'll just make a standing comment now that we don't believe that exercising the Fifth Amendment is enough to comply with the subpoena, that we have offered Liebarger protections, and that we believe there may be disciplinary or legal consequences for refusing to answer our questions beyond asserting the Fifth Amendment.

[00:04:27.100] - Speaker 2

Do you understand?

[00:04:27.960] - Speaker 3

Oh, I understand.

[00:04:29.080] - Speaker 1

Perfect. All right. Unless we need to do any more admin stuff, we can get started. Okay. Great. I want to make sure we're on the same page with terminology. Sometimes I may use the term deputy involved shooting. Sometimes I may use the term officer involved shooting. If I use them, I mean them interchangeably. Does that make sense to you? I know different agencies call them different things depending on what their staffing is. I understand. How long have you been employed by the Sanoma County Sheriff's Office?

[00:04:56.920] - Speaker 3

Since July of 2013, so a little over 11 years.

[00:05:00.580] - Speaker 1

When were you promoted to sergeant?

[00:05:02.860] - Speaker 3

April of 2021.

[00:05:05.980] - Speaker 1

What's your current assignment?

[00:05:07.600] - Speaker 3

I'm a Detective Sergeant for a Crime scene Investigations Unit.

[00:05:11.940] - Speaker 1

How long have you been in that assignment?

[00:05:13.740] - Speaker 3

Since October of '23, so approximately a year.

[00:05:20.380] - Speaker 1

What other assignments have you had as a sergeant?

[00:05:23.260] - Speaker 3

I'm one of the sergeants on our EOD team, the Bomb Squad.

[00:05:28.780] - Speaker 1

Is that like an ancillary assignment or a special assignment that you hold now in addition?

[00:05:34.260] - Speaker 3

We call them collateral.

[00:05:34.920] - Speaker 1

Collateral. Great. Any other collateral assignments that you have at the moment?

[00:05:40.820] - Speaker 3

Not currently, no.

[00:05:41.920] - Speaker 1

Okay. How about previously?

[00:05:44.780] - Speaker 3

Was it Sergeant or?

[00:05:46.400] - Speaker 1

Either sergeant or before you were promoted.

[00:05:48.840] - Speaker 3

I was a tactical flight officer on the helicopter. I was a traffic investigator, motor officer. I was in the Marine unit. I have previous experience prior to Sheriff's office, so I don't know how far you want to go.

[00:06:03.050] - Speaker 1

We can just talk about the Sheriff's office for right now. As far as your main assignments, you said you're a Detective Sergeant right now. What was your main assignment as a Sergeant prior to that?

[00:06:13.680] - Speaker 3

Patrol. I forgot. I was also a Violent Crimes Detective before I got promoted. Great.

[00:06:19.220] - Speaker 1

Thank you. I appreciate you letting me know. It's hard to list everything in a row sometimes. Okay. Is Patrol the only other main assignment you've had as a sergeant? Yes. Okay, great. You said that you had some law enforcement experience before the Sheriff's office. Can you tell me what agency or agencies that was?

[00:06:42.380] - Speaker 3

I worked for a Petaluma Police Department as a police officer from 2007 to 2010. From 2010 to 2013, right before I came to the Sheriff's office, I worked for Novato Police Department as a police officer.

Okay.

[00:06:58.100] - Speaker 1

Great. You weren't a supervisor in either of those employments, is that right?

[00:07:03.040] - Speaker 3

I was a field training officer in Novato, so it's an indirect supervisor, but no, sergeant, no corporal, nothing like that.

[00:07:10.440] - Speaker 1

Understood. Then did you have any collateral assignments in either of those jobs?

[00:07:15.760] - Speaker 3

Yeah, I worked on... They called it the Novato Response Team, which is like a street crimes team that worked out investigations at Novato Police. I was a defensive tactics instructor. I was also on the Great.

[00:07:32.700] - Speaker 1

Do you teach any courses or assist with teaching at the Sheriff's office?

[00:07:39.100] - Speaker 3

Not currently.

[00:07:40.140] - Speaker 1

Any previous courses that you taught or assisted with teaching at the Sheriff's office?

[00:07:48.360] - Speaker 3

No.

[00:07:49.120] - Speaker 1

Where did you attend the academy?

[00:07:52.320] - Speaker 3

The Santa Rosa Junior College.

[00:07:55.660] - Speaker 1

When you joined the Sheriff's office, what additional training When did you receive specific to the Sonoma County Sheriff's office?

[00:08:03.820] - Speaker 3

Can we go through all my training that I've been to?

[00:08:06.000] - Speaker 1

I'd like to know if they gave you any specific training at the time that you lateraled over.

[00:08:12.540] - Speaker 3

We go through a couple of two It's a week orientation, but there's no specific training to come to the Sheriff's office. I came as a lateral with all the training and certifications to be a Deputy Sheriff.

[00:08:26.220] - Speaker 1

You don't have any additional training on Sonoma County Sheriff's office specific policies or anything like that that happens when you first- That would occur during the orientation and the FTO program.

[00:08:36.740] - Speaker 3

Got it.

[00:08:37.540] - Speaker 1

Okay. How long was the FTO program that you attended?

[00:08:40.440] - Speaker 3

I believe I did seven or eight weeks for the Sheriff's office. I've been through three FTO programs. Okay.

[00:08:49.260] - Speaker 1

Can you give me just a general understanding of what was covered during that two-week orientation that you mentioned?

[00:08:57.360] - Speaker 3

Anything and everything. Firearms, driving EVOG, report writing system, policy procedure, orientation, payroll, pretty much everything. Okay.

[00:09:13.540] - Speaker 1

Then when you were specifically promoted to sergeant, was there any additional training that you received at that time, best specific to your promotion?

[00:09:21.120] - Speaker 3

Yeah, we go through another two-week orientation where we shadow various sergeants. We also meet with a lot of different people in the Sheriff's office, civilians and sworn, to learn more about the position as your expectation and your roles are a lot different from a deputy sheriff. Okay.

[00:09:40.700] - Speaker 1

Can you give me a sense of what types of topics you went over in that orientation?

[00:09:49.060] - Speaker 3

Yeah, we don't use it anymore, but the AIM system where we do all the pursuits, use of force, we go through a payroll section, civil, we meet with various lieutenants and captains regarding administrative expectations of sergeants. As it progresses, we conduct briefings and interact more and it becomes less of a shadowing and more of a hands-on, and the sergeant watches you, and you learn that way.

[00:10:22.440] - Speaker 1

Okay. Is there any field training or shadowing beyond that two-week orientation? No. Okay. And AIM, I understand, is a database where you can enter information about incidents or documents are saved.

[00:10:37.500] - Speaker 3

Yes. They're administrative database. Okay.

[00:10:42.780] - Speaker 1

Have you given a formal statement Did you interview to anyone else related to the death of David Peláez Chavez? No. Did you do anything to prepare for your interview today other than talk to your attorney? No. Okay. Did you speak to anyone other than your attorney in order to prepare? No. Was anyone else with you when you talked to your attorney? No. Have you ever viewed video footage related to Mr. Peláez Chavez's death?

[00:11:15.210] - Speaker 2

I'm going to ask you to.

[00:11:16.200] - Speaker 3

Yeah. On the advice of my attorney, I'm going to invoke my Fifth Amendment rights, remain silent.

[00:11:20.240] - Speaker 1

Understood. If you'd like to shorten that phrase in the future, I won't make you put out that word jumbal every time. If you'd like to say something shorter, like Fifth I'll understand what you mean. Okay. Have you ever reviewed statements made by Deputy Dietrick or by Deputy Powers related to Mr. Peláez Chavez 's death?

[00:11:39.980] - Speaker 3
Fifth Amendment.

[00:11:41.340] - Speaker 2
If I just may. Let me see how to put this. I feel that I have made clear before this interview that he was not going to answer questions about the incident. I am trying to balance between making sure that he answers questions that have no potential criminal liability, complying with your order to be here, and really bending over backwards to try to allow him to answer as many questions as he can. I've notified you before this interview that he wasn't going to be answering any questions about this incident, and I think further questions would be an exercise in both futility as well as harassment of him. It's not necessary. I'd ask that we stop asking questions about the incident. Thank you.

[00:12:35.320] - Speaker 1
Understood. Just for the record, because some of this conversation was had outside of emails, I will state that we do believe it's necessary to ask some questions on different topics in order to establish the scope of the Fifth Amendment privilege that he's asserting. It's my intention to move on once we've established that, but that we will need to go through a few topics, at least headlines, in order to establish the scope of the privilege.

[00:13:02.200] - Speaker 2
To help with that, anything about the incident and anything about policies or at issue. To head off any questions about policy The reason for that is because in criminal prosecutions for officer-involved shootings, district attorneys often are able to get evidence in and even witnesses about policies. I'm just letting everybody here know that any questions about incident or policies related to the incident, he's going to have the same answer.

[00:13:33.880] - Speaker 3
Understood. Thank you.

[00:13:35.800] - Speaker 1
Have you ever reviewed reports by the Sheriff's office, district Attorney, coroner, or the Santa Rosa Police Department related to Mr. Palais Shabbat's death?

[00:13:44.700] - Speaker 3
Fifth Amendment.

[00:13:45.840] - Speaker 1
Since July 29, 2022, the date of his death, have you spoken to Deputy Dietrick or Deputy Powers about Mr. Peláez Chavez 's death or the pursuit leading up to his death?

[00:13:58.040] - Speaker 3
Fifth Amendment. Okay.

[00:14:04.180] - Speaker 1
I'd like to ask you questions about the responsibilities that a supervisor has when they respond to the scene of a deputy-involved shooting in general, not specific to this day. Can you tell me what your understanding is of those policies?

[00:14:17.180] - Speaker 3
Fifth Amendment.

[00:14:19.020] - Speaker 1

Have you received training about the steps that need to happen after a deputy-involved shooting?

[00:14:24.000] - Speaker 3
Fifth Amendment.

[00:14:25.760] - Speaker 1
I'm going to hand you a copy of Sheriff's Office Policy 305. Do you want copies of that?

[00:14:32.250] - Speaker 2
No, and I'm objecting to this based on my prior comments. Thank you. Understood.

[00:14:37.360] - Speaker 1
This is Sheriff's Office Policy 305, titled Officer Involved shootings and Deaths. And any policy that I reference is going to be dated June 15th, 2022. Were you familiar with this policy at the time of the incident? I'm going to hand you Protocol 93-1. This is the Law Enforcement Employee Involved Critical Incident Protocol, published by the Sanoma County Law Enforcement Chiefs Association. Were you familiar with this critical incident protocol at the time of the incident?

[00:15:15.420] - Speaker 3
Fifth Amendment.

[00:15:16.940] - Speaker 1
At the time of the incident, were you aware that this protocol requires witnesses and involved employees to be sequestered after an officer involved shooting?

[00:15:25.260] - Speaker 3
Fifth Amendment.

[00:15:28.100] - Speaker 1
I'd like to Can you talk about the responsibilities that a supervisor has during a foot pursuit, not specific to this incident, but in general. Can you tell me what your understanding is of those responsibilities?

[00:15:42.360] - Speaker 3
Fifth Amendment.

[00:15:43.780] - Speaker 1
Have you received training about foot pursuits?

[00:15:46.940] - Speaker 3
Fifth Amendment.

[00:15:48.740] - Speaker 1
I'm going to hand you a copy of Sheriff's Office Policy 429, which is titled Foot Pursuits. Were you familiar with this policy at the time of the incident?

[00:15:58.520] - Speaker 3
Fifth Amendment.

[00:15:59.460] - Speaker 2
Again, I may, I'm trying to do this as sparingly as possible. But all of these potentially, as much as they're being posed as general questions about policies, which technically they are, can pose theoretical criminal liability to him, and that's the reason that I'm advising him to answer such general questions. Thank you.

[00:16:17.760] - Speaker 1
Understood. This investigation relates to the deputy involved shooting of David Peláez Chavez

that occurred on July 29th, 2022. Can you walk me through that day in as much detail as you beginning with when you started work and then ending when you were relieved of all duties related to the shooting scene.

[00:16:38.020] - Speaker 2

Excuse me. You said you're trying to figure out what the parameters are of when he's going to invoke. That's been made very, it's really clear, not only today, but before today. You know he's going to invoke his Fifth Amendment, right? Ask these questions. I don't understand the purpose of doing this other than, I don't know. I am objecting to further questions about it. You want to respond as you have previously? Fifth Amendment? Yeah. That's what he's going to answer to these questions. We know the parameters of that.

[00:17:05.240] - Speaker 1

What was your call sign on July 29th, 2022?

[00:17:09.240] - Speaker 3

Fifth Amendment.

[00:17:10.780] - Speaker 1

Were you Deputy Dietrick and Deputy Powers' direct supervisor that day?

[00:17:14.940] - Speaker 3

Fifth Amendment.

[00:17:16.180] - Speaker 1

Were there any other individuals directly supervising Deputy Dietrick or Deputy Powers that day?

[00:17:21.020] - Speaker 3

Fifth Amendment.

[00:17:23.280] - Speaker 1

When did you begin monitoring the deputy's response to the calls that were coming from Trimonte Lane that morning?

[00:17:29.740] - Speaker 3

Fifth Amendment.

[00:17:31.540] - Speaker 1

When did you first believe that Deputy Dietrick and Deputy Powers were in a foot pursuit?

[00:17:36.280] - Speaker 3

Fifth Amendment.

[00:17:37.600] - Speaker 1

Did you monitor the foot pursuit at any point?

[00:17:40.060] - Speaker 3

Fifth Amendment.

[00:17:41.460] - Speaker 1

Are you aware of any other supervisor other than yourself who monitored the foot pursuit at any point?

[00:17:46.440] - Speaker 3

Fifth Amendment.

[00:17:50.580] - Speaker 1

When did you learn that the suspect, later identified as Mr. Peláez Chavez, was speaking Spanish to

the deputies and others?

[00:17:59.040] - Speaker 3
Fifth Amendment.

[00:18:00.000] - Speaker 1
What Spanish language resources are available to deputies in the field?

[00:18:06.080] - Speaker 3
Fifth Amendment.

[00:18:08.080] - Speaker 1
Did you suggest to Deputy Dietrick or Deputy Powers at any point that they try to connect with any language resources during this incident?

[00:18:14.760] - Speaker 3
Fifth Amendment.

[00:18:18.160] - Speaker 1
You were the first supervisor to arrive after the shooting. Did you have any conversations with Deputy Clegg about what each of you would do when you arrived at the shooting scene?

[00:18:27.800] - Speaker 3
Fifth Amendment.

[00:18:30.460] - Speaker 1
What did you believe your responsibilities were when you arrived?

[00:18:34.020] - Speaker 3
Fifth Amendment.

[00:18:36.280] - Speaker 1
Body worn camera footage shows that when you got to the scene, you didn't separate the deputies or give them instructions about discussing the incident at first. They spoke to Deputy Clegg about the incident for around four minutes before you told them to stop talking. Is there a reason you didn't stop those discussions sooner?

[00:18:53.120] - Speaker 3
Fifth Amendment.

[00:18:55.060] - Speaker 1
I understand that you assisted with the critical incident briefing that was provided to the Santa Police Department. Can you tell me about that briefing?

[00:19:03.060] - Speaker 3
Fifth Amendment.

[00:19:04.120] - Speaker 1
Who else was present at that briefing from the Sheriff's office?

[00:19:07.740] - Speaker 3
Fifth Amendment.

[00:19:09.280] - Speaker 1
Who else was present from outside the Sheriff's office?

[00:19:12.000] - Speaker 3
Fifth Amendment.

[00:19:14.100] - Speaker 1

As far as lessons learned, do you have any ideas about improvements that could be made to the foot pursuit policy or training on that policy based on your experience in this case?

[00:19:26.040] - Speaker 3

Fifth Amendment.

[00:19:27.460] - Speaker 1

How about improvements to the sequestration policy?

[00:19:30.980] - Speaker 3

Fifth minute.

[00:19:32.680] - Speaker 1

Any other policies or training where you believe improvements could be made based on your experience during this incident? Fifth minute. Do you mind if we take a quick break? We can go off the record and then I think we'll probably wrap up after that. I'll pause it. Thank you. Okay, I'm going back on. We are back on the record. It is 3: 12 PM. Sergeant, I assume you don't have anything that you'd like to add at this point. I do not. Okay. I'll tell you this because I tell everyone, if you do think of something you'd like to add later, please get in touch with your attorney and he can contact me and we'll make sure that you have the opportunity to say whatever you'd like to. Okay. Andrew, do you have anything you want to add? No, thank you. Great. That's all I have for now. Obviously, I have a number of additional interview questions about policy training, the shooting, the pursuit, things that happened afterwards that we have not answered today because of your Fifth Amendment right. I understand that you're going to continue asserting that right, and so I'm not going to continue asking questions on those topics.

[00:20:37.540] - Speaker 1

Am I understanding all that right? I think we've made a clear enough record on that. Yes, thank you. This interview will be continued to a different day to be determined later in the hopes that we can resolve the Fifth Amendment issue. If we do, then we'll obtain additional testimony from Sergeant Berg related to this investigation. The only other thing I have, Sergeant Berg, please don't discuss this interview with anyone other than your representative. This is an ongoing investigation, and we may do more interviews after this. It's important that you not influence anyone else's testimony. Does that make sense to you?

[00:21:09.520] - Speaker 3

Yeah, it does.

[00:21:10.580] - Speaker 2

Just quick comment or clarification. I wasn't expecting the, this will be continued to another day. Understood. Hearing that. The way that I look at it is if you... We've had a lot of, again, conversation, positions articulated back and forth. Obviously, Obviously, you know how to contact me if there's a request for an additional interview. Absolutely. We'll handle it that way. But as of now, basically the same parameters as I've expressed and as have been demonstrated here, I think would exist in a future interview, but I'll always be open to any comments or communications. So thank you.

[00:21:49.670] - Speaker 1

Understood. I appreciate that. Thank you. Anything else from anyone? No. Great. I'm going to stop the recording. I should leave my phone on the table. The time is 3: 15 PM, and I'm going off.