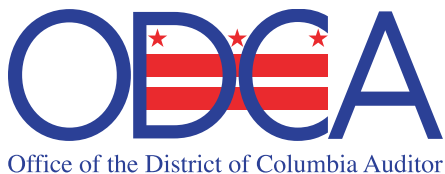

The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019

March 23, 2021

A report by The Bromwich Group LLC and Steptoe & Johnson LLP



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March 23, 2021

The Hon. Muriel Bowser
Mayor of the District of Columbia
The John A. Wilson Building
Washington, DC 20004

The Hon. Phil Mendelson
Chairman, Council of the District of Columbia
The John A. Wilson Building
Washington, DC 20004

Dear Mayor Bowser and Chairman Mendelson:

The report that follows provides detailed case studies of the Metropolitan Police Department's investigations of four officer-involved fatalities that occurred in 2018 and 2019. The case studies were prepared by The Bromwich Group, led by Michael R. Bromwich, who served as Monitor for a Memorandum of Agreement (MOA) on police use of force between the District and the Department of Justice from 2001 to 2008. His team partnered with Steptoe & Johnson LLP and we appreciate the law firm's substantial pro-bono assistance.

This work builds upon a review of the Department's policies and practices on use of force prepared by The Bromwich Group for ODCA in 2016. That review found that the Metropolitan Police Department (MPD) and its overall policies on use of force "continues to be consistent with best practices in policing" and with the provisions of the earlier MOA. We also identified deficiencies in use of force investigations that needed correction.

The case studies that follow document serious lapses in the MPD's investigation of the 2018 and 2019 uses of deadly force. We note that "weaknesses identified in our 2016 report have not been remedied and, indeed, have grown substantially worse" while the Department has appeared "to resist or be unconcerned with remedying them." The case studies document failure to comprehensively review the events leading up to the four fatalities and to fully explore the policy, tactical, and training issues they raise. The major recommendations include:

- Comprehensive investigation and analysis of use of force incidents including actions by all officers leading up to the use of force and any and all opportunities for de-escalation.
- Enhanced training for investigators who handle serious use of force cases.
- Requiring the Use of Force Review Board (UFRB) to provide specific recommendations on training, policy and best practices.
- Public release of both the Internal Affairs Division final report and the UFRB's resulting conclusions on use of force investigations.

We also call on the U.S. Attorney for the District of Columbia to issue declination letters that explain the reasoning when choosing not to prosecute in use of force cases, as is standard practice in other jurisdictions.

This report will be followed by case studies of two officer-involved fatalities that occurred in the District in 2020. We were asked by the Police Reform Commission to add a review of the more recent fatalities as the Department conducted its investigations. We appreciate the leadership of former Chief Peter Newsham and Acting Chief Robert J. Contee III in permitting team members to observe interviews as well as the physical record in the form of body-worn camera footage. We will report on those investigations when MPD's administrative investigations conclude.

Our 2016 report emphasized that police reform is possible and can be sustained. It stressed that a critical ingredient in sustaining reform includes accountability by government leaders and independent oversight bodies. In his written response to the findings and recommendations Acting Chief Contee expressly committed to implementing all of the report's recommendations. This is welcome and appreciated. Our ongoing review of MPD's investigation of the 2020 deaths of Deon Kay and Karon Hylton-Brown provides a real-time opportunity for the Department to demonstrate its commitment to improved oversight of use of deadly force.

Policing practices are under review nationally. We hope the case studies and resulting recommendations contribute to that ongoing discussion. It is important to keep before us the "why" of this review. Four young Black men -- Jeffrey Price, Jr., D'Quan Young, Marqueeese Alston, and Eric Carter -- lost their lives. The very least the District government can do is recognize when and how and whether officer-involved fatalities can be averted and institute and maintain policy and practice with prevention as the goal.

I would like to thank The Bromwich Group and Steptoe & Johnson for their expertise and good work and Chiefs Newsham and Contee and their leadership teams for their collaboration and response.

Sincerely yours,



Kathleen Patterson
District of Columbia Auditor

cc: Councilmembers



THE METROPOLITAN POLICE DEPARTMENT AND THE USE OF DEADLY FORCE: FOUR CASE STUDIES, 2018-2019

MARCH 2021

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Executive Summary

Introduction

During 2018 and 2019, four young Black men — Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter — were killed during separate encounters with members of the District of Columbia’s Metropolitan Police Department (“MPD”). We were asked to undertake an in-depth review of these four cases by the Office of the District of Columbia Auditor (“ODCA”).¹

The purpose of the review was to evaluate the conduct of the MPD officers involved in the incident, and the MPD internal affairs investigations that followed, to determine whether the conduct was consistent with existing law, MPD policy, and best policing practices. The incidents under review occurred on May 4, 2018 (Mr. Price); May 9, 2018 (Mr. Young); June 12, 2018 (Mr. Alston); and September 16, 2019 (Mr. Carter).

Our review looked at each of these instances with a wide lens. We focused not only on the use of force incident itself, but also the events leading up to and following the incident. Likewise, we not only focused on the investigation itself, but also oversight by supervisory personnel and the Use of Force Review Board (“UFRB”), the internal unit within MPD that reviews serious uses of force. At each stage of our review, we considered not only whether MPD personnel complied with existing MPD policies and best policing practices, but also whether there were opportunities to improve MPD policies, practices, and training, particularly in light of recommendations we made in our January 2016 report.² We also considered whether MPD complied with the terms of a June 2001 Memorandum of Agreement (“MOA”) between MPD, the District of Columbia, and the U.S. Department of Justice (“DOJ”). While the MOA is no longer binding on MPD, it sets forth standards, best practices, and procedures that are useful reference points.

The work described in this report commenced in late July 2020 and extended through early February 2021. To conduct these assessments, the team received briefings from the Internal Affairs Division (“IAD”) agents investigating each use of force, as well as senior MPD officials, including Assistant Chief Wilfredo Manlapaz (Director, Internal

¹ Subsequently, we have been asked by the ODCA to review the September 2, 2020, death of Deon Kay, and the October 23, 2020, death of Karon Hylton-Brown. Those reviews are ongoing and will be analyzed separately.

² *The Durability of Police Reform: The Metropolitan Police Department and Use of Force: 2008-2015* (Jan. 28, 2016), available at http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/Full-Report_2.pdf (“2016 Report”). That review and report were also commissioned by the D.C. Auditor.

Affairs Bureau), Inspector John Knusten (Director, Internal Affairs Division), and Maureen O'Connell (Director, MPD Policy and Standards Branch).

The review team³ thoroughly reviewed the voluminous case files of the four use of force incidents, including physical evidence, investigative reports, autopsy and forensic reports, audio recordings and transcripts of investigative interviews and dispatch communications, and body-worn camera ("BWC") footage, among other evidence. The team also attended, by video, the UFRB's deliberations in the Eric Carter case. Finally, the team reviewed civil litigation filed against MPD in connection with any of the four use of force incidents. After reviewing the evidence, the team re-interviewed the investigative agents and MPD officials.

Throughout our investigation, the review team found the MPD members with whom we interacted to be responsive, professional, cooperative, and supportive of our efforts. MPD provided us the information that we requested in a timely manner. The review team recognizes and appreciates the considerable time and effort each of these MPD members took out of their schedules to assist us.

With the hope of benefiting both the MPD and the communities of the District of Columbia, the overarching goals of our review are to: (1) mitigate the occurrence of use of force incidents; (2) minimize the risk to the general public and MPD members stemming from those incidents; and (3) enhance the credibility and efficacy of MPD's use of force investigations.

Both the review team and ODCA recognize that this review comes at a critical moment in the relationship between the police and public, both nationally and within the District of Columbia. We conducted our review mindful of several important points of context. First, over the last several years, the relationship between law enforcement agencies and the communities they serve has been the focus of a growing nationwide discussion. While our review team made a similar observation in our 2016 review, this focus has further intensified in the years that have followed—particularly in the wake of the killing of George Floyd by members of the Minneapolis Police Department, and the demonstrations that followed in cities and towns throughout the country. Locally, policing issues have been front and center in Washington, D.C., where various groups

³ The review team was led by Michael R. Bromwich, who had served as the independent monitor from 2002 through 2008, and as the head of the 2015–16 review team. The review team included policing experts Dennis E. Nowicki, the former Chief of Police in Joliet, Illinois, and Charlotte, North Carolina; Kerr Putney, the former Chief of Police in Charlotte; and Ann Marie Doherty, the former Superintendent of the Boston Police Department. Mr. Bromwich, Chief Nowicki, and Superintendent Doherty served on the independent monitoring team and the 2016 review team. The review team also included as full participants Michael G. Scavelli and Emma S. Marshak from the Washington D.C.-based law firm Steptoe & Johnson LLP.

have sought greater transparency and accountability from the MPD. In this context, it is more important than ever that law enforcement agencies, including MPD, focus on fostering trust and confidence in the community by demonstrating that uses of force are taken seriously, and that they are investigated and overseen in a transparent, even-handed manner. Indeed, the credibility of investigations of serious uses of force, especially those resulting in the death of civilians, has never been more important.

After a brief discussion of our previous work with MPD and the methodology for our review, this report provides an in-depth analysis of each of the four cases, including providing an overview of the facts of the incident that led to the deaths of the four men, describing the investigation conducted by members of the IAD's Internal Affairs Bureau ("IAB"), analyzing the investigator's findings, reviewing the available materials on the UFRB's review of the investigation, and making recommendations relevant to the case under review. We then propose a number of more general recommendations that flow from our review of the four cases.

The Death of Jeffrey Price, Jr.

On May 4, 2018, at approximately 1:23 p.m., the D.C. Office of Unified Communications ("OUC") broadcast a call reporting multiple gunshots in the 5300 block of Blaine Street, N.E. The dispatcher advised that two males, one on a four-wheel all-terrain vehicle and a second on a dirt bike, were fleeing the area of the gunshots at high rates of speed. The operator of the dirt bike, Jeffrey Price, Jr., drove by Officers David Jarboe and Anthony Gaton near the intersection of 53rd Street and Blaine, N.E. Officers Jarboe and Gaton began following Mr. Price, radioing that they were behind a person riding a dirt bike who matched the description of one of the vehicles that had been seen in the area of the gunshots.

Separately, Officer Michael Pearson had responded to a different report of gunshots in the Lincoln Heights area of Northeast. Officer Pearson was completing his work on the response when he heard a radio transmission from Officer Jarboe reporting, "I'm behind him. He's coming up on Division [Avenue]. Red dirt bike – Division toward Burroughs." Moments later, Officer Jarboe repeated the substance of that transmission.

Officer Pearson drove eastbound on Fitch Place. When he entered the intersection of Fitch Place and Division, he saw the dirt bike traveling towards his police vehicle. Officer Pearson pulled forward into the northbound lane, and as he did so, Mr. Price applied the dirt bike's brakes and began an extended skid. The dirt bike skidded over 100 feet and collided with Officer Pearson's vehicle. The impact caused severe injuries to Mr. Price – who was not wearing a helmet – and pinned him below the dirt bike. Officer Pearson pulled the bike off Mr. Price and checked his condition. Additional officers came to the scene, rendered first aid and called for medical

assistance. Paramedics transported Mr. Price to the hospital, where he was later pronounced dead from the injuries he sustained in the collision.

The MPD investigation was conducted jointly by the MPD Major Crash Investigation Unit (“MCIU”) and the Internal Affairs Division. The accounts from multiple eyewitnesses to the collision were largely consistent, reporting that: Mr. Price was well ahead of the police cars following behind him; Officer Pearson’s marked SUV emerged on to Division Ave from Fitch Place; Mr. Price attempted to brake; and Mr. Price then struck the SUV. All of the eyewitnesses except one, and all of the MPD officers, reported that Mr. Price was traveling in the wrong lane of traffic. MCIU performed a detailed crash reconstruction and concluded that the primary cause of the accident was Mr. Price’s “reckless operation of a stolen dirt bike.”

The investigation of all three officers—Pearson, Jarboe, and Gaton—focused on potential violations of MPD’s policy governing vehicle pursuits. Specifically, Officers Jarboe and Gaton were investigated for engaging in an unjustified vehicular pursuit, while Officer Pearson was investigated for intentionally utilizing his car as a “blocking vehicle,” which is prohibited by MPD policy. At the conclusion of the investigation, allegations that these policies were violated were deemed “Unfounded,” which, according to MPD’s terminology, means “there are no facts to support that the incident occurred.” On June 18, 2019, the UFRB unanimously concurred with IAD’s recommendation that the allegations were “Unfounded.”

We disagree with the “Unfounded” conclusion. The collision occurred, and Mr. Price died as a result, so at best it is misleading and confusing to find that the allegations are “Unfounded,” according to MPD’s own definition of that term. As to each potential act of misconduct, there *were* obviously facts that showed that the incident actually occurred. However, in the end, we did not find sufficient evidence to determine that the involved officers violated MPD policies or procedures. Thus, the officers should have been “Exonerated” under MPD policy.

Even so, our review determined that the investigation had significant shortcomings. It did not adequately question Officer Pearson’s account of the collision to fully explore the “blocking” allegation. Nor did it adequately explore whether Officers Jarboe and Gaton engaged in a vehicle pursuit, as defined by MPD policy, and if they did, whether it violated any MPD requirements. We found that the shortcomings of the investigation and analysis of the vehicle pursuit issue were in large part because of the likely confusion and ambiguity surrounding the definition of what constitutes a vehicle pursuit. For example, MPD’s vehicular pursuit policy defines the situation where a police officer does not activate emergency equipment as something other than a pursuit when law, logic and common sense dictate the opposite. More broadly, we found the investigative interviews of the three officers on these and other issues to be brief and relatively superficial, especially the re-interviews, which were

perfunctory and lacking in substance. This is unacceptable in any investigation, but especially in a case involving death.

The Death of D'Quan Young

On Wednesday, May 9, 2018, at approximately 6:45 pm, MPD Officer James Lorenzo Wilson III was off duty and in civilian clothes, on his way to attend a cookout with four of his former MPD Academy classmates at a house in the 2300 block of 15th Street, N.E., in Washington, D.C. After parking his car, Officer Wilson began walking northbound on 15th Street in search of his classmates' house. He had trouble locating the house and unsuccessfully attempted to phone one of his classmates to help him locate it. While still walking northbound, he realized that he must have passed the house and reversed direction, walking southbound on the east sidewalk of 15th Street.

Shortly after he reversed direction, Officer Wilson was approached by D'Quan Young, a resident of the area. As shown in footage from three surveillance cameras located across the street at the Brentwood Recreation Center, Mr. Young walked casually across 15th Street and approached Officer Wilson. According to Officer Wilson, as Mr. Young approached, he asked whom Officer Wilson was calling on his cellphone. Officer Wilson refused to engage with Mr. Young, in substance responding that whom he was calling was none of Mr. Young's business. The question was repeated, with substantially the same answer.

As Mr. Young approached the east sidewalk, Officer Wilson turned towards the street and stepped from the sidewalk, off the curb, and into the street where Mr. Young had stopped. Officer Wilson placed a bag with beverages he had been carrying on the ground, crouched and then took a couple of steps back. He settled into a semi-crouch, which in video appears to be at the same time confrontational and defensive. At that point, Officer Wilson and Mr. Young were only a couple of feet apart. After they faced each other in the street for no more than a few seconds, Mr. Young stepped up on the curb and continued onto the sidewalk, followed by Officer Wilson. At that point, according to Officer Wilson, Mr. Young reached into his waistband and drew what was subsequently determined to be a Kai-Tee .380 caliber pistol, and said, "Be cool." The video footage shows Officer Wilson take a step forward while Mr. Young retreated, followed by Officer Wilson backing up rapidly while still facing Mr. Young. According to Officer Wilson, he backed up rapidly in response to Mr. Young pointing and firing his pistol at Officer Wilson. Officer Wilson said he saw the flash and felt the bullet go by.

In retreat, Officer Wilson drew his service pistol and fired numerous rounds at Mr. Young as Mr. Young continued to back away. After retreating, Officer Wilson took cover behind a van parked at the curb, and peeked around the front driver's side. Mr. Young had crossed from the sidewalk into the street and was on the ground, having

been struck by multiple shots from Officer Wilson. Officer Wilson fired an additional shot from behind the cover of the van, and then, after pausing, peeked around the front of the van again and fired a final shot.

Initial emergency medical care was provided to Mr. Young by MPD members who were in the vicinity. Personnel from D.C. Fire and Emergency Medical Services responded to the scene. They treated Mr. Young and brought him to the Washington Hospital Center Medstar Unit, where he was pronounced dead by emergency room staff at 7:23 pm.

The MPD investigation of Officer Wilson's use of deadly force included interviews of witnesses; video footage from the Brentwood Recreation Center cameras, which was subsequently enhanced by the FBI; a substantial volume of BWC footage of the aftermath of the shooting; forensic evidence that included recovery and analysis of shell casings recovered at the scene; medical and autopsy reports documenting the fatal wounds suffered by Mr. Young; and substantial additional evidence. In general, the investigation did a thorough job of gathering the large amount of potentially relevant evidence. Based on this evidence, including multiple interviews of Officer Wilson, the investigation concluded that Officer Wilson's use of deadly force was justified and within MPD policy.

We disagree with this finding based on Officer Wilson's failure, prior to the exchange of gunfire, to explore opportunities for de-escalation, as required by MPD's use of force policy. We credit Officer Wilson's claim that Mr. Young drew his weapon and shot first, and therefore Officer Wilson's use of deadly force in firing his weapon at Young on the sidewalk was justified. But there is no evidence that Officer Wilson tried at any point to de-escalate his encounter with Mr. Young. Our review of the evidence showed that Officer Wilson failed to take advantage of numerous opportunities to do so, beginning with the initial verbal exchange and extending through to his following Mr. Young up on the sidewalk after their faceoff in the street. Officer Wilson did not identify himself as a police officer. He did not call for backup. He did not call 911. He took no steps to avoid the encounter or seek any potential avenue of escape. He made no effort to attempt "warning, verbal persuasion, tactical communication," as required by MPD policy, or employ any other de-escalation technique.

The issue of de-escalation was not investigated, was not flagged at any stage of MPD's review, and was not addressed either by the IAD chain of command or the UFRB. Our independent review concluded that although Officer Wilson's use of deadly force was indeed justified, he violated MPD's policy requiring de-escalation. In addition to this core issue, we found that certain civilian witnesses should have been re-interviewed outside a group setting, and that Wilson's final two shots when Mr. Young was already prone in the street should have been more critically examined.

The Death of Marquese Alston

On June 12, 2018, members of MPD's Seventh District Impact Team were patrolling in the 3700 block of First Street, S.E. The team members were traveling in two marked MPD cars. Officer Ronald Koch and three other officers were assigned to Cruiser D16 ("Car #1"). Officer Caleb Demeritt and one other officer were traveling behind them in Cruiser 760 ("Car #2").

At approximately 7:10 pm, one of the officers in Car #1 saw Mr. Marquese Alston walking northbound in the 3700 block of First Street, S.E. That officer said he observed Mr. Alston carrying something in his front pants pocket that he suspected was a pistol. Officer Demeritt, who was driving Car #2, later said that he believed that the officers in Car #1 "[saw] something." He made eye contact with Mr. Alston, who started running away. Officer Demeritt (Car #2) and Officer Koch (Car #1) simultaneously got out of their respective cars and pursued Mr. Alston on foot.

During a foot chase that lasted only 12 seconds, Mr. Alston drew a handgun from his waistband. Mr. Alston turned and fired four rounds in the direction of the officers, none of which struck them. As Mr. Alston began firing, Officer Demeritt dove to the ground in the alley, and while on the ground, fired eight rounds at Mr. Alston. Nearly simultaneously, Officer Koch, who was behind Officer Demeritt, fired seven rounds from his weapon. Mr. Alston was struck by six of the shots fired by the two officers. Three of the officers then approached Mr. Alston, who was on the ground and appeared to be unconscious. The officers immediately called for medical assistance. D.C.'s Emergency Medical Services reached the scene and pronounced Mr. Alston dead at 7:30 pm.

The IAD investigation began immediately. The officers who were involved in the incident were interviewed either at the scene or at the Seventh District. Members of IAD performed a witness canvass, seeking eyewitnesses to the shooting. The investigators spoke with seven civilian witnesses and obtained statements from each of them. The witness accounts were largely consistent. Among those who actually saw the exchange of gunfire, three of four witnesses stated that Mr. Alston shot first. The fourth witness indicated that she "did not see Mr. Alston with a gun" and "only saw the police shooting at him."

Members of MPD's Department of Forensic Services ("DFS") also responded to the scene, took photographs, and collected forensic evidence, including four shell casings that were subsequently determined to have been fired from Mr. Alston's pistol. IAD personnel also reviewed and analyzed BWC footage from a number of the Impact Team officers.

We agree with MPD's ultimate conclusion, concurred in by the UFRB, that the officers' use of deadly force was justified and within MPD policy. That conclusion is reasonable and fully supported by the evidence. Nevertheless, we noted a number of opportunities for significant improvements in MPD tactics and in IAD investigative practices.

The speed at which the encounter unfolded made it unfeasible for the officers to exhaust other options or identify themselves as officers prior to discharging their firearms, but the investigation should have explored why the officers appeared not to have issued any verbal commands during the pursuit, as required by MPD policy. Although it is extremely unlikely that these commands would have altered the outcome, the policy requires such a command. At a minimum, the investigator should have asked the officers involved in the pursuit whether such commands were considered and why they were not provided. In addition, we saw no evidence that any officer actually checked Mr. Alston's vital signs or otherwise attempted to render first aid, as required by MPD policy. Indeed, the officers' failure to attempt to render aid to Mr. Alston was undoubtedly noticed by onlookers, which likely stoked their anger and increased the tension and volatility at the scene.

A central question in the case was why the officers initiated contact with Mr. Alston in the first place. We do not believe the reason for the initial pursuit was adequately explored. In particular, the IAD report's account of how and why Officer Demeritt pursued Mr. Alston does not appear to be supported by the weight of the evidence. The report suggests that he "joined" three other officers—each of whom believed Mr. Alston was armed—in an existing pursuit. But nearly all of the evidence suggests that Officer Demeritt was initially unaware that Mr. Alston was armed and initiated the pursuit on his own—*i.e.* in parallel to the three other officers. Neither the report nor the investigation adequately addressed how and why Officer Demeritt joined the pursuit and whether Officer Demeritt had an adequate factual basis for doing so. Instead, it focused almost entirely on the moment of the exchange of gunfire between Mr. Alston and the officers and not sufficiently on the events leading up to it. The fact that Mr. Alston was in fact carrying a weapon does not eliminate the need for the propriety of the foot pursuit to have been addressed and evaluated.

The interviews with the involved officers were extremely brief—all but one lasted fewer than 10 minutes. The interview of one of the central officer participants was eight minutes in total and included only approximately five minutes of substantive questioning. Each of the interviews occurred shortly after the incident, and IAD agents did not conduct follow-up interviews with the officers after having the opportunity to review the BWC footage. Such follow-up interviews might have provided the officers involved in the incident the opportunity to provide needed context and information relating to various important issues, including whether the officers involved in the pursuit had an adequate factual basis for a lawful stop of Mr. Alston.

More thorough interviews are critical to ensure that MPD (and the public at large) can have full confidence in the investigative process and that all relevant issues are fully explored, even if they are sensitive and difficult, and even if they are not relevant to the ultimate issue of whether the use of force was justified.

The Death of Eric Carter

On September 16, 2019, at approximately 7:00 pm, the D.C. Office of Unified Communication (“OUC”) received a series of 911 calls related to an incident at 2245 Savannah Terrace, S.E. One of the calls was from Ms. Carter, who reported that her son, Eric Carter, was firing a gun inside her apartment. Within two minutes, officers from MPD’s Seventh District responded to the scene.

The first officer on the scene learned that shots had been fired in the apartment and requested a ballistic shield. One of the radio transmissions suggested that Mr. Carter might have mental health issues. Numerous officers arrived at the scene, one of whom brought a ballistics shield; another was armed with an M4 patrol rifle.

The officers deployed on the front stoop around the exterior door to the building, which led to the apartment where Eric Carter was inside. The officers remained in this position for several minutes and discussed their tactical options. The officers then heard a gunshot, which they believed came from inside the Carter apartment (Apartment 12). Officer Dennis Sfoglia entered the hallway and climbed the staircase; other officers followed and were positioned on (or at the top of) the stairs leading to the apartment. While Officer Sfoglia held the ballistic shield, he kicked the door to Apartment 12 several times but the door did not open, and there was no response from inside. Officer Sfoglia was told to stop by Sergeant Joseph Devlin, and he and his fellow officers returned to their positions on the front stoop. Sergeant Devlin then told the dispatcher he was “declaring a barricade.” The officers radioed that they believed the shots came from Apartment 12 and requested a second ballistic shield.

Less than a minute later, Officer Sfoglia told the other officers that he saw “someone jiggling the door” of Apartment 12. He yelled “police department” and “come out with your hands up.” After a few seconds, Mr. Carter emerged from Apartment 12. Officer Sfoglia yelled, “Gun, gun, step back, he’s got a gun.” Mr. Carter then returned to Apartment 12. At this point, the officers were positioned on the front step and the narrow sidewalk leading up to the building. A few seconds later, Mr. Carter re-emerged from Apartment 12. An officer yelled, “He’s got a gun” to his fellow officers and, “Put your hands up” to Mr. Carter. Nearly simultaneously with the officer’s command, Mr. Carter raised his gun, took aim at the officers and fired his weapon.

Multiple officers returned fire. Officer Sfoglita fired two rounds, turned his back to Mr. Carter, and retreated to the parking lot. Officer Juwan Jefferson fired at least one round, turned his back to Mr. Carter, and retreated to the sidewalk – ultimately firing eighteen rounds at Mr. Carter. It was later determined that one of those rounds struck Officer Sfoglita in his tactical vest. Officer Byron Jenkins backpedaled on the walkway and fired nineteen rounds from his M4 patrol rifle. While backpedaling, Officer Jenkins fell to the ground but continued to fire in the direction of Mr. Carter. Two other MPD members also returned fire. Mr. Carter continued advancing towards the officers, as they fired at him. He eventually collapsed in the front walkway of 2245 Savannah Terrace. Mr. Carter was unresponsive and was later pronounced dead on the scene at 9:38 pm. The Emergency Response Team (“ERT”) was dispatched to the scene and entered Apartment 12. When ERT members forcibly removed the bathroom door, the officers discovered the body of Mr. Alphonso Carter on the bathroom floor. He was pronounced dead as a result of multiple gunshot wounds.

IAD investigators immediately began their investigation. Our review did not identify any major inconsistencies among the accounts of the civilian witnesses who were interviewed. However, the witnesses’ accounts focused on what occurred prior to the shooting – *i.e.*, that Mr. Carter was agitated, fired his gun in the apartment, and that Ms. Carter had fled to another apartment. None of the civilian witnesses saw the exchange of shots between Mr. Carter and the MPD officers. The IAD investigators also interviewed 11 MPD members who responded to the scene. Their accounts were generally consistent with the narrative above, and all of the officers stated unequivocally that Mr. Carter fired first. Department of Forensic Services personnel collected forensic evidence and conducted weapons and ammunition checks on the scene. They recovered the Taurus .45 ACP semi-automatic pistol used by Mr. Carter.

The investigators recommended, and the UFRB unanimously concurred, that the use of deadly force by Sergeants Joseph Devlin and Darnell Sanders, and Officers Dennis Sfoglita and Bryon Jenkins, was justified and within MPD policy. The UFRB also unanimously concurred with the recommendation in the Internal Affairs investigative report that Officer Jefferson’s use of force was justified, but called for a tactical improvement opportunity based on his having shot Officer Sfoglita. Beyond its concurrence, the UFRB “directed all of the members that were on the scene of the incident ... to attend a scene review” at the MPD Academy but made no additional findings or recommendations.

We agree with MPD’s ultimate conclusion that the officers’ use of deadly force was justified and supported by the evidence, but we identified a number of opportunities for significant improvements in tactics and investigative practices. BWC footage, witness statements, and physical evidence support the conclusion that the involved officers provided verbal warnings. The evidence shows convincingly that Mr. Carter exited Apartment 12 with a pistol in his hand, pointed the pistol at officers,

and fired at least once before the officers returned fire. Under these circumstances, the involved officers reasonably feared for their lives and were unable to otherwise de-escalate the situation prior to discharging their firearms.

However, there were multiple tactical issues implicating officer safety that the investigation needed to more fully explore. We agree with the investigators, and the UFRB, that Officer Jefferson's actions warranted a "tactical improvement opportunity" for accidentally shooting Officer Sfoglia during the exchange of gunfire, but this was only one of many issues that should have been addressed. For example, consistent with MPD policy and best policing practices, the officers on scene should have notified the Emergency Response Team at the outset of the incident and declared a barricade. Indeed, MPD policy *requires* the mobilization of ERT when officers determine that the armed individual is known to have mental health issues. That did not occur, and the issues relating to declaring a barricade and notifying the ERT were not explored. Even though only about five minutes passed between the request for the ballistic shield and Mr. Carter's emerging from the apartment and firing at the officers, our review of the evidence makes clear that the officers had the opportunity to summon ERT when they initially arrived on the scene and should have done so.

Further, the video evidence suggests that the MPD officers' positioning created a "fatal funnel." The videos clearly show that a number of the officers were fully exposed in the funnel and covered neither by the building nor by the ballistic shield. Several of the officers were forced to fall back as Mr. Carter began shooting, and two officers were forced to turn their back on the shooter as they retreated. This tactical error had a number of significant consequences, including Officer Jefferson's shooting of Officer Sfoglia, excessive gunfire from unsafe shooting positions, and unnecessary risks to civilians both inside and outside the apartment building.

We found several significant tactical shortcomings in the actions of the MPD members during this incident. These shortcomings were not adequately investigated by IAD and not adequately identified and analyzed in the IAD report or by the UFRB. Like several of the other cases that we have examined, the investigation was largely focused on the "moment of discharge." Accordingly, the only tactical improvement recommended by the report was directed at Officer Jefferson. And that recommendation stated only that he was "responsible for ensuring no other persons were within his line of fire for each shot." While we agree with this conclusion, neither IAD investigators nor the UFRB grappled with the numerous tactical issues presented by the facts, including but not limited to those described above.

Recommendations

Our review of these four cases has raised questions about the adequacy of certain MPD policies and concerns about how these three shootings and one vehicle collision

were investigated and reviewed by the UFRB. In the body of this report, we describe specific recommendations that flow from the specific facts under review in the individual cases. However, our review of the four cases gave rise to some general recommendations broadly applicable to MPD deadly force investigations. We summarize several of them here, but the report contains a fuller set of these general recommendations, including those aimed at ensuring greater transparency in deadly force investigations and greater clarity and consistency in the classification of use of force incidents.

First, MPD must ensure that IAD investigations are sufficiently comprehensive to allow the UFRB to meet its mandate. MPD's policy on use of force investigations does not currently ensure that IAD's use of force investigations provide the Board with the range of information it needs. While the current policy requires IAD to consider the involved officer's tactics, we recommend that MPD revise its policy so it is clear that IAD's investigation should mirror the areas that the UFRB is required to review. This includes investigating and presenting to the UFRB risk management issues, the adequacy of training, and analysis of the events leading up to and following the incident, including the actions of DFS and OUC personnel. In our prior work with MPD, we did not observe that the lack of congruence adversely affected the quality of IAD's use of force investigations. Our review of these four cases demonstrates that with the passage of time, it has. Therefore, we recommend a change in MPD's use of force investigations policy.

Second, IAD investigators need to be trained on investigating and presenting the above issues to the UFRB. We noted with concern in our 2016 report that the merger of the former Force Investigations Team ("FIT"), created in 1999 by former Chief Charles H. Ramsey, into the Internal Affairs Bureau could, over time, degrade the quality of use of force investigations especially in serious use of force cases. Indeed, the first two recommendations in our 2016 report specifically addressed the degradation in quality of such investigations, noting that the MPD's phasing out FIT could have serious negative effects on the quality of investigations. We recommended that MPD create use of force specialists, and that they receive specialized training similar to the training that was provided to FIT when it was formed in 1999. There is no evidence that those recommendations were implemented.

Third, the UFRB should improve its practices with respect to the "Decision Point Matrix Analysis" required by MPD policy. In each of the cases we reviewed, the content of the analysis did not match its title. The documents largely provided a summary of the Final Investigative Report's investigative conclusions. But these analyses did not carefully scrutinize the various *decision points* faced by the officers involved in the incident. A decision point analysis can be an extremely helpful tool to facilitate the assessment of a use of force incident. It should serve as the basis for the UFRB to serve its critical role as an independent review body within MPD. It can also

serve as the basis for recommendations for additional training either for the officer(s) involved in the incident or for the entire Department, and it can be the source of instruction about appropriate police tactics in particular circumstances.

Fourth, the UFRB should embrace its broad responsibilities to recommend use of force investigative protocols, standards for use-of-force investigations, training enhancements, and policy and procedure amendments. In the four cases we reviewed, the Final Report and UFRB recommended additional training for only one officer. Even where the UFRB does not believe a formal “tactical improvement opportunity” classification is warranted, the UFRB should still make a practice of providing soft feedback and training recommendations where warranted.

Fifth, IAD should designate and train force investigation specialists. As described above, the 2016 Report recommended that MPD specially train a cohort of IAD agents to focus on investigating serious use of force cases, much like specially trained units for homicides and sexual assaults. At the time, MPD did not agree with this recommendation and, instead, indicated that all members of IAD would receive cross-training on use of force investigations and misconduct investigations. Based on the investigatory shortcomings described in our report, we believe MPD should reconsider. We do not believe that MPD must necessarily undo the merger of FIT and IAD, although that is an option MPD should certainly consider. But, at a minimum, we recommend that MPD provide intensive, specialized training to a select group of IAD investigators who can serve as the lead investigators in all serious use of force incidents. The current use of force investigation training offered to IAD investigators is insufficient, as evidenced by the decreasing quality and thoroughness of serious use of force investigations that we first observed during the 2016 Review. IAD investigators informed us that the primary training for new IAD investigators consists of shadowing other IAD investigators. This is not sufficient.

Conclusion

Our review over the past several months has focused on MPD’s investigations into the four incidents in which the actions of MPD officers caused the deaths of Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter. We have been mindful throughout our review that we are not engaged in an academic or theoretical exercise, but instead a review of some of the most significant and difficult incidents MPD has dealt with over the last several years. Those incidents have had enormous impact not only (and most obviously) on the four men who died, but also on their families and friends, and the communities who mourn their loss, regardless of whether the actions of the MPD officers who caused their deaths were justified under the circumstances. Less obviously, these fatal incidents have a large and lasting impact on the officers involved in these events, on the MPD as a whole, and on the relationship between MPD and the communities it serves. These incidents have become flashpoints in the city, just as

citizen deaths at the hands of police have caused anger and turmoil in many other places in the country.

MPD owes the D.C. community and the public a robust system for investigating and reviewing uses of force. That system must ensure that appropriate policies are in place for investigating serious uses of force, that MPD investigators are adequately trained to investigate such cases, and that the review and oversight system both in the Internal Affairs Bureau and the Use of Force Review Board is demanding and rigorous. If any policies relevant to an incident are unclear, that lack of clarity should be identified during the course of an investigation and brought to the attention of MPD officials so they can address the issue. If a set of facts presents thorny and difficult issues, IAD investigators must be adequately trained to identify those issues and thoroughly investigate them. And if an investigation fails to address the full range of issues presented by the use of deadly force, reviewing officials within IAD and the UFRB must identify those shortcomings and insist that all the relevant issues – not just those at the time that the ultimate decision to use force was made – be addressed. Those obligations exist for every investigation of serious uses of force, but they apply with even greater urgency to incidents resulting in death.

Our review of these four cases from 2018 and 2019 demonstrates that MPD has fallen short of the standards it should set for itself, and far short of the standards it achieved in prior years when it was under federal oversight (2002–08). For those six years, members of this Review Team reviewed every serious use of force investigated by FIT, including cases involving death. Those MPD investigations were not perfect but they consistently reached a high level of excellence, to the point that MPD became a national model for conducting and reviewing such incidents.

When we reviewed similar cases in 2015, we noted that the quality of use of force investigations had slipped to the point that we expressed concern that the dissolution of FIT and its merger into the Internal Affairs Division would further dilute the quality of investigation into serious uses of force. In the Conclusion to our January 2016 Report, we stated:

In addition, the Review Team found substantial evidence showing that the quality of serious use of force investigations has declined. MPD’s elite use of force investigations unit – FIT – has been disbanded and merged into IAD, though declining FIT caseloads over time make this reorganization decision understandable. Unfortunately, the intensive and continuing training needed to maintain high-quality use of force investigations has not occurred. The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce unsatisfactory use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view. As we

have described in this report, the shortcomings in Internal Affairs investigations and investigative reports have had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the use of force by MPD officers is consistent with MPD policies and law enforcement best practices.⁴

Unfortunately, the weaknesses identified in our 2016 report have not been remedied; indeed, they have grown substantially worse. Our review of the four 2018–2019 fatal use of force cases has shown that those weaknesses persist, and that generally MPD has not recognized them and appears to resist or be unconcerned with remedying them.

At a time of crisis in American policing, when many of the causes and effects of that crisis are beyond the reach of law enforcement agencies, we recommend that MPD address the weaknesses in its system for investigating serious uses of force in a serious and committed way so that MPD’s investigations are thorough, credible, and can withstand public disclosure and examination. This will require the same level of innovation, commitment, and resources that were applied more than 20 years ago when MPD emerged as a leader in the field of investigating serious uses of force. If MPD is to meet the challenge it faces, the Department must first recognize and acknowledge the magnitude of that challenge – and the fierce urgency of meeting it.⁵

⁴ 2016 Report at 115.

⁵ In his March 15, 2021 response to our draft report, included at Appendix O, Acting Chief Contee stated that MPD agrees with all of the report’s recommendations and targets full implementation by the end of this calendar year. We are pleased that the response is so positive and constructive, and is without reservation. Needless to say, full implementation of so many important reforms will require hard work and continuing vigilance.

I. Introduction

During 2018 and 2019, four Black men—Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter—were killed during separate encounters with members of the District of Columbia’s Metropolitan Police Department (“MPD”). We were asked to undertake an in-depth review of these four cases by the Office of the District of Columbia Auditor (“ODCA”).⁶

This report evaluates whether these incidents, MPD’s investigations of these incidents, and the internal oversight of the internal MPD investigations were handled appropriately. More specifically, we were asked to determine whether MPD members at each stage of the process complied with existing law and MPD policy, best policing practices, and the terms of a June 2001 Memorandum of Agreement (“MOA”) between MPD, the District of Columbia, and the U.S. Department of Justice (“DOJ”). The report also looks at the MPD policies implicated by the review of these four cases and makes recommendations that flow from that review. The overarching goal of our review is to assist MPD and District of Columbia communities to mitigate the occurrence of use of force incidents; minimize the risk to the general public and MPD members stemming from those incidents; and enhance the credibility and efficacy of MPD’s use of force investigations.

Both the review team and ODCA recognize that this review comes at a critical moment in the relationship between the police and public, both nationally and within the District of Columbia. We conducted our review mindful of several important points of context.

Since our previous review of MPD was published in January 2016,⁷ the relationship between law enforcement agencies and the communities they serve has been the focus of a growing nationwide discussion. While our review team made a similar observation in our 2016 review, this focus has only intensified in the years that have followed. The issue was brought to a boil in late May 2020 with the killing of George Floyd by the Minneapolis Police Department, and the demonstrations that followed in cities and towns throughout the country. Policing issues have been front and center in Washington, D.C., where local groups have sought greater transparency

⁶ Subsequently, we have been asked by the Auditor to review the September 2, 2020, death of Deon Kay, and the October 23, 2020, death of Karon Hylton-Brown. Those reviews are ongoing and will be addressed separately.

⁷ *The Durability of Police Reform: The Metropolitan Police Department and Use of Force: 2008-2015* (Jan. 28, 2016), available at http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2018/07/Full-Report_2.pdf (“2016 Report”). That review and report were also commissioned by the D.C. Auditor.

and accountability from the MPD.⁸ We hope this report contributes to this important, ongoing dialogue. In this fraught context, it is more important than ever that law enforcement agencies, including MPD, focus on fostering trust and confidence in the community by demonstrating that uses of force are taken seriously, and that they are investigated and overseen in a transparent, even-handed manner.

In response to the Floyd case – and to the deaths of Ahmaud Arbery in Georgia,⁹ Breonna Taylor in Kentucky,¹⁰ and other Black men and women at the hands of police officers – the Council of the District of Columbia in June 2020 enacted a number of reforms through emergency legislation aimed at building such trust and confidence. A temporary version of the legislation, Act 23-0399, is in effect through July 15, 2021.¹¹ The reforms address both permissible law enforcement techniques and process issues.

⁸ See, e.g., Mitch Ryals, *Hiding Behind The Badge*, Washington City Paper (June 26, 2020), available at <https://washingtoncitypaper.com/article/304093/how-the-dc-police-department-doj-and-dc-attorney-generals-office-shield-the-bad-actions-of-cops/>; Paul Duggan, *A disproportionate number of D.C. police stops involved African Americans; Chief wants further analysis, saying the cause of the disparity isn't necessarily racial bias*, The Washington Post (Sept. 9, 2019), available at https://www.washingtonpost.com/local/public-safety/a-disproportionate-number-of-dc-police-stops-involved-african-americans/2019/09/09/6f11beb0-d347-11e9-9343-40db57cf6abd_story.html; Jacob Fenston, *D.C.'s Special Police Units Exclusively Used Force on Black People, Report Finds*, DCist (Sept. 29, 2020), available at <https://dcist.com/story/20/09/29/dc-mpd-special-police-units-black-people-arrests-use-of-force/>; Theresa Vargas, *"It hurt": A 9-year-old boy was handcuffed. But how many other D.C. children have also been?*, The Washington Post (April 27, 2019), available at https://www.washingtonpost.com/local/it-hurt-a-9-year-old-boy-was-handcuffed-but-how-many-other-dc-children-have-also-been/2019/04/26/1b173c0e-6862-11e9-8985-4cf30147bdca_story.html; Rachel Sadon, *After Police Detain Another Child, D.C. Attorney General Is Reviewing MPD's Policies*, DCist (April 24, 2019), available at <https://dcist.com/story/19/04/24/after-police-detain-another-child-d-c-attorney-general-is-reviewing-mpd-policies/>; John Henry, *DC residents still search for answers after MPD's "stop and frisk" of three boys*, WUSA9 (Jan. 15, 2019), available at <https://www.wusa9.com/article/news/local/dc-residents-still-search-for-answers-after-mpd-stop-and-frisk-of-three-boys/65-3e2ddc57-1b6f-4efd-9920-a82067cfb27f>.

⁹ Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, The New York Times (Dec. 17, 2020), available at <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

¹⁰ Richard A. Oppel Jr., Derrick Bryson Taylor, and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, The New York Times (Jan. 6, 2021), available at <https://www.nytimes.com/article/breonna-taylor-police.html>.

¹¹ See Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020, available at <https://lims.dccouncil.us/Legislation/B23-0826>.

They include provisions to strengthen current limits on use of neck restraints, ban hiring officers previously fired from other departments for police misconduct, and expand mandatory training subjects to include racism and white supremacy. In addition, the emergency legislation requires MPD to add non-MPD members to the Use of Force Review Board, including an individual who has personally experienced use of force, and outlines additional definitions on use of deadly force by MPD. The D.C. Council's Committee on the Judiciary and Public Safety plans to enact permanent legislation this year.

The history of substantial reform attempts in MPD, with respect to use of force, goes back 20 years. Beginning in 2002, an independent monitoring team (including three members of our current review team) oversaw MPD's implementation of a broad MOA that focused on many of the issues at the core of our current review: use of force policies, use of force investigations, and MPD's internal investigations review mechanism—the Use of Force Review Board (“UFRB”).¹² The MOA and the monitorship followed an investigation by the Civil Rights Division of the DOJ requested by former MPD Chief Charles H. Ramsey that found MPD was engaged in a pattern or practice of civil rights violations, primarily through the excessive use of force.

As described further below, the MOA was a comprehensive document that set forth a large number of reforms that MPD was required to implement, including broad and exacting requirements that addressed all aspects of the use of force by MPD officers: use of force policies; the implementation of those policies; the training of MPD personnel on those policies and related procedures; the investigation and review of force; and many other related issues.

Federal oversight by the DOJ and the independent monitor ended in 2008, at the recommendation of the independent monitor. At that time, the independent monitor concluded:

In the seven years since the parties executed the MOA, MPD has become a much more sophisticated police agency in terms of training its officers in the proper use of force, investigating and reviewing use of force incidents and allegations of misconduct, and reaching out to citizens and members of the public based on sound principles of community policing. We believe that the City's and MPD's success in implementing the MOA's reforms, which are now embedded in the Department's internal policies

¹² *Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department* (June 13, 2001), available at <http://www.dccwatch.com/police/010613.htm>.

and practices, stands as a model for municipalities and police departments across the country.¹³

In 2015, ODCA retained the Bromwich Group LLC to perform a review of MPD policies and practices with respect to the use of force. The results of that review, published as [*The Durability of Police Reform: The Metropolitan Police Department and Use of Force*](#) (the “2016 Report”), were in many ways positive. We concluded that many of the reforms implemented during the monitorship remained in place, while others had eroded over time. The 2016 Report set forth a number of detailed recommendations – many of which MPD agreed should be implemented. We have considered these past reforms and recommendations in our analysis of the four incidents that we have been asked to review.

Finally, the need for sound policies and practices is critical as the District of Columbia faces considerable civil liability for police misconduct. Since 2016, according to The Washington Post, the District of Columbia has settled over 70 lawsuits, many of which have alleged police misconduct and negligence, at a cost to taxpayers of over \$40 million.¹⁴ Indeed, two of the four cases under review are the subject of ongoing civil rights litigation against MPD and the District of Columbia, and both lawsuits specifically allege violations of MPD policy during the use of force incidents.

With this context in mind, this report proceeds in three parts. First, we provide a general background of our previous work with MPD, our review’s procedures, and MPD’s use of force policies. Second, for each of the four cases under review, we

¹³ Independent Monitor, *Final Report of the Independent Monitor for the Metropolitan Police Department* (June 13, 2008), available at <http://www.policemonitor.org/MPD/reports/080613reportv2.pdf> (“2008 Final Report”).

¹⁴ Paul Schwartzman, *These are the police misconduct lawsuits the public hears little about*, The Washington Post (Dec. 25, 2020), available at https://www.washingtonpost.com/local/legal-issues/dc-police-lawsuits/2020/12/24/e986472c-2375-11eb-8672-c281c7a2c96e_story.html; see also Jordan Fischer and Eric Flack, *D.C. Police settle lawsuit over “invasive,” unconstitutional anal search during stop & frisk*, WUSA9 (Dec. 6, 2018), available at <https://www.wusa9.com/article/news/local/dc-police-settle-lawsuit-over-invasive-unconstitutional-anal-search-during-stop-frisk/65-621627554>. Since 2016, the D.C. Attorney General’s Office has handled police misconduct settlements worth over \$40 million: about \$33 million for six claims of wrongful conviction and death; \$2.8 million to settle lawsuits over arrests during 2002 protests; and the remaining \$5 million to resolve at least 65 other suits, with amounts ranging from \$25,000 to \$200,000, alleging false arrest, excessive force, negligence, and violations of constitutional rights. In addition, the police department settled several additional lawsuits, at a cost of \$805,000.

provide an overview of the facts of the incident that led to the deaths of the four men, describe the investigation conducted by members of the Internal Affairs Division (“IAD”) of MPD’s Internal Affairs Bureau (“IAB”), analyze the investigator’s findings, review the available materials on the UFRB’s review of the investigation, and make recommendations relevant to the case under review. Finally, we propose a number of more general recommendations that flow from our review of the four cases.

II. Background

A. The 2008 Final Monitoring Report and the 2015-16 Review

As described above, this report is the third and most recent assessment of the MPD undertaken by members of the review team since 2008.

Our 2008 review was the culmination of a six-year independent monitorship of the MPD, in which we assessed MPD’s implementation of the June 2001 MOA between MPD, the District of Columbia, and the DOJ. The 2001 MOA required MPD to adopt reforms relating to the use of force by police officers, and to incorporate those reforms into policies, procedures, and training. The goal was to create a culture of accountability and constitutional policing within MPD. Although MPD is currently under no legal obligation to maintain these reforms, they establish meaningful benchmarks for assessing MPD’s current management of the use of force.

The MOA was a detailed charter for reforming MPD. It addressed all aspects of the use of force by MPD officers. It included detailed prescriptions for appropriate use of force polices applicable to the use of firearms, and separate policies applicable to other MPD tools including ASPs (batons), chemical spray, and canines; the implementation of those policies, including the training of MPD personnel; the reporting and investigation of uses of force by MPD officers; and many other related issues. As noted above, in April 2008, the monitoring team recommended that the MOA and the monitorship be terminated, even though MPD had not yet achieved substantial compliance on a small number of MOA provisions. For those provisions, oversight was transferred from the monitor to the DOJ. The 2008 Final Report noted the MOA’s reforms had become “embedded in the Department’s internal policies and practices.”¹⁵

In 2015, ODCA hired The Bromwich Group LLC to undertake a fresh review, to determine whether the reforms implemented from 1999 (when the DOJ investigation was launched) to 2008 (when the MOA and independent monitoring were terminated) remained in place. The central goal of that review was to determine whether MPD’s

¹⁵ 2008 Final Report at 3-4.

use of force policies, practices, and training were consistent with the MOA and best practices in law enforcement.

The 2016 Report, published in January 2016, reviewed the full set of MPD's use of force policies. It found the policies were both consistent with the MOA and generally reflected best practices in law enforcement, with a small number of exceptions. That report recommended MPD's use of force policy be modified to include more detailed discussion of neck restraints, including chokeholds; that the use of neck restraints be reported and investigated as a serious use of force; and that the use of MPD canines be more limited than the policy in effect at the time permitted.

The 2016 Report also identified problems with the review process for fatal shootings by MPD officers, but found the data did not support the claim that MPD officers use their firearms excessively. That report recommended MPD undertake a comprehensive review of its use of force policies every two years, and if necessary, make appropriate revisions. The 2016 Report also noted with concern that the quality of use of force investigations had deteriorated following the merger of the elite Force Investigations Team, created by former MPD Chief Charles H. Ramsey in 1999, into MPD's Internal Affairs Bureau.

B. The 2020–2021 Review

In July 2020, ODCA asked The Bromwich Group to conduct a review of the four fatal use of force incidents that occurred in 2018 and 2019. The purpose of the review was to evaluate these cases and the MPD internal affairs investigations that followed to ensure consistency with existing law and MPD policy, the MOA, and best policing practices. The review team also looked more broadly at opportunities to improve MPD's policies, practices, and training, particularly in light of our 2016 recommendations.

The review team was led by Michael R. Bromwich, who had served as the independent monitor from 2002 through 2008, and as the head of the 2015–16 review team. The review team included policing experts Dennis E. Nowicki, the former Chief of Police in Joliet, Illinois, and Charlotte, North Carolina; Kerr Putney, the former Chief of Police in Charlotte; and Ann Marie Doherty, the former Superintendent of the Boston Police Department. Mr. Bromwich, Chief Nowicki, and Superintendent Doherty served on the independent monitoring team and the 2016 review team. The review team also included as full participants Michael G. Scavelli and Emma S. Marshak from the Washington D.C.-based law firm Steptoe & Johnson LLP.

In preparing this report, we performed an in-depth review of four incidents involving MPD members that resulted in the death of a D.C. resident. The Black men who died in these incidents were: Jeffrey Price, Jr. on May 4, 2018; D'Quan Young on

May 9, 2018; Marqueeese Alston on June 12, 2018; and Eric Carter on September 16, 2019. Our review looked broadly at not only the officers involved in the use of force incidents and the internal affairs investigators but also supervisory personnel and the UFRB. At each stage of these cases, we considered not only whether MPD personnel complied with existing MPD policies and best policing practices, but also whether there were opportunities to improve MPD policies, practices, and training.

The bulk of the work described in this report commenced in late July 2020 and extended through early February 2021. To conduct these assessments, the team received briefings from the Internal Affairs Division (“IAD”)¹⁶ agents investigating each use of force, as well as senior MPD officials, including Assistant Chief Wilfredo Manlapaz (Director, Internal Affairs Bureau), Inspector John Knusten (Director, Internal Affairs Division), and Maureen O’Connell (Director, MPD Policy and Standards Branch).

The review team thoroughly reviewed the extensive case files of the four use of force incidents, including physical evidence, documentary evidence, autopsy reports, audio recordings of investigative interviews, and body-worn camera (“BWC”) footage, among other evidence. The team also attended, by video, the UFRB’s consideration of the Eric Carter case. Finally, the team reviewed any civil litigation filed against MPD in connection with the four use of force incidents. After reviewing the evidence, the team re-interviewed the investigative agents and departmental officials.¹⁷

Throughout our investigation, the review team found the MPD members with whom we interacted to be responsive, professional, cooperative, and supportive of our efforts. MPD provided us all of the information that we requested in a timely manner. The review team recognizes and appreciates the considerable time and effort each of these MPD members took out of their schedules to assist us.

C. Use of Force, Use of Force Investigation, and UFRB Policies

Three MPD General Orders provide the core policy and regulatory framework for our review of the four 2018-2019 cases. The first is GO-RAR-901.07, which addresses the use of force and includes a delineation of the circumstances in which deadly force

¹⁶ IAD is the division of the Internal Affairs Bureau (“IAB”) that investigates members of the MPD for misconduct as well as lethal and serious non-lethal uses of police force. For the purposes of this report, we refer to the investigators, staff, and supervisors responsible for these investigations as “IAD.”

¹⁷ The IAD investigator responsible for the Jeffrey Price, Jr. investigation briefed the Review Team at an early stage of our work. Sometime after this briefing, he retired from MPD. Although MPD attempted to secure his cooperation for an interview, he declined our request.

may be used.¹⁸ The second is GO-RAR-901.08, which covers Use of Force Investigations and provides the requirements for conducting such investigations.¹⁹ The third is GO-RAR-901.09, which establishes the structure, function, and membership of the UFRB, which is responsible for reviewing all cases involving the serious use of force, including deadly force.²⁰

1. Use of Force Policy

GO-RAR-901.07 (“GO 901.07”) is the foundational use of force policy that governs the actions of MPD members. It has been modified over the years to reflect evolving best practices in the law enforcement profession, as well as MPD’s own experience implementing the policy. Major changes were made to the policy in August 2016, when two core principles governing the use of force – sanctity of human life and principles of de-escalation – were explicitly incorporated into the policy. The policy was most recently revised in 2017.

The policy is divided into various sections, including subsections on topics such as use of less lethal weapons, use of neck restraints, and handcuffing. The core of the policy is stated as follows:

The policy of the Metropolitan Police Department (MPD) is to value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. Therefore, MPD members shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. When using force, members shall continuously reassess the perceived threat in order to select the reasonable use of force response, or one that is proportional to the threat faced by him, her, or others.

GO 901.07 II. The policy defines serious uses of force to include, among other things, firearms discharges, any use of force that results in serious physical injury or death, and any use of neck restraints.

Consistent with the nationwide emphasis on de-escalation, GO 901.07 was amended in August 2016 to place this requirement front and center in MPD’s use of force policy:

¹⁸ Attached as Appendix A.

¹⁹ Attached as Appendix B.

²⁰ Attached as Appendix C.

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques. Members shall attempt to defuse use of force situations with de-escalation techniques whenever feasible.

GO 901.07 IV.A. The policy also requires MPD members to determine whether the victim of the use of force requires medical assistance, to perform emergency first aid, and immediately to call for medical assistance.

Deadly force may be used by an MPD officer only when it is “necessary and objectively reasonable,” in response to an actual or threatened attack that could result in death or serious bodily injury to the MPD officer or some other person – and only after all other options have been exhausted or are not feasible under the circumstances. Deadly force may also be used in limited circumstances when an officer is in pursuit of a “fleeing felon.” Those circumstances are: 1) if a suspect poses an immediate threat of death or serious bodily harm to another person (including the officer); or 2) the suspect has committed or attempted to commit a felony involving the threat of death or bodily harm, the suspect poses a continuing threat, *and* the use of deadly force does not threaten the lives of innocent people. GO 901.07 IV.G.1.

Although GO 901.07 addresses a broad range of additional issues, the elements of the policy described above are the provisions most relevant to our review and analysis of the four cases discussed below.

2. Use of Force Investigations Policy

MPD’s policy governing use of force investigations, GO-RAR-901.08 (“GO 901.08”), requires that all serious uses of force by MPD officers must be investigated thoroughly and impartially to address, among other things, “the decision to use force.” GO 901.08 II. The investigations of the use of deadly force, and serious uses of force, are conducted by the IAD, which also is responsible for investigating any other case where there is the possibility that the use of force may have amounted to criminal conduct. In cases involving potential criminal conduct, MPD is required to consult with the U.S. Attorney’s Office for the District of Columbia (“USAO”), which makes the determination whether the use of force involves criminal wrongdoing. If the USAO determines that there is no criminal wrongdoing, it notifies MPD in a “declination letter” of its decision not to prosecute, and MPD proceeds to complete its administrative investigation.

GO 901.08 mandates that IAD investigators report to the scene of the use of force and immediately take charge of the investigation. GO 901.08 IV.I. The policy mandates that:

- All relevant evidence be collected, documented, and analyzed;
- The scene of the use of force be canvassed to locate all potential witnesses;
- All witnesses be interviewed separately;
- Leading questions during interviews be avoided to the maximum extent possible; and
- Inconsistencies among witnesses, including MPD members, be identified and addressed.

GO 901.08 V.D.4. In addition, the statements of all members and material witnesses must be recorded and transcribed, so that personnel in the Internal Affairs chain of command and members of the Use of Force Review Board can refer to them when they review the investigative reports.

The introduction of body-worn cameras (“BWCs”) in MPD, which was completed in December 2016,²¹ has made available a significant new source of evidence for IAD investigators of serious uses of force. GO 901.08 requires that all BWCs and cellphones belonging to MPD members who were participants in or witnesses to the use of force be collected and uploaded to a website, Evidence.com, where they are available for review and analysis by IAD investigators. GO 901.08 IV.I.

GO 901.08 mandates that investigative reports must include a complete summary of the use of force, a summary and analysis of all the relevant evidence collected during the investigation, and proposed findings. The investigator is required to reach conclusions on whether the use of force was consistent with MPD policy and training; whether proper tactics were used; and whether alternative and less serious uses of force were reasonably available under the circumstances.

MPD uses a classification scheme for use of force investigations, with four possible findings:

- Justified, within Department Policy (the use of force was justified and consistent with MPD policies).

²¹ MPD, *MPD and Body-Worn Cameras*, available at <https://mpdc.dc.gov/page/bwc>.

- Justified, Policy Violation (the use of force was justified, but the officer nevertheless violated one or more MPD policies).
- Justified, Tactical Improvement Opportunity (the use of force was justified, and there was no policy violation, but the officer(s) made tactical errors).
- Not Justified, Not within Department Policy (the use of force was not justified and violated one or more MPD policies).

GO 901.08 V.J.3. In addition, for allegations of excessive force or misconduct, MPD's policy requires one of the following findings:

- Unfounded – no facts to support that the incident occurred.
- Sustained – the allegation is supported by evidence, using a preponderance of the evidence standard.
- Insufficient Facts – there is not adequate evidence to determine whether misconduct occurred.
- Exonerated – the conduct occurred but did not violate MPD policy, procedure or training.

In some cases, there may not be any “allegations” of excessive force or misconduct, only the facts themselves. This creates some ambiguity as to when the second category of findings must be applied.

3. Use of Force Review Board

The Use of Force Review Board (“UFRB”) is the internal entity within MPD that reviews serious use of force investigations, including all investigations of uses of force that result in death. The UFRB reviews all use of force investigations completed by the Internal Affairs Division; any other use of force investigation sent to it by the Internal Affairs Bureau; and all vehicle pursuits that end in death. GO-RAR-901.09 (“GO 901.09”).

The UFRB is chaired by an Assistant Chief, who is selected by the MPD Chief, and consists of seven additional voting members, as well as a non-voting representative of the Fraternal Order of Police. The UFRB generally meets twice each month, and is assisted by the UFRB administrator, who deals with logistical and administrative matters.

The UFRB's mandate includes:

...the actions of all members used in the use of force incident, not just the actions of the member(s) who used force. The actions of the member(s) leading up to and following the use of force shall be reviewed to identify commendable actions(s) and/or conduct warranting corrective intervention by the MP and, as appropriate, recommend training.

GO 901.09 V.C.1. The scope of the UFRB's review includes: compliance with MPD policies; assessment of MPD tactics; evaluation of risk management issues raised by the incident; the adequacy of relevant training; and findings on whether the use of force was appropriate in light of all relevant circumstances. The UFRB is empowered to make recommendations to the Chief on investigative policies and procedures, standards for use of force investigations, and changes in training that result from the UFRB's review.

UFRB policy requires the use of a "Decision Point Analysis Matrix," which must be incorporated into the record, but which is not further described or defined in the policy. GO 901.09 V.C.3. The UFRB is required to either support or reject the findings made by the IAD investigation, using the same two sets of categories and classifications described above. Based on its review of the investigation, the UFRB may return the investigation to IAD for further investigation or other types of follow-up, but the rule requires that any follow-up be completed within five days.

As a result of its review of an individual case or group of cases, the UFRB has the power and authority, among other things, to make training recommendations for one MPD officer or, if appropriate, the entire Department. The UFRB also has the power to refer substantiated allegations of policy violations to the Disciplinary Review Division, which reports back to the UFRB on any discipline imposed on an MPD member. In addition to its review of individual use of force investigations, the UFRB is required to furnish an annual report to the MPD Chief analyzing uses of force that occurred in that year, and identifying any patterns, problems, or issues that have come to the UFRB's attention. GO 901.09 V.E.5.

III. Review of 2018-19 Cases Involving Deaths of Civilians

A. The Death of Jeffrey Price, Jr.

1. Summary of Facts

On May 4, 2018, at approximately 1:23 p.m., the D.C. Office of Unified Communications ("OUC") broadcast a call reporting multiple gunshots in the 5300

block of Blaine Street, N.E.²² At the same time, the dispatcher provided a description of a male wearing a mask on a four-wheel all-terrain vehicle and a second male on a dirt bike. The dispatcher advised that the operators of these vehicles had been reported to be fleeing the area of the gunshots at high speed. OUC received this information from a witness who was inside a school located at 5300 Blaine Street and reported “two Black males, one was riding a motorcycle and the other was riding a four wheel vehicle, and he had a mask covering his face,” approximately two minutes prior to hearing gunfire.²³ The witness said they did not see anyone with a weapon, and did not provide any further description of the individuals.²⁴

Officers David Jarboe and Anthony Gaton, in a marked MPD vehicle, responded to the 5300 block of Blaine Street, N.E., to canvass for the suspects and any possible shooting victims. Around the same time, a sergeant²⁵ reported over the radio that he had just seen a Black male, wearing gray pants, and said that the suspect was traveling on a dirt bike and “might be our guy.”²⁶ Seconds later, an individual on a dirt bike drove by Officers Jarboe and Gaton near the intersection of 53rd Street and Blaine, N.E. The officers saw the dirt bike²⁷ operator, later identified as Mr. Jeffrey Price, Jr., turn onto Division Avenue, N.E., traveling northbound in the southbound lane of travel. Officers Jarboe and Gaton turned onto Division Avenue and followed Mr. Price. Officer Jarboe radioed that he was driving behind an individual riding a dirt bike matching the description of one of the vehicles observed in the area of the gunshots.²⁸

As the situation was unfolding, Officer Michael Pearson had responded to a separate call for service nearby concerning the sound of gunshots in the Lincoln Heights area of Northeast. Officer Pearson was parked in his marked MPD vehicle and was completing a report on his canvass of the area when he heard a radio transmission, in

²² Facts related to the incident are drawn from the Final Investigative Report (“Price Report”) dated April 25, 2019 unless otherwise noted.

²³ OUC 854 Synopsis at 1.

²⁴ OUC Recording 1 (5300 Blaine St. NE 5-4-18) at 2:08.

²⁵ Pursuant to MPD’s request, we have not disclosed the identities of civilian witnesses, investigators, and officers who were not directly involved in the use of force.

²⁶ OUC Recording 2 (Division & Fitch Pl. 5-418) at 2:11.

²⁷ A subsequent check of the Washington Area Law Enforcement System/National Crime Information Center by MPD investigators revealed that the dirt bike had been reported stolen from Prince George’s County, Maryland on April 30, 2018.

²⁸ OUC 854 Synopsis at 2.

which Officer Jarboe stated, “I’m behind him. He’s coming up on Division [Avenue]. Red dirt bike – Division toward Burroughs.” After stating that a second person riding a blue four-wheeler was coming right at them in the opposite lane of traffic, Officer Jarboe again stated, “Coming up on Division and Burroughs.”²⁹

Officer Pearson started his MPD vehicle and began to drive eastbound on Fitch Place. When he entered the intersection of Fitch Place and Division, he saw the dirt bike speeding northbound in the southbound lane of travel – *i.e.* traveling towards his police vehicle. Officer Pearson then pulled forward into the northbound lane. As he did so, Mr. Price applied the dirt bike’s brakes and began an extended skid. The dirt bike skidded over 100 feet and collided with the right passenger side of the police vehicle. The impact caused severe injuries to Mr. Price – who was not wearing a helmet – and pinned Mr. Price below the dirt bike.

After the collision, Officer Pearson got out of his vehicle, pulled the dirt bike off Mr. Price and checked his condition. According to Officer Pearson, Mr. Price was unresponsive. Additional officers then came on the scene. They began rendering first aid and called for medical assistance. Paramedics transported Mr. Price to the hospital, where he was later pronounced dead from the injuries he sustained in the collision.

Officials in MPD’s chain of command and the U.S. Attorney’s Office for the District of Columbia (“USAO”) were promptly notified of the incident.

2. Summary of Investigation

The investigation was conducted jointly by a detective in the MPD Major Crash Investigation Unit (“MCIU”) and an agent in the Internal Affairs Division. The detective responded to the scene. No “walkthrough”³⁰ was conducted with the involved officers.

Investigators performed a thorough witness canvass and were able to take statements from a number of eyewitnesses to the collision. Investigators also looked for publicly-installed or private business or residential cameras that might have recorded the incident. The accounts from the multiple eyewitnesses were largely consistent, reporting that Mr. Price was well ahead of the police cars following behind him; Officer

²⁹ OUC Recording 2 (Division & Fitch Pl. 5-418) at 2:27.

³⁰ “Walkthroughs” are a standard practice for incidents where officers have been involved in the death of civilians. They allow the investigator to obtain a contemporaneous account of the officer who used deadly force or otherwise caused the death while it is still fresh in the officer’s mind, at the scene, so the investigator can more easily visualize and understand the description provided by the officer and the events that led up to it.

Pearson's marked SUV emerged on to Division Ave from Fitch Place; Mr. Price attempted to brake; and Mr. Price then struck the SUV. There was a discrepancy among the accounts on whether Mr. Price was in the wrong lane of travel – all of the eyewitnesses except one, and all of the MPD officers, reported that Mr. Price was traveling in the wrong lane of traffic. One witness specifically characterized Officer Pearson's SUV as trying to "cut off" Mr. Price. There were also some discrepancies and lack of recollection as to whether the pursuing officers had activated their emergency equipment.³¹ IAD interviewed Officer Pearson (the driver of the vehicle involved in the crash), as well as Officers Gatton, Jarboe, an additional officer, and the sergeant. Their accounts were also largely consistent with the summary above.

MCIU performed a detailed crash reconstruction. This included collecting and analyzing data on the movements of Officer Pearson's vehicle from the recorder located in the vehicle. From that data, MCIU determined that Officer Pearson was traveling at 22 MPH, and rolled into the intersection without completely stopping at the stop sign located at the intersection of Fitch and Division. The recorder captured a sudden 36.9% depression of the accelerator immediately prior to impact. MCIU also recreated the path and speed of the dirt bike. Relying on deceleration (skid) marks, MCIU concluded that Mr. Price was traveling at least 40.91 MPH (in a 25 MPH zone) at the time of impact and left a skid mark in excess of 114 feet. MCIU ultimately concluded that the primary cause of the accident was Mr. Price's "reckless operation of a stolen dirt bike."

On February 21, 2019, the USAO issued a declination letter declining to prosecute any MPD officers for actions related to this incident, and referred the matter to the MPD for any administrative investigation deemed appropriate.³² The Final Investigative Report ("Price Report") was issued on April 25, 2019.

The case was submitted to the Use of Force Review Board ("UFRB"). In preparation for its consideration of the case, UFRB staff prepared for the Board a document entitled "Decision Point Analysis Matrix," which was a detailed synopsis of the facts developed during the investigation and set forth MPD's policies concerning vehicular pursuits. On June 18, 2019, the UFRB unanimously concurred with the recommendation in the Price Report that the allegations against each of the involved officers were "unfounded." Beyond its concurrence, the UFRB made no additional findings or recommendations.

³¹ Body-worn camera ("BWC") footage confirms that Officer Jarboe activated his siren seconds before the crash.

³² It does not appear any of the officers completed Use of Force Incident Reports.

3. Analysis

The three involved officers — Officer Pearson and Officers Jarboe and Gaton — were investigated for engaging in prohibited conduct as set forth in GO-OPS-301.03, which governs vehicle pursuits.³³ Specifically, Officers Jarboe and Gaton were investigated for engaging in an unjustified vehicular pursuit. Officer Pearson was investigated for intentionally utilizing his assigned scout car as a blocking vehicle in an attempt to slow down, stop, and detain Mr. Price, which is prohibited by MPD policy. At the conclusion of the investigation by IAD, each of these allegations was deemed “Unfounded,” which according to MPD’s terminology as contained in its rules and regulations means “there are no facts to support that the incident occurred.”³⁴ The incident occurred, and Mr. Price died as a result, so at best it is misleading and confusing to find that the allegations are “Unfounded.”

We do not agree that the allegations of inappropriate police conduct were “Unfounded.” The Price Report does a disservice in reaching that conclusion. As to each potential act of misconduct, there *were* facts to support that the events actually occurred. We do ultimately find there was sufficient evidence to determine that the involved officers did not violate MPD policies or procedures. Thus, the officers should have been “Exonerated” under GO 901.08 V.J.4. IAD likewise should have drawn conclusions as to whether the alleged use of force was justified and within departmental policy under GO 901.08 V.J.3.

We provide support for these conclusions and make a number of recommendations below.

a. Officer Pearson’s Use of His Scout Car

A critical question in this investigation was whether Officer Pearson improperly used his MPD scout car in an effort to stop or slow Mr. Price. If Officer Pearson intended to do so, his conduct would, at a minimum, violate numerous MPD policies. These policies include prohibitions of: (1) the use of deadly force when there is no threat to officer safety and it is not necessary or objectively reasonable;³⁵ (2) the use of deadly force during a vehicular pursuit when other reasonable means of preventing escape have not been exhausted;³⁶ and (3) the use of roadblocks during a vehicular

³³ Attached as Appendix D.

³⁴ GO 901.08 V.J.4 (defining “Unfounded” as “there are no facts to support that the incident occurred”).

³⁵ GO 901.07.

³⁶ GO-OPS-301.03.IV.A.

pursuit.³⁷ Indeed, Mr. Price's family has alleged that this was precisely what occurred. In a lawsuit against the involved officers, the District of Columbia, and others, the complaint states:

It is alleged that Defendant, Michael Pearson, (hereinafter "Pearson") a District of Columbia police officer, killed Jeffery Price, Jr., by intentionally and/or negligently using his police vehicle as a barricade to block the path of Mr. Price when it was outrageously unreasonable to do so. It is further alleged that Defendant Pearson intended to harass and intimidate Mr. Price as a pattern of profiling and harassing black motorcycle drivers, by use of excessive force in violation of the Fourth Amendment and violations of Due Process of the Fifth Amendment to the Constitution that are outrageous and shock the conscience.³⁸

As suggested above, we do not agree that such allegations against Officer Pearson were "Unfounded." There *were* and *are* facts to support these allegations – but we found insufficient facts to establish any violation of MPD policy. We further note that IAD could have done more to critically examine Officer Pearson's account to ensure he was being truthful about his intentions for entering the intersection and determine whether he was, in fact, trying to avoid Mr. Price, as he claimed.

b. Officer Pearson's Account of the Crash

Officer Pearson was interviewed twice by IAD investigators. The first time, Officer Pearson was interviewed jointly by IAD and MCIU investigators, and subsequently by IAD investigators alone.

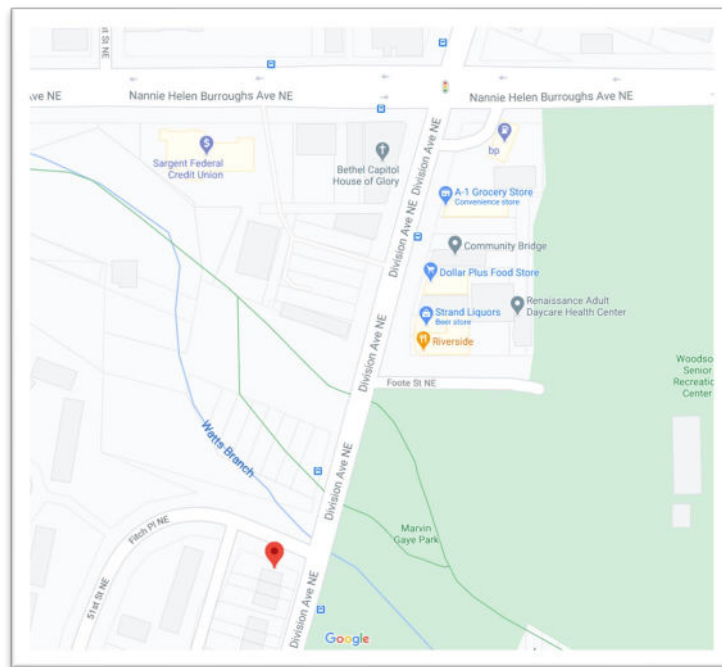
In his first interview with MCIU and IAD, Officer Pearson stated that, as he approached the intersection of Division Ave and Fitch Place, he believed – based on the radio transmission from Officer Jarboe – that Mr. Price had already passed Fitch Place traveling north toward Burroughs Ave. As he entered the intersection, Officer Pearson said he saw Mr. Price speeding toward him in the wrong lane of traffic. He said he tried to move forward out of the path of Mr. Price, and then was struck by Mr. Price's dirt bike.

In an interview months later, Officer Pearson "clarified" that he initially was going to turn left to head toward Burroughs Ave because the Jarboe radio transmission led him to believe Mr. Price was close to the intersection of Division and Burroughs, which was north of the intersection of Division and Fitch. Based on his understanding

³⁷ GO-OPS-301.03.V.G.

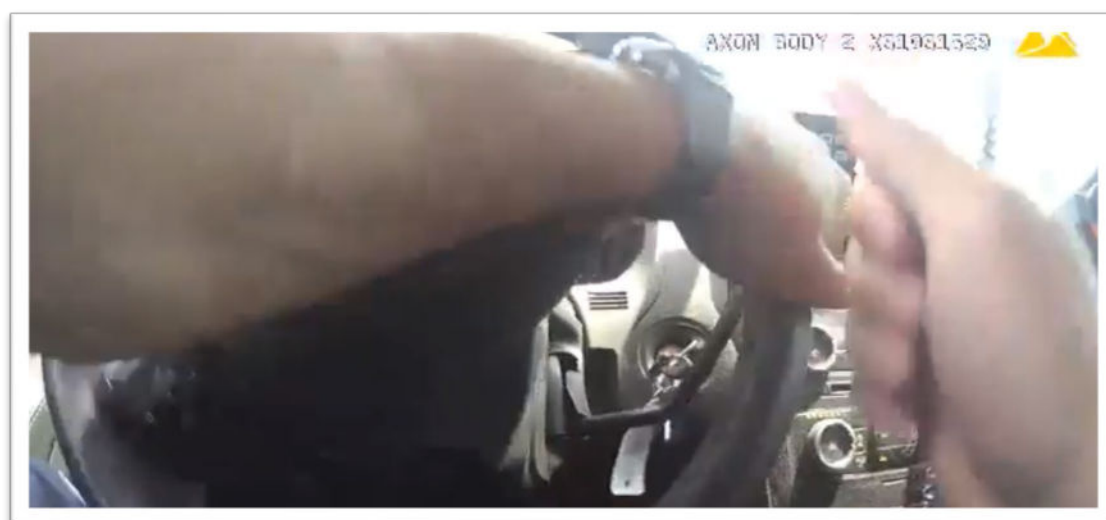
³⁸ *Price, et al. v. Pearson, et al.*, No. 19-cv-01272 (RBW) (D.D.C. filed Mar. 20, 2020) (ECF No. 1).

of the Jarboe radio transmission, Officer Pearson said he entered the intersection and “quickly look[ed] left and didn’t see anyone, so I went to turn right up Division and right when I came to the intersection I saw the dirt bike on the wrong side of the road coming down toward me, so I continued straight to get out of the path of the dirt bike.”



Officer Pearson looked “left” or northbound toward Burroughs Avenue when he first entered the intersection of Division Avenue and Fitch Place.

Officer Pearson should have been asked by IAD investigators to clarify the movements of his vehicle in the intersection based on a review of his BWC footage. As the final MCIU Report explains in reconstructing the crash, “Officer Pearson’s Body Worn Camera shows that as he entered the intersection of Fitch Pl. NE and Division Ave. N.E., he slightly turned to the left (toward Division Avenue Northeast and Nannie Helen Burroughs Northeast) then back toward the right to progress straight across the intersection.”



Officer Pearson's BWC footage shows him initially turning left, then right, then driving straight.

c. *The Investigation Did Not Sufficiently Explore Facts That Suggested Officer Pearson Might Have Used His Vehicle as a Roadblock*

Officer Pearson's intent as he entered the intersection is central to whether or not he was using his vehicle as a "roadblock." As a result, it was critical for IAD investigators to carefully scrutinize his account to determine whether he was being truthful. We believe additional analysis and investigation should have been done consistent with that objective.

First, the Price Report appropriately calls out Officer Pearson's erroneous statement that Officer Jarboe's radio transmission meant that Mr. Price had already reached the intersection of Division Ave and Burroughs Ave as Officer Pearson was traveling on Fitch Place. As the Price Report explains, OUC radio transmissions make clear that Officer Jarboe says Mr. Price is "coming up on Division and Burroughs."³⁹ In fact, the OUC radio transmissions reveal that Officer Jarboe *twice* said Mr. Price was coming up on Division and Burroughs. And Officer Jarboe also said Mr. Price was on Division headed *toward* Burroughs.

Second, investigators failed to ask important follow-up questions after Officer Pearson clarified that he intended to turn left on Division Ave based on the belief that Mr. Price had passed his location on Fitch Ave. These questions include the following:

- Why did Officer Pearson stop his left turn when he saw Mr. Price speeding toward him?
- Wouldn't Officer Pearson have been more likely to successfully avoid Mr. Price if he continued to turn left, because he would have moved through the intersection more quickly, turned into the lane opposite Mr. Price, and minimized the extent to which his vehicle was obstructing Division Ave.?
- Why did Officer Pearson instead stop his left turn and turn right *towards* Mr. Price when he saw him speeding toward the intersection?
- And was the MCIU report correct in concluding that Officer Pearson ultimately chose to "progress straight across the intersection?" As the above map makes clear, Officer Pearson would have driven directly into a park if he had continued to drive straight.

³⁹ Price Report at 7-8.

Third, investigators should have asked Officers Jarboe and Gatton, who witnessed the incident, more detailed questions about the movements of Officer Pearson's car. Both stated that they "observed an MPD vehicle [Officer Pearson's] pull into the intersection of Division Avenue and Fitch Place, Northeast" and then observed the dirt bike strike the MPD vehicle.⁴⁰ Their BWC footage likewise clearly demonstrates that they saw the crash given their audible reaction when it occurred. Despite having these important eyewitnesses, Officer Gatton was not asked any questions about whether he believed Officer Pearson was trying to get out of Mr. Price's way. Although Officer Jarboe stated that he believed Officer Pearson was trying to get out of the way of Mr. Price and the motorcycle, the investigators did not probe the basis for that belief.⁴¹ Such follow-up was particularly necessary in the interview of Officer Jarboe, who can be heard radioing, "We got him stopped" immediately following the crash.

Fourth, we believe such scrutiny was particularly warranted given conflicting statements from two witnesses. One eyewitness stated that Officer Pearson's car "turn[ed] off Fitch Place, Northeast, as if he were going to 'cut off' the dirt bike."⁴² Another eyewitness, an officer, stated that the scout car was "stationary" and it appeared the dirt bike swerved into the cruiser.⁴³

It is clear that investigators had all of this information at the time of Officer Pearson's second interview, which took place on February 28, 2019. Officer Pearson should have been confronted with this information to clarify and/or test the reliability of his account. To be sure, the event unfolded in a matter of seconds, and Officer Pearson may have aborted his left turn out of confusion or panic. Indeed, the Crash Data Retrieval analysis reflects that Officer Pearson accelerated approximately 1.5 seconds prior to impact (at approximately the same time as Officer Pearson appears to start turning right).⁴⁴ These facts could support Officer Pearson's account that he saw Mr. Price and tried to get out of the way. But Officer Pearson's account is not conclusive and should have been further explored.

⁴⁰ Price Report at 16-17.

⁴¹ The investigators asked him to clarify how he knew this and Officer Jarboe merely responded "he [inaudible] move[d] the scout car out of the way as the guy was coming down in the...oncoming lane."

⁴² Price Report at 23.

⁴³ The Price Report's synopsis of the eyewitness officer's statement says only that he "observed an MPD cruiser (Officer Michael Pearson) pull out into the intersection.... Simultaneously, [Mr. Price]...locked up his brakes, and struck the MPD cruiser." Price Report at 28-29. The Price Report omits the eyewitness officer's statement that the scout car was stationary.

⁴⁴ Price Report at 13; Crash Data Retrieval Report, Table 1.

d. The Pursuit of Mr. Price

The Price Report states that Officers Jarboe and Gatton were investigated for engaging in an unjustified vehicular pursuit in violation of GO-OPS-301.03. The investigation determined that this was “Unfounded.” The Price Report provides minimal analysis on this aspect of the investigation and does not cite to any of the specific sections of GO-OPS-301.03 that the investigator believed to be at issue. Indeed, the crux of the analysis can be found in the following paragraph from the Price Report:

It is important to note that Mr. Price collided with Scout Car 6041 two seconds (00:47 to 00:49 timestamp on Officer Jarboe's BWC video) after Officer Jarboe activated his vehicle's emergency lights and sirens. Additionally, Officer Jarboe was approximately 300-500 feet behind Mr. Price when he activated his emergency equipment. The distance was so great, in fact that Officer Jarboe completely lost sight of the motorcycle. Officer Jarboe asserted that he activated his lights and sirens in an attempt to conduct a traffic stop on the dirt bike, and to alert other pedestrians and vehicle operators in the area that Mr. Price was traveling in the wrong lane of traffic, it has been determined that his brief activation of the emergency equipment did not constitute a vehicular pursuit. It was further determined that Officer Jarboe's action was reasonable, and in accordance with the Department's General Orders.⁴⁵

While we ultimately agree that Officer Jarboe's actions were justifiable and within the spirit of Departmental policy, we do not agree with the determination that the allegations were “Unfounded.” It was at least an open question as to whether the officers engaged in a pursuit—particularly by any objective standard of what a “pursuit” is.⁴⁶ If the officers did engage in a pursuit, we believe it was justified, but we do not have sufficient information to conclude whether it was consistent with departmental policy.

⁴⁵ Price Report at 9.

⁴⁶ This situation underscores the difficulty with the current classifications in GO 901.08 V.J.4. Here, if it is determined that there is some—but not a preponderance of—evidence to suggest a pursuit occurred, it is not accurate to refer to the allegations as “Unfounded.”

e. *The Price Report Does Not Adequately Analyze Whether the Officers Engaged in a Pursuit*

As described above, the Price Report quickly disposes of the argument that Officers Jarboe and Gatton engaged in a pursuit of Mr. Price. The Price Report reaches this conclusion without analyzing (or referring to) the criteria used to make this determination. It appears that the Price Report relied on three factors in reaching this conclusion: (1) Officer Jarboe activated his emergency lights two seconds before the incident; (2) the officers were a significant distance behind Mr. Price when they activated their emergency equipment; and (3) the officers' intention in activating their emergency equipment was to warn citizens that Mr. Price was traveling in the wrong lane of travel. We do not read the General Orders to state that these factors control in assessing whether the officers' actions constituted a pursuit.

MPD policy defines a vehicular pursuit as "an attempt...to apprehend a fleeing felon while in an authorized emergency vehicle with all emergency warnings devices activated."⁴⁷ As described below, we believe this definition should be revisited and may have led to confusion by the investigating agent. Regardless, it was clear that Officer Jarboe was following someone he believed to be a "fleeing felon." And it is clear that Officer Jarboe activated his siren – if only momentarily – prior to the crash.⁴⁸ Under MPD's own definition, there is at least a colorable argument that a vehicular pursuit occurred.

Furthermore, Officer Jarboe's conduct was certainly consistent with an officer pursuing a suspect. The officers initially observed Mr. Price while canvassing for a suspect matching his description who may have fired gunshots. Upon seeing him, Officer Gatton pointed to him and Officer Jarboe began accelerating his car rapidly. Officer Jarboe stated he reached speeds of 50 MPH – well in excess of the 25 MPH speed limit. While pursuing Mr. Price, Officer Jarboe notified the dispatcher that he was "behind him" and provided regular updates of Mr. Price's location, consistent with MPD regulations regarding vehicular pursuits.⁴⁹ Finally, upon reaching the scene of the accident, Officer Jarboe radioed, "We got him stopped." The Price Report does not meaningfully confront these facts as part of its analysis.

⁴⁷ GO-OPS-301.03.III.2.

⁴⁸ Officer Gatton's interview does not address the issue of when Officer Jarboe activated emergency equipment. He stated that the equipment was on while they were heading down the hill behind Mr. Price. It is clear from the BWC that Officer Jarboe activated the siren just seconds before the crash. But we cannot determine whether the emergency lights were already activated, and witness accounts on the topic were inconclusive.

⁴⁹ See GO-OPS-301.03.V.B.

The Price Report also does not address whether, if the actions of Office Jarboe and Gatton constituted a vehicular pursuit, it was justified and consistent with MPD policy. Further investigation and analysis were warranted because there was at least a possibility that the events could be deemed a vehicular pursuit. In particular, investigators should have determined whether the officer met the requirements of GO-OPS-301.03.IV.A, which governs the circumstance when an officer can engage in a vehicular pursuit. Here, it appears the officers arguably had probable cause to believe Mr. Price had committed a felony that could have resulted in serious bodily harm—firing the gunshots that were the subject of the original radio alert—and the pursuit would not endanger the lives of others.⁵⁰ Because the issue was not explored, we do not have sufficient information to reach a conclusion on whether the officers reasonably believed that Mr. Price was a danger to others.⁵¹ Further investigation into these areas should have been pursued.

Finally, having definitively concluded that Officer Jarboe's actions were not a pursuit, the Price Report does not consider whether his conduct implicated any other MPD policies governing the operation of a police vehicle not engaged in a pursuit. For example, was it appropriate for the officers to travel at a high speed without emergency lights activated? Were the officers at any point driving on the wrong side of the road, as one eyewitness suggested? Officer Jarboe indicated that he initially intended to conduct a traffic stop but indicated that this "was not going to happen." Should emergency lights have been activated immediately? These questions were not adequately explored.

f. MPD Policies Do Not Provide Clear Guidance to the Officers or the Investigators

The Price Report's conclusion that no pursuit occurred is, at least in part, based on a lack of clear policy guidance of what constitutes a vehicular pursuit. As noted above, MPD policy defines a vehicular pursuit as "an attempt...to apprehend a fleeing felon while in an authorized emergency vehicle with all emergency warnings devices activated."⁵² Read literally, the only considerations that matter for whether officers engage in a "pursuit" are: (1) whether the individual is a "fleeing felon"; and (2) whether the officer is in an authorized emergency vehicle with its emergency equipment activated. We do not believe MPD intends such a formalistic construction of a "vehicle pursuit."

⁵⁰ GO-OPS-301.03.IV.A.2.a, c.

⁵¹ GO-OPS-301.03.IV.A.2.b.

⁵² GO-OPS-301.03.III.2.

It is illogical to define a pursuit based on whether the suspect was a “fleeing felon.” While to our understanding “fleeing felon” is not defined in the General Orders, the term clearly requires some determination by the officer that the fleeing individual has committed or is committing a felony. But whether an officer has sufficient cause to pursue the suspect speaks to whether the pursuit was *justified*, not whether it is a pursuit at all. Indeed, General Order 301.03.IV makes clear that “any member engaging in a vehicular pursuit must follow the conditions that are set forth in [GO 901.07 IV.G.2b]”, which include having “probable cause to believe the crime committed...was a felony which involved an actual or threatened attack[.]”⁵³ Incorporating this definition into the determination of whether a pursuit occurred at all would lead to absurd results, where an officer pursuing a suspect without sufficient cause would be deemed to have been, by definition, not engaging in a pursuit at all.

Furthermore, the vehicular pursuit policy defines the situation where a police officer does not activate emergency equipment as something other than a pursuit. Again, we doubt MPD intended such a result in so defining a vehicular pursuit. Indeed, courts in Washington, D.C., and across the country have acknowledged that a police officer engages in a pursuit even when he or she does not activate his emergency equipment.

A number of jurisdictions define a pursuit as any attempt to apprehend an individual fleeing from a law enforcement officer in a motor vehicle after that individual has been told to stop. The Chicago Police Department, for example, “automatically...classifie[s] as a pursuit” any instance where a department member is following an individual eluding law enforcement in their vehicle.⁵⁴ That directive provides clear guidance for when an individual is “eluding” and relies, in part, on the Illinois law criminalizing flight from a police officer while in a motor vehicle. Some jurisdictions also exclude from the definition of pursuit the circumstance where: “the vehicle remains in motion complying with all relevant traffic laws except failure to yield [to the police officer].”⁵⁵

We suggest that MPD adopt a similar approach and define a pursuit as an effort to apprehend the occupant of a motor vehicle who “fails or refuses to bring the motor vehicle to an immediate stop, or who flees or attempts to elude a law enforcement officer, following a law enforcement officer’s signal to bring the motor vehicle to a

⁵³ We note that GO 301.03 erroneously points to this section as GO-RAR-901.07.V.D.2.

⁵⁴ Chicago Police Department General Order G03-03-1, §§ II-III.

⁵⁵ See, e.g., City of Bellevue, WA Policy Manual § 3.00.010, available at <https://www.powerdms.com/public/bellpd/documents/3895>.

stop.”⁵⁶ Such a definition would provide clear, objective parameters for when a pursuit occurs.

g. Sufficiency of the Interviews

In contrast to some of the other investigations we have reviewed, the involved officers here were interviewed twice. In the first interview, the officers were jointly interviewed by a MCIU detective and an IAD agent. In the second interview, the officers were interviewed by an IAD agent and were asked, in advance, to review their previous statements and certain evidence, including their BWC footage. Each officer was asked to attest to the accuracy of their previous statement and whether the evidence provided an “accurate depiction of events.” In a few instances, the IAD investigator posed a small number of follow-up and clarification questions. But these interviews were all short and largely non-substantive.

These follow-up interviews were not sufficiently detailed and did not address important discrepancies in the evidentiary record (as described above). The follow-up interview with Officer Pearson is illustrative. In that interview, Officer Pearson was first asked a series of perfunctory leading questions that asked him to re-affirm information that he had already provided. For example:

Q: You were also afforded the opportunity to listen to OUC regarding recordings, dated May fourth, twenty eighteen, for both a call for sounds of gunshots, which you responded to as well as the accident itself that took place, is that correct?

A: Yes.

Q: And, also you were *inaudible*, afforded the opportunity to review your video recorded statement with Major Crash on May fourth as well, is that accurate?

A: Yes.

Q: The information within your statement provided to Major Crash is that an accurate description of the events that took place on May fourth, twenty eighteen at the intersection of Division Avenue and Fitch Place, Northeast?

A: Yes.

Q: Okay. Having had an opportunity to review your statement, your recorded statement as well as the OUC recordings and your Body-Worn Camera footage, after listening to the recordings itself do you recall hearing Officer David Jarboe come across the *inaudible*, come across the radio and make a comment that he had observed the operator of this red or white dirt bike at Nannie Helen Burroughs and Division, do you recall hearing that?

A: Yes.

⁵⁶ See D.C Code § 50-2201.05b(b)(1).

Officer Pearson then provided the following account:

Q: Upon you arriving at Division and Fitch, were they at Division and Fitch or were they at Division and Bur-, were they at Division and Burroughs when you got to Division and Fitch?

A: No, when I got to Division and Fitch I quickly look left and didn't see anyone, so I went to turn right up Division and right when I came out to the intersection I saw the dirt bike on the wrong side of the road coming down toward me, so I continue straight to get out of the path of the dirt bike.

Particularly in light of the widespread public skepticism of official accounts of Officer Pearson's actions immediately following Mr. Price's death, additional follow-up was critical. Such follow-up should have included asking Officer Pearson explicitly whether he intended to block Mr. Price's path, or what his motivations were for driving into the intersection in the first place. Additional questions also should have focused on, among other things, whether Officer Pearson planned on joining the pursuit, and why his first instinct was to turn right after not seeing anyone to the left. As described above, Officer Pearson may have had credible and persuasive responses to these questions. But they were never asked. Internal investigations must fully explore points of contention that naturally arise during the course of an investigation. This practice is critical to dealing with the crescendo of skepticism about internal police investigations.

h. Review by UFRB

The UFRB did not address the classification of the case as "Unfounded." It is clear from our review of the record that it is inaccurate to conclude that "there are no facts to support that the incident occurred."⁵⁷ On the topic of whether Officer Pearson used his car as a roadblock, for example, his car did ultimately "block" Mr. Price and at least one eyewitness said it looked like he was trying to "cut off" Mr. Price. While we agree that the preponderance of the evidence is that Officer Pearson did not intend to move his car in the path of Mr. Price, we do not believe it is accurate to call the allegations "Unfounded." It was incumbent on the UFRB to carefully scrutinize the investigating agent's recommended classification and return the case to IAD if the UFRB was dissatisfied with IAD's investigation or the evidence that supported its conclusions.

⁵⁷ GO 901.08 V.I.4.

4. Recommendations

Based on our review of the Price Report, the underlying evidence, and the UFRB's review of the investigation, we provide the following recommendations for MPD's consideration.

- IAD agents should conduct follow-up interviews with important witnesses after the agents have had the opportunity to evaluate initial interviews, BWC footage, and other evidence. This is a key issue that we identified not only in this case, but in the Young, Alston, and Carter cases, as discussed below.
- The UFRB and supervisors in IAD must more carefully scrutinize the recommendations and conclusions of the IAD investigator, and if necessary return the investigation to IAD for additional work. The IAD supervisor should periodically (weekly or bi-weekly) review the investigative file and document each review in writing. The log of reviews should be part of the completed investigations file. Again, this is a key issue that we identified not only in this case but also in the Young, Alston, and Carter cases.
- MPD should revisit and revise its classification of use of force incidents. While the current terminology has been used by the Department for a number of years, these labels are very likely to be misconstrued by the public and are not being consistently applied by IAD or the UFRB. We provide further recommendations about use of force classifications in Section IV below.
- As described in detail above, MPD should re-visit its definition of "vehicular pursuit" and establish easy to understand, objective criteria for when a pursuit occurs. The definition should not be contingent on factors such as whether the officer activates emergency equipment or whether the officer has an adequate basis to pursue the individual.

B. The Death of D'Quan Young

1. Summary of Facts

On Wednesday, May 9, 2018, at approximately 6:45 pm, Officer James Lorenzo Wilson III of the Metropolitan Police Department ("MPD") was off duty and in civilian clothes.⁵⁸ He was on his way to attend a cookout with four of his former MPD Academy classmates at a private home in the 2300 block of 15th Street, N.E., in

⁵⁸ Facts related to the incident are drawn from the Final Investigative Report ("Young Report") dated July 16, 2019 unless otherwise noted.

Washington, D.C. At the time of the incident, Officer Wilson was considered a probationary MPD officer – his entry on duty date is December 27, 2016.⁵⁹

While driving to the cookout, Officer Wilson was contacted by one of his classmates, who asked him to pick up some soda for the cookout. Officer Wilson stopped at a 7-11, picked up the soda and continued towards his destination. According to Officer Wilson, he had never before been in the neighborhood where the reunion was being held.⁶⁰ As he approached his destination, Officer Wilson parked his car. He then consolidated into a single bag the soda he had purchased from the 7-11 with some alcohol he had brought from home.

After parking his car, Officer Wilson began walking northbound on 15th Street, on the east side of the street, in search of his destination. He later stated that, as he walked north, he noticed a group of 7-10 men near the Brentwood Recreation Center (“BRC”) and they were watching him intently. In his multiple interviews with MPD investigators, Officer Wilson described the men in various ways – at times he put the number of men at 10-15 rather than 7-10 – and characterized their looks as hostile. Officer Wilson said their facial expressions signaled to him that he was unwelcome.⁶¹

According to Officer Wilson, he had trouble locating his destination, in part because the house addresses were not easy to see from the sidewalk. Officer Wilson said he then attempted to phone one of his classmates, an officer, to help him locate the right house, but she did not answer the phone. After continuing northbound, Officer Wilson realized from the ascending house address numbers that he had gone too far. He reversed direction and started walking southbound on the east sidewalk of 15th Street. Officer Wilson’s statements about his search for the house are corroborated by video footage from cameras operating at the BRC, which show him walking in one direction and then within moments walking in the opposite direction.

Shortly after he reversed direction, Officer Wilson was approached by D’Quan Young, a resident of the area who lived approximately a block away. According to

⁵⁹ An MPD officer is considered in probationary status for 18 months after the date of his appointment, although in special circumstances MPD can extend the probationary period for up to a total of 36 months. GO-PER-201.07.II, attached as Appendix E. At the time of the incident, Officer Wilson had been a member of MPD for approximately 16 months.

⁶⁰ Officer Wilson was assigned to MPD’s 7th District, whose D.C. Station is approximately 5 miles and a 20-minute drive from the residence where the reunion was being held, which is in MPD’s 5th District.

⁶¹ In one of his statements, Officer Wilson said the number of young men was 10-15, but in his initial statement he said 7-10. He returned to the 7-10 estimate in his subsequent descriptions.

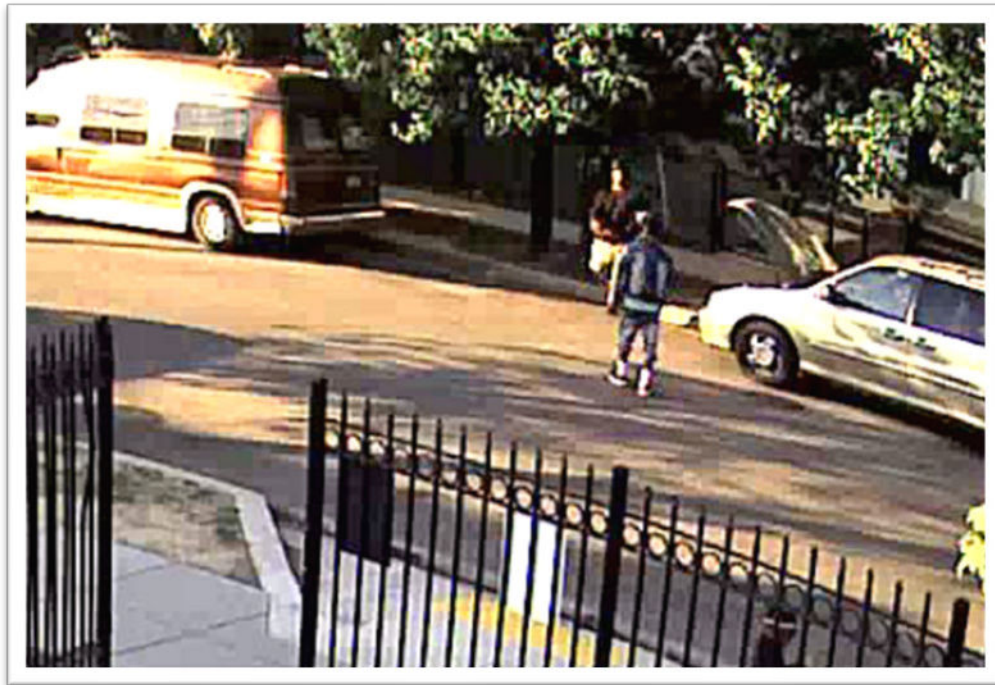
Officer Wilson, he was uncertain whether Mr. Young was one of the group of men who had given him hostile stares a few minutes earlier. The video footage, which was retrieved by MPD from three closed-circuit television (“CCTV”) cameras located at the BRC, and subsequently enhanced by the Federal Bureau of Investigation (“FBI”) Laboratory, shows Mr. Young walk casually across 15th Street and approach Officer Wilson. Mr. Young’s left arm is hanging loose and his right arm is closer to his body. Officer Wilson was carrying his mobile phone in his left hand and, according to his subsequent statements, was trying for a second time to reach his classmate by phone, to no avail. Officer Wilson was still carrying the bag with the soda and alcohol in his right hand as Mr. Young approached him.



Young crosses street toward Wilson

According to Officer Wilson, as Mr. Young approached, he asked, “Who you calling?” In Officer Wilson’s multiple interviews, he variously said he chose not to respond to Mr. Young, said, “What’s it to you?” or said, “None of your business.” Whatever the specific words he used, Officer Wilson intended to communicate that he had no interest in engaging with Mr. Young. According to Officer Wilson, Young then repeated the same question, or something very much like it. Officer Wilson said that he responded in a similar way as before – either by not responding at all, or saying words to the effect of, “None of your business.” The CCTV cameras do not have audio capabilities and therefore Officer Wilson’s subsequent statements to investigators constitute the only information about these verbal exchanges.

The video footage shows that as Mr. Young approached the east sidewalk of the 2300 block of 15th Street, Officer Wilson turned towards the street, presumably in response to Mr. Young's speaking to him. Officer Wilson stepped from the sidewalk, off the curb, and into the street where Mr. Young had stopped. Officer Wilson placed the bag with the soft drinks and alcohol on the ground, crouched and then took a couple of steps back. He settled into a semi-crouch with his legs more than shoulder-width apart. On the video footage, his stance appears to be confrontational, although it could also be viewed as a defensive stance. The men were quite different in stature and likely in physical strength: Officer Wilson was 5'9", 200 lbs.; Mr. Young was 5'7", 130 lbs.



Wilson steps into street towards Young



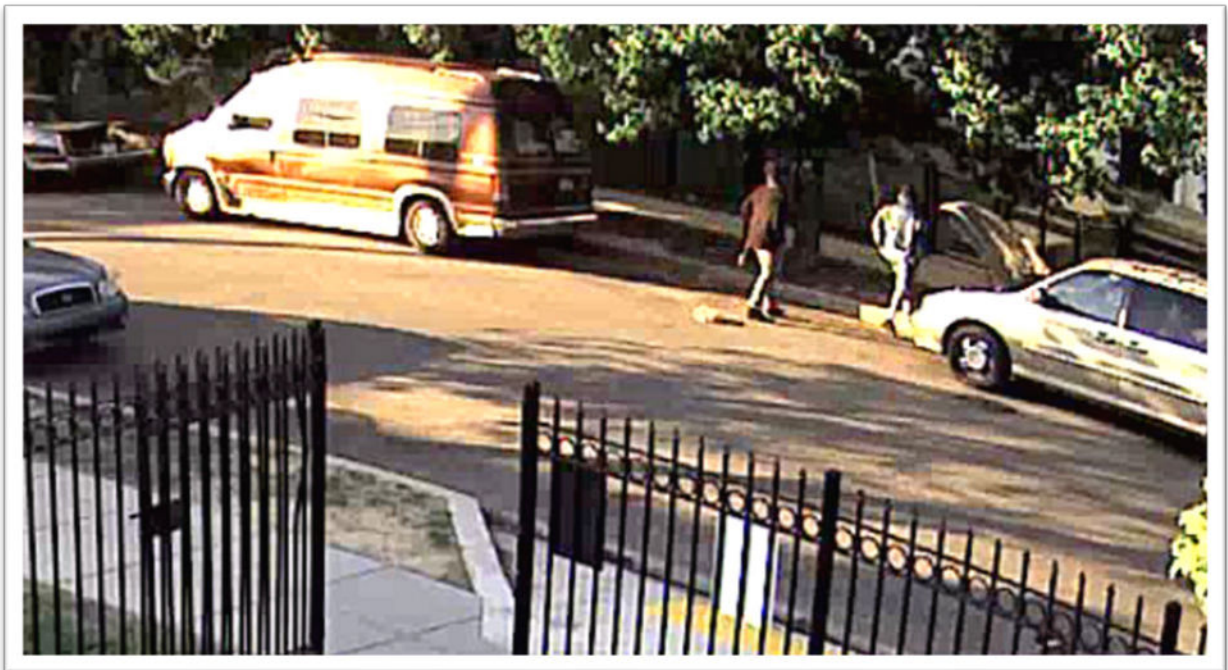
Wilson in street with bag shifted to left hand.

In any event, Officer Wilson appeared to be signaling by his body movements that he was not withdrawing but instead was standing his ground. In addition, although the enhanced video footage is blurry, it appears to show Officer Wilson tugging at his sleeves in what appears to be a further sign that he was prepared to fight with Mr. Young. At that point, Officer Wilson and Mr. Young were only a couple of feet apart. At no point is there any evidence that Officer Wilson tried to walk away or otherwise show an intention to withdraw from engaging with Mr. Young. Further, in none of his subsequent statements to investigators did Officer Wilson state that he identified himself as a police officer in an effort to encourage Mr. Young to stand down. In fact, during one of his interviews, he specifically said that he did not do so.



Wilson and Young are face-to-face; Wilson assumes stance

After they faced each other in the street for no more than a few seconds, Mr. Young stepped up on the curb and continued onto the sidewalk, followed by Officer Wilson.



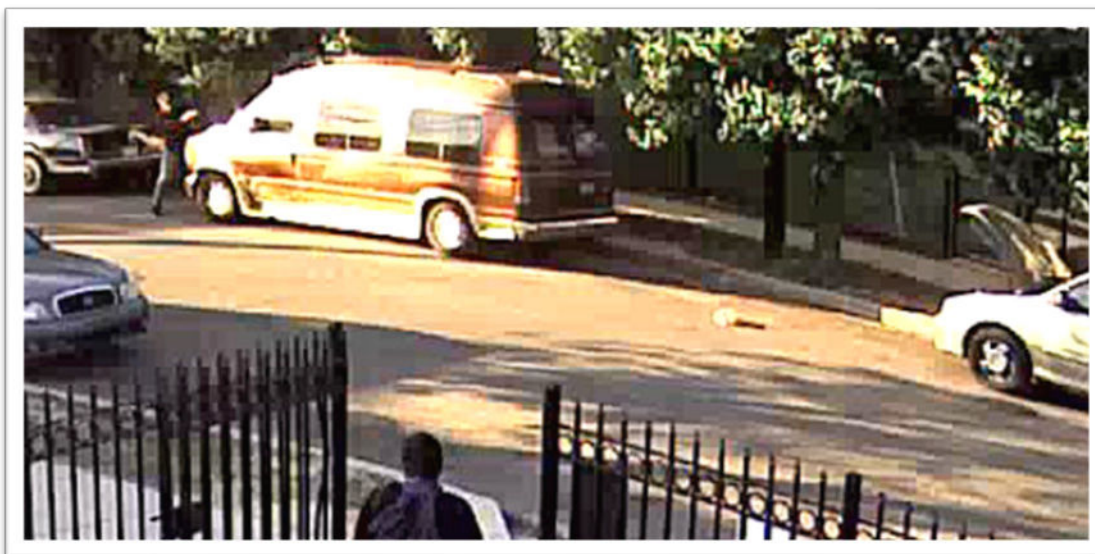
Wilson follows Young onto sidewalk

Officer Wilson followed Mr. Young up on the curb and the sidewalk. The video footage then clearly shows the two men facing each other only a few feet apart. At that point, according to Officer Wilson, Mr. Young reached into his waistband and drew what was subsequently determined to be a Kai-Tee .380 caliber pistol, and said, "Be cool." The video shows Officer Wilson taking a step forward and Mr. Young retreating, followed by Officer Wilson backing up rapidly while still facing Mr. Young.⁶² According to Officer Wilson, he backed up rapidly in response to Mr. Young pointing and firing his pistol at Officer Wilson. Officer Wilson said he saw the flash and felt the bullet go by.

As he retreated, Officer Wilson fired numerous rounds at Mr. Young as Young continued to back away. Officer Wilson claimed that even as Young retreated, Young continued to point his weapon at him, even though investigators subsequently found no physical or forensic evidence that Young fired more than a single shot.⁶³ After retreating, Officer Wilson took cover behind a van parked at the curb, and peeked around the front driver's side. By that point, Mr. Young had crossed from the sidewalk into the street and was on the ground, having been struck by Officer Wilson's multiple shots. Officer Wilson later claimed that Young continued to point his weapon at Wilson even after Young was on the ground. Officer Wilson fired an additional shot from behind the cover of the van, and then after pausing, peeked around the front of the van again and fired a final shot.

⁶² The MPD investigative report stated that Officer Wilson reached for Young's weapon in an effort to grab it. Young Report at 56. Officer Wilson did not claim that he did so in any of his interviews, and we could not discern it from the video footage, which the MPD investigator said was the basis for his finding.

⁶³ See FBI processed video from BRC camera 14, at 2:20 to 2:25.



Officer Wilson behind the van

At about the same time as he fired this final shot, Officer Wilson heard a loud gunshot that he said led him to believe that he was being fired upon by someone other than Mr. Young.⁶⁴ In response, Officer Wilson retreated northbound on 15th Street. In response to the gunfire, two officers from the D.C. Housing Authority Police Department (“DCHAPD”) approached Officer Wilson and ordered him to lie on the ground, unaware that he was an MPD officer. Officer Wilson complied, placed his weapon on the ground and told the DCHAPD officers that his MPD credentials were in the back pocket of his pants, which one of the officers confirmed. By that point, having also heard the gunshots, Officer Wilson’s four MPD Academy classmates emerged from their house and began securing the scene.

Almost immediately, a crowd began growing in size and volatility. Bystanders had identified Officer Wilson as a participant in the shooting and were becoming aggressive and hostile, according to numerous MPD officers. Among many MPD members who arrived at the scene was Sergeant David Jones of the 5th District. Sgt. Jones observed the situation and told Officer Wilson to get in Jones’s police cruiser to move him away from the scene. Sgt. Jones and another MPD officer drove Officer Wilson to a nearby carwash and waited there for approximately 45 minutes before returning to the scene. Neither Sgt. Jones nor Officer Wilson provided timely

⁶⁴ Other witnesses who contacted 911 reported hearing multiple gunshots from what sounded like a different weapon. In addition, Crime Scene Unit personnel recovered bullets from a weapon other than Officer Wilson’s and Mr. Young’s.

notification to MPD officials or Internal Affairs that Wilson had been involved in a shooting, as required by MPD regulations.⁶⁵

Initial emergency medical care was provided to Mr. Young by members of a Gun Recovery Unit, who were in the vicinity, as well as Officer Wilson's colleagues who had emerged from the house in response to the gunshots. Personnel from D.C. Fire and Emergency Medical Services responded to the scene. They treated Mr. Young and brought him to the Washington Hospital Center Medstar Unit, where he was pronounced dead by emergency room staff at 7:23 pm. Mr. Young's mother was notified of his death shortly after midnight, approximately five hours after he was pronounced dead. As mentioned above, Mr. Young was 24 years old at the time of his death.

On May 10, 2018, MPD made the required notification to the U.S. Attorney's Office for the District of Columbia ("USAO") for review of the incident to determine whether criminal prosecution of Officer Wilson was supported by the facts. Over a year later, on June 28, 2019, the USAO provided a declination letter, written notice that it had decided not to bring criminal charges against Officer Wilson.

2. Summary of Investigation

MPD's investigation began shortly after the incident and was led by an agent in the Internal Affairs Division.⁶⁶ The investigation included interviews of witnesses; video footage from the Brentwood Recreation Center cameras, which was subsequently enhanced by the FBI; a substantial volume of BWC footage of the aftermath of the shooting; forensic evidence that included recovery and analysis of shell casings recovered at the scene; medical and autopsy reports documenting the fatal wounds suffered by Mr. Young; and substantial additional evidence.

The autopsy performed two days after the incident showed that Mr. Young had suffered five gunshot wounds to various parts of his body, including wounds to his chest, his right knee, the back of his thigh, and his lower back. The autopsy was not able to determine the sequence of the wounds.

⁶⁵ Sgt. Jones' failure to provide timely notifications to the Command Information Center, the 5th District Watch Commander, and Internal Affairs, as well as his premature powering off of his body-worn camera, prompted Internal Affairs to initiate two separate investigations of him for potential policy violations.

⁶⁶ The beginning of the investigation was delayed by at least 45 minutes because of the actions of Sgt. Jones in removing Officer Wilson from the scene without either of them notifying MPD authorities of an officer-involved shooting. The allegation against Sgt. Jones was substantiated and disciplinary action was taken.

Crime Scene Unit personnel took photographs, collected forensic evidence at the scene, and performed other appropriate forensic tasks. Crime Scene Unit technicians recovered 14 shell casings from the area of the sidewalk where Officer Wilson was backpedaling and firing at Mr. Young, and two additional shell casings near the front of the Ford Econoline Van behind which Officer Wilson took cover. They recovered a spent .380 caliber casing in front of 2323 15th Street, NE, which was found to be consistent with the ammunition recovered from the .380 caliber pistol that was found next to the body of Mr. Young and that matched the description provided by Officer Wilson.

Crime Scene Unit personnel also recovered a .40 caliber copper jacket bullet fragment in the street in front of 2332 15th Street that was fired from a pistol other than Wilson's or Young's, which was consistent with Officer Wilson's claim that he heard shots fired in his direction after he fired the final two shots at Mr. Young. The recovery of the fragment was also consistent with calls from residents of the neighborhood who reported shots having a different sound than the multiple shots that came from Officer Wilson's weapon.

On the day of the incident and in the days immediately following, the investigator and other Internal Affairs personnel interviewed numerous witnesses and conducted an extensive neighborhood canvass in an effort to identify additional witnesses. The witnesses included residents of the 2300 block of 15th Street and on nearby streets who heard gunshots but who did not see any part of the incident. Some of these witnesses called 911 while others called MPD's 5th District Office, but none of the 911 or 5th District callers saw what happened between Officer Wilson and Mr. Young. Two participants in a group interview summarized below said they saw at least parts of the incident. The witnesses also included numerous law enforcement personnel who responded to the scene after the incident had ended. Among many others, these witnesses included Officer Wilson's four MPD Academy classmates who, as noted above, responded to the sound of gunshots. None of them saw any part of what happened.

Officer Wilson was the central witness, and for some portion of his interactions with Mr. Young, the only witness with information about the words they exchanged and much of what happened between them. Two days after the incident, on May 11, the investigator conducted an initial interview during which Officer Wilson described the events from the time he arrived on 15th Street until the aftermath of his use of deadly force on Mr. Young. Then, a week after the incident, in the early morning hours of May 16, 2018, the investigator conducted a walkthrough with Officer Wilson at the scene of the incident, with Wilson again describing in detail his interactions with Mr. Young and

the fatal shooting that followed.⁶⁷ Finally, the investigator conducted a third interview of Officer Wilson in July 2019, 14 months after the incident and shortly after receiving the declination letter from the USAO. We carefully reviewed the audiotapes and transcripts of each of these interviews.

In a single confusing and somewhat chaotic group interview on May 22, 2018,⁶⁸ various witnesses, among other things, told the investigator:

- Officer Wilson was an undercover officer, Mr. Young surrendered to Officer Wilson, and Officer Wilson shot Mr. Young when Young was on the ground and was bleeding.
- The incident was a police buy-bust operation that “went wrong.” This witness said that Officer Wilson shot at persons other than Mr. Young and that he was “shooting at everybody” and that MPD had “jump-out” units all around the area.
- Officer Wilson drew his weapon first, and Mr. Young tried to run and was then shot several times by Officer Wilson, who continued to shoot Mr. Young after he was already on the ground.
- Mr. Young was not a threat to Officer Wilson, who the witness claimed was aggressive from the time he got out of his car. This witness further stated Officer Wilson was “mean mugging” the witness and his group, and that when Mr. Young approached him, Wilson became aggressive. The witness said that he did not see Mr. Young with a gun until Mr. Young was on the ground after he had been shot, stating that someone must have put the gun there.

Following the USAO’s June 28, 2019, decision not to prosecute, the investigator completed his investigative report, dated July 16, 2019 (Young Report).

⁶⁷ “Walkthroughs” are a standard practice for incidents where officers have been involved in the death of civilians, so that the investigator can obtain a contemporaneous account of the officer who used deadly force or otherwise caused the death while it is still fresh in the officer’s memory and at the scene of the death so the investigator can more easily visualize the events that led up to it. Ideally, such a walkthrough is conducted the same day and under the same conditions as the incident. Because of the angry reactions to Officer Wilson on the date of the incident, the investigator decided to conduct the walkthrough in the early morning hours a week later to avoid attracting a crowd.

⁶⁸ Audio interview (May 22, 2018) (702_0577 Interview at 2300 block of 15th ST NE.mp3).

The Young Report's Summary and Conclusions concluded that, "The video evidence and physical evidence corroborate Officer Wilson's account of this incident." More specifically, as to the key interactions between Officer Wilson and Mr. Young, the Young Report found:

- "Mr. Young asked Officer Wilson who he was on the phone with, but Officer Wilson refused to provide any information to him. This agitated Mr. Young, who began to display aggressive behavior."
- "Mr. Young and Officer Wilson both ended up on the east sidewalk of the 2300 block of 15th Street, N.E., and Mr. Young pulled a .380 caliber pistol from his waistband."
- "Officer Wilson unsuccessfully attempted to grab Mr. Young's pistol. Mr. Young and Officer Wilson then began backing away from each other. Mr. Young raised his pistol and fired one round at Officer Wilson, but the round did not strike him. While moving backwards, Officer Wilson drew his service weapon from his administrative holster and returned fire. Officer Wilson fired 14 rounds from his service pistol at Mr. Young. Mr. Young continued to point his pistol at Officer Wilson as he retreated. At the time he fired his service pistol, Officer Wilson did not know if any of his rounds had struck Mr. Young."⁶⁹

Based on these findings, the investigation recommended that Officer Wilson's use of force be found to be justified and within Departmental policy.

The investigation was approved by four levels of MPD personnel in the investigator's chain of command in IAB within nine days of the completion of the report. On July 25, 2019, the Assistant Chief approved the report.

The case was submitted to the UFRB. In preparation for its consideration of the case, UFRB staff prepared a document entitled "Decision Point Analysis Matrix,"⁷⁰ which was a detailed synopsis of the facts developed during the investigation. On August 21, 2019, the UFRB unanimously concurred with the recommendation in the Young Report that Officer Wilson's use of force was justified and within MPD policy. Beyond its concurrence, the UFRB made no additional findings or recommendations.

⁶⁹ Young Report at 57.

⁷⁰ The requirement for a Decision Point Analysis Matrix is discussed in the next section.

3. Analysis

a. *Relevant Policies*

MPD's Use of Force Policy, GO 901.07, governs Officer Wilson's actions in the encounter with Mr. Young that ended in Young's death.⁷¹ Section V.G authorizes the use of deadly force in the following limited circumstances:

Authorized Use of Deadly Force

a. Defense of Life

Members may use deadly force in the performance of police duties under the following circumstances:

- (1) When is it necessary and objectively reasonable; **and**
- (2) To defend themselves or another from an actual or threatened attack that is imminent and could result in death or serious bodily injury; **and**
- (3) When all other options have been exhausted **or** do not reasonably lend themselves to the circumstances.

(emphasis in original).⁷² However, MPD officers are also governed by the duty to de-escalate situations: to take all reasonable steps to avoid the use of any type of force, including deadly force. MPD's de-escalation policy, incorporated as a central element of MPD's use of force policy in 2016, provides:

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques, Members shall attempt

⁷¹ We are not aware of any MPD policies or regulations that specifically cover uses of force by off duty officers. We could identify only one relevant MPD policy that sets forth off-duty responsibilities—SO-04-07, attached as Appendix F—and it does not explicitly address uses of force. Therefore, our analysis applies the same standards for off-duty officers as for on-duty officers.

⁷² MPD regulations also authorize the use of deadly force in a limited set of circumstances involving fleeing felons. GO 901.07 IV.G.1.b.

to defuse use of force situations with de-escalation techniques whenever feasible.

GO 901.07 IV.A. Indeed, consistent with the growing consensus among major police departments in the United States, the de-escalation requirement is the first principle listed under MPD's use of force regulations. This reflects the primacy of de-escalation and its overarching applicability to situations in which the use of force may be necessary.

The UFRB's policies and procedures, which govern its consideration of investigations of serious uses of force by the IAD, require the preparation and use of a Decision Point Analysis Matrix, which is incorporated into the record.⁷³

b. Investigative Issues

The investigation did a generally thorough job of gathering the large amount of potentially relevant evidence. As noted above, this evidence included multiple interviews of Officer Wilson, interviews of other officers who reported to the scene, a volume of (largely irrelevant) BWC footage⁷⁴ from officers who reported to the scene after the shooting, interviews of civilians who lived in the neighborhood and who called 911 or the local MPD District Office, and people who were at or around the vicinity of the incident, including friends and associates of Mr. Young.

(1) Witness Interviews

However, some additional investigation was appropriate, focusing on the people who were in and around the BRC – many of them seemingly friends and associates of Mr. Young – who claimed to the investigator that they had seen some or all of the encounter between Officer Wilson and Mr. Young. We summarized above some of the statements made in a group interview conducted on May 22, 2018, some of which were implausible on their face and some of which were contradicted by other evidence. Even so, some of the statements called for investigative follow-up, particularly those statements where the witnesses making the statement said they saw some part of the interactions between Officer Wilson and Mr. Young. These included the witness who said he saw Officer Wilson draw his gun first, and the witness who said that Mr. Young surrendered.

⁷³ GO 901.09 V.C. 3

⁷⁴ Because he was off duty, Officer Wilson was not wearing a body-worn camera, nor was he required to do so. A properly activated body-worn camera would have resolved most if not all of the remaining uncertainties about the sequence of the key interactions between Officer Wilson and Mr. Young.

Group interviews are problematic because the individuals involved take cues from each other and may be repeating what they have just heard from others rather than providing information based on their own observations. For that reason, among others, Paragraph 81c of the 2001 MOA specifically prohibited group interviews.

A review of the audiotape of the group interview makes clear the deficiencies and drawbacks of speaking to multiple witnesses at the same time. That was especially true in this case, when the support for Mr. Young among the people participating in the group interview was so strong that any witness who might have said something unfavorable to Mr. Young, or who claimed to see him as the aggressor, would have risked retaliation. We understand that isolating the members of the group and interviewing them individually at a different location and at a different time might have been challenging, but the effort should have been made to fully address and resolve their claims.

When we spoke with the investigator about this issue, he explained that trying to isolate individuals from the group at the time of the group interview was problematic. He said it could have led other members of the group to conclude that anyone he interviewed individually was cooperating with the police, thus possibly making them a target for retaliation. But the investigator acknowledged that this concern would not have precluded him from making efforts, at a time subsequent to the May 22 group interview, to contact at least some of these witnesses individually by phone or through some other means given that, with one exception, he was able to obtain names of the participants in the group interview. We believe that making such efforts would have been helpful in ensuring the completeness of the investigation.

(2) *Opportunities for De-Escalation Prior to the Shooting*

Based on our independent review of the evidence, we credit Officer Wilson's claim that Mr. Young drew his weapon and shot first, though the issue is not free from doubt. The basis for crediting the claim is not only Officer Wilson's repeated statements to that effect but also the video footage⁷⁵ that shows Officer Wilson advancing towards Mr. Young and then retreating quickly.⁷⁶ His retreat is consistent with reacting to Mr.

⁷⁵ FBI enhanced video processed from camera 14.

⁷⁶ As previously mentioned, the Young Report states that Officer Wilson's advance towards Mr. Young was an effort to grab Mr. Young's pistol. In his final interview, a year after the event, Officer Wilson was asked multiple leading questions from the investigator suggesting that Wilson had reached for Mr. Young's weapon. Despite the leading questions, Officer Wilson never agreed with the suggestion that he did so. Our review of the videotape evidence

Young's actions in drawing and pointing his weapon, and Young firing first. Also, a careful review of the video from one of the BRC cameras shows Officer Wilson's pistol in his hand after he starts backing away from Young. As he retreated, Officer Wilson was firing his own weapon at Mr. Young. Video footage from the BRC cameras does not clearly resolve the issue, and none of the third-party witness accounts credibly refutes Officer Wilson's description of this sequence.

When viewed through the lens of events that occurred after both men were on the sidewalk, Officer Wilson's use of deadly force in firing his weapon at Young on the sidewalk was justified. It was "necessary and objectively reasonable," because he was defending himself from "an actual or threatened attack" that was imminent and could have resulted in death or serious bodily injury — *i.e.*, the threat posed by Mr. Young's drawing, pointing, and firing his weapon at Officer Wilson. It is somewhat less clear that Officer Wilson was justified in continuing to fire his weapon once Mr. Young was in full retreat, although there is no substantial credible evidence that contradicts Officer Wilson's claim that Mr. Young continued to point his weapon at Officer Wilson. And a close review of the enhanced video from one of the BRC cameras appears to show that Mr. Young continued to face Officer Wilson as the two men backed away from each other.⁷⁷ If that was the case, Mr. Young continued to constitute a threat that justified the use of deadly force, at least before Mr. Young moved from the sidewalk into the street.

We next turn to the question of whether Officer Wilson made efforts to de-escalate the situation, as required by MPD regulations. As an initial matter, it is clear that Officer Wilson did nothing to initiate or provoke the encounter with Mr. Young. Officer Wilson had come to the neighborhood for a cookout with his classmates, not a confrontation. He was minding his own business; his only objective was to meet up with his MPD colleagues for the cookout. Officer Wilson did not seek out Mr. Young and there is no evidence that he had any interest in engaging with Mr. Young or anyone else on the street. Mr. Young initiated the confrontation by crossing the street and asking Wilson whom he was speaking with on the phone.⁷⁸ The question itself was provocative. It was, in fact, none of Mr. Young's business, whether that is how Officer Wilson specifically responded or not.

But there is no evidence that Officer Wilson made an effort at any point to de-escalate his encounter with Mr. Young. In fact, even though Mr. Young initiated the encounter, Officer Wilson escalated it. Even at the stage of Mr. Young's invasive initial

similarly did not allow us to reach the investigator's conclusion that Wilson reached for Young's weapon.

⁷⁷ FBI enhanced video from camera 14, at 2:20-2:25.

⁷⁸ FBI enhanced videos from BRC cameras 1 and 14.

question, Officer Wilson might have tried to answer the question less sharply by saying something more benign, such as that he was speaking to a friend, or to his mother. It may well have had no impact on Mr. Young but Officer Wilson's actual response, in the moment, surely did nothing to de-escalate the confrontation. When Mr. Young asked the question a second time, and Officer Wilson provided a similar dismissive answer, the situation escalated further. This was the first potential missed opportunity for de-escalation, and it was not explored during the investigation. Officer Wilson was never asked about the possibilities for de-escalation and the Young Report did not address the issue.

This initial missed opportunity was followed by others. While some of the specifics of the subsequent interactions between Officer Wilson and Mr. Young are murky, several things are clear: Officer Wilson did not identify himself as a police officer—either when Mr. Young first addressed him, or at any time. Officer Wilson did not call for backup. He did not call 911. He took no steps to avoid the encounter or seek any potential avenue of escape. He made no effort to attempt “warning, verbal persuasion, tactical communication,” as required by MPD policy, or employ any other de-escalation technique.⁷⁹ Instead, Officer Wilson did the opposite.

Officer Wilson walked from the sidewalk to the curb, dropped his bag, and adopted a confrontational stance towards Mr. Young. He then followed Mr. Young up on to the sidewalk instead of using the opportunity to stay in the street and move away from Mr. Young. It is possible that Mr. Young would have tried to draw and fire his weapon even if Officer Wilson had tried to retreat or move away. But Officer Wilson's actions in confronting Mr. Young in the street and then following him on to the sidewalk substantially increased the likelihood that the confrontation would become deadly. Before they faced each other on the sidewalk, Mr. Young had not shown his gun and had not overtly threatened Officer Wilson in any way.

Officer Wilson was asked during one of his interviews why he failed to identify himself as a police officer. He said he did not want to do so because that would somehow reveal that his colleagues who lived on the block were police officers.⁸⁰ This explanation makes little sense. Officer Wilson's identifying himself as a police officer would have revealed nothing about his purpose for being on the block, much less that four police officers lived there. Although there is no guarantee that Wilson's identifying himself as an MPD officer would have de-escalated the confrontation, it would have communicated to Mr. Young that the stakes for him were higher than if he were dealing with a civilian.

⁷⁹ GO 901.07 IV.A.

⁸⁰ Recording of investigator's interview of Officer Wilson at 5:20 to 5:30.

The objective evidence of the interaction between Officer Wilson and Mr. Young is contained on the videotape captured by the BRC CCTV cameras. The investigator carefully reviewed the enhanced videotape from those cameras, and the report provides detailed summaries of the camera footage.

Here is the Young Report's summary of that footage, still photos of which appear above, which describes the sequence beginning when Officer Wilson came into the street to meet Mr. Young.

- "Officer Wilson stepped off the curb and walked into the street to meet Mr. Young at the front of the Kia Van.
- Mr. Young walked towards Officer Wilson, and Officer Wilson closed the distance between them. Officer Wilson adjusted his pants and pulled them up while spreading his legs apart.
- Officer Wilson placed his bag on the ground.
- Mr. Young turned and walked eastbound onto the sidewalk.
- Officer Wilson adjusted his hands (out in front motion), and then walked eastbound onto the sidewalk parallel to Mr. Young."⁸¹

This summary and the footage itself provide the basis for questioning why Officer Wilson first stepped off the curb to meet Mr. Young in the street, and then followed Mr. Young onto the sidewalk. In the Tactical Analysis section of the report, Mr. Young is described as "display[ing] characteristics of an armed gunman while using the vehicle in front of him as cover." We saw little or no evidence to support that speculative conclusion other than Officer Wilson's own statements, which were subject to being shaped by his desire to justify his own actions. The fact that Mr. Young turned out to be an armed gunman does not prove that he showed those characteristics in approaching Officer Wilson. The interviews of Officer Wilson never pressed him for details that might have supported his conclusion that Mr. Young was an armed gunman. And that conclusion, whatever its basis, should not have prevented the analysis of possibilities for de-escalation at that stage of the encounter.

In the Young Report's Summary and Conclusions, the opportunities for Officer Wilson to defuse the situation are not addressed. Indeed, the important facts that Officer Wilson came off the sidewalk to meet Mr. Young in the street, and then followed Mr. Young onto the sidewalk are not mentioned at all – rather, that important

⁸¹ Young Report at 48.

interaction is summarized as “Mr. Young and Officer Wilson both ended up on the east sidewalk.” True, but they “ended up” there because Officer Wilson followed Mr. Young.⁸² Any efforts by Officer Wilson to de-escalate the situation might well have failed, but he did nothing to test that possibility. He should have been held accountable for not doing so. And because of the importance of the de-escalation principle, the investigation should have fully explored the possibilities for de-escalation, addressed the issue in its report, and teed it up for consideration by the UFRB.

We agree that the use of deadly force by Officer Wilson – in response to Mr. Young drawing, pointing, and shooting his pistol – was justified, but we disagree with the conclusion that Officer Wilson’s actions taken as a whole were consistent with MPD policy. We believe his failure to make any effort to de-escalate the situation violated MPD’s policy, which requires de-escalation when feasible (as it was here). The investigation should have explored the de-escalation issue, and the UFRB should have addressed it. Neither of those things happened.

(3) *The Final Two Shots*

We were also troubled by MPD’s treatment of the final two shots Officer Wilson fired at Mr. Young from the cover of the Ford Econoline Van. The evidence falls short of fully supporting the finding that Officer Wilson needed at that point to defend himself from an imminent actual or threatened attack, or that he had exhausted other options.

By the time Officer Wilson fired those final two shots, Mr. Young was lying in the street, wounded. The investigation fully credited Officer Wilson’s claims that Mr. Young continued to pose a deadly threat at that point, even though Young was on the ground, and even though Officer Wilson had already found a way to minimize the threat by taking cover behind the van. We found not wholly convincing Officer Wilson’s claim that Mr. Young continued to pose a threat because he was allegedly pointing his weapon at Wilson while lying wounded in the street. Similarly, we did not find wholly convincing that the position of Mr. Young’s body uphill from Officer Wilson “may have appeared to elevate the position of Mr. Young’s firearm in the view of Officer Wilson.”⁸³ This is a speculative conclusion not supported by objective evidence.

Officer Wilson made no claim that Mr. Young had fired more than the first shot, and the forensic evidence and post-incident examination of Mr. Young’s pistol provided no evidence that he had fired any additional shots. We believe the final two shots fired

⁸² Young Report at 56.

⁸³ Young Report at 52.

by Officer Wilson were at least arguably not justified under MPD policy and should have been analyzed more critically.⁸⁴ MPD might have conducted a trajectory analysis of Officer Wilson's final two shots, which might have shed light on whether Officer Wilson's claims about a continuing threat were credible.

We think the three issues we have highlighted in this analysis – the lack of follow-up on interviewing the neighborhood civilian witnesses, the absence of any analysis of the de-escalation issues, and the uncritical acceptance that the final two shots were justified – should have been identified and addressed during the review process within IAD and highlighted for the UFRB.

c. UFRB Review

As described above, the Young Report's recommendation that the shooting was justified and within policy was accepted by the UFRB on August 21, 2019. The only document we were provided in the UFRB file, other than documentation of its unanimous conclusion, was the Decision Point Analysis Matrix required by MPD General Order 901.07 IV.G.1.b.

The Decision Point Analysis Matrix in this case is a detailed four-page summary of the investigative findings contained in the Young Report. Its content does not match its title. It does not explicitly address decision points – *e.g.*, Officer Wilson's decision not to identify himself as a police officer, or his decision to follow Mr. Young onto the sidewalk; it does not provide analysis that goes beyond anything addressed in the investigative report; and it is not a matrix of any kind.

A decision point analysis can be an extremely helpful analytic tool to facilitate the assessment of a use of force incident. It should serve as the basis for the UFRB to serve its critical role as an independent review body within MPD. It can serve as the basis for recommendations for modifications to policy, or additional training either for the officer(s) involved in the incident or for the entire Department, and it can be the source of instruction about appropriate police tactics in particular circumstances. That important purpose is not served by a summary document that does not contain independent analysis and does not extract from the incident relevant guidance.

That general point is illustrated in this specific case. An independent decision point analysis here would likely have highlighted the de-escalation possibilities that

⁸⁴ Officer Wilson reported that after firing the final two shots, he heard multiple shots fired from a third weapon from the direction of the 2200 block of 15th Street. That claim was supported by the recovery of 40 caliber copper jacket bullet fragment in street in front of 2332 15th Street that was fired from a pistol other than Wilson's or Young's, as well as calls made to 911 at the time of the incident that reported a different sound from those subsequent gunshots.

were not addressed in the investigation and could have been the basis for a constructive discussion among the members of the UFRB and important guidance for the Internal Affairs Bureau.

As noted above, because of Officer Wilson's failure to make any effort to de-escalate the situation, we disagree with MPD's conclusion that Officer Wilson's actions were consistent with MPD policy. Based on the current record, we would have found his use of deadly force to be justified but in violation of MPD policy's requiring de-escalation.

4. Recommendations

Based on our review of the Final Investigative Report, the underlying evidence, and the UFRB's review of the investigation, we provide the following recommendations for MPD's consideration:

- IAD investigators should explore the possibilities for de-escalation in every investigation and in every interview of an officer engaged in a serious use of force.
- Whenever possible, group interviews should be avoided. If a group interview is unavoidable, the investigator should attempt to supplement the interview with subsequent individual interviews whenever possible.
- IAD supervisors should caution investigators not to use leading questions during interviews of civilian or sworn witnesses of the involved officers. That is especially important when addressing state of mind issues.⁸⁵
- In serious use of force incidents, all statements from involved officers, witness officers, and civilians should be recorded, transcribed, and included in the investigative file, as required by MPD policy.⁸⁶
- IAD investigators should be provided guidance that the scope of their investigations is broader than the actions of the officer at the point serious or deadly force is used. The actions, tactics, and decisions of all participants in the event, from the call taker to the responding supervisors, should be assessed

⁸⁵ We made this recommendation in our 2016 report, and as a result this requirement was incorporated in MPD policy. GO 901.08 IV.D.4.a.4. But the requirement is not self-executing – it requires adequate training and oversight.

⁸⁶ See GO 901.08 V.I.1.e.

against MPD policy requirements and best practices.

- Even in cases when an initial use of force is justified, investigators should carefully examine whether subsequent uses of force (in this case the final two shots) are also justified and in conformance with MPD policy.
- MPD should reinforce as part of in-service training the responsibility of officers and supervisors to report incidents of the use of force in the aftermath of a serious use of force incident. The training should emphasize the importance of timeliness, as well as incident scene and evidence preservation.
- The UFRB should keep a more detailed record of its deliberations in each case. The record should reflect the specific issues discussed by the Board and their specific findings.
- MPD should consider whether it has in place adequate policies governing what its officers can and should do when confronted with criminal activity when they are in off-duty status. Its policy on this important issue has not been updated since 2004. In particular, MPD should clarify in policy and training the full applicability of its use of force principles, including de-escalation, when MPD members are off duty.

C. The Death of Marquese Alston

1. Summary of Facts

On June 12, 2018, members of MPD's Seventh District Impact Team, an MPD Specialized Unit, were patrolling in the 3700 block of First Street, S.E.⁸⁷ The team members were traveling in two marked MPD cars. Officer Ronald Koch and three other officers were assigned to Cruiser D16 ("Car #1"). Officer Caleb Demeritt and one other officer were traveling behind them in Cruiser 760 ("Car #2").

At approximately 7:10 pm, an officer in Car #1 saw Mr. Marquese Alston walking northbound in the 3700 block of First Street, S.E. That officer, who had received specialized training in the detection of firearms, said he observed Mr. Alston carrying something in his front pants pocket that, based on his training and experience, he suspected was a pistol. The officer alerted the other officers in Car #1, and the driver stopped and started backing up. Officer Demeritt, who was driving Car #2, observed

⁸⁷ Facts related to the incident are drawn from the Final Investigative Report ("Alston Report") dated March 4, 2019 unless otherwise noted.

the movements of Car #1.⁸⁸ Officer Demeritt subsequently told investigators that he believed that the officers in Car #1 “[saw] something.”⁸⁹ He then said he observed Mr. Alston make eye contact with him and take off running. Officer Demeritt (Car #2) and Officer Koch (Car #1) simultaneously got out of their respective cars and pursued Mr. Alston on foot.⁹⁰ Two other officers from Car #1 also pursued Mr. Alston on foot but were some distance behind the other officers. The officer who suspected Mr. Alston was carrying a pistol radioed, “Got one running” on the Seventh District’s radio channel, and stated Alston’s hand was near his “right pants.”

Officer Demeritt was slightly ahead of Officer Koch during the foot chase, which lasted approximately 12 seconds. Officer Demeritt subsequently reported that, during the foot chase, he saw Mr. Alston put his hand in his coat pocket. When the officers reached an alley near Wayne Place, Mr. Alston drew a black Ruger 9mm LC9 semi-automatic pistol from his waistband. While still running, Mr. Alston turned and fired four rounds in the direction of the officers, none of which struck them. As Mr. Alston began firing, Officer Demeritt dove to the ground in the alley. While on the ground, Officer Demeritt drew his service pistol and fired eight rounds at Mr. Alston. Nearly simultaneously, Officer Koch, who was running toward Mr. Alston but behind Officer Demeritt, fired seven rounds from his weapon at Mr. Alston. Mr. Alston was struck six times and fell to the ground. Multiple officers, including one of the other officers engaged in the foot pursuit, immediately reported “shots fired” over their MPD radios.

Immediately after the exchange of gunfire, the other four officers of the Impact Team reached the alley. Three officers, including Demeritt and Koch, approached Mr. Alston, who was on the ground and appeared to be unconscious. The officers immediately called for medical assistance. The officers then located and secured Mr. Alston’s pistol, which was on the ground several feet from Mr. Alston’s body.

In the immediate aftermath of the exchange of gunfire, a number of people in the area began to gather near the scene of the shooting, including Mr. Alston’s girlfriend. Some of the individuals appeared to be angry and agitated, yelling at the officers whom they believed had shot Mr. Alston. D.C.’s Emergency Medical Services reached the scene and pronounced Mr. Alston dead on the scene at 7:30 pm.

⁸⁸ Interview of Officer Demeritt at 2.

⁸⁹ Interview of Officer Demeritt at 2.

⁹⁰ Body-worn camera (“BWC”) recording of Officer Koch at 01:47.

2. Summary of Investigation

The investigation was led by a sergeant in IAD, who responded to the scene. MPD's chain of command and the US Attorney's Office for the District of Columbia ("USAO") were promptly notified of the incident. The investigator reported that he was unable to perform a walkthrough of the scene with Officers Demeritt and Koch given its volatility. He interviewed various members of the Impact Team officers in a car in the alley where the shooting took place.⁹¹ Officers Demeritt and Koch were interviewed at the Seventh District several hours after the incident.

Four additional members of Internal Affairs responded to the scene and promptly performed a witness canvass, seeking eyewitnesses to the shooting. The agents interviewed a number of witnesses who were on the scene and knocked on doors in adjacent buildings. Through those efforts, the agents spoke with seven civilian witnesses and obtained statements from each of them. The accounts were largely consistent. Among those who actually saw the exchange of gunfire, three of four witnesses stated that Mr. Alston shot first. The fourth witness indicated that she "did not see Mr. Alston with a gun" and "only saw the police shooting at him." Agents also sought surveillance footage of the incident but the only cameras in the vicinity were determined not to have been operating at the time of the incident.

Members of MPD's Department of Forensic Services ("DFS") also responded to the scene. DFS photographed the scene and collected forensic evidence. DFS also conducted weapons and ammunition checks at the scene, including collecting and examining the service weapons of the involved officers and assessing how many rounds were fired and whether the rounds struck any individuals or objects. DFS also recovered, among other things, four shell casings that were subsequently determined to have been fired from Mr. Alston's pistol. DFS also recovered DNA from that pistol and concluded that there was "extremely strong support" that the DNA recovered from certain magazines matched that of Mr. Alston.

IAD personnel also reviewed and analyzed body-worn camera ("BWC") footage from a number of the Impact Team officers. Notably, Officer Koch had failed to activate his BWC at the outset of the incident, but the default two minute "buffer," which allows BWCs to capture footage before the camera is manually activated, allowed the chase and shooting to be fully captured, although footage captured by the buffer does not include audio.⁹² The investigator was assigned to investigate Officer Koch's failure to activate his BWC as part of the overall investigation of the Alston shooting.

⁹¹ July 30, 2020 Interview with the investigator.

⁹² EO-18-014, attached as Appendix N.

On June 13, 2018, each of the involved officers was interviewed by IAD agents. The investigator conducted an additional interview of Officer Koch on January 30, 2019, related to Officer Koch's failure to activate his BWC.

IAD made a timely notification to the USAO, which issued a declination letter on January 2, 2019.

The Final Investigative Report ("Alston Report") was filed on March 4, 2019, and on March 5, 2019, Officers Demeritt and Koch each completed a Use of Force Incident Report ("UFIR").⁹³

The case was submitted to the Use of Force Review Board ("UFRB" or "Board"). In preparation for its consideration of the case, UFRB staff prepared for the Board a Decision Point Analysis Matrix, which contained a detailed synopsis of the facts developed during the investigation and set forth MPD's policy and District of Columbia regulations concerning the use of a firearm in self-defense. On April 2, 2019, the UFRB unanimously concurred with the recommendation in the Internal Affairs investigative report that Officers Koch and Demeritt's uses of force were justified and within MPD policy. Beyond its concurrence, the UFRB made no additional findings or recommendations.

3. Analysis

We agree with MPD's ultimate conclusion that the officers' use of force was justified and within departmental policy. That conclusion is reasonable and fully supported by the evidence. Nevertheless, we note a number of opportunities for significant improvements in MPD tactics and in IAD investigative practices.

a. Justification for Use of Force

As noted above, MPD's General Order 901.07 governs a member's use of force. It requires that "Members shall attempt to defuse use of force situations with de-escalation techniques whenever feasible."⁹⁴ The General Order authorizes MPD members to use deadly force:

- (1) When it is necessary and objectively reasonable; and

⁹³ While the UFIR copies in the case file are dated March 5, 2019, the Alston Report reflects that these were completed on January 25, 2019 and January 14, 2019 respectively.

⁹⁴ GO 901.07 IV.A (effective November 3, 2017); *see also* MOA ¶ 39.

(2) To defend themselves or another from an actual or threatened attack that is imminent and could result in death or serious bodily injury; and

(3) When all other options have been exhausted or do not reasonably lend themselves to the circumstances.⁹⁵

Finally, the General Order requires the officers to issue a verbal warning before discharging a firearm “when feasible.”⁹⁶

Here, BWC footage, witness statements, and physical evidence combine to support the conclusion that Officers Koch and Demeritt chased Mr. Alston into an alley where Mr. Alston pulled out a pistol and started shooting at them. Both Officers Demeritt and Koch credibly stated, in their respective interviews, that they reasonably feared for their lives at the time they drew their weapons and fired shots that killed Mr. Alston. In addition, the speed at which the encounter unfolded made it unfeasible for the officers to exhaust other options or identify themselves as officers prior to discharging their firearms.

We note that the officers do not appear to have issued any verbal commands during the pursuit. For example, officers could have identified themselves as police officers and directed Mr. Alston to stop.⁹⁷ In our judgment, it is extremely unlikely that these commands would have altered the outcome here, but the policy requires it and the investigator should have asked whether any such commands were considered and why they were not provided. In addition, such audible verbal commands might have defused the anger expressed by the people who subsequently gathered at the scene after Mr. Alston was shot.

b. Rendering Medical Assistance

The same General Order also requires members, after using any force, to:

1. Conduct a visual and verbal check of the subject to ascertain whether the subject is in need of medical care.

⁹⁵ GO 901.07 IV.G.

⁹⁶ GO 901.07 IV.K.

⁹⁷ We note that both officers were in uniform and emerged from marked vehicles.

2. Summon medical assistance immediately if a person is injured, complains of pain, or demonstrates life-threatening symptoms as established in GO-PCA-502.07 (Medical Treatment and Hospitalization of Prisoners).⁹⁸
3. Render first aid as soon as the scene is safe.

GO 901.07 IV.C; *see also* MOA ¶ 40.

Here, Officer Koch stated that he “checked on” Mr. Alston and observed that he had been shot in the head after the exchange of gunfire ended and Mr. Alston was on the ground. Also, multiple officers requested medical assistance promptly after the incident. However, we saw no evidence that any officer actually checked Mr. Alston’s vital signs or otherwise attempted to render first aid, as required by subsection 3.⁹⁹ Indeed, the officers’ failure to attempt to render aid to Mr. Alston was undoubtedly noticed by onlookers, which likely stoked their anger and increased the tension and volatility at the scene. And Mr. Alston’s family has accused the officers of not attempting to resuscitate Mr. Alston in a lawsuit it has filed against the District of Columbia.¹⁰⁰ The Alston Report seems to suggest any first aid would have been futile because Mr. Alston was observed by the officers to be “unconscious” and “had a gunshot wound to the right side of the head.”¹⁰¹ This conclusion appears reasonable from our review of the BWC footage, but does not obviate the requirement.

c. The Pursuit

As with many police encounters, one of the key questions is why the officers initiated contact with Mr. Alston in the first place. In fact, Mr. Alston’s family has criticized the involved officers for jumping out of their cars and pursuing Mr. Alston

⁹⁸ Attached as Appendix G.

⁹⁹ Officer Koch very briefly bent over Mr. Alston’s body immediately following the shooting. But he appeared to have been searching for his gun. BWC (Officer Koch) at 2:07 (immediately after the shooting, Officer Koch checks Mr. Alston’s hands and says, “He tossed the gun.”); *see also* Interview with Officer Koch at 3-4 (acknowledging that no one rendered first aid).

¹⁰⁰ *See* Amended Complaint ¶ 17 (ECF No. 9), *Kenithia Alston v. District of Columbia, et al.*, No. 20-cv-01515-KBJ (filed Aug. 27, 2020) (“Alston Complaint”) (“[The officers] did not check Mr. Alston’s pulse, attempt to resuscitate him, or gauge the extent of his injuries to ascertain whether he was alive.”).

¹⁰¹ Alston Report at 3.

“without good cause or valid basis.”¹⁰² We do not believe the reason for the initial pursuit was adequately explored in this case. In particular, the Alston Report’s account of how and why Officer Demeritt pursued Mr. Alston does not appear to be supported by the weight of the evidence. The Alston Report suggests that Officer Demeritt “joined” three other officers – each of whom believed Mr. Alston was armed – in an existing pursuit. But nearly all of the evidence suggests that Officer Demeritt was initially unaware that Mr. Alston was armed and initiated the pursuit on his own – *i.e.* in parallel to the three other officers. This discrepancy highlights three significant shortcomings described below.

(1) *The Alston Report’s Account of the Pursuit*

In relevant part, the Alston Report states that the pursuit of Mr. Alston began as follows:

- An officer in Car #1 alerted the other three officers in Car #1 that Mr. Alston had a handgun in his pocket.
- At this time, Officer Koch and two other officers exited Car #1 in an attempt to stop Mr. Alston. While this was occurring, Officer Demeritt and one other officer pulled up in Car #2 behind Car #1 in the 3700 block of First Street, S.E..
- Three officers from Car #1 pursued Mr. Alston on foot, while the driver of Car #1 and Officer Demeritt (the driver of Car #2) turned their vehicles around and followed the foot pursuit in their police vehicles.
- Officer Demeritt drove Car #2 eastbound into the 100 block of Wayne Place, S.E., and stopped his vehicle a short distance past the mouth of the alleyway at the south end of the east alley of the 3700 block of 1st Street.
- Officer Demeritt got out of his car, and joined the foot pursuit of Mr. Alston.¹⁰³

¹⁰² Alston Complaint at 1. (“Without any good cause or valid basis, multiple MPD Officers . . . jumped out of two vehicles, chase Marquese into an alley, and shot him between twelve and eighteen times, killing him in broad daylight.”).

¹⁰³ Alston Report at 1-2.

This chronology is not consistent with other parts of the Alston Report, BWC recordings, and the statements of Officer Demeritt and the other officer in Car #2.

It is apparent from Officer Koch's BWC recording – as well as the Alston Report's synopsis of that recording – that Officers Koch and Demeritt got out of their respective cruisers *at the same time*.¹⁰⁴ Indeed, both Officers Koch and Demeritt's BWC recordings confirm that Officer Demeritt was *leading* the chase, and that Officer Demeritt reached the alley first.¹⁰⁵ The BWC footage also confirms that, contrary to the Alston Report, neither vehicle "turned around" prior to the chase.¹⁰⁶

These recordings are consistent with the chronology of events in Officer Demeritt's statement – *i.e.*, he saw Car #1's reverse lights activated, believed therefore that the officers in Car #1 saw "something," made eye contact with Mr. Alston, and then Mr. Alston fled.¹⁰⁷ Officer Demeritt did not mention "following the pursuit in his police vehicle" and his statements do not suggest he "joined" a pursuit.¹⁰⁸ In fact, he stated that he did not see any of the other officers engaged in the pursuit until "after the incident."¹⁰⁹ Likewise, the other officer who was in Car #2 with Officer Demeritt stated that he got out of his car when he saw the officers in Car #1 leave theirs but then returned to his cruiser to secure it – suggesting that the car's driver, Officer Demeritt, initiated a foot pursuit at the same time as the other officers. And that officer did not convey to investigators that he was aware of any reasonable basis for Officer Demeritt to believe that Mr. Alston was armed when the pursuit began.

¹⁰⁴ BWC (Officer Koch) at 01:46; Alston Report at 31 (describing time stamp 1:46 as "Officer Koch exited the vehicle via the left rear passenger side and immediately began to run The operator of [the other] vehicle (Officer Demeritt) exited an[d] immediately began to run. Officer Demeritt was slightly ahead of Officer Koch[.]").

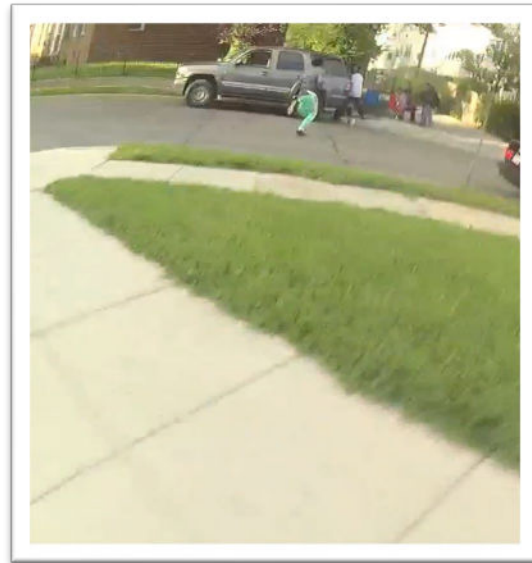
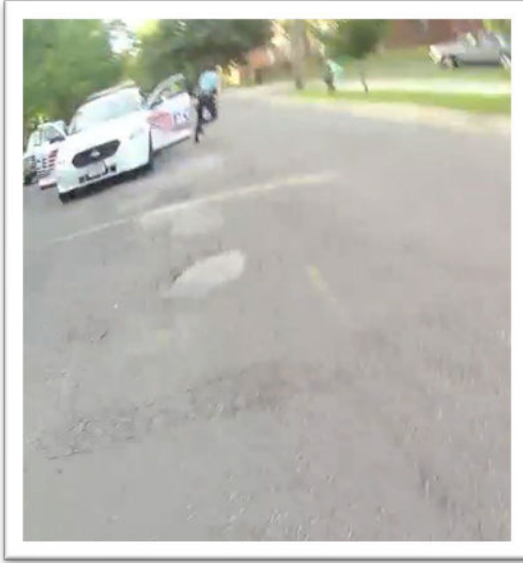
¹⁰⁵ BWC (Officer Koch) at 01:47; BWC (Officer Demeritt) at 01:59.

¹⁰⁶ *See, e.g.*, BWC (officer from Car #1) at 01:58. The Alston Report repeats this erroneous fact – that Officer Demeritt's car was facing the opposite direction – in its description of time stamp 01:46 of Officer Koch's body worn camera footage. Alston Report at 31.

¹⁰⁷ Interview with Officer Demeritt at 2-3; UFIR.

¹⁰⁸ *Id.*; Recorded Interview of eyewitness officer from Car #2 at 04:03 (noting the doors in both cars opened "simultaneously").

¹⁰⁹ Interview with Officer Demeritt at 2.



Officer Koch's BWC (left, 7:11:39 pm) and Officer Demeritt's BWC (right, 7:11:40 pm) show Officer Demeritt clearly exiting his car at the same time as Officer Koch and leading the pursuit of Mr. Alston

(2) *Investigative Shortcomings Related to the Pursuit*

General Order 901.08 V.J requires the Final Investigative Report to include, among other things, a description of the use of force incident, a determination of whether proper police tactics were employed, and a determination of whether the force was "consistent with MPD policy and training." The description and analysis must be accurate and complete for the Final Investigative Report to serve its purpose. General Order 901.09 V.C.1. likewise requires the UFRB to consider the events leading up to a use of force incident.

Here, while the Alston Report is, in many ways, thorough, it does not adequately address how and why Officer Demeritt joined the pursuit:

- The Summary and Conclusions states: the first officer "notified *his colleagues* of his observations, and the Impact Team members attempted to stop Mr. Alston."¹¹⁰
- The Tactical Analysis likewise states that "*the officers*" had "reasonable suspicion to stop" Mr. Alston based on the first officer's observation and "[t]he Impact Team officers lawfully pursued Mr. Alston, and were justified

¹¹⁰ Alston Report at 7 (emphasis added).

in forcibly stopping him to further investigate the apparent weapons violation.”¹¹¹

- The investigator’s request for a “curriculum review” provides a chronology similar to the one described in subsection 1 above where Officer Demeritt began the pursuit in his car and then “joined the pursuit.”¹¹²

The Alston Report did not address at any point the important threshold issue of whether Officer Demeritt had a factual basis for initiating the foot pursuit. Instead, it focused almost entirely on the moment of the exchange of gunfire between Mr. Alston and the officers and not sufficiently on the events leading up to it. The investigation did not focus on whether, if Officer Demeritt was unaware that Mr. Alston was carrying a pistol, his pursuit was legal and appropriate as a matter of tactics and MPD policy; whether the pursuit of Mr. Alston should have been handled differently; and whether Officer Koch should have warned him that he was pursuing an armed suspect. None of these questions were addressed or analyzed.¹¹³ The fact that Mr. Alston was in fact carrying a weapon does not eliminate the need for this issue to have been addressed and evaluated.

Furthermore, as described below, the interviews with the involved officers were extremely brief – all but one lasting fewer than 10 minutes. Each of the interviews occurred shortly after the incident, and IAD agents did not conduct follow-up interviews with the officers, particularly after having the opportunity to review the BWC footage. Such follow-up interviews might have provided the officers involved in the incident the opportunity to provide needed context and information relating to the questions raised above, as well as others. This additional information would have been particularly useful in this case, where there is no BWC footage that captures the events that triggered the foot pursuit.¹¹⁴

(3) *Areas for Tactical Improvement Related to the Pursuit*

As noted above, the Alston Report did not include a tactical analysis that addressed whether Officer Demeritt had reason to believe Mr. Alston to be armed at the

¹¹¹ Alston Report at 5 (emphasis added).

¹¹² Attachment 6 to Alston Report.

¹¹³ See GO 901.08 V.I.d.

¹¹⁴ The Alston family’s lawsuit complains about this fact. See Alston Complaint ¶ 37.

initiation of the chase. Accordingly, we address two areas for tactical improvement not included in the Alston Report's Tactical Analysis.

First, as a matter of officer safety, it is critical for officers to warn one another that a suspect is armed. Here, our review found no evidence that any of the officers in Car #1 warned Officer Demeritt and the other officer, who were in Car #2, that the individual they were pursuing might have a weapon. Nor did we find evidence that any of the officers warned the various bystanders that Mr. Alston might have a weapon.¹¹⁵ The Alston Report states that an officer from Car #1 stated over the radio, "Got one running" and that Mr. Alston's hand was at his "right pants." But we are unaware of any evidence that Officer Demeritt even heard this statement.¹¹⁶ This would have been an appropriate issue to raise with Officer Demeritt in a follow-up interview.

Second, it is, at minimum, an open question whether Officer Demeritt had the requisite factual basis to attempt a lawful stop of Mr. Alston. The Alston Report's tactical analysis relies solely on the first officer's observation of what appeared to be a pistol in Mr. Alston's pocket to support its conclusion that "the officers had reasonable suspicion to stop and frisk him for a weapon."¹¹⁷ The Alston Report goes on to state that "[w]hen the officers attempted to stop Mr. Alston, he immediately fled on foot. The Impact Team officers lawfully pursued Mr. Alston, and were justified in forcibly stopping him to further investigate the *apparent weapons violation*."

But, as described above, this analysis is inconsistent with Officer Demeritt's own version of events. Unlike the other members of the Impact Team, Officer Demeritt's pursuit was *not* initiated to further investigate an "apparent weapons violation." Rather, Officer Demeritt and the other officer in Car #2 acknowledged that Mr. Alston ran when they made eye contact with him.¹¹⁸ And, at some point, Mr. Alston had his hand in his pocket or near his waist. Officer Demeritt never told investigators (nor was he asked) whether he believed Mr. Alston was carrying a weapon.¹¹⁹ Indeed, the other officer in Car #2, who had a better view of Mr. Alston, specifically stated that he did not

¹¹⁵ A bystander can be seen in the middle of the crossfire at 1:55 of Officer Koch's BWC recording.

¹¹⁶ For the six seconds of the chase for which Officer Demeritt's body worn camera captured audio, no statements on the radio can be heard. BWC (Officer Demeritt) at 02:00-02:06.

¹¹⁷ Alston Report at 5 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

¹¹⁸ Recorded Interview with officer from Car #2 at 02:22.

¹¹⁹ Interview with Officer Demeritt at 2.

know what, if anything, Mr. Alston was carrying.¹²⁰ Thus, whether Officer Demeritt had sufficient cause to stop Mr. Alston prior to that point is, at least, an open question, and warranted investigation. The indisputable fact that Mr. Alston was in fact carrying a weapon did not eliminate the need to examine the state of Officer Demeritt's knowledge at the outset of the pursuit.

As discussed in greater detail below, there is legal precedent for an officer to conduct an investigatory stop where a suspect in a high crime area flees from individuals they know to be police officers. *See generally Illinois v. Wardlow*, 528 U.S. 119 (2000).¹²¹ However, courts in the District of Columbia have suggested that the involved officer must have some level of articulable suspicion beyond the mere fact that a suspect fled. *See Miles v. United States*, 181 A.3d 633, 641 (D.C. 2018). But all courts (and MPD policy¹²²) agree that the officer that attempts a stop must be able to articulate the basis for his reasonable suspicion. Yet the investigators relied on Officer Koch's basis without ever asking Officer Demeritt for his.

(4) *Policy Revision and Training Opportunities Related to the Pursuit*

The current applicable MPD policy governing investigative stops, colloquially known as "Terry stops,"¹²³ is GO-OPS-304.10. That policy does a commendable job of providing guideposts for officers on the legal basis for conducting a "stop."¹²⁴ The Order also, importantly, requires that "*every member* conducting a stop be prepared to cite the particular factors that supported the determination that reasonable suspicion existed" and provides an example of how justification might be articulated.¹²⁵ The fact that the Alston Report here relied on a "collective" articulation of the factors that supported reasonable suspicion, and that Officer Demeritt was never specifically asked

¹²⁰ Recorded Interview with officer from Car #2 at 10:53.

¹²¹ MPD policy indicates that "[a]n individual ... fleeing from an actual or possible crime scene" can contribute to an officer's reasonable suspicion. GO-OPS-304.10 ¶ II (emphasis added), attached as Appendix H. But the policy says nothing of flight alone being dispositive for reasonable suspicion.

¹²² GO-OPS-304.10.

¹²³ *Terry v. Ohio*, 392 U.S. 1 (1968) is the case that established the constitutionality of investigative stops by law enforcement personnel so long as the stop is based on reasonable articulable suspicion.

¹²⁴ *See* GO-OPS-304.10.II.B.2.b.

¹²⁵ GO-OPS-304.10.II.B.3.

why *he* pursued Mr. Alston, underscores the importance of this guidance. Clearly, it is very important for IAD investigators to analyze these issues when investigating use of force incidents.

In short, there is no transitive property of reasonable suspicion: simply because one member of a team has an adequate factual basis for reasonable suspicion does not mean that other members do if that basis is not communicated.¹²⁶ This is not a hypertechnical legal splitting of hairs – this is a fundamental principle of Fourth Amendment law. MPD should consider further emphasizing this point in training and/or further policy revisions – both for officers making such stops and for IAD agents investigating such stops. MPD should also provide more precise guidance to officers regarding unprovoked flight. Officer Demeritt’s only statement related to the initiation of the pursuit – *i.e.* that Mr. Alston looked at him and took off – was not sufficiently followed by further inquiry into the issue and may well have run afoul of departmental policy and legal requirements for “reasonable suspicion depending on the results of that further inquiry.”¹²⁷

We are encouraged to learn from MPD officials that MPD is considering a policy and additional training related to foot pursuits. We agree this is warranted and recommend that MPD take into consideration the issues described above. Such changes will not only ensure that pursuits conform to the requirements of the Fourth Amendment but also help to enhance public trust – given the considerable public criticism the MPD has received for so-called “jump outs.” We provide additional discussion related to potential policy changes in the Recommendations section below.

¹²⁶ The reasonable suspicion inquiry begins with “what facts were known to the officer” at the time of the seizure, *United States v. McKie*, 951 F.2d 399, 402 (D.C. Cir. 1991); *see also United States v. Gorham*, 317 F. Supp. 3d 459, 473 (D.D.C. 2018) (refusing to “aggregate” relevant facts after the fact to find reasonable, articulable suspicion when “no actual communication or direction occurs between the officer conducting the search or seizure and the officer in possession of the information giving rise to the required reasonable suspicion”).

¹²⁷ During our previous review of MPD policies and practices, MPD personnel provided inconsistent information on whether flight, without any additional indicia of criminal activity, justifies pursuit by MPD officers. At that time, it was recommended that “officers at all levels have a common understanding of the correct legal standard governing the actions of MPD officers.” 2016 Report at 87 n. 165.

d. *Reporting Protocols for Use of Force Incidents*

While IAD submitted a timely final report, we note that the investigation did not meet two of MPD's policies for reporting use of force incidents.¹²⁸

"Immediate" Completion of the UFIR Form. Standing Order 10-14 Part IV.V.4 states "Members shall complete the PDF Form 901-e (UFIR) *immediately* following all firearm discharges[.]"¹²⁹ (emphasis added). The Alston Report indicates Officers Demeritt and Koch completed these forms on January 25, 2019, and January 14, 2019, respectively (although the forms in the file appeared to be dated March 4, 2019). We see no explanation in the investigative file for this discrepancy.

As a general rule, MPD members are required to complete the UFIR form "immediately following all firearm discharges" and "use of force incidents."¹³⁰ However, officers are permitted to defer completion of the UFIR until after the USAO makes a determination not to prosecute.¹³¹ If the reason for the delay here is that the officers were awaiting the USAO's declination, that should have been explicitly noted in the Alston Report.

Transcriptions of All Interviews. GO 901.08 V.I (d) and (e)(1) require that all interviews be transcribed and audio/video recorded. It appears all of IAD's interviews were appropriately audio recorded. But, with the exception of Officers Demeritt and Koch, none of the interviews were transcribed. Rather, a synopsis of the statement is attached to the Alston Report and the Alston Report itself provides a summary of that synopsis—in other words, the Alston Report is two or more levels removed from the statements themselves. While these summaries provide a basic overview of what occurred, they omit and/or mischaracterize relevant details.

For example, the officer in Car #2 with Officer Demeritt twice described how Mr. Alston gestured to his waistband but admitted he was unsure precisely what Mr. Alston had in his pocket. This detail does not appear in the Alston Report's summary of the interview. In fact, that officer's fourteen minute interview was the longest and among the most detailed of any of the officers, yet was summarized in a single paragraph. Likewise, the synopsis of the statement of the officer who saw Mr. Alston

¹²⁸ We further note that IAD made a timely notification to the USAO, which issued a declination letter on January 2, 2019.

¹²⁹ Attached as Appendix I.

¹³⁰ SO-10-14.IV.B.2, 3.

¹³¹ SO-10-14.IV.F.2.b.2.

carrying a gun states that: the officer “yelled ‘Stop! He has a gun!’ to Mr. Alston and made the statement ‘Get him!’ to his co-workers.”¹³² But the officer actually stated: “I yelled Stop. He has a gun. Get him.”¹³³ He does not actually suggest that he was telling Mr. Alston to stop. Indeed, two of the other officers in Car #1 stated that the officer’s direction to “stop” was directed at the driver and not Mr. Alston.¹³⁴ Since there is no evidence that Mr. Alston was otherwise given any verbal commands, this discrepancy is significant and could have been mitigated by the inclusion of a verbatim transcript of the interview. The creation of transcripts is important because it permits members of the Internal Affairs chain of command to more fully review and critique drafts of the investigative report, and ultimately permits more meaningful reviews of the incident by the UFRB.

e. Sufficiency of the Interviews

IAD investigators completed interviews of all of the involved officers in the hours following the incident. Also, it appears IAD completed a thorough canvass that yielded seven witness statements shortly after the incident. The interviews – particularly of the involved officers – were extraordinarily brief, especially for an incident ending in death, and did not sufficiently probe the officers’ recollections of the events. For example, Officer Demeritt’s interview on June 13 was eight minutes in total and included only approximately *five minutes* of substantive questioning.

The brevity of these interviews is, to an extent, understandable. The incidents had just occurred, and the IAD team had not yet had the time to evaluate the vast amount of evidence that would ultimately be collected (*e.g.* other witness statements, BWC footage, and physical evidence). But, in such cases, it is critical that investigators re-interview officers and witnesses to clarify discrepancies, address points of contention, and test the accounts of officers involved in the incident against the evidence.

For example, Officer Demeritt should have been more thoroughly questioned on when he concluded that Mr. Alston was carrying a firearm. The officer who saw Mr. Alston carrying a gun should have been asked to clarify whether his direction to “stop” was directed at Mr. Alston or the driver of Car #1. And Officer Koch should have been

¹³² PD Form 854 Statement of Officer at 1.

¹³³ Audio Recording of Interview of Officer at 1:59.

¹³⁴ PD Form 854 Statement of Officer in Car #1 at 1 (upon seeing Mr. Alston with a gun, the officer yelled to the driver of Car #1, “[S]top he he’s got a gun!”); PD Form 854 Statement of a Second Officer in Car #1 at 1 (upon seeing Mr. Alston with a gun, the officer “requested that [the driver of Car #1] stop the vehicle and back up.”).

asked why he did not warn Officer Demeritt or the bystanders when he observed an armed man running toward various uninvolved people who were in the area. Finally, no officer was sufficiently probed on why no one actually attempted to check Mr. Alston's vital signs after he had been shot. Several of the officers noted that they observed that he had been shot in the head and that they needed to immediately secure the scene. But the BWC footage confirms that no officer spent more than a passing moment ascertaining Mr. Alston's condition. While no signs of life are apparent from the footage, the officers should have been more carefully asked about their decisions not to do so. Even if it was not feasible to ask these questions in the hours following the incident, it was incumbent on IAD to re-interview the involved officers to get more thorough answers. Such practices ensure that MPD (and the public at large) can have full confidence in the investigative process and that all relevant issues are fully explored, even if they are sensitive and difficult, and even if they are not relevant to the ultimate issue of whether the use of force was justified.

IAD investigators should have addressed many of these same issues with the civilian witnesses—either initially or through a re-interview. Many of these witnesses were not asked, for example: (1) if they had any understanding of *why* the officers were chasing Mr. Alston; (2) if they heard any statements made by the officers or Mr. Alston during the incident; or (3) if they observed the officers attempting to render medical assistance to Mr. Alston.

f. Body-worn Camera Policy and Training

Like several of the cases we have reviewed, IAD's investigation of this case uncovered a violation of MPD's BWC policy. Here, it is clear that Officer Koch violated MPD policy by failing to activate his BWC at "the beginning of any self-initiated police action."¹³⁵ Indeed, pursuit of an armed suspect falls under a number of the scenarios that are to be recorded per the General Order, including: "self-initiated calls-for-service," "all stops," "vehicle and foot pursuits," "suspicious activities," and "use of force situations."¹³⁶

While we believe the evidence clearly demonstrates that Officer Koch should have activated his BWC when he was alerted to the presence of an armed suspect and had several seconds of opportunity to do so, we understand the conclusion that Officer Koch should be "exonerated" for this failure. As IAD's report concludes, the incident unfolded rapidly and, at the end of the pursuit, involved a clear threat to officer and

¹³⁵ GO-SPT-302.13 ¶ V.A.3, attached as Appendix J.

¹³⁶ GO-SPT-302.13 ¶ V.A.4 (a), (c), (d), (k), (l) (respectively).

bystander safety.¹³⁷ Furthermore, Officer Koch ultimately activated his camera after the incident – thus preserving the two minutes of “stand-by” recording, which captured the chase and exchange of gunfire.¹³⁸

Putting this violation aside, MPD should consider changes to its training and policies to make BWC violations less common. MPD completed its rollout of BWCs in December 2016, a full 18 months before this incident, a period long enough for officers to have become accustomed to the proper use of BWCs.¹³⁹ At this point, MPD should consider more severe consequences for repeat offenders of the BWC policy. Indeed, since this incident, Officer Koch has committed another BWC violation and Officer Demeritt (whose BWC was activated for this case) has had three BWC violations sustained against him. Despite his repeated violations in other cases, Officer Demeritt in each instance received the same discipline (a P.D. 750 Dereliction Report). We believe that stricter policies and progressive discipline for repeat violators could help to curb this problem.

4. Recommendations

Based on our review of the Alston Report, the underlying evidence, and the UFRB’s review of the investigation, we provide the following recommendations for MPD’s consideration:

- MPD should remind officers of the requirement that they check vital signs of people who have been subjected to uses of force, especially deadly force, whenever an officer can safely do so.
- MPD should consider revising General Order 901.08 V.J.2 to make clear that investigators should consider whether the “entirety of the incident” and not just “the [use of] force” is “consistent with MPD policy and training.”
- MPD should consider increasing the consequences for members who are repeat violators of MPD’s BWC policy.
- Finally, we recommend MPD clarify its existing policies regarding the pursuit, stop, and search for weapons of a suspect to clearly address the issue of whether

¹³⁷ See GO-SPT-302.13 ¶IV.B.

¹³⁸ See EO-18-014.

¹³⁹ MPD, *MPD and Body-Worn Cameras*, available at <https://mpdc.dc.gov/page/bwc>.

unprovoked flight alone is sufficient to justify a stop. During our 2016 review, we made a similar recommendation¹⁴⁰ and MPD responded:

MPD agrees in part with this recommendation. As we discussed with the Reviewers, it is completely legal and appropriate for a law enforcement officer to pursue a person who flees from them on foot. *Officers are trained that flight alone is not sufficient cause for a stop, but other properly articulated factors, such as the discarding of contraband, may form the basis for a stop. MPD does agree to revisit guidelines and/or training on the issue of foot pursuits to reinforce our policy.*¹⁴¹

Based on our review of the Alston Report and discussions with investigators, there is still confusion in the department on this issue. Guidance on this issue is critical, as approximately 19% of all MPD stops are initiated based on the suspect's actions.¹⁴²

Accordingly, we recommend that MPD mandate that unprovoked flight is insufficient on its own to justify an investigatory stop. And while an officer may consider unprovoked flight as one factor when deciding whether a stop is permissible under departmental policy, the officer also must articulate an additional basis for suspecting criminal activity. We believe such a policy is warranted for two reasons.

First, it is an open question as to whether flight alone, when the person fleeing is in a high crime area, is sufficient to justify a stop under the Fourth Amendment. While some courts have said it is, a number of judges in the District of Columbia and

¹⁴⁰ We recommended: "In light of [one of the 2016 cases we reviewed], judicial criticism in the related civil litigation, and confusion among MPD officers, MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue." 2016 Report at 101.

¹⁴¹ 2016 Report, Ex. N. at 18 (emphasis added).

¹⁴² In 2016, the D.C. Council implemented the Neighborhood Engagement Achieves Results (NEAR) Act, which requires MPD to record detailed demographic data each time they stop someone, regardless of whether the stop ends in an arrest. However, MPD did not begin compiling this data until July 22, 2019, and as of the date of this report, only data from July 22, 2019, to December 31, 2019 has been released. See Stop Data Report (Feb. 2020), available at <https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/Stop%20Data%20Report.pdf>. No 2020 report has been released, nor is the raw data available on the MPD website, despite the report's assertion that "the comprehensive data set [is] publicly available on MPD's website." Nevertheless, of the 63,000 stops conducted by MPD during the six-month period for which data were collected, 19% were initiated due to the individual's actions.

elsewhere have required officers to articulate some additional basis for the stop.¹⁴³ MPD's policies should hold officers to a standard that is higher than the bare minimum required by the law to ensure all stops (and any seizures or arrests arising therefrom) are fully defensible as matters of law, policy, and relationships with the community.

As judges confronted with this issue have repeatedly explained, there are good and just reasons for such a requirement, far beyond the concern of simply ensuring that these stops are later deemed lawful. As Supreme Court Justice John Paul Stevens observed in a 2000 opinion, "many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas," and he suggested that "the character of the neighborhood arguably makes an inference of guilt" on the part of the fleeing person "less appropriate, rather than more so." *Illinois v. Wardlow*, 528 U.S. 119, 139 (Stevens, J., concurring in part and dissenting in part). And courts in the District of Columbia have been even more explicit. For example, in 2007, judges in the D.C. Circuit raised the concern that courts are enforcing "the rule that, in a high-crime neighborhood, being young, male, and black creates reasonable, articulable suspicion." *United States v. Goddard*, 491 F.3d 457, 468 (D.C. Cir. 2007) (Brown, J., dissenting). Judge Tatel shared those "concerns about how courts have applied *Terry* in high-crime minority communities." *Id.* at 469 (Tatel, J., dissenting) (citation omitted).

Five years later, in 2012, the now-Chief Judge of the D.C. Court of Appeals noted that "in the District of Columbia and other urban areas[,] . . . an overly strict and formulaic application of *Wardlow* and its progeny could lead to unequal protection of citizens' Fourth Amendment rights, depending upon where a person lives or frequents, and the justification of seizures that are unsupported by any actual, particularized suspicions of wrongdoings by that person," and concluded that a "more nuanced interpretation of *Wardlow* necessitates not only a finding of the *Wardlow* dual factors of flight and a high crime area but also *specific* and *articulable* facts that a particular individual is *suspected* of being involved in criminal activity." *Henson v. United States*, 55 A.3d 859, 872 (D.C. 2012) (Blackburne-Rigsby, J., concurring). And in 2018, the D.C. Court of Appeals explicitly recognized that in D.C., there "are myriad reasons an innocent person might run away from the police," including fear of being shot by the police, and concluded flight does not necessarily imply consciousness of guilt. *Miles v. United States*, 181 A.3d 633, 641 (D.C. 2018). The Court reached that conclusion after citing a New York Times analysis of officer-involved shootings that found "the disproportionate presence of African-Americans, people with mental illnesses, and young men among the dead." *Id.* at 641–42.

¹⁴³ *Henson v. United States*, 55 A.3d 859, 869 (D.C. 2012); *Miles v. United States*, 181 A.3d 633 (D.C. 2018) ("Because Mr. Miles's flight was not 'unprovoked' to the same extent as the defendant's flight in *Wardlow*, and because there are no circumstances—beyond the flight itself—that cast an incriminating light on Mr. Miles's flight, we conclude that Mr. Miles's flight does not sufficiently corroborate the 911 call.").

Second, a change in policy would represent a critical step in addressing the public perception that police-resident encounters are random and arbitrary. MPD has been criticized for years for the use of so-called “jump-outs.” Jump-outs are generally described as instances where undercover officers “jump out” of unmarked cars to stop and detain a civilian.¹⁴⁴ Community members have complained that these tactics are an example of “militarized police presence in [Washington, D.C.’s] poorest neighborhoods.”¹⁴⁵ While the facts of this incident do not have all of the indicia of a jump-out, Mr. Alston’s family has characterized it as such.

In a recent lawsuit against Washington, D.C. and MPD, the Alston family alleged:

The terror of MPD jump-outs is well known to residents of Ward 8. Jump-outs have been described as “DC’s scarier version of stop-and-frisk,” and a “paramilitary operation” meant to “intimidate [citizens] into submission.” MPD is infamous for its use of jump-outs, particularly in low-income areas of the city, like Ward 8. What distinguishes jump-outs from other police stops is the participation of multiple officers per car instead of the two normally involved in a patrol; all officers suddenly emerge from a car and descend upon a single suspect or group on the street, often with the goal of surprising them in order to search and potentially detain them if something illegal can be recovered. Although MPD categorically denies the continued use of jump-outs, residents report that they remain ubiquitous in certain areas of the city and document them when possible.¹⁴⁶

As members of the department have explained to the review team, there can often be law enforcement reasons for such tactics. But there can be no dispute that such tactics may jeopardize the public’s trust in the MPD by creating the impression of MPD “terrorizing” citizens. And an officer’s explanation that he chased someone *only* because the person ran simply reinforces these concerns.

¹⁴⁴ See, e.g., Armando Trull, *Protesters Criticize D.C. Police For ‘Jump-Outs’ And Other Police Tactics*, WAMU (Mar. 10, 2015), available at https://wamu.org/story/15/03/10/protesters_criticize_dc_police_for_jump_outs_and_other_police_tactics/.

¹⁴⁵ *Id.*

¹⁴⁶ Alston Complaint ¶ 66 (footnote omitted).

D. The Death of Eric Carter

1. Summary of Facts

On September 16, 2019, at approximately 7:00 pm, the Office of Unified Communication (“OUC”) received a series of 911 calls related to an incident at 2245 Savannah Terrace, S.E. One of the calls relayed information from Ms. Carter and reported that her son, Eric Carter, was firing a gun inside her apartment.¹⁴⁷ Within two minutes, officers from MPD’s Seventh District responded to 2245 Savannah Terrace. The first officers on scene were met by a resident of that address, who informed the officers that his neighbor, Ms. Carter, had told him that Eric Carter was shooting inside her apartment. The witness stated to the officers that he had heard a pop, then a second pop coming from Apartment 12, where Ms. Carter lived.

MPD investigators subsequently learned that Mr. Carter was “highly agitated” and “acting irrational” that day. He reportedly had fought with Ms. Carter’s other son, Alphonso Carter, and at some point, brandished a handgun. Ms. Carter later reported to investigators that she saw Eric shoot two rounds inside the apartment. Soon thereafter, she said that Alphonso moved to the bathroom to get away from Eric. Ms. Carter said she then saw Eric shoot twice through the bathroom door. 911 recordings confirmed that several citizens called to report the sound of gunshots at 2245 Savannah Terrace. A neighbor would later state to investigators that she had heard these gunshots.

The first officer on the scene announced over the radio the information learned from the witness of shots fired from the apartment, and requested a ballistics shield be brought to the scene.¹⁴⁸ The first officers on scene had been in the area earlier in the day in response to an earlier call, the substance of which is unclear from the case record.¹⁴⁹ And either an officer or dispatcher stated on the radio that he believed Mr. Carter to have mental health issues.¹⁵⁰ Officer Dennis Sfoggia heard the first officer on scene’s

¹⁴⁷ Facts related to the incident are drawn from the Final Investigative Report (“Carter Report”) dated August 6, 2020 unless otherwise noted.

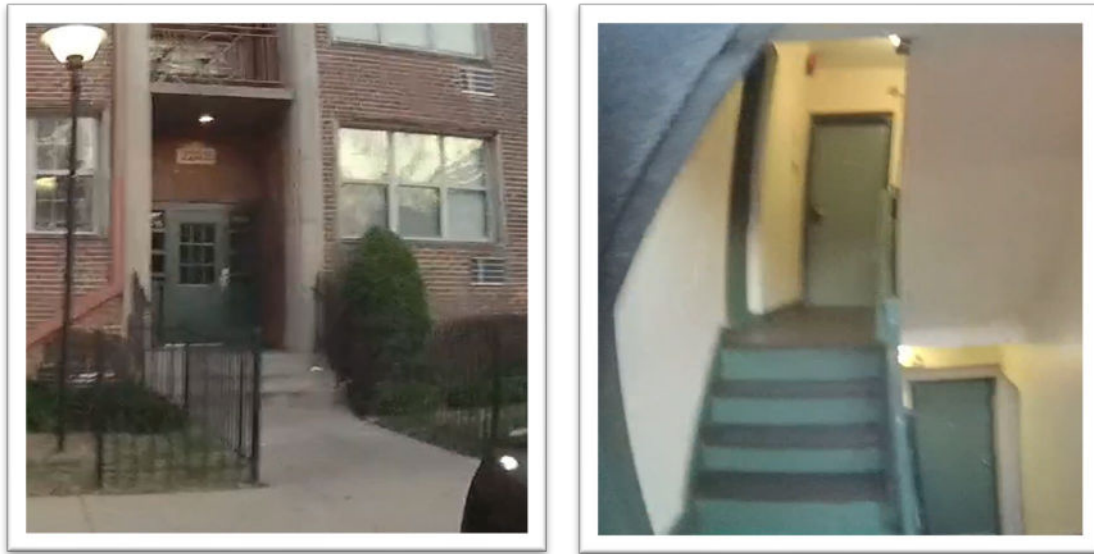
¹⁴⁸ Ballistics shields are protection devices deployed by police and military forces, and are designed to stop or deflect bullets or other projectiles.

¹⁴⁹ Body-worn camera (“BWC”) (first officer on scene) at 04:31.

¹⁵⁰ See OUC (7D Radio) at 00:42. Interview of Officer at 1 (“When the call was dispatched an unknown officer told the dispatcher that the caller was a mental health consumer who called earlier.”)

request for a ballistics shield, retrieved one from district headquarters, and arrived on the scene with his partner, Officer Juwan Jefferson. Additional officers arrived at the scene, including Officer Byron Jenkins (armed with an M4 patrol rifle), Sergeant Joseph Devlin, and Sergeant Darnell Sanders.

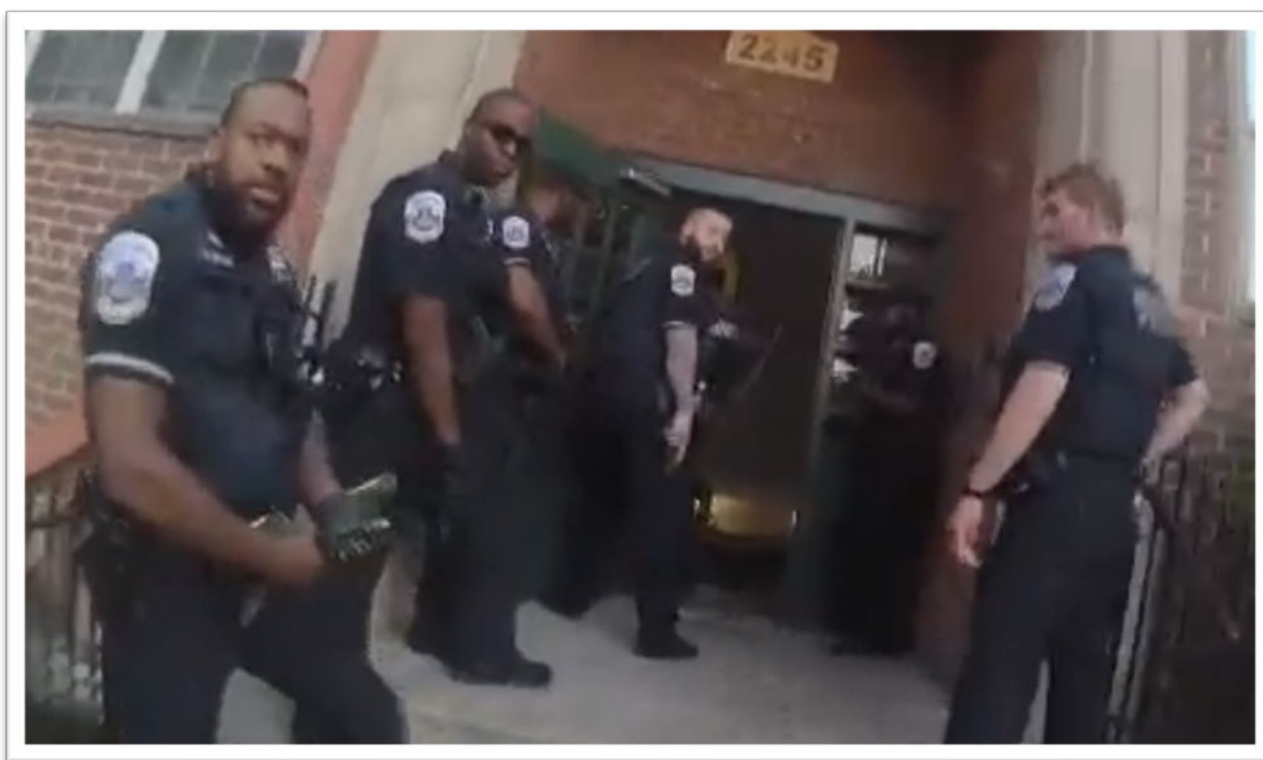
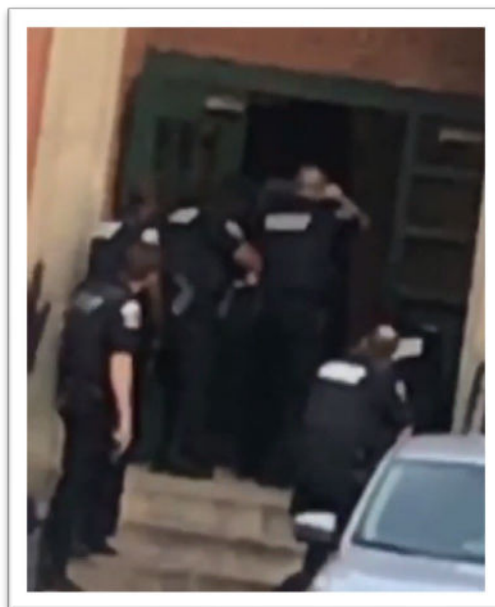
At 2245 Savannah Terrace, a fence-enclosed walkway leads up to the exterior door of the building. The exterior door opens into two stairways – one leading up and one down toward the various apartments in the building. The door to Apartment 12 was located directly up the stairway and was visible from the exterior door.



Exterior and interior hallway of 2245 Savannah Terrace¹⁵¹

The officers arrayed themselves on the front stoop around the exterior door. Officer Sfoglia stood on the left side of the door, holding the ballistic shield and his service pistol. Officer Jenkins was directly behind Officer Sfoglia. Officer Jefferson was on the right side of the door on one knee and partially shielded by the doorframe. Officer Roger Gordon was behind Officer Jenkins. And another officer was positioned behind all of the officers on the walkway. While initially positioned at the front door, the two first officers on scene were instructed to cover the rear of the building.

¹⁵¹ BWC (Officer Sfoglia) at 2:29 & 2:49.



The officers' positions prior to Mr. Carter exiting Apartment 12¹⁵²

The above-named officers remained in this position for approximately three minutes and discussed their tactical options and next steps. The officers then heard a

¹⁵² Civilian Video at 0:01; BWC (Sgt. Sanders) at 6:11.

gunshot, which they believed to have come from inside Apartment 12. At that time, Officer Sfoglia entered the hallway, climbed the staircase, and asked his fellow officers if they were “ready.”¹⁵³ Officer Jenkins and Gordon followed and were positioned on (or at the top of) the stairs leading to Apartment 12. Officer Jefferson entered the building and walked down the staircase toward the lower apartments. Officer Sfoglia, while holding the ballistic shield in his left arm, kicked the door to Apartment 12 several times. The door did not open, nor did anyone in the apartment respond. Officer Sfoglia then moved to the right of the door behind the shield.¹⁵⁴ Officer Sfoglia was told to stop by Sergeant Joseph Devlin and he and his fellow officers returned to their positions outside on the front stoop. Sergeant Devlin then told the dispatcher he was “declaring a barricade,” but there is no evidence that the dispatcher responded with an affirmative.¹⁵⁵ The officers radioed that they believed the shots came from Apartment 12 and requested a second ballistic shield.¹⁵⁶

Less than a minute later, Officer Sfoglia stated to the other officers that he saw “someone jiggling the door” of Apartment 12.¹⁵⁷ He yelled “police department” and “come out with your hands up.” After a few seconds, Mr. Carter emerged from Apartment 12 and Officer Sfoglia yelled, “gun, gun, step back, he’s got a gun.” Mr. Carter then re-entered Apartment 12. At this point, the officers were positioned on the front step and the narrow sidewalk leading up to the building. A few seconds later, Mr. Carter re-emerged from Apartment 12. An officer yelled, “He’s got a gun” to his fellow officers and, “Put your hands up” to Mr. Carter. Nearly simultaneously with the officer’s command, Mr. Carter raised his gun, took aim at the officers and fired his weapon.

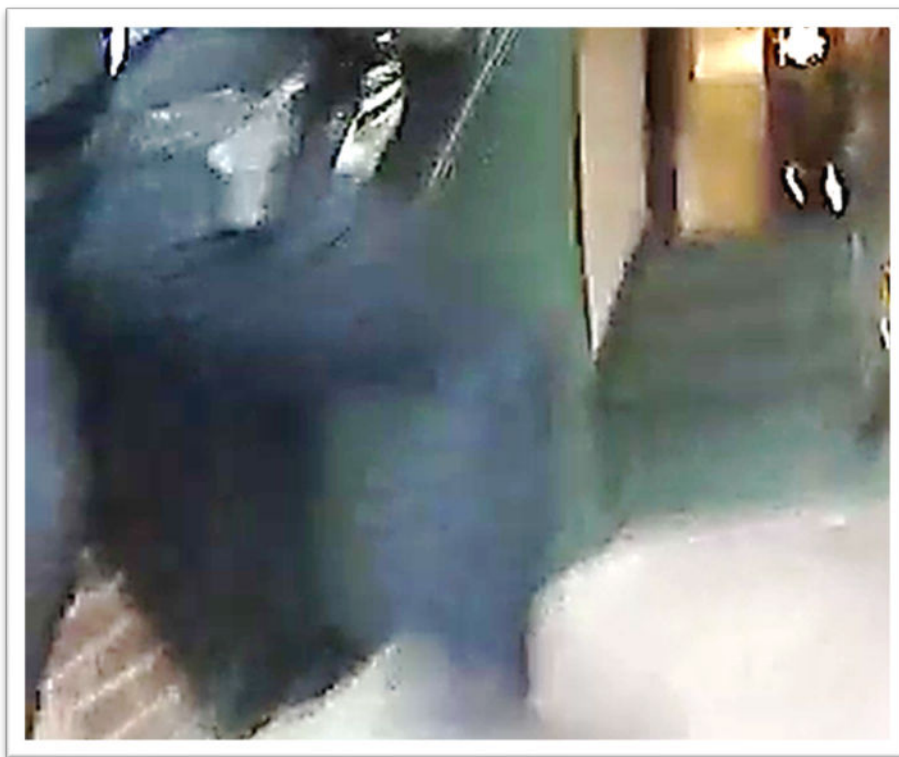
¹⁵³ BWC (Officer Sfoglia) at 06:07.

¹⁵⁴ BWC (Officer Jenkins) at 08:16.

¹⁵⁵ BWC (Sgt. Sanders) at 07:14.

¹⁵⁶ BWC (Officer Sfoglia) at 7:39.

¹⁵⁷ BWC (Officer Sfoglia) at 8:10.



Muzzle flash from Mr. Carter's pistol at top of stairs¹⁵⁸

Multiple officers returned fire. Officer Sfoglia fired two rounds, turned his back to Mr. Carter, and retreated to the parking lot. Officer Jefferson fired at least one round, turned his back to Mr. Carter, and retreated to the sidewalk outside the building. Officer Jefferson fired a total of eighteen rounds. Officer Jenkins backpedaled on the walkway and fired nineteen rounds from his M4 patrol rifle. While backpedaling, Officer Jenkins fell to the ground but continued to fire in the direction of Mr. Carter. Sergeants Sanders and Devlin also returned fire. Officer Gordon and another officer retreated towards an adjacent building and did not return fire.

Mr. Carter continued advancing towards the officers, as they fired at him. He eventually collapsed in the front walkway of 2245 Savannah Terrace. Body-worn camera ("BWC") footage confirms that, despite the fact that multiple officers had been returning fire, Mr. Carter was still standing and pointing his gun at the officers when he came down the stairs from Apartment 12 and emerged on the front stoop of the building.¹⁵⁹ Officer Sfoglia approached Mr. Carter, who was on the ground by that time, and moved Mr. Carter's gun away from his body. Mr. Carter was immediately unresponsive and was later pronounced dead on the scene at 9:38 pm. Officer Jenkins

¹⁵⁸ BWC (Officer Jefferson) at 09:04.

¹⁵⁹ BWC (Officer Jefferson) at 09:09.

retrieved the gun, walked behind a vehicle, took cover, and placed the gun on the ground next to him. The officers established a perimeter around the building and stated to one another that they were unsure if there were additional shooters in the building.

Officer Sfoglia subsequently determined that he had sustained a non-penetrating gunshot to the right front pocket of his ballistic vest. He was transported to MedStar Washington Hospital Center and treated for what the Carter Report refers to as “minor injuries.” Officer Gordon sustained a minor laceration to his elbow that was later determined to be an abrasion caused by his contact with a fence.

Following the shooting, a lieutenant from the Seventh District responded to the scene. At 7:30 pm, he called for a barricade based on his belief that a second shooter might be inside. The Emergency Response Team (“ERT”) was dispatched to the scene at 7:45 pm and later entered Apartment 12.¹⁶⁰ ERT had to forcibly remove the bathroom door. When the door was removed, the officers discovered the body of Mr. Alphonso Carter on the bathroom floor.¹⁶¹ Mr. Alphonso Carter, a victim of multiple gunshot wounds, was pronounced dead on the scene at 9:35 pm.¹⁶²

MPD chain of command and the U.S. Attorney’s Office for the District of Columbia (“USAO”) were promptly notified of the incident. The USAO issued a declination letter on May 18, 2020.

2. Summary of Investigation

An agent in IAD led MPD’s investigation of the incident under the supervision of a lieutenant. A detective from the Homicide Branch, Major Case Squad, led the separate but related investigation into the death of Alphonso Carter.

At the time of the incident, the investigating agent had recently joined IAD and was not immediately designated as lead investigator. The preliminary investigative report was drafted by a different agent.¹⁶³ Two other IAD agents responded to the scene and conducted a witness canvass. Other homicide detectives were also involved in interviewing witnesses. Our review did not identify any major inconsistencies among the accounts of the civilian witnesses who were interviewed. However, their accounts largely focused on what occurred prior to the shooting—*i.e.*, that Mr. Carter

¹⁶⁰ ERT Incident Report (Sept. 16, 2019) at 2.

¹⁶¹ Death Report of Alphonso Carter (Sept. 16, 2019) at 2.

¹⁶² Death Report of Alphonso Carter (Sept. 16, 2019) at 1.

¹⁶³ Interview with Investigator (Dec. 16, 2020).

was agitated, fired his gun in the apartment, and Ms. Carter had fled to another apartment. None of the civilian witnesses saw the exchange of shots between Mr. Carter and the MPD officers. A witness who lived in a neighboring apartment stated that he saw parts of the incident through a crack of his apartment door. He told investigators that he heard officers say, “Come out with your hands up” multiple times, heard someone say, “He’s got a gun,” and then heard the exchange of gunfire. The IAD agents also interviewed seven officers and four sergeants who responded to the scene. Their accounts were generally consistent with the narrative above, and all of the officers stated unequivocally that Mr. Carter fired first. It does not appear that IAD agents interviewed the first officers on the scene (who were not involved in the exchange of gunfire).

Members of the City’s Department of Forensic Services (“DFS”) also responded to the scene. DFS personnel collected forensic evidence, and conducted weapons and ammunition checks on the scene. They recovered, among other things, the Taurus .45 ACP semi-automatic pistol used by Mr. Carter. They were unsuccessful in attempting to obtain latent prints on Mr. Carter’s weapon. DFS personnel also requested DNA testing; the results of any such testing had not been received at the time the investigation was complete and went before the Use of Force Review Board (“UFRB”). Notably, no .45 caliber shell casings were recovered in the area of the door to Apartment 12. Two shell casings were recovered outside of Apartment 12 and five shell casings were recovered inside Apartment 12. Also of note, DFS personnel recovered a bullet from the front of Officer Sfoglia’s vest that was traced to Officer Jefferson’s service pistol. Finally, reports prepared by DFS personnel noted property damage to the exterior of the building and its interior caused by the large number of bullets fired by Mr. Carter and the officers, including damage to a window and a wall in Apartment 14.¹⁶⁴

IAD investigators reviewed and analyzed BWC footage from a number of officers on the scene. Notably, the lieutenant who declared a barricade failed to activate his body-worn camera until the time of the shooting. The investigator was assigned to investigate this violation. Another IAD agent also canvassed for CCTV footage but none could be found in the immediate area. The investigator was able to obtain two cell phone videos – one obtained by the news media and one from a public Instagram account. Both videos were taken from the parking lot across the street but had a direct line of sight to the front of 2245 Savannah Terrace. Neither video is inconsistent with the narrative above.

Officer Devlin completed his Use of Force Incident Report (“UFIR”) on June 16, 2020. Officer Sfoglia completed his UFIR on June 30, 2020. Officers Jenkins, Sanders,

¹⁶⁴ Report of Crime Scene Examination at 4 (Sept. 17, 2019).

and Jefferson completed their UFIRs on July 16, 2020.¹⁶⁵ The Final Investigative Report (“Carter Report”) was completed on August 6, 2020.

The case was submitted to the UFRB. In preparation for its consideration of the case, UFRB staff prepared the Decision Point Analysis Matrix, which as in the other cases we reviewed was a detailed synopsis of the facts developed during the investigation and a summary of MPD’s policy and District of Columbia regulations concerning the use of a firearm in self-defense.

On August 26, 2020, the UFRB unanimously concurred with the recommendation in the Internal Affairs investigative report that Sergeants Devlin and Sanders and Officers Sfoglita and Jenkins’ uses of force were justified and within MPD policy. The UFRB also unanimously concurred with the recommendation in the Internal Affairs investigative report that Officer Jefferson’s use of force was justified and warranted a tactical improvement opportunity. Beyond its concurrence, the UFRB “directed all of the members that were on the scene of the incident ... to attend a scene review” at MPD Academy but made no additional findings or recommendations.

3. Analysis

We agree with MPD’s ultimate conclusion that the officers’ use of force was justified and supported by the evidence. Nevertheless, we note a number of opportunities for significant improvements in tactics and investigative practices.

a. Justification for Use of Force

As set forth previously, MPD’s General Order 901.07 (effective November 3, 2017) governs a member’s use of force. In relevant part, the General Order requires that “Members shall attempt to defuse use of force situations with de-escalation techniques whenever feasible.” Sec. IV.A. *See also* MOA ¶ 39. The General Order authorizes members to use deadly force:

- (1) When it is necessary and objectively reasonable; and
- (2) To defend themselves or another from an actual or threatened attack that is imminent and could result in death or serious bodily injury; and

¹⁶⁵ As described in our discussion of the Alston investigation, Standing Order 10-14 Part IV.V.4 states, “Members shall complete the PDF Form 901-e (UFIR) immediately following all firearm discharges[.]” Each of these officers completed their UFIR months after the incident occurred. However, officers are permitted to defer completion of the UFIR until after the USAO makes a determination not to prosecute. GO-SO-10-14.IV.F.2.b.2.

- (3) When all other options have been exhausted or do not reasonably lend themselves to the circumstances.

GO 901.07 IV.G. Finally, the General Order requires the officers to issue a verbal warning before discharging a firearm “when feasible.” ¶ IV.K.

Here, credible BWC footage, witness statements, and physical evidence support the conclusion that the involved officers provided verbal warnings. The evidence shows convincingly that Mr. Carter exited Apartment 12 with a pistol in his hand, pointed the pistol at officers, and fired at least once before the officers returned fire.¹⁶⁶ Under these circumstances, the involved officers reasonably feared for their lives and were unable to otherwise de-escalate the situation prior to discharging their firearms.

b. Tactical Errors and Deficiencies

The Carter Report recommended, and the UFRB concurred, that all of the officers, except Officer Jefferson, acted within MPD policy. The UFRB endorsed the finding that the facts warranted a ruling that although the shooting was justified, Officer Jefferson’s actions warranted a “tactical improvement opportunity” for accidentally shooting Officer Sfoglia during the exchange of gunfire. As described further below, the Carter Report provided little explanation as to how Officer Jefferson could have avoided this potentially deadly error beyond “be[ing] sure of [his] target.”¹⁶⁷ The Carter Report should have further addressed this and certain other tactical shortcomings by the responding officers, as set forth below. Indeed, best policing practices require a more thorough follow-up by the UFRB on each finding. The investigative record should include evidence that MPD officials discussed inappropriate and ill-advised tactics with the officers and implemented remedial actions. If the findings have implications for training to be provided to the involved officers, or to a broader universe of officers within MPD, those findings should be documented along with confirmation that the recommendations were implemented.

(1) Emergency Response Team Notification

Consistent with MPD policy and best policing practices, the officers on scene should have notified the Emergency Response Team at the outset of the incident and declared a barricade. GO-HSC-805.05 requires responding officers to take a number of steps, including notifying ERT, in the event of a “possible barricade and/or hostage

¹⁶⁶ The BWC footage confirms a muzzle flash coming from Carter’s pistol. See Jefferson BWC Footage at 9:04.

¹⁶⁷ Carter Report at 56.

situation.”¹⁶⁸ A barricade situation is, in turn, defined as a “[s]ituation where an individual resists being taken into custody by seeking refuge in a building ... while using or threatening to use deadly force against him/herself or others, and ignoring orders to surrender.”

Under MPD policy, the first officer on the scene is required to determine whether the situation is a “possible” barricade situation.¹⁶⁹ If that officer so determines, the officer must request that a district official respond to the scene, alert OUC “of the situation and advise that ERT *may* be needed, and evacuate as many citizens as possible.”¹⁷⁰ The responding district official is then required to ascertain if a barricade situation exists and request assistance from ERT.¹⁷¹

Furthermore, MPD policy *requires* the mobilization of ERT when officers determine that the armed individual is known to have mental health issues. GO-OPS-308.04.VI.F states:

The Emergency Response Team (ERT) shall be responsible for assisting district units with hostage and barricade situations and those situations where death or serious bodily injury is imminent that involve mental health consumers in accordance with GO-HSC-805.05 (Barricade/Hostage Situations and Other Unusual Incidents).¹⁷²

In addition, responding officers are required to notify ERT when a “mental health consumer” escalates a police interaction “to the point where death or seriously bodily injury is imminent.”¹⁷³

In this case, the first officers on the scene had sufficient information to conclude that the scene was a “possible” barricade situation. They were aware that an individual was firing a gun in Apartment 12 and, in fact, immediately requested a ballistic

¹⁶⁸ GO-HSC-805.05.A.1-3, attached as Appendix K.

¹⁶⁹ GO-HSC-805.05.A.1.

¹⁷⁰ GO-HSC-805.05.A.1.

¹⁷¹ GO-HSC-805.05.A.2.a.

¹⁷² Attached as Exhibit L.

¹⁷³ GO-OPS-308.04.V.C.1.b.

shield.¹⁷⁴ The first officer on scene also stated that he had been to the scene earlier that day and, thus, had reason to believe that Mr. Carter was suffering from mental health issues.¹⁷⁵ At this juncture, it was critical that the officers, at a minimum, advise OUC that ERT might be necessary.¹⁷⁶ Indeed, if the officers knew that Mr. Carter had mental health issues, MPD policy required them to notify ERT and also determine whether a Crisis Intervention Officer (“CIO”) should be dispatched.¹⁷⁷ They did neither.

As more officers came to the scene, it was readily apparent to them that the scene was a barricade situation. The officers assembled outside the exterior door and discussed alternatives to make a forcible entry into Apartment 12. Two officers deployed a patrol rifle, which can only be deployed in “tactical” or “high-risk arrest situations,” including barricade situations.¹⁷⁸ The officers confirmed over the radio that they had “sufficient units on-scene” to make an entry.¹⁷⁹ And, in fact, they did try to make a forcible entry. These tactics strongly suggest the officers believed the scene to be a barricade situation from the start, yet no efforts to notify ERT were made by any of the responding officers.

After the officers tried to make entry, Sergeant Devlin radioed to the lieutenant (who was en route) that he was declaring a barricade.¹⁸⁰ In doing so, Sergeant Devlin appropriately requested additional units in order to form a perimeter but made no request that ERT be notified. Instead, Sergeant Devlin radioed for a second ballistic shield. MPD policy is clear that if a barricade has been declared, ERT must be mobilized. This did not occur.

To be sure, only about five minutes passed between the request for the ballistic shield and Mr. Carter’s emerging from the apartment and firing at the officers. But our

¹⁷⁴ Carter Report at 45.

¹⁷⁵ We are not aware of any efforts to contact Ms. Carter, who was readily available in an adjacent apartment and could have confirmed that Mr. Carter was a mental health consumer.

¹⁷⁶ GO-HSC-805.05.A.1.

¹⁷⁷ GO-OPS-308.04.V.C.1.b; GO-OPS-308.04 (requiring that the first officer on the scene determine whether a Crisis Intervention Officer should be dispatched to the scene to interact with the mental health consumer. It does not appear such a request was made and IAD does not appear to have asked any of the involved officers if they considered summoning a CIO).

¹⁷⁸ GO-RAR-901.01.VI.F.3, attached as Exhibit M.

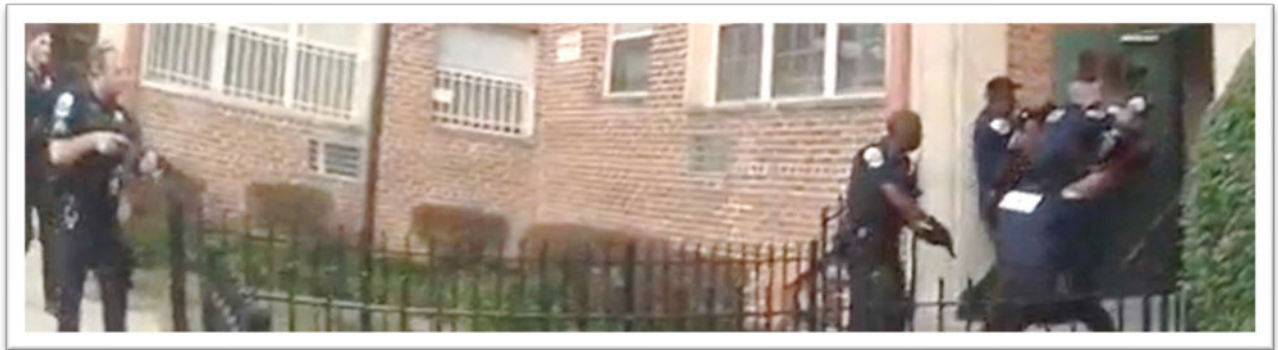
¹⁷⁹ Carter Report at 46.

¹⁸⁰ OUC (7th District) at 06:45.

review of the evidence makes clear that the officers had the opportunity to summon ERT when they initially arrived on the scene and should have done so.

(2) *Tactical Formation and the Fatal Funnel*

While the Carter Report refers to the officers as assembling around the exterior door in a tactical “stack” formation, the video evidence suggests their positioning could better be described as standing in what is known in policing as a “fatal funnel.”¹⁸¹ For example, Sergeant Sanders’ BWC shows the officers’ tactical formation in the moment Mr. Carter emerged from Apartment 12:

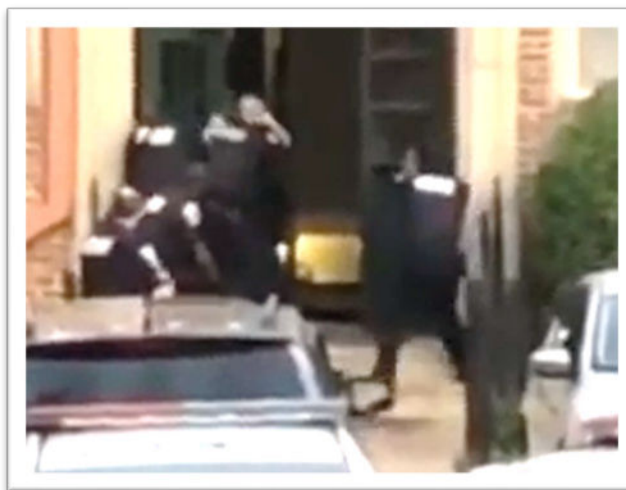


*The tactical formation at the moment Mr. Carter emerged from Apartment 12.*¹⁸²

¹⁸¹ “Fatal funnel” is a term that refers to building-clearing operations undertaken by law enforcement or military personnel. It refers to areas such as stairwells, hallways and doorways that are generally narrow, confining areas that offer little or no cover or concealment and potentially limit the officer's tactical options. Brian Willis, *The Scale of Desirability and Fatal Funnel*, Police Magazine (Oct. 15, 2010), available at <https://www.policemag.com/373636/the-scale-of-desirability-and-fatal-funnel#:~:text=The%20%22fatal%20funnel%22%20is%20a,have%20to%20go%20into%20combat.>

¹⁸² Sanders BWC at 9:33.

Likewise, a civilian witness's video shows:



The tactical formation at the moment Mr. Carter emerged from Apartment 12.¹⁸³

The videos clearly show that a number of the officers were fully exposed in the “fatal funnel” and covered neither by the building nor by the ballistic shield. From this moment, we see several of the officers—including Officer Sfoglia and the ballistic shield that was supposed to provide cover—have to fall back as Mr. Carter begins shooting at them. In doing so, Officer Sfoglia and Officer Jefferson turned their back to the shooter and retreated through the fatal funnel. And Officer Jenkins fell down as he was backpedaling and simultaneously firing a patrol rifle.

This major tactical error likely had a number of significant consequences and reinforces our conclusion that it was critical for the officers to have attempted to summon ERT. *First*, it likely contributed to Officer Jefferson’s shooting Officer Sfoglia. A proper “stack” formation is intended to mitigate the possibility of responding officers shooting one another. Here, the officers’ vulnerable formation caused both Officers Sfoglia and Jefferson to retreat through the fatal funnel¹⁸⁴ in order to find better cover, thus exposing themselves to fire from Mr. Carter and their fellow officers. *Second*, it led to excessive gunfire from unsafe shooting positions. Officer Jefferson appears to have fired eighteen rounds during the ten-second exchange of gunfire (including approximately three seconds where he had his back to the shooter) while other officers crossed into his view. Officer Jenkins, who was initially behind Officer Sfoglia (and the shield), had to backpedal away from the shooter when Officer Sfoglia changed positions

¹⁸³ Civilian Video at 00:14.

¹⁸⁴ In this statement, Sgt. Devlin stated specifically that when Mr. Carter emerged from Apartment 12 “the officers were attempting to back out of the building away from the ‘fatal funnel’ and [he] observed Officer Sfoglia fall down the front steps and believed he had been shot.” Carter Report at 22.

and left him unprotected. As a result, Officer Jenkins fell down while firing his M4 patrol rifle. *Third*, the barrage of gunfire – which Officer Gordon referred to as the “OK Corral” – as the officers retreated led to at least one bullet breaking the window of Apartment 14, where a family with two young children resided.¹⁸⁵

(3) *The Attempted Breach of Apartment 12*

The Carter Report’s Chronological Narrative does not specifically mention that the officers attempted to force entry into Apartment 12. Rather, the report states that after hearing a gunshot, Officer Sfoglia “approached [A]partment 12” and “kicked the door several times and received no answer.”¹⁸⁶ While the narrative suggests Officer Sfoglia was trying to get someone to answer the door, video evidence and the involved officers’ statements to investigators make clear that the officers were preparing a forced entry into Apartment 12.¹⁸⁷

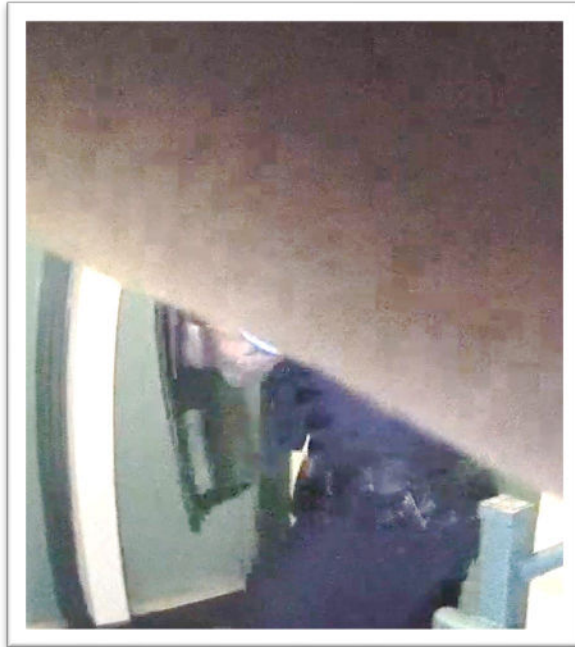
The officers’ tactics here were also inconsistent with best practices and reinforce the need for an ERT team to have been summoned. Officer Jenkins’ BWC footage reveals that Sergeant Sanders was beginning to give the officers instructions on positioning themselves when a gunshot was heard. The officers immediately stopped planning their approach and moved toward the door to Apartment 12. Officer Sfoglia approached the door and asked the team, “OK?” He then proceeded to kick the apartment door while Officer Jenkins and another officer remained completely exposed on the stairway.¹⁸⁸

¹⁸⁵ Carter Report at 15, 36 (“A multitude of bullets struck the exterior walls and front door area, and broke a window to Apartment 14.”).

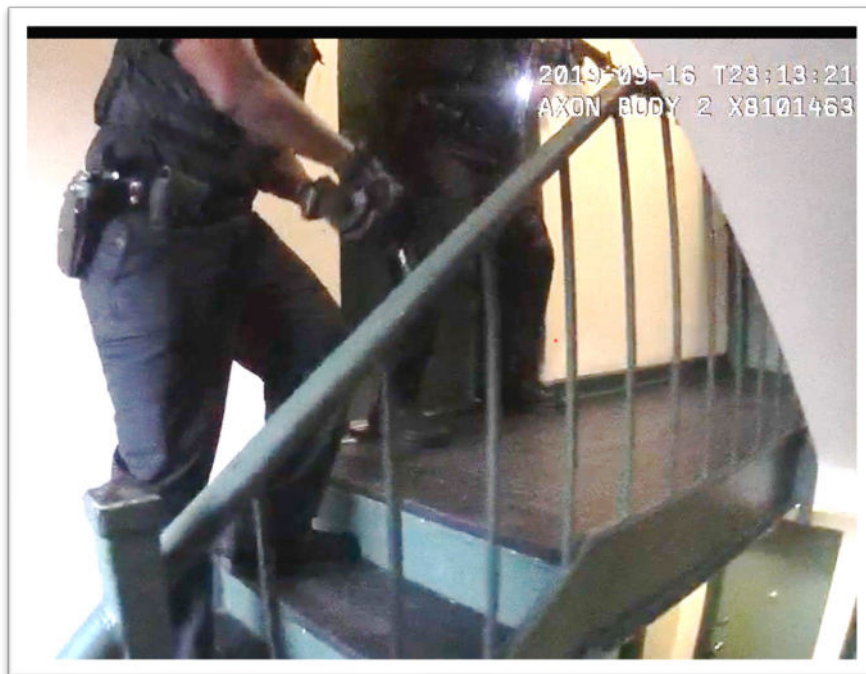
¹⁸⁶ Carter Report at 3.

¹⁸⁷ BWC (Officer Jenkins) at 08:15.

¹⁸⁸ BWC (Officer Jenkins) at 08:15; BWC (Officer Jefferson) at 06:26.



Officer Jenkins' BWC shows that he was not behind Officer Sfoglia or the shield at the time of the attempted breach¹⁸⁹



Officer Jenkins and another officer exposed on the stairway at time of the attempted breach¹⁹⁰

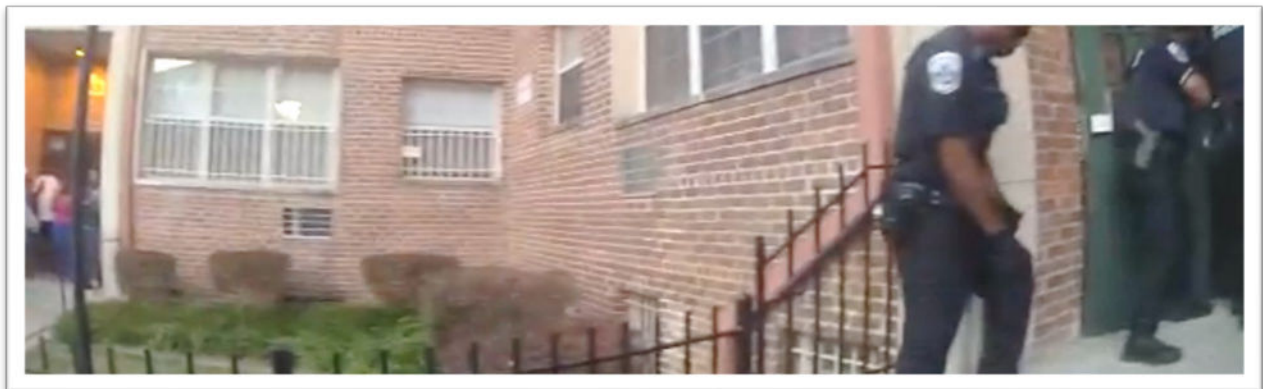
¹⁸⁹ BWC (Officer Jenkins) at 08:15.

¹⁹⁰ BWC (Officer Jefferson) at 06:26.

Ultimately, Sergeant Devlin ordered the officers to fall back and they made no further efforts to force entry into Apartment 12.¹⁹¹ But it is possible, if not probable, that the officers' attempted breach of the apartment escalated the situation and caused Mr. Carter to emerge from the apartment and start shooting. It is also not clear whether the officers had a specific plan for what to do if entry was successful. The better practice in this situation would have been to secure the scene and call immediately for ERT and a Crisis Intervention Officer.

(4) *Securing the Parking Lot and Surrounding Area*

As the officers waited outside the building, video footage confirms that bystanders were in or near the line of fire. Sgt. Sanders's BWC footage shows a number of bystanders standing in the next-door building as the officers assembled outside the exterior door and Sgt. Sanders requested an additional ballistic shield.¹⁹² Those civilians appear to have remained outside (within a few yards of the officers) until the moment of the shooting.¹⁹³ At 09:31 of Sergeant Sanders's BWC footage, officers appear to be looking at these bystanders and perhaps communicating with them. Shortly before the shooting, Sergeant Devlin is overheard on a BWC asking for additional units to establish a perimeter. But it appears the civilians did not take cover until the shooting started.



*Bystanders can be seen nearby*¹⁹⁴

¹⁹¹ BWC (Sgt. Sanders) at 06:56.

¹⁹² BWC (Sgt. Sanders) at 08:23.

¹⁹³ BWC (Sgt. Sanders) at 9:31 (*less than two seconds* before the shooting, an officer is communicating with the bystanders and they flee as the shooting begins).

¹⁹⁴ BWC (Sgt. Sanders) at 9:31.

The two civilian videos likewise show what appears to be at least one group of individuals directly across the street, and potentially in the line of fire, filming the incident with cellphone cameras. Given the significant number of officers on the scene, these officers should have at least attempted to get these civilians out of harm's way.

c. Investigative Shortcomings

(1) Inadequate Tactical Analysis

As described above, we found several significant tactical shortcomings in the actions of the MPD members during this incident. These shortcomings were not adequately investigated by IAD and not adequately identified and analyzed in the Carter Report and by the UFRB. Like several of the other cases that we have examined, the investigation was largely focused on the "moment of discharge." Accordingly, the only tactical improvement recommended by the report was directed at Officer Jefferson. And that recommendation stated only that he was "responsible for ensuring no other persons were within his line of fire for each shot."¹⁹⁵ While we agree with this conclusion, the Carter Report did not meaningfully grapple with the set of tactical issues described above. These issues likely contributed to Officer Jefferson's shooting Officer Sfoglita and could have contributed to whether the exchange of gunfire occurred in the first place. MPD policy and best policing practices require a more searching analysis.

In particular, MPD policy requires the Carter Report to consider whether the use of force was consistent with MPD training and whether "proper tactics were employed."¹⁹⁶ MPD policy also states:

The Use of Force Review Board shall review the actions of all members involved in the use of force incident, not just the actions of the member(s) who used force. **The actions of the member(s) leading up to and following the use of force shall be reviewed** to identify commendable action(s) and/or conduct warranting corrective intervention by the MPD and, as appropriate, recommend training.¹⁹⁷

In doing so, the UFRB is required to review: "(a) Compliance with MPD policies, procedures, directives, and training; (b) Whether proper tactics were used by the involved member(s); (c) Risk management issue(s); (d) Adequacy of related MPD

¹⁹⁵ Carter Report at 56.

¹⁹⁶ GO 901.08 V.J.2.

¹⁹⁷ GO 901.09 V.C.1 (emphasis added).

training; and (e) Whether the level of force used was appropriate for the incident.”¹⁹⁸ Also, the UFRB is required to prepare a “Decision Point Matrix Analysis.”¹⁹⁹

The fact that the investigation did not meaningfully analyze the involved officers’ attempt to force entry into Apartment 12 is illustrative of this broader problem. While the officers were ultimately unsuccessful, their decision to attempt to force entry rather than wait for ERT, and the tactics employed to breach the door, should have been carefully scrutinized by IAD and the UFRB. As described above, these tactics were in several respects contrary to policy and best policing practices. These tactics also could have had consequences for the ultimate use of force. The involved officers should have been asked why they believed that they needed to breach the door immediately after they heard the gunshot—especially where the officers were already aware that there was an armed individual in the apartment who had already fired shots inside the apartment. Among the questions that should have been asked are the following:

- Whether the MPD members had formed a plan for how to clear the apartment if the door did open;
- Whether they attempted to locate Ms. Carter or other witnesses to obtain more information about who and what they might find in Apartment 12;
- Whether they were concerned that someone had just been injured;
- Whether they believed they were being shot at;
- Whether they considered whether ERT could respond in time;
- Whether they considered dispatching a Crisis Intervention Officer;
- The rationale for Sgt. Sanders initially allowing the officers to approach the door but then Sgt. Develin pulling them back and attempting to declare a barricade;
- The reason a barricade was not established when Sgt. Devlin called for one over the radio.

All of these areas of inquiry were essential to a proper assessment of the tactics employed by the officers leading up to the use of force itself.

¹⁹⁸ GO 901.09 V.C.2.

¹⁹⁹ GO 901.09 V.C.3.

Rather than giving these related sets of issues careful attention, the Carter Report largely glossed over them and provided potentially conflicting descriptions of the attempted breach of the Apartment 12 front door:

- In the Chronological Narrative, the Carter Report says nothing about trying to breach the door. Rather, it states that Officer Sfoglia kicked the door and did not receive an answer, and the officers then fell back to “devise strategy for entry.”²⁰⁰
- In the Tactical Analysis, the Carter Report suggests that Officer Sfgolia’s kicking the door was *either* an effort to force entry *or* an effort to get a response from inside Apartment 12. After hearing the gunshot, the officers returned to their positions, and “continu[ed] to devise a strategy for entry.”²⁰¹
- Finally, in the Summary & Conclusions, the Carter Report says nothing of the attempted breach and instead states that, after the gunshot, the involved officers did nothing more than “devis[e] a plan to secure the scene and declare a barricade to await the arrival of the Emergency Response Team.”²⁰²

In short, the investigation did not determine whether the officers intended to breach the door and what their plans for doing so were. In fact, the Summary and Conclusions section does not even mention the attempted breach—a fact that may have precipitated the use of force incident in the first place. Instead, it misleadingly states that Mr. Carter emerged from Apartment 12 and fired on the officers while the officers were waiting for ERT to arrive.²⁰³ It was incumbent on the investigator, and the members of his chain of command who reviewed the report, to explain this clearly so the UFRB could analyze the numerous decision points leading up to the use of force. It was also incumbent on IAD supervisors and the UFRB to review the Narrative and the Tactical Analysis with a critical eye to highlight and resolve these issues. Finally, it was incumbent on the UFRB to prepare an appropriate decision point analysis that included these decisions as part of its review.

(2) *Delay in Rendering Aid to Alphonso Carter*

While it is unclear precisely when he died, it appears that Mr. Alphonso Carter succumbed to his injuries inside Apartment 12 before MPD was able to reach him and

²⁰⁰ Carter Report at 3.

²⁰¹ Carter Report at 54; *see also id.* at 27.

²⁰² Carter Report at 58.

²⁰³ Carter Report at 57.

render first aid. In the aftermath of the shooting, Mr. Carter's family criticized the MPD for not making a faster entry into Apartment 12 to save Alphonso Carter after Eric Carter had been shot and killed. In comments to the media the evening of the incident, Ms. Carter, the sister of the deceased brothers, accused the MPD of taking hours to make entry into Apartment 12 and demanded to know the time of death.²⁰⁴ Notably, Ms. Carter made similar statements to two MPD investigators (including the lead IAD investigator) on the evening of the incident. This interview was recorded but not transcribed, nor was an interview of Ms. Carter mentioned in the Carter Report. On the evening of the incident, Chief Peter Newsham informed the media that the officers responded to the incident the way they did "because they didn't know who was still in the apartment."²⁰⁵

From our review of the evidence, it appears this delay was caused by two factors. *First*, after the shooting, MPD officers chose to not make entry and instead wait for ERT because they had reason to believe there was a second shooter in the building.²⁰⁶ *Second*, MPD members may have been unaware that Alphonso Carter was in Apartment 12. While a witness informed the 911 operator that Eric Carter was shooting inside Apartment 12, she did not mention Alphonso Carter being inside. And, in fact, she told that operator that no one had been shot.²⁰⁷ While Alphonso Carter called 911 – begging for assistance and mentioning his brother – it does not appear that this information (or the fact that Alphonso Carter did not answer the phone when the 911 operator called back) was ever passed along to officers on the Seventh District's radio channel.

Nor does it appear that the 911 operators attempted to call back when the first call back to Alphonso Carter went unanswered. In addition, the Carter Report suggests that the first officer on scene learned from a witness that gunshots were fired inside 2245 Savannah Terrace when he initially came on the scene.²⁰⁸ And while the witness

²⁰⁴ Bruce Leshan, *Family members think shooting victim may have died while police waited to secure building*, WUSA9 (Sept. 17, 2019), available at <https://www.wusa9.com/article/news/local/dc/family-search-for-answers-after-brother-kills-brother-in-southeast-dc/65-4fe428ba-07a0-46ec-8522-67e7d79f4c85>.

²⁰⁵ Mark Segreaves and Andree Swalec, *Man Killed His Brother, Shot Officer in Southeast DC, Police Say*, NBC4 Washington (Sept. 18, 2019), available at <https://www.nbcwashington.com/news/local/man-killed-his-brother-shot-officer-in-southeast-dc-police-say/1959692/>.

²⁰⁶ See, e.g. Statement of Sergeant at 21.

²⁰⁷ Carter Report at 51.

²⁰⁸ Carter Report at 2, 12.

was likely aware that Alphonso Carter was inside,²⁰⁹ the Carter Report does not state whether he informed the first officer on scene of this fact.

Though not related to the moment of weapons discharge, the delayed response in rendering aid to Alphonso Carter also required further investigation and analysis by IAD and the UFRB. The investigation should have attempted to ascertain whether any officers were aware that Alphonso Carter was inside and, if so, when the officers learned this information:

- Did the witness inform the first officer on scene that Alphonso Carter might be inside the apartment?
- Did the officer ask?
- When did the officers first encounter Ms. Carter, the mother of Eric and Alphonso?²¹⁰
- Did Ms. Carter tell them Alphonso Carter was inside?
- Did the officers take any steps to find Ms. Carter (who MPD knew was in a neighboring apartment) to get more information about who was in Apartment 12?
- Why was Alphonso Carter's call to 911 not conveyed to the responding officers?

Answers to the above questions are critical to ensuring public confidence in the investigation and to providing a complete tactical analysis and assessment of potential training opportunities for both MPD members and 911 dispatchers. Even if the decision to delay entry was deemed justified by IAD, these issues should have been investigated, analyzed in the report, and discussed by the UFRB.

(3) *Inadequate Inquiry into the Decision to Notify ERT*

As described above, MPD policy required the responding officers to have notified ERT when they came on the scene. But it was only after the officers heard a

²⁰⁹ The witness's statement to investigators indicates that he saw Alphonso Carter going into the building and thereafter heard a pop. Another witness's statement also suggests the first witness, and another man, may have been made aware of the fact that Eric Carter was "over there shooting Alphonso." Witness Statement at 1.

²¹⁰ The OUC indicates that after the incident, Ms. Carter was sitting in a grey sedan nearby the scene. (34:39)

gunshot and attempted to force entry that Sergeant Devlin radioed that he was declaring a barricade.²¹¹ And it was not until after the incident occurred that the lieutenant again declared a barricade and summoned ERT.²¹² The Carter Report and the UFRB should have carefully scrutinized these decisions, including: whether any officer did not believe the scene to be a possible barricade situation; whether other officers were aware of Mr. Carter's mental health issues and believed him to be a danger to himself or others; whether any officers mentioned waiting for ERT to arrive after they attempted entry; whether the officers considered calling a Crisis Intervention Officer; and why Sergeant Devlin did not call for ERT after he explicitly declared a barricade.

(4) *Officer Gordon's False Form PD-42*

On September 17, 2019, Officer Gordon submitted a Form PD-42 (certified by a sergeant) indicating that he had been shot by the suspect and sustained a laceration to the left elbow caused by the gunshot. The Carter Report concludes that this did not occur. In the Discrepancies and Clarifications section, the Carter Report states that IAD reviewed the BWC footage and conducted a follow-up interview with Officer Gordon and concluded, "It was determined his injury was more than likely sustained from rubbing against a wrought iron fence."²¹³

While the Carter Report does a commendable job flagging certain potential discrepancies, the Carter Report minimizes IAD's investigation of this important discrepancy, which relates to whether an MPD officer may have deliberately made a false statement. Indeed, the Carter Report does not mention that IAD interviewed Officer Gordon and the certifying sergeant on December 4, 2019 specifically about the false report – when both were told that an administrative investigation could be triggered by the responses to their questions. Nor does it appear that these interviews were transcribed or even summarized anywhere in the Carter Report. During Officer Gordon's interview, the investigator summarized at some length the BWC footage that cast considerable doubt on whether Officer Gordon was shot at all. The investigator ultimately established that Officer Gordon was never in the line of fire and never told anyone on the scene that he had been shot. Officer Gordon ultimately admitted that he was mistaken and did not believe he was shot. These facts, undoubtedly, bear on Officer Gordon's overall credibility and should have been addressed more explicitly in

²¹¹ An eyewitness officer stated that, after the attempted entry, Sergeant Devlin told the officers to fall back and that he was going to notify ERT. Carter Report at 20. But there is no indication from OUC that Sergeant Devlin called for ERT.

²¹² Carter Report at 33.

²¹³ Carter Report at 52.

the Carter Report. While Officer Gordon's statements about the incident likely did not have a significant effect on the central conclusions of the report, the issue should have been highlighted for the UFRB.

It should also be noted that the certifying sergeant admitted that she prepared the Form PD-42 (Injury or Illness Report) memorializing the injury, and attesting to having investigated it, without gathering sufficient independent information to ensure its completeness and accuracy. She stated that she was directed to make Officer Sfoglia's Form PD-42 (the only contemporaneous account of the incident that we have from Officer Sfoglia) as "generic" as possible, without identifying who gave her that direction. Her actions (and the actions of the unnamed officials that directed her) are contrary to best practices in investigations. The entire incident should have been explored further and brought to the attention of the UFRB.

(5) *Sufficiency of Officer Interviews*

Unlike certain of the other cases we have reviewed, the four officers most directly involved in the use of force incident neither participated in a walkthrough nor were interviewed until after the USAO issued a declination letter, which eliminated the risk of criminal liability. Although we can infer that the officers declined to be interviewed before the risk of prosecution was eliminated, that is not explicitly stated in the report. It appears Officer Sfoglia gave a brief statement to the certifying sergeant in connection with completing his PD 42 on the date of the incident. The other involved officers were interviewed within a day of the incident and none were ever re-interviewed.

On the whole, the interviews of the subject officers were longer and more detailed than interviews in some of the other cases we have reviewed. Even so, the interviews did not probe many of the tactical concerns that were described above – instead, focusing largely on the exchange of gunfire itself. For example, no officer was asked whether or not they were aware that Alphonso Carter was in Apartment 12 prior to ERT making entry. Likewise, no officer was asked any questions about Officer Jefferson's shooting Officer Sfoglia. We find it notable that Officer Gordon was provided stills of his BWC footage and the investigator walked him step-by-step to establish that he *had not* been shot. While it may not have been feasible to actually show BWC footage to certain of the officers, similar efforts were not undertaken to understand the circumstances under which Officer Sfoglia *had* been shot.

While investigators generally did not ask leading questions, there were several notable instances where the investigator asked leading questions or failed to follow-up on issues of particular importance. For example, the certifying sergeant admitted that the time of the incident she included on Officer Gordon's PD-42 was not accurate and explained that a superior told her to record it as such – a seemingly deliberate choice.

The investigator then asked, “So it was a mistake?” and the sergeant agreed. Likewise, the investigator asked Officer Jefferson certain highly suggestive questions on issues that bear directly on whether Officer Jefferson complied with MPD policy, including: “Did you not have the chance to give verbal commands because of the exigency of the circumstances?” As we noted above, leading questions should be avoided whenever possible, especially when they involve suggesting an exculpatory response to officers under investigation, in this case a rationale (exigent circumstances) for not providing verbal commands.

Finally, we note that *none* of the statements from the officers were transcribed, even though this is an MPD requirement.²¹⁴ And the interviews of the subject officers (Devlin, Jenkins, Sfoglita, Sanders, and Jefferson) are only summarized in the body of the Carter Report — *i.e.*, there is not a more detailed synopsis attached to it. It is difficult and time-consuming for officials in the IAD chain of command and members of the UFRB to effectively perform their review functions if transcripts are not provided and instead they have to hunt through the audio recordings themselves.

4. Recommendations

Based on our review of the Carter Report, the underlying evidence, and the UFRB’s review of the investigation, we provide the following recommendations for MPD’s consideration:

- MPD should consider enacting or clarifying its policy related to circumstances when a barricade should be ordered and ERT (or other tactical support) should be contacted.
- MPD should review its policy on deployment of ballistics shields and consider adding requirements that when an officer requests a shield: (1) a supervisor be notified and (2) the supervisor should respond to the scene of the incident to assess the conditions and decide if ERT should be called.
- MPD should ensure that all officers are adequately trained on how to use the ballistics shield, including how the deploying officer is to handle his pistol while holding the shield and the tactical formations to be employed when a shield is being used.
- MPD should review training on how to breach a door, including training on when and how to do so, and the proper equipment to use. Training should be

²¹⁴ GO 901.08 V.I

provided on each relevant breaching device before the officer is authorized to use it.

- MPD should provide tactical training on how to approach a location where entry is contemplated and there is indication that an armed subject is within the premises to be entered. The training should address being in the line of fire, stacking, the “fatal funnel” and seeking cover.
- In all serious use of force cases, the lead investigator should seek assistance from MPD Academy staff responsible for tactical and physical skills training when conducting the investigation’s tactical analysis. IAD should also consider tactical review by ERT supervisory personnel when there is an attempted high-risk entry.
- The Decision Point Analysis Matrix should provide a meaningful independent analysis of the decision points faced by all participants in the event, including, but not limited to, call takers, dispatchers, assisting officers and the officer or group of officers using force. The analysis should address not only the decisions made by the officer who used force, but the decisions made by any officer that is relevant to the use of force. Where appropriate, the analysis should identify any policy, training, equipment or tactical concerns raised by the actions of participants.

IV. Recommendations

In explaining the purpose of its Use of Force Investigations policy, MPD states:

Fair and accurate follow-up investigations of use of force incidents increase Department and community awareness of the integrity and appropriateness of decisions to use force. Use of force investigations enhance the Department’s ability to make decisions regarding the incident and to provide necessary guidance to members on appropriate levels of use of force.

This is well-stated. Rigorous use of force investigations *are* critical to maintaining the public trust. Such investigations provide the public with a clear message that uses of force, particularly serious uses of force, are taken seriously by the MPD. They also demonstrate that MPD will not only hold wrongdoing officers accountable but also look at the incidents with a critical eye to understand how the Department as a whole can minimize the risk of use of force incidents occurring in the first place and minimize the risk of harm to members of the public and MPD officers when they do occur.

Guided by this purpose, this report contains 28 recommendations that the Review Team developed in the course of reviewing the four 2018 and 2019 use of force cases. We begin this section with eight broad recommendations for changes to MPD policy, procedure, and practice that fall into three categories: broadening the scope of use of force investigations, increasing transparency, and improving the manner in which the results of use of force investigations are classified by the UFRB. These recommendations are intended to address many of the core policy shortcomings contained in our report that we observed across the cases we reviewed. We then bring together the 20 specific recommendations on use of force policy, training, investigations, and oversight that were made in earlier sections of the report in the context of the individual case reviews.

A. Broadening MPD's Inquiry into Use of Force

In all four of the above cases, we found that IAD investigators and the UFRB focused almost exclusively on the moment when force was employed, and the events immediately leading up to that moment. In the Carter case, for example, the investigation's findings focused almost entirely on whether the involved officers were justified in shooting at Mr. Carter with little to no inquiry into several fundamental issues: the officers' tactics in attempting to breach the door; the possibility that the officers escalated the situation; the failure to alert ERT in a timely manner; and the time it took to get medical assistance to Alphonso Carter. Likewise, in the Young case, there was minimal inquiry into whether Officer Wilson took steps to de-escalate the situation. While the "moment of weapons discharge" is undoubtedly a critical part of any use of force investigation, GO 901.09 grants the UFRB a significantly broader mandate. As set forth above, it states in relevant part:

The Use of Force Review Board shall review the actions of **all members involved in the use of force incident**, not just the actions of the member(s) who used force. **The actions of the member(s) leading up to and following the use of force** shall be reviewed to identify commendable action(s) and/or conduct warranting corrective intervention by the MPD and, as appropriate, **recommend training**.²¹⁵

The General Order goes on to require that the UFRB review each incident for:

- Compliance with MPD policies, procedures, directives, and training;
- Whether proper tactics were used by the involved member(s);

²¹⁵ GO 901.09 V.C.1 (emphasis added).

- Risk management issue(s);
- Adequacy of related MPD training; and
- Whether the level of force used was appropriate for the incident.²¹⁶

Based on the four cases we examined, we found that both the UFRB and IAD are not currently fulfilling this mandate. Doing so is critical to satisfying MPD's purpose in conducting use of force investigations. To that end, we make five recommendations.

- **Recommendation #1: IAD Should Broaden Its Investigation and Analysis of Use of Force Incidents**

MPD must ensure that IAD investigations are sufficiently comprehensive to allow the UFRB to meet its mandate.²¹⁷ While, as described above, the UFRB's mandate is broad, MPD's policy on use of force investigations is less specific and does not ensure that IAD's use of force investigations provide the UFRB with the range of information it needs. The use of force investigations policy states in relevant part:

[T]he final investigative report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation, a summary and analysis of all relevant evidence gathered during the investigation, and proposed findings.²¹⁸

While the current policy requires IAD to consider the involved officer's tactics, we recommend that MPD revise its policy so it is clear that IAD's investigation should mirror the areas that the UFRB is required to review. This includes investigating and presenting to the UFRB risk management issues, the adequacy of training, and analysis of the events leading up to and following the incident. In our prior work with MPD, we did not observe that the lack of congruence adversely affected the quality of IAD's use of force investigations. Our review of these four cases demonstrates that with the passage of time, it has. Therefore, we recommend a change in MPD's use of force investigations policy.

²¹⁶ GO 901.09 V.C.2.

²¹⁷ We likewise noted in our 2016 Review that shortcomings in IAD investigations and reports "had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the use of force by MPD officers is consistent with MPD policies and law enforcement best practices. 2016 Report at 115-16.

²¹⁸ GO 901.08 V.J.1.

- **Recommendation #2: IAD Should Enhance the Training of IAD Investigators who Handle Serious Use of Force Cases**

IAD investigators need to be trained on investigating and presenting the above issues to the UFRB. We noted with concern in our 2016 report that the merger of the former Force Investigations Team (“FIT”), created in 1999 by former Chief Charles H. Ramsey, into the Internal Affairs Bureau could, over time, degrade the quality of use of force investigations especially in serious use of force cases. Indeed, the first two recommendations in our 2016 report specifically addressed the degradation in quality of such investigations.

“First, we recommend that MPD restructure IAD so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this group should be officers who have demonstrated the proper attitude and who possess the necessary skills for conducting use of force investigations.

Second, we recommend providing the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.”

2016 Report at 55.

There is no evidence that those recommendations were implemented. During the review team’s interviews with IAD investigators, we learned that there is no formal training or orientation for IAD investigators where the scope of a use of force investigation (or the scope of the UFRB’s review) is discussed. We recommend that IAD perform this basic training as new agents join the division.

- **Recommendation #3: The UFRB Should Conduct a More Thorough Decision Point Analysis as Part of Its Review**

The UFRB should improve its practices with respect to the “Decision Point Matrix Analysis” required by GO 901.09 V.C.3. In each of the cases we reviewed, the content of the analysis did not match its title. The documents largely provided a summary of the Final Investigative Report’s investigative conclusions. But, critically, these analyses did not carefully scrutinize the various *decision points* faced by the officers involved in the incident. For example, with respect to the Carter case, such an analysis might have contained, among other things, the following information:

- *The responding officers arrive on scene.* The officers appropriately decided to draw their weapons, employ a ballistic shield, and secure the area around Apartment 12. The officers appropriately ascertained whether there were additional exits to the building and posted officers at the rear of the building. The officers should have summoned ERT at this juncture. The reasons the officers did not summon ERT at this juncture was likely the result of OUC not communicating to the involved officers that Alphonso Carter had called for help from inside the apartment and the involved officers not knowing that Eric Carter had mental health issues.
- *The officers hear a gunshot from inside Apartment 12.* The officers, who were mostly facing one another while getting instructions from Sgt. Sanders, appropriately sought cover immediately. But from that point, the officers immediately entered the building and began kicking the door of Apartment 12. Unless the officers believed that there was an immediate threat to themselves or others (and we have seen no evidence of this), the officers should not have done this. The officers should have secured the scene and summoned ERT. While waiting, the officers should have further investigated who might be in Apartment 12 by seeking out neighbors, asking OUC, and speaking with one another. When Officer Sfoglita kicked the door, Sergeant Devlin appropriately ordered the officers to fall back and declared a barricade.

A decision point analysis can be an extremely helpful tool to facilitate the assessment of a use of force incident. It should serve as the basis for the UFRB to serve its critical role as an independent review body within MPD. It can also serve as the basis for recommendations for additional training either for the officer(s) involved in the incident or for the entire Department, and it can be the source of instruction about appropriate police tactics in particular circumstances. That important purpose is not served by a summary document – a slightly rewritten version of the IAD investigator’s

summary – that does not contain independent analysis and does not extract from the incident relevant guidance.²¹⁹

- **Recommendation #4: The UFRB Should Provide Specific Recommendations Related to Training, Policy, and Best Practices**

The UFRB should embrace its broad responsibilities to “recommend to the Chief of Police use of force investigative protocols, standards for use-of- force investigations, training enhancements, and policy and procedure amendments”²²⁰ and to recommend additional training for the involved officers or the MPD as a whole.²²¹ The MOA similarly states that MPD should “authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance.”²²²

In the four cases we reviewed, the Final Report and UFRB recommended additional training for *one* officer. In the Carter case, the UFRB recommended a “tactical improvement opportunity” for Officer Jefferson after it was determined that he shot Officer Sfogle in his tactical vest. Even where the UFRB does not believe a formal “tactical improvement opportunity” classification is warranted, UFRB should still make a practice of providing soft feedback and training recommendations where warranted.²²³ For example, in the Alston case, Officer Koch should have communicated to Officer Demerit that he believed Mr. Alston to be armed. We do not believe Officer Koch should have been disciplined (or even re-trained) for his failure. But, he should have been reminded of this best practice. And the Academy should have been directed to incorporate this best practice in its training.

²¹⁹ During the 2016 Review, we likewise recommended that the UFRB enforce the requirement of the creation of decision point analysis. We also suggested that the UFRB consider transferring the responsibility for the analysis to the IAD investigator. 2016 Report at 111 (Recommendation No. 20).

²²⁰ GO 901.09 V.C.4.

²²¹ GO 901.09 V.E.

²²² MOA ¶ 67.

²²³ We note that the UFRB can direct all members on the scene to attend a “scene review” at the Metropolitan Police Academy. The UFRB so directed in the Carter case. We have seen no evidence of what was discussed during this review (or whether it occurred). Regardless, we note that any kind of review would only be enhanced by the UFRB providing a detailed analysis of the decision points involved in each case and areas for improvement.

The Carter case also provides a useful illustration. In that case, it appears that none of the officers were made aware that Alphonso Carter was in Apartment 12. This information undoubtedly would have affected the officers' decision-making with respect to making entry (both before and after the exchange of gun fire with Eric Carter). While we see no clear violations of policy or training by MPD members, it is critical that the UFRB identify breakdowns in communications, process, and tactics to MPD leadership, the Academy, and OUC (which *was* aware that Alphonso Carter was in need of assistance) to ensure it does not happen again. In short, each use of force investigation—especially those that involve the use of deadly force—can serve as a useful case study for MPD members and the Academy for developing and refining best practices.

- **Recommendation #5: IAD Should Designate and Train Force Investigation Specialists**

As described above, the 2016 Report recommended that MPD specially train a cohort of IAD agents to focus on investigating serious use of force cases, much like specially trained units for homicides and sexual assaults. At the time, MPD did not agree with this recommendation and, instead, indicated that all members of IAD will receive cross-training on use of force investigations and misconduct investigations. Based on the investigatory shortcomings described above, we believe MPD should reconsider.

From 1999 through 2012, MPD did have a specially trained unit for serious use of force investigations called the Force Investigation Team ("FIT").²²⁴ FIT's mandate, which expanded over time, included the review of all police-related firearms discharges, all deaths in police custody, and all officer involved suicides with a service weapon. In 2002, a second FIT team was formed to investigate other serious use of force incidents. From early 2004 through late 2007, the independent monitoring team reviewed each case investigated by the FIT teams and consistently found both units conducted "thorough and high quality investigations."²²⁵

In 2012, MPD merged FIT into IAD.²²⁶ Asked about the merger during the 2016 Review, MPD explained that, among other reasons, FIT's caseload decreased considerably and it was not an effective use of resources to maintain the team. Instead, MPD explained that all IAD investigators would be cross-trained in both use of force investigations and misconduct investigations. MPD also stated that it would "document

²²⁴ 2016 Report at 19.

²²⁵ 2016 Report at 20.

²²⁶ 2016 Report at 20–21.

the core curriculum that all IAD investigators must receive upon being assigned to the unit, to include specific training on use of force investigations and ensure those training records are maintained.”²²⁷

The 2016 Report took issue with MPD’s response, noting that it was “not an attainable goal” to expect all IAD investigators to develop the skills and experience to conduct top-flight use of force investigations.²²⁸ In particular, we noted the critical importance that IAD investigators receive: “instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.” The 2016 Report concluded that this training was necessary because IAD investigators lacked this skill and experience.

The four use of force incidents presently under review reinforce these 2016 recommendations. As noted in 2016, we do not believe that MPD must necessarily undo the merger of FIT and IAD, although that is an option MPD should definitely consider. But, at a minimum, we recommend that MPD provide intensive, specialized training to a select group of IAD investigators who can serve as the lead investigator in all serious use of force incidents.

As an initial matter, the current use of force investigation training offered to IAD investigators is insufficient, as evidenced by the decreasing quality and thoroughness of serious use of force investigations that we first observed during the 2016 Review. MPD committed, then, to documenting a “core curriculum” for IAD investigators. MPD also did not quarrel with our suggestion that IAD training include: conducting a thorough tactical analysis; reviewing the decisions that led to the use of force, not merely the use of force itself; and analyzing policy, training, and equipment issues in each incident.²²⁹ We have seen no evidence that such training has occurred and believe this lack of training had a significant influence on the investigatory shortcomings we have observed and identified.

²²⁷ 2016 Report, Ex. N. at 18.

²²⁸ 2016 Report, Ex. N. at 19.

²²⁹ 2016 Report, Ex. N. at 7–8.

IAD investigators informed us that the primary training for new IAD investigators consists of shadowing other IAD investigators.²³⁰ This is not sufficient. Given how different each use of force incident can be and how few incidents occur each year, on-the-job training is not sufficient on its own. This is well-illustrated by the Carter investigation. The investigating agent had only been in IAD for two months when he was assigned as lead investigator to the Carter case.²³¹ While it is clear that he is a highly credentialed investigator with nearly two decades of policing experience, two months of on-the-job training by itself is not sufficient for an IAD investigator to master the host of investigatory considerations required to conduct an effective use of force investigation—particularly an incident as complex as the Carter investigation. In addition to on-the-job training, IAD should craft training (and re-training) programs for all investigators assigned to use of force incidents that includes conducting a thorough tactical analysis; reviewing the decisions that led to the use of force, not merely the use of force itself; and analyzing policy, training, and equipment issues in each incident. We recognize that the resources required to conduct such training is considerable and the few use of force incidents that occur each year make it difficult for investigators to gain experience. As such, we recommend MPD focus on providing this training to a select group of IAD investigators.

We also recognize MPD's concern that the relatively small number of serious use of force incidents that occur in a single year may make it difficult to justify maintaining a team devoted exclusively to investigating serious use of force incidents. If MPD chooses not to create a separate unit but instead to have force investigation specialists remain part of IAD, these specialists should take on additional responsibilities within the unit. These investigators, for example, can take a leading role in training IAD investigators—a practice commonly utilized in police departments around the country.

Finally, these investigators can also be specially trained to enhance the credibility of serious use of force incidents in the eyes of the public. To the extent their findings are made public, these investigators can develop the skills and experience to convey their findings in a manner that assures the public that the investigation was conducted fully and fairly, in their written investigative reports and in public explanations of those investigative results.

²³⁰ During the 2016 Review, investigators similarly indicated that they received no formal training on how to conduct a use of force investigation and learned by “just doing it.” 2016 Report at 52.

²³¹ December 15, 2020 Interview with Investigator.

B. Increasing Transparency

As we discussed in the Introduction, the national spotlight has turned to the issue of police reform, and D.C. has taken several steps to increase transparency, including by creating the Police Reform Commission. But when a serious use of force incident occurs, members of the public do not generally have access to a significant body of information about the case, other than what can be found in media reports and press releases, unless a lawsuit or Freedom of Information Act request is filed. This lack of information creates tension in the relationship between the community and the police, leading to speculation and in many instances erroneous allegations of misconduct. To address this problem, we recommend two potential vehicles for informing the public about the investigations into serious uses of force, especially those ending in death.

- **Recommendation #6: The USAO Should Issue Detailed Declination Letters**

We recommend that the U.S. Attorney's Office for the District of Columbia ("USAO"), which currently releases brief and perfunctory declination letters whenever it declines to prosecute the officers involved in use of force incidents, prepare and issue detailed declination letters, as prosecutors in other jurisdictions do.²³² This would provide the public with a thorough summary, from an authoritative source, of the facts of the incident, the relevant legal standards, and an explanation of why the officer(s) conduct in that case did not rise to the level of criminal conduct. We know from our 2015-16 review that the USAO prepares a detailed internal memo to justify its decision not to prosecute. It would therefore seem not to require substantial additional work to produce a document that is capable of being released to the public.

²³² For example, in North Carolina's Mecklenburg County, the District Attorney releases a report on each officer-involved shooting laying out the role of the District Attorney under North Carolina law; the legal standards for the use of deadly force in general, and the use of deadly force by a law enforcement officer in particular; the facts of the incident; the evidence reviewed by the District attorney, including physical and video evidence; and ultimately reaching a conclusion as to whether the evidence in the case would be sufficient to prove to a jury that the officers had violated the law. The photographic evidence, autopsy reports, officer statements, and other evidence are attached to the report as exhibits, allowing the public to confirm the accuracy of the District Attorney's factual statements. See, e.g., March 13, 2020 Report, available at http://charmeckda.com/news/031320_1.pdf (13-page report with 31 pages of attached exhibits); November 5, 2019 Report, available at http://charmeckda.com/news/110519_1.pdf (11-page report with 58 pages of attached exhibits); November 17, 2017 Report, available at http://charmeckda.com/news/111717_1.pdf (11-page report with 218 pages of attached exhibits).

- **Recommendation #7: MPD Should Release IAD’s Final Investigative Report and the UFRB’s Conclusions to the Public**

We recommend that MPD make its own Internal Affairs Division Final Investigative Report, as well as the document setting forth the UFRB’s conclusions, public in some form. We recognize that this raises sensitive issues for MPD, particularly given the comprehensive analysis we advise in our other recommendations. Nevertheless, at present, there is no public disclosure of the details or findings of the investigation. This information gap leads to a lack of public confidence in MPD’s investigations, and can lead to public speculation and erroneous allegations of misconduct. For example, the lawsuit filed against MPD by Mr. Alston’s family alleges that the officers moved the gun, a statement which we have found, after reviewing the video evidence from the body-worn cameras, to be demonstrably false. Furthermore, public disclosure of some form of the Final Investigative report will create powerful internal incentives for those investigations to be competently and thoroughly conducted and rigorously reviewed because there would be some public accountability for the MPD entities and personnel responsible for those matters. The release of MPD’s findings would enhance the credibility of its work, thus raising the level of the public’s trust.

C. Improving the UFRB’s Use of Force Classifications

MPD policy currently requires the UFRB to make two different “classifications” in reviewing use of force incidents. Although we are aware that these classification systems have existed in MPD for many years, and that they are mirrored in many other law enforcement agencies around the country, we have concluded that in many cases, including the four we have reviewed, they obscure more than they illuminate. We recommend that in each use of force review the UFRB be required to memorialize five “findings,” which are components of its analysis that are largely already required.

The Current Classification Procedures. Under the current procedure, UFRB is required to make the following findings.

The UFRB must first apply the “Section D.3 Classifications” and determine whether the allegations of use of force or other misconduct are:

- **Unfounded**—investigation determined there are no facts to support the incident complained of actually occurred;
- **Sustained**—investigation determined the person’s allegation is supported by a preponderance of the evidence to determine that the incident occurred and the actions of the member were improper;

- Insufficient Facts – investigation determined there are insufficient facts to decide whether the alleged misconduct occurred; or
- Exonerated – investigation determined a preponderance of the evidence showed that the alleged conduct did occur but did not violate MPD policies, procedures, or training.²³³

UFRB next must apply the “Section D.2 Classifications” to classify the actions of MPD officers involved in the incident by one of the following findings:

- Justified, Within Departmental Policy – disposition reflects a finding in which a use of force is determined to be justified, and during the course of the incident the subject member did not violate an MPD policy;
- Justified, Policy Violation – disposition reflects a finding in which a use of force is determined to be justified, but during the course of the incident the subject member violated an MPD policy;
- Justified, Tactical Improvement Opportunity – disposition reflects a finding in which a use of force is determined to be justified; during the course of the incident no MPD policy violations occurred; and the investigation revealed tactical error(s) that could be addressed through non-disciplinary and tactical improvement endeavor(s); or
- Not Justified, Not Within Departmental Policy – disposition reflects a finding in which a use of force is determined to be not justified, and during the course of the incident the subject member violated an MPD policy;²³⁴

Finally, with respect to vehicle pursuits, which is relevant to the Price case, the UFRB must determine whether the pursuit was:

- Justified – classification reflects a finding in which a vehicle pursuit is determined to be within Department policy.
- Not Justified – classification reflects a finding in which a vehicle pursuit is determined to be not within Department policy.²³⁵

²³³ GO 901.09 V.D.3.

²³⁴ GO 901.09 V.D.2.

²³⁵ GO 901.09 V.D.4.

The Shortcomings of the Current Classification Procedure. We believe the fundamental questions inherent in these classifications – *i.e.*, did the alleged conduct occur, was it justified, and was it consistent with MPD policy – are correct. But the current classification system can lead to confusion and inconsistency.

First, the Section D.2 and D.3 classifications are not being used consistently and can be redundant. As drafted, it appears the UFRB must first make findings for each allegation of use of force under Section D.3 and then make a broader classification of the use of force incident as a whole under Section D.2. Thus, in the Price case, the UFRB concluded that the allegations of use of force were “unfounded” and therefore did not classify the incident under Section D.2. But in the other three cases (Alston, Carter, and Young), where there was undeniable evidence that a use of force incident occurred, UFRB did not make any findings about the use of force under Section D.3. Rather, in each case, the UFRB only classified the incident under Section D.2 – finding that the officers’ actions were “justified, within departmental policy”²³⁶ – but making no other findings. This violates MPD policy as written.

To use the Alston case as an illustration, in addition to finding the incident “Justified, Within departmental policy,” the UFRB should also have concluded that Officer Demeritt was “exonerated” under Section D.3 because it is clear that the use of force incident occurred but was consistent with MPD policy. While the UFRB’s conclusions in each of the cases were sufficiently clear, and making these additional findings can be somewhat redundant, MPD policy currently requires the UFRB to make findings about the allegations of use of force under Section D.3 in all cases. We believe the intention of these two policies is to have the UFRB first draw conclusions about whether the use of force occurred and, if it did, render a judgment on whether the use of force is justified and in conformance with departmental policies. We believe this is sound policy and recommend clarifications to the policy below.

Second, MPD policy does not define the term “justified” consistently. In connection with vehicle pursuits, the term means that the officer followed MPD policy.²³⁷ In connection with a use of force incident, UFRB is to determine whether the conduct was justified *and* whether it was consistent with MPD policy – suggesting that justified has a distinct meaning. We recommend that MPD define “justified” as “the officer’s conduct was objectively reasonable under the circumstances” and revise GO 901.09 V.D.4 accordingly.

²³⁶ With the exception of Officer Jefferson in the Carter case, whose actions were classified as Justified, Tactical Improvement Opportunity.

²³⁷ GO 901.09 V.D.4.

Third, the Section D.3 Classifications – particularly terms like “unfounded” and “exonerated” – can easily be misconstrued by the public. This issue was well-illustrated in the Price case. The UFRB labeled the allegations as “unfounded” – *i.e.*, there were “no facts to support that the incident occurred.” This makes little sense. The incident occurred, and Mr. Price died. As described above, there was *some* evidence to suggest Officers Jarboe and Gatton were engaged in a pursuit of Mr. Price. And there was *some* evidence to suggest that Officer Pearson used his car to block Mr. Price. It undermines the credibility of MPD’s investigation to use this label. It sends the wrong message to the Price family and the public at large. IAD and the UFRB presumably relied on this classification because the conduct did not rise to the level of “exonerated.” The term “exonerated” can similarly be misconstrued. While it is intended to mean that the officers’ conduct did not rise to the level of a policy violation, it can be interpreted by members of the public to mean that the officer is blameless. Indeed, “exonerate” is generally understood to mean to “clear or absolve from blame.”²³⁸

While we propose a more significant change below, we recommend MPD, at minimum, change the classification “insufficient facts” to “not sustained.” Other departments, including the Chicago Police Department, use the term “not sustained” to refer to any circumstance where the allegation is “insufficient evidence to either prove or disprove the allegation.”²³⁹ This term can be used for circumstances where: (1) there is ample evidence available to investigators but that evidence is still not sufficient to meet the preponderance standard (like the Price case); or (2) there is insufficient evidence – *e.g.*, because there was no video footage or eyewitnesses – from which investigators can draw conclusions concerning the allegations.

- **Recommendation #8: MPD Should Require the UFRB to Make Five Findings in all Serious Use of Force Cases**

We do not believe that major revisions to MPD policy need to be made to address these shortcomings. We recommend that MPD policy be adjusted to direct the UFRB to memorialize five “findings” in its conclusions, all of which are drawn from existing MPD policy related to the UFRB:

²³⁸ Collins Dictionary of Law; “Exonerate,” Merriam-Webster.com, *available at* <https://www.merriam-webster.com/dictionary/exonerate> (“clear or absolve from blame”).

²³⁹ Chicago Police Department Special Order S08-01-1, § II.F.16.

- Identify the allegations of use of force with specificity and classify them as: “Supported by the Preponderance of the Evidence” or “Not Supported by the Preponderance of the Evidence.” (GO 901.09 V.D.3)²⁴⁰
- Determine whether the use of force was justified – *i.e.*, whether the actions of the officer were objectively reasonable in the circumstances. (GO 901.09 V.D.2)
- Determine whether the use of force incident (and the events surrounding it) were consistent with MPD policy. (GO 901.09 V.D.2, D.3, C.1)
- Determine whether the officer requires “tactical improvement endeavors” or more formal re-training. (GO 901.09 V.D.2, C.2)
- Provide additional recommendations related to: (1) areas for policy and training improvements; (2) risk management issues; (3) equipment concerns; (4) areas for officer improvement that do not require formal re-training. (GO 901.09 V.C.2, E.2)²⁴¹

We believe each of the above findings are already within UFRB’s mandate, and the UFRB should currently be discussing each of these points. Still, we believe a clear distillation of these findings in the UFRB’s conclusions will strengthen the credibility of its conclusions and provide clear guidance to the MPD on areas for policy and training enhancements.

D. Additional Recommendations

This section re-presents the 20 recommendations discussed in the Price, Young, Alston, and Carter cases above. Although the substance of each recommendation is unchanged from the initial discussion, we have listed them in an order that begins with the recommendations of broadest applicability and ends with those that, although significant, are applicable to a narrower set of cases. For each recommendation, we have noted the cases giving rise to it.

²⁴⁰ For example, in the Alston case, the allegation that Officer Demerrit shot Mr. Alston would be “supported by the evidence.” And in the Price case, the allegation that Officer Pearson used his vehicle to stop Mr. Price would be “not supported by the evidence.”

²⁴¹ The Chicago Police Department, for example, requires its Force Review Board to “identify specific modifications to existing policy, training, tactics, or equipment that could minimize the risk of deadly force incidents occurring and the risk of harm to officers and the public.” Chicago Police Department General Order G03-02-08V.D.5.

- **Recommendation #9: Scope of Investigations**

IAD investigators should be provided guidance that the scope of their investigations is broader than the actions of the officer at the point serious or deadly force is used. The actions, tactics, and decisions of all participants in the event, from the call taker to the responding supervisors, should be assessed against MPD policy requirements and best practices. (Alston, Carter)

- **Recommendation #10: De-escalation**

IAD investigators should explore the possibilities for de-escalation in every investigation and in every interview of an officer engaged in a serious use of force. (Young, Carter)

- **Recommendation #11: Involvement of Academy Personnel in Tactical Review**

In all serious use of force cases, the lead investigator should seek assistance from MPD Academy staff responsible for tactical and physical skills training when conducting the investigation's tactical analysis. IAD should also consider tactical review by ERT supervisory personnel when there is an attempted high-risk entry. (Price, Young, Alston, Carter)

- **Recommendation #12: Decision Point Analysis**

The Decision Point Analysis Matrix should provide a meaningful independent analysis of the decision points faced by all participants in the event, including, but not limited to, call takers, dispatchers, assisting officers and the officer or group of officers using force. The analysis should address not only the decisions made by the officer who used force, but the decisions made by any officer that is relevant to the use of force. Where appropriate, the analysis should identify any policy, training, equipment or tactical concerns raised by the actions of participants. (Price, Young, Alston, Carter)

- **Recommendation #13: Follow-up Interviews**

IAD agents should conduct follow-up interviews with important witnesses after the agents have had the opportunity to evaluate initial interviews, BWC footage, and other evidence. (Price, Young, Alston, Carter)

- **Recommendation #14: More Rigorous Review and Oversight of Investigations**

The UFRB and supervisors in IAD must more carefully scrutinize the recommendations and conclusions of the IAD investigator, and if necessary return the investigation to IAD for additional work. The IAD supervisor should periodically (weekly or bi-

weekly) review the investigative file and document each review in writing. The log of reviews should be included as part of the completed investigation file. (Price, Young, Alston, Carter)

- **Recommendation #15: No Leading Questions**

IAD supervisors should caution investigators not to use leading questions during interviews of civilian or sworn witnesses of the involved officers. That is especially important when addressing state of mind issues.²⁴² (Young, Carter)

- **Recommendation #16: Transcription of All Interviews**

In serious use of force incidents, all statements from involved officers, witness officers, and civilians should be recorded, transcribed, and included in the investigative file, as required by MPD policy.²⁴³ (Price, Young, Alston, Carter)

- **Recommendation #17: Check Vital Signs**

MPD should remind officers of the requirement that they check vital signs of people who have been subjected to uses of force, especially deadly force, whenever an officer can safely do so. (Alston)

- **Recommendation #18: No Group Interviews**

Whenever possible, group interviews should be avoided. If a group interview is unavoidable, the investigator should attempt to supplement the interview with subsequent individual interviews whenever possible. (Young)

- **Recommendation #19: Examine All Uses of Force in Incident**

Even in cases when an initial use of force is justified, investigators should carefully examine whether subsequent uses of force (such as the final two shots in the Young case) are also justified and in conformance with MPD policy. (Young)

²⁴² We made this recommendation in our 2016 report, and as a result this requirement was incorporated in MPD policy. GO-901.08 IV. D 4 a (4). But the requirement is not self-executing—it requires adequate training and oversight.

²⁴³ See GO 901.08 V.I.1.e.

- **Recommendation #20: Immediate Reporting**

MPD should reinforce as part of in-service training the responsibility of officers and supervisors to report incidents of the use of force immediately in the aftermath of a serious use of force incident. The training should emphasize the importance of timeliness, as well as incident scene and evidence preservation. (Young)

- **Recommendation #21: More Complete UFRB Documentation**

The UFRB should keep a more detailed record of its deliberations in each case. The record should reflect the specific issues discussed by the Board and their specific findings. (Price, Young, Alston, Carter)

- **Recommendation #22: Clarify Definition of Vehicular Pursuit**

As described in detail above, MPD should re-visit its definition of “vehicular pursuit” and establish easy to understand, objective criteria for when a pursuit occurs. The definition should not be contingent on factors such as whether the officer activates emergency equipment or whether the officer has an adequate basis to pursue the individual. (Price)

- **Recommendation #23: Clarify Responsibilities of Off-Duty Officers**

MPD should consider whether it has in place adequate policies governing what its officers can and should do when confronted with criminal activity when they are in off-duty status. Its policy on this important issue has not been updated since 2004. In particular, MPD should clarify in policy and training the full applicability of its use of force principles, including de-escalation, when MPD members are off duty. (Young)

- **Recommendation #24: Barricades**

MPD should consider enacting or clarifying its policy related to circumstances when a barricade should be ordered and ERT (or other tactical support) should be contacted. (Carter)

- **Recommendation #25: Deployment of Ballistic Shields**

MPD should review its policy on deployment of ballistics shields and consider adding requirements that when an officer requests a shield: (1) a supervisor be notified and (2) the supervisor should respond to the scene of the incident to assess the conditions and decide if ERT should be called. (Carter)

- **Recommendation #26: Training on Use of Ballistic Shields**

MPD should ensure that all officers are adequately trained on how to use the ballistics shield, including how the deploying officer is to handle his pistol while holding the shield and the tactical formations to be employed when a shield is being used. (Carter)

- **Recommendation #27: Training on Breaching Doors**

MPD should review training on how to breach a door, including training on when and how to do so, and the proper equipment to use. Training should be provided on each relevant breaching device available to the officer before the officer is authorized to use it. (Carter)

- **Recommendation #28: Dealing with Armed Subjects within Buildings**

MPD should provide and reinforce tactical training at regular intervals to relevant MPD personnel on how to approach a location where entry is contemplated and there is indication that an armed subject is within the premises to be entered. The training should address being in the line of fire, stacking, the “fatal funnel” and seeking cover. (Carter)

V. Conclusion

Our review over the past several months has focused on MPD’s investigations into four incidents in which the actions of MPD officers caused the deaths of Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter. We have been mindful throughout our review that we are not engaged in an academic or theoretical exercise, but instead a review of some of the most significant and difficult incidents MPD has dealt with over the last several years. Those incidents have had enormous impact not only (and most obviously) on the four men who died, but also on their families and friends, and the communities who mourn their loss, regardless of whether the actions of the MPD officers who caused their deaths were justified under the circumstances. Less obviously, these fatal incidents have a large and lasting impact on the officers involved in these events, on the MPD as a whole, and on the relationship between MPD and the communities it serves. These incidents have become flashpoints in the city, just as the citizen deaths at the hands of police have caused anger and turmoil in many other places in the country.

MPD owes the D.C. community and the public a robust system for investigating and reviewing uses of force. That system must ensure that appropriate policies are in place for investigating serious uses of force, that MPD investigators are adequately trained to investigate such cases, and that the review and oversight system both in the Internal Affairs Bureau and the Use of Force Review Board is demanding and rigorous.

If any policies relevant to an incident are unclear, that lack of clarity should be identified during the course of an investigation and brought to the attention of MPD officials so they can address the issue. If a set of facts presents thorny and difficult issues, IAD investigators must be adequately trained to identify those issues and thoroughly investigate them. And if an investigation fails to address the full range of issues presented by the use of deadly force, reviewing officials within IAD and the UFRB must identify those shortcomings and insist that all the relevant issues – not just those at the time that the ultimate decision to use force was made – be addressed. Those obligations exist for every investigation of serious uses of force, but they apply with even greater urgency to incidents resulting in death.

Our review of these four cases from 2018 and 2019 demonstrates that MPD has fallen short of the standards it should set for itself, and far short of the standards it achieved in prior years when it was under federal oversight (2002-08). For those six years, members of this Review Team reviewed every serious use of force investigated by MPD's Force Investigation Team, including cases involving death. Those MPD investigations were not perfect but they consistently reached a high level of excellence, to the point that MPD became a national model for conducting and reviewing such incidents.

When we reviewed similar cases in 2015, we noted that the quality of use of force investigations had slipped to the point that we expressed concern that the dissolution of FIT and its merger into the Internal Affairs Division would further dilute the quality of investigation into serious uses of force. In the Conclusion to our January 2016 Report, we stated:

In addition, the Review Team found substantial evidence showing that the quality of serious use of force investigations has declined. MPD's elite use of force investigations unit – FIT – has been disbanded and merged into IAD, though declining FIT caseloads over time make this reorganization decision understandable. Unfortunately, the intensive and continuing training needed to maintain high-quality use of force investigations has not occurred. The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce unsatisfactory use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view. As we have described in this report, the shortcomings in Internal Affairs investigations and investigative reports have had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the use of force by

MPD officers is consistent with MPD policies and law enforcement best practices.²⁴⁴

Unfortunately, the weaknesses identified in our 2016 report have not been remedied; indeed, they have grown substantially worse. Our review of the four 2018-2019 death cases has shown that those weaknesses persist, and that generally MPD has not recognized them and appears to resist or be unconcerned with remedying them.

At a time of crisis in American policing, when many of the causes and effects of that crisis are beyond the reach of law enforcement agencies, we recommend that MPD address the weaknesses in its system for investigating serious uses of force in a serious and committed way so that MPD's investigations are thorough, credible, and can withstand public disclosure and examination. This will require the same level of innovation, commitment, and resources that were applied more than 20 years ago when MPD emerged as a leader in the field of investigating serious uses of force. If MPD is to meet the challenge it faces, the Department must first recognize and acknowledge the magnitude of that challenge—and the fierce urgency of meeting it.²⁴⁵

March 2021

Dennis E. Nowicki
Kerr Putney
Ann Marie Doherty
Michael G. Scavelli
Emma S. Marshak



Michael R. Bromwich
The Bromwich Group LLC

²⁴⁴ 2016 Report at 115.

²⁴⁵ In his March 15, 2021 response to our draft report, attached as Appendix O, Acting Chief Contee states that MPD agrees with all of the report's recommendations and targets full implementation by the end of this calendar year. We are pleased that the response is so positive and constructive, and is without reservation. Needless to say, full implementation of so many important reforms will require hard work and continuing vigilance.

Glossary

BRC	Brentwood Recreation Center
BWC	Body-worn camera
CIO	Crisis Intervention Officer
DCHAPD	D.C. Housing Authority Police Department
DFS	Department of Forensic Services
DOJ	Department of Justice
ERT	Emergency Response Team
FIT	Force Investigations Team
IAB	Internal Affairs Bureau
IAD	Internal Affairs Division
MCIU	Major Crash Investigation Unit
MOA	Memorandum of Agreement
MPD	District of Columbia Metropolitan Police Department
ODCA	Office of the District of Columbia Auditor
OUC	Office of Unified Communication
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	U.S. Attorney's Office for the District of Columbia

Agency Comments

On February 25, 2021, we sent a draft copy of this report to the D.C. Metropolitan Police Department (MPD). MPD responded with comments on March 15, 2021. Agency comments are included here in their entirety, followed by ODCA's response.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

March 15, 2021

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Patterson,

Thank you for providing the Metropolitan Police Department (MPD) with an opportunity to review the draft District of Columbia Auditor report, *"The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019."* We recognize that we are at a critical juncture in law enforcement. With the killing of George Floyd last year and the subsequent protests for police reform and racial justice, it is more important than ever that we critically examine all aspects of the way we are interacting with our community and ensure that we have strict and comprehensive policies governing the use of force and use of force investigations. Most importantly, we must continue to ensure that our policies, training, and day-to-day operations require our officers to employ de-escalation techniques to avoid the use of force whenever possible and ensure that deadly force is only used as a last resort, when the officer or others are facing the threat of serious bodily injury or death, and there are no other reasonable options available.

We are very pleased that the draft report confirmed our findings that the uses of force in the cases reviewed were justified. However, we recognize that the loss of any life is tragic, and we must ensure that we are doing everything in our power to prevent those situations from occurring. MPD remains committed to ensuring our use of force policies and practices serve as a model for the nation, and we recognize the need to be forward-thinking on how we can continue to increase transparency and broaden the depth of our investigations. Accordingly, MPD agrees with all of the report's recommendations and will begin working on implementation immediately. We are targeting implementation of all recommendations by the end of 2021.

We have two general comments regarding the draft. We recommend that the names of civilian witnesses be removed from the report. Disclosing the identities of civilian witnesses in a public report is neither necessary nor advisable. As you know, some witnesses may be reluctant to come forward based on fears of unwanted notoriety or possible reprisals. We see no potential negative impact to the content of the report by excluding their identities. Additionally, while we understand the need for transparency regarding the officers who were directly involved in the uses of force, we request that the names of uninvolved, witness officers and the assigned investigators be removed from the report, consistent with your 2016 report.

In closing, we would like to thank your office and The Bromwich Group for your work on this important report. As outlined above, we believe the implementation of these recommendations will further strengthen MPD's policies and procedures regarding use of force. Please do not hesitate to contact us if you have any further questions.

Sincerely,

A handwritten signature in dark ink, reading "Robert J. Contee III". The signature is fluid and cursive, with a prominent "R" and "C".

Robert J. Contee III
Acting Chief of Police

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