

**REBUTTAL EXPERT REPORT OF  
JOHN R. (“RICK”) BROWN**

In

*Hispanic National Law Enforcement Association NCR et al. v.*

*Prince George’s County et al.,*

District of Maryland No. 18-cv-3821

Updated: October 19, 2020

## **I. Background and Experience**

I am a former Lieutenant Colonel for the Pennsylvania State Police (“PSP”), a full service police agency, and completed over 29 years of active law enforcement experience within a department that has over 4,200 sworn and 1,900 civilian personnel, an annual budget of more than \$840 million, and serves a community with over 12.7 million residents. I served in several key positions, including Deputy Commissioner of Administration and Professional Responsibility.

In 2004, I was appointed by the Pennsylvania Governor to maintain executive oversight of the Bureau of Integrity and Professional Standards (including the Internal Affairs Division), Equal Employment Opportunity Office/Heritage Affairs Office, Department Discipline Office and the Early Intervention Program Office. I also had executive oversight of the PSP’s Bureaus of Training and Education and Human Resources and led the recruitment of persons of color and women. I was a key member of the Pennsylvania Governor’s Executive Diversity Council, and I am a graduate of the FBI National Academy. From 2003-2004 I was the designated liaison to the Commonwealth of Pennsylvania, Office of the Inspector General, during its independent review of policies and procedures relating to sexual misconduct and sexual harassment investigations.

Among other responsibilities at PSP, I maintained supervisory responsibility for the independent research Police-Citizen Contact Project voluntarily initiated by the PSP. Assisted by researchers from two major academic institutions, the project utilized applied research techniques to assess the extent to which PSP officers engaged in racial or biased-based policing during motor vehicle stops. I subsequently oversaw the implementation of proactive training and operational strategies to monitor and prevent racial profiling.

I had supervisory oversight and helped develop the PSP’s Equal Employment Opportunity Office’s statewide liaison program and had oversight of workplace sexual harassment and hostile work environment complaints (Title VII) and citizen complaints that alleged discrimination, harassment or disparate treatment through the Internal Affairs and/or EEOO functions.

After retiring from the PSP in 2010, I created Transparency Matters, LLC, a consulting business that focuses on assisting large and small police departments around the country. I have served on independent monitoring teams involving federal consent decrees of police departments in Oakland, California, and Detroit, Michigan, assessing the use of force in officer-involved

shootings and their supervisory/command reviews. I also serve on the independent monitoring team for the Maricopa County (Arizona) Sheriff's Office as an expert on internal investigations and related training, and I served on an independent audit team pursuant to a state consent decree in Niagara Falls, New York on accountability, use of force, and community engagement processes.

I also served as a subject matter expert for the U.S. Department of Justice in a pattern-and-practice investigation of the Baltimore Police Department, and for the U.S. Office of Justice Programs concerning recruitment, diversity, and retention issues within the Hartford (Connecticut) Police Department. Additionally, I have assessed and provided technical assistance on accountability measures for police departments in Anchorage, Alaska; East St. Louis, Illinois; Puerto Rico; Springettsbury Township, Pennsylvania; and Middletown, Pennsylvania.

I am being compensated at the rate of \$150 per hour. My compensation is not contingent upon the substance of my opinions or the outcome of this case.

## **II. Assignment**

I have been retained by Arnold & Porter Kaye Scholer LLP, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and the American Civil Liberties Union of Maryland, counsel for Plaintiffs in this matter. I was asked to review and comment on the expert reports filed by Michael E. Graham (August 28, 2020), J. Thomas Manger (September 28, 2020), and Janet R. Thornton (September 28, 2020).

I have responded to the opinions of Mr. Manger and Dr. Thornton as I understand them based on my review and analysis of those reports, and to the extent those reports included support for the opinions, as well as my assessment of the evidentiary record. Although I may not have responded to every assertion or conclusion in the Manger or Thornton reports, that should not be construed to indicate my agreement with those assertions or conclusions. My work is continuing, and I may modify this report before my testimony.

### **III. Summary of Opinions**

1. PGPD's policies for addressing harassment and discrimination complaints are deficient and do not follow best practices or industry standards. Among other things, PGPD's policies for the handling of discrimination and/or harassment, and retaliation complaints do not comport with IACP Model Policies and CALEA Standards, and they fall short when compared to efforts of other Police Departments.
2. The PGPD does not follow its own policies or the law regarding discrimination and/or harassment, and retaliation allegations. Prince George's County legislation and PGPD policy require these complaints to be investigated by IAD. There is ample evidence that PGPD leadership failed to investigate these complaints and report a number of them to the Citizen Complaint Oversight Panel as required.
3. PGPD's Chief and Command Staff failed in the numerous cases cited in this report to take immediate corrective action; removing or separating parties, addressing, and resolving complaints alleging retaliation, investigating, and disciplining where appropriate.
4. There is no clear Department policy statement banning Discrimination and/or Harassment in General Order Volume I, Chapter 12. Discrimination and Sexual Harassment.
5. There is no clear Department policy prohibiting Department Supervisors, Commanders or Managers from investigating or resolving allegations of discrimination, harassment, and retaliation involving subordinates.
6. The EEO training is silent on providing supervisors with guidance on what immediate action(s), such as transfers or reassignments, they can take without the appearance of retaliation or penalty.

7. The EEO training is also silent on what steps a Supervisor, Commander, or Manager can take to effectively monitor the workplace to prevent and correct discrimination, harassment, and retaliation.
8. The EEO training does not cover alternate reporting channels or other accessible points of contact for independent witnesses or other employees to go outside the chain of command to report allegations of discrimination, harassment, and retaliation.
9. The EEO training and Discrimination and Sexual Harassment policy have no instruction on ensuring the confidentiality of all discrimination, harassment, and retaliation complaints.
10. The EEO training does not cover the importance of not notifying the subject of the allegation because that individual could possibly be the harasser.
11. The EEO training does not include instruction for addressing Third-Party Harassment complaints that extends to independent contractors and vendors.
12. The EEO training fails to provide instruction on how to protect complainants from acts of retaliation.
13. The EEO training does not include the best practice of including the communities it serves in the training.
14. The EEO training provided does not indicate an ongoing effort by the Department to seriously address discrimination, harassment, and retaliation issues and eliminating this behavior from the workplace.
15. Mr. Manger's report fails to note that the Maryland Police Training and Standards Commission's (Commission) report also mentions that common characteristics of weak recruitment processes include systems that were designed to "select out," rather than "select in," a candidate.

16. Mr. Manger's report fails to mention the Commission's report recommended several strategies to increase law enforcement diversity and his report is silent on whether PGPD employs any of these strategies.
17. Mr. Manger does not provide an analysis of PGPD's recruitment strategies or processes and their effectiveness.
18. Based on federal and state consent decrees, IACP Model Policies, and my experience, a review of the PGPD policy on Use of Force is inadequate and does not comport with best practices.
19. The Department's Use of Force Policy provides no guidance on de-escalation techniques.
20. The Use of Force Policy needs to expand supervisor's responsibilities to encompass model policies and best practices.
21. The Use of Force Policy does not contain prohibitions on using OC spray on a handcuffed person, limits on Conducted Electrical Weapons cycling and duration, head strikes, and discharging firearms at or from moving vehicles.
22. The Use of Force Policy does not require officers to report and the Department to evaluate the justification for pointing a firearm at a person.
23. The Use of Force Policy does not address whether officers can confer in report writing or review body worn camera footage in drafting reports.
24. The Use of Force Policy does not require officers to provide medical assistance after a use of force.
25. There is no requirement in the PGPD Use of Force Policy that the supervisor assigned to conduct a Use of Force Review shall be trained in conducting use of force investigations.

## ANALYSIS

### **I. The PGPD's Policies and Processing of Complaints of Discrimination and/or Harassment**

In Part 1, Analysis and Opinions, Internal and External EEO Complaint Procedures, Mr. Manger's report asserts the PGPD's "policies for addressing harassment and discrimination complaints are commensurate with best practices and industry standards."<sup>1</sup>

Mr. Manger is wrong, and his analysis and opinions are inaccurate and misleading, for two basic reasons. First, the PGPD policies do not incorporate best practices and are not consistent with industry standards. Second, there is ample evidence that PGPD does not follow its own policies and legal requirements.

In paragraphs 46-52 and 57-64 of his report, Mr. Graham details the Department's failure to investigate all complaints of discrimination or harassment. Of particular concern, as Mr. Graham noted at paragraph 57 of his report, former Chief Stawinski and other senior Department witnesses testified that the Department's policy is that when complaints of discrimination are found to be associated with an EEO charge, they will not be investigated. Record evidence also indicates that if an investigation was underway and the complainant files an EEO charge, the investigation was terminated, and the cases closed. Police officers possess considerable powers, including the ability to take a citizen's freedom and to legally use force in performing their duties. The internal administrative investigation is appropriate to ensure Department policies and procedures are followed by officers, to ensure expected standards of professional conduct are observed when delivering police services. Police agencies must investigate complaints and specific incidents and take timely corrective action when appropriate. The administrative investigation also serves as a training tool, informing policy from lessons learned, and will help agencies reduce risk and/or liability.

<sup>1</sup> Manger Report Paragraph 10.

In my opinion, Chief Stawinski and the Department’s Command Staff abdicated their authority by failing to properly assign, investigate, and resolve discrimination, harassment, and retaliation complaints as mandated by the County Code and the General Orders. The PGPD is responsible for investigating acts of discrimination, harassment, and retaliation in the workplace. Furthermore, the Department is required to prevent retaliation and to implement appropriate disciplinary action to resolve these complaints where and when appropriate. Chief Stawinski was not prevented, and missed several opportunities, to investigate the various complaints of discrimination, harassment, and retaliation outlined in Mr. Graham’s report.

This information further illustrates that Chief Stawinski chose to abdicate his decision-making authority to the County’s Law Office, County HRC, and to a federal agency (EEOC)<sup>2</sup>, that have no authority to discipline or take corrective action against PGPD officers. Consequently, instead of initiating internal investigations and holding various employees accountable for their misconduct the offenders escape accountability. This leadership failure has exposed the PGPD to civil ramifications and negative public perception. I am particularly troubled by Chief Stawinski’s decision to allow a County or federal agency to purportedly investigate complaints—in lieu of using his own Department’s internal processes and resources—at the expense of the County, PGPD, and ultimately the public. In my opinion, Chief Stawinski’s decision not to investigate serious allegations of misconduct made internally against the employees of the PGPD was unreasonable, and a violation of the County Code and Department policy. As explained in further detail below, the Department did not meet these obligations.

**A. PGPD’s Policies on Discrimination, Harassment, and Retaliation Do Not Reflect Best Practices.**

1. *PGPD’s Policies for Investigation of Discrimination and Harassment Complaints are Deficient*: Mr. Manger fails to consider that the Prince George’s County Code requires “The Police Department, in all cases where . . . a law enforcement officer or other person has filed a

<sup>2</sup> In this Rebuttal Report, I use the term “EEO Charge” to refer to a complaint of discrimination, harassment or retaliation made either internally at PGPD or made externally to an outside body such as the Prince George’s County Human Relations Commission (HRC) or the U.S. Equal Employment Opportunity Commission (EEOC).

complaint . . . regarding the conduct of a law enforcement officer, the Police Department **shall**<sup>3</sup> commence an investigation within a reasonable amount of time. . . The purpose of such investigation shall be to evaluate the merits of the complaint in an objective manner.”<sup>4</sup> The Code similarly provides “[t]he Chief of Police **shall** notify the Panel within twenty-four (24) hours or the next business day when a law enforcement officer or other person has filed a complaint with the Department or CCOP regarding the conduct of a law enforcement officer.”<sup>5</sup> Another section of the Code states, “The Chief of Police shall promptly send to the [Human Relations Commission] a copy of every signed complaint against a law enforcement officer. The copy of the complaint shall be accompanied by a statement indicating whether the Internal Affairs Division will conduct a full investigation of the alleged conduct.”<sup>6</sup> The Code requires this process be followed for all cases, including cases where discrimination, harassment, or retaliation is alleged.

The requirements for the Citizen Complaint Oversight Panel (CCOP) were introduced on June 12, 1990 and became effective on August 27, 1990. The CCOP’s powers were expanded on November 26, 2001, through Council Legislation CB-25-1990 and CB-59-2001, which created the Panel and modified the procedures for the County Human Relations Commission by requiring that complaints of “harassment,” “excessive use of force,” and “use of language which would demean the inherent dignity of any person” be referred to the Chief of Police and the CCOP.<sup>7</sup> The legislative intent was to provide objective citizen participation in the complaint process and strengthen existing procedures for handling complaints made against members of the PGPD for excessive force, harassment, and/or abusive language, and to advise the Chief of Police if the investigation was complete, thorough, and impartial. The CCOP also reviews all administrative charges and all hearing board or suspension hearings served upon a law enforcement officer.<sup>8</sup>

<sup>3</sup> Used in laws, regulations, or directives to express what is mandatory, [www.merriam-webster.com](http://www.merriam-webster.com), Online Dictionary, 2020 Version.

<sup>4</sup> County Code, CB-59-2001, Section 18-186.05(a).

<sup>5</sup> County Code, CB-59-2001, Section 18-186.06(a).

<sup>6</sup> County Code Section 18-186.06(b); this notification from the Chief of Police is only required for the Human Relations Commission not the CCOP.

<sup>7</sup> County Code CB-59-2001, Sections 2-229 and 2-231.

<sup>8</sup> County Code, CB-59-2001, Section 186,06(h).

The Department's General Orders and IAD Standard Operating Procedures were put in place to comport with the County Code's requirement that IAD investigate use of excessive force, abusive language, and harassment complaints:

- **Volume I, Chapter 4. Complaints<sup>9</sup>, Section 4.** Complaints of Criminal Misconduct states, "All complaints alleging criminal misconduct shall be investigated by IAD." Section 7. Complaint Assignment states, "Use of force, abusive language, harassment and criminal misconduct complaints **must** be investigated by IAD; it may also investigate other types of complaints. Complaints not investigated by IAD are handled at the lowest appropriate level of supervision."
- **Volume I, Chapter 3. Committees, Councils, & Panels,<sup>10</sup> Section 6:** Citizens Complaint Oversight Panel (CCOP) states "The Commander, IAD shall forward a copy of every complaint to the CCOP within 24 hours of its evaluation. A statement from Commander, IAD must accompany this copy indicating whether or not a full investigation will be conducted."<sup>11</sup> The CCOP may conduct its own investigation independently of, and concurrently (simultaneously) with, any investigation being conducted by IAD." "The Chief of Police shall notify the CCOP within two working days of the final disposition of all cases where a complaint alleges use of force, abusive language, or harassment."
- **The PGPD IAD Standard Operating Procedure (SOP),<sup>12</sup> Paragraph C4** states "A determination will be made as to whether or not the complaint alleged any misconduct as enumerated in CB-59-2001. If so, The Citizen Complaint Oversight Panel (CCOP) will be notified by letter, normally with a copy of the complaint. The correspondence to the CCOP will be faxed directly to them and the receipt kept on file. If the complaint was received in the IAD from the CCOP, a written acknowledgement will be sent."
- **Volume I, Chapter 22. Internal Investigation Procedures, Section 10** states: "The Chief of Police shall notify the [CCOP] panel within two working days of

<sup>9</sup> PGPD General Order Manual, Volume I. Chapter 4. Complaints dated December 2016.

<sup>10</sup> PGPD General Order Manual, Volume I, Chapter 3. Committees, Councils, & Panels.

<sup>11</sup> This statement in this policy is incorrect and does not comport with County Code Section 18-186.05(a).

<sup>12</sup> The PGPD IAD Standard Operating Procedure (SOP) dated March 1, 2011.

the final disposition of all cases where a complaint alleges the use of force (Excessive use of force is not specifically stated here in this policy, just use of force generally.), abusive language, or harassment.” Section 11 states: “The Human Relations Commission shall investigate every case alleging use of excessive force, abusive language, or harassment by a law enforcement officer in accordance with the provisions of the Human Relations Code.”

- **General Order, Volume I, Chapter 3. Committees, Councils, & Panels, Section 6:** Citizens Complaint Oversight Panel (CCOP) that states, “A statement from Commander, IAD must accompany this copy indicating whether or not a full investigation will be conducted.” This requirement as stated in policy is incorrect and does not comport with County Code Section 18-186.05(a) and only applies to the Duties of the Chief of Police under Section 18-186.06(b) to provide the above statement to the HRC not the CCOP.

Mr. Manger does not discuss any provisions of the General Orders or the mandates of the County Code that provide for an investigation of these incidents by Internal Affairs (or mandatory reporting to the CCOP and HRC) in his report. Nowhere does the County Code or the cited provisions of the General Orders give the PGPD the authority to send complaints of excessive force, abusive language, or harassment back to the District or Unit Supervisor, Commander or Manager. There is no requirement for the Department to handle informally at the employee supervisor level without the required investigation by IAD. Rather, both the County Code and the General Orders require an investigation should be completed before a resolution and/or disciplinary action is implemented. One important aspect of this legislation is that it requires the PGPD IAD to investigate all abusive language and harassment complaints which if handled appropriately by the Department would mitigate agency liability.

PGPD’s failure to handle complaints in accordance with the County Code and General Orders does not give the CCOP (and, through the CCOP, the public) the opportunity to objectively review the complaint(s), investigations(s), and make recommendations/comments to the Chief of Police on the PGPD’s action(s), policy changes, supervision, operational procedures, training, recruitment, and case review findings. Accordingly, the failure to assign a case number in the IAPro case management system, the failure to investigate, and the failure to adequately

resolve discrimination and/or harassment and abusive language complaints allows the wrongdoers to escape accountability for their misconduct. Additionally, supervisors, Commanders, or Managers who fail to monitor their workplace or take corrective action in these matters can also escape accountability. This failure also leads to underreporting of these significant complaints to the CCOP for oversight and will result in the CCOP unintentionally misrepresenting the actual number of cases in its public Annual Report.

Mr. Manger asserts, without addressing the complaint assignment provisions in the County Code and the General Orders, that the decision not to have the Internal Affairs Division investigate these claims generally, or when there has been an EEOC charge filed, is reasonable because “conducting dual investigations opens the door for conflicting evidence and statements to be gathered.”<sup>13</sup> This analysis and opinion in my view are wrong.

- Dual, concurrent, or simultaneous investigations of discrimination and harassment complaints are a common occurrence in law enforcement.
- The County Code (i) authorizes the CCOP to conduct its own investigation of, and concurrently (simultaneously) with, any investigation being conducted by IAD and (ii) specifically allows for the HRC to conduct its investigations regarding excessive force, abusive language, or harassment simultaneously (concurrently) with IAD. This authority is referenced in the Department’s General Orders, which reference the relevant portions of the County Code (CB-25-1990 and CB-59-2001).<sup>14</sup> Indeed, elsewhere in his report, Mr. Manger acknowledges “(CCOP) has the power to conduct its own investigation either independent of or concurrently with any IAD investigation.”<sup>15</sup>
- Competent investigators routinely address conflicts in investigations, and there should not be any material conflicts involving Department employees, because of their obligation to be honest and truthful in these matters or face

<sup>13</sup> Manger Report Paragraph 36.

<sup>14</sup> General Order, Volume I, Chapter 4, Section VI Governing Legislation & Reference.

<sup>15</sup> Manger Report Paragraph 75.

disciplinary consequences. Citizens who provide false or misleading information can also be held accountable through the criminal justice system.

Mr. Manger also states that the EEO Coordinator or the Chief can send a discrimination or harassment complaint “to Internal Affairs or refer the complainant to the County Human Relations Commission or EEOC.”<sup>16</sup>

- This is not consistent with the County Code or General Order, Volume I, Chapter 4, which requires PGPD to assign complaints of excessive force, abusive language, and harassment to the IAD.
- These protocols do not provide (and Mr. Manger does not suggest) that it is appropriate for IAD to screen discrimination and harassment complaints and reassign to them other Districts, Units, or supervisors, Commanders or Managers outside of IAD, which appears to have occurred in a number of situations.
- Investigations by the EEOC or HRC are not adequate substitutes for investigations by the PGPD, because neither EEOC nor HRC can impose discipline or direct other remedial actions in the Department’s workplace. The EEOC cannot discipline PGPD employees, and the HRC is severely limited in its ability to investigate complaints against PGPD officers.<sup>17</sup> The Chapter 3 policy also notes the investigation and hearing by the HRC shall not be construed to constitute an investigation or hearing that could lead to disciplinary action, demotion, or dismissal of a law enforcement officer. This statement in policy also comports with the County Code Section 18-186.07(c).
- The PGPD’s policy of not investigating or terminating an investigation once a complaint is filed with the HRC or EEOC does not absolve the Department

<sup>16</sup> Manger Report Paragraph 36.

<sup>17</sup> County Code, CB-59-2001, Section 2-229 states that the HRC has authority to investigate complaints “against any law enforcement officer operating within the County, except a complaint against a member of the Prince George’s County Police Department” and County Code Section 2-231 requires HRC to forward a copy of the complaint and all related documents to the Chief of Police and the CCOP within twenty (20) working days after receipt of the complaint by the HRC [completion of the investigation by the Internal Affairs Division in accordance with Sections 18.186.01 through 18-186.08 of this Code.]

from investigating complaints of excessive force, abusive language, and harassment. The HRC and EEOC cannot be used in lieu of a Department IAD investigation.

Although Mr. Manger does not generally defend the Department's practice of referring discrimination and harassment complaints to the field command, he does opine it was "reasonable" in conjunction with the Pinckney/Brown matter, which is one of several incidents discussed by Mr. Graham.<sup>18</sup> In addition to violating the County Code and the General Orders, I do not think referring a discrimination or harassment complaint to the chain of command to address is appropriate. When Districts or Units are assigned to handle complaints alleging discrimination and/or harassment involving their direct subordinates, whom they know and work with, it compromises their ability to impartially investigate because of that relationship. Department supervisors, Commanders or Managers, should be prohibited from investigating or resolving allegations of discrimination and harassment involving subordinates. This should be codified and included in annual in-service training to ensure this misconduct is discouraged institutionally. Any supervisor who violates that mandate should be held accountable through the disciplinary process. Allegations of discrimination and harassment affect the integrity of the Department and only IAD should carry out such investigations.

2. *PGPD's Policies for Complaint Initiation are Deficient*: As Mr. Graham notes, PGPD's complaint process is not clear and appears to be deficient in at least two respects. First, the process for complaint initiation is not clear. General Order, Chapter 12, Section 3. Complaint Procedures states, "To initiate the resolution of a complaint, the employee shall complete Part I of the Equal Employment Opportunity Complaint Form, which is available at all Districts/Divisions. The employee shall either mail the form (marked confidential) or take it directly to the Deputy Chief, BOAHS." The policy requires the employee to complete a Department form to initiate the resolutions of a discrimination and/or harassment complaint, which conflicts with the provisions of General Order Chapter 4. Complaints, Section 2. that states, "Written complaints not submitted on the County form shall be handled as if received on the County form." The Complaints policy allows external complaints by civilians to be filed in

<sup>18</sup> Manger Report Paragraph 202.

this manner but not internal complaints by an employee of the Department alleging discrimination and/or harassment by another employee.

Second, the complaint process does not provide a process for independent witnesses or other employees to go outside the chain of command to report allegations of discrimination and/or harassment. Rather, the Policy requires that “when employees, other than victims, become aware of conduct believed to be sexual harassment or discrimination, whether or not the conduct is directed at them, witnessed by them, or related to them by another employee, they shall report the incident to their supervisor or Commander/Manager.”<sup>19</sup> Requiring that witnesses other than the victim report the incident to their supervisor, Manager, or Commander, is not a best practice or industry standard. IACP Model Policies and EEOC, Enforcement Guidance, Vicarious Liability for Unlawful Harassment by Supervisors<sup>20</sup> provide recommendations for alternate reporting channels or other accessible points of contact for the initial complaint. Best practices and industry standards allow the employee to report discrimination and harassment to bypass the chain of command because a supervisor may be the harasser. It does not make sense for policy to require reporting misconduct directly to the individual that may be responsible for the behavior. Nor does it make sense to require reporting misconduct up the direct chain of command.

3. *PGPD Does Not Follow Industry Standards or Best Practices*: PGPD policies regarding investigation, likewise, do not incorporate best practices and are not consistent with industry standards. In concluding that PGPD’s policies incorporate “best practices,” Mr. Manger fails to cite any policies of other jurisdictions; nor does he generally discuss the model policies of respected organizations such as the International Association of Chiefs of Police (IACP) and Commission on Accreditation for Law Enforcement Agencies, Inc.<sup>21</sup> (CALEA).<sup>22</sup>

- The IACP National Law Enforcement Policy Center for over 30 years has been identifying leading practices and providing sound guidance to the law enforcement profession to assist in developing policies for individual departments.<sup>23</sup> The IACP

<sup>19</sup> General Order, Volume I, Chapter 12, Section V.

<sup>20</sup> EEOC, Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>.

<sup>21</sup> CALEA Website: [www.calea.org](http://www.calea.org).

<sup>22</sup> Mr. Manger references IACP in conjunction with the IACP’s recommendation that employees be allowed to make a complaint outside the chain of command. Manger Report Paragraph 54.

<sup>23</sup> <https://www.theiacp.org/policycenter>.

consists of over 18,000 police departments in the United States alone and another 13,000 member agencies in over 165 countries. The IACP has been in existence since 1893. The IACP National Law Enforcement Policy Center developed a Model Policy for Law Enforcement on addressing Harassment and Discrimination<sup>24</sup> in the workplace. The IACP Model Policy provides procedures for reporting, investigating, and resolving complaints of harassment and discrimination. The Model Policy was originally published in June 1990 and specifically mentions that employees have the right to work in an environment free from all forms of harassment and discrimination by employees, whether sworn, regular, reserve, or civilian, and all volunteers, or other non-employees who conduct business with the agency. All employees must be aware that they may not engage in any acts that threaten, intimidate, harass, demean, or torment fellow employees irrespective of whether the employee is a member of a protected class. The Model Policy considers harassment and discrimination of others serious employee misconduct. Coincidentally, the initial IACP Model Policy was published in June 1990, the same year and month the County Code CCOP legislation was introduced on June 12, 1990.

- CALEA was created in 1979 as a credentialing authority through the joint efforts of law enforcement's major executive associations, notably, IACP, National Organization of Black Law Enforcement Executives (NOBLE), Police Executive Research Forum (PERF), and National Sheriff's Association (NSA). The CALEA Accreditation program seals are reserved for use by those public safety agencies that have demonstrated compliance with CALEA Standards and have been awarded CALEA Accreditation by the Commission. PGPD is not currently accredited by CALEA. According to its website, PGPD sought re-accreditation as recently as 2014.<sup>25</sup>

The PGPD policies are not a best practice because they do not comport with model policies and standards embraced and provided to law enforcement by professional organizations, namely, the IACP and CALEA.

<sup>24</sup> IACP National Law Enforcement Policy Center, Harassment and Discrimination, Model Policies, Originally Published June 1990, Revised January 2002, and Updated May 2019.

<sup>25</sup> <http://pgpolice.blogspot.com/2014/03/accreditation-assessment-team-invites.html>.

- The IACP Model Policy states that “Any proscribed conduct covered by this policy that comes to the attention of a supervisor **shall** result in an investigation.” The Model Policy further mandates that “OPS [Office of Professional Responsibility] shall be responsible for investigating any complaint alleging harassment and/or discrimination.” CALEA Standard 26.1.3 similarly states in part: “Unlawful harassing of any agency personnel by anyone employed by or contracted by the agency has the effect of unreasonably interfering with an individual's work performance and/or creating an intimidating, hostile, or offensive work environment. Agencies need to have strong policies and directives that prohibit such conduct; **immediate and thorough investigation of any allegation of unlawful harassment**; effective and appropriate disciplinary action in any case where allegations of harassment can be substantiated; and efforts to make agency employees aware of their responsibilities and the legal issues involved.”<sup>26</sup> Although PGPD’s Discrimination and Sexual Harassment policy cites, as a governing reference, CALEA Standards 26.1.1 and 26.1.3, the PGPD does not comport to the requirements of 26.1.3 to conduct an immediate and thorough investigation of any allegation of unlawful harassment and implement effective and appropriate disciplinary action in any case where allegations of harassment can be substantiated. As discussed above, Mr. Manger confirms (consistent with Mr. Graham’s observations) that the PGPD policy does not require an investigation, and these investigations are not required to be conducted by PGPD’s equivalent of the OPS – the Internal Affairs Division.
- The IACP Model Policy also puts supervisor(s) on notice that they have the responsibility to assist any employee of the agency who comes to that supervisor with a complaint of harassment or discrimination in documenting and filing a complaint with OPS.<sup>27</sup> The PGPD policy has no such provisions.

<sup>26</sup>Salt Lake City Police Department Utah, CALEA Standards, 26.1.1 and 26.1.3,

<http://www.slcpd.com/ass3ts/uploads/2019/11/CALEA-Law-Enforcement-Manual-v-6.5-all-standards.pdf>.

<sup>27</sup> Office of Professional Responsibility (OPS), the designated employee(s) or unit, which may be external to the agency, with primary responsibility for monitoring adherence of employees to a agency policy, procedures, and rules and for conducting investigations of allegations of employee misconduct. This may also be referred to as internal affairs or professional responsibility, IACP National Law Enforcement Policy Center, Harassment, Discrimination, and Unprofessional Conduct, Model Policy, Updated May 2019.

- The IACP Model Policy tasks supervisors with the responsibility of taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment and/or discrimination. “If a situation requires separation of the parties, care should be taken to avoid action that punishes or appears to punish the complainant. Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should be temporary pending the outcome of the investigation.” The PGPD policy has no such provisions.
- The IACP Model Policy provides that retaliation against any employee for filing a harassment and/or discrimination complaint is prohibited. While PGPD’s policy contains such a provision, it does not contain the IACP Model Policy language providing that “Monitoring to ensure retaliation does not occur is the responsibility of the chief executive officer, supervisors, and the Office of Professional Standards.” Testimony from the Internal Affairs Commanders and Chief Stawinski noted in Mr. Graham’s report confirmed that PGPD does not take steps to monitor retaliation.

I have also reviewed PGPD’s policies against those of other comparable agencies or governing body policies in Maryland and Northern Virginia. Those Departments all have policies that (i) clearly require investigation of all complaints alleging discrimination and or/harassment, and (ii) many specifically state the investigation will be conducted by OPS, IAD, or the EEO function.

- Anne Arundel County, Maryland Government Employee Relations Manual<sup>28</sup>, mandates under its policy as follows: **Section II. Non-Harassment Policy**, (Paragraph 2): “Harassing conduct will not be tolerated, and all reported or suspected occurrences of harassment will be promptly and thoroughly investigated. Any individual found to have engaged in harassment in violation of this policy will be subject to remedial action which may include discipline, up to and including termination of employment.” The Anne

<sup>28</sup> Anne Arundel County, Maryland Government Employee Relations Manual, Number K-01, Non-Discrimination and Non-Harassment in Employment, Revised May 2019.

Arundel County Government has ultimate regulatory authority over the Anne Arundel Police Department.

- Annapolis Police Department: General Order G.1., Investigation of Complaints Against Personnel, Issue Date: April 2015,<sup>29</sup> mandates under its policy as follows: **Policy**: “It shall be the policy of the Annapolis Police Department to investigate all complaints against the agency or its employees thoroughly, fairly, and promptly.” **Section I., Subsection C.**: “The Internal Affairs Section (IAS) will investigate all alleged or suspected violations of criminal statutes, false statement, integrity, excessive force, domestic violence, harassment, abusive language towards citizens, police involved shootings, serious misconduct, and cases assigned by the Chief of Police or designee.”
- Howard County Department of Police (HCPD), General Order ADM-02, Internal Investigations, Effective November 17, 2017<sup>30</sup>, mandates under its policy as follows: **Section V. Receiving Inquiries and Complaints**: “The HCPD shall investigate all complaints against the agency or its employees, to include anonymous complaints.” **Section V., Subsection A. 2.** “IAD will investigate complaints of corruption, brutality, breach of civil rights<sup>31</sup>, the outcome of criminal investigations, workplace harassment, workplace violence, or other violations of a serious nature. IAD (Internal Affairs Division) will be responsible for conducting internal investigations regarding workplace harassment or violence and for ensuring compliance with LEOBR and the County Employee Manual.”
- Frederick County Sheriff’s Office: Harassment Policy, Section 26.1.10, dated 01/08/2020<sup>32</sup> mandates under its policy as follows: **Section I.**: “Complaints will be investigated fairly and impartially to determine whether the allegations are founded. Confidentiality shall be maintained to the extent possible.”
- Harford County Sheriff’s Office Personnel Policy, Sexual Harassment/Workplace Harassment/Discrimination, issued: 7/19/2019, Index PER 0301<sup>33</sup>, mandates under its

<sup>29</sup> Annapolis Police Department: General Order G.1., Investigation of Complaints Against Personnel, Issue Date: April 2015.

<sup>30</sup> Howard County Department of Police, General Order ADM-02, Internal Investigations, Effective November 17, 2017.

<sup>31</sup> Federal law prohibiting discrimination/harassment in the workplace is Title VII of the Civil Rights Act of 1964.

<sup>32</sup> Frederick County Sheriff’s Office: Harassment Policy, Section 26.1.10, dated 01/08/2020.

<sup>33</sup> Harford County Sheriff’s Office Personnel Policy, Sexual Harassment/Workplace Harassment/Discrimination, Issued: 7/19/2019, Index PER 0301.

policy as follows: **Section 6. Office of Professional Responsibility (OPS):** 1. “Fully investigate all cases of alleged complaints of harassment and/or discrimination; 2. Ensure the investigation is given immediate attention; 3. Respond with sensitivity to the feelings and needs of the victim; and; 4. Keep in personal contact with the victim to alleviate fear and to assure that everything possible is being done to resolve the complaint.”

- Arlington County Police Department, Department Directive Manual, Chapter: 5, Procedures, Section 511.04 Harassment, Revised January 2017<sup>34</sup>, mandates under their policy as follows: **Section III. Procedures, Subsection C. 3.** “All complaints of harassment shall be investigated by the Office of Professional Responsibility or, at the direction of the Chief of Police, another supervisor. The alleged harasser should not have supervisory authority over the individual conducting the investigation. The County’s Human Resources EEO Office will be notified on all harassment complaints. The EEO Office and the Police Department shall determine if a joint investigation will be conducted.”
- Fairfax County Sheriff’s Office, Standard Operating Procedure, SOP Number: 017, Subject: Harassment in the Workplace, Date Approved: 01/01/2000, Revised July 2006, June 2017<sup>35</sup>, mandates under their policy as follows: **Policy:** “The Sheriff’s Office considers harassment and discrimination to be serious employee misconduct. Therefore, the Sheriff’s Office will take direct and immediate action to prevent such behavior, and to investigate all reported instances of harassment and discrimination and to remedy founded complaints.”

4. *Criticism of PGPD Investigative Practices by CCOP:* Consistent with its failure to follow best practices, the CCOP has been critical of the Department’s investigative and disciplinary functions. In his discussion of the CCOP process, citing statistics from the 2018 and 2019 CCOP Annual Reports, Mr. Manger concludes that the CCOP process “indicat[es] that IAD performs quality investigations. . . .”<sup>36</sup> Mr. Manger is wrong. The CCOP reports since

<sup>34</sup> Arlington County Police Department, Department Directive Manual, Chapter: 5, Procedures, Section 511.04 Harassment, Revised January 2017.

<sup>35</sup> Fairfax County Sheriff’s Office, Standard Operating Procedure, SOP Number: 017, Subject: Harassment in the Workplace, Date Approved: 01/01/2000, revised July 2006, June 2017.

<sup>36</sup> Manger Report Paragraphs 75 – 78.

2013 reflect a troubling trend that the Department's internal investigations over these years were not complete or thorough, were missing evidence or other items, and were untimely, causing the disciplinary process to be negatively impacted.

The cases identified in Mr. Graham's report cover Calendar Years 2014 through 2019. I researched the CCOP Annual Reports for this time period and noted that the CCOP also identified deficiencies in the PGPD's IAD investigative processes. The annual findings of the CCOP are further documentary evidence of the inadequate internal investigation process employed by the PGPD. The following is a summary of findings from the CCOP:

- **2014 CCOP Annual Report:** "In earlier annual reports the CCOP noted that, in some cases, investigators failed to fully investigate or address all the charges applicable to a complaint. The CCOP continues to note an improvement in the quality of the questioning and investigation into the allegations outlined in the original complaints as well as additional allegations that may emerge during the course of the investigation. However, in FY14, the panel reviewed several investigations where quality was an issue and this concern bears repeating. It is imperative that as the Department brings on new investigators, they are fully cognizant of the need to conduct thorough, complete, and unbiased investigations."<sup>37</sup>
- **2015 CCOP Annual Report:** "The Panel has noted several improvements in the scope and quality of IAD investigations that the Panel believes is, in part, due to its diligence and insistence on impartiality and thoroughness. Investigations were more thorough and broader in scope and investigators were more diligent in delineating and fully charging officers. While there was improvement in these areas, the Panel continued to receive investigations it deemed incomplete or missing evidence. In these instances, the Panel either remanded the investigations back to IAD to correct the deficiencies or recommended that allegations be added to the list of charges."  
"[T]he CCOP still notes concerns regarding some investigators, who are not fully investigating or addressing all the charges applicable to a complaint. Specifically, the Panel reiterates that some investigators do not take into consideration: (a) All allegations outlined in the original written complaint; (b) Additional allegations made by the

<sup>37</sup> Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2014 Annual Report.

complainant or witness(es) during taped or written statements; and (c) Additional charges or allegations made during a 911 call or other requests for assistance.”

“[T]he yearly number of investigations reviewed by the CCOP has decreased by 57.8% since 2006. Although there have been several upticks, this overall downward trend has been consistent. Factors to consider are:

(1) The Field Case (FC) classification of investigations, which included complaints sent directly to district commanders for investigation, has been eliminated. The Department instituted a process to more efficiently route these complaints directly to IAD for investigations. However, this did not result in a corresponding increase in the number of investigations routed to the remaining SI or IA classifications.

(2) The Department established a process to triage complaints. Some of the triaged complaints were deemed not to be related to misconduct and were processed without IAD investigations; and

(3) This resulted in an overall decline in the number of full complaint investigations completed by IAD.”<sup>38</sup>

- **2016-2017 Annual Report**: Because of “problems related to data extraction, the CCOP reluctantly had to adjust the publication of the annual report . . . the CCOP notes that during the second half of 2017, some investigations have continued to reach the Panel with little time for a thorough review by members or even after the appropriate deadline established by the Law Enforcement Officers Bill of Rights (LEOBR) has passed.”<sup>39</sup>
- **2018 Annual Report**: “[In] 2018, the Panel observed a small, but notable group of officers with a pattern of increasing concerning behavior -- both on duty and off duty. If left unchecked, this pattern could possibly develop into incidents with highly consequently impacts on others outside the Department. For example, in a short period of time, one officer was involved in incidents of insubordination, confrontations with other officers and reckless driving with his personal vehicle. Another officer, in a similarly short period of time, was involved in increasingly volatile incidents related to a custody dispute that required the involvement of outside law enforcement agencies. The

<sup>38</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2015 Annual Report.

<sup>39</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2016-2017 Combined Annual Report.

Panel would like to know what policies and procedures are in place for officers who demonstrate such behavior. If not already established, the Panel recommends that the Department establish or enhance its early warning system to include such conduct.” “[T]he CCOP noted that in 2018 there was a continuation of a trend that began in the second half of 2017, where numerous investigations continued to reach the Panel with little time left for a thorough review by members or even after the appropriate deadline established by the Law Enforcement Officers Bill of Rights (LEOBR) has passed. In several cases, the investigations had to be closed administratively because the LEOBR deadlines had passed. While not intentional, this effectively results in the circumvention of the Panel’s oversight authority. . . . The Panel worked with the Department to establish an enhanced marking and monitoring process to keep the deadlines of both the 30-day review period established for the Panel as well as the one-year deadline established by LEOBR in the forefront of the review process. Nonetheless, several cases continued to arrive to the Panel either passed the LEOBR deadline or with little real time left to appropriately review them and allow the Department to complete its disciplinary process. The Panel recommends that the Department develop enhanced internal processes and report to the Panel what it expects to do to reduce the number of late submissions.”<sup>40</sup>

- **2019 Annual Report:** “The CCOP noted several issues and concerns during its review of investigations during this reporting period. Upon completion of its reviews, the CCOP immediately relays its issues and concerns to the Chief of Police in recommendation letters for each case reviewed. For those that the Panel deem to be urgent, the Panel will discuss them in ad hoc meetings with the Chief and/or his executive staff. Some of these issues may have appeared in prior years. However, the fact that they are repeated in its report is not an indication that they are not being addressed. Their inclusion indicates that the issue of concern is still pending and will continue to be included until resolution.”  
“**Investigative File Missing Evidence:** The CCOP reviewed a number of files it had to return because of missing evidence and/or other items. This was noteworthy as it had a direct impact on the number of reviews the Panel completed, as compared to previous periods. The files were returned to the Department with a request that the missing evidence be provided to the CCOP forthwith and under the normal referral process.”

<sup>40</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2018 Annual Report.

**“Patterns of Increasingly Concerning Behavior By Specific Officers:** [I]n 2019 the Panel observed a small, but notable group of officers with a pattern of increasing concerning behavior -- both on duty and off duty. If left unchecked, this pattern could possibly develop into incidents with highly consequently impacts on others outside the Department. For example, in a short period of time, one officer was involved in incidents of insubordination, confrontations with other officers and reckless driving with his personal vehicle, failing to secure a firearm, and using a firearm while under the influence. Another officer, in a similarly short period of time, was involved in increasingly volatile incidents related to a custody dispute that required the involvement of outside law enforcement agencies. The Panel would like to know what policies and procedures are in place for officers who demonstrate such behavior. If not already established, the Panel recommends that the Department establish or enhance its early warning system to include such conduct.”<sup>41</sup>

This is hardly the clean bill of health Mr. Manger suggests and does not indicate that PGPD follows investigative best practices. To the contrary, CCOP repeatedly noted continuing problems with the quality and completeness of the reports reviewed. I found two aspects of the CCOP findings to be of particular concern.

First, the CCOP has noted significant deficiencies in the Department’s ability to address officers “with a pattern of increasingly concerning behavior.”<sup>42</sup> Mr. Graham identified some of these officers in his initial report, as well as the failure of Internal Affairs to address officers who are frequent subjects of investigation.

Second, in 2015, the Department began assigning complaints designated as Field Cases (FC) for IA or SI investigations and determined which cases, in its opinion, did not rise to misconduct requiring an IAD investigation.<sup>43</sup> It appears this triage procedure has contributed to improperly processing complaints of discrimination, harassment, and retaliation that were not assigned a case tracking number, assigned for investigation by IAD, and were not reported to the CCOP.

<sup>41</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2019 Annual Report.

<sup>42</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2018 & 2019 Annual Report.

<sup>43</sup> Prince George’s County, Maryland, Citizen Complaint Oversight Panel, 2015 Annual Report.

5. Additional Deficiencies in PGPD's Policies: In addition to the issues I discussed regarding complaint initiation and investigations, PGPD fails to follow best practices in the following areas:

- Maintaining Confidentiality of Complainants: Complaints alleging discrimination and/or harassment are confidential and should not be disclosed to the respondent (subject) or anyone else not authorized to receive the complaint. The only reference in this policy to confidentiality is under General Order Chapter 12, **Section 3. Complaint Procedures** where it states, "To initiate the resolution of a complaint, the employee shall complete Part I of the Equal Employment Opportunity Complaint Form, which is available at all Districts/Divisions. The employee shall either mail the form (marked confidential) or take it directly to the Deputy Chief, BOAHS." The Discrimination & Sexual Harassment and Complaints policies do not then require the confidentiality of all discrimination and harassment complaints to employees only on a need-to-know basis to include their Department records and/or case files. The importance of maintaining confidentiality and not notifying the subject of the allegation until the assigned IAD investigator has determined that it is appropriate, is self-evident, and helps protect the integrity of the investigation. These policies do not include any language that prohibits any employee receiving or having knowledge of a complaint being prohibited from discussing or disclosing the complaint with the respondent (subject). Violating the complainant and complaints confidentiality can obstruct the discovery of information, impede the IAD investigation, and prevent the successful resolution of discrimination and/or harassment allegations. The IACP Model policy recommends the complaining party's confidentiality shall be maintained throughout the investigative process.
- No clear policy statement exists banning Discrimination and/or Harassment in General Order Volume I, Chapter 12. Under the "Policy" provisions, all that is listed are what positions serve as the Department's Equal Employment Opportunity Coordinator and the Assistant Coordinator, which is not a policy statement. In effect, there is no clear policy statement articulated regarding

discrimination and/or harassment in this General Order. The Chapter 4 Complaints policy refers to the investigation of public complaints and to inform the public about its complaint-filing procedures. The Complaints General Order is silent and does not have a policy statement banning discrimination and/or harassment in the Department and that all complaints alleging discrimination and/or harassment shall be investigated. The IACP Model Policy and best practices recommend a clear policy that prohibits acts that threaten, intimidate, harass, demean, or torment fellow employees, and considers unprofessional conduct, harassment, discrimination, bullying, and retaliation of others to be serious employee misconduct. The policy should include language that any of the prohibited conduct that comes to the attention of a supervisor shall result in an investigation. Strong, clear policies on these issues will assist the PGPD in discouraging this conduct institutionally. The PGPD's Discrimination and Sexual Harassment and Complaints policies are clearly inadequate.

- No Specification of Protected Individuals: General Order Volume I, Chapter 12 does not provide general information about the protected classes. The policy contains some information about persons or groups under the definition of "Arbitrary Discrimination" but is deficient by not including gender identity and pregnancy. The policy only mentions that Supervisors, Commander and Managers are tasked with the responsibility of ensuring their workplace is free from discrimination and sexual harassment, however, there is no guidance as detailed in the IACP Model Policy on prohibited activities and supervisors' responsibilities. The IACP Model Policy also prohibits supervisors from making any employment decision that affects the employee's terms and conditions of employment based on the person's protected class status. Chapter 4 Complaints policy is also silent on the specification of protected classes. The Complaints policy contains a definition of biased-based profiling that included references to race, ethnicity, age, etc. but not that they are protected classes and are specified separately in the policy.
- Other Deficiencies in the PGPD Policy: General Order, Volume I, Chapter 12 does not include protocols for addressing Third-Party Harassment that extends to

independent contractors and vendors. The policy is also silent as to online harassment; cyberbullying, use of blogs, social networking sites, or other internet communication devices to harass another employee to include the employees use of internet or social networking sites outside the workplace.

- Failure to Protect Complainants: General Order, Volume I, Chapter 4, Section 9 Provides that retaliatory actions against complainants and witnesses will not be tolerated. However, the policy does not define what retaliatory conduct is. General Order, Volume I, Chapter 12, Section 4 provides that there shall be no retaliation against any employee or citizen for filing a discrimination or harassment complaint or for assisting, testifying, or participating in an inquiry or investigation of such complaint. These policies are inadequate and do not provide a clear definition for Retaliatory Conduct as recommended in the IACP Model Policy.<sup>44</sup> These PGPD policies do not account for transfers and reassignments that can affect the terms and conditions of an individual's employment. These actions should be carefully evaluated to ensure decisions made during the complaint and investigatory process were not motivated by retaliation. Any evidence of retaliation should be considered a separate violation of policy, investigated, and resolved using the Department's disciplinary process.
- No Consequences Exist for Violating Aspects of Department Policy. In reviewing General Orders, Volume I, Chapter 4. Complaints, Chapter 11. Discipline, Chapter 12. Discrimination and Sexual Harassment, and Chapter 32. Protocol (Which is essentially a police Code of Conduct.), there is no codified prohibition or penalty indicated for violating confidentiality, non-contact provisions/orders<sup>45</sup>, and retaliatory conduct. The Discipline policy has sanctions for abusive language, harassment, and discriminatory language but does not list a violation

<sup>44</sup>IACP Policy Center documents on Retaliatory Conduct available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

<sup>45</sup> Based on my experience, once an employee was notified he or she was the subject (respondent in PGPD policy) of a harassment or discrimination complaint their Commander/Supervisor would issue an order in writing ordering them to have no contact with the complainant during the investigation. If the subject violated the provisions of this written order, he or she would be held accountable for failing to obey a lawful order and disciplined for insubordination which could result in termination from employment.

for violating the confidentiality of a complaint, non-contact provisions/orders, and retaliation as offenses and categorizes them where appropriate in this regulation.

**B. PGPD Does Not Follow Its Policies on Discrimination, Harassment, and Retaliation Complaints.**

The PGPD does not follow its own policies in investigating excessive force, abusive language, discrimination and/or harassment, or retaliation. In particular, the PGPD does not follow their own policies or the County Code regarding discrimination and/or harassment, and retaliation allegations, which require these complaints to be investigated by IAD.

The PGPD's failure to take meaningful action to address discrimination and/or harassment, and retaliation complaints with a complete, thorough, unbiased investigation, and taking prompt disciplinary action where appropriate does not eliminate the hostile or intimidating work environment as required for employees. Additionally, this failure can lead to acts of retaliation that can go unaddressed and will have a chilling effect on victims and/or complainants from bringing discrimination and/or harassment, and retaliation complaints to the Department's attention. Workplace discrimination and/or harassment can have a serious debilitating psychological effect (mental and emotional) on the victim or complainant. Productivity is disrupted while the victim or complainant deals with anxiety, stress, pain, anger, humiliation, and resentment caused by the hostile work environment.

In some cases, the Department's failure to appropriately address discrimination and/or harassment complaints will contribute to negative employee performance issues. The causal link between the two are occasionally overlooked. Supervisor reports of poor employee performance issues may be a direct result of discrimination and/or harassment issues in the workplace that are not adequately investigated and addressed, and as a consequence, employees can face further retaliation by way of the agency's disciplinary process for actions being taken against them that they have no control over for poor performance in a hostile work environment.

I have reviewed various discrimination and/or harassment, and retaliation complaints described in Mr. Graham's report. I concur that the allegations of discrimination, harassment, or retaliation summarized in the following paragraphs were not investigated as mandated by the Prince George's County Code or the General Orders Complaints policy. Because these complaints were not investigated, they were not forwarded to the CCOP. This prevented the

CCOP from providing feedback to the PGPD on the completeness, thoroughness, impartiality, and that the investigative report recommendations are reasonable and appropriate. This failure of process negated important checks and oversight to address these Department issues.

The handling of these complaints also does not comport with the Model Policies and Best Practices in policing as recommended by the IACP and CALEA. The failure to investigate these complaints and ascertain the depth and breadth of the discrimination and/or harassment, and retaliation in the workplace, the Department failed to take immediate corrective action and to prevent retaliatory conduct toward the complainants. I find the following points to be of particular concern:

- In paragraph 61 of Mr. Graham's report, he notes the Defendants in responses to discovery requests identified approximately 57 matters where a PGPD officer or employee filed a formal charge with the EEOC. There is no record in the documentation provided by IAD or Field Command of any investigation in 49 of these complaints.
- Chief Stawinski and other witnesses have testified that the PGPD's unwritten policy regarding complaints of discrimination that are discovered to be associated with an EEO charge, they will not be investigated by the Department.

PGPD leadership failed in numerous cases to take immediate corrective action, such as removing or separating parties, addressing complaints alleging retaliation, and investigating and disciplining where appropriate. The following cases were identified specifically in Mr. Graham's Report and were largely unaddressed in Mr. Manger's report.

- Graham Paragraph 64. This policy violation and relegation of serious allegations of racist conduct to the field for investigation is consistent with what I have observed in the record. For example, the record indicates that in May 2017, IAD Commander Kathleen Mills was presented with two separate allegations of racial harassment by Sergeant Darrin Rush made by officers under his direct supervision, Police Officer Latashia Pinckney and Corporal Terrence Brown. These allegations followed several other allegations against Sgt. Rush for engaging in discriminatory behavior (one of which involved Rush's sending of a video with racist slurs to other officers under his

supervision was sustained). Both complainants sent emails to IAD Commander Mills indicating they were confidential. On May 16, 2017, in a breach of Policy regarding Internal Complaints and confidentiality, Commander Mills assigned the complaints back to the field, to their District Commander to be addressed. Upon receiving the complaints, the District Commander made a disparaging remark reflecting that the complaints would not be reviewed in an objective manner. Consistent with this, there is no evidence these matters were investigated – no case opening numbers were requested or assigned, neither the complainants, nor Rush, nor other witnesses identified by the complainants were interviewed, and there was no inquiry into other harassing conduct by Sgt. Rush. Rather, both complainants were transferred outside of Sergeant Rush’s command.

The treatment of these complaints of harassment was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. These matters should have been investigated – they were not. The investigation should have been investigated by IAD – it was not – and upon receiving information from the Field Commander that the complaints would not be evaluated “in an objective manner,” the Internal Affairs Commander should have pulled the investigations back to Internal Affairs. The complainants should have been protected from retaliation – instead they were transferred shortly after they made the complaints. I agree with Mr. Graham, this incident is evidence and a pattern of the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 66(a). During a recruiting meeting in December 2016 to discuss new applicants, Major Misty Mints made a derogatory comment about Nigerian-Americans. Although Lieutenant Thomas Boone complained to several senior members of the Department, there is no indication this matter was investigated, or Major Mints was disciplined. As noted below in Paragraph, following the lodging of his complaint, Lt. Boone was transferred.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter

should have been investigated – it was not. The complainants should have been protected from retaliation – instead, he was transferred shortly after they made the complaints. I agree with Mr. Graham, this incident is evidence and a pattern of the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 66(c). During a community K-9 demonstration to a group of students, a white corporal (Corp. S-4) said “if a black bad guy is running and he drops a cell phone or he drops this piece of leather that may have evidence or DNA on it, or he fired a gun and it may have that shell there.” There were multiple civilian complaints about this incident. At her deposition, Major Mills confirmed that Internal Affairs did not investigate that incident.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated – it was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 66(d). In June 2015, a white officer posted, in the Homicide Unit of the Criminal Investigation Division, derogatory images of Major Cesar Pacheco, a senior Hispanic officer in the Department, including images where he was given “googly” eyes and another where he was depicted as a voodoo doll, and accompanied by captions making light of his ethnicity (“I want to wish everyone Cinco de Mayo”). The Department was made aware of the images on June 10, 2015. Internal Affairs did not open an investigation into the matter. Rather, Internal Affairs considered the matter closed after the pictures were removed without any further investigation into the matter, and no individual was disciplined for making the derogatory images. In May 2016, a white officer, Sergeant Kerry Jernigan, circulated the images to various members of the Department by email. Although there was a complaint about this matter, Internal Affairs took no further action after learning that Sergeant Jernigan, who had retired, had his

email access revoked; IAD conducted no further investigation, and considered the matter resolved. Major Mills's memo concluded that Sergeant Jernigan's conduct "stemmed from a transfer he deemed as punitive." This is the only basis provided in Major Mills conclusion that Sergeant Jernigan's misconduct "was a personal one and not a racial one."

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated – it was not. Under Department policies, officers who received these emails should have reported the matter – they did not. The officers besides Jernigan who circulated the images should have been investigated – they were not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 66(g). In response to a communication to the Department announcing the establishment of the United Black Police Officers Association in August 2016, numerous senior white officers, including Lt. Finn and Major Crandall Weaver, sent derogatory responses. There is no indication in IAPro that any of these officers were ever investigated.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. The officer who received these emails should have reported the matter – he did not. The officers who sent the emails should have been investigated – they were not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 80. In October 2015, Defendants received an email from the civil rights organization CASA complaining about potential racial profiling of Hispanic youths

in an incident outside their headquarters. The email chain shows that the Chief of Police was notified. Defendants' discovery responses confirm that no investigation into this matter was conducted.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated – it was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 84(b). In July 2016, Chief Stawinski received a complaint forwarded by State Representative Jimmy Tarlau that one of his constituents had complained of bias and harassment where an officer asked whether he was leaving "his house or his girl's house." Notwithstanding the complaint of harassment, emails reflect Chief Stawinski asked the matter to be referred to the District Commander (Major Mills, shortly before she was given command of Internal Affairs). The discovery record reflects that Commander Mills' inquiry was limited to asking the two Lieutenants and six Sergeants whether they knew anything about the incident, and appears to have closed the matter after Lt. Finn (discussed above), whose unit was on duty during the incident, denied knowing anything about the matter. The IAPro data and the IA log indicate no investigation was opened into this matter.

The treatment of this complaint of harassment was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated by IAD – it was not. The investigation conducted by the field commander did not comply with the County Code in that it was not conducted in an "objective manner." I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 84(c). In October 2018, Chief Stawinski received a complaint forwarded by Prince George’s Council member Deni Taveras from one of her constituents, a member of the Hyattsville Race and Equity Task Force, who complained that he was racially profiled and stopped by a white officer while taking photographs for his commercial realty business. Although an email chain reflects Chief Stawinski was informed about the incident, the IAPro data and the IA log indicate no investigation was opened into this matter. Rather, notwithstanding the complaint of racial profiling, the matter was referred to the District Commander, who in turn referred the matter to Lt. Selway. Lt. Selway closed the matter after the white officer (POFC **Ofc. V-1**) denied any misconduct after he was not able to speak with the complainant. In closing the matter, Lt. Selway and the Defendants failed to consider that POFC **Ofc. V-1** had been the subject of two other civilian complaints in the prior four months.

The treatment of this complaint of harassment was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated by IAD – it was not. The investigation conducted by the field commander did not comply with the County Code in that it was not conducted in an “objective manner.” I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 84(d). In May 2015, the Department received a complaint from the Prince George’s County Fire Department EEO Coordinator that a white officer made racist comments to two Black patients who were in an ambulance awaiting transport, accusing them of smoking marijuana and said “don’t act like this is the first time that the police took your picture.” Although this incident was reported to IAD and the EEO Coordinator, there is no indication in IAPro or Defendants’ Discovery response that reflects that the Department conducted any investigation into this matter. The officer who made this comment appears to be Lieutenant **Lt. F-2**.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated – it was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 84(e). In April 2016, Chief Stawinski received a complaint forwarded by Council member Dannielle Glaros from a member of the New Carrollton City Council that a white officer had harassed and threatened him, used abusive language, and left him “more afraid of the County Police Officers than the crime in the community.” Notwithstanding the complaint of harassment, this matter was referred to the District Commander (Major **Maj. H-2**) rather than reporting it to Internal Affairs, where it was closed with no discipline imposed. As discussed elsewhere in this report, less than five months later, the officer who made these statements—Corporal **Corp. M-1**—was criminally convicted for assaulting a homeless woman, and Major **Maj. H-2** was identified as a central figure in trying to intimidate witnesses against **Corp. M-1**.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. This matter should have been investigated by IAD – it was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 84 (h). In November 2017, the Department was notified by the State’s Attorney that Lieutenant **Lt. D-1** was pressuring two minority officers who were prosecution witnesses in the criminal trial of George Merkel. This included repeated efforts by **Lt. D-1** to “pressure” the witnesses, including contacting the witnesses to ask if they “really wanted to go forward with the complaint,” and referring to the two officers as the “rat squad” to other officers. During the investigation, both **Lt. D-1** and Major **Maj. H-2** acknowledged that she had instructed **Lt. D-1** to speak with one of the officers.

Internal Affairs closed this matter finding that the charges against Lt. D-1 were “non-sustained,” but never considered whether he violated anti-retaliation policies or witness intimidation, nor did it investigate Major Maj. H-2 for instructing Lt. D-1 to speak with one of the officers.

The treatment of this complaint was not in accordance with the County Code, the General Orders, or best practices concerning investigation of complaints of harassment. The investigation conducted by the field commander did not comply with the County Code in that it was not conducted in an “objective manner.” I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of discrimination and harassment. This in no way demonstrates “best practices” that Mr. Manger references.

### **C. PGPD Does Not Follow Its Policies on Retaliation Complaints.**

As Mr. Graham notes at paragraph 141, the Department does not appear to enforce its retaliation policies. In his report, Mr. Manger does not discuss PGPD’s lack of enforcement of the retaliation policy.

Under best practices, retaliation complaints should, at a minimum, be treated as similar to discrimination and harassment complaints – they should be investigated, and the investigation should be conducted by the Internal Affairs Division. This is consistent with the County Code. Likewise, retaliation complaints should be reported to the CCOP under the County Code. In its failure to investigate these complaints and ascertain the depth and breadth of the discrimination and/or harassment, and retaliation, in the workplace, the Department failed to take immediate corrective action and to prevent retaliatory conduct toward the complainants.

PGPD’s handling of retaliation complaints does not comport with the Model Policies and Best Practices in policing as recommended by the IACP and CALEA:

- (1) Taking immediate action to prevent retaliatory conduct toward the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment and/or discrimination.<sup>46</sup>
- (2) If a situation requires separation of the parties, care should be taken to avoid action that punishes or appears to punish the complainant.<sup>47</sup>
- (3) Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should not be taken against the wishes of the complaining party.<sup>48</sup>
- (4) When the parties and witnesses are interviewed during the investigation of discrimination and harassment, the investigator should remind these individuals about the prohibition against retaliation.<sup>49</sup>
- (5) Placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.<sup>50</sup>

In his report, Mr. Graham noted several different types of retaliation evident at PGPD, including the institution of retaliatory investigative proceedings against the complainant, creation of a hostile work environment, and transfers. Mr. Manger does not address the Department's failure to conduct retaliation investigations when complainants alleged that retaliatory investigations had been commenced or they were subject to hostile work environment. With respect to transfers, Mr. Manger contends that PGPD's actions were consistent with General Order Volume I, Chapter 31.<sup>51</sup> Mr. Manger misquotes the relevant provision, which states: "The Chief of Police reserves the right to transfer, permanently or temporarily, any employee, and may staff any unit based on operational necessity." Mr. Manger then opines, without citing any record evidence or relevant literature that "operational necessity includes separating

<sup>46</sup> IACP National Law Enforcement Policy Center, Harassment and Discrimination, Model Policies, Originally Published June 1990, Revised January 2002, and Updated May 2019.

<sup>47</sup> IACP National Law Enforcement Policy Center, Harassment and Discrimination, Model Policies, Originally Published June 1990, Revised January 2002, and Updated May 2019.

<sup>48</sup> IACP National Law Enforcement Policy Center, Harassment and Discrimination, Model Policies, Originally Published June 1990, Revised January 2002, and Updated May 2019.

<sup>49</sup> EEOC, Enforcement Guidance: Vicarious Liability for Unlawful harassment by Supervisors, issued June 18, 1999, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>.

<sup>50</sup> EEOC, Enforcement Guidance: Vicarious Liability for Unlawful harassment by Supervisors, issued June 18, 1999, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>.

<sup>51</sup> Manger Report Paragraph 39.

complainants and alleged offenders when appropriate.” Mr. Manger does not mention or address that the Chief’s ability to “direct the transfer of any Department Employee” is only to the extent “such direction is otherwise limited in accordance with law,”<sup>52</sup> which would include anti-retaliation laws.

In my opinion, Mr. Manger misconstrues the cited policy and is contrary to best practices. Chapter 31 deals specifically with employees having equal opportunities to expand their careers and is silent on transfer or reassignment due to a discrimination and/or harassment, and retaliation complaints. Chapter 31 says nothing about transfers or reassignment of complainants following complaints for harassment, discrimination, and retaliation nor does it suggest that transfers or reassignments may be made if such transfers or reassignments are not in accordance with law.

Mr. Manger similarly argues that transfers of complainants are appropriate under the Department’s Discrimination and Sexual Harassment policy, which, states that Commanders and Managers are to ensure their commands are free from harassment and discrimination.<sup>53</sup> There is nothing in this policy that suggests that transfers of complainants following complaints for harassment or discrimination are appropriate, nor does it suggest that transfers may be made if such transfers are not in accordance with law or prohibit employment decisions that affect the terms and conditions of the individual’s employment.

Mr. Manger’s assertion that Department policies permit transfers of complainants who have complained about discrimination and harassment confirms my opinion that PGPD’s policies are not adequate. The fact that the policies on (1) Complaints, (2) Discrimination and Sexual Harassment, and (3) Discipline Policies are silent on the Department’s ability transfer or reassign any of the parties involved in a discrimination, harassment, and retaliation complaint is a flaw, as is the fact that they do not specify that if a party is to be moved, it should not be the complainant. While immediate corrective action may include a transfer or reassignment of personnel to separate the parties to eliminate the hostile work environment while the IAD investigates and an appropriate course of action to resolve the complaint(s) is determined, caution should be used if a transfer or reassignment is used to separate the parties, because a transfer or reassignment can result in a reduction of wages, benefits, job status or promotional opportunities. Accordingly,

<sup>52</sup> General Order, Volume I, Chapter 29 Section V.

<sup>53</sup> Manger Paragraph 39.

using transfer or reassignment without careful consideration and proper guidance can be viewed as retaliation or an act by the Department that penalized or punished the complainant(s).

I have reviewed various retaliation complaints described in Mr. Graham's report. I concur that the following allegations of retaliation summarized in the following paragraphs were not investigated as mandated by the Prince George's County Code or the General Orders Complaint policy. Because these complaints were not investigated, they were not forwarded to the CCOP. This prevented the CCOP from providing feedback to the Department and negated an important checks and oversight to address these PGPD issues.

The handling of these complaints also does not comport with the Model Policies and Best Practices in policing as recommended by the IACP and CALEA. I find the following points discussed in Mr. Graham's report, which Mr. Manger does not address, to be of particular concern:

- Graham Paragraph 143(a). **Danita Ingram:** While Cpl. Ingram (a Black officer) was sitting (undercover) in a courtroom, she was confronted by a white officer, POFC Michael Rushlow.<sup>389</sup> POFC Rushlow demanded that she surrender her seat to him and proceeded to verbally harass and disparage her. Cpl. Ingram reported the incident to the court liaison and filed an internal written complaint against POFC Rushlow, in which she accused him of discrimination and racial bias. Several officer witnesses corroborated Cpl. Ingram's account of events. When POFC Rushlow learned about Cpl. Ingram's complaint, he filed a counter-complaint against Cpl. Ingram concerning the same incident. During his investigation interview, POFC Rushlow stated that he filed a complaint against Cpl. Ingram only (i) after he was informed by his superior (11 days after the incident) that she had filed a complaint against him, and (ii) in response to her filing a complaint. Nonetheless, IAD did not charge POFC Rushlow for violating the Department's anti-retaliation provisions. The IAD investigator concluded that POFC Rushlow should not be charged; in spite of 3 witnesses who confirmed Cpl. Ingram's version of the encounter, IAD Commander Mills overruled this finding and directed that the charge be sustained, and that the unbecoming conduct charge against POFC Rushlow be non-sustained. Instead, Commander Mills directed both officers be given the sustained charge of discourtesy." POFC Rushlow accepted the punishment; Cpl. Ingram took this charge to an administrative hearing and won. In their report to the Chief, the

Administrative Hearing Board not only found Cpl. Ingram “Not Guilty” but detailed numerous conduct violations committed by POFC Rushlow that were not charged, noting that Cpl. Ingram had tried to end his abuse at several points in the confrontation. Still, during the pendency of the case, which lasted over a year, Cpl. Ingram was ineligible for a promotion.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. POFC Rushlow should have been investigated for retaliation—he was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of retaliation. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 143(b). **Captain Capt. G-1**: Capt. **Capt. G-1** (a Hispanic officer) filed a complaint against Lieutenant **Lt. R-2** following the Department’s Toys for Tots program, during which Lt. **Lt. R-2** instigated a public argument with Capt. **Capt. G-1** (unbecoming conduct) and called her a bitch (use of language). Police department witnesses corroborated the allegation forming the basis of the first charge, and one civilian witness confirmed the Use of Language allegation. Several civilian witnesses also filed complaints against Lt. **Lt. R-2** stemming out of this incident. After Capt. **Capt. G-1** filed the complaint, Lt. **Lt. R-2** subsequently filed one against Capt. **Capt. G-1**. IAD concluded that the allegations as to Lt. **Lt. R-2** were unfounded (unbecoming conduct) and non-sustained (use of language), despite the ample corroboration of Capt. **Capt. G-1**’s allegation and the civilian complaints. IAD also concluded that Lt. **Lt. R-2**’s unbecoming conduct allegation against Capt. **Capt. G-1** was unfounded. IAD does not appear to have investigated Lt. **Lt. R-2** for retaliation, notwithstanding his admission that he filed the complaint against Capt. **Capt. G-1** because she had filed a complaint against him.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Lt. **Lt. R-2** should have been investigated for retaliation—he was not. I agree with Mr. Graham, this incident is evidence of a pattern and the

Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 143(c). **Officers Ofc. R-2** and **Ofc. A-6** (SI2017-064): As discussed above, Officers **Ofc. R-2** and **Ofc. A-6** reported Corporal George Merkel after he assaulted a homeless woman and cooperated in his criminal prosecution. After they first made the charges, they were subject to a number of hostile and retaliatory acts (*e.g.*, pushing them to drop the charges, insisting on accompanying them to a pat-down so they "don't use too much force," coming to their traffic stops, not concurring that a use of force was consistent with Department policy, calling them the "rat squad") from their Shift Commander, Lieutenant **Lt. D-1** after they refused his efforts to pursue charges against Merkel. **Ofc. R-2** complained that she did not feel safe after **Lt. D-1**'s comments. Although **Lt. D-1**'s conduct prompted a complaint from the State's Attorney, IAD non-sustained all charges against him and he was not disciplined in any way. IAD does not appear to have investigated **Lt. D-1** for retaliation.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Lt. **Lt. D-1** should have been investigated for retaliation—he was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 143(e). **POFC Earl Sharpe**: Four days after POFC Sharpe's cooperation in an investigation during which he reported Sgt. Rush's racist conduct and other racist conduct in the RID/RST division (discussed above, IA2015-092), POFC Sharpe was transferred out of the Investigations Bureau to the Patrol Bureau without explanation. Although the Department has advised the Justice Department that Sharpe was purportedly transferred "after a series of incidents in November and December of 2015 during which he exhibited unprofessional behavior . . . and became belligerent with his co-workers," Defendants have not produced evidence of such conduct; I also note that Defendants attributed the decision to transfer Sharpe to a white Sergeant and Major and

Captain Sunny Mrotek, whose conduct and condonation of discriminatory conduct in RID/RST (discussed above) was the subject of Sharpe's cooperation. Approximately one month after Sharpe's transfer, IAD reopened a stale investigation (started in 2014) into POFC Sharpe relating to a worker's compensation claim. POFC Sharpe was charged with a Category IV offense, and he was told by the investigator that he would be terminated if he did not accept a diminishment of rank.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. The officers who decided to transfer Sharpe (including Captain Mrotek) should have been investigated for retaliation—they were not. I agree with Mr. Graham, this incident is evidence of a pattern the Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 143(h). Lt. [REDACTED]: Lt. [REDACTED], a prominent member of HNLEA, reported Sgt. [REDACTED] and Sgt. [REDACTED] for workplace harassment (including removing a wheel from his office chair and urinating on his keyboard). Lt. [REDACTED] identified these officers as the perpetrators by secretly filming his desk space. Sgt. [REDACTED] retaliated against Lt. [REDACTED] by issuing a complaint against him for filming without permission. IAD does not appear to have investigated Sgt. [REDACTED] for retaliation, despite the fact that Sgt. [REDACTED]'s complaint stemmed directly from Lt. [REDACTED]'s institution of charges against him.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Sergeants [REDACTED] and [REDACTED] should have been investigated for retaliation—they were not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 144(e). **Sergeant Aubrey Thompson**: In January 2015, Sgt. Thompson complained to the EEO Coordinator that Major Zachary O'Lare had

discriminated against him on the basis of race and age, including telling Sgt. Thompson when Major O’Lare was first assigned to the unit he had heard that Sgt. Thompson “never came to work and was lazy” and the unit Sgt. Thompson supervised was “the worst squad in the gang unit,” and subsequently wrote him up; Sgt. Thompson subsequently filed a charge with the EEOC. In June 2015, Sgt. Thompson was told by Assistant Chief Howard that he was being transferred from the Special Investigative Division Gang Unit to the Division of Property Management. After the transfer, the FOP President, Dean Jones, advised Chief Magaw in writing that Thompson’s transfer was retaliatory for filing an EEOC complaint and “Thompson has suffered and continues to suffer monetary damages as well mental anguish from the embarrassment, humiliation, harassment and loss of status.” Dean Jones asked the Chief look into the matter and requested a meeting at the Chief’s “earliest convenience.” There is nothing in the record that indicates the Chief made any inquiries or met with the FOP President regarding this forced transfer.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Major O’Lare should have been investigated for retaliation—he was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department’s failure to appropriately address complaints of retaliation. This in no way demonstrates “best practices” that Mr. Manger references.

- Graham Paragraph 144(h). **Sergeant Sgt. C-1** : Sergeants **Sgt. C-1** and **Sgt. R-3** had an altercation in the office. Sgt. **Sgt. C-1** submitted a complaint (including a request that **Sgt. R-3**, his subordinate, be transferred). Sgt. **Sgt. R-3** met with the unit’s Lieutenant (**Capt. M-1**), called Sgt. **Sgt. C-1** into the meeting, and accused him of being a racist. Sgt. **Sgt. C-1** was subsequently transferred from RID/RST to IAD. Although the Department has advised the Department of Justice that **Sgt. C-1** was purportedly transferred for “poor performance,” the fact that **Sgt. C-1** was transferred to another prestigious investigative like IAD is inconsistent with that explanation. Defendants attribute the transfer decision to Major **Maj. X-1** and Captain **Capt. M-1** ; **Sgt. C-1** provided evidence against **Capt. M-1**, both of whom are discussed elsewhere in this report; **Sgt. C-1** provided evidence of

Capt. M-1's discriminatory acts, as well as Maj. X-1 and Capt. M-1's failure to keep their command free from discrimination. This matter was ultimately investigated as part of IA 2015-092 (discussed above); Sgt. Sgt. C-1's complaint (as well as related complaints against Sgt. Sgt. R-3) were closed administratively and forwarded to the EEOC Coordinator. The EEO Coordinator does not appear to have conducted any subsequent investigation.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Major Maj. X-1 and Captain Capt. M-1 should have been investigated for retaliation—they were not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

- Graham Paragraph 144(i). **Corporal NaRica Hamilton:** Cpl. Hamilton complained about workplace harassment involving Sergeant Gerald Manley; the complaint was never addressed or resolved. Sgt. Manley subsequently issued her a negative performance evaluation. Although Defendants advised the Department of Justice that Hamilton requested a transfer, she failed to disclose that Hamilton was involuntarily transferred from day shift to night shift, which forced her to be reassigned to another squad.

The treatment of this incident was not in accordance with the County Code, the General Orders, or best practices concerning retaliation. Sergeant Manley should have been investigated for retaliation—he was not. I agree with Mr. Graham, this incident is evidence of a pattern and the Department's failure to appropriately address complaints of retaliation. This in no way demonstrates "best practices" that Mr. Manger references.

## II. The PGPD's EEO Training

Mr. Manger discusses the PGPD EEO training without ever addressing whether he thinks it is adequate or that the Department follows best practices.<sup>54</sup> Based on my review of the training materials, as well as Mr. Manger's description of the training program, the Department's

<sup>54</sup> Manger Report Paragraphs 45-50.

EEO training is clearly inadequate to properly process, investigate, and resolve complaints of discrimination, harassment, and retaliation. The PGPD EEO PPT training for Supervisors and Managers is basic. I note the following deficiencies, which Mr. Manger failed to address:

1. The EEO PowerPoint (PPT) training does not comport to the County Code (CB-59-2001) and Department policy (Chapter 4, Complaints) in place to ensure that workplace discrimination, harassment, and retaliation complaints are investigated and resolved through employee discipline. The Department needs to develop, or have developed by a subject matter expert, customized EEO training to address the agency's specific needs.

2. There is no instruction on prohibiting Department Supervisors, Commanders, or Managers from investigating or resolving allegations of discrimination, harassment, and retaliation involving subordinates. This best practice should be included in EEO and annual in-service training to ensure discrimination, harassment, and retaliation is discouraged institutionally.

3. The EEO training is silent on providing supervisors' guidance on what immediate action(s), such as transfers or reassignments, they can take without the appearance of retaliation or penalty. The IACP Model Policy tasks supervisors with the responsibility of taking immediate action to prevent retaliation towards the complaining party where there has been a complaint of discrimination, harassment, or retaliation. "If a situation requires separation of the parties, care should be taken to avoid action that punishes or appears to punish the complainant. Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should be temporary pending the outcome of the investigation."

4. The EEO training is also silent on what steps a Supervisor, Commander, or Manager can take to effectively monitor the workplace to prevent and correct discrimination, harassment, and retaliation in their assigned areas of responsibility.

5. The EEO training does not cover alternate reporting channels or other accessible points of contact for independent witnesses or other employees to go outside the chain of command to report allegations of discrimination, harassment, and retaliation. IACP Model Policies and EEOC, Enforcement Guidance, Vicarious Liability for Unlawful Harassment by

Supervisors<sup>55</sup> provide recommendations for other accessible points of contact for the initial complaint. Best practices and industry standards allow the employee to report discrimination and harassment to **a supervisor** and can bypass their (immediate) supervisor in the chain of command who may be the harasser. The EEO training does not adequately address this reporting issue.

6. The EEO training has no instruction on ensuring the confidentiality of all discrimination, harassment, and retaliation complaints, to include anonymous complaints, to Department employees only on a need-to-know basis. There is no instruction on why violating the complainant and complaints confidentiality can obstruct the discovery of information, impede the internal investigation, and prevent the successful resolution of discrimination, harassment, or retaliation allegations.

7. The EEO training does not cover the importance of not notifying the subject of the allegation because that individual could possibly be the harasser.

8. The EEO training does not include any instruction that forbids any employee receiving or having knowledge of a complaint being prohibited from discussing or disclosing the complaint with the respondent (subject).

9. The EEO training should include language that any of the prohibited conduct that comes to the attention of a supervisor shall result in an investigation. Strong, clear policies and training on these issues will assist the PGPD in discouraging this behavior institutionally. The IACP Model Policy and best practices recommend a clear policy that prohibits acts that threaten, intimidate, harass, demean, or torment fellow employees, and considers unprofessional conduct, harassment, discrimination, bullying, and retaliation of others to be serious employee misconduct.

10. The EEO training does not include instruction for addressing Third-Party Harassment complaints that extends to independent contractors and vendors. The EEO training is also silent on online harassment, i.e., cyberbullying, use of social networking sites, or other

<sup>55</sup> EEOC, Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>.

internet communication devices to harass another employee. It is likewise silent on the employee's use of internet or social networking sites outside the workplace.

11. The EEO training fails to provide a clear definition for Retaliatory Conduct as recommended in the IACP Model Policy.<sup>56</sup> The EEO training does not provide instruction on how to protect complainants from acts of retaliation. There is no instruction in the EEO training outlining the consequences for violating confidentiality, non-contact provisions/orders, and retaliatory conduct.

12. The EEO training does not include the best practice of including the communities it serves in the training. "Law enforcement agencies should engage community members in the training process. Not only can agencies make important contributions to the design and implementation of training that reflects the needs and character of their communities but it is also important for police training to be as transparent as possible."<sup>57</sup> Considering discrimination, harassment, and retaliation issues have been matters of importance to the Department and CCOP for over thirty (30) years this best practice recommendation may assist in helping build trust in the communities the PGPD serves.

In summary, the EEO training does not indicate an ongoing effort by the Department to seriously address discrimination, harassment, and retaliation issues and eliminating this behavior from the workplace. PGPD should consider education in discrimination, harassment, and retaliation issues as an ongoing effort, with additional approaches used periodically to reinforce earlier education (in-service, legal updates, new hires). Education may consist of written materials, formal training, educational videos, orientation sessions, workplace discussions, or individual counseling. The Department should develop and take advantage of partnerships with academic institutions; and organizations such as the International Association of Chiefs of Police (IACP), the Major Cities Chiefs Association (MCCA), the National Organization of Black Law Enforcement Executives (NOBLE), and the Police Executive Research Forum (PERF); and other sources of appropriate training. The need for realistic, adult learning scenario-based decision-making training to better manage interactions and the use of various methods of delivery will reinforce learning.

<sup>57</sup> Final Report on the President's Task Force on 21<sup>st</sup> Century Policing dated May 2015.

### III. PGPD's Recruitment Efforts

In Background Section A, Recruitment, Mr. Manger attempts to address the failure of PGPD to reflect the demographics of Prince George's County. He specifically cites the Maryland Police Training and Standards Commission (Commission), Public Safety and Policing, Maryland House Bill – 1016 Report<sup>58</sup> and how the report describes true diversity (beyond race and gender) and his experience as a Police Chief in two jurisdictions within the region.

Mr. Manger asserts that PGPD's failure to recruit a diverse workforce is attributable to competition with the salary and benefits provided by Federal Law Enforcement Agencies and applicant limitations in regards to the requirement to have a high school diploma and U.S. Citizenship.<sup>59</sup> These are common excuses that I have heard many times in law enforcement—nothing new here. Mr. Manger notably fails to support these opinions with any supporting information, such as how many minority applicants that the Department was trying to recruit were lost to the federal government, or how many prospective minority applicants were screened out of the background investigation process because they lacked sufficient education.

Mr. Manger goes further and states “the reality is that not everyone in the County can meet the minimum standards [high school education and citizenship] to become a police officer in the State of Maryland.”<sup>60</sup> This opinion is an insult to the minority communities in Maryland and especially the large diverse minority communities of Prince George's County. Census data reflects that 86.5% of the population in Prince George's County age 25 or older are high school graduates or higher, and 32.7% of persons age 25 years or older have a Bachelor's degree or higher.<sup>61</sup> There is an ample pool of minority candidates within the County and the State.

Mr. Manger also fails to note that the Commission's report also mentions that common characteristics of weak recruitment processes include systems that were designed to “select out,” rather than “select in,” a candidate. In effect, the process is designed to find a reason not to offer an applicant a job rather than identify reasons to employ. Additionally, the Commission's report recommends the following strategies to increase law enforcement diversity:

<sup>58</sup> Maryland Police Training and Standards Commission, “Public Safety and Policing,” available at [https://www.mdle.net/pdf/Recruitment\\_Document.pdf](https://www.mdle.net/pdf/Recruitment_Document.pdf).

<sup>59</sup> Manger Report Paragraph 16.

<sup>60</sup> Manger Report Paragraph 17.

<sup>61</sup> U.S. Census, County Quick facts, available at

<https://www.census.gov/quickfacts/fact/table/princegeorgescountymaryland/PST045219>.

- Streamline Recruitment and Selection Processes
- Mentor Applicants Through the Process
- Involve Everyone in Recruitment
- Enhance Web Outreach for Minority Applicants
- Enlist the Support of the Media

Mr. Manger's report is silent on whether PGPD employs any of the strategies recommended by the Commission.

Of course, based on my experience, there are many more strategies that can be employed, including but not limited to, recruiting and testing at Historically Black Colleges and Universities such as Bowie State, Coppin State, Morgan State Universities in Maryland, or Howard University and the University of the District of Columbia in Washington, DC, enlisting the support of State and County representatives/advocates, connecting with community groups including the NAACP, Urban League, a robust advertising campaign, Latinx, Asian and African-American organizations in the region or statewide, conducting citizen surveys and other research to assist in recruitment program development.

Mr. Manger does not provide an analysis of PGPD's recruitment strategies or processes and their effectiveness. Based on my experience with recruiting for diversity, I disagree with Mr. Manger's analysis because it is incomplete and misleading. I agree with the Commission's report regarding weak recruitment processes in law enforcement. That has been my experience in the Pennsylvania State Police and with other police agencies. Recruiting for diversity must include an aggressive local approach to building trust with the affected minority communities. As a career police officer and African American, I know firsthand the benefits of this kind of outreach and the support for diversity in law enforcement that can be achieved with minority communities.

#### **IV. PGPD's Use of Force Policy**

Based on federal and state consent decrees, IACP Model Policies, and my experience, a review of the PGPD policy on Use of Force is inadequate and does not comport with best practices in reporting, investigating, and reviewing use of force incidents.

I noted the following deficiencies in the Department's policy in the following areas:

## **1. No Definitions Exist for De-Escalation or De-Escalation Techniques, In-Custody Deaths, and Evidence Standards for Reviews:**

The PGPD Use of Force Policy lacks basic definitions for key concepts in use of force policies. The PGPD Policy should address the following topics:

- **De-Escalation:** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.
- **De-Escalation Techniques:** Techniques used to minimize the need to use force and increase the likelihood of voluntary compliance. These techniques may include, but are not limited to, persuasion, warnings, creating space, use of physical barriers, slowing down the pace of an incident and requesting additional resources.<sup>62</sup>
- **In Custody Deaths:** The death of an individual while in custody or while attempts to effect custody are being made.<sup>63</sup>
- **Preponderance of the Evidence:** No definition exists in policy on the proper application of this evidence standard during administrative processes or reviews.

## **2. Supervisor Responsibilities On-Scene Guidance does not Comport to Best Practices<sup>64</sup>:**

The PGPD Use of Force Policy does not address key concepts regarding the supervisor's responsibilities in a use of force review. Those responsibilities should include the following best practices:

- The Use of Force Review must be completed by a permanent-rank supervisor who is not an involved officer in the use of force, and who is the same rank or greater than the highest-ranking involved officer.
- In the instance that a supervisor uses, directs, or is otherwise involved, a higher-ranking

<sup>62</sup> Baltimore Police Department, De-Escalation Policy 1107, November 24, 2019.

<sup>63</sup> IACP Model Policy, Officer Involved Shootings, In-Custody Deaths, and Serious Uses of Force, May 2012.

<sup>64</sup> Baltimore Police Department, Use of Force Reporting, Review and Assessment, November 24, 2019.

supervisor who was not involved in the incident will complete the Use of Force Review.

- Separate all involved officers in a use of force incident and keep apart until they have completed their reports and been interviewed.
- Instruct the officer who uses force to complete a use of force report. Officers who witness the use of force should complete separate reports.
- Conduct and document a neighborhood canvass for relevant witnesses and, whenever practical, recorded statements from persons or witnesses.
- Attempt to locate CCTV or privately owned surveillance cameras that may have recorded all or part of the incident. If located, such videos must be recovered and included in the Use of Force Review.
- Group interviews of officers and any discussion between officers regarding a Use of Force prior to submitting statements should be **prohibited**.
- Involved officers shall not be asked leading questions that suggest legal justification for the officer's conduct.
- Avoid conclusory statements, boilerplate, or canned language including, but not limited to, "furtive movement" or "fighting stance" without supporting incident-specific detail in use of force reporting.
- Investigate any incident in which an officer intervenes in another officer's Use of Force (Duty to Intervene - Police officers have a duty to intercede when their fellow officers violate the constitutional rights of a citizen.).
- Assess the availability of non-force options, including tactical repositioning, going to cover or other de-escalation techniques; environmental factors; availability of back up and specialized units.
- Photograph any departmental or private property damaged because of a Department officer's involvement.
- Evaluate in writing all Uses of Force for compliance with policy, as well as any other relevant concerns including, but not limited to, continuous assessment, tactics, or training. Provide timely, constructive feedback, where appropriate.

- Deliberate material omissions, false statements, or inaccuracies made with the intent to mislead will result in discipline for failure to report, up to and including termination.
- Document the content of any CCTV videos. A copy of any videos should be obtained and attached to the IAPro Blue Team use of force entry.
- Address any discrepancy, confusion, or lack of information with supplementary statements from officers, witnesses, or persons prior to completing a IAPro Blue Team entry. Document in IAPro Blue Team any issue that cannot be resolved.

### **3. Notification to the State’s Attorney**

The PGPD Use of Force Policy is silent on notification to the Prince George’s County States’ Attorney’s Office immediately, or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.

### **4. Use of Conducted Electrical Weapons (CEW)**

The PGPD Use of Force Policy does not have sufficient protocols around use of electrical weapons, such as Tasers. PGPD’s Chapter 58, Weapons policy states, “The CEW shall be deployed the least number of times reasonably necessary to gain control.” No protocol exists for limiting the amount and time of CEW applications (cycles) in a single encounter, regardless of the mode (probe or stun modes) of the application, and regardless of whether the applications are by the same or different officers. There should also be a warning in the Department’s Use of Force policy that the use of a CEW in a flammable or explosive environment poses serious risk of injury to officers, the subject, and the public.

### **5. Use of OC Spray**

The PGPD Use of Force Policy, Section 5, states, If OC is discharged at a restrained individual, the Supervisor shall notify the Special Investigation Response Team (SIRT). SIRT will determine investigative responsibility for these incidents and will inform the Supervisor of such.” But the Policy contains no prohibition exists in using OC spray on a handcuffed person, unless there is an imminent threat of injury to the officer, third party, or the subject. Chapter 58, Weapons states, “OC spray may be used on a restrained subject only when absent the use of OC

spray, the subject is likely to suffer injury or the subject may escape.” This guidance is normally included in a police department’s Use of Force policy; however, this guidance still does not comport with best practices in law enforcement.

#### **6. Discharging Firearms from and at Moving Vehicles**

The PGPD Use of Force Policy articulates it is the policy of the Department not to shoot (Under the Lethal Force Section) at occupants of a vehicle and noted there will be rare times when shooting at a vehicle may be justified. But the policy is silent on officers shooting at a moving vehicle or from moving vehicles and the dangers associated with these events, unless they are necessary to defend the officer or other person against the imminent or immediate threat of death or serious bodily injury.

#### **7. Vehicular Pursuits Resulting in Death or Serious Bodily Injury**

The PGPD Use of Force Policy lacks a provision about police pursuits that result in death or serious bodily injury. Based upon my experience, there is high risk for the Department in police pursuits and these incidents should be included in the use of force policy, thoroughly investigated, and reviewed.

#### **8. Use of Force Against Persons in Handcuffs and Using Firearm as an Impact Weapon**

The PGPD Use of Force Policy contains no prohibition on the use of force on a person in handcuffs to include the use of OC spray, except to prevent imminent bodily injury to the officer or another person. Officers should never use a firearm as an impact weapon to pistol whip a subject or use the firearm as a club, except in situations where deadly force would be authorized. Additionally, the policy does not prohibit head strikes, except when deadly force is authorized.

#### **9. Pointing a Firearm at a Person**

The PGPD Use of Force Policy, Section 5 states that “A Use of Force Review is not required when: “An officer points a weapon at an individual.” Based on my experience in consent decrees and use of force assessments, officers should document any drawing and intentional pointing of a firearm at another person. The pointing of a firearm at a person may be

found unreasonable and a violation of the Fourth Amendment of the Constitution in the absence of a threat to the officers, or others and should be reported and reviewed by the Department. I have evaluated numerous gun-pointing incidents as an independent monitor and assessor and know firsthand this kind of potentially lethal encounter and/or seizure can have a negative impact on communities of color.

#### **10. Public Safety Statements**

The PGPD Use of Force Policy contains no provision or guidance for a PGPD officer to provide a Public Safety Statement in Officer Involved Shooting incidents. Public Safety Statements collected from the involved officers, covering information necessary to focus on initial police response and direct the preliminary investigation. This information is necessary to ensure officer and public safety and to assist in the apprehension of at-large suspects.<sup>65</sup>

#### **11. Reporting and Body Worn Camera Footage**

The Use of Force Policy does not address whether officers can confer in report writing or review body worn camera footage in drafting reports.

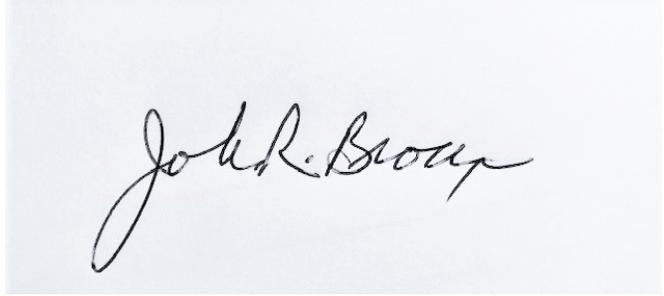
#### **12. Medical Assistance**

The Use of Force Policy does not require officers to provide medical assistance after a use of force.

#### **13. Training**

There is no requirement in the PGPD Use of Force Policy that the supervisor assigned to conduct a Use of Force Review shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.

<sup>65</sup> IACP Model Policy, Officer Involved Shootings, In-Custody Deaths, and Serious Uses of Force, May 2012.

A photograph of a handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and reads "John R. Brown".

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John R. ("Rick") Brown

# **APPENDIX A**

# JOHN R. "RICK" BROWN

## TRANSPARENCY MATTERS, LLC

P.O. Box 6598 ~ Harrisburg, Pennsylvania 17112-0598

Home: (717) 712-2066

[rbrown@transparencymattersllc.com](mailto:rbrown@transparencymattersllc.com)

Mobile: 717-712-2066

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Motivational leader and "hands-on" team contributor that is experienced at managing multiple responsibilities simultaneously in a fast-paced, highly visible environment. Proven communicator that develops trusting relationships with integrity and a commitment to service.

### CAREER ACCOMPLISHMENTS

- Selected to work with the, in the United States District Court for the District of Arizona under the direction of Judge G. Murray Snow. Monitor and technical assistance engagement complete March 2018.
- Selected to work with the Office of the Independent Monitor of the Oakland Police Department in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* in the United States District Court for the Northern District of California under the direction of Judge Thelton E. Henderson.
- Selected to work with the Office of the Independent Monitor of the City of Detroit Police Department in the July 18, 2003 Consent Decree brought by the United States Department of Justice in the United States District Court for the Eastern District of Michigan Southern District under the direction of Judge Julian Abele Cook, Monitor and technical assistance engagement complete August 2014.
- Selected to work with the Office of the Independent Monitor of the Niagara Falls, New York Police Department in the November 30, 2010 Consent Decree brought by the State of New York in the Supreme Court of the State of New York for Niagara County under the direction of Judge Ralph A. Boniello III, monitor and technical assistance engagement complete February 2015.
- Oversee all segments logically related in scope to the investigation, accountability, and policies employed by the Pennsylvania State Police regarding police misconduct, with an emphasis on prevention through training programs at all levels.
- Designated as the department liaison between the Pennsylvania Office of Inspector General, Office of the Governor, Pennsylvania State Police Commissioner, and Kroll, The Risk Consulting Company, during their independent investigation and monitoring of the department's handling of sensitive internal sexual harassment, sexual misconduct, and domestic violence issues. The department complied with the forty recommendations identified by the Office of Inspector General in one year.
- Selected to serve as Member of the Department's contract negotiating team for collective bargaining proceedings in 2004 (Act 111) and in 2008 with the Pennsylvania State Troopers Association (Union). The outcome of the 2004 proceedings resulted in a landmark arbitration decision received by the department and recognized by Pennsylvania Governor Edward G. Rendell in 2004, for reforming and improving member discipline and related processes.
- Collaborate with the Governor's Advisory Commissions on Latino, African American, and Asian Affairs in the development of innovative community based and process strategies to improve and reform the department's hiring processes to recruit qualified minorities and women into enlisted and civilian positions.
- Maintain overall supervisory responsibility for the independent research Police-Citizen Contact Project voluntarily initiated by the Pennsylvania State Police. Utilize applied research to determine if the department engages in racial or biased based profiling during motor vehicle stops. Implement proactive training and operational strategies to monitor and prevent racial profiling.

- Guest Speaker; International Association of Chiefs of Police, Washington (State) Association of Sheriffs and Police Chiefs, American University – Washington, DC, George Mason University, Fairfax, VA, California State University of Pennsylvania, Elizabethtown College – Elizabethtown, Pennsylvania, Pennsylvania Department of Corrections Annual Training Symposium, Office of National Drug Control Policy - Domestic Highway Enforcement Program (DHE) – High Intensity Drug Trafficking Areas (HIDTA) Annual Conference.

## **PROFESSIONAL EXPERIENCE**

TRANSPARENCY MATTERS LLC (TMLLC), Harrisburg, Pennsylvania 2010 – Present  
[www.transparencymattersllc.com](http://www.transparencymattersllc.com), Certified MBE (Third Party - Eastern Minority Supplier Development Council) and Veteran-Owned Small Business (VOSB).

### ***Owner/Independent Consultant***

- Law enforcement consultant focused on building transparent policing policies and process change that provides organizational efficiencies, personnel accountability, diversity, community education, training, and monitoring.
- Subject Matter Expert, Use of Force Review and Analysis, retained by Attorney Charles Bonner, San Francisco, CA in case Maurice Crawley v. Syracuse Police Department, October 2018 – Present.
- Subject Matter Expert, Use of Force Review and Analysis, retained by J. Mark Pecci, II, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., Philadelphia Office, One Penn Center, 1617 John F. Kennedy Boulevard, Suite 1010, Philadelphia, PA in case Ryan Patterson v. Michael Fiocca (Delaware River Port Authority Police) retained March 8, 2018 – October 2018.
- Moderator/Expert/Policing Chairman, American University, Washington, DC, Inaugural; And Justice for All Symposium Series (Criminal Justice Reform), October 2018 – Present.
- Subject Matter Expert and Team Leader, Police Foundation, Homicide Operations Assessment, New Orleans Police Department, New Orleans, LA, October 2017 – July 2018.
- Subject Matter Expert, United States Office for Justice Programs (OJP), Diagnostic Center, Hartford Police Department, Hartford CT, Recruitment, Diversity, and Retention Issues, September 2017 – May 2018.
- Subject Matter Expert and Independent Investigator Internal Administrative Investigation, Coral Gables Police Department, Coral Gables, FL, September 2017 – February 2018.
- Subject Matter Expert, Use of Force Review and Analysis, retained by Plaintiff's Attorney Charles Bonner, San Francisco, CA in an excessive force case involving Alonzo Grant v. Syracuse Police Department, September 2016 – October 2018.
- Subject Matter Expert contracted by Kroll Associates, Inc., Philadelphia PA to conduct an internal assessment of Community Engagement policies and practices, of the University of Chicago Police Department, Chicago, IL, November 2016 – January 2017.
- Stadium Security Risk and Vulnerability Assessment, Contracted by MSA Security, Inc., 9 Murray Street, 2<sup>nd</sup> Floor, New York, NY 10007; University of Maryland, College Park, MD and University of Michigan, Ann Arbor, MI (Big Ten Conference), October 2016 – November 2016.
- Independent Monitor for the Maricopa County Sheriff's Office, Phoenix, AZ, Internal Investigations and related training, August 2016 – March 2018.
- Moderator/Panelist, National Black Prosecutor's Conference, St. Louis, MO, on the President's Task Force Report on 21<sup>st</sup> Century Policing, July 11, 2016.
- Guest Speaker, International Association of Chiefs of Police (IACP), Institute for Community-Police Relations, July 2016 – 2018.
- Subject Matter Expert, United States Office for Justice Programs (OJP), Diagnostic Center, Springettsbury Township Police Department, Police-Community Relations, Use of Force, and Citizen Complaints Engagement, York County, PA; May 2016 – August 2018.
- Subject Matter Expert contracted by the United States Department of Justice, Special Litigation Section, Washington, DC for the pattern and practice investigation of the Baltimore Police Department, Baltimore, MD; September 2015 – Completed August 2016.
- Security Supervisor for Apex Security; VIP and Altar Detail for the visit of Pope Francis, World Meeting of Families, Ben Franklin Parkway, Philadelphia, PA, September 26-27, 2015.

- Subject Matter Expert contracted by Kroll Associates, Inc., Philadelphia PA to conduct an internal administrative investigation (tactics and the use of deadly force analysis) of the University of Cincinnati Police Department Fatal Officer Involved Shooting in the City of Cincinnati, July 2015 – September 2015.
- Subject Matter Expert on tactics and the use of deadly force analysis contracted by the law firm of Elliott Greenleaf, Philadelphia, PA by a Hummelstown, Pennsylvania Police Officer, August 2015 – November 2015.
- Consultant for the Middletown Police Department, Middletown, Pennsylvania to assess policies; conduct internal investigations, develop Executive Search Protocols, and conduct operational reviews; June 2014 - 2017.
- Subject Matter Expert and Independent Investigator Municipality of Anchorage; Internal investigation into the conduct of the Anchorage Police Department and Alaska National Guard regarding Sexual Assault Complaints and Illegal Narcotics Distribution Allegations, October 2014 – November 2018.
- Subject Matter Expert, United States Office for Justice Programs (OJP), Diagnostic Center, Metro East Police District Commission (MEPDC) Engagement, Ethics and Accountability Initiative, East St. Louis, IL; July 2013 – December 2016.
- Primary Security Representative/Investigator, National Football League (NFL), Philadelphia, PA, Domestic Violence, Sexual Misconduct, Personal Conduct Policy investigations, June 2013-July 2020.
- Presenter teamed with Daigle Law Group, Southington, CT conduct instruction on special (internal) investigations at the Connecticut State Police Academy; June 2014 and Westport, CT Police September 2015. Community Relations and Police Use of Force, Use of Force Summit, Uncasville, CT; December 2014.
- Consultant for the Anchorage, Alaska Police Department with the International Association of Chiefs of Police (IACP), assessed policies and practices and made recommendations to Mitigate Sexual Misconduct June – September 2012.
- Independent Monitor for the Niagara Falls, New York Police Department, Internal Investigations, Use of Force, Discipline and Community Relations; August 2011-February 2015.
- Subject Matter Expert with the Puerto Rico Police Department (2<sup>nd</sup> largest U.S. Police Department), Community Outreach, Complaint Reception and Processing, Internal Investigations, Member/Employee Discipline, and Training December 2010-February 2015.
- Independent Monitor for the City of Detroit Police Department teamed with Police Performance Solutions LLC, Dover, NH; October 2010-August 2014. The United States Department of Justice announced successful resolution of the Consent Judgment on August 25, 2014, Monitor engagement complete.
- Independent Monitor for the Oakland Police Department teamed with Police Performance Solutions LLC, Dover, New Hampshire; May 2010-Present.
- Office for Victims of Crime, United States Department of Justice, Diversity Working Group; March 2010-Present.

PENNSYLVANIA STATE POLICE, Harrisburg, Pennsylvania

1981 – 2010

***Deputy Commissioner of Administration and Professional Responsibility, 2006-2010***

***Deputy Commissioner of Professional Responsibility, 2004-2010***

***Rank: Lieutenant Colonel***

- Accepted additional responsibilities in December 2006 formerly assigned to the Deputy Commissioner of Administration
  - Maintain executive oversight of the Bureau of Training and Education (Academy/Training Centers), Bureau of Human Resources, Member Assistance Program, and the Recruitment and Special Services Office (Targeting minorities and women for employment).
  - Appointed by Governor Edward G. Rendell to maintain executive oversight of the Bureau of Integrity and Professional Standards, Equal Employment Opportunity Office, Department Discipline Office, and the Early Intervention Program Office (March 2004). Acquired the Heritage Affairs Office in May 2006 and the newly created Office of Risk Management in January 2009.
- Contribute to the oversight of an annual budget over \$840 Million involving 4664 sworn and 1600 non-sworn personnel; and responsible for all segments logically related in scope to the prevention, investigation and accountability measures employed by the department regarding police misconduct.

- Maintain oversight for all risk management issues across the full spectrum of potential liability affecting department operations.
- Commissioner's Designation of Duties, in his absence; assume the duties of Acting Commissioner with responsibility for the day-to-day administrative, operational, and policy decisions of the Department. Act as liaison with the Governor, Deputy Chief of Staff, Criminal Justice Policy Office, and cabinet officials.

**Director, Bureau of Professional Responsibility; Rank: Major, 2003-2004**

- Provided executive oversight of two Divisions and one Office with 35 personnel within the Bureau.
- Managed the Internal Affairs Division, Systems and Process Review Division, and the Early Intervention Program Office.
- Led the development of the Early Intervention Program Office of the Pennsylvania State Police.
- Designated as the liaison to the Pennsylvania Office of Inspector General during their independent review of department misconduct investigations, policies, and procedures.
- Designated as liaison with Kroll, The Risk Consulting Company during their independent monitoring of the department's implementation of the forty recommendations identified by the Pennsylvania Office of Inspector General. Kroll provided periodic reports to the Office of the Governor.

**Director, Internal Affairs Division; Rank: Captain, 2000-2003  
(Acting Captain from April 26, 1999 - January 29, 2000)**

Responsible for directing the work of fifteen subordinates; direct and investigate complex criminal and administrative investigations involving allegations of misconduct involving Department personnel. Responsible for non-complaint investigations mandated by directives, assist the Office of Chief Counsel and conduct other confidential investigations as directed by the Commissioner.

**Commander, Central Section, Internal Affairs Division; Rank: Lieutenant, 1997-2000**

Direct and investigate complex confidential criminal and administrative investigations involving allegations of personnel misconduct and the use of deadly force. Supervise the work of four investigators.

**Administrative Officer, Internal Affairs Division; Rank: Corporal to Sergeant, 1994-1997**

Review confidential investigative reports for accuracy, completeness, compliance with regulations, and labor agreements. Conduct training seminars; aid in receiving and tracking personnel complaints, and track active investigations to ensure timely submission.

**Criminal Investigation Unit (First Line) Supervisor, Troop H, Harrisburg; Rank: Corporal, 1993-1994**

Supervise complex criminal investigations; perform normal supervisory duties of eleven-member unit. Be familiar with all facets of criminal investigation, including but not limited to homicide, robbery, rape, burglary, theft, etc. Supervise confidential background investigations on applicants for Commonwealth and other law enforcement agency employment.

**Patrol Unit (First Line) Supervisor, Troop H, Harrisburg; Rank: Corporal, 1993**

Supervise patrol members responding to crime scenes, motor vehicle accidents, warrant service, special situations and other patrol related duties. Responsible for reviewing criminal investigation and patrol related reports.

**Intelligence/Vice Officer, Troop H, Harrisburg; Rank: Trooper, 1992-1993**

Responsible for collecting, recording and disseminating confidential intelligence information regarding sex offenders, gangs, organized crime and other subversive organizations. Intelligence gathered to ensure Commonwealth domestic security.

**Criminal Investigator, Troop H, York and Harrisburg Stations; Rank: Trooper, 1984-1992**

Responsible for investigations into all facets of crime, including but not limited to homicide, robbery, rape, burglary, theft, motor vehicle theft, organized crime, etc. Job responsibilities also include conducting confidential background investigations on applicants for Commonwealth and other law enforcement agency employment.

***Patrol Officer, Troop H Harrisburg – York Station; Rank: Trooper, 1983-1984***

Investigate motor vehicle accidents and thefts. Enforce criminal and traffic laws and serve arrest warrants. Secure and search crime scenes; completing investigative reports; collect and compile evidence in ongoing cases, testify in court; operate radar.

***Criminal Investigator, Troop K, Philadelphia; Rank: Trooper 1983***

Responsible for investigating robberies occurring at State Stores, investigations on State Hospital grounds; warrant service and confidential background investigations on applicants for Commonwealth employment.

***Patrol Officer, Troop K, Philadelphia; Rank: Trooper, 1981-1983***

Investigate motor vehicle accidents and thefts. Enforce criminal and traffic laws and serve arrest warrants. Secure and search crime scenes; completing investigative reports; collect and compile evidence in ongoing cases, testify in court; operate radar.

### **MILITARY EXPERIENCE**

United States Navy

1976 - 1980

***Aviation Maintenance Administrator; Highest Rank: E-5***

- Oversaw personnel assigned to the Maintenance Control Divisions of Attack Squadron 93 (VA-93), on the aircraft carrier USS Midway, and Patrol Squadron 46 (PATRON 46), Moffett Field, CA.
- Ensured accuracy, completion, and secure storage of all data related to the configuration, history, maintenance, receipt, and transfer of Naval Aircraft and related aeronautical equipment.
- Earned Secret Security Clearance.
- Received Honorable discharge.

### **EDUCATION**

EASTERN UNIVERSITY, St. Davids, Pennsylvania

***Master of Business Administration, Management Concentration***

ELIZABETHTOWN COLLEGE, Elizabethtown, Pennsylvania

***Bachelor of Professional Studies, Major in Criminal Justice***

Middletown Area High School graduated June 1976

### **TRAINING AND CERTIFICATIONS**

- Private Investigator's License, Approved Dauphin County President Judge Todd A. Hoover, June 4, 2013.
- National Football League (NFL) Primary Security Representative Annual One-Week Training, Ft. Lauderdale, FL; June 2013; San Diego, CA June 2014, Ft. Lauderdale, FL May 2015, San Diego, CA May 2016, Washington, DC 2017, San Diego, CA 2018.
- Law Enforcement Officer's Safety Act (LEOSA), Certified to Carry Firearms, Commonwealth of Pennsylvania Card #0005906, Dauphin County Sheriff's Confirmation #09329531.
- Force Science Institute, Force Science Certification, Alexandria, VA, April 22-26, 2013.
- U.S. Department of Homeland Security, Emergency Management Institute, FEMA, IS-00700, National Incident Management System (NIMS), March 31, 2006.
- The Police Executive Development Program (POLEX), Advanced Part 2, Pennsylvania State University, earned 3 undergraduate credits, March 2004.
- Federal Bureau of Investigation National Academy, 211<sup>th</sup> Class, University of Virginia, Quantico, Virginia, completed December 13, 2002, earned 15 undergraduate credits
- The Police Executive Development Program (POLEX), Pennsylvania State University, Basic Part 1, earned 3 undergraduate credits, March 1999.

- Pennsylvania State Police Academy, July 1981.
- United States Navy, Aviation Maintenance Administration "A" School, NTTC Meridian, MS, November 1976.
- United States Navy Basic Training, Great Lakes, IL, August 1976.

### **PROFESSIONAL RECOGNITION**

- Community Excellence Award, Youth 10x Better Ministries, Middletown, PA, June 2018.
- Commonwealth of Pennsylvania, Office of Inspector General, Certificate of Recognition, August 21, 2010, for leading positive change in the implementation and administration of accountability measures.
- Complimentary Letter from former Pennsylvania State Police Commissioner Paul J. Evanko for work on high level department internal investigations.
- Pennsylvania State Police, Medal of Commendation (Department's 2<sup>nd</sup> Highest Award), for selfless sacrifice and extraordinary service in protecting the image, integrity and reputation of the Department.
- Honorable Discharge, Pennsylvania State Police, May 21, 2010.
- Certificate of Appreciation, International Association of Chiefs of Police (IACP), for outstanding contributions toward the professionalization of Law Enforcement.
- Record of Service Citation from the Pennsylvania House of Representatives May 11, 2010.
- Record of Service Citation from the Senate of Pennsylvania May 2, 2010.
- Complimentary Letter from the United States Secret Service, G-20 Economic Summit, Pittsburgh, Pennsylvania, dated September 28, 2009.
- Commissioner's Certificate of Recognition, 2009 Barack Obama 44<sup>th</sup> Presidential Inauguration; January 20, 2009.
- Recognized by Kroll, The Risk Consulting Company in their Fourth (Final) Report of the Independent Monitor of the Pennsylvania State Police for providing invaluable assistance to the Monitor, February 21, 2005.
- Complimentary Letter from Pennsylvania State Police Commissioner Jeffrey B. Miller for work on discipline improvements during the 2004, Act 111 Interest Arbitration, and subsequent Award; dated January 17, 2005.
- Troop Commander's Letter of Commendation; dated June 15, 1994, for work in a bank robbery investigation.
- Letter of Appreciation from the New York State Police; dated September 26, 1991 and Troop Commander's Letter of Commendation; dated March 16, 1993, for work in a high-profile homicide investigation.
- Commissioner's Letter of Commendation; dated January 11, 1991, for arrests in child abuse and sexual abuse criminal investigations dated January 9, 1991.
- Complimentary Letter from the Harrisburg, PA Director of the YWCA Rape Crisis and Domestic Violence Services Office for work on a child sexual assault case.
- Troop Commander's Letter of Commendation; March 8, 1990, for work in a Corrupt Organizations investigation.
- Complimentary Letter from Dauphin County District Attorney Richard A. Lewis; dated August 6, 1986, for work in a public corruption investigation.
- United States Navy Good Conduct Award, June 1980.
- Patrol Squadron 46 (VP-46), Sailor of the Month, February 1980.
- Attack Squadron 93 (VA-93), Sailor of the Month, July 1978.

### **PROFESSIONAL MEMBERSHIPS AND AFFILIATIONS**

- Federal Bureau of Investigation, National Academy Associates (FBINA) December 2002-Present.
- International Association of Chiefs of Police (IACP) January 2000-Present.
  - Serve as member of the Advisory Committee on the Linking Local Law Enforcement Internal Affairs Practices and Community Trust Building Project Phase 1, completed October 2009.
  - Serve as a member of the IACP Advisory Committee on Employing Returning Combat Veterans as Police Officers, commenced April 2008.
  -

- Serve as a member of the Advisory Committee on Police Response to Persons with Mental Illness, commenced May 2009.
- Pennsylvania Chiefs of Police Association (PCPA).
- Governor's Executive Diversity Council.
  - Assigned by the Commissioner to serve on his behalf regarding Commonwealth Diversity Recruiting Initiatives with the Office of Diversity Management.
- Executive Reviewer, Evaluation and Demonstration Programs, National Institute of Justice, in collaboration with Educational Services, Inc., Bethesda, Maryland.
- Independent Consultant with the U.S. Department of Justice, Office for Victims of Crime, on Witness intimidation and Diversity issues.
- National Internal Affairs Investigator's Association (NIAIA).
- Lifetime member of Delta Mu Delta, International Honor Society in Business Administration, Gamma Pi Chapter, Eastern University 2009.
- Member National Organization of Black Law Enforcement Executives (NOBLE).
- Member International Association of Ethics Trainers (IAET).
- Keystone Technical Institute, Criminal Justice Program Advisory Committee.
- Certified Minority Business Enterprise (MBE) – Eastern Minority Supplier Development Council, Pennsylvania, New Jersey and Delaware, Certificate Number PT0655.
- U.S. Navy Veteran's Networking Group.

References and supporting documentation are available upon request.

## APPENDAGE A

### Training and Experience Related to the Use of Force in Policing

**Lt. Colonel John R. “Rick” Brown** served over 29 years of active law enforcement experience with the Pennsylvania State Police (PSP), with a compliment of 4664-sworn and 1600 non-sworn personnel, and an operating budget of over \$850 million dollars. Lt Col. Brown rose through the ranks performing patrol, criminal investigation, vice/intelligence, and internal investigation duties. He ultimately rose to the position of Deputy Commissioner of Administration and Professional Responsibility. In this role, he managed the operations of the PSP’s Bureau of Integrity and Professional Standards (Including the Internal Affairs Division) and Bureau of Training and Education amongst other agency components.

Lt. Col. Brown was also responsible for overseeing the PSP’s reform and accountability efforts in the areas of personnel misconduct, sexual harassment/sexual misconduct, sworn member domestic violence, use of force, and early intervention/risk management initiatives.

Since retiring from the PSP in May 2010, Lt. Col. Brown has worked as an independent monitoring team member with the Detroit, Michigan Police Department, Oakland, California Police Department, Niagara Falls, New York Police Department, and the Maricopa County Sheriff’s Office, Phoenix, AZ. Lt. Col. Brown also was a member of the United States Department of Justice’s (DOJ) pattern and practice investigation of the Baltimore Police Department prior to the issuance of the Department’s current federal Consent Decree. During these assessments Lt. Col. Brown applied the legal standards of *Graham v. Conner* and *Tennessee v. Garner* as appropriate assessing each case from the perspective of a reasonable police officer (active police officer for over 29 years) at the scene. The following is additional information relating to the federal/state Consent Decree Litigation:

- a. Selected to work with the Office of the Independent Monitor of the Oakland Police Department in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* in the United States District Court for the Northern District of California under the direction of Judge Thelton E. Henderson, engagement complete February 2015.
- b. Selected to work with the Office of the Independent Monitor of the City of Detroit Police Department in the July 18, 2003 Consent Decree brought by the United States Department of Justice in the United States District Court for the Eastern District of Michigan Southern District under the direction of Judge Julian Abele Cook, engagement complete August 2014.
- c. Selected to work with the Office of the Independent Monitor of the Niagara Falls, New York Police Department in the November 30, 2010 Consent Decree brought by the State of New York in the Supreme Court of the State of New York for Niagara County under the direction of Judge Ralph A. Boniello III, engagement complete February 2015.
- d. Subject Matter Expert contracted by the U.S. DOJ, Special Litigation Section, Washington, DC for the pattern and practice investigation involving the use of force of the Baltimore Police Department, Baltimore, MD; September 2015 – Completed August 2016. The Baltimore Police Department because of the DOJ investigation is currently under a federal Consent Decree.
- e. Selected to work with the Independent Monitor for the Maricopa County Sheriff’s Office, Phoenix, AZ, Internal Investigations, to include reviews of police misconduct, use of force investigations, and related training, in the United States District Court for the District of Arizona under the direction of Judge G. Murray Snow, engagement complete March 2018.

Lt. Col. Brown monitored and assessed use of force investigations, including but not limited to, police pursuits resulting in injury or death, in custody deaths, use of chemical spray, baton strikes, officer involved shootings, etc., and Force Review Boards in the federal consent decree in Oakland, CA, he monitored and assessed Force Investigations (Oakland assessed between 90 – 100 cases every quarter) and Command Level Force Review Teams (CLFRT) in the completed (completed August 2014) Detroit, MI federal consent decree (Detroit assessed approximately 20 – 30 cases every quarter), and monitors and assesses internal investigations, to include use of force investigations, in the state consent decree with the

## Appendage A - Continued

Niagara Falls, NY consent decree and the federal court orders/Consent Decree with the Maricopa County Sheriff's Office.

Lt. Col. Brown has written extensively in his career. He has contributed important segments to the Independent Monitor's final reports in Oakland, Detroit, Niagara Falls, and Maricopa County. Lt. Col. Brown was the lead assessor of the Special Report of the Independent Monitor for the Oakland Police Department: Officer Involved Shootings (Including their supervisory/command reviews) dated October 2, 2012 in response to an order issued by the Judge Thelton Henderson. Lt. Col. Brown also provided reports to the DOJ in their pattern and practice investigation of the Baltimore Police Department.

- a. Subject Matter Expert, United States DOJ, Office for Justice Programs (OJP), Diagnostic Center, Springettsbury Township Police Department, Police-Community Relations, Use of Force investigations and related policies, and Citizen Complaints Engagement, York County, PA; May 2016 – August 2018.
- b. Subject Matter Expert contracted by Kroll Associates, Inc., Philadelphia PA to conduct an internal administrative investigation (tactics and the use of deadly force analysis) of the University of Cincinnati Police Department Fatal Officer Involved Shooting in the City of Cincinnati, July 2015 – September 2015. Wrongful death litigation was filed, and the case was ultimately settled out of court.
- c. Subject Matter Expert on tactics and the use of deadly force analysis contracted by the law firm of Elliott Greenleaf, Philadelphia, PA by a Hummelstown, Pennsylvania Police Officer, August 2015 – November 2015. Wrongful death litigation was filed, and the case was ultimately settled out of court.
- d. Subject Matter Expert, Use of Force Review and Analysis, retained by J. Mark Pecci, II, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., Philadelphia Office, One Penn Center, 1617 John F. Kennedy Boulevard, Suite 1010, Philadelphia, PA in case Ryan Patterson v. Michael Fiocca (Delaware River Port Authority Police Officer) retained March 8, 2018 – October 2018. Case settled out of court.
- e. Subject Matter Expert, retained by Attorney Charles Bonner of the Law Offices of Bonner & Bonner, 475 Gate Five Road, Suite 212, Sausalito, CA 94965 to provide an opinion on the use of force used by the Syracuse Police Department in the case of Alonzo Grant v. City of Syracuse, NY. On October 16, 2018 certified as an Expert Witness during trial testimony in police use of force by United States District Judge David Hurd, U.S. District Court, Northern District of New York, 10 Broad Street, Utica, NY 13501.
- f. Subject Matter Expert, Use of Force Review and Analysis, retained by Attorney Charles Bonner, San Francisco, CA in case Maurice Crawley v. Syracuse Police Department, October 2018 – Present.

### **Use of Force Training After Retirement from the Pennsylvania State Police**

- Daigle Law Group, LLC, P.O. Box 123, Southington, CT 06489, Use of Force Summit, Uncasville, CT November 28 – 30, 2018.
- Daigle Law Group, LLC, P.O. Box 123, Southington, CT 06489, Community Relations and Police Use of Force (Guest Speaker), Use of Force Summit, Uncasville, CT; December 2015. (Note: The Daigle Law Group three-day use of force course of instruction (State of Connecticut, Police Officer Standards and Training Council Accredited) included specific modules on the legal standards of Graham v. Conner, Tennessee v. Garner, and Monell v. Department of Social Services, 1978; amongst other cases)
- Daigle Law Group, LLC, P.O. Box 123, Southington, CT 06489, Community Relations and Police Use of Force (Guest Speaker), Use of Force Summit, Uncasville, CT; December 2014.
- Force Science Institute, 6348 N. Milwaukee Avenue, Suite 153, Chicago, IL 60646, Certificate of Completion, April 2013. (Full week of training.)

Appendage A - Continued

- Daigle Law Group, LLC, P.O. Box 123, Southington, CT 06489, Use of Force Summit, Uncasville, CT; November 2012.

PENNSYLVANIA STATE POLICE, Harrisburg, Pennsylvania

1981 – 2010

During Lt Col. Brown's PSP career, he served as a criminal investigator and internal affairs investigator and subsequently held supervisory and command positions within these specialized areas. The following is a summary from 1984 until his retirement in 2010 that relates to his training and experience with use of force investigations and their reviews both criminally and administratively:

***Deputy Commissioner of Administration and Professional Responsibility, 2006-2010***

***Deputy Commissioner of Professional Responsibility, 2004-2010***

***Rank: Lieutenant Colonel***

- Maintain executive oversight of the Bureau of Training and Education (Academy/Training Centers).
- Appointed by Governor Edward G. Rendell to maintain executive oversight of the Bureau of Integrity and Professional Standards.
- Maintain oversight for all risk management issues across the full spectrum of potential liability affecting department operations.

***Director, Bureau of Professional Responsibility; Rank: Major, 2003-2004***

- Provided executive oversight of two Divisions and one Office with 35 personnel within the Bureau.
- Managed the Internal Affairs Division, Systems and Process Review Division, and the Early Intervention Program Office.
- Ultimately responsible for all PSP internal investigation to include the use of force by sworn personnel initiated by policy (subject received medical treatment with no complainant), complaints of excessive force, and member's use of deadly force.

***Director, Internal Affairs Division; Rank: Captain, 2000-2003***

***(Acting Captain from April 26, 1999 - January 29, 2000)***

Responsible for directing the work of fifteen subordinates; direct and investigate complex criminal and administrative investigations involving allegations of misconduct, to include use of force and complaints of excessive force, and the use of deadly force involving Department personnel.

***Commander, Central Section, Internal Affairs Division; Rank: Lieutenant, 1997-2000***

Direct and investigate complex confidential criminal and administrative investigations involving allegations of personnel misconduct and the use of deadly force involving department personnel. Supervise the work of four investigators.

***Administrative Officer, Internal Affairs Division; Rank: Corporal to Sergeant, 1994-1997***

Review confidential investigative misconduct and use of force (including member's use of deadly force) investigation reports for accuracy, completeness, compliance with regulations.

***Criminal Investigation Unit (First Line) Supervisor, Troop H, Harrisburg; Rank: Corporal, 1993-1994***

Supervise complex criminal investigations; perform normal supervisory duties of eleven-member unit. Be familiar with all facets of criminal investigation, including but not limited to homicide, robbery, rape, burglary, theft, and police officer involved shootings, etc.

Significant Officer Involved Shooting resulting in paralysis: Primary criminal investigator, even though a supervisor, into the officer involved shooting by four police officers of an armed subject that as a result was critically injured and ultimately was paralyzed.

***Criminal Investigator, Troop H, York and Harrisburg Stations; Rank: Trooper, 1984-1992***

## Appendage A - Continued

Responsible for investigations into all facets of crime, including but not limited to homicide, robbery, rape, burglary, theft, motor vehicle theft, organized crime, officer involved shootings, etc. It's important to note that despite being assigned to a criminal investigation unit the writer on occasion made car stops for serious traffic offenses (DUI, etc.) and felony incidents (auto theft, wanted person, etc.).

Significant Officer Involved Shooting resulting in death: Criminal investigation into the fatal shooting of an armed subject by a Harrisburg City Police Officer after responding to a reported domestic violence incident.

Federal Bureau of Investigation National Academy, 211<sup>th</sup> Class, University of Virginia, Quantico, Virginia, completed December 13, 2002, earned 15 undergraduate credits to include a three-credit course of instruction on Constitutional Law. This course of accredited instruction extensively covered 4<sup>th</sup> Amendment issues.

Attended annual Mandatory in-service training on a regular basis that included legal updates (including 4<sup>th</sup> Amendment issues) and use of force training as required and deemed appropriate by the Pennsylvania State Police Academy up to retirement from active service.

## **APPENDAGE B**

### **Training and Experience Related to Security**

#### **Pennsylvania State Police:**

- Pennsylvania State Police, Assistant Commander, Mobile Field Force, President Barack Obama's G-20 World Economic Summit, Pittsburgh, Pennsylvania, September 28, 2009.
- Pennsylvania State Police, 2009 Barack Obama 44<sup>th</sup> Presidential Inauguration Security Detail; January 20, 2009.

#### **National Football League:**

NFL Primary Security Representative, Philadelphia, PA (Includes Eastern, PA, New Jersey, and Delaware) June 2013 – Present.

- NFL Primary Security Representative Annual One-Week Training, Best Practices for Stadium Security, Ft. Lauderdale, FL; June 2013; San Diego, CA June 2014, Ft. Lauderdale, FL May 2015, San Diego, CA May 2016, Washington, DC 2017, San Diego, CA 2018.
1. **Game Day Security Services:**
    - Perform the activities set forth in the NFL Operations and Investigations Manuals.
    - Attend necessary pre-game meetings and each Assigned Member Club's games at its home stadium, and away at the Divisional Championship, Super Bowl and international game(s).
    - Respond to any security concerns that may arise on game day.
    - Pre-game coordination with the Assigned Member Club, visiting club, stadium authorities, law enforcement, stadium security and game officials during the week prior to each home game.
    - Perform any other appropriate functions relating to game day security, crowd management, crowd control, game day report preparation, and such other services as reasonably requested by the NFL.
    - Monitor and report to the NFL Chief Security Officer, or designee, significant deviations in compliance with critical NFL Best Practices for Stadium Security standards.
    - As determined by the NFL, assist independent inspectors in the performance and documentation of NFL Best Practices for Stadium Security compliance inspections.
    - Submit preliminary and final game day reports to NFL Chief Security Officer.
  2. **Services for Players, Member Club and NFL Personnel:**
    - Provide advice and coordination of investigative and security activities for the cyber and physical protection of NFL players, the Assigned Member Club and NFL personnel, and their families, and for investigations concerning the location or recovery of their property, and financial assets and such other services as requested by the NFL. Consultant shall not perform other services for players without prior written approval from the NFL and shall advise players accordingly.
  3. **Information Services:**
    - Gather information as requested from public records and other publicly available sources, including, without limitation, criminal and civil justice records, asset and authorized credit records, social media, sports media, and additional open source information.
  4. **Training Camp Services:**
    - Attend and assist at training camp presentations for the Assigned Member Club as requested and authorized in writing by the NFL Regional Director or other designated NFL representative.
  5. **Other Investigative Services:**
    - Assist in investigations and inquiries related to personnel matters, integrity of the game and fair competition among Member Clubs, as requested and authorized in writing by the NFL Chief Security Officer or other designated NFL representative.
    - Report investigations to the NFL Regional Director within established deadlines or written notification to the NFL Regional Director stating when the reports will be received.

## Appendage B - Continued

- Document all interviews, evidence, reports, photos, etc. and enter into league's Records Management System.
6. Liaison Services:
- Maintain reasonable liaison with the Assigned Member Club and law enforcement personnel.
  - Provide a written summary of liaison activities on a monthly basis to the NFL Regional Director.
7. Event Security Services:
- Provide services relating to NFL events or meetings, as assigned by the NFL, including:
    - coordinating with appropriate NFL personnel, game officials and venue authorities during the week prior to an event.
    - making other necessary preparations for event-related security;
    - attending the event and responding to any security concerns that may arise; and
    - performing any other necessary functions relating to event security, crowd management and crowd control.
    - Serving as sub-committee or committee chair for event planning
    - Preparing operational plans and/or written after action reports.
8. Training Services:
- Assist in training and orienting new security representative(s) or consultant(s) or NFL representatives as requested by the NFL Chief Security Officer or other authorized NFL representative.
9. Additional Specific Events:
- NFL Wildcard Playoff Game, Philadelphia Eagles vs. New Orleans Saints, Philadelphia, PA, January 2014.
  - Security Lead, 2017 NFL Pro Bowl, Camping World Stadium, Orlando, FL, January 2017.
  - Security Team, Public Safety & Security Liaison, 2017 NFL Draft, Benjamin Franklin Parkway, Philadelphia, PA, April 2017.
  - Security Lead, 2018 NFL Pro Bowl, Camping World Stadium, Orlando, FL January 2018.
  - NFL Eastern Conference Divisional Playoff Game, Philadelphia Eagles vs. Atlanta Falcons, Philadelphia, PA, January 2018.
  - NFL Eastern Conference Championship Game, Philadelphia Eagles vs. Minnesota Vikings, Philadelphia, PA, January 2018.
  - Super Bowl 52, Philadelphia Eagles vs. New England Patriots, Minneapolis, MN, February 2018.
  - Security Team, Public Safety & Security Liaison, 2017 NFL Draft, Benjamin Franklin Parkway, Philadelphia, PA, April 2017.
  - Security Team, Draft Experience & Red Carpet, 2018 NFL Draft, AT & T Stadium, Arlington, TX, April 2018.
  - International Regular Season Game, Philadelphia Eagles vs. Jacksonville Jaguars, London, England, October 2018.
  - Security Lead, 2019 NFL Pro Bowl, Camping World Stadium, Orlando, FL January 2019.
  - Security Team, Red Carpet, 2019 NFL Draft, Nissan Stadium, Nashville, TN, April 2019.

### Apex Security:

- Security Supervisor for Apex Security; VIP and Altar Detail for the visit of Pope Francis, World Meeting of Families, Ben Franklin Parkway, Philadelphia, PA, September 26-27, 2015.

### MSA Security, Inc.:

- Stadium Security Risk and Vulnerability Assessment, Contracted by MSA Security, Inc., 9 Murray Street, 2<sup>nd</sup> Floor, New York, NY 10007; University of Maryland Stadium, College Park, MD and University of Michigan Stadium, Ann Arbor, MI (Big Ten Conference), October 2016 – November 2016.

## **APPENDIX B**

**Appendix B**  
**Documents Considered for Report**

1. Expert Report of Michael E. Graham (as well as all the documents considered and referenced in report)
2. Expert Report of J. Thomas Manger (as well as all the documents considered and referenced in report)
3. Defendants' Rebuttal Expert Report of Janet R. Thornton
4. Defendant Prince George's County's Objections and Answers to Plaintiff United Black Police Officers Association's First Set of Interrogatories
5. Prince George's County Police Department General Order Manual
6. Prince George's County's Internal Affairs Standard Operating Procedure (SOP) (March 1, 2011)
7. James McCreary Deposition (June 15, 2020)
8. Robert Harvin Jr. Deposition (June 18, 2020)
9. Melvin Powell Deposition (June 30, 2020)
10. Jewell L. Graves Deposition (July 1, 2020)
11. Henry Stawinski Deposition (July 31, 2020)
12. Kathleen Mills Deposition (August 6, 2020)
13. Robert Harvin Jr. Deposition (June 18, 2020)
14. County Code, CB-59-2001, Section 18-186.05(a)
15. County Code, CB-59-2001, Section 18-186.06 (a), (b), (h)
16. County Code CB-59-2001, Sections 2-229 and 2-231
17. Federal law prohibiting discrimination/Harassment in the workplace is Title VII of the Civil Rights Act of 1964
18. Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2014 Annual Report
19. Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2015 Annual Report

20. Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2016-2017 Combined Annual Report
21. Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2018 Annual Report
22. Prince George's County, Maryland, Citizen Complaint Oversight Panel, 2019 Annual Report
23. Annapolis Police Department: General Order G.1., Investigation of Complaints Against Personnel, Issue April 2015
24. Anne Arundel County Government, Maryland Employee Relations Manual, Number K-01, Non-Discrimination and Non-Harassment in Employment, Revised May 2019
25. Arlington County Police Department, Department Directive Manual, Chapter: 5, Procedures, Section 511.04 Harassment, Revised January 2017
26. Baltimore Police Department, De-Escalation Policy 1107, November 24, 2019
27. Baltimore Police Department, Use of Force Reporting, Review and Assessment, November 24, 2019
28. Fairfax County Sheriff's Office, Standard Operating Procedure, SOP Number: 017, Subject: Harassment in the Workplace, Date Approved: 01/01/2000, revised July 2006, June 2017
29. Frederick County Sheriff's Office: Harassment Policy, Section 26.1.10, dated 01/08/2020
30. Harford County Sheriff's Office Personnel Policy, Sexual Harassment/Workplace Harassment/Discrimination, Issued: 7/19/2019, Index PER 0301
31. Howard County Department of Police, General Order ADM-02, Internal Investigations, Effective November 17, 2017
32. Salt Lake City Police Department Utah, CALEA Standards, 26.1.1 and 26.1.3, <http://www.slcpd.com/ass3ts/uploads/2019/11/CALEA-Law-Enforcement-Manual-v-6.5-all-standards.pdf>
33. Final Report on the President's Task Force on 21st Century Policing dated May 2015
34. IACP National Law Enforcement Policy Center, Harassment and Discrimination, Model Policies, Originally Published June 1990, Revised January 2002, and Updated May 2019

35. IACP National Law Enforcement Policy Center, Harassment, Discrimination, and Unprofessional Conduct, Model Policy (2002)
36. IACP National Law Enforcement Policy Center, Harassment, Discrimination, and Unprofessional Conduct, Model Policy (Updated May 2019)
37. IACP Model Policy, Officer Involved Shootings, In-Custody Deaths, and Serious Uses of Force, May 2012
38. IACP Policy Center documents on Retaliatory Conduct available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.
39. <https://www.theiacp.org/policycenter>.
40. EEOC, Enforcement Guidance: Vicarious Liability for Unlawful harassment by Supervisors, issued June 18, 1999, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>
41. Maryland Police Training and Standards Commission, "Public Safety and Policing," available at [https://www.mdle.net/pdf/Recruitment\\_Document.pdf](https://www.mdle.net/pdf/Recruitment_Document.pdf)
42. CALEA Website: [www.calea.org](http://www.calea.org)
43. <http://pgpolice.blogspot.com/2014/03/accreditation-assessment-team-invites.html>
44. U.S. Census, County Quick facts, available at <https://www.census.gov/quickfacts/fact/table/princegeorgescountymaryland/PST045219>
45. www.merriam-webster.com Online Dictionary, 2020 Version
46. <http://pgpolice.blogspot.com/2014/03/accreditation-assessment-team-invites.html>
47. Internal Affairs files, including but not limited to:
  - IAQ2020-001
  - IA2015-006
  - SI2018-076
  - SI2018-076
  - SI2018-076
  - IA2012-024
  - IA2018-066
  - IA2016-024
48. Early Warning System documents (PG0000987526, PG0000987529, PG0000987531, PG0000987538, PG0000987539, PG0000987546, PG0000987552, PG0000987560, PG0000987563, PG0000987565, PG0000987570, PG0000987572, PG0000987575, PG0000987577, PG0000987579, PG0000987583, PG0000987586, PG0000987587,

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PG0000990478, PG0000990479, PG0000990493, PG0000990494, PG0000990495, PG0000990496, PG0000990497, PG0000990498, PG0000990500, PG0000990501, PG0000990518, PG0000990519, PG0000990520, PG0000990521, PG0000990522, PG0000990523, PG0000990524, PG0000990537, PG0000990544, PG0000990551, PG0000990551, PG0000990558, PG0000990561, PG0000990638, PG0000990641, PG0000990645, PG0000990648, PG0000990651, PG0000990654, PG0000990656, PG0000990659, PG0000990661, PG0000990664, PG0000990671, PG0000990677, PG0000990683, PG0000990686, PG0000990689, PG0000990692, PG0000990695, PG000099070, PG0000990701, PG0000990705, PG0000990708, PG0000990710, PG0000990714, PG0000990717, PG0000990720, PG0000990723, PG000099073, PG0000990737, PG0000990740, PG0000990742, PG0000990745, PG0000990750, PG0000990753, PG0000990755, PG0000990758, PG000099076, PG0000990760, PG0000990763, PG0000990765, PG0000990768, PG000099078, PG0000990781, PG0000990783, PG0000990785, PG0000990788, PG000099079, PG0000990791, PG0000990794, PG0000990796, PG0000990799, PG0000990802, PG0000990805, PG0000990806, PG0000990807, PG0000990808, PG0000990810, PG0000990812, PG0000990814, PG0000990816, PG0000990818, PG0000990821, PG0000990824, PG0000990826, PG0000990828, PG0000990830, PG0000990832, PG0000990835, PG0000990837, PG0000990844, PG0000990845, PG0000990869, PG0000990875, PG0000990886, PG0000990892, PG0000990897, PG0000990903, PG0000608940, PG0000608989, PG0000609039, PG0000965837, PG0000609106, PG0000609180, PG0000609228, PG0000609286, PG0000609355, PG0000609405, PG0000609449, PG0000609518, PG0000609570, PG0000609631, PG0000609662, PG0000609708, PG0000609720, PG0000609764, PG0000609810, PG0000609853, PG0000965832, PG0000609898, PG0000609969, PG0000610016, PG0000965832, PG0000610082, PG0000610139, PG0000610205, PG0000965832, PG0000610269, PG0000610317, PG0000610376, PG0000610558, PG0000965832, PG0000610611, PG0000610653, PG0000610684, PG0000610739, PG0000610785, PG0000610838, PG0000610868, PG0000610924, PG0000610972, PG0000611012, PG0000611012, PG0000611077, PG0000611121, PG0000611129, PG0000611173, PG0000611225, PG0000611276, PG0000965834, PG0000965834, PG0000965834, PG0000611326, PG0000611367, PG0000611430, PG0000611473, PG0000611532, PG0000611578, PG0000611618, PG0000611650, PG0000611684, PG0000611751, PG0000611769, PG0000611815, PG0000611863, PG0000611897, PG0000611906, PG0000611951, PG0000612017)

49. CCOP Annual Reports (PG0000937951, PG0000938022, PG0000938076, PG0000938114, PG0000938143)