

Expert Report

Prepared By

J. Thomas Manger

In

Hispanic National Law Enforcement Assoc. NCR et al.

v.

Prince George's County et al.,

United States District Court

District of Maryland

Civil Action No.: 8:18-cv-03821-TDC

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EXPERIENCE

1) I spent 42 years as a police officer from 1977 to 2019. After being sworn in as a Fairfax County, Virginia police officer, I rose through the ranks and was appointed the Chief of Police in 1998. During my career, I worked as a patrol officer, a supervisor, had a variety of administrative and operational assignments as a Lieutenant, and then commanded two District Stations as a Captain. As a supervisor, I conducted numerous investigations of complaints, both those generated internally, as well as complaints from the public involving personnel under my supervision. As a District Commander, I gained extensive experience reviewing and making decisions on internal investigations as well as disciplinary decisions. For over three years, I was assigned as the Night Duty Officer, and was in charge of all police operations from 4 p.m. to 4 a.m. In that role, I managed hundreds of police operations involving violent crimes, hostage-barricade events, protests, police shootings and other use of deadly force cases, traffic fatalities, and other high-profile incidents. I also headed the Patrol Bureau for two years. The District Station Commanders reported directly to me. I oversaw transfers, staffing issues, coordination of special assignment teams, and reviewed discipline for all cases involving patrol officers, supervisors and Commanders. Before I was appointed as the Chief of Police, I served as the Deputy Chief for Administration (“DCA”), then the Deputy Chief for Operations (“DCO”). As the DCA, I oversaw Training, Human Resources, Technology, Planning, the 9-1-1 Center, Animal Control and the Budget. In my role as DCO, I supervised Investigations, Special Operations and Patrol.

2) From 1998 to 2004, I served as the Chief of Police for Fairfax County. In that position, I exercised oversight and final decision-making authority for all aspects of the Department’s operations, including hiring the right people, investing in their training, and holding every member of the Department accountable for doing the job the way it should be done. I was responsible for delivering police service to 1.2 million members of the community and spent a good deal of my time doing outreach to the community, listening to their concerns, and being responsive to their issues. I had final decision-making authority over all personnel issues, the budget, transfers, grievances, internal investigations, promotions, policy development, and interfacing with elected officials. I ensured that the Department and its members had the resources they needed to reduce and prevent crime in the County.

3) In 2004, after serving six years as the police chief in Fairfax County, I left the Department to accept the position as the Chief of Police in Montgomery County, Maryland. I remained in that position for 15 years, until July 2019. As the Chief, I was responsible for an agency with over 1900 employees and an annual budget of \$285 million. My duties included delivering police services to over 1 million residents. In 2016, Montgomery County Police Department was the first large police department in the D.C. area to mandate body-worn cameras for all of our patrol officers. For 21 years, I had direct oversight and responsibility over the Internal Affairs Division Commander. I was directly involved in serious disciplinary matters as well as disciplinary appeals, and I worked closely with the Fraternal Order of Police (“FOP”), the exclusive collective bargaining representative of sworn officers and its elected leadership.

Upon my retirement, the County Executive issued an executive order naming the Police Headquarters building, the "Chief J. Thomas Manger Public Safety Headquarters."

4) In my capacities as the Chief of Police for Fairfax County and Montgomery County, my departments had occasion to become involved in coordinated police operations with other police departments in the Washington Metropolitan Area. A prime example of such cooperative activities occurred in October 2002 during the D.C. Beltway Sniper case. As a result of these types of interactions within other police departments and other shared connections, I gained a general familiarity with the organizational structure and operations of the other major police departments in the region, including the Prince George's County Police Department.

5) During my 21 years as a police chief, I was very active in a number of professional associations. I am now a "lifetime active" member of the International Association of Chiefs of Police ("IACP") the Police Executive Research Forum ("PERF"), as well as the Major Cities Chiefs Association ("MCCA"), an Association of the 70 largest police departments in the United States and Canada. I served on the IACP's Highway Safety Committee, Research Committee, and the Police Explorer Committee. I also served as the Vice-President of the PERF Board for four years and was the Chair of MCCA's Legislative Committee for 7 years. In 2014, I was elected by my peers to be the President of MCCA. I was re-elected in 2016 and served as President for a second (two-year) term until 2018. As the MCCA President, I presided over a closed session roundtable comprised of Police Chiefs only, where we discussed our most serious challenges facing our agencies and our profession. Race, accountability, community outreach, and internal problems were all regular topics at these all-day roundtables. They were held three to four times each year. Prince George's County Police Department was a member of MCCA and had regular participation. I participated in MCCA meetings from 2001-2019.

6) In my role on the Board of MCCA, I was invited to testify in front of various Congressional Committees on several topics impacting policing. I was also invited to several meetings with members of the Senate to brief them on current issues in policing. In addition, I participated in several meetings, alongside other law enforcement leaders, with President Bush, President Obama, President Trump, and Vice-President Biden. I also sat down with the Attorney General of the United States and the Secretary of Homeland Security more than a dozen times. Each of these meetings during the Bush and Obama Administrations focused on current issues with regard to policing, including, but not limited to, use of force, race, violent crime, guns, immigration, and gangs.

7) Upon my retirement in 2019, I began doing consulting work. Among other contracts, I am a Strategic Site Leader for the Department of Justice's Public Safety Partnership program where I am working with the Davenport, Iowa Police Department in its effort to reduce a rising violent crime rate. A more complete review of my experience and qualifications are contained in my curriculum vitae, which is attached as Appendix A.

SCOPE OF ANALYSIS

8) I have been retained by Venable LLP, counsel for the Defendants in the matter of Hispanic National Law Enforcement Officers et al. v. Prince George's County, Maryland et al., United States District Court of Maryland Case No. 8:18-cv-03821- TDC.¹ Specifically, I have been asked to review the policies, practices, and procedures of the Prince George's County Police Department (the "Department") with regard to the prohibition of discrimination and the Equal Employment Opportunity ("EEO") complaint process, the Internal Affairs Division ("IAD") investigation and disciplinary process, transfer processes and procedures, the promotional process and procedure, and give my assessment of its conformance to what, in my experience, constitute industry norms for such policies and procedures. I have also been asked to review the facts and circumstances surrounding various allegations made by Plaintiffs in the Amended Complaint filed in this case. In addition, I have been asked to present my expert opinions regarding the expert report of Mr. Michael Graham ("Mr. Graham's Report").²

MATERIALS REVIEWED

9) In the course of this review and analysis, I conducted interviews with Department employees and former employees and reviewed extensive documents, which include the documents generally described as follows:

- Pleadings and other case filings, including the Amended Complaint and Answer;
- Written discovery responses from both Plaintiffs and Defendants;
- Deposition Testimony;
- The Department's General Order Manual;³
- IAD policies, procedures, and case files;
- Documents produced in discovery in this case; and
- Documents, correspondence, and deposition testimony relating to the review and investigation by Mr. Graham.

¹ I am charging \$350 per hour for my work on this matter.

² The scope of my analysis is primarily limited to Plaintiffs' claims which involve the alleged treatment of Plaintiffs themselves. I have been advised that Plaintiffs have alleged over 122 acts involving over 150 Prince George's County Police Department employees that are not tied to the Plaintiffs themselves and bear no relation to their alleged treatment. I have also been informed that those alleged acts are the subject of a pending Motion In Limine whereby Defendants are requesting the Court to limit the number of acts that Plaintiffs may seek to introduce at trial, require Plaintiffs to identify the acts on which they will rely and grant Defendants the right to conduct discovery in connection with the acts. I reserve the right to supplement this report with additional analysis of those alleged acts pending the outcome of that motion.

³ Prince George's County Police Department General Order Manual (hereinafter "General Order Manual" or "GOM"), PG0000944536-945397.

SUMMARY OF CONCLUSIONS

10) It is my opinion, held to a reasonable degree of certainty, and based upon my police operations and management expertise, training and experience, that:

- Prince George's County Police Department's policies for addressing harassment and discrimination complaints are commensurate with best practices and industry standards. Mr. Graham failed to take into consideration all of the relevant General Orders when rendering his opinion, which severely undermined his conclusions that the Department's policies for handling complaints about racial harassment and discrimination are inadequate.
- After conducting a full review of all the Department's relevant harassment and discrimination policies and General Orders, and, based on my law enforcement background, I found no significant deficiencies.
- Mr. Graham's criticism of the Department's EEO compliance trainings are equally unfounded. The Department conducts routine, in person, harassment and discrimination trainings that are generally presented by the County's Human Resources Commission, and as of 2020, by a County Attorney. Mr. Graham's reliance solely on the documents produced in this litigation to establish the number of attendees at EEO Compliance trainings and the content of the EEO Compliance trainings was improper, inaccurate and further undermines the Graham Report's conclusions.
- Prince George's County Police Department affords members of the community and officers multiple complaint avenues, which in turn, are managed by a reasonable screening and assignment process that considers the Department's investigatory assets.
- The Department's multi-stage discipline process involves various levels of comment and approval from internal and external decision-makers, which fosters a fair and equitable process for all complainants and respondents. The demographic makeup of the officers involved in the discipline process demonstrates the Department's commitment to prohibiting any racial bias.
- The discipline imposed against Plaintiffs Perez, Oatis, Brown, McClam and Crudup was warranted based on their actions, which proper and thorough IAD investigations revealed were in violation of the Department's policies to various degrees.
- The Department has repeatedly handled circumstances brought to its attention reasonably and thoroughly regardless of various challenges by conducting IAD investigations where appropriate, disciplining officers when investigations indicated such action was necessary, and authorizing review of complaints by multiple units as authorized under the Department's written policies and procedures.
- Prince George's County Police Department's promotion processes give all officers an equitable opportunity to advance within the Department.
- Most officers must take and pass a promotional examination in order to be promoted. The examination process involves multiple layers of accountability, including the

County's Office of Human Resource Management, an independent third-party consultant, and the officers' union (the Fraternal Order of Police). At the highest ranks, the Chief makes promotional decisions with significant input from the Assistant Chief and Deputy Chiefs.

- Contrary to the assertions in the Graham Report, the Department offers a promotional process which is largely transparent and offers all officers an equal opportunity to advance in rank.
- Plaintiff Mack's and Perez's failure to earn a promotion was not discriminatory or retaliatory; [REDACTED] during the 2016 promotional cycle and there is no evidence to suggest that Perez's failure to earn a promotion was discriminatory or retaliatory.
- Prince George's County Police Department's transfer procedures are commensurate with best practices in a law enforcement agency of Prince George's County Police Department's size.
- The Department's practice of using a deliberative process for deciding transfers with the participation of the Executive Command Staff is commensurate with best practices.
- In a police department of Prince George's County Police Department's size, multiple factors related to the needs of the Department inform the transfer process, and regular transfers are a best practice for ensuring officer experience and career development.
- The transfers of Plaintiffs Perez, Anis, Boone Zollicoffer, Smith, McClam and Torres were not discriminatory or retaliatory.
- The Graham Report misunderstands the issue of use of force. Contrary to Mr. Graham's assertions, there were not 6,805 instances of force used by Prince George's County Police Department officers in January 2016 through 2019.
- Under the Prince George's County Police Department's policies, officers must report any resisted physical coercion, no matter how minor. Mr. Graham does not explain this important context.
- The Department's use of force review matters represent a tiny fraction of its actual number of contacts with members of the public.
- The Department's use of force policies are fair and comprehensive, and they reflect many of the most progressive trends in the field of policing today. The Department has extensive use of force training, which incorporates leading guidance on ethical policing, de-escalation, and the duty to intervene.
- In reviewing and investigating uses of force, the Department follows its policies.
- A high number of "justified" use of force reviews is not a product of "rubber-stamping." This is a product of a well-trained police force—officers who know what force is reasonable, who use force appropriately, and who report the force when used.
- Prince George's County Police Department has been providing Implicit Bias Training as a required part of Department-wide in-service training since 2018. Recruits have

been receiving Implicit Bias Training since 2015. The Department's provision of this training is consistent with current best practices in the field of law enforcement.

- Department leadership has supported Implicit Bias Training from the onset and continues to support it today. Chief Stawinski, himself requested a subject matter expert to institute the training. Chief Velez and Department leadership also support implicit bias training, which is ongoing.
- Officers did not "walk out" of Implicit Bias training on June 12, 2018. Concerns with how the class was conducted in a prior training session had been raised with the trainers the previous week by the Department but were ignored by the team conducting the training on June 12, 2018. After receiving notification that the Department's expressed concerns had not been addressed, authorized representatives of the Department excused the officers in attendance that day from completion of the class and those excused officers completed the training on a later day.
- Contrary to the assertions in the Graham Report, there were not "complaints to the County" regarding this incident that Department leadership ignored, and, based upon my law enforcement experience, no IAD or disciplinary action was warranted.

LANDSCAPE OF POLICING IN THE WASHINGTON D.C. METROPOLITAN AREA

11) The population of the Washington D.C. metropolitan area is just over 6.2 million.⁴ There are over 20 police departments, Federal, State and Local, that operate within the metro area, and of those, there are four large police departments that provide police service to the vast majority of the residents. Those 4 agencies are: the Metropolitan Police Department of Washington D.C. (over 3,000 Officers and 650 civilians), the Prince George's County Police Department (over 1700 Officers and 326 civilians), the Fairfax County VA Police Department (approximately 1400 Officers and over 500 civilians), and the Montgomery County MD Police Department (approximately 1300 Officers and over 500 civilians).

12) In an effort to coordinate law enforcement efforts among the more than two dozen police departments within the D.C. region, to include Federal partners, the Metropolitan Washington Council of Governments created a Police Chiefs Committee (the "Committee"). The Committee meets monthly to exchange information, learn about the latest trends and data, share best practices, and develop solutions to the region's major challenges.⁵ I attended these meetings for over 20 years. These meetings were an opportunity for police chiefs to discuss critical topics that impacted our Departments, including racial profiling, bias training, and other troubling trends we were seeing across the nation.

⁴ Census Reporter, "Census profile: Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area," retrieved September 20, 2020, available at <https://censusreporter.org/profiles/31000US47900-washington-arlington-alexandria-dc-va-md-wv-metro-area>.

⁵ Metropolitan Washington Council of Governments, "About Us, Committees & Members," available at <https://www.mwcog.org/about-us/committees-and-members/>.

13) The Census Reporter breaks down the race and ethnicity of the D.C. area as follows:⁶

- White – 45%
- Black – 25%
- Hispanic – 16%
- Asian – 10%
- All others – 4%

A. Recruitment

14) Most police departments endeavor to recruit a diverse workforce that reflects the diversity of the communities they serve. The Maryland Police Training and Standards Commission (the “Commission”) sets the hiring standards for all police officers in the State of Maryland, which includes Prince George’s County Police Department.⁷ As one of its duties, the Commission provides for the development of strategies for recruiting women, Black, Hispanic, and other minority candidates.⁸

15) The Commission advances that “[d]iversity is not only determined by race and gender, but also by religion, sexual orientation, gender identity, language ability, background, and experience. True diversity within an agency serves as a critically important tool in building trust with communities.” The Commission also highlights that “[m]inority applicants often deal with negativity from their own community when it is revealed that they desire to enter the profession of law enforcement.”⁹

16) Using race as a sole diversity measure is not consistent with ‘true diversity’ as described by the Maryland Police Training and Standards Commission. And, in fact, as the police chief of two of large jurisdictions in the region, my recruiting efforts to identify diverse candidates was always a challenge, first and foremost, because of the competition with Federal Law Enforcement Agencies. Unfortunately, it is very difficult to compete with the salary, benefits and prestige of working for the Federal Bureau of Investigation and other federal agencies. Our applicant pool was further limited by the requirements to become a police officer in the State of Maryland. Two of the Maryland prerequisites are a high school diploma and U.S. Citizenship, which can be far more burdensome for areas like Prince George’s County, which has a significant immigrant population.

⁶ Census Reporter, “Census profile: Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area,” retrieved September 20, 2020, available at <https://censusreporter.org/profiles/31000US47900-washington-arlington-alexandria-dc-va-md-wv-metro-area>.

⁷ Md. Code Ann., Public Safety § 3-207.

⁸ Md. Code Ann., Public Safety § 3-207(a)(20).

⁹ Maryland Police Training and Standards Commission, “Public Safety and Policing,” available at https://www.mdle.net/pdf/Recruitment_Document.pdf.

17) The racial and ethnic diversity of Prince George's County (the "County") has grown steadily for the past 40 years, or more. The diversity of the Prince George's Police Department has also increased within its ranks over the past 40 years. As with any police department, there is always a lag time to match the diversity of the community. Mr. Graham's Report is critical of the diversity of the Department.¹⁰ While diversity should be measured by more than just race and ethnicity, the Department has demonstrated a history of increasing the diversity of its personnel in recent years. This analysis should include sworn and civilian members of the organization, not just officers as in Mr. Graham's Report. It is always a work in progress, for nearly every police department in the Nation. Mr. Graham uses the Prince George's County population demographics for his comparative analysis.¹¹ But, this is flawed, as the reality is that not everyone in the County can meet the minimum standards to become a police officer in the State of Maryland.

B. Background on Prince George's County Police Department

18) Prince George's County, like Washington, D.C. and Montgomery County, is a majority-minority community. Montgomery County has the most residents with a population of more than one million, and Prince George's County is the second most populous jurisdiction in the State of Maryland, with just over 900,000 residents.

19) Mr. Graham's Report points out that although the County's population is 64 percent Black, the Sworn members of the Department are only 43 percent Black.¹² To be precise, that does not include the 326 Civilian employees of the Department, many of whom have daily contact with the public and play critical roles, such as 9-1-1 operators, within the organization. The civilian police employees are 58.5 percent Black.

20) Mr. Graham also describes the rank of Lieutenant and Captain as the "primary command-level staff."¹³ In fact, within the Department, the rank of Lieutenant is the entry level rank to the executive staff. Even Captains are considered a mid-level executive rank within the Department's structure. Most often, it is the rank of Major that is in charge of a "Command." They command District Stations and Divisions. Lieutenants and Captains report directly to Majors. They are the assistants or deputies to the rank of Major. There are 25 Majors, and that is the primary rank in terms of decision making and running the daily operations of the Department. Of the 25 Majors, according to Interim Chief Hector Velez's PowerPoint¹⁴ used by Mr. Graham, 12 are of a minority race or ethnicity, 11 are white males, and two are white females.

21) The upper-level command officers in the Prince George's Police Department are at the rank of Major, Deputy Chief, Assistant Chief, and Chief. Currently, according to Interim

¹⁰ Graham Report, ¶¶ 13-14, p. 7.

¹¹ Graham Report, ¶ 13, p. 7.

¹² Graham Report, ¶ 12, p. 7.

¹³ Graham Report, ¶ 13, p. 7.

¹⁴ See PG0000986142.

Chief Velez, of the five individuals occupying the three “Chief” level ranks, two are Black, two are White, and one is Hispanic. Thus, the five most senior leaders in the Department are majority-minority.¹⁵

22) According to Mr. Graham, the Plaintiffs have alleged that, “the fact that the majority of Prince George’s County Police Department officers and senior officers are white has caused tension with the community”¹⁶ As noted above, the majority of Prince George’s County Police Department officers are NOT White. According to Interim Chief Velez, 42.5 percent of the officers are White. Therefore, the majority of the Department is of minority race or ethnicity. Respectfully, it is my opinion that neither the Plaintiffs, nor any group of officers can speak for the entire Community, with regard to their level of “tension”, as Mr. Graham suggests.

23) A reference is made in Mr. Graham’s Report about racial tension between the Department and the community from 20 years ago.¹⁷ While it is true that this led to a Consent Decree and Memorandum of Agreement (“MOA”) with the Department of Justice, Mr. Graham’s Report refers to these events dating back 10 years despite the fact that the Department successfully completed the Consent Decree and MOA in 2007 and 2009, respectively, and incorporated improvements that remain in place today.

24) To put the improvements enacted during that period in perspective, the following quote from Chief Hank Stawinski in 2013 states it clearly: *“Our Department was placed under a memorandum of understanding and consent decree in 2004, and after coming out on the other end, it was a very positive experience for us. I think the key is understanding, going into the process, that there are no cut-and-dried answers. As we negotiated with the Justice Department, DOJ didn’t say, ‘You have to do A, B, and C.’ Rather, they said, ‘You have to live up to certain Constitutional standards to policing in Prince George’s County while remaining effective. So that’s how we approached it. Every policy was custom-made and then approved by the independent monitors. The outcome was a greater degree of policy and practice clarity for our personnel, which we think is contributing to crime reduction. We fundamentally explain to our officers where the boundaries are on a variety of issues so they are able to aggressively fight crime while policing Constitutionally.”*¹⁸

25) This philosophy of focusing on policing constitutionally while working on effective crime fighting strategies clearly remained with Chief Stawinski as he continued to rise through the senior ranks. During the years that Chief Stawinski led the department, Prince George’s County saw a dramatic reduction in crime.

¹⁵ PG0000986142.

¹⁶ Graham Report, ¶ 14, p.7.

¹⁷ Graham Report, ¶ 15, p. 8.

¹⁸ Police Executive Research Forum (PERF), “Critical Issues in Policing Series, Civil Rights Investigations of Local Police: Lessons Learned,” available at https://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

26) Mr. Graham's Report also refers to an empirical study released in 2015 that noted a significant increase in use of force incidents from 2010 to 2014.¹⁹ The study, according to Mr. Graham's Report, cited "news reports" as evidence of unlawful behavior of police and a continued absence of respect for the rule of law among certain County officials. News reports are not an empirical study. What is not mentioned in Mr. Graham's Report is the fact that the increase in the numbers of use of force incidents, according to Chief Mark Magaw, were explained by the increase in the population of the County and the newly expanded definition of "use of force." Chief Magaw was quoted, "The way I read these numbers is we're doing a better job, we're holding our Officers more accountable and we're being more transparent."²⁰ An interview with First Sergeant William Gleason, who oversees use of force training at the Department's Training and Education Division and trains and testifies as an expert on these issues nationwide, confirmed that supervisors are trained to complete use of force reviews for even the most minor uses of force by their personnel. He advised that this also accounted for a lot of the increase in the number of use of force reports.

ANALYSIS AND OPINIONS

PART 1. INTERNAL AND EXTERNAL EEO COMPLAINT PROCEDURES

A. Prince George's County Police Department Policies for Addressing Harassment and Discrimination Complaints is Consistent with Industry Standards and Incorporates Best Practices.

27) The Department has a policy on Discrimination and Sexual Harassment that is generally outlined in General Order Manual, Vol. 1, Chapter 12.²¹ Chapter 12, however, is not the only applicable policy related to the Department's handling of Discrimination and Sexual Harassment Complaints. In addition, the Department follows the EEO requirements included in the County's Personnel Law²² and General Order Manual, Vol. I, Chapters 4, 12, 31, 32 (collectively, with County law, "the EEO Policy").²³ Mr. Graham's Report fails to take all of the relevant GOM sections into consideration when rendering his opinion. Mr. Graham's failure to review and analyze all applicable general orders undermines his conclusion that the Department's policies for handling complaints about racial harassment and discrimination are inadequate. My detailed review of all the relevant general orders found no deficiencies.

¹⁹ Graham Report, ¶ 17, p. 9.

²⁰ J. Chanin, "Evaluating Section 14141: An Empirical Review of Pattern or Practice Police Misconduct Reform," Ohio State J. of Crim. L., Vol. 14:67, pp. 95-101.

²¹ GOM, Vol. I, Ch. 12, PG0000944716-944719.

²² Samples of the policies and procedures for EEO, harassment, and discrimination were provided to the DOJ, PG0000000442-496. See PG0000000493-496 (Personnel Law 16-109); PG0000000443-459 (Personnel Procedure 208); PG0000000484-492 (Administrative Procedure 221).

²³ *Id.*; GOM, Vol. I, Chs. 4, 12, 31, 32.

28) As an initial matter, the EEO Policy outlines equal opportunity in County employment,²⁴ the prohibitions on discrimination, sexual harassment and retaliation against employees, and procedures for handling employee or third-party complaints.²⁵ These concepts are contained in the General Order Manual and are distributed to all Department employees. EEO information regarding complaint procedures is also disseminated to all employees quarterly by the Assistant EEO Coordinator.²⁶ In addition, the EEO Coordinator ensures all Department stations are outfitted with placards that address EEO compliance.²⁷

29) First, Mr. Graham's Report unjustifiably criticizes the Department's reporting requirements because it inaccurately describes the content of the general orders related to the Complaint Procedures. The Complaint Procedures allow the EEO Coordinator to resolve Complaints in one of three ways, depending on the circumstances of the complaint: (1) Handle informally; (2) Refer to the Employees Commander/Manager for mediation; or (3) Assign for Investigation.²⁸ Referrals to the employee's Commander/Manager for resolution is not unreasonable and is not the only option for resolution. Mr. Graham's Report states that "even if an employee is uncomfortable with this directive and instead makes a complaint directly to the EEO Coordinator, the Coordinator is authorized to . . . refer the complaint back to the employee's Commander for mediation."²⁹ This would lead the reader to believe that a victim of harassment or discrimination has no other avenue, other than his or her chain of command, to make a complaint. Mr. Graham's Report goes so far to say that under the EEO Policy, "it is difficult, if not impossible, to break out of the chain of command."³⁰ This is not accurate. The General Order Manual specifically states in Volume I, Chapter 32 (Protocol, Section 19) that employees may go around the chain of command "[t]o transmit confidential or sensitive information" and "[t]o directly discuss an equal employment opportunity complaint with an employee designated to investigate such complaints."³¹ Chapter 12 of the General Order Manual also provides that "The Coordinator and Assistant Coordinator are authorized by the Chief of Police to become directly involved in issues of this nature [internal complaints] at any level, regardless of command responsibility."³²

30) Contrary to the assertions in Mr. Graham's Report, the Department's EEO Policy is consistent with industry standards and incorporates best practices. One aspect of the EEO Policy that is considered a best practice, is the ability for employees to make complaints to external agencies outside of the police department at any point in time. The EEO Policy specifically delineates all of the external agencies where a complainant may file a report.³³

²⁴ PG0000000493-496.

²⁵ GOM, Vol. I, Ch. 12, PG0000944716-944719.

²⁶ PG0000000344; PG0000103651; PG0000145106; PG0000144779; PG0000155489; PG0000145106; PG0000967037; PG0000432824.

²⁷ Harvin Tr. 51 (June 18, 2020).

²⁸ GOM, Vol. I, Ch. 12, PG0000944718.

²⁹ Graham Report, ¶ 22, p. 11.

³⁰ Graham Report, ¶ 26, p. 13.

³¹ GOM, Vol. I, Ch. 32, PG0000944877.

³² GOM, Vol. I, Ch. 12, PG0000944717-944718.

³³ *E.g.*, GOM, Vol. I, Chs. 12, 32.

Specifically, it states that Department personnel may contact any one of the following agencies to resolve or investigate complaints: County Office of Personnel and Labor Relations, Employee Services Division, Equal Employment Opportunity Commission (“EEOC”), the Maryland Human Relations Commission, or their Union representative.³⁴ This is consistent with other model policies around the nation that understand that victims may be hesitant or fearful to internally report complaints of this nature.³⁵ The Department’s policy allows the complainant to have some control in how their complaint is first heard and investigated. This too, is a best practice.

31) Mr. Graham’s Report cites guidelines published by the EEOC as evidence that employees should not have to report complaints through their chain of command.³⁶ First, the EEOC guidelines are just that, *guidelines*, and are not the law. Second, as stated above, chain of command reporting is not the only reporting option. Again, the EEO Policy makes clear that employees have multiple alternative external reporting methods outside their chain of command for EEO-related complaints.

32) Another best practice, which has been adopted by the Department, is to try to resolve complaints informally through mediation. This is permitted by Department policy, but not mandated. The Department’s EEO Coordinator has both the authority and discretion to work with the complainant on resolving the complaint according to the complainants’ wishes. This practice allows the complainant to discuss how they would like to see the complaint resolved.³⁷

33) Second, Mr. Graham’s Report criticizes how employees can initiate resolution of a complaint under the EEO Policy. The Report states that in order for a complainant to initiate a complaint, they are required to complete a form and mail it to the Department’s EEO Coordinator.³⁸ This is wrong. While the EEO Policy does specify that an employee *can* complete a Complaint Form and mail or directly deliver it to the EEO Coordinator, this is not the only method of initiating a complaint. Employees can also initiate a complaint by emailing, calling, or directly speaking to the Assistant EEO Coordinator or EEO Coordinator. In fact, many of the internal complaints the Department has received are initiated in this manner. It is not unusual for the Assistant EEO Coordinator or EEO Coordinator to follow up with an employee about a possible complaint that had been verbally communicated to the EEO Office.³⁹ Further, the EEO Policy states that an employee may contact his or her Supervisor or Commander with complaints.⁴⁰ In addition, and as stated above, any complainant may go directly to any of the external agencies to make their complaint. This would not require any particular format or require anything to be put in writing.

³⁴ GOM, Vol. I, Ch. 12, PG0000944718.

³⁵ Jurisdictions with similar policies include Arlington County and Montgomery County.

³⁶ Graham Report, ¶ 24, p. 24.

³⁷ GOM, Vol. 1, Ch. 12 (V.3), PG000034965.

³⁸ Graham Report, ¶ 24, p. 12.

³⁹ *E.g.*, PG0000968590; Robert Harvin Jr. Deposition Transcript (“Harvin Tr.”) 134-138 (June 18, 2020); Jewell Graves Deposition Transcript (“Graves Tr.”) 239-243 (July 1, 2020).

⁴⁰ GOM, Vol. I, Ch. 12, PG0000944717.

34) Mr. Graham's Report states that the Department has no investigative process if a report is made up the chain of command and is "silent" on what a Commander does upon receipt of a complaint. This is also inaccurate. Chapter 12 of the General Orders Manual directs Commanders to ensure their commands are free from harassment and discrimination, and states "[a]ttempts will be made to settle complaints at the employee supervisory level by dialogue between the parties concerned." When resolution at that level cannot be reached, employees are urged to seek assistance from the EEO Office.⁴¹ Contrary to Mr. Graham's assertions, this provides clear guidance on the expectations and responsibilities for Commanders on how to handle a complaint they receive from a subordinate.

35) Mr. Graham's Report also condemns the Department's investigation and resolution process. Mr. Graham's Report states that the methods the Department's EEO Coordinator may resolve a complaint does not "contemplate[] a thorough investigation." This is not correct. The Department's EEO Coordinator is a Deputy Chief. The fact that the Department gives that responsibility to a senior executive of that rank is a clear indication of the importance that the Department places on these issues. By design, the EEO Policy allows the Deputy Chief broad authority in handling these complaints. The Deputy Chief has the ability to appropriately assign a case for the best resolution. This includes initiating a formal investigation, mediation, or informal resolution.⁴² The Deputy Chief may also consult with the Internal Affairs Division to determine whether the EEO Office or IAD should handle the investigation and remediation of an internal complaint.⁴³

36) If the EEO Coordinator or the Chief decides to assign a complaint for formal investigation, they may either send it to Internal Affairs or refer the complainant to the County Human Relations Commission or EEOC.⁴⁴ The best practice for conducting investigations of this type require that a single investigative process be followed where the complainant is treated as the central figure of importance. Conducting dual investigations opens the door for conflicting evidence to be gathered, including statements from victims, witnesses or accused members of the Department. Collecting contradicting evidence can compromise the investigative process and can prohibit an appropriate and just conclusion. The fact that IAD would administratively close an investigation or the EEO Coordinator would cease remediating a complaint once another external agency received notice of the complaint is a best practice. Mr. Graham's assertion that "it makes no sense to stop an investigation merely because the officer indicates they have or intend to file a charge with the EEOC"⁴⁵ contemplates a dual investigation that runs the risk of the issues stated above.

37) Mr. Graham's statement that the Department places a "heavy" emphasis⁴⁶ on direct confrontation between complainants and alleged offenders is misleading. The EEO Policy

⁴¹ *Id.*

⁴² GOM, Vol. I, Ch. 12, PG000034963-34966; Harvin Tr. 104-105 (June 18, 2020).

⁴³ PG0000179481-179482.

⁴⁴ PG0000155772 (referral of Plaintiff Perez's complaint to the Executive Director of HRC).

⁴⁵ Graham Report, ¶ 50, p. 34.

⁴⁶ Graham Report, ¶ 32, p. 17.

allows for a complaint to be handled at the lowest level possible through a dialogue between the concerned parties. This method is only one option described in the General Order Manual, and the EEO Policy clearly states that employees are urged to seek the assistance of the EEO Coordinator.⁴⁷ Again, the complainant can be heard by Department leadership with regard to how their complaint is handled. When deemed appropriate, the EEO Coordinator can become directly involved at any time regardless of command responsibility.⁴⁸

38) Third, Mr. Graham's Report also incorrectly asserts that the Department's policies lack appropriate confidentiality protections.⁴⁹ However, confidentiality is addressed in both GOM, Vol. 1, Chapter 4 and Chapter 22. Specifically, Chapter 22, states that, "Internal investigations shall be handled confidentially. Investigative information and evidence shall not be disclosed unless authorized by law or by the Chief of Police." In addition, the Department's Harassment and Discrimination trainings address the importance of maintaining confidentiality.

39) Fourth, Mr. Graham's Report states that there are no policies in place to protect complainants from contact with suspected offenders.⁵⁰ This is not true. General Order Manual Vol. 1, Chapter 31, states that, "The Chief of Police reserves the right to transfer, permanently or temporarily, any employee, and may staff on operational necessity."⁵¹ Operational necessity includes separating complainants and alleged offenders when appropriate. Additionally, General Order Manual, Chapter 12, Section V places responsibility on commanders and managers to ensure their commands are free from harassment and discrimination "and that supervisors strictly enforce the sexual harassment and discrimination policy promptly and appropriately." In practice, this can mean adjusting employee work schedules, moving an employee to a sister squad, or similar assignment modifications.⁵²

40) Fifth, Mr. Graham's Report states that the Department policies don't prohibit "all unlawful forms of harassment." This is also false. Forms of harassment are addressed in several general orders. Most notably, in Chapters 4 and 12 of the GOM. Chapter 12 specifically defines "disparaging terms" in the context of negative statements pertaining to one's age, national origin, color, race, ethnic group, religion, gender, sexual orientation, or disability.⁵³ Chapters 4 and 12 of the General Order Manual specifically prohibit retaliatory acts, which are unlawful forms of harassment.⁵⁴

41) At the end of many of the Department's general orders, "Governing Legislation" is provided. This is done to ensure that if the general order is not updated, any changes in the

⁴⁷ GOM, Vol. I, Ch. 12, PG0000944717.

⁴⁸ GOM, Vol. 1, Ch. 12, PG0000944717-944718.

⁴⁹ Graham Report, ¶ 34, p. 18.

⁵⁰ *Id.*

⁵¹ GOM, Vol. I, Ch. 31, PG0000944868.

⁵² GOM, Vol. I, Ch. 12, PG0000944717; *e.g.*, PG0000968887; PG0000154090-154091 ([REDACTED]).

⁵³ GOM, Vol. I, Ch. 12, PG0000944716.

⁵⁴ GOM, Vol. I, Ch. 4, PG0000944650; GOM, Vol. I, Ch. 12, PG0000944716.

law will take precedence. Specifically, in general order, Chapter 12, Discrimination and Sexual Harassment, the governing legislation listed is the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, as well as the Prince George's County Executive Order No. 61-1995. It has been my experience that police agencies attach the laws that are directly associated with their policies to ensure any lag time between a law change and a corresponding update in the General Order. This prevents an Officer from citing to an outdated general order as a defense to a violation of law. The fact that the Prince George's County Police Department lists this governing legislation is a best practice.

42) Mr. Graham's Report is critical of the EEO Coordinator's efforts to "promote anti-discrimination or anti-retaliation efforts within the Department." The criticism is not justified. The EEO Coordinator's efforts are appropriate and in line with best practices. Ensuring that officers are reminded frequently of their obligation to keep a discrimination and harassment-free workplace is a best practice for police departments. Placing posters within the District Stations, that are seen daily by all employees, are a great way to give those reminders. The posters are typically put in the roll call and report rooms, so that all personnel are likely to see them. There are relatively few authorized posters that are permitted to be displayed on the walls at the workplace. This is another indication of the importance that the Department places on this issue. That and the fact that EEO compliance trainings are regularly conducted. In addition, in several depositions, the Deputy Chiefs assigned as the EEO Coordinator advised that quarterly emails were sent to all personnel in the Department on how to file an EEO complaint, along with general information on the EEO.⁵⁵ As a police chief for two large agencies for more than 21 years, I know there are very few issues that get this level of attention. The only other issues I've seen addressed with posters and email reminders dealt with: 1) Officer Safety (wear your vest, "arrive alive" for driving safely, and 2) Employee Assistance Program. The Department's commitment to placing EEO issues at that level is a strong statement indicating the importance of having a discrimination-free environment.

43) Finally, the Department's handling of complaints that have been filed with external agencies is reasonable. The Deputy Chief (EEO Coordinator) and Assistant EEO Coordinator (Director of Personnel) (collectively, "EEO Office") are the point of contact for receiving external employee complaints filed with agencies such as the EEOC, the Prince George's County Human Relations Commission ("HRC"), and the Maryland Commission on Civil Rights. When a complaint is received from an external agency, the EEO Office investigates the factual circumstances alleged in the complaint in order to compile relevant documents and draft a response for the Office of Law to review and submit on behalf of the Department.

44) Mr. Graham's Report criticizes the Department for failing to investigate complaints that have been filed with external agencies like the EEOC.⁵⁶ This assertion is without merit. After the external agency sends the Department a copy of the charge, the agency sends a Request for Information that the Department must fulfill. In response, the EEO Office gathers

⁵⁵ Raphael Grant Deposition Transcript ("Grant Tr.") 35-37 (March 16, 2020); Melvin Powell Deposition Transcript ("Powell Tr.") 25-26 (June 30, 2020); Harvin Tr. 52-53, 152 (June 18, 2020).

⁵⁶ *E.g.*, Graham Report, ¶ 61, p. 40.

extensive documentation related to the allegations in the charge in order to fully respond to the agency's request. The EEO Office supplies the Office of Law with a detailed written report defending the Department's position and/or supplying the external agency with the requested information. By way of example, the EEO Office conducted investigations and supplied fulsome responses to external complaints filed by Plaintiffs.⁵⁷

B. Prince George's County Police Department Conducts Routine, In Person, Harassment and Discrimination Trainings That Are Generally Presented by the County's Commission on Civil Rights.

45) The Department conducts routine, in-person, trainings related to EEO compliance. In accordance with County law, all new Department hires, including new recruits in the Training Academy, complete Workplace Harassment Avoidance Training ("WHAT") at the beginning of their employment.⁵⁸ The WHAT training presentation was created by the County's Office of Human Resources & Management ("OHRM").⁵⁹ EEO training presented by the County's HRC is generally done annually to Department administrators and supervisors (consisting of ranks Acting Sergeant and above). In 2017, an EEO presentation titled "Discrimination at the Workplace" was presented during In-Service training to all rank and file employees.⁶⁰ More specifically, the in-person EEO trainings during the relevant period occurred as follows:

- On or about June 2015, the HRC presented a training on the HRC generally, discrimination in the workplace, and supervisory best practices to supervisors at a Department Crime Meeting.⁶¹ In or around November and December 2015, the HRC presented two-hour trainings titled "EEO/Sexual Harassment" to supervisors and administrators.⁶²
- Between June and October 2016 during In-Service Training, the HRC presented an EEO training to supervisors.⁶³ On or about November 2016, the HRC presented an EEO-related training to supervisors at First Line Supervisor School.⁶⁴
- On or about August 2017, the HRC presented a training titled "EEO/Sexual Harassment" to supervisors.⁶⁵ Between August and December 2017 during In-Service Training, a

⁵⁷ PG0000071313-71484 [REDACTED]; PG0000071525-71562 [REDACTED]; PG0000071563-71610 [REDACTED]; PG0000071611-71663 [REDACTED]; PG0000071664-71751 [REDACTED].

⁵⁸ Human Resources Management, "Workplace Harassment Prevention Training," Prince George's County, MD, available at <https://www.princegeorgescountymd.gov/3547/Workplace-Harassment-Prevention-Training>; PG0000000370.

⁵⁹ PG0000968917-968933; PG0000969101-969118; PG0000969046-969090; PG0000968980-969025.

⁶⁰ PG0000969232-969252; PG0000969743-969750; PG0000969751-969761; PG0000969762-969777.

⁶¹ PG0000967249-967290; PG0000907898-907939.

⁶² PG0000968914-968916; PG0000969037-969042; PG0000967249-967290; PG0000907898-907939.

⁶³ PG0000966820-966830; PG0000969165-969175; PG0000969046-969090; PG0000968980-969025.

⁶⁴ PG0000969221-969223; PG0000969119-969164.

⁶⁵ PG0000969043-969045.

Training Academy instructor presented the EEO training titled “Discrimination at the Workplace” to rank and file employees.⁶⁶

- On or about July and September 2018, two EEO trainings were presented to supervisors by Assistant Commander Daniel Sheffield. Materials were disseminated to attendees by the Assistant EEO Coordinator after the training session.⁶⁷ Between June and December 2018, rank and file officers received Implicit Bias Training at In-Service Training.⁶⁸
- On or about February 2019, the current Director of HRC, Renee Battle-Brooks, presented a training titled “EEO/Sexual Harassment” to supervisors at First Line Supervisor School.⁶⁹ On or about March 2019, the HRC presented a training titled “EEOC” to administrators at Administrator School.⁷⁰
- Between January and March 2020, Associate County Attorney Annie Koshy presented trainings titled “EEO & Grievances” to supervisors at Leadership School.⁷¹ In 2020, Deputy Chief of the Bureau of Administration and Homeland Security Robert Harvin instituted EEO training for all rank and file employees. This new rank and file training has been implemented remotely due to COVID-19.⁷²

46) Mr. Graham’s Report relies on training session sign-in sheets and concludes that the officers whose signatures appear on those particular sheets are the *only* officers who received EEO training from 2014 to 2020.⁷³ It is improper for Mr. Graham’s Report to rely on the absence of documents produced in this litigation to establish the number of attendees at EEO Compliance trainings. The hard copy sign-in sheets which were accessible and produced in the course of the lawsuit would not necessarily be determinative of the actual number of officers who attended trainings. A more accurate measure of officer attendance at trainings can be derived from the fact that all officers must complete In-Service Training in order to remain Maryland Police and Correctional Training Commission (“MPCTC”) certified.

47) In addition to the above trainings, the Department disseminates information to all Department employees about filing EEO-related complaints and procedures. As discussed previously, on a quarterly basis, the Assistant EEO Coordinator sends EEO information to all Department employees via the Police_Only list serve, including a Complaint Pathways chart and a comprehensive PowerPoint outlining EEO policy and procedure (“Prince George’s County Police

⁶⁶ PG0000969743-969750; PG0000969751-969761; PG0000969762-969777; PG0000969232-969252.

⁶⁷ PG0000967291; PG0000968934-968964.

⁶⁸ *E.g.*, In-Service Implicit Bias Training Classroom Participation Sign-In Sheets (2018).

⁶⁹ PG0000969224-969225; PG0000969229-969231.

⁷⁰ PG0000969226-969230.

⁷¹ PG0000968965-968979; PG0000969026-969036; PG0000969091-969100.

⁷² Harvin Tr. 179, 188 (June 18, 2020).

⁷³ Graham Report, ¶ 44, p. 28.

Department EEO PowerPoint”),⁷⁴ and the EEO Coordinator ensures all Department stations are outfitted with placards that address EEO compliance.⁷⁵

48) Mr. Graham’s Report asserts that Deputy Chief Harvin testified in his deposition that new rank and file officers do not receive WHAT training.⁷⁶ Graham misread or misunderstood the testimony. Harvin testified that rank and file officers are not given a training *on the Prince George’s County Police Department EEO PowerPoint* (Exhibit 7 in the deposition) but will begin to receive such training as of mid-2020.⁷⁷ Mr. Graham’s Report confused WHAT training with EEO training and drew an incorrect conclusion. Mr. Graham’s Report also asserts that the Department’s EEO PowerPoint “appears to be primarily presented through a DVD presentation” and cites only the PowerPoint itself as evidence of this speculation.⁷⁸ However, one EEO training was recorded and a DVD was made available for officers who were required to view it as part of a settlement agreement between the Department and the EEOC.⁷⁹ In fact, Mr. Graham’s Report references this instance and then leaps to the conclusion that trainings are not regularly conducted with a live instructor.⁸⁰ The EEO Coordinator monitored compliance for those who were required to view the DVD and collected signed acknowledgment forms from the officers.⁸¹

49) Mr. Graham’s Report proceeds to critique the substance of the Department’s EEO PowerPoint and doesn’t account for the fact that the trainings are conducted by a live instructor who provides additional information to attendees. Mr. Graham’s Report inaccurately asserts the PowerPoint “ignores key protections . . . including accommodations for pregnant employees and prohibitions on the basis of sexual orientation, gender identity, and marital status.”⁸² Yet, there is reference made to all three of these protected classifications in the PowerPoint.⁸³ Mr. Graham’s Report also concludes that the EEO training is deficient because it “contains minimal discussion of retaliation” and cites only one page of the PowerPoint for this assertion.⁸⁴ Prohibitions on retaliation are referenced on no less than nine different pages of the PowerPoint.⁸⁵

50) Mr. Graham further concludes that EEO training is deficient because it lacks an element of “testing” and “[t]he Department does not appear to do anything beyond confirming

⁷⁴ PG0000000344; PG0000103651; PG0000145106; PG0000144779; PG0000155489; PG0000145106; PG0000967037; PG0000432824.

⁷⁵ Harvin Tr. 51 (June 18, 2020).

⁷⁶ Graham Report, ¶ 44, p. 28.

⁷⁷ Harvin Tr. 188 (June 18, 2020).

⁷⁸ Graham Report, ¶ 43, p. 24.

⁷⁹ PG0000928316-928618; PG0000928319-928620; PG0000783353; PG0000908227; PG0000152721; PG0000154901-154902.

⁸⁰ Graham Report, ¶ 44, p. 28.

⁸¹ PG0000154901-154902; PG0000329248-329249; PG0000329749-329750; PG0000152721; PG0000928400.

⁸² Graham Report, ¶ 43, p. 25.

⁸³ PG0000000397 (pregnancy, gender identity, and sexual orientation); PG0000000399 and PG0000000406 (pregnancy); PG0000000433 (marital status).

⁸⁴ Graham Report, ¶ 44, p. 25.

⁸⁵ PG0000000399-403; PG0000000406; PG0000000409; PG0000000410; PG0000000433.

officers signed a sign-in sheet.”⁸⁶ The PowerPoints used during in-person EEO-related trainings contain slides with case examples and scenarios that are discussed with class attendees.⁸⁷ This practice is consistent with my experience as to how such training sessions are often conducted.

PART 2. IAD REASONABLY APPLIES DISCIPLINE AND PERFORMS INVESTIGATIONS IN ACCORDANCE WITH BEST PRACTICES

51) The stated mission of the Department’s Internal Affairs Division is to investigate all complaints in any manner and form they are submitted.⁸⁸ This is designed to ensure that all complaints are investigated in a complete, fair, and impartial manner and to impose disciplinary action, if necessary, in a uniform and timely fashion. Based on my review of the IAD policies, procedures, and practices, and my experience overseeing officer investigations and discipline, IAD has been achieving that goal.

A. Prince George’s County Police Department’s Complaint Policies Are Reasonable

52) Vol. 1, Chapter 4 of the General Order Manual details the Department’s Complaints policy. It contains sound guidelines that address the importance of creating and maintaining a relationship of mutual trust and confidence with the community. The order recognizes the obligation to notify the public about its complaint filing procedures and acknowledges each individual’s rights to file a complaint against an employee. It clearly states that the Department accepts all complaints of employee misconduct at all levels of the Department.⁸⁹ The entire policy reflects best practices.

53) Mr. Graham’s Report criticizes the internal complaint process by stating that it restricts employees of any ability to file a complaint out of their chain of command.⁹⁰ Again, this is not accurate. In confidential matters, reports may be made directly to the Commander of the Internal Affairs Division.⁹¹ In cases where an employee is complaining about his or her supervisor or anyone in their chain of command, they are afforded the opportunity to go directly to IAD.

54) Mr. Graham’s Report discusses the IACP model policy on Harassment, Discrimination, and Unprofessional Conduct, which cites as a best practice the ability of an employee to make a complaint outside of their chain of command.⁹² Vol. 1, Chapter 4 of the Department’s General Order Manual does exactly that as noted above.

⁸⁶ Graham Report, ¶ 44, pp. 25-31.

⁸⁷ *E.g.*, PG0000969238-969239; PG0000969249-969252; PG0000969137; PG0000969158-969164; PG0000968947-968962; PG0000907926-907939.

⁸⁸ See PowerPoint presentation by Major James McCreary, “Internal Affairs Division” (September 16, 2020) (hereinafter “McCreary IAD PowerPoint”).

⁸⁹ GOM, Vol. 1, Ch. 4, PG0000944646.

⁹⁰ Graham Report, ¶ 25, p. 13.

⁹¹ GOM, Vol. 1, Ch. 4, PG0000944646.

⁹² Graham Report, ¶ 27, p. 13.

B. IAD's Screening and Assignment Procedures Are Reasonable

55) The detectives in the Internal Affairs Division of any police department must be held to the highest standards of integrity. As such, it is industry standard that the personnel selected to be assigned to IAD as investigators have a proven reputation and high ethical standards.

56) Internal Affairs cases are not just assigned randomly. The nature of the case will influence which investigator is assigned to a specific case. That said, it has been my experience that commanders will assign the most difficult cases to their best detectives. It is also my experience that often a routine or minor case could be assigned to a less experienced investigator to build his or her skill set and confidence.

57) IAD's screening and assignment procedures at Prince George's County Police Department are reasonable. IAD screens complaints to determine the investigatory responsibility.⁹³ This is both necessary and appropriate so the investigation can be directed to the appropriate investigative avenue in accordance with the stated mission above. Without the screening process, valuable and limited resources can be wasted by needlessly tying up specially trained IAD investigators with conducting investigations that are better and more appropriately investigated at lower levels of the department.

58) The Prince George's County Police Department assigns complaints it receives for investigation after screening the complaint.⁹⁴ Complaints involving criminal allegations and administrative investigations that can lead to termination, reduction in rank or significant fines and suspension are retained by IAD for investigation.⁹⁵ These types of cases also include allegations of use of force, abusive language, and harassment.⁹⁶

59) Complaints of minor violations or simpler investigations are assigned to a supervisor or command officer at the division or district level for investigation. This allows IAD to focus on the more serious investigations that require more specialized training and experience. This best practice utilizes limited specialized personnel resources in a more efficient manner. This also places the investigation into the hands of supervisors and commanders who are well-situated to understand and resolve day-to-day management or performance issues.

60) Graham implies that "inquiries" and "field cases" are improper but ignores or mischaracterizes the facts of the cases he cites. For example:

⁹³ Art'z Watkins Deposition Transcript ("Watkins Tr.") 119-122 (July 10, 2020); IAD Standard Operating Procedures, PG00000000497-530; GOM, Vol. I, Ch. 4.

⁹⁴ McCreary IAD PowerPoint, *supra* note 87; Watkins Tr. 119-122; GOM, Vol. I, Ch. 4.

⁹⁵ *Id.*

⁹⁶ McCreary IAD PowerPoint, *supra* note 87; GOM, Vol. I, Ch. 4, PG0000944649.

- **Plaintiff Chambers:** Mr. Graham criticizes IAD for referring Plaintiff Sharon Chambers' complaint about her supervisor, Sergeant [REDACTED], to the District as an inquiry. In June 2018, while under investigation for [REDACTED] in connection with her loss and recovery of her Department-issued firearm, Plaintiff Chambers first complained to IAD that [REDACTED] had called her a "Signal 7" a year earlier. The term "Signal 7" is a radio signal from the General Order Manual and is used to identify a suspicious individual as part of police operations. This radio signal is race-neutral.⁹⁷ Plaintiff Chambers claimed that [REDACTED] used the term when issuing her a Department order [REDACTED]

[REDACTED]⁹⁸ In my opinion, IAD's referral of this matter to the District Commander for an inquiry was appropriate, based upon what IAD knew about Plaintiff Chambers' allegation at the time it was referred.

Mr. Graham's criticisms are based upon his misleading and incorrect statements about Plaintiff Chambers' complaint. He suggests that IAD improperly referred that complaint in light of information it allegedly had from Plaintiff Chambers' charge of discrimination with the EEOC, but Mr. Graham's Report is inaccurate regarding both the *content* and the *timing* of that charge. First, Mr. Graham suggests that the charge (A) stated that [REDACTED] called Plaintiff Chambers a "Signal 7" and disgrace, and (B) "specifically noted that [Plaintiff Chambers' Commander, Lieutenant [REDACTED],] and others in the station were notified of Sergeant [REDACTED] conduct, and apparently did nothing."⁹⁹ However, these allegations are not [REDACTED].¹⁰⁰ The charge contains no allegations about [REDACTED]

[REDACTED]¹⁰¹
[REDACTED]¹⁰²
[REDACTED]

⁹⁷ GOM, Vol. II, Ch. 49, PG0000945310.

⁹⁸ See Transcript of Plaintiff Chambers' June 18, 2018 Interrogation, PGPD-CHA-0000384; PGPD-CHA 0000385, PGPD-CHA-0000389.

⁹⁹ Graham Report, ¶ 67(g), pp. 54-55.

¹⁰⁰ PGPD-CHA-0000944 (EEOC Charge).

¹⁰¹ In fact, [REDACTED] See PGPD-CHA-0000944.

¹⁰² Graham Report, ¶ 67(g), p. 54 (emphasis added).

██████████¹⁰³ These inaccuracies undermine Mr. Graham’s suggestion that IAD failed to properly address a claim of race discrimination advanced in any EEOC charge.¹⁰⁴

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61) Furthermore, the Department trains district and division level supervisors to conduct investigations.¹⁰⁸ It is appropriate for the Department to assign investigations to supervisors outside of IAD. And, the Department follows the best practice dictating that those supervisors be trained.

C. IAD’s Practices Comply with LEOBR and Have Several Layers of Internal and External Review

62) Prince George’s County Police Department’s IAD practices comply with the Law Enforcement Officers’ Bill of Rights (“LEOBR”) and allow for review of discipline inside and outside of the Department. Prince George’s County Police Department’s disciplinary process has multiple levels, involving many decision-makers, as established under Prince George’s County Police Department’s policies, Maryland law, and the union agreement.

i. Investigations

¹⁰³ See Transcript of Plaintiff Chambers’ June 18, 2018 Interrogation, PGPD-CHA-0000384; PGPD-CHA-0000385; PGPD-CHA-0000944; PG0000121755.

¹⁰⁴ The Report is also inaccurate regarding IAD’s interaction with Plaintiff Chambers following her allegations about ██████████. While Mr. Graham claims that IAD did not interview ██████████, (Graham Report, ¶ 67(g), p. 55), ██████████

██████████ See PGPD-CHA-0000384; PGPD-CHA-0000396. Similarly, Mr. Graham also fails to accurately reflect the nature of the inquiry that ██████████ conducted. ██████████

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¹⁰⁵ See PGIAD0000032990.

¹⁰⁶ PGIAD0000032974 (emphasis added).

¹⁰⁷ PGIAD0000032972-32974.

¹⁰⁸ Interview with IAD Commander Major James McCreary.

63) Disciplinary investigations vary depending on the type of case, but certain principles apply throughout. One of those principles is that investigations are reviewed and approved through the chain of command. This allows for multiple sets of eyes on a file and collaboration across multiple decision-makers, which is a best practice.

64) Further, IAD investigations draw on various sources for expertise. One example is use of force investigations. Special Investigative Response Team (“SIRT”) cases involving use of force, complaints from members of the public on use of force, or non-justified use of force reviews are often investigated with input from First Sergeant William Gleason, an experienced use of force expert.¹⁰⁹ Another example is allegations of criminal misconduct, which are handled by SIRT. These investigations are worked in conjunction with the State Attorney’s office. This is another example of a best practice as the State Attorney’s office can provide expert guidance and oversight during the investigative process and provides outside eyes to help assure the integrity of the investigation.

65) At the end of an investigation, a finding is made with respect to each allegation and there are four choices:

- Sustained – A preponderance of the evidence proves the allegation violated departmental policy or procedure;
- Non-sustained—The evidence fails to prove or disprove the alleged act(s) occurred;
- Exonerated (Proper Conduct)—The evidence proves that the alleged act(s) occurred, however, the act(s) were justified, lawful, or proper; and
- Unfounded—The evidence proves the alleged act(s) did not occur or the accused officer was not involved.

66) By trying to associate “sustained” percentages with certain IAD investigators, Mr. Graham ignores the process used at Prince George’s County Police Department. For IA and SI cases, the investigator’s work is reviewed and approved by his or her Lieutenant and Captain in IAD.¹¹⁰ Though the investigator has input, sustaining a charge is a collective decision. The IAD Commander generally reviews and signs off on the recommendation from the Lieutenant and Captain, sometimes consulting with the Assistant Chief.¹¹¹ This collaborative process is reasonable and in line with what is seen in other agencies.

ii. *Recommending Discipline and Like Discipline*

67) IAD’s steps after completing an investigation also show a fair and balanced process. If an IA or SI charge is sustained, the AHB Coordinator (not the investigator or supervising officer) collects a range of potential discipline based on a review of “like discipline” imposed in other cases.¹¹² This is a best practice in the industry. In Major Kathleen Mills’ tenure

¹⁰⁹ Interview with 1st Sergeant William Gleason.

¹¹⁰ Interview with IAD Commander Major James McCreary.

¹¹¹ *Id.*

¹¹² McCreary IAD PowerPoint, *supra* note 87; Interview with IAD Commander Major James McCreary.

as IAD Commander, the Commander of the Administrative Investigation Section (“AIS”) or SIRT generally adopted the Administrative Hearing Board’s (“AHB”) Coordinator’s selection of like discipline, and in some cases sought the input of Major Mills. And, she sometimes sought input from the Assistant Chief.¹¹³ The Commander of AIS or SIRT would then serve the recommended discipline on the officer in a Disciplinary Action Recommendation (“DAR”), subject to final review by the Commander of IAD. In some cases involving more severe proposed discipline, the Assistant Chief would review and sign the DAR. In addition, when the Commander of AIS or SIRT was unavailable, the Commander of IAD would execute the DAR. At all times relevant here, this process of determining and issuing discipline had multiple layers of review.

68) Mr. Graham attempts to call into question the fairness of the Department’s handling of the assessment of “Like Discipline” in a selective group of cases involving disciplinary actions against Command level employees.¹¹⁴ Graham recounts that Major Mills was tasked with identifying “like discipline” in connection with the Department’s determination of the appropriate punishment [REDACTED]

[REDACTED] Specifically, he faults Major Mills for failing to have considered the punishments imposed in connection with four separate IAD cases involving c [REDACTED]

69) To properly assess whether [REDACTED]

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¹¹³ Kathleen Mills Deposition Transcript (“Mills Tr.”) 24, 296 (August 6, 2020).

¹¹⁴ Graham Report, ¶¶ 136-138, pp. 122-125.

¹¹⁵ PG0000980426-980432 (IA2018-002) (Report of Investigation).

¹¹⁶ PG0000984011-980414 (IA2018-002) (Disciplinary Action Recommendation).

¹¹⁷ The facts of this incident are recounted elsewhere in this report.

¹¹⁸ PG0000984012-984013 (IA2018-002) (Disciplinary Action Recommendation).

¹¹⁹ PG0000980339-980341 (IA2018-002).

70) Based on my extensive experience overseeing and evaluating the conduct of the internal affairs divisions of two large police departments and my familiarity with internal affairs investigation best practices, it is my opinion held to a reasonable degree of certainty that Major Mills did not err by not considering the disciplinary penalties imposed in the cases below as “like discipline” for the charges sustained [REDACTED]. Specifically:

- [REDACTED] 120 [REDACTED] 121 [REDACTED] 122 [REDACTED] 123 [REDACTED] 124 [REDACTED] 125 [REDACTED]
- [REDACTED] 126 [REDACTED]

¹²⁰ PG0000447427-447430 (IA2016-030).

¹²¹ GOM, Vol. I, Ch. 31, PG0000944871 states in relevant part:

Commanders/Managers may make temporary assignments within their commands. They shall review each TDY assignment under their authority every 90 days and report to the Chief of Police on the status of the assignment. This written report shall include all of the following:

- Projected length of the temporary assignment
- Reason for continuing the assignment
- Efforts to permanently fill the position when a vacancy exists

¹²² PG0000447427-447430 (IA2016-030).

¹²³ Also, [REDACTED]

¹²⁴ PG0000447445-447453; PG0000162691-162711 (IA2016-030).

¹²⁵ Henry P. Stawinski III Deposition Transcript (“Stawinski Tr.”) 313 (July 31, 2020).

¹²⁶ Officers may earn either pay or compensatory time for hours worked beyond their regular schedule. County compensatory time is earned when the total hours worked during one pay period exceeds 80 hours.

iii. *Recommending Terminations*

72) Mr. Graham's Report fails to mention that terminations under Major Mills' tenure were brought to the Executive Command Staff for a briefing and a vote on discipline.¹³¹ Looking back to 2016, that Executive Command has included Hank Stawinski or Hector Velez, as Chief; Hector Velez as Assistant Chief; Carlos Acosta or Donnell Turner as Inspector Generals; and Melvin Powell, Raphael Grant, Robert Harvin, George Nichols, George Nader, Samir Patel, Genia Reaves, Anthony Schartner, Chris Murtha, and/or Jacqueline Rafferty as Deputy Chiefs. With consensus from this group, the Assistant Chief or Chief of Police issued recommendations of termination.¹³²

73) Mr. Graham's Report misunderstands the IAD process when he ties terminations to certain investigators. IAD investigators are not involved in selecting discipline. Mr. Graham improperly blames three investigators who he claims have higher "sustain" rates against Officers of Color for the terminations of ten Black and Hispanic officers.¹³³ Included among the ten cases Mr. Graham tries to attribute to biased investigators are:

- **Former Plaintiff Clarence Rucker:** Rucker was investigated by IAD after it was notified that Rucker may be involved in an inappropriate romantic relationship with a domestic violence victim from one of his assigned cases. The IAD investigation uncovered evidence that Rucker had obtained personal information of multiple domestic violence victims from his assigned cases and used this information to initiate and/or attempt to initiate intimate relationships with three of the domestic violence victims involved in cases assigned to Rucker for his investigation.¹³⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³⁶ The Department recommended termination, and Rucker resigned pending discipline.¹³⁷ He then sued in this case, alleging that his termination was discriminatory and retaliatory.¹³⁸ After over a year of pursuing his lawsuit, he dropped his case without explanation.¹³⁹
- **Juan Hernandez:** Hernandez was criminally convicted of second-degree assault in May 2017 based on dash cam footage of him chasing down and striking with his police cruiser

¹³¹ Under McCreary's tenure, the Executive Command Staff votes on any termination or demotion. See McCreary IAD PowerPoint, *supra* note 87; Interview with IAD Commander Major Kathleen Mills; Interview with IAD Commander Major James McCreary.

¹³² See *id.*

¹³³ Graham Report, ¶ 126, p. 112.

¹³⁴ Defendants' Answer to Plaintiffs' First Amended Complaint, ¶ 212 [ECF 142].

¹³⁵ PG0000070896-70902; PG0000070916-70926.

¹³⁶ PG0000070916-70926.

¹³⁷ PG0000070896-70902; PG0000070894.

¹³⁸ Plaintiffs' First Amended Complaint, ¶¶ 210-21 [ECF 51].

¹³⁹ Motion To Vacate Clarence Rucker's Notice of Fed. R. Civ. P. 41(A) Voluntary Dismissal Without Prejudice And For Entry of Dismissal With Prejudice (ECF 266).

a suspect fleeing on foot in a field.¹⁴⁰ [REDACTED]

[REDACTED]¹⁴¹

- **James Sims:** Sims pled guilty to four counts of visual surveillance with prurient interest and two counts of misconduct in office.¹⁴² The criminal investigation revealed that Sims had taken upskirt photos of multiple women while on duty.¹⁴³ After pleading guilty, an

[REDACTED]¹⁴⁴

- **Bashua Olashea:** Judge Albert Northup issued a protective order against Olashea in 2017, finding that Olashea put his two-year-old son in serious danger when he took the child away from his mother during a visitation and drove off recklessly with the child in his arms.¹⁴⁵ In 2016, [REDACTED]

[REDACTED]¹⁴⁶

[REDACTED]¹⁴⁷

- **Tempitope Asaya:** Asaya was criminally charged for theft.¹⁴⁸ Video surveillance showed Asaya and a companion stealing a woman's iPad.¹⁴⁹ After the theft, the owner put her device on "lost mode" with instructions to call her.¹⁵⁰ According to the police reports, "[a] man called the owner and told her the tablet was purchased from Craigslist," and the call was traced to Asaya.¹⁵¹ The Department [REDACTED]

[REDACTED]¹⁵²

¹⁴⁰ *Hernandez v. State*, 2018 Md. App. LEXIS 587 (Md. Ct. Spec. App. 2018); Lynh Bui, "Md. police officer convicted of assault after being caught on video striking man with cruiser," *The Washington Post* (May 18, 2017), available at https://www.washingtonpost.com/local/public-safety/md-police-officer-convicted-of-assault-after-being-caught-on-video-striking-man-with-cruiser/2017/05/17/64bcf024-3b46-11e7-a058-dddb23c75d82_story.html.

¹⁴¹ PG0000852384-852394; PG0000966028-966030.

¹⁴² CBS Baltimore, "Maryland Officer Pleads Guilty To Taking Upskirt Photos of Women" (January 17, 2017), available at <https://baltimore.cbslocal.com/2017/01/17/maryland-officer-pleads-guilty-to-taking-up-skirt-photos-of-women/>

¹⁴³ *Id.*

¹⁴⁴ PGIAD0000103604-103612.

¹⁴⁵ PGIAD0000072294-72303 (SI2017-039).

¹⁴⁶ See PGIAD0000099627-99643; Jamie Forzato, "Prince George's Co. officer suspended following domestic-related arrest," *WTOP News* (February 29, 2016), available at <https://wtop.com/prince-georges-county/2016/02/prince-georges-co-officer-suspended-following-domestic-related-arrest/>.

¹⁴⁷ PGIAD0000072294-72303 (SI2017-039).

¹⁴⁸ Moriah Balingit, "Police officer from Prince George's County suspended following theft charge," *The Washington Post* (October 4, 2014), available at https://www.washingtonpost.com/local/crime/police-officer-from-prince-georges-county-suspended-following-theft-charge/2014/10/04/b9848b4a-4bec-11e4-891d-713f052086a0_story.html

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Interview with Major Katie Mills.

74) None of these officers were worthy of holding the certification of a police officer and I fully concur with the decisions made by Prince George's County Police Department to recommend termination. Mr. Graham's implication in paragraph 126 of his report that specific investigators' racial biases caused these officers to be investigated and terminated is not tied to the IAD process or the facts of these cases.

iv. CCOP Review

75) The Prince George's County Police Department utilizes an independent seven-member civilian panel appointed by the County Executive's Office to assist the Department in achieving its goal of complete, thorough and impartial IAD investigations.¹⁵³ The panel is called the Citizens Complaint Oversight Panel ("CCOP"). It reviews disciplinary investigations for completeness and impartiality. It also submits comments and recommendations to the Chief of Police. Furthermore, it has the power to conduct its own investigation either independent of or concurrently with any IAD investigation. The panel has subpoena power, through the Prince George's County Council for people to appear before it.¹⁵⁴

76) In 2018, the CCOP reviewed 109 complete investigations containing 401 allegations. Of those 401 allegations, the CCOP disagreed with IAD findings in 10 instances.¹⁵⁵ In 2019, the CCOP reviewed 105 complete investigations containing 495 allegations. Out of those 495 allegations, the CCOP disagreed with IAD findings in 25 instances.¹⁵⁶ These numbers appear normal, indicating that IAD performs quality investigations and that the CCOP is not simply rubber stamping its work.

77) In the Olashea case discussed above, for which Mr. Graham finds investigator bias to have caused the termination, [REDACTED]

[REDACTED]

¹⁵⁷

78) Public oversight is a best practice. The CCOP precludes the Department from conducting internal investigations in a vacuum and without community oversight. Partnering with the State Attorney as well as the CCOP allow a level of transparency and accountability that are also best practices.

¹⁵³ PG0000938025 (Citizen Complaint Oversight Panel, Prince George's County 2018 Annual Report).

¹⁵⁴ *Id.*

¹⁵⁵ PG0000938031-938042 (Citizen Complaint Oversight Panel, Prince George's County 2018 Annual Report).

¹⁵⁶ Citizen Complaint Oversight Panel, Prince George's County 2019 Annual Report, pp. 10-21.

¹⁵⁷ PGIAD0000072311 (SI2017-039).

v. AHB Hearing

79) Under LEOBR, officers have the right to dispute the discipline recommended by the Department for sustained findings. When disputed, the case progresses to an Administrative Hearing Board. The AHB hearing functions like a legal proceeding—with evidence and witnesses from both sides, presented by counsel, into an extensive record. If the AHB finds an officer guilty of any charge, the officer has the right to a Character Hearing. The same board then requests “like discipline” information before making its own recommendation on discipline for any sustained/guilty charge. This process is intended to ensure consistency in disciplinary decisions. A report summarizing the proceedings, how the board arrived at its conclusion and the discipline recommendation is prepared and sent to the Chief of Police.

80) The accused officer has five working days to submit a letter to the Office of the Chief requesting leniency. By law, the Chief or his designee can accept the proposed discipline or change it. Only if the discipline is increased does the Chief have to have a formal and recorded meeting with the accused officer and their legal representative to review the change in discipline.¹⁵⁸ Chief Stawinski had a stated policy never to deviate from the discipline recommended by an AHB.¹⁵⁹

81) Pursuant to the CBA with the FOP, the Department’s three-person AHB consists of an appointed Major as the AHB Chair and an appointed Captain as the AHB Co-Chair, with an officer of equal rank selected on a rotating basis.¹⁶⁰ Based on my experience, this is a reasonable formation of the AHB.

82) Many instances of discipline that Mr. Graham characterizes as retaliatory or inadequate were reviewed and decided upon by a three-person AHB of the Department—three officers who take a fresh look at the case to reach their own determination. The AHB recommended termination for [REDACTED], for example.

83) To establish additional independence in the hearing board review, Prince George’s County Police Department outsourced various AHBs, meaning that officers from other Maryland agencies conducted the hearing, reviewed the investigation, and independently recommended discipline. In an industry like ours, this is an act that ensures that there is no pre-conceived notion about the case. Mr. Graham fails to mention this, insisting that the Department and IAD retaliated even when officers from other jurisdictions reached their own conclusions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁶¹

[REDACTED]

¹⁵⁸ Mark Magaw Deposition Transcript (“Magaw Tr.”) 26-27 (August 12, 2020).

¹⁵⁹ See Stawinski Tr. 250 (July 31, 2020).

¹⁶⁰ Agreement between Prince George’s County Maryland and Fraternal Order of Police, Lodge 89, Inc, (“CBA”), PG000000580-581; Magaw Tr. 24-26 (August 12, 2020).

¹⁶¹ PG0000982883-982898.

84) Without acknowledging the facts or multiple levels of independent review, Mr. Graham claims that cases like Plaintiff McClam’s, Plaintiff Perez’s and Plaintiff Crudup’s were a product of a “culture of retaliation.” I disagree, and I have discussed the facts surrounding these officers’ extensive misconduct below.

vi. Circuit Court Review

85) An officer has a right to appeal the decision of an AHB to the Prince George’s County Circuit Court and, again, to the Court of Special Appeals.¹⁶² This provides yet another level of independent oversight into the Department’s system of discipline. Once again, there are disciplinary actions that Mr. Graham characterizes as discrimination or retaliation—like Plaintiff Perez, Purnell, and Beale—that were reviewed and upheld by Maryland judges.¹⁶³

vii. Diversity in the Disciplinary Process

86) The extent to which the Department has consistently placed Black and Hispanic officers into pivotal positions in the disciplinary process during the period relevant to the litigation undercuts Mr. Graham’s suggestion that disciplinary investigations are tainted by discriminatory animus. Demographic diversity within the senior ranks of the Department is a critically important and effective way to prevent racial discrimination in the disciplinary process and to improve relationships with the community. The chart below identifies Officers of Color who have held such positions in the Department’s disciplinary process at different times since 2015.

ASSISTANT CHIEFS AND DEPUTY CHIEFS

Name	Race	Bureau (for Deputy Chiefs)
Grant, Raphael	B	Deputy Chief, Bureau of Administration and Homeland Security (BOAHS)
Harvin, Robert	B	Deputy Chief, BOAHS
Howard, Craig	B	Assistant Chief
Nader, George	W (Lebanese)	Deputy Chief, BOAHS
Nichols, George	B/M	Deputy Chief, Bureau of Forensic Science & Intelligence
Patel, Samir	A (Indian)	Deputy Chief, Bureau of Investigations
Powell, Melvin	B	Deputy Chief, BOAHS

¹⁶² LEOBR, §3-109.

¹⁶³ See, e.g., *Joseph Perez v. Prince George’s County Police Department*, Civil Action 19-36458, (Circuit Court for Prince George’s County, Maryland); see also Sullivan DOJ letter dated Nov. 27, 2019 (Request No. 1).

Reaves, Genia	B	Deputy Chief, BOAHS
Velez, Hector	H	Deputy Chief, Bureau of Investigations (before he was Assistant Chief)
Velez, Hector	H	Assistant Chief
Whittington, Genovia	B	Deputy Chief, BOAHS

COMMANDER OF IA

Name	Race
McCreary, James	B
Grant, Raphael	B

COMMANDER OF AIS

Name	Race
Perez, Joseph	H
Watkins, Art'z	B
Watson, Trevel	B

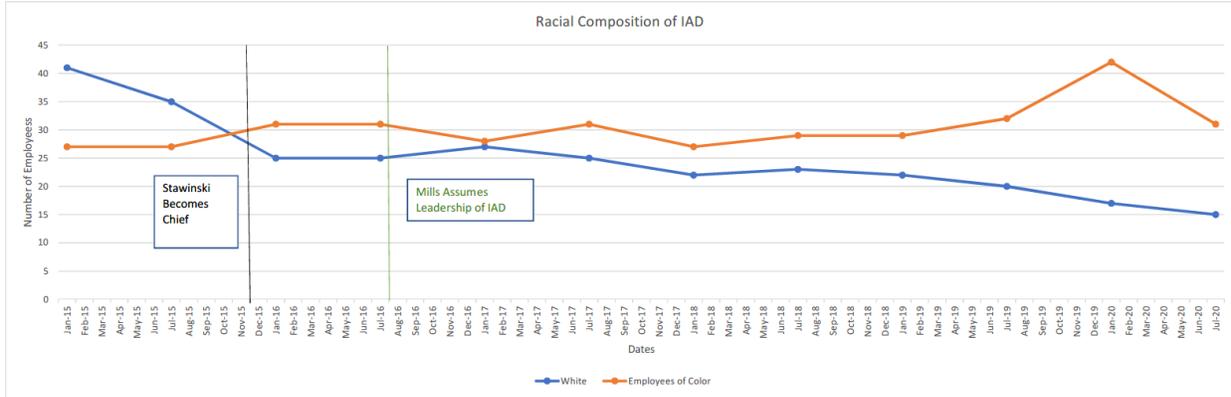
COMMANDER OF SIRT

Name	Race
Sheppard, Terrance	B

AHB CHAIRPERSON

Name	Race
Burks, Irene	B
Watkins, Art'z	B

87) Moreover, the demographics of the employees assigned to IAD during the period relevant to the litigation also serve to undercut the suggestion in Mr. Graham's Report that the disciplinary process is implemented in a racially discriminatory manner. As the chart below demonstrates, when reviewing the January and July rosters for each year since Chief Stawinski assumed leadership of the Division, employees of color have consistently outnumbered White employees in IAD. That has remained the case through Major Mills' tenure as well.



88) Building and maintaining the community’s trust is an ongoing pursuit for any police department. It has been my experience that community members are more likely to come forward to make complaints against the police when they have confidence that their complaints will be handled competently. Moreover, my opinion, based on my experience, is that a victim or complainant often feels more comfortable speaking with someone they believe will understand their point of view. Placing minority officers in pivotal positions in the disciplinary process is, therefore, a best practice for building the community’s trust and confidence in the investigatory and disciplinary process, and for preventing racial discrimination in the process.

D. The Individual Plaintiffs Were Reasonably Disciplined

i. The investigations into Plaintiff Perez were not retaliatory or harassment

89) Contrary to Mr. Graham’s assertion that Plaintiff Perez faced retaliatory or reciprocal charges for making complaints, it is my opinion that the Department’s treatment of Plaintiff Perez has been thorough, careful, and fair and not retaliatory.

90) Mr. Graham’s Report discusses Plaintiff Perez in the context of “reciprocal charges,” which indicates a focus on the Department’s IAD investigation into Plaintiff Perez’s conduct at the Seat Pleasant Police Department.¹⁶⁴ Mr. Graham’s Report also mentions Plaintiff Perez’s transfer in 2016 from the Internal Affairs Division to the Planning and Research Division and the Department’s failure to promote Plaintiff Perez to the rank of Major, along with other minor acts which Mr. Graham appears to believe were retaliatory.¹⁶⁵

91) [REDACTED]

[REDACTED] 166 [REDACTED]

[REDACTED]

[REDACTED] 167 [REDACTED]

¹⁶⁴ Graham Report, ¶ 143(f), pp. 130-134.

¹⁶⁵ *Id.*

¹⁶⁶ PG0000980350-980354.

¹⁶⁷ *Id.*

[REDACTED]
[REDACTED]¹⁶⁸ [REDACTED]
[REDACTED]¹⁶⁹ [REDACTED]
[REDACTED]
[REDACTED]¹⁷⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁷¹

92) [REDACTED]
[REDACTED]¹⁷² [REDACTED]
[REDACTED]
[REDACTED]¹⁷³ [REDACTED]
[REDACTED]

[REDACTED] Plaintiff Perez challenged the Department's actions three times. First, Plaintiff Perez filed a request with the Circuit Court for Prince George's County requesting a "Show Cause" hearing to determine whether Prince George's County Police Department's actions in the investigation were retaliatory.¹⁷⁴ The court determined they were not.¹⁷⁵ [REDACTED]

[REDACTED]¹⁷⁶ Finally, the Circuit Court for Prince George's County Maryland upheld the AHB's findings, stating that there was "substantial evidence to support the [Administrative Hearing] Board's finding... and that "any reasoning mind can find [Plaintiff Perez's conduct] to be intimidating."¹⁷⁷ The court further found that Plaintiff Perez "use[d] the prestige of [his] office to gain access and ultimately to gain personal benefit..."¹⁷⁸ As a result of his actions, Plaintiff Perez received a demotion from Captain to Lieutenant, and was removed from the promotion cycle for one year.¹⁷⁹

93) Mr. Graham's Report claims that there were "significant procedural irregularities" in the Department's investigation. Notably, as described above, Plaintiff Perez has already challenged these alleged irregularities before the Circuit Court for Prince George's County, Maryland, which specifically found that "[w]here the Department deviated from its standard

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² PG0000980347; PG0000990252.

¹⁷³ PG0000990252.

¹⁷⁴ PG0000080041.

¹⁷⁵ PG0000161564.

¹⁷⁶ PG0000980342-980358.

¹⁷⁷ Transcript of July 31, 2020 Motions Hearing, *Joseph Perez v. Prince George's County Police Department*, Civil Action 19-36458, (Circuit Court for Prince George's County, Maryland) ("Perez Circuit Court Hearing") at 34-35.

¹⁷⁸ Perez Circuit Court Hearing at 35.

¹⁷⁹ PG0000980339-980341.

[REDACTED] 186 [REDACTED]
[REDACTED] 187 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 188 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

98) Mr. Graham also notes his opinion that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 190 [REDACTED]
[REDACTED] 191 [REDACTED]
[REDACTED] 192

99) Similarly, the Department's transmission of information related to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 193 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁸⁶ See PG0000971483-971484.

¹⁸⁷ Graham Report, ¶ 143(f), pp. 132-133.

¹⁸⁸ PG0000971483-971484; Christopher Murtha Deposition Transcript ("Murtha Tr.") 61-94 (August 5, 2020).

¹⁸⁹ PGPD-PER-0069140.

¹⁹⁰ Graham Report, p. 131, note 426, citing PG0000785918-785919.

¹⁹¹ PGPD-PER-0067452; PGPD-PER-0098783.

¹⁹² Compare Graham Report, p. 132, note 432 (citing PG0000169211-169213) with Michael Smith Deposition Transcript ("M. Smith Tr.") 155-156 (July 22, 2020) and Joseph Ghattas Deposition Transcript ("Ghattas Tr.") 221-229 (July 8, 2020).

¹⁹³ PG0000155728; Stawinski Tr. 343-349 (July 31, 2020).

103) The GOM expressly prohibits officers from engaging in “double dipping.” Vol. I, Ch. 18, Section V, sub-section 3 of the General Order Manual states: “[N]o employee shall work any Non-Departmental Secondary Employment or Secondary Law Enforcement Employment . . . [r]eceiving payment from two or more employers simultaneously without written permission of the multiple employers.”²⁰⁰ The GOM also states that “[e]mployees shall not, without authorization, leave an assigned workplace during the tour of duty.”²⁰¹

104) [REDACTED]
[REDACTED]
[REDACTED]²⁰² [REDACTED]
[REDACTED]²⁰³ [REDACTED]
[REDACTED]
[REDACTED]²⁰⁴ [REDACTED]
[REDACTED]²⁰⁵ S [REDACTED]
[REDACTED]
[REDACTED]²⁰⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁰⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁰⁸ [REDACTED]
[REDACTED]
[REDACTED]²⁰⁹ [REDACTED]
[REDACTED]
[REDACTED]²¹⁰ [REDACTED]

105) In my opinion, [REDACTED]
[REDACTED] Therefore, termination was a reasonable punishment for the conduct she admitted to having engaged in.

106) Like Plaintiff Oatis, Sergeant [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁰⁰ PG0000958909-958910.

²⁰¹ PG0000959013

²⁰² PGPD-OAT-0000021- PGPD-OAT-0000027.

²⁰³ PGPD-OAT-0000025.

²⁰⁴ PG0000958841.

²⁰⁵ PGPD-OAT-0000027.

²⁰⁶ PG0000006277.

²⁰⁷ PG0000013412-13423.

²⁰⁸ PG0000013422-13423.

²⁰⁹ PG0000013427-13432.

²¹⁰ PG0000988686.

[REDACTED]²¹¹

[REDACTED]²¹²

107) After completing an initial investigation, [REDACTED]

[REDACTED]

[REDACTED]²¹³

[REDACTED]²¹⁴

[REDACTED]²¹⁵ S [REDACTED]

[REDACTED]²¹⁶

[REDACTED]²¹⁷

108) Under the Collective Bargaining Agreement (“CBA”) between the Department and the Fraternal Order of Police, the Department cannot interfere with an officer’s choice to exercise his or her right to retire, if that officer has met the in-service time for eligibility for retirement.²¹⁸

[REDACTED]²¹⁹

[REDACTED]²²⁰

[REDACTED]²²¹

109) [REDACTED]

[REDACTED]²²²

110) The GOM prohibits officers from engaging in secondary employment “[a]s a commissioned police officer for any other county, municipality, or political subdivision.”²²³

[REDACTED]

²¹¹ PG0000972018; PG0000980259.

²¹² PG0000980240; PG0000980271.

²¹³ PG0000978816; PG0000971924.

²¹⁴ PG0000975424-975466.

²¹⁵ PG0000971926-971948.

²¹⁶ PG0000971948.

²¹⁷ PG0000939411-93413

²¹⁸ PG0000000531.

²¹⁹ PG0000000531; PG0000988686.

²²⁰ PG0000971992; PG0000988686.

²²¹ PG0000988686.

²²² PG0000159211.

²²³ PG0000960608.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 224 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 225 [REDACTED]

[REDACTED]

111) The investigation into the anonymous complaint [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 226 [REDACTED]

[REDACTED]

112) In my opinion, the Department conducted investigations into these complaints in a complete, fair, and impartial manner and imposed disciplinary action in an appropriate, uniform, and timely fashion.

iii. Michael Brown was Fairly Disciplined

113) Mr. Graham's Report presents comparative discussions into the conduct of Plaintiff Michael Brown, Corporal [REDACTED], Corporal [REDACTED], and Corporal [REDACTED] in connection with different, unrelated incidents as reflective of a pattern in the Department "where minority officers have received harsher discipline than white officers for similar violations."²²⁷ I disagree with Mr. Graham's allegation that these four cases are examples of unfair or disparate discipline because the conduct of Plaintiff Brown and circumstances surrounding the incident [REDACTED] were far more serious than any of the actions and incidents alleged to be connected to the other individuals identified as possible comparators.

a. *Plaintiff Michael Brown Resigned from the Department [REDACTED] (Unbecoming Conduct, [REDACTED] and Display of Firearm Prohibited) and Being Faced With Termination.*

²²⁴ PG0000159211.
²²⁵ PG0000159212; PG0000159224.
²²⁶ PG0000960546.
²²⁷ Graham Report, ¶ 134(e), pp. 119-120.

[REDACTED]
[REDACTED]
[REDACTED]²³⁹ [REDACTED]
[REDACTED]
[REDACTED]²⁴⁰ [REDACTED]
[REDACTED]
[REDACTED]²⁴¹

117) [REDACTED]
[REDACTED]²⁴² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴³

b. [REDACTED]
[REDACTED]

118) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁵ [REDACTED]
[REDACTED]²⁴⁶

119) [REDACTED]
[REDACTED]
[REDACTED]²⁴⁷ A judge of the District Court of Maryland for Charles County found Plaintiff Brown guilty of three counts of second degree assault and one count of affray.²⁴⁸ Plaintiff Brown appealed his conviction to the Circuit Court and entered into a plea agreement in which his case

²³⁹ PG0000012153.
²⁴⁰ PG0000012154.
²⁴¹ PG0000012155.
²⁴² PG0000012123; PG0000012134.
²⁴³ PG0000012123.
²⁴⁴ PG0000114435-11448.
²⁴⁵ PG0000114446.
²⁴⁶ PG0000114440.
²⁴⁷ PG0000114450-14451.
²⁴⁸ PG0000114464.

was placed on the stet docket in exchange for Plaintiff Brown's agreement to perform community service.²⁴⁹

120) Following the disposition of the criminal case, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁰

121) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵¹
[REDACTED]
[REDACTED]²⁵²
[REDACTED]
[REDACTED]²⁵³

122) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁴
[REDACTED]
[REDACTED]²⁵⁵
[REDACTED]
[REDACTED]²⁵⁶

123) [REDACTED]
[REDACTED]
[REDACTED]

²⁴⁹ PG0000114469-114473.
²⁵⁰ PG0000113952-113955.
²⁵¹ PG0000070049-70050.
²⁵² PG0000070050.
²⁵³ PG0000070039.
²⁵⁴ PG0000070029-70033.
²⁵⁵ PG0000070008-70009.
²⁵⁶ PG0000070031; PG0000070029.

[REDACTED] 257 [REDACTED]
[REDACTED] 258 [REDACTED]
[REDACTED] 259 [REDACTED]

124) Progressive discipline is an industry standard when making decisions on the level of discipline in a particular case. Simply put, if an officer is late for roll call on one occasion, they may likely receive a low level of discipline. If that same officer is late to roll call for a third or fourth time, however, the discipline will be more severe with each violation. [REDACTED]

[REDACTED]
[REDACTED]

c. [REDACTED]
[REDACTED]
[REDACTED]

125) Mr. Graham's Report uses a case involving [REDACTED]

[REDACTED] 260 C [REDACTED]
[REDACTED]
[REDACTED] 261 [REDACTED]
[REDACTED] 262 [REDACTED]
[REDACTED] 263 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 264 [REDACTED]
[REDACTED]
[REDACTED] 265 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁵⁷ PG0000070021-70033.

²⁵⁸ PG0000070028.

²⁵⁹ PG0000070001.

²⁶⁰ Graham Report, ¶ 84(f), p. 84, ¶ 134(e), pp. 119-120.

²⁶¹ PG0000986195.

²⁶² PG0000986196.

²⁶³ PG0000986195-986196.

²⁶⁴ PG0000990987.

²⁶⁵ PG0000991930.

[REDACTED]

132) [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

133) It is my opinion that the Department acted properly by investigating the complaints that were brought to IAD's attention. These allegations were serious and there were many potential witnesses in these events. Plaintiff McClam has been promoted twice since the time when Mr. Graham claims he was harmed as a result of these investigations (to Sergeant in September of 2017 and to Lieutenant in November of 2018).

v. The investigation into Plaintiff Crudup was not retaliatory.

134) Mr. Graham's Report appears to claim that Plaintiff Crudup was subjected to a retaliatory investigation because he made a complaint accusing his supervisor, Lieutenant

²⁸¹ PG0000982883-982898.

²⁸² PG0000023867.

²⁸³ PG0000023869-23879.

²⁸⁴ PG0000023828.

²⁸⁵ PG0000027647.

²⁸⁶ PG0000027646-27647.

Hampson, ██████████²⁸⁷ In my opinion, as described below, the investigation into Plaintiff Crudup was both appropriate and necessary, and was not based on retaliation.

135) ██████████
██████████
██████████
██████████²⁸⁸ ██████████
██████████²⁸⁹ ██████████
██████████
██████████²⁹⁰

136) In May 2017, Plaintiff Crudup was criminally indicted regarding the incident described above.²⁹¹ He was tried before a jury on 11 counts, including witness intimidation, accessory after the fact, and misconduct in office. The jury found him guilty on one count: misconduct in office. This finding was later dismissed on appeal.²⁹²

137) After the conclusion of his criminal trial, ██████████
██████████²⁹³ ██████████
██████████
██████████
██████████²⁹⁴ ██████████
██████████²⁹⁵

138) ██████████
██████████
██████████²⁹⁶ ██████████
██████████
██████████
██████████²⁹⁷

139) ██████████
██████████²⁹⁸ ██████████
██████████

²⁸⁷ Graham Report, ¶ 143(g), pp. 134-135.

²⁸⁸ PG0000984909.

²⁸⁹ See PG0000978140.

²⁹⁰ *Id.*

²⁹¹ PG0000984910.

²⁹² *Id.*

²⁹³ See generally PG0000984414-0984956.

²⁹⁴ PG0000978140.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

E. Prince George’s County Police Department Acted Reasonably with Regard to Other Investigations If and When Complaints Were Made

144) Mr. Graham’s Report cites a number of incidents in which he claims: (1) no investigation occurred (thereby incorrectly assuming that a complaint was made); (2) the investigation was deficient for a variety of reasons; (3) the investigation yielded sustained charges regarding racism but inadequate discipline; or (4) IAD improperly referred the complaint back to the field. While many of Mr. Graham’s assertions seem disturbing and very serious on their face, an assessment of the facts actually underlying these incidents further demonstrates a consistent pattern in the Report: Mr. Graham’s claims are groundless, inaccurate, and fail to acknowledge the record evidence.

F. The Department Responded Appropriately to Facts and Circumstances, Even If No Complaint Was Filed

i. “GFYOBMA” License Plate

145) Mr. Graham’s Report identifies the Department’s alleged failure to investigate a case involving a so-called complaint from April 2016 regarding a personalized license plate owned by Brian Selway, a then-sergeant who was assigned to IAD at the time. Mr. Graham claims that the complaint alleged the license plate stood for the acronym “Go F*** Yourself Obama.”³⁰⁵

146) Mr. Graham misses the mark and his conclusion disregards the established facts. In fact, the Department did screen this matter and it is my belief that the license plate—regardless of what the officer intended it to stand for—could be considered protected speech under the First Amendment of the U.S. Constitution. Further, it was displayed on an officer’s personal vehicle.

147) During a February 2017 press conference, Chief Stawinski stated that the license plate came to his attention in April 2016.³⁰⁶ He explained that he rejected Lieutenant Selway’s explanation that GFYOBMA meant “Good for you Obama” and “immediately” consulted with his legal advisors, who informed him that a Maryland license plate had been issued and that people had a First Amendment right to express their opinions.³⁰⁷

148) Mr. Graham’s Report fails to address the fact that license plates issued by the Maryland Motor Vehicle Administration (“MVA”) are not the personal property of the registered owner but are the property of the MVA and are regulated by that agency. [REDACTED]

³⁰⁵ Graham Report, ¶ 66(b), pp. 47-48.

³⁰⁶ Prince George’s County Police Department, “Chief Stawinski Discusses DOJ Complaint” (February 9, 2017), available at <https://www.youtube.com/watch?v=TNGQ05KJDgw>.

³⁰⁷ *Id.*

153) Lieutenant Finn and the New York Times reporters [REDACTED]

[REDACTED]³¹⁶ After leaving the scene of a deadly stabbing of a Black man during the ride along, Finn and the reporters headed to dinner. The article, which was published on July 23, 2016, states the following:

A handful of officers manage the scene. Lieutenant Finn heads for dinner. He says he prefers not to eat in the area he has been patrolling, where he might run into people he arrested or be reminded of where fellow officers were shot. So he drives south, to a Texas Ribs & BBQ in Clinton, Md. Talk turns to the Black Lives Matter protest. “ ‘Black Lives Matter When the Police Kill Them,’ ” Lieutenant Finn says, as if arguing with protesters. ‘Have that be your name.’”³¹⁷

154) The article did not provide any further context for Lieutenant Finn’s comments.

155) After the article was published, Lieutenant Finn [REDACTED]

[REDACTED]³¹⁸ [REDACTED]

156) While Mr. Graham asserts that Lieutenant Finn was quoted in a Washington Post article published on July 27, 2016, he was not in fact quoted in the opinion piece that appeared in that publication. That piece had been written about him and the New York Times article noted above, but did not quote him.³¹⁹ Notably, there is no indication that Lieutenant Finn was even interviewed for the piece that appeared in the Washington Post.

157) Mr. Graham’s assertion that a complaint was made about Lieutenant Finn’s statement is untrue; tellingly, that assertion is completely unsupported in Mr. Graham’s Report. As the Department never received a complaint about the statement, and there was no evidence that any violation of Department policy had occurred, in my opinion and based on my experience it was entirely appropriate that no IAD investigation occurred.

158) Similarly unreliable is Mr. Graham’s citation to [REDACTED]

[REDACTED]³²⁰ [REDACTED]

³¹⁶ PG0000990240-990241.

³¹⁷ Jess Bidgood, et al., “One Police Shift: Patrolling Anxious America,” The New York Times (July 23, 2016), available at <https://www.nytimes.com/2016/07/24/us/police-ridealongs.html#:~:text=Policing%20in%20America%20today%20is,into%20your%20patrol%20car%20door.&text=And%20it's%20facing%20the%20protests,of%20us%2Dversus%2Dthem>.

³¹⁸ PG0000045100.

³¹⁹ Radley Balko, “Scott Finn, model cop for a model police department,” The Washington Post (July 27, 2016), available at <https://www.washingtonpost.com/news/the-watch/wp/2016/07/27/scott-finn-model-cop-for-a-model-police-department/>.

³²⁰ PG0000783498.

iii. A String of Statements Allegedly Made by Corporal Steven Jones

159) Mr. Graham's Report further states that Corporal Steven Jones made a series of negative comments about Black members of the community and officers, including that "at least slaves had food and a place to live," referring to President Obama as a "coon," and referring to a black officer as a "Signal 7." Mr. Graham also reports that Corporal Jones defended the Ku Klux Klan ("KKK") and equated the Black Lives Matter ("BLM") movement with the Ku Klux Klan. Mr. Graham further claims that Corporal Jones was the subject of complaints made to Major Misty Mints (who advised that she did not want to hear about discrimination), Lieutenant Thomas Calmon (who denied a request for a meeting to discuss the complaint), and the EEO Coordinator (who acknowledged the complaint, but did not schedule a meeting with the complainant). Finally, Mr. Graham notes that there is no indication in the IAPro data produced or Defendants' discovery responses that this matter was investigated or that Corporal Jones was disciplined.³²¹

160) Reading Plaintiff Christopher Smith's deposition, Plaintiff Smith recounts that the conversations in which these comments allegedly occurred were about a variety of topics that, sometimes, included race and policing.³²² According to Plaintiff Smith, a number of Officers on his squad participated in the conversations, but he said in his deposition that Corporal Jones spoke more than the others on the team.³²³

161) There is no evidence in the record to support Plaintiff Smith's allegation that the Department was made aware of any comments allegedly made by Corporal Jones that would have warranted an investigation or discipline. Plaintiff Smith alleges that he participated in a discussion with Jones and other members of his Special Assignment Team regarding the Black Lives Matter movement. During the discussion, Jones allegedly compared the BLM movement to the Ku Klux Klan, and pointed to an example he heard of a Black Lives Matter supporter talking about killing police officers.³²⁴ Plaintiff Smith disagreed, and said that the KKK and BLM are nothing alike.³²⁵ Based on my experience evaluating the conduct of police officers, it is my opinion that Jones' alleged comments, as characterized by Plaintiff Smith in his deposition, did not amount to an act of racial harassment. There is no evidence that Plaintiff Smith reported to anyone that he believed the conversation to be racial harassment, including Lieutenant Vondell Smith, Plaintiff Smith's Black supervisor, to whom he allegedly described the conversation. Moreover, the Report's characterization of Corporal Jones as "defending" the KKK is inaccurate and misleading.

³²¹ Graham Report, ¶ 66(f), p. 50.

³²² Christopher Smith Deposition Transcript ("C. Smith Tr.") 120-124 (July 29, 2020).

³²³ C. Smith Tr. 118, 120, 123-124 (July 29, 2020).

³²⁴ C. Smith Tr. 121-124 (July 29, 2020).

³²⁵ *Id.*

162) Plaintiff Smith also alleges that Jones said that Smith looked like a “Signal 7” on a day that Smith wore plain clothes to work. “Signal 7” is the Department’s official code for “suspicious person,” and is used when referring to suspicious individuals of any race.³²⁶ In his deposition, Plaintiff Smith testified that various officers made jokes and comments about others looking like “Signal 7s,” including White people.³²⁷ Based on my experience evaluating the conduct of police officers, it is my opinion that Jones’ alleged “Signal 7” comment, as characterized by Plaintiff Smith’s deposition testimony, did not amount to an act of racial harassment. There is no record evidence that Plaintiff Smith reported to anyone that he believed Jones’ alleged “Signal 7” comment to be racial harassment, including Lieutenant Vondell Smith, to whom he allegedly described the comment.

163) Plaintiff Smith further alleges that Jones once attempted to discuss an article with Corporal Michael Myerly, which noted that during the time of slavery in the United States, some slaves had access to food, clothes, and shelter, whereas some nomadic white people at the time did not.³²⁸ Jones allegedly said that he did not know how to feel about the article, and was about to ask Corporal Myerly what he thought when Corporal Myerly interrupted him and told him that this was not an appropriate topic of conversation.³²⁹ Plaintiff Smith and Corporal Joseph Gavin were in the room with Myerly, but did not say anything.³³⁰ It is my opinion that Corporal Jones’ alleged comments regarding this article, as characterized by Plaintiff Smith’s deposition testimony, did not amount to an act of racial harassment. Following this alleged conversation, Plaintiff Smith did not report this incident as racial harassment to any supervisor or to the Department’s EEO Coordinator, including to Lieutenant Smith, to whom he allegedly described the comments.

164) Finally, Plaintiff Smith alleges that, during a conversation about President Barack Obama and his political activities, Corporal Jones referred to President Obama as a “coon.”³³¹ Plaintiff Smith alleges that he, Police Officer First Class Kyle Colleli, and Corporal Joseph Gavin were in the room (without any supervisors present), and none of them said anything in response.³³² There is no record evidence to suggest that, following this alleged conversation, Plaintiff Smith reported this incident to any supervisor or to the Department’s EEO Coordinator.

165) Mr. Graham’s Report relies on allegations in the complaint and Plaintiff Smith’s June 15, 2020 Declaration. The allegations in these documents are unsupported by the record, including specifically Plaintiff Smith’s deposition testimony and contemporaneous Department documents. For example, Mr. Graham’s Report incorrectly suggests that Plaintiff Smith made a complaint regarding Corporal Jones to Lieutenant Calmon.³³³ After Plaintiff Smith was reassigned off the SAT, [REDACTED]

³²⁶ C. Smith Tr. 43-44 (July 29, 2020).

³²⁷ C. Smith Tr. 43-45, 149-152 (July 29, 2020).

³²⁸ C. Smith Tr. 179-181 (July 29, 2020).

³²⁹ C. Smith Tr. 180 (July 29, 2020).

³³⁰ C. Smith Tr. 179-181 (July 29, 2020).

³³¹ C. Smith Tr. 161-165 (July 29, 2020).

³³² *Id.*

³³³ Graham Report, ¶ 66(f), p. 50.

[REDACTED]³³⁴ His email to Calmon did not mention Corporal Jones, racial harassment, discrimination or retaliation. In fact, Plaintiff Smith acknowledged in his deposition that he had never spoken to Calmon about Corporal Jones' allegedly discriminatory comments.³³⁵ Mr. Graham's Report also states that Calmon denied Smith's request for a meeting. This is not accurate. [REDACTED]

[REDACTED]³³⁶ Based on my experience, [REDACTED]
[REDACTED]
[REDACTED]

166) [REDACTED]

[REDACTED]³³⁷ [REDACTED]
[REDACTED]³³⁸ [REDACTED]
[REDACTED]³³⁹ [REDACTED]

[REDACTED] Although Plaintiff Smith alleges that he subsequently submitted a hand-written complaint directly to the EEO Coordinator's office, the Department has no record of any such complaint, and Plaintiff Smith said that he kept no copy.

G. The Department Repeatedly Carried Out Sufficient Investigations Despite Impediments Caused by Plaintiffs or Circumstances Unrelated to the IAD Leadership

i. The Color Guard Locker, SI2017-018

167) Mr. Graham's Report first cites the "Color Guard" incident as an example of an inadequate investigation in which investigators did not pursue leads and failed to conduct a fair and complete investigation. This is completely inaccurate.

168) The investigation into the "Color Guard" incident was precipitated by [REDACTED]

[REDACTED] In that photograph, the word "Color" on the locker's label was crossed out, and "African American" was written on tape above it.³⁴⁰ [REDACTED]
[REDACTED]³⁴¹ [REDACTED]

³³⁴ PGPD-SMI-0000003-0000004.

³³⁵ C. Smith Tr. 293 (July 29, 2020).

³³⁶ PGPD-SMI-0000003-0000004.

³³⁷ PGPD-SMI-0003951-0003952.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ PG000024869; PG000025095 (SI2017-018).

³⁴¹ PG000024886-24887 (SI2017-018).

[REDACTED]
[REDACTED]³⁴²

169) Mr. Graham's Report criticized the IAD investigation for "failing to pinpoint" the exact date that the vandalism occurred.³⁴³ [REDACTED]

[REDACTED]
[REDACTED]³⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]³⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]

170) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁴⁶ [REDACTED]
[REDACTED]
[REDACTED]³⁴⁷

171) Mr. Graham's Report also concluded that the IAD investigation failed to investigate leads. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁴⁸

The IAD investigators reasonably concluded that the employee witnesses had no further information that could further the investigation.

172) It was also not reasonably possible to pursue the primary lead—the individual who first took a picture of the locker vandalism and [REDACTED]
[REDACTED]
[REDACTED]³⁴⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁵⁰

³⁴² PG000024878-24879 (SI2017-018).
³⁴³ Graham Report, ¶¶ 56-57, pp. 37-38.
³⁴⁴ PG000024905; PG000025094 (SI2017-018).
³⁴⁵ PG000024911-25086 (SI2017-018) (witness questionnaire forms).
³⁴⁶ *Id.*
³⁴⁷ PG000024874-24877; PG000024882 (SI2017-018).
³⁴⁸ PG000025020; PG000025023; PG000025080 (SI2017-018).
³⁴⁹ PG000024905-24909 (SI2017-018).
³⁵⁰ PGPD-PER-0146458-0146459.

173)

Based on the evidence available at the time, IAD reasonably concluded that a respondent could not be identified and the case must be administratively closed. There was no discipline imposed because a respondent could not be identified.

174) Mr. Graham’s Report suggests the IAD investigation was inadequate because unnamed individuals purportedly committed “clear policy violations of failing to report discrimination and the failure of managers to keep their commands free from harassment and discrimination.”³⁵¹ The case file shows that as soon as Major Gordon was on notice of the vandalism, he had it removed, the command staff immediately addressed the incident with employees in the building to discover related information and ensure that no further incidents occurred. The same day a formal SIRT investigation was initiated to attempt to locate the perpetrator of the vandalism.³⁵²

175) The Department made every reasonable effort to investigate this case. The investigation was hindered at the outset due to

ii. Training Dummy, SI2017-067

176) Paragraph 68 of Mr. Graham’s Report also alleges that IAD’s investigation into the “training dummy” incident, SI2017-067, was incomplete. I disagree. The Department performed a reasonable investigation of the “training dummy” incident that while not fruitful, was thorough and conformed to standard police investigation procedures.

³⁵³
³⁵⁴
³⁵⁵
³⁵⁶

³⁵¹ Graham Report, ¶ 57, p. 38.

³⁵² PG000024869; PG000024873; PG000024879-24880 (SI2017-018).

³⁵³ M. Smith Tr. 92 (July 22, 2020).

³⁵⁴ PG0000020993-20994. Contrary to the assertion on page 57 of Mr. Graham’s Report, PG000002020767-2020768. PG0000020993-20994.

³⁵⁵ PG0000020767-20772.

³⁵⁶ *Id.*

[REDACTED]
[REDACTED] 357

177) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 358 [REDACTED] 359

[REDACTED]
[REDACTED] 360 [REDACTED]
[REDACTED] 361 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 362 [REDACTED]
[REDACTED] 363

178) [REDACTED]

[REDACTED]
[REDACTED] 364 [REDACTED]
[REDACTED] 365 [REDACTED]
[REDACTED] 366 [REDACTED]

[REDACTED] 367 Thus, Graham's assertion that [REDACTED]
[REDACTED] is false, and
disingenuously suggests that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 368 [REDACTED]
[REDACTED] 369 Nevertheless, Mr. Graham's Report

³⁵⁷ PG0000020767-20772.

³⁵⁸ PG0000020745-20748.

³⁵⁹ PG0000020754-20755.

³⁶⁰ PG0000020753-20754.

³⁶¹ PG0000020754.

³⁶² PG0000020746; PG0000020776.

³⁶³ PG0000020782

³⁶⁴ PG0000020993.

³⁶⁵ PG0000020993.

³⁶⁶ PG0000020707.

³⁶⁷ PG0000020767.

³⁶⁸ M. Smith Tr. 91-92 (July 22, 2020). [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] PG0000020739.

³⁶⁹ M. Smith Tr. 92 (July 22, 2020).

mischaracterized Smith's testimony and suggested that [REDACTED] had narrowed down the potential wrongdoers, "[b]ut no one was charged or disciplined in the matter."³⁷⁰ These seemingly subtle inaccuracies further demonstrate flaws in Mr. Graham's Report.

179) Moreover, all of this indicates IAD performed a reasonable investigation and closed it when there were no further leads. As an initial matter, anonymous complaints lead to difficult investigations to perform, and it was determined that the photograph [REDACTED] [REDACTED]³⁷¹ Consequently, the time lag added to the already complicated investigation. Despite these impediments, the investigation revealed that the [REDACTED] [REDACTED] It appears that every investigative lead was followed up on in this case. The alleged deficiencies noted in Mr. Graham's Report wholly ignore the realities of the investigatory circumstances.

iii. Sergeant Bunce, IA2017-003

180) Mr. Graham criticizes certain IAD investigations as "inadequate" and certain investigators who failed to be "fair."³⁷² One of these investigations is the investigation conducted by [REDACTED] into Plaintiff Torres' complaint against Sergeant Joseph Bunce. Mr. Graham's descriptions of this investigation are at odds with the evidence in the case file.

181) First, Mr. Graham mistakenly writes that the [REDACTED]³⁷³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁷⁴ [REDACTED]
[REDACTED]
[REDACTED]³⁷⁵ Mr. Graham's report on this issue is simply false.

182) Second, Mr. Graham's Report faults [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁷⁶ [REDACTED]
[REDACTED]
[REDACTED]³⁷⁷

³⁷⁰ Graham Report, ¶ 68(b), p. 58.
³⁷¹ PG0000020738-20739.
³⁷² Graham Report, ¶ 68, p. 55.
³⁷³ Graham Report, ¶ 68(g), p. 64.
³⁷⁴ PG0000020426.
³⁷⁵ PG0000020504.
³⁷⁶ Graham Report, ¶ 68(g), p. 64.
³⁷⁷ PG0000020526-20554.

183) Finally, Mr. Graham's Report states [REDACTED]

[REDACTED] This is false and misleading. [REDACTED]

[REDACTED]³⁷⁸ [REDACTED]

[REDACTED]³⁷⁹ Mr. Graham's claim that Plaintiff Torres had previously complained to IAD, which has no citation, contradicts the record.

184) Contrary to Mr. Graham's claims, [REDACTED] conducted an adequate investigation, which [REDACTED]

[REDACTED]³⁸⁰ [REDACTED]

[REDACTED]³⁸¹

iv. Sergeant [REDACTED], IA2016-034 and Parallel EEO Complaint

185) Mr. Graham's Report further asserts that IAD conducted an inadequate investigation and reached the wrong result for a complaint made by Corporal Sean Miller.³⁸² Again, I cannot agree with his conclusion based on the record.

186) Mr. Graham's Report discusses a complaint from Corporal Miller, upon which he later based an EEOC charge alleging racial discrimination. Miller alleged to IAD that Sergeant [REDACTED] read a suspect's text message and put emphasis on the word "nigga" four times. In addition, Miller alleged that [REDACTED] asked to see a photograph of Miller's fiancé, and upon finding out that she was Mexican American, said she was cheating on Miller "because that's what they do." Miller [REDACTED] In March 2016, Miller accused [REDACTED]³⁸³

187) After review of the record, the following information was determined:

- IAD conducted the investigation into Corporal Miller's allegations against Sergeant [REDACTED]³⁸⁴ IAD investigated Miller's allegations that Sergeant [REDACTED] made several derogatory statements that Miller found offensive.³⁸⁵

³⁷⁸ Richard Torres Deposition Transcript ("Torres Tr.") 175-176, 237, 187, (August 7, 2020); PGDOJ_NO9_0000000058.

³⁷⁹ PG0000020415.

³⁸⁰ *Id.*

³⁸¹ PG0000020472.

³⁸² Graham Report, ¶167, p. 51.

³⁸³ Graham Report, ¶ 67(a), pp. 51-52, ¶ 68(d), pp. 59-60.

³⁸⁴ PG0000025286-25415 (IA2016-034).

³⁸⁵ *Id.*

- The investigation found that [REDACTED] had read evidence out loud in an active criminal matter (a suspect's text message containing the word "nxxxx") for the purpose of conducting the investigation. [REDACTED]

[REDACTED]³⁸⁶ The conclusory statement in Mr. Graham's Report that [REDACTED]

[REDACTED]³⁸⁷

188) After his IAD complaint, Miller filed an EEOC Charge (No. 531-2016-01761) alleging discrimination by [REDACTED], and requested a Notice of Right to Sue from the Commission.³⁸⁸ Miller then commenced a civil action against the Department alleging racial discrimination and retaliation, in which the Department won dismissal of all claims on summary judgment.³⁸⁹ The federal district court judge noted that Miller's claims amounted only to "employee grievances," and found no racial discrimination had occurred.³⁹⁰

189) Mr. Graham's Report criticized the IAD investigation into Miller's allegations against [REDACTED], alleging "the investigator did not appear to consider that other similar charges had been brought against Sergeant [REDACTED], nor was there an inquiry into whether Sergeant [REDACTED] engaged in other discriminatory conduct."³⁹¹ Based on my experience, an officer's past misconduct is factored into IA's disciplinary recommendation after finding a charge is sustained, but when charges are non-sustained, there is no discipline to be rendered. An officer's history alone cannot produce a guilty or sustained verdict.

190) The court in Miller's civil case rejected Miller's argument that [REDACTED] history indicated guilt in other contexts; the judge stated "All I have here is the suggestion that [REDACTED] somehow was racist in other cases, and, therefore, a jury should be able to infer that in this case he was racist as well. Can't permit it. Not fair. Not fair to the process, not fair to [REDACTED]."³⁹²

191) In my opinion, a complete investigation into Miller's complaint was conducted and produced no evidence that would corroborate Miller's allegation of discriminatory conduct by Sergeant [REDACTED].³⁹³

³⁸⁶ PG0000025303-25308 (IA2016-034).

³⁸⁷ PG0000025297-25299; PG0000025303-25308 (IA2016-034).

³⁸⁸ PG0000002232-2269.

³⁸⁹ PG0000940132-940144.

³⁹⁰ PG0000940143.

³⁹¹ Graham Report, ¶ 67(a), pp. 51-52.

³⁹² PG0000940143.

³⁹³ PG0000025286-25415 (IA2016-034).

H. The Department Determined Discipline for All Cases in Light of the Evidence Available and Consistent with Best Practices

192) Mr. Graham's Report highlights the discipline imposed against Private First Class ██████████ in IA case number IA2016-038, and the failure to impose discipline in case number IA2017-049, as examples of "incidents where charges of racism were sustained, but the discipline was inadequate."³⁹⁴ I disagree with the conclusion of Mr. Graham's Report on these matters.

193) In May, 2016, ██████████ filed a complaint with IAD alleging misconduct by Plaintiff McClam during a Citizen Interaction Class.³⁹⁵ ██████████
██████████
██████████³⁹⁶ ██████████
██████████
██████████³⁹⁷ ██████████
██████████³⁹⁸

194) IAD assigned ██████████ complaint against Plaintiff McClam to Sergeant ██████████ for investigation under case number IA2016-038. ██████████
██████████
██████████³⁹⁹ ██████████
██████████
██████████⁴⁰⁰ ██████████
██████████
██████████⁴⁰¹ ██████████
██████████
██████████⁴⁰² ██████████
██████████⁴⁰³ ██████████ had stated that a picture shown by the instructors to the class was, "Black Lives Matter crap," ██████████
██████████⁴⁰⁴

195) ██████████
██████████⁴⁰⁵ However, Mr. Graham's Report

³⁹⁴ Graham Report, ¶ 69(c), pp. 66-69.

³⁹⁵ PG0000024330-24331.

³⁹⁶ PG0000024330.

³⁹⁷ PG0000024331.

³⁹⁸ *Id.*

³⁹⁹ PG0000023858-23879.

⁴⁰⁰ PG000023867.

⁴⁰¹ PG0000023859-23860.

⁴⁰² PG0000023860-23867.

⁴⁰³ PG0000023860-23861.

⁴⁰⁴ PG0000023859-23879.

⁴⁰⁵ PG0000023844-23846.

claims [REDACTED]
[REDACTED]⁴⁰⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁰⁷

196) Ultimately, Captain [REDACTED] found that the charges of unbecoming conduct and Use of Language filed against Plaintiff McClam were unfounded and non-sustained, respectively.⁴⁰⁸ [REDACTED] found that charges against Baird for integrity (dishonesty) and use of inappropriate language were sustained.⁴⁰⁹ Major Mills, then the Commander of IAD, issued a DAR against [REDACTED], and [REDACTED] accepted the discipline imposed of two \$ [REDACTED] fines.⁴¹⁰ [REDACTED]
[REDACTED]
[REDACTED]⁴¹¹

197) Captain [REDACTED] and Major [REDACTED] concluded that integrity was the appropriate charge, [REDACTED]
[REDACTED]⁴¹² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴¹³

198) In April 2017, while case IA2016-038 was still pending, Plaintiff McClam filed a harassment complaint against [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴¹⁴ Plaintiff McClam complained that [REDACTED]
[REDACTED]⁴¹⁵ Plaintiff McClam acknowledged that he was upset about the investigation into the training incident (case number IA2016-038), noting “[REDACTED]
[REDACTED]⁴¹⁶

199) Again, in my opinion, IAD followed standard procedure outlined in the GOM and initiated an investigation into Plaintiff McClam’s complaint under case number IA2017-019.⁴¹⁷

⁴⁰⁶ Graham Report, ¶ 69(c), p. 67.
⁴⁰⁷ [REDACTED] Tr. 279-80 (July 10, 2020).
⁴⁰⁸ PG0000023830.
⁴⁰⁹ *Id.*
⁴¹⁰ PG0000023833-23835.
⁴¹¹ PG0000023833-23835; PG000023840.
⁴¹² [REDACTED] Tr. 275-276, 286 (July 10, 2020).
⁴¹³ [REDACTED] Tr. 286-287 (Jul. 10, 2020).
⁴¹⁴ PG0000080480-80481.
⁴¹⁵ *Id.*
⁴¹⁶ *Id.*
⁴¹⁷ PG0000080533.

Although Acting [REDACTED]

[REDACTED]⁴¹⁸ Accordingly, IAD concluded that the harassment charge against [REDACTED] was unfounded.⁴¹⁹ Mr. Graham suggests that IAD should have charged or investigated [REDACTED]

[REDACTED]⁴²⁰

200) It was entirely reasonable for the commanders of the investigative unit overseeing the investigation and the head of IAD to have arrived at these decisions in cases IA2016-038 and IA2017-019. They were the individuals in the best positions to make a determination regarding the appropriate charges and resolution, in light of the evidence presented and their familiarity with the general orders pertaining to internal investigations and appropriate disciplinary action.

I. IAD Exercised Its Discretion Appropriately When Deeming Cases Suitable for Review by Alternative Avenues

i. Complaints by Police Officer [REDACTED] and Corporal [REDACTED]

201) Mr. Graham's Report criticizes the Department and Major Mills for the handling of internal complaints made by Police Officer [REDACTED] and [REDACTED].⁴²¹ First, Mr. Graham's Report suggests these complaints were exclusively related to the Harassment and Discrimination Policy. This is incorrect. In reviewing the complaints, in my opinion, it is evident they were largely interpersonal in nature and expressed dissatisfaction with the way [REDACTED]

[REDACTED]⁴²²

[REDACTED]⁴²³ Given the nature of these complaints, it was reasonable for Major Mills to promptly refer the [REDACTED]

[REDACTED]⁴²⁴

202) The General Order Manual ("GOM") directs employees to address internal complaints at the lowest level possible through the chain of command.⁴²⁵ Vol. I, Chapter 4, of the General Order Manual, outlining Complaint Assignment procedures, states that (A) "Complaints not investigated by IAD are handled at the lowest appropriate level of supervision;" (B) the "Commander, IAD" screens complaints to determine if they will be investigated by IAD; and (C) "less serious allegations" may be referred back to an employee's "Commander/Manager"

⁴¹⁸ PG0000080474-80476

⁴¹⁹ PG0000080463.

⁴²⁰ PG0000080480.

⁴²¹ Graham Report, ¶ 64, pp. 42-46, ¶¶ 144(f)-(g), pp. 139-140.

⁴²² PG0000968875-968887; PG0000968861-968863.

⁴²³ PG0000968861-968863; PG0000968875-968887.

⁴²⁴ PG0000165875-168576; PG0000968893-968894.

⁴²⁵ GOM, Vol. I, Chs. 4, 12.

for handling.⁴²⁶ [REDACTED]
[REDACTED]⁴²⁷ And, as stated above, these complaints were focused on Sergeant [REDACTED] and were not Harassment complaints. That said, in my opinion, the IAD Commander is not breaching any confidentiality [REDACTED].

203) Mr. Graham's Report asserts [REDACTED] were subject to retaliatory transfers. This is not correct, in my opinion. [REDACTED]
[REDACTED]⁴²⁸ [REDACTED] transfer was also not retaliatory, in my opinion; [REDACTED]
[REDACTED]⁴²⁹

204) Mr. Graham's Report further states that "there is no evidence . . . that anyone at senior levels in the Department took [REDACTED] seriously."⁴³⁰ [REDACTED]
[REDACTED]
[REDACTED]⁴³¹

205) Lastly, Mr. Graham's Report incorrectly concludes that an IAD investigation was sustained against Sergeant [REDACTED] "for engaging in racist behavior."⁴³² This is false. [REDACTED]
[REDACTED]
[REDACTED]⁴³³

ii. Compensatory Time Incentive Program

206) Mr. Graham's Report asserts that the Department did not appropriately handle external complaints against senior officers, citing the Defendants' disclosure of a 2019 Department investigation into a compensatory time bonus program [REDACTED]
[REDACTED]
[REDACTED]⁴³⁴

207) Mr. Graham's Report asserts that the Department's handling of this episode was deficient in several respects, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴²⁶ GOM, Vol. I, Ch. 4.

⁴²⁷ PG0000968868-968869.

⁴²⁸ PG968885-968886.

⁴²⁹ PG0000968887; PG0000154090-154091.

⁴³⁰ Graham Report, ¶ 64, p. 46.

⁴³¹ PG0000154091-154092.

⁴³² Graham Report, ¶ 64, p. 43.

⁴³³ PG000045105; PG000045108 (IA2016-008).

⁴³⁴ Graham Report, ¶ 82, p. 78.

[REDACTED]⁴³⁵ All of these assertions in Mr. Graham's Report are in my opinion either inconsequential or inaccurate, as explained below.

208) First, Mr. Graham's cited sources⁴³⁶ fail to confirm the assertion made in the Report that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴³⁷

209) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴³⁸

210) On August 7, 2019, Chief Stawinski held a press conference. At that conference, he stated that on July 26, 2019, the Department's Inspector General notified him of an email that revealed the existence of an unauthorized incentive program that had been instated by the commanders of one of the Department's District stations. The Chief further stated that he immediately convened the Deputy Chiefs and directed them to immediately ensure that no other such programs were ongoing within the Department. The Chief further stated that he had initiated an investigation with the responsible commanders, which had concluded on August 7, 2019.⁴³⁹ Additionally, the Department posted a blog that same day announcing the Chief's investigation of the unauthorized performance incentive program and the corrective actions taken as a result of the investigation.⁴⁴⁰

211) The Department began its investigation into the unauthorized incentive program

[REDACTED]
[REDACTED]
[REDACTED]

⁴³⁵ Graham Report, ¶¶ 83-85, p. 79.

⁴³⁶ Graham Report, p. 79, notes 281 and 282 (PS2019-115, at PG0000127831 and PS2019-114, at PG0000127808).

⁴³⁷ PG0000977423-977433.

⁴³⁸ Information provided by telephone from Inspector General Donnell Turner on September 24, 2020 and former Deputy Chief Christopher Murtha on September 27, 2020.

⁴³⁹ Prince George's County Police Department, "Chief Hank Stawinski Ends Unauthorized Incentive Program At District Station" (Aug. 7, 2019), available at <https://youtu.be/Pe1LfmB9TuM>.

⁴⁴⁰ Prince George's County Police Department News, "Chief Ends Unauthorized Patrol Incentive Program for Performance at a Prince George's County Police Department District Station" (Aug. 7, 2019), available at <http://pgpolice.blogspot.com/2019/08/chief-ends-unauthorized-patrol.html>.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PS cases are investigated under the direction of the charged officers' Commander. In this case, that Commander was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

212) [REDACTED]
[REDACTED]

[REDACTED] I am unaware of any procedural restriction on the formal opening and closing of the investigation on the same date.⁴⁴¹

213) Without citations to any evidence supporting his conclusions, Mr. Graham's Report asserts that Deputy Chief Murtha "made no findings how long the program had been in existence or what 'productivity' was being incentivized."⁴⁴² [REDACTED] did in fact determine in the course of his investigation that the incentive program had been in operation for six months (a fact publicly disclosed in the Department's August 7, 2019 blog concerning the investigation⁴⁴³), and how "productivity" was measured for purposes of determining which officers were awarded a compensatory time bonus.

214) Similarly, without record support, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁴⁴⁴ That assertion is inaccurate. [REDACTED]
[REDACTED]
[REDACTED]

⁴⁴⁵

215) Mr. Graham's Report asserts that Deputy Chief Murtha "**does not appear** to have taken any steps to inquire whether any other Districts were using similar program [sic]."⁴⁴⁶ The Report's speculation totally ignores the Department's publicly posted pronouncement that the Chief "directed the Deputy Chiefs to convene their staffs to ensure the unauthorized

⁴⁴¹ See generally PS2019-115; PS2019-114.

⁴⁴² Graham Report, ¶ 83, p. 80.

⁴⁴³ Prince George's County Police Department News, "Chief Ends Unauthorized Patrol Incentive Program for Performance at a Prince George's County Police Department District Station" (Aug. 7, 2019), available at <http://pgpolice.blogspot.com/2019/08/chief-ends-unauthorized-patrol.html>.

⁴⁴⁴ Graham Report, ¶ 83(b), p. 80.

⁴⁴⁵ Information provided by telephone from Inspector former Deputy Chief Murtha on September 27, 2020.

⁴⁴⁶ Graham Report, ¶ 83(d), p. 80 (emphasis added).

performance program was not being employed elsewhere in the agency.”⁴⁴⁷ Consistent with that directive, [REDACTED]

[REDACTED]⁴⁴⁸

216) The discipline determined to be appropriate for [REDACTED] implementation of an unauthorized incentive program consisted of, [REDACTED] [REDACTED] In my opinion, when evaluating the adequacy of the Department’s handling of this matter, it is important to note that [REDACTED] [REDACTED] were removed from their command positions in District II following the discovery of the unauthorized incentive program, and transferred to lesser assignments effective August 11, 2019.⁴⁴⁹ Contrary to the Report’s assertions, the discipline for [REDACTED]

[REDACTED]⁴⁵⁰

[REDACTED]⁴⁵¹

217) Contrary to the Graham Report’s assertion, [REDACTED] [REDACTED]⁴⁵² Moreover, the Report’s assertion that the Department’s “handling of this matter appears designed to hide this misconduct from public scrutiny” is belied, based on my experience, by (A) the Department’s press conference and blog posting regarding this matter; [REDACTED] and (C) its prompt adoption of a general order prohibiting the unauthorized implementation of incentive programs.⁴⁵³

218) The press conference by Chief Stawinski fully informed the community of what had been occurring, and would have been one of the best sources for generating new complaints to the Department or Inspector General about the program. The Chief publicly invited anyone who had a complaint about the program to report it to him or the Inspector General. No known complaints alleging harassment or discrimination were received following the press conference.⁴⁵⁴

219) It is my opinion that the investigation into this matter was appropriate, and it was conducted in an appropriate manner as a PS case. The discipline was also appropriate. The

⁴⁴⁷ Prince George’s County Police Department News, “Chief Ends Unauthorized Patrol Incentive Program for Performance at a Prince George’s County Police Department District Station” (Aug. 7, 2019), available at <http://pgpolice.blogspot.com/2019/08/chief-ends-unauthorized-patrol.html>.

⁴⁴⁸ Information provided by telephone from Inspector former Deputy Chief Murtha on September 27, 2020.

⁴⁴⁹ “Transfer to Personnel” (August 11, 2019); Excel Workbook, “[REDACTED] Suspension Without Pay”; Excel Workbook, “[REDACTED] Suspension Without Pay”; PGIAD0000127806 (PS2019-114); PGIAD0000127824 (PS2019-115).

⁴⁵⁰ PGIAD0000127801-127802 (PS2019-115); PGIAD0000127820-127822 (PS2019-114).

⁴⁵¹ “DISCIPLINARY ACTION – [REDACTED]” (December 5, 2019); “DISCIPLINARY ACTION – [REDACTED] (CORRECTION)” (December 5, 2019).

⁴⁵² PGIAD0000127812 (PS2019-115); PGIAD0000127816-127817 (PS2019-114).

⁴⁵³ GOM, Vol. I, Ch. 9, PG0000944680; GOM, Vol. I, Ch. 27, PG0000944847; GOM, Vol. I, Ch. 32, PG0000944882.

⁴⁵⁴ Information provided by telephone from Inspector General Donnell Turner and Major James McCreary on September 24, 2020.

highest-ranking officer received the highest discipline. It is appropriate to hold more senior command staff to a higher level of accountability than lower members of a police department, which was done in this case.

220) In addition to the discipline, the subsequent transfer of the Commander and Captain achieved two objectives. To the members of the Department and the community, it demonstrated that this type of behavior would not be tolerated. It also served to facilitate the restoration the community's trust in the Department to the extent that it could have been diminished because of this unauthorized incentive program.

PART 3. THE DEPARTMENT'S PROMOTION PROCESSES ARE EQUITABLE.

221) As with many police departments, the Prince George's County Police Department offers both competitive, non-competitive, and appointed promotions.

222) Non-competitive promotions include the ranks of Police Officer First Class and Corporal.⁴⁵⁵ If an officer wishes to advance to a non-competitive rank, they must first meet other eligibility requirements, such as years of service in their current rank and satisfactory performance appraisals.⁴⁵⁶ They will then take the promotional exam, which is a multiple choice test.⁴⁵⁷ If they receive a "passing" score on the exam, they will advance in rank.⁴⁵⁸ There are no limitations on the number of individuals who may be promoted to these positions.⁴⁵⁹ Testing for POFC and Corporal occurs twice each year.⁴⁶⁰

223) Competitive promotions are promotions for which there are a limited number of positions.⁴⁶¹ Officers compete for competitive promotions by taking a two-part promotional exam.⁴⁶² Officers first take the multiple choice examination.⁴⁶³ If they receive a passing score on the multiple choice test, they advance to a skills assessment, which has both a written essay or short answer component and a videotaped narrative component.⁴⁶⁴ Each officer's score in the exam process is ranked against other officers who took the test based on their performance, and placed in rank order on a promotional list.⁴⁶⁵ The promotional list remains in effect for

⁴⁵⁵ Graves Tr. 34-35 (July 1, 2020).

⁴⁵⁶ Graves Tr. 35 (July 1, 2020); *see also* PG0000968054; Video Recording: Panel for Equality Meeting (April 17, 2017).

⁴⁵⁷ Jennifer Flaig Deposition Transcript ("Flaig Tr.") 37 (August 7, 2020).

⁴⁵⁸ Graves Tr. 35 (July 1, 2020); Flaig Tr. 37 (August 7, 2020).

⁴⁵⁹ Flaig Tr. 37 (August 7, 2020).

⁴⁶⁰ Graves Tr. 38 (July 1, 2020); Flaig Tr. 22-23 (August 7, 2020).

⁴⁶¹ Flaig Tr. 37-38 (August 7, 2020).

⁴⁶² *See generally* PG0000968054; Video Recording: Panel for Equality Meeting (April 17, 2017).

⁴⁶³ Flaig Tr. 38 (August 7, 2020).

⁴⁶⁴ Graves Tr. 37 (July 1, 2020); Flaig Tr. 47-52 (August 7, 2020). In the videotaped portion of the test, officers may be "dispatched" to a hypothetical incident, and would be "given information about what they see on the scene" to which they need to verbally respond. Flaig Tr. 51-52; *see also* Graves Tr. 41-42 (July 1, 2020).

⁴⁶⁵ Graves Tr. 37 (July 1, 2020).

approximately two years, and as positions open up during that time period, officers will be promoted in rank order.⁴⁶⁶

224) The promotion exam process involves numerous parties both inside and outside the Prince George's County Police Department. The promotional exam itself is developed and scored by a third-party consultant, ESCI (formerly called Fields Consulting), which was selected by the main office of personnel for Prince George's County.⁴⁶⁷ ESCI continually updates the exam, striving to ensure that it is "job related" and "predictive or significantly correlated with important elements of work behavior."⁴⁶⁸ ESCI also goes to great lengths to ensure that the exams are assessed in a fair and unbiased manner.⁴⁶⁹ All officers are provided with study materials for the promotional exam in order to ensure that they have equal access to the material needed to pass.⁴⁷⁰ In my experience, ESCI administers the "gold standard" in police promotional examinations.

225) The materials that ESCI uses to prepare its written examination are reviewed by a "source review committee" within Prince George's County Police Department.⁴⁷¹ The source review committee is composed of several higher-ranked individuals in the Department who are vetted with the FOP,⁴⁷² and it endeavors to make sure that the information being tested and documents used for the test are relevant to the promotional rank for which the test is designed.⁴⁷³ For the skills portion of the test, ESCI consults with subject-matter experts—officers operating in the rank for which the test is being developed—to ensure that the skills being tested are skills relevant to and used on the job.⁴⁷⁴

226) Officers may appeal their scores for both the competitive and non-competitive promotion tests to the Prince George's County Office of Human Resources & Management.⁴⁷⁵ The appeal process is governed by the collective bargaining agreement between the officers' union, FOP 89, and the County.⁴⁷⁶ Appeals are reviewed by the Joint Appeal Board, which is comprised of three members of the FOP holding the rank of Sergeant and/or Lieutenant, and two members of the Prince George's County Police Department command staff selected by the Chief of Police.⁴⁷⁷

⁴⁶⁶ Graves Tr. 37-38 (July 1, 2020). Testing for competitive promotions occurs in even-numbered years (2016, 2018). Flaig Tr. 22-23 (August 7, 2020).

⁴⁶⁷ Graves Tr. 40, 59-62 (July 1, 2020); Flaig Tr. 9-10 (August 7, 2020).

⁴⁶⁸ ESCI000860.

⁴⁶⁹ Flaig Tr. 63-70 (August 7, 2020).

⁴⁷⁰ Flaig Tr. 96-97 (August 7, 2020).

⁴⁷¹ Graves Tr. 44 (July 1, 2020).

⁴⁷² Graves Tr. 82-83 (July 1, 2020).

⁴⁷³ Graves Tr. 44 (July 1, 2020).

⁴⁷⁴ Flaig Tr. 59-60 (August 7, 2020); *see also* ESCI000856.

⁴⁷⁵ Flaig Tr. 38 (August 7, 2020); *see also* ESCI000856.

⁴⁷⁶ CBA, Article 14 (*see, e.g.*, PG0000000531).

⁴⁷⁷ CBA, Article 14.

227) The promotion process overall is also examined by the “Joint Study Committee,” a committee comprised of representatives from both the Department and the FOP.⁴⁷⁸ This committee meets at least quarterly, though usually more often, and makes recommendations regarding improvements that could be made to the promotional process. For example, the committee has addressed whether to change the dress code for the exam,⁴⁷⁹ and whether to allow test takers to use computers on the written exam.⁴⁸⁰

228) Officers who may be up for promotion but who are under investigation for an infraction which could lead to a serious disciplinary action (including discharge or demotion) will have their promotion held in abeyance pending resolution of the investigation.⁴⁸¹

229) Promotions for higher level ranks, beginning with Major, are not made based on a promotion list or test.⁴⁸² Ranks at the level of Major and above are considered “Executive Level Positions” within the Department.⁴⁸³ Such positions are made by appointment of the Chief, and are subject to the approval of the County Executive or the County Chief Administrative Officer.⁴⁸⁴ In practice, the Deputy Chiefs and Assistant Chief engage in a review of all officers at the Captain level to evaluate their qualifications for the position of Major, and make a recommendation to the Chief about who to choose for a vacant Major position.⁴⁸⁵ Ultimately, as required by law, the Chief makes the final decision about who is promoted to Major, subject to the approval of the County Executive or the County Chief Administrative Officer.⁴⁸⁶

A. Contrary to His Assertions in the First Amended Complaint, Plaintiff Paul Mack [REDACTED] [REDACTED] During the 2016 Promotional Cycle

230) Paragraph 131 of the First Amended Complaint alleges that “[i]n 2016, Sergeant Mack tested to be promoted to Lieutenant. He received a high ranking, within the promotional range of openings but he was not promoted.” Paragraph 132 goes on to allege that “[i]n 2018, Sergeant Mack again tested to be promoted to Lieutenant. Three White male officers—Steven Cobb, James Rogers, and William Gleason—who ranked lower than Sergeant Mack and another Officer of Color, were promoted to the position of Lieutenant. Instead of promoting Sergeant Mack, [the Department] allowed the remaining Lieutenant position to stay vacant.” In my opinion, this complaint reflects Plaintiff Mack’s misunderstanding of the promotional process.

231) Plaintiff Mack took the 2016 exam to be promoted to Lieutenant. After the consolidation of his written and skills assessment scores, he ranked [REDACTED] on the promotions list

⁴⁷⁸ *Id.*

⁴⁷⁹ PG0000956406-956407.

⁴⁸⁰ PG0000956324-956325.

⁴⁸¹ Graves Tr. 46-47 (July 1, 2020).

⁴⁸² Graves Tr. 98-99 (July 1, 2020).

⁴⁸³ Prince George’s Cty. Code § 16-102.

⁴⁸⁴ Prince George’s Cty. Code § 16-148(a)(7).

⁴⁸⁵ Video Recording: Panel for Equality Meeting (June 13, 2017).

⁴⁸⁶ Prince George’s Cty. Code § 16-148(a)(7).

(eligibility register).⁴⁸⁷ The 2016 lieutenant eligibility register expired on February 26, 2018, 60 days before the next scheduled promotional exam in 2018.⁴⁸⁸ The last set of promotions off of the 2016 eligibility register occurred on February 25, 2018.⁴⁸⁹ On that date, the day before the eligibility register expired, five sergeants were promoted to lieutenant. Among them was Sonya Lancaster (Zollicoffer), one of the plaintiffs in this action.⁴⁹⁰ The last sergeant promoted off of the list was [REDACTED].⁴⁹¹ Plaintiff Mack did not get promoted because he [REDACTED] before it expired.

232) Plaintiff Mack suggests that he should have been promoted off of the eligibility register to a permanent position as a lieutenant, in lieu of certain sergeants being placed into acting lieutenant positions. What Plaintiff Mack fails to recognize, however, is that a vacancy at the lieutenant position can only be filled through a promotion off of the currently active eligibility register if there has been approval by the Office of Management & Budget (“OMB”) to permanently fill the vacancy.⁴⁹² Therefore, if OMB has not approved enough, or all, of the vacancies, then certain individuals will not be promoted off of the eligibility register, as was the case with Plaintiff Mack in 2016.⁴⁹³ In light of Plaintiff Mack’s ranking on the eligibility register and the number of vacancies approved by OMB by the end of the 2016 promotional cycle, there is a reasonable and justifiable explanation for why Plaintiff Mack was not promoted to lieutenant. In my opinion, this is a nearly universal practice by police agencies nationwide.

B. Plaintiff Perez’s Failure to Earn a Promotion to Major Does Not Indicate Retaliation or Discrimination.

233) Mr. Graham’s Report seems to imply that the Department’s failure to promote Plaintiff Perez to Major is evidence of retaliation. Mr. Graham does not cite, and I have not seen, any evidence which indicates that Plaintiff Perez’s failure to earn a promotion was based on retaliation or discrimination.

234) As described above, officers in the Department qualify for promotion to the ranks of Captain and below by taking a promotional exam. There is no promotional exam for the rank of Major. Instead, all Captains are considered for promotion to the rank of Major when the Deputy Chiefs and Assistant Chief review eligible officers to make a recommendation to the Chief about officers to appoint.

235) In my experience, it is difficult for an officer to earn a promotion to Major, as officers must show a high level of leadership ability in order to be promoted to the highest ranks

⁴⁸⁷ PG0000043394-43396.

⁴⁸⁸ *Id.*

⁴⁸⁹ PG0000080783.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² PG0000171546; PG0000171622; PG0000171629-171631.

⁴⁹³ *Id.*

of a department. Officers will not advance to Major merely because they have passed a test or have served in their currently rank for a certain amount of time. Not all officers possess the necessary skills for such a promotion. Some officers will remain at the rank of Captain if they do not possess the skills necessary to be a Major.

236) In addition, the higher an officer goes in rank, the caliber of the officers they are competing with is higher as well. Often, even those Captains doing a good job are eclipsed for promotion by those Captains that are performing at a superior level.

237) In my opinion, Mr. Graham does not point to any reason to believe that Plaintiff Perez's failure to earn a promotion was based in retaliation or discrimination.

PART 4. THE DEPARTMENT MAKES TRANSFERS REASONABLY AND FAIRLY WITHOUT RACIAL BIAS AND WITHOUT RETALIATION

238) Under the County Code of Prince George's County, the Chief is directed to create bureaus and divisions, and officers must transfer among those bureaus and division as needed. The County Code of Prince George's County, Maryland Sec. 18-144. (entitled "Assignment of employees; transfers") states:

- (a) The Chief of Police shall create and maintain such bureaus and divisions as are necessary for the proper functioning of the Police Department subject to approval by the County Executive. He shall assign by order competent police and civilian employees of any rank or classification which he deems proper to command and administer these bureaus and divisions.
- (b) The Chief of Police shall assign commissioned officers, noncommissioned officers, and officers to such duties as he deems proper for the efficient functioning of the Department, unless such assignments are otherwise established in accordance with law.
- (c) All employees of the Department shall be subject to transfer from one area to another or from one bureau or division of the Department to another, at the direction of the Chief of Police, unless such direction is otherwise limited in accordance with law.

239) When joining the Department, recruits have signed a memoranda issued by the Prince George's County Government Office of Personnel and Labor Relations, which states that among other "career considerations," recruits should evaluate the following:

As a police officer, ***you may be assigned to work in any part of Prince George's County.*** You will be required to perform shift work, including rotating day, evening and midnight shifts. On occasion you will be required to work unscheduled overtime, and you will have

to attend court to testify on your normal day or on a day where you are scheduled to work the evening or midnight shift. You will be compensated for shift work, overtime and court time; however, you must expect these occurrences if you accept employment.⁴⁹⁴

240) Performing regular transfers is a best practice to enable officers' career development and improve the efficiency and effectiveness of a department's operations, and they are necessary to carry out the Department's mission. In a large police agency such as Prince George's County Police Department, transfers and temporary duty assignments are often necessary and occur with regularity.

241) Chief Stawinski properly oversaw a "deliberative process involving leadership at various levels" for transfer decisions.⁴⁹⁵ Throughout the year on an as needed basis, members of the Executive Command Staff (the Chief, Assistant Chief, and Deputy Chiefs) meet to assess staffing needs and fill officer vacancies. The Chief's Chief of Staff also attends and provides input in many of these deliberations. At the end of the deliberations, the Office of the Chief publishes a document referred to department wide as the "transfer list," which ranges from a handful to over one hundred transfers in a given period.⁴⁹⁶

242) The Executive Command Staff has been composed of diverse officers. From 2015 to present, the Executive Command Staff has included: (1) Hector Velez (H), the current Chief, who was also formerly part of the Executive Command Staff as Assistant Chief ; (2) Craig Howard (B), who has served as Assistant Chief; and (3) Hank Stawinski (W), George Nader (W), Gevonnia Whittington (B), Christopher Murtha (W), George Nichols (B), Samir Patel (A), Raphael Grant (B), Melvin Powell (B), Jacqueline Rafterry (W), Robert Harvin (B), and Genia Reaves (B), who have all served as Chiefs, Deputy Chiefs or Acting Deputy Chiefs.⁴⁹⁷

243) Based on my expert experience, I know that the Prince George's County Police Department command staff must juggle various moving pieces to construct a staffing arrangement that best serves the needs of the Department and the communities it serves. Also based on my expert experience, many factors inform transfer decisions, including the location of current vacancies; officer experience and performance; effectiveness of command pairings, departmental priorities and crime trends; needs and preferences of each bureau; recommendations from division or unit supervisors; and, in some cases, the needs and preferences of the officers involved. These different inputs must be evaluated by the Command Staff for the Department to function.

244) The bulk of transfers occur in tandem with promotions in most police departments, including Prince George's County Police Department. Promotions almost always result in the transfer of the promoted officer to fill vacancies throughout the agency. Transferring

⁴⁹⁴ PG0000069307.

⁴⁹⁵ Stawinski Tr. 19 (July 31, 2020).

⁴⁹⁶ PG0000432807-0000432810; PG0000107666.

⁴⁹⁷ "Prince George's County Police Department Select Leadership Assignments" Roster; Excel Workbook, "Retirements and Separations Roster" (2016-2020).

a newly promoted employee promotes career development and avoids having promoted officers supervise members of the department who were their peers the previous workday. This has been the practice of police agencies, especially larger ones, across the nation for generations, and is considered a best practice.

245) In any department the size of Prince George's County Police Department, some transfers occur at the division or district level without going through the executive-level deliberations. For example, within Prince George's County Police Department, the Commander of a patrol district or a division has authority to transfer an officer from one shift or team to another.⁴⁹⁸ As with the transfers discussed above, many factors can go into the decision to reassign an officer within a division, district, or bureau.⁴⁹⁹

A. Perez's transfer was not retaliatory.

246) Mr. Graham's Report appears to claim that Plaintiff Perez's transfer from IAD to the Planning and Research Division was retaliation for his various complaints. The timeline does not bear this out.

247) Although Plaintiff Perez was told he was being transferred on October 21, 2016, the transfer was planned far in advance. The Department [REDACTED]

[REDACTED]⁵⁰⁰ As frequently happens in my experience, that transfer [REDACTED]
[REDACTED]
[REDACTED]⁵⁰¹

[REDACTED] Although the Department was not aware of the DOJ complaint which Plaintiff Perez alleges was filed in March, even if it had known of the alleged complaint at that time, [REDACTED]

[REDACTED] Further, although Mr. Graham's Report notes that Plaintiff Perez was transferred to a division under [REDACTED], against whom he had previously made complaints, [REDACTED]

[REDACTED]⁵⁰²

248) In my experience, transfers such as Plaintiff Perez's are commonplace and necessary to the running of a police department. Plaintiff Perez had been in IAD for over six years, and this is an unusually long time for an executive to be in the same job assignment. As former-Chief Stawinski has testified, it is important that all officers receive well-rounded

⁴⁹⁸ In his deposition, Chief Velez testified that "very rare[ly] do we have a meeting about a transfer into a specific specialty unit." Hector Velez Deposition Transcript ("Velez Tr.") 39 (July 15, 2020).

⁴⁹⁹ In some cases, division commanders, district commanders, or bureau chiefs may circulate or announce assignment changes just within their divisions, districts, or bureaus. Chief Velez testified that a particular commander has to "accept [a] person. You know, that person will -- that commander will look at that person's qualifications and things like that." Velez Tr. 40 (July 15, 2020).

⁵⁰⁰ PG0000153768; PG0000153829.

⁵⁰¹ PG0000970332-970356.

⁵⁰² Perez Tr. 79-82 (July 30, 2020).; Stawinski Tr. 130-131 (July 31, 2020).

experience so that if a vacancy occurs in the Department, many individuals have the experience necessary to fill that role.⁵⁰³ I agree with Chief Stawinski, and it is my opinion that it was beyond time for Plaintiff Perez to be transferred to another assignment.

B. Corporal Michael Anis Was Not Discriminated Against in Connection with His Transfer Requests

249) Michael Anis claims that the Department failed to transfer him to positions in various specialty units due to discriminatory animus, after he submitted transfer requests in response to departmental transfer announcements.⁵⁰⁴ He further claims that the Department did not indicate why he was not selected for those transfers. In fact, the Department never actually transferred anyone in connection with certain of these announcements, and Plaintiff Anis withdrew himself from the evaluation process in several other instances. For additional transfers, the Department selected candidates who were more qualified and/or performed better than Plaintiff Anis in the evaluation process. In fact, for a number of the transfers about which he complains, the Department selected Black officers instead of Plaintiff Anis. In my opinion, this serves to undercut Mr. Graham's suggestions of animus against minority officers generally.

250) By way of example, Plaintiff Anis claims that he was not selected for transfer to the Department's Marine Unit in 2015, but there was in fact *no available vacancy* in that unit for any officer to fill. Plaintiff Anis has acknowledged that *no one* was selected to transfer into the Unit at that time.⁵⁰⁵ While he also claims that he was not selected for the National Harbor Unit in connection with a 2017 transfer request, Plaintiff Anis himself [REDACTED]

[REDACTED]⁵⁰⁶ Further, in connection with the 2019 transfer request for the Conflict Negotiation Division, the Department selected candidates [REDACTED]

[REDACTED] The three [REDACTED] that the Department actually selected for transfer (officers [REDACTED] and [REDACTED]) were Black.⁵⁰⁷

251) Overall, nothing in this example indicates discriminatory practices involving transfers by the Department.

C. Plaintiff Thomas Boone's Transfer Was Not Retaliatory

252) Plaintiff Boone alleges that his transfer to Patrol, District II was made in retaliation for his involvement in filing the complaint with the United States Department of Justice⁵⁰⁸ Mr.

⁵⁰³ Stawinski Tr. 123-126 (July 31, 2020).

⁵⁰⁴ Excerpts of Plaintiff Anis's Third Supplemental Responses and Objections to Defendants' First Set of Interrogatories, Interrogatory No. 6, pp. 152-155.

⁵⁰⁵ Michael Anis Deposition Transcript ("Anis Tr.") 67-68 (August 13, 2020).

⁵⁰⁶ PG0000425817.

⁵⁰⁷ PG0000987395 (Negotiator School Ratings).

⁵⁰⁸ Plaintiffs' First Amended Complaint, ¶ 33 [ECF 51].

264) Lastly, Plaintiff Zollicoffer identified two officers, [REDACTED], who received promotions while assigned to IAD and were not immediately transferred out of IAD. Mr. Graham's Report suggests that the fact that these individuals were not immediately transferred indicates an ulterior motive on the part of the Department regarding Plaintiff Zollicoffer's transfer. However, [REDACTED]⁵³⁶ As noted above, Major Mills did not become the Commander of IAD, and thus her preference for transfer upon promotion was not implemented, until August 2016.⁵³⁷

265) Finally, it is a common and well-known practice to transfer someone upon promotion to an executive position. It is also an industry standard to ensure that all those in executive ranks get patrol experience, at the rank of Lieutenant and Captain especially.

E. Corporal Chris Smith's Reassignment Was Not Retaliatory

266) According to Mr. Graham's Report, in October and December 2015, Plaintiff Chris Smith complained to Lieutenant Vondell Smith that Plaintiff Smith's colleagues had created a racially hostile environment by disparaging Black members of the community, and that Lieutenant Smith took no action. Mr. Graham claims that in March 2016, Plaintiff Smith was involuntarily transferred to the Patrol Bureau, a transfer that Plaintiff Smith believed was retaliatory in response to his prior complaints. Mr. Graham further claims that in June 2016, Sergeant Darryl Kries gave Plaintiff Smith a poor performance evaluation after Plaintiff Smith had complained to him about the racist environment on the team. The Report's characterization of Plaintiff Smith's March 2016 reassignment contains numerous inaccuracies, omits key facts, and is contrary to record evidence. Based on my experience and a review of the available evidence, it is my opinion that Plaintiff Smith's March 2016 reassignment back to regular patrol duties was not retaliatory or discriminatory.

267) Plaintiff Smith was assigned to District II Patrol from 2013 to January 2019. He was selected for the District II Special Assignment Team ("SAT") in March 2015, and was reassigned back to regular District II patrol duties in March 2016, [REDACTED]. Contrary to Mr. Graham's claims, Plaintiff Smith's March 2016 reassignment back to regular patrol duties was not a transfer, as Plaintiff Smith remained in District II of the Patrol Bureau before, during, and well after his tenure on the District II SAT team.

268) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵³⁸ [REDACTED]
[REDACTED]

⁵³⁶ PG0000080771; PG0000080760.
⁵³⁷ PG0000080911.
⁵³⁸ PG0000006862-6863.

[REDACTED]

269) [REDACTED]

[REDACTED]

270) Mr. Graham’s Report does not account for any of Plaintiff Smith’s documented [REDACTED], or cite to any other contemporaneous documents. Instead, Mr. Graham’s Report assumes as true Plaintiff Smith’s unsupported allegations that he reported the allegedly “racist environment” on the SAT team to Lieutenant Vondell Smith, Plaintiff Smith’s Black supervisor.

271) The Graham’s Report’s suggestion that Plaintiff Smith’s March 2016 reassignment was retaliatory for his alleged complaints is unsupported by the record. Aside from the overwhelming evidence that shows that Smith was reassigned due to his [REDACTED] the decision-makers who unanimously agreed to reassign Plaintiff Smith in March 2016 had no knowledge of the alleged complaints of racial hostility. As Plaintiffs’ complaint concedes, Lieutenant Vondell Smith had already transferred out of District II by the time the decision was made to return Plaintiff Smith to regular patrol. Sergeant Kries, Lieutenant Calmon, Captain Mistinette Mints, and Major Steven Yuen, collectively, made the decision to reassign Plaintiff Smith—and none of them were aware of Plaintiff Smith’s alleged conversations with Lieutenant Vondell Smith. Plaintiff Smith alleges that he complained about discrimination, harassment, and retaliation on other occasions, aside from his alleged conversation with Lieutenant Smith in the fall of 2015, but all of these alleged complaints occurred after Plaintiff Smith was already reassigned. Therefore, these complaints cannot be the basis for a claim that Plaintiff Smith was reassigned in retaliation for making such complaints.

⁵³⁹ PG0000006912.

⁵⁴⁰ PG0000006868-6870.

⁵⁴¹ PG0000006866-6867.

F. Plaintiff Patrick McClam's Transfer Was Not Retaliatory

272) In January of 2016, Plaintiff McClam was transferred from the Forensic Science Division ("FSD") as a DNA Intake Officer to the Bureau of Patrol as a School Resource Officer ("SRO") in District III.⁵⁴² The DNA Intake Officer position was eliminated, because FSD needed to fill the Firearms Examiner position.⁵⁴³ Mr. Graham's Report claims that this transfer was retaliatory due to Plaintiff McClam allegedly: (1) witnessing the director of the DNA lab making racist and sexist statements about minority female lab employees; (2) encouraging those employees to file a complaint; and (3) cooperating with the related EEOC investigation.⁵⁴⁴ Mr. Graham's Report is again flawed in its conclusions.

273) The position that Plaintiff McClam occupied in FSD was eliminated. In my experience, this is a routine occurrence in police departments across the country, and is often done when a department identifies the need for a position that is determined to be of a higher priority. Here, the Department's need for a Firearms Examiner in FSD was determined to be a greater need, and the DNA Intake Officer position was eliminated.

274) Further, Plaintiff McClam was reassigned to another specialty position, to serve as the SRO in District III's Community Oriented Policing Service. The SRO's normal work schedule would be daywork hours, Monday through Friday.

275) Mr. Graham also references other transfers that he claims were used to punish Plaintiff McClam. These other reassignments occurred as part of Plaintiff McClam's promotion. Plaintiff McClam was promoted to the ranks of sergeant in September of 2017, and to lieutenant in November of 2018.⁵⁴⁵ He was promoted to the rank of sergeant with 10 other officers; at that time, Plaintiff McClam was transferred to the Bureau of Patrol, as were at least three of the officers promoted to lieutenant, and 10 other officers who held the position of sergeant. This was a common and comprehensive reassignment that occurs regularly with the promotions, retirements, and other personnel movements that large law enforcement organizations coordinate, often more than once in a 12-month period.⁵⁴⁶ It is routine to be transferred when promoted to the rank of sergeant and lieutenant, and to all executive ranks within the Department.

G. Plaintiff Richard Torres's Transfer Was Not Retaliatory

276) Plaintiff Torres alleged that he was transferred for reporting that his supervisor, Sergeant Joseph Bunce, (A) texted to him an alleged racial slur (the letters "NECA," as described above), and (B) allegedly made a derogatory remark about a Bladensburg resident. Plaintiff Torres first showed the text to his supervisor Captain Melvin Powell and complained about the

⁵⁴² PG00000787026; PG00000787059; PG00000787069; PG0000090339.

⁵⁴³ PG00000209599; PG00000335688.

⁵⁴⁴ Graham Report, ¶ 143(d), p. 129.

⁵⁴⁵ PG0000080777; PG0000080790.

⁵⁴⁶ PG0000080777-80778; PG0000787038-787039.

remark roughly six months after the text was sent— [REDACTED]
[REDACTED]⁵⁴⁷

277) Mr. Graham’s Report cites the transfer of Plaintiff Torres as an example of a minority officer transferred after he “filed a complaint or cooperated in an investigation of a white officer.”⁵⁴⁸ Mr. Graham bases this interpretation on only partial and improperly-skewed facts. The record evidence shows that Torres was transferred as a result of [REDACTED]
[REDACTED] Mr. Graham ignored all of these facts in his analysis.

278) Plaintiff Torres was [REDACTED] For instance:

- [REDACTED]
[REDACTED]
[REDACTED]⁵⁴⁹
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁵⁰
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁵¹

279) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁵² [REDACTED]
[REDACTED] He was notified of his transfer on December 28, 2016.⁵⁵³

280) Following his transfer, Plaintiff Torres’s position in RID was filled by Police Officer First Class [REDACTED] (H).⁵⁵⁴ Plaintiff Torres replaced [REDACTED] on Patrol Squad 28,

⁵⁴⁷ PGDOJ_NO9_00000000061.

⁵⁴⁸ Graham Report, ¶ 144(a), p. 136.

⁵⁴⁹ PGDOJ_NO9_00000000056.

⁵⁵⁰ PGDOJ_NO9_00000000057.

⁵⁵¹ PGDOJ_NO9_00000000058.

⁵⁵² PGDOJ_NO9_00000000059; PGDOJ_NO9_00000000060; PGDOJ_NO9_00000000061.

⁵⁵³ *Id.*

⁵⁵⁴ PGDOJ_NO9_00000000062; PGDOJ_NO9_00000000064.

District II. [REDACTED]

[REDACTED] 555

PART 5. USE OF FORCE

A. Background

281) In the Report, Mr. Graham uses the fact that Prince George's County Police Department spent three years under a DOJ Consent Decree (2004-2007) and signed a MOA with the Department of Justice to portray the current members of the Department in a negative light. In fact, the Department successfully completed both the Consent Decree and the MOA, and incorporated improvements that remain in place today.

282) In 2013, then-Deputy Chief Stawinski was a contributor to a PERF publication, "Civil Rights Investigations of Local Police Departments: Lesson Learned." He is quoted:

"Our Department was placed under a memorandum of understanding and consent decree in 2004, and after coming out on the other end, it was a very positive experience for us. I think the key is understanding, going into the process, that there are no cut-and-dried answers. As we negotiated with the Justice Department, DOJ didn't say, 'You have to do A, B, and C.' Rather, they said, 'You have to live up to certain Constitutional standards to policing in Prince George's County while remaining effective. So that's how we approached it. Every policy was custom-made and then approved by the independent monitors. The outcome was a greater degree of policy and practice clarity for our personnel, which we think is contributing to crime reduction. We fundamentally explain to our officers where the boundaries are on a variety of issues so they are able to aggressively fight crime while policing Constitutionally.'" ⁵⁵⁶

283) This philosophy of focusing on policing constitutionally while working on effective crime fighting strategies clearly remained with Chief Stawinski as he continued to rise through the senior ranks. During the years that Chief Stawinski led the department, Prince George's County saw a dramatic reduction in crime, while maintaining its commitment to safe policing and appropriate force.

B. Mr. Graham's Misstatements about Uses of Force

284) I have reviewed the use of force review data and documents discussed in Mr. Graham's Report, including EWS documents, EWS memoranda, and use of force review files. I have interviewed IAD Commander James McCreary, whose team generated the use of force

⁵⁵⁵ PGDOJ_NO9_0000000065; PGDOJ_NO9_0000000066.

⁵⁵⁶ Critical Issues in Policing Series, Civil Rights Investigations of Local Police: Lessons Learned, PERF, p.11

review dataset, and First Sergeant William Gleason, who leads Prince George's County Police Department's use of force training and testifies nationwide as an expert on use of force.

285) Mr. Graham's Report distorts the data on use of force reviews, misstates the facts with respect to the Department's practices and investigations, and fails to mention the impressive training and policies that the Department has created and maintained.

286) **To summarize my conclusions:**

- **There were not 6,805 instances of force used by Prince George's County Police Department officers in January 2016 through 2019.**
- **Under the Department's policies, officers must report any resisted physical coercion, no matter how minor the contact is. This includes, for example, an officer who escorts or handcuffs someone resisting arrest, as well as someone who is passively resisting arrest.**
- **The Department's use of force review matters, in fact, represent a tiny fraction of its actual number of contacts with members of the public.**
- **The Department's use of force policies are fair and comprehensive, and they reflect many of the most progressive trends in the field of policing today. The Department has extensive use of force training, which incorporates leading guidance on ethical policing, de-escalation, and the duty to intervene.**
- **In reviewing and investigating uses of force, the Department follows its policies.**
- **A high number of "justified" use of force reviews is not a product of Prince George's County Police Department "rubber-stamping." This is a product of a well-trained police force—officers who know what force is reasonable, who use force appropriately, and who report the force when used.**

There are not 6,805 uses of force since January 2016.

287) The use of force review dataset⁵⁵⁷ does not show 6,805 instances of force. Mr. Graham mischaracterizes the use of force review data and ignores key facts in reaching his conclusions.

288) When IAPro generates a use of force review dataset, it creates a separate entry for every involved officer matched up with every involved member of the public, regardless of

⁵⁵⁷ PG0000985307. Mr. Graham fails to appropriately distinguish "use of force" issues. The dataset he relies on reflects use of force review matters. In many circumstances, an IAD investigation is also opened into a use of force case. This includes any serious injury or discharge of a firearm. To respond to Mr. Graham's Report, I focus on the use of force review data, but it should be noted that other files exist related to use of force.

which officer used force against whom.⁵⁵⁸ So if three officers each arrested three people, but only one officer used force against one person, there would automatically be nine entries in the dataset associated with that case. This is evident on the face of the data, and it should have been noted by Mr. Graham. In a use of force review case like 19-580, the dataset has 36 entries, which clearly track the 9 officers and 4 members of the public at the scene of the incident. Mr. Graham includes those 36 entries in his distorted count of 6,805, with no consideration of the facts of these cases. In short, his numbers are multiplied.

289) For further context, the Department assigns a use of force review number when force is reported and creates a use of force review packet for that incident. At the start of another year, the numbering resets, with the identifiers starting back at zero. For the relevant period, the incidents in this dataset include (without considering missing case numbers):

2016: 16-001, 16-002, 16-003 . . . up to **16-507**;
2017: 17-001, 17-002, 17-003 . . . up to **17-655**;
2018: 18-001, 18-002, 18-003 . . . up to **18-662**; and
2019: 19-001, 19-002, 19-003 . . . up to **19-878**.⁵⁵⁹

290) This is roughly 2,700 use of force review matters opened, which divides over four years to roughly 675 per year. Mr. Graham's Report does not explain this important distinction.

Any resisted contact constitutes force, and all force must be reported.

291) To legitimately analyze Prince George's County Police Department's use of force policies and practices, it is essential to understand how the Department defines "force."

292) Prince George's County Police Department's use of force continuum begins with low level control,⁵⁶⁰ and the Prince George's County Police Department's General Order Manual defines "force" as "[a]ny physical coercion used to effect, influence, or persuade a subject to comply with an order from an officer; the term shall include the use of chemical irritants and the deployment of canine, but shall not include ordinary, unresisted handcuffing, or unresisted use of the hobble strap and unresisted escort."⁵⁶¹ Prince George's County Police Department's training guide plainly states:

Officers shall notify their supervisors whenever force is used. A Use of Force review will be completed by a supervisor who did not use or order the force. Supervisors who witness

⁵⁵⁸ Interview of IAD Commander James McCreary.

⁵⁵⁹ Additionally, in the dataset, there are gaps in these numbers assigned to use of force reviews. For simplicity, I have not outlined every single one.

⁵⁶⁰ "Use of Force Training Guide 2015" (updated).

⁵⁶¹ GOM, Vol. II, Ch. 58, PG0000945352.

the force may write the force review. **All force must be reported except un resisted escorts and un resisted handcuffing.**⁵⁶²

293) Put simply, Prince George’s County Police Department officers must report any resisted physical coercion, no matter how minor the contact is. These requirements are in line with best practices, and they demonstrate how seriously Prince George’s County Police Department takes the issue of force. Mr. Graham’s Report ignores these facts entirely.

294) Mr. Graham’s Report cites aggregated, inflated data but provides no information about what that data shows or the context surrounding these cases. It helps to look at an example of what “force” means. Take the use of force review case numbered 17-064.⁵⁶³ [REDACTED]

[REDACTED]

[REDACTED] ⁵⁶⁴ [REDACTED]

[REDACTED]

[REDACTED] ⁵⁶⁵ [REDACTED]

[REDACTED] ⁵⁶⁶ [REDACTED] ⁵⁶⁷ [REDACTED]

[REDACTED]

[REDACTED] ⁵⁶⁸ [REDACTED]

[REDACTED]

[REDACTED] ⁵⁶⁹

295) Mr. Graham tries to raise a number of “concerns” about use of force review matters like this one, which is part of his inaccurate 6,805 statistic. Paragraph 98 of Mr. Graham’s Report concludes that a “justified” determination like this one is merely a “rubber-stamp.”⁵⁷⁰ Mr. Graham also characterizes [REDACTED]

[REDACTED] In fact, this is appropriate delegation that is commonplace and even necessary in busy police districts. Finally, Mr. Graham suggests that Lieutenant [REDACTED] is rooted in discrimination, given that he is involved in a high percentage of use of force review matters. Mr. Graham ignores the fact that [REDACTED] was, for **all** four years, a Lieutenant in charge of District III, a populous patrol district and the district with the most crime.⁵⁷¹

⁵⁶² “Use of Force Training Guide 2015” (updated).

⁵⁶³ PG0000161455-161465.

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ Graham Report, ¶ 98, pp. 91-93.

⁵⁷¹ PG0000090287-90291; PG0000090938-90942; PG0000091148-91153; PG0000087035-87039; Excel Workbook, “Data regarding Crime Statistics” (.xls).

The use of force review dataset shows that force is used in a small fraction of Prince George's County Police Department police contacts.

296) Policing, especially in busy patrol districts, requires interactions with the public. It also requires traffic stops, person stops, and arrests—all of which are detentions (even if temporary). As stated in Prince George's County Police Department's training guide:

The use of force by law enforcement is a matter of critical concern both to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied encounters with people, and when warranted to do so, may use force in carrying out their duties. This Department recognizes and respects the value of human life and dignity. Vesting officers with authority to use force to protect the public welfare requires a careful understanding of the limitation of this authority. Officers are held to a high standard to protect the civil rights of individuals they encounter.⁵⁷²

297) The number of use of force reviews must be analyzed alongside the number of contacts with the public. In all four years, 2016 through 2019, there were roughly 115,000 traffic stops and arrests made by Prince George's County Police Department officers each year.⁵⁷³ Even just using this limited set of public contacts, this means .6% of contacts each year resulted in a use of force review matter, by rough estimate (using 675 per year, as discussed above). Even accepting Mr. Graham's incorrect count of "1,700 uses of force per year" in paragraph 86 of the report, this would constitute roughly 1.5% of contacts. Based on my experience, this small fraction of use of force reviews is consistent with good practices and with police departments in this area.

Prince George's County Police Department's use of force policies, training, reviews, and investigations are comprehensive.

298) The Department's policies and practices on use of force are impressive, and they reflect many of the most progressive trends in the industry today. The Department requires comprehensive training on the topic at the police academy, at yearly in-service, and at the range. Many of these policies and trainings focus on de-escalation, ethical policing, duty to intervene and honoring the sanctity of life. These incorporate elements from model policies written by IACP, PERF, and other notable departments.⁵⁷⁴

299) Prince George's County Police Department's practices for reviewing and investigating uses of force are reasonable and adequate. Mr. Graham's Report incorrectly argues that, because a few months and a few quarters of EWS reports were not located and produced in litigation, that the Department has broken its "promises" to the DOJ and "virtual[ly] shut down."⁵⁷⁵ As IAD Commander Mills explained, Assistant Commander Watkins raised issues with

⁵⁷² "Use of Force Training Guide 2015" (updated).

⁵⁷³ Excel Workbook, "2016-2019 Countywide Arrests and Traffic Stops."

⁵⁷⁴ Interview with 1st Sergeant William Gleason.

⁵⁷⁵ Graham Report, ¶ 105, pp. 98-99.

the EWS reporting, citing problems with data entry. It is not uncommon for police departments to encounter technology issues like these.⁵⁷⁶ In my opinion, this is not widespread evidence of discrimination or a “broken promise” with DOJ.

300) Mr. Graham’s claim that the district commanders did not report back to the Chief of Police after interviewing officers flagged by the Early Warning System has no basis in fact. I have reviewed these memoranda memorializing interviews—hundreds of which have been produced in discovery.⁵⁷⁷ In my opinion, the Early Warning System at the Department was working as intended by the General Order Manual.

Justified use of force reviews are not evidence of a rubber stamp.

301) Finally, Mr. Graham incorrectly ties the high percentage of “justified” use of force reviews to a culture of “rubber-stamping.” This is incorrect. First, he uses a faulty dataset, as discussed above. Second, justified use of force reviews are a product of a well-trained police force—officers who know what force is reasonable, who use that force appropriately, and who report the force when used. Based on my review and relevant experience, Prince George’s County Police Department is ahead of the curve with respect to use of force policies and training. Evidence of widespread compliance on such an important issue should be celebrated because it is a product of the Department’s extensive efforts to protect the community and its officers.

PART 6. THE DEPARTMENT PROVIDES IMPLICIT BIAS TRAINING CONSISTENT WITH BEST PRACTICES

302) Mr. Graham’s Report asserts that the “Department does not appear to have adequate anti-racial bias training” and further claims that although the Department publicized its Implicit Bias Training, “it is far from clear that the program has the support of Department leadership.”⁵⁷⁸ This is a wholly inaccurate statement. Based on my professional expertise, this type of training provided is consistent with industry best practices.

303) Prince George’s County Police Department provides anti-racial bias training to its officers that is given by Dr. Kris Marsh, a credentialed University of Maryland Professor, whose general areas of academic focus include issues related to the Black middle class.⁵⁷⁹ A common theme in her work is decomposing what it means to be Black in America.⁵⁸⁰ She currently provides training through her consultancy, Applied Research Services.⁵⁸¹

⁵⁷⁶ Mills Tr. 113-116 (August 6, 2020).

⁵⁷⁷ PG0000988460-988670; PG0000988687-988983; PG0000988984-989152; PG0000989153-989213; PG0000989214-989349; PG0000989350-989623; PG0000989624-989877; PG0000989878-989980; PG0000990255-990534; PG0000990535-990562; PG0000990563-990839; PG0000990840-9990907.

⁵⁷⁸ Graham Report, ¶ 75, p. 75.

⁵⁷⁹ Declaration of Dr. Kris Marsh (hereinafter “Marsh Decl.”) at ¶ 4.

⁵⁸⁰ Marsh Decl. at ¶ 4.

⁵⁸¹ Marsh Decl. at ¶ 5.

304) Dr. Marsh began conducting Implicit Bias Training to all Prince George's County Police Department academy recruits in late 2015.⁵⁸² At the request of former Chief Hank Stawinski, since March 2018, Dr. Marsh has also been conducting Implicit Bias Training for all Department officers, who are required to take this training as part of their annual In-Service Training.⁵⁸³

305) Dr. Marsh continued to provide implicit bias training in 2019 and 2020. Officers were required to attend as part of their In-Service training.⁵⁸⁴

306) Chief Stawinski first approached Dr. Marsh about providing mandatory Implicit Bias Training to all officers in late 2015 or early 2016.⁵⁸⁵ Chief Stawinski was consistently committed to providing Implicit Bias Training Department-wide, and current Chief Hector Velez and Department leadership maintain that commitment today.⁵⁸⁶

307) In-Service Implicit Bias Training for all Department officers began as part of a sponsored research agreement between the University of Maryland and the Department. University of Maryland Sociology Professor Rashawn Ray originally worked with Dr. Marsh on the project.⁵⁸⁷

308) Department leadership expressed enthusiasm for implementing Implicit Bias Training for rank and file officers.⁵⁸⁸ Leadership described their commitment to this successful training in their sworn deposition testimony.⁵⁸⁹

309) Mr. Graham's Report states that the Department "do[es] not appear to have provided in discovery any training materials . . . to instruct officers on bias-based profiling."⁵⁹⁰ The training that Dr. Marsh provides to the Department is discussion-based, using PowerPoint slides and video.⁵⁹¹

310) Mr. Graham's Report, incorrectly relying on the uncorroborated Declaration of Plaintiff Anis, asserts that in June 2018 "a group of predominately white officers walked out of an In-Service 'implicit biased' training workshop being conducted by the University of Maryland."⁵⁹² This is inaccurate. A review of this incident shows there was not a "walk out" at the training.

⁵⁸² Marsh Decl. at ¶ 6.

⁵⁸³ Marsh Decl. at ¶ 7.

⁵⁸⁴ Marsh Decl. at ¶ 8.

⁵⁸⁵ Marsh Decl. at ¶ 9.

⁵⁸⁶ Marsh Decl. at ¶ 9.

⁵⁸⁷ Marsh Decl. at ¶ 10.

⁵⁸⁸ PG0000162845-162846.

⁵⁸⁹ Murtha Tr. 102-103 (August 5, 2020); Velez Tr. 179-182 (July 15, 2020); Jacqueline Rafterry Deposition Transcript ("Rafterry Tr.") 155, 163, 166 (July 17, 2020).

⁵⁹⁰ Graham Report, ¶ 75, p. 75.

⁵⁹¹ Marsh Decl. ¶ 15.

⁵⁹² Graham Report, ¶¶ 76-78, pp. 75-77.

311) Originally, the In-Service Training sessions were held at the University of Maryland, College Park Campus, with officers attending in plain clothes.⁵⁹³ One group of approximately 25 to 50 officers per-week received day-long training over the course of 36 weeks.⁵⁹⁴

312) On June 10, 2018, Sergeant Kevin McSwain emailed Professor Ray, copying Dr. Marsh, explaining that officers had raised concerns with the previous week's training session.⁵⁹⁵ In particular, officers were concerned that several students came to the view the class, who were using laptops and other electronic devices.⁵⁹⁶

313) Among other things, officers felt that unauthorized students at the training compromised the nature of the training.⁵⁹⁷ Sergeant McSwain asked that in the future, students not attend officer In-Service Training without express permission from the Department, and advised that the same approval should be sought from the FOP. In an email, Sergeant McSwain expressly asked how the problem would be addressed.⁵⁹⁸ The email was addressed to Professor Ray and, as a research team, Dr. Marsh and Professor Ray did not respond to the Department.⁵⁹⁹

314) The following week, on June 12, 2018, students were again brought to the In-Service Training.⁶⁰⁰ Officers were excused from continuing training that day because they again expressed concerns about the attendance of the students.⁶⁰¹

315) Mr. Graham's Report asserts that "[a] complaint was made to the County . . ." and that "there is no evidence in discovery produced by Defendants to indicate that . . . a review or an investigation of any sort occurred."⁶⁰² Again, this inaccurately reflects what occurred and wrongly contends that appropriate action was not taken.

316) As noted in the deposition testimony of Deputy Chief Murtha, who personally looked into this incident on behalf of the Office of the Chief, those officers who were uncomfortable with continuing the June 12, 2018 training due to objections with the manner in which it was being conducted were excused from the training program on that day.⁶⁰³ Several In-Service Training attendees spoke with a supervisor during a break in the session to express their concerns. The supervisor conferred with the training staff, the union, and other command officers. The training staff decided to reassign those officers to return to the Training and

⁵⁹³ Marsh Decl. at ¶ 11.

⁵⁹⁴ Marsh Decl. at ¶ 11.

⁵⁹⁵ Marsh Decl. at ¶ 11.

⁵⁹⁶ Marsh Decl. at ¶ 12.

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*; Email from Kevin McSwain to Rayshawn Ray (June 10, 2018) at 3:47 p.m.

⁵⁹⁹ Marsh Decl. at ¶ 12.

⁶⁰⁰ Marsh Decl. at ¶ 13.

⁶⁰¹ *Id.*

⁶⁰² Graham Report, ¶¶ 76-78, pp. 75-77.

⁶⁰³ Murtha Tr. 105-116 (August 5, 2020).

Education Division to participate in additional training for the remainder of the day.⁶⁰⁴ These officers were properly excused as a result of a concerns with the students present in the class.

317) The officers in attendance at the training session did not engage in a “walkout” and the Department indisputably looked into the event to determine the circumstances of the class dismissal.⁶⁰⁵ The dismissal of the class by training staff was reasonable in light of officer concerns⁶⁰⁶ and authorized by supervisory personnel.⁶⁰⁷

318) Mr. Graham’s Report also states that a “complaint was made to the County” concerning the departure of the officers from the June 12, 2018 training session. The document Mr. Graham’s Report relies upon to establish the existence of a “complaint to the County” is an email from Plaintiff Perez to an individual at the Office of the State’s Attorney for Prince George’s County (an arm of the State government, separate from the Prince George’s County government)⁶⁰⁸ conveying Perez’s hearsay description of the incident.⁶⁰⁹

319) Mr. Graham’s Report asserts that “it appears that senior command officers (Murtha and Watkins) decided there should be no investigation of this matter and sought to excuse their failure to investigate or discipline this matter.”⁶¹⁰ This assertion is directly contradicted by the record evidence.⁶¹¹ Deposition testimony (from Murtha and Watkins) and contemporaneous internal documents about the incident fully support the Department’s determination that no IAD investigation or disciplinary action was warranted.

320) Relying solely upon quotes from the Plaintiff Anis Declaration, Mr. Graham’s Report adopts as its own the Plaintiff Anis’ assertions that: (A) “Prince George’s County Police Department was entirely unconcerned” about the Implicit Bias Training incident; (B) “Murtha made light” of the incident in front of a group of officers; (C) “the Department notified officers” involved in the incident “that it did not intend to reschedule the training;” and (D) the

⁶⁰⁴ [REDACTED] PG0000985666-985667; PG985668-985669; PG000016500-162502.

⁶⁰⁵ Murtha Tr. 105-116 (August 5, 2020); PG0000985666-985667; PG985668-985669; PG000016500-162502; Email from Adam Popielarcheck to Kevin McSwain (June 29, 2018) at 10:35 a.m.; Email from [REDACTED] (June 12, 2018) at 3:37 p.m.; Email from Adam Popielarcheck to John Teletchea (October 9, 2018) at 4:46 p.m.

⁶⁰⁶ Email from Marcus Jenkins to Kevin McSwain (June 6, 2018) at 4:22 p.m.; Email from Kevin McSwain to Rayshawn Ray (June 10, 2018) at 3:47 p.m.

⁶⁰⁷ PG0000985666-985667.

⁶⁰⁸ Md. Const., Art. V § 7; Md. Crim. Pro. Code Ann. §§ 15–101 and 15–102.

⁶⁰⁹ Graham Report, p. 75, note 266, citing PGPD-PER-0122769-122770.

⁶¹⁰ Graham Report, ¶ 77, p. 76.

⁶¹¹ *E.g.*, PG0000985666-985667; PG985668-985669; PG000016500-162502; Murtha Tr. 105-116 (August 5, 2020).

Department “never conducted an investigation into the details” of the incident.⁶¹² The Plaintiff Anis Declaration and the Report’s assertions are directly refuted by record evidence.⁶¹³

321) The Department followed up with officers who had been dismissed from the Implicit Bias Training class and ensured they completed their training. Corporal Marcus Jenkins and Corporal Leslie Cauthern (Instructors in AOT) were tasked with assisting Lieutenant Adam Popielarcheck, Captain Phil Davis, and Sergeant McSwain (the Officer In Charge of AOT) in ensuring that each officer who failed to complete the class did indeed reschedule and attend.⁶¹⁴ The officers did make up the training.⁶¹⁵

322) In addition to Implicit Bias training, Chief Velez points out in his PowerPoint presentation that new recruits spend an entire day at the National Museum of African American History and Culture.⁶¹⁶ Prince George’s County is on the leading edge of this best practice that exposes future police officers to the history of the relationship between the police and the Black community. Many young men and women have no knowledge of how many police departments got started as slave patrols in the 1800s. Nor are they familiar with the tactics that police used in communities to deal with civil rights protests. This history provides context for young Officers to understand the distrust that impacts the relationship today between police and the Black community.

SUMMARY AND CONCLUSIONS

323) In summary, based on my experience, education, and training in police operations management, it is my opinion that Prince George’s County Police Department’s policies, practices, and procedures for training, managing, and disciplining its employees meet and often exceed current professional standards for largescale police departments across the United States. Further, it is my opinion that the Department adequately and appropriately handles citizen and internal employee complaints, and applies discipline imposed through the internal investigation process reasonably and consistently. Finally, it is my opinion that the Department’s policies, practices, and procedures for transfer and promotion of personnel are consistent with industry standards.

324) As a police officer and a police chief in two nearby jurisdictions to Prince George’s County, I have watched Prince George’s County Police Department transform itself into a

⁶¹² Graham Report, ¶ 78, pp. 76-77.

⁶¹³ Murtha Tr. 105 -116 (August 5, 2020); PG0000985666-985667; PG985668-985669; PG000016500-162502; Email from Adam Popielarcheck to Kevin McSwain (June 29, 2018) at 10:35 a.m.; Email from [REDACTED] (June 12, 2018) at 3:37 p.m.; Email from Adam Popielarcheck to John Teletchea (October 9, 2018) at 4:46 p.m.

⁶¹⁴ Email from Adam Popielarcheck to John Teletchea (October 9, 2018) at 4:46 p.m.; Emails from Adam Popielarcheck to 37 Implicit Bias Training class attendees (October 9, 2018); PG0000588980; PG0000606204.

⁶¹⁵ In-Service Implicit Bias Training Classroom Participation Sign-In Sheets (2018).

⁶¹⁶ PG0000986142 (produced natively), slide 17.

progressive agency that has instituted change and brought accountability and transparency to the public. This is evidenced most pointedly by the training the Department gives its personnel. It is my opinion that the Department has a model Use of Force policy, particularly because the training focuses on de-escalation, smart tactics, and a duty to intervene if officers see a colleague acting improperly.

325) My experience in 42 years in policing has taught me that the two most important traits a police officer can possess are integrity and an ability to communicate effectively, with empathy a close third. If you look at the Prince George's County Police Department, you see a Use of Force policy that talks about the value of human life and dignity. Moreover, the ICAT training stresses use of smart tactics and effective communication skills. This is squarely in line with what the best police departments are now doing.

326) The fact that the Prince George's County Police Department has assigned a Deputy Chief to be the Equal Employment Opportunity coordinator for the organization is particularly impressive. It demonstrates the level of importance that the Department leadership puts on ensuring a workplace free from discrimination and harassment. A Deputy Chief not only has an agency-wide perspective, but he or she also has direct access to the Chief and direct authority to ensure policies are followed and investigations of complaints are handled appropriately. The coordination of EEO issues with the County's HRC and the County Office of Law is also a best practice implemented and followed by the Department.

327) The Department's Internal Affairs Division is structured in a way to ensure appropriate investigatory resources are on all levels of cases, from minor violations to serious wrongdoing. My review of the IAD's policies, practices, and procedures confirmed that the IAD Commander stays in constant contact with the Assistant Chief to ensure that the Department leadership is aware of significant investigations as well as any trends the agency experiences.

328) No large police agency is immune from conflicts and challenges, both internal and external. In my experience, those police departments that experience significant levels of dysfunction are also deficient in their ability to deliver police services in a manner that adequately addresses crime and safety issues. Simply put, the jurisdictions with some of the highest crime rates are often dealing with significant levels of dysfunction within the agency and in their relationships with the public. This is not the case with Prince George's County Police Department, as the County has seen crime go down and community outreach efforts increase.

329) It is my opinion, based on my 42 years of experience, education, and training in policing that the Prince George's County Police Department's leadership has demonstrated significant efforts to be responsive to the community in its mission to deliver police services in a fair and impartial manner, to reduce crime, and to keep the County safe. The Department has met these goals through best policies, practices, and procedures that are in compliance with best practices and industry standards and have been applied appropriately and consistently.

A handwritten signature in black ink, appearing to read "J. Thomas Manger". The signature is written in a cursive style with a large initial "J" and "M".

J. Thomas Manger

APPENDIX A

J. THOMAS MANGER

Manger Group LLC

jtm@mangergroup.com

240-876-1279

PROFESSIONAL BACKGROUND

Principal, Manger Group LLC July 2019 – Present

Principal and Co-Founder of Manger Group LLC, providing public safety consulting and training services. Specializing in crisis communications, executive leadership, police management, police legitimacy and accountability, crime reduction strategies, race and policing, patrol operations, community outreach, policy development, inspections, administrative investigations, police criminal misconduct, legislative advocacy, school safety, criminal investigations, police response and tactics at major events, use of force, body-worn cameras, alcohol enforcement, traffic, first-line supervision, crime prevention, human trafficking, hate crime response, conflict resolution, immigration issues for local policing, facial recognition technology, traffic safety, community safety and security.

Top Secret Security Clearance 1998-2020.

Life Member of the International Association of Chiefs of Police, the Major Cities Chiefs Association, and the Police Executive Research Forum.

EXPERIENCE

Strategic Site Leader, U.S. Dept. of Justice, Public Safety Partnership Program (2019-present)

Leading team assisting the Davenport, Iowa Police Department in reducing violent crime. Identifying and providing training and technical assistance to police and prosecutors.

Chief of Police, Montgomery County, MD Police Dept. 2004-2019

Responsible for police service delivery to 1 million residents in the State of Maryland's most populous jurisdiction. Oversaw \$280 million annual budget with workforce of 1,900 employees. Appointed by County Executive Doug Duncan in 2004. Re-appointed by County Executive Ike Leggett in 2006. Re-appointed by County Executive Marc Elrich in 2018. Responsible for the management of all facets of police service, to include (but not limited to) Patrol, Investigations, Special Operations, Budget, Personnel, Internal Affairs, Technology, Community Outreach, 9-1-1 Center, Animal Control, and Media Relations. Interviewed over 200 times per year by print, radio, or television media.

Chief of Police, Fairfax County, VA Police Dept. 1998-2004

Responsible for police service delivery to over 1 million residents in the State of Virginia's largest local jurisdiction. Oversaw workforce of nearly 2000 employees. Began career as a patrol officer in 1977 and rose through the ranks to be appointed Chief of Police in 1998.

President, Major Cities Chiefs Association 2014-2018

Elected President (two terms) by my peers from the 70 largest police departments in the United States and Canada. Represented the Association on policy and legislative issues. Met regularly with Officials at the White House, U.S. Congress, the Dept. of Justice and Dept. of Homeland Security. Represented the Association three times, in meetings with President Obama at the White House. From 2006-2014, was the Chairman of the Legislative Committee for the Association. Represented the Association on legislative issues, and spoke at numerous Congressional hearings on police, law enforcement, crime, and homeland security issues.

Member, Archdiocese of Washington D.C., Child Safety Advisory Board 2006- Present

Create policy and review specific case issues regarding child protection within the Catholic church and schools. Advisory role to the Archbishop of Washington D.C. Assist with investigations at the request of the Archbishop.

Co-Chairman, National Immigration Forum's Law Enforcement Immigration Task Force 2016-2019

Led large task force of local police and Sheriff's departments on navigating immigration issues. Met directly with Secretary of Homeland Security and his/her staff several times each year.

Vice-President, Board, Police Executive Research Forum, two terms, 2012-2016

Led Board, along with President Charles Ramsey, providing input to premier law enforcement think tank in the Nation.

Member, International Association's Highway Safety Committee 1999-2014

Researched and recommended best practices for traffic safety, crash reduction, and traffic enforcement.

Other Memberships:

Anti-Defamation League's Consortium on Fighting Hate 2020

Montgomery County Community Criminal Justice Commission 2004-2019

Hearts and Homes for Youth Board 2006-2014

Shelter House Board 1998-2005

IACP Police Explorer Committee (1999-2019)

Selection Committee for National Law Enforcement Memorial's Destination Zero Awards (2016-present)

EDUCATION

2006 – Senior Executive Program for State and Local Government – **John F. Kennedy School, Harvard University**

2000 - FBI National Executive Institute – **FBI Leadership Development Institute**

2000 – Senior Executive Institute – **University of Virginia**

1998 – Police Executive Leadership School – **University of Richmond**

1989 – FBI National Academy – **FBI Leadership Development Institute**

1976 - Bachelor of Arts, Criminal Justice, **University of Maryland, College Park**

NATIONAL AWARDS AND RECOGNITION

- 2019 Major Cities Chiefs Association Leadership Award
- U.S. Senate Citation for "Excellence in Leadership and Public Service". March 28, 2019
- Certificate of Special Congressional Recognition for "Exemplary and Passionate Service to the People of Montgomery County", Cong. Jamie Raskin, March 28, 2019
- U.S. House of Representatives Certificate of Special Recognition, "Exemplary Leadership, and Faithful Efforts to Safeguard Property and Persons living in Montgomery County." Congressman John Sarbanes.
- April 9, 2019 - Advocates for Highway and Auto Safety – Highway Safety Hero Award
- 2018 FBI National Executive Institute's Penrith Leadership Award
- May 7, 2018 - Anti-Defamation League's Gorowitz Institute Service Award – Recognized nationally for building bridges to the Muslim and Immigrant communities and for preserving and defending our Nation's Democratic Values.
- U.S. Congressman Jamie Raskin, Certificate of Special Congressional Recognition for Extraordinary Leadership and Commitment to Public Safety
- 2017 National Immigration Forum's "Keeper of the Dream" award
- 2015 U.S. Congressional Citation (Sen. Chris Van Hollen) for dedicated service

- 2007 Brady Campaign to Prevent Gun Violence – James S. Brady Law Enforcement Award
- 2007 Hero of Freedom Award, for Combating Child Trafficking, Charity Network Inc. (CNI)

LOCAL AWARDS AND RECOGNITION (SELECTED)

June 12, 2019 – Olney Chamber of Commerce, Bienvenue Award, "Dedication to Serve and Protect"

June 4, 2019 – Boy Scouts of America, 2019 Distinguished Citizen Award

March 29, 2019 - County Executive resolution to rename the County public safety headquarters to the Chief J. Thomas Manger Public Safety Headquarters

March 28, 2019 – Citation from Maryland State Senator Cheryl Kagan, "under your leadership, our community has seen increased transparency, accountability, and safety."

2018 – Selected as a "Washingtonian of the Year" by Washingtonian Magazine

2018 – Montgomery County Coalition for the Homeless, Distinguished Service Award

2017- Montgomery County Hispanic Gala, Public Service Award

March 1, 2017 – Addiction Policy Forum's award for STEER program, "Ability to integrate treatment with law enforcement response."

February 16, 2017 – Presenter, Leadership Greater Washington, "Policing in a Post-Ferguson Environment"

February 14, 2017 – Presenter, Montgomery County Council, on Preventing Hate Crimes

2017 – Instituted all Spanish-speaking Community Police Academy

Jan. 29, 2017 – Briefing on Domestic Violence to Montgomery County Commission for Women

2017 – Instituted quarterly community outreach meetings with the LGBTQ community

Jan. 4, 2017 – Presenter, Jewish Community Relations Center, Combatting anti-Semitism, Racism and Bigotry

2016 – First large police agency in Washington D.C. region to institute a body-worn camera program.

2016 – Montgomery County Family Justice Center, Inspiring Leader Award

Oct. 12, 2015 – Conflict Resolution Center of Montgomery County award for "Peacemaker of the Year"

2014 – Sentinel Newspaper, 2014 Excellence in Government Award

Jan. 2014 – Montgomery County Victim Rights Foundation, Public Safety Award

May 6, 2013 – Youth Leadership Foundation, Community Champion Award

Oct. 28, 2012 – Inducted into the Montgomery County Human Rights Hall of Fame

2002-2013 – In-person interviews on CBS, local Ch.9 News over 130 times discussing police, crime and safety issues

2012 – Started an annual event put on by the Mont. Co. Police Dept. – Autism Night Out

2009 – Bethesda-Chevy Chase Chamber of Commerce, Public Safety Award

April 30, 2006 – Maryland Muslim Council, 2006 Public Safety Award

2004 – Established racial and ethnic outreach meetings (monthly). Attended over 400 of these meetings between 2004-2019.

2004 – Fairfax County NAACP Branch, Community Service Award

2001 – Fairfax County Human Rights Commission’s Award for “Work in preventing hate crimes”

April 22, 1993 – Silver Medal of Valor, Fairfax County Chamber of Commerce, Public Safety Awards

NATIONAL MEDIA INTERVIEWS, WHITE HOUSE, DEPT. OF JUSTICE, AND CONGRESSIONAL APPEARANCES

Inside Washington – Interview on Police Reform (July 2020)

Speaker, U.S. Senate Democratic Steering Committee, Gun Violence Prevention (March 27, 2019)

Meeting with DHS Secretary Neilsen in Immigration issues (Feb. 14, 2019)

Meeting with Congressman David Trone on Opioid Addiction Crisis (Feb. 11, 2019)

Testified before the Senate Judiciary Committee on Gun Violence (Dec. 6, 2017)

Speaker at U.S. Attorney General’s Advisory Committee, on crime and prosecution issues (Sept. 26, 2018)

Heavy.com News, “Tom Manger: 5 Fast Facts You Need to Know” Sept. 22, 2018

National Press Briefing on Autonomous (Driverless) Vehicles (July 23, 2018)

Mother Jones magazine interview on Gun Violence and Arming School Teachers (March 8, 2018)

Speaker, U.S. Congressional Hearing on Immigration Issues for Local Police (July 24, 2017)

Testified before Senate Committee on Homeland Security, Gangs and Transnational Criminal Organizations (May 25, 2017)

Panelist, Senate Democratic Caucus on Law Enforcement Issues (May 17, 2017)

BBC interview on Gangs (May 8, 2017)

Presenter, U.S. Dept. of Justice, Hate Crime Prevention Forum (May 1, 2017)

Law Enforcement presenter for the U.S. Conference of Mayors at meeting with the U.S. Attorney General (April 25, 2017)

Law Enforcement presenter for the U.S. Conference of Mayors at meeting with DHS Secretary (April 24, 2017)

Briefing to U.S. Senate Staff, on behalf of Tahirih Justice Center on Human Trafficking (April 5, 2017)

Speaker, on behalf of the U.S. Conference of Mayors, in meeting with DHS Secretary (March 29, 2017)

Speaker, House Congressional Hearing in support of domestic violence victims, sex assault victims and victims of human trafficking. (March 17, 2017)

Meeting with Senator Jeff Sessions regarding nomination as Attorney General (Dec. 20, 2016)

Meeting with Vice President Joe Biden on Policing Issues (Aug. 3, 2016)

Keynote Speaker at Bureau of Justice Assistance (DOJ) conference on body-worn cameras (May 14, 2016)

Law Enforcement Leaders breakfast meeting, Naval Observatory, with Vice Pres. Biden (May 13, 2016)

Testimony before Senate Judiciary Committee on the Impacts of U.S. Immigration Policy on local Police (July 21, 2015)

Presenter, House Judiciary Committee, Senate President and House Speaker, Public Safety Workgroup (June 8, 2015)

Guest on CNN's "State of the Union" program, on effects of Ferguson on policing (Nov. 30, 2014)

CNN interview on National Policing issues, (Aug. 6, 2011)

Testified before Senate Judiciary Subcommittee on Immigration Reform (April 30, 2009)

Testified before Senate Judiciary Committee on "Protecting National Security and Civil Liberties" (April 21, 2009)

Participant in Attorney General Eric Holder's Law Enforcement Summit (April 20, 2009)

SELECTED PRESENTATIONS AND COMMISSION WORK

Jan. 2020 - Responsible Hospitality Institute – Instructor for Bar and Restaurant Owners on alcohol enforcement and regulatory compliance

Jan. 2020 – Member, National Police Foundation's workgroup on Body-worn cameras

2004-2019 – Instructor at more than 60 Citizen Academy classes on crime and safety in Montgomery County

March 14, 2019 – Guest Lecturer, on police/media issues, Georgetown University

2015-2019 – Guest Lecturer at American University, current policing issues

Jan. 25, 2019 – Speaker at U.S. Conference of Mayors meeting on Hate Crime investigations

Jan. 17, 2019 – Keynote speaker at Montgomery Co. Chapter of Md. Municipal League on crime and policing

2018-2019 – Member of Dept. of Justice’s (COPS) National School Safety Consortium

May 31, 2018 – Participant, DOJ/ Major Cities Chiefs Assoc., Executive Workshop to create a Violent Crime Operations Guide (Published by Bureau of Justice Assistance)

May 8, 2018 – Speaker, Migration Policy Institute, “Changing Landscape of Immigration”

2013-2018 – Selected as a Mentor for (5) newly appointed Police Chiefs, Major Cities Chiefs Association’s Police Executive Leadership Institute

Nov. 13, 2017 – Presentation at 50-State summit on Public Safety in Wash. D.C. on policing

Oct. 18, 2017 – Panelist at CATO Institute – Project on Criminal Justice

Sept. 25, 2017 – Speaker, Georgetown Law Center’s 14th Annual Immigration Law and Police Conference

April 21-23, 2017 – Panelist, Harvard University, Public Safety Summit

April 12, 2017 – Lecturer at America Trauma Society Conference (PA)

March 9, 2017 – Featured guest/ speaker at Montgomery College President’s series “Civility in Action, Dialogues Across Differences”

Dec. 12, 2016 – Host with NAACP and Human Rights Commission at Town Hall Meeting on police and race issues

June 14, 2016 – Speaker at World Elder Abuse Awareness event, on Crimes against Seniors

May 14, 2016 – Keynote Speaker at National Law Enforcement Memorial’s Wreath Laying Ceremony

Nov. 10-14, 2015 – Executive Session on Innovative Approaches to Minimizing Use of Force – Police Scotland

2004-2019 - Introductory speaker at more than 75 sessions of Montgomery County Crisis Intervention Training. Dealing with people experiencing mental health issues.

July 20, 2015 – Panelist, National Black Prosecutors Association Conference

July 14, 2015 – Panelist, Maryland Commission on Civil Rights, Baltimore

June 18, 2015 – Major Cities Chiefs Roundtable on Emerging Police Issues

March 12, 2015 – Interview with Washington Post Editorial Staff on Police issues

PUBLICATIONS

Contributing Author, Maryland Innovations to Address Opioid Epidemic, (Feb. 2019)

Author of Major Cities Chiefs Association position paper on Immigration Policy

Author of Major Cities Chiefs Association position paper on Marijuana

"New Strategies for Countering Homegrown Violent Extremism: Preventive Community Policing" Nov. 13, 2013. Washington Institute for Near East Policy

APPENDIX B

Appendix B - Documents Considered for this Report

- Export report of Michael E. Graham in this matter (August 28, 2020)
- Documents, correspondence, and deposition testimony cited by Mr. Graham in his Report dated August 28, 2020
- Pleadings and other case filings, including the Plaintiffs' First Amended Complaint (ECF 54) and Defendants' Answer (ECF 142)
- Written discovery responses from both Plaintiffs and Defendants
- Maryland State Constitution, Maryland Annotated Code, and Prince George's County Maryland Code of Ordinances
- The Department's General Order Manual ("GOM")
- IAD Standard Operating Procedures
- Prince George's County Police Department equal employment opportunity and diversity training materials
- Equal employment opportunity and diversity training materials from other local and/or major jurisdictions
- Prince George's Police Department Rosters, Promotion Lists, and Transfer Lists
- Selected deposition testimony in this matter and related exhibits, including:
 - Adrian Crudup
 - Art'z Watkins
 - Carlos Acosta
 - Christopher Murtha
 - Christopher Smith
 - Hector Velez
 - Henry Stawinski
 - Jacqueline Rafterry
 - James McCreary
 - Jennifer Flaig (ESCI/Fields Consulting)
 - Jewell Graves
 - Joseph Ghattas
 - Joseph Perez
 - Kathleen Mills
 - Linda Washington
 - Mark Magaw
 - Melvin Powell
 - Michael Anis
 - Michael Brown
 - Paul Mack
 - Raphael Grant
 - Richard Torres
 - Robert Harvin, Jr.
 - Sharon Chambers
 - Sonya Zollicoffer
 - Tasha Oatis
 - Thomas Boone

- Interviews I conducted with the following individuals: IAD Commander Major James McCreary, 1 Sgt. William Gleason, former Deputy Chief Murtha, and Inspector General Donnell Turner, Kathleen Mills, Henry Stawinski
- Correspondence between Defendants and the Department of Justice dated December 20, 2019; January 23, 2020; February 6, 2020; and February 14, 2020
- IAD Complaint Process PowerPoint by IAD Commander James McCreary
- Early Warning System (EWS) reports and EWS memoranda
- Selected Prince George's County Police Department arrest, crime, and traffic stop data
- Selected articles, websites, and press conferences, as cited in the report
- Video Recording: Panel for Equality Meeting (April 17, 2017)
- Video Recording: Panel for Equality Meeting (July 13, 2017)
- Prince George's County Police Department Select Leadership Assignments Roster
- Citizen Complaint Oversight Panel, Prince George's County 2019 Annual Report
- Declaration of Dr. Kris Marsh
- DISCIPLINARY ACTION – Captain Trent Tolson #1396 (*CORRECTION*) (December 5, 2019)
- DISCIPLINARY ACTION – Major Mistinette Mints #2083 (*CORRECTION*) (December 5, 2019)
- Email from Adam Popielarcheck to John Teletchea (October 9, 2018) at 4:46 p.m.
- Email from Adam Popielarcheck to Kevin McSwain (June 29, 2018) at 10:35 a.m.
- Email from Kevin McSwain to Rayshawn Ray (June 10, 2018) at 3:47 p.m.
- Email from Marcus Jenkins to Kevin McSwain (June 6, 2018) at 4:22 p.m.
- Emails from Adam Popielarcheck to 37 Implicit Bias Training class attendees (October 9, 2018)
- Excel Workbook, "2016-2019 Countywide Arrests and Traffic Stops."
- Excel Workbook, "Data regarding Crime Statistics"

- Excel Workbook, “Misty Mints Suspension Without Pay”
- Excel Workbook, “Retirements and Separations Roster” (2016-2020).
- Excel Workbook, “Trent Tolson Suspension Without Pay”
- IA2015-006
- In-Service Implicit Bias Training Classroom Participation Sign-In Sheets (2018)
- Transcript of July 31, 2020 Motions Hearing, *Joseph Perez v. Prince George’s County Police Department*, Civil Action 19-36458, (Circuit Court for Prince George’s County, Maryland)
- Transfer to Personnel (August 11, 2019)
- Use of Force Training Guide 2015 (updated)
- Documents produced in discovery in this matter, including:

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