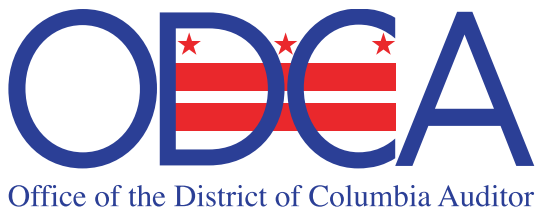


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# MPD and the Use of Deadly Force: The Karon Hylton-Brown Case

July 23, 2025

A report by The Bromwich Group LLC and Steptoe LLP for the D.C. Auditor



**Audit Team**  
The Bromwich Group LLC  
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**Kathleen Patterson, District of Columbia Auditor**  
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July 23, 2025

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

Dear Councilmembers:

This is the third and final report in a series of case studies of the Metropolitan Police Department's investigation of the use of deadly force prepared for the Office of the D.C. Auditor by The Bromwich Group, led by Michael R. Bromwich, and Steptoe LLP. This case study covers the October 23, 2020, death of Karon Hylton-Brown which led to criminal charges against Officer Terence Sutton and Lieutenant Andrew Zabavsky, who were convicted in U.S. District Court and then subsequently pardoned on January 22, 2025, by President Donald J. Trump.

This report carefully assesses the Department's own multi-part internal administrative review of the officers' actions which found that the two sworn members violated MPD policy on vehicle pursuits and false statements and recommended termination for both individuals. Police Chief Pamela A. Smith declined to take that action and has not yet provided an explanation for rejecting the findings and recommendations from the department's own review.

This report includes a 17-page letter from Chief Smith that does not address this discrepancy and a response by Mr. Bromwich whose experience includes serving as monitor for the Memorandum of Agreement on police use of force between the District and the U.S. Department of Justice from 2002 to 2008. The authors provide 11 recommendations to strengthen the department's policy and practice in overseeing use of force, including vehicle pursuits. Not only did Chief Smith reject her department's discipline recommendation but here also rejects each recommendation to strengthen MPD policies, process, and training on use of force.

This failure to engage constructively on proposals to improve use of force investigations is a marked departure from the Metropolitan Police Department's approach over the last 25 years in an area of law enforcement in which MPD has been a leader and an example for other police departments. It is a marked departure as well for the Bowser Administration whose previous chiefs of police embraced and enhanced the District's leadership on use of force.

MPD Chief Charles Ramsey and Mayor Anthony A. Williams first invited the U.S. Department of Justice (DOJ) to work with the District on use of force after a 1999 Washington Post series revealed MPD's excessive use of firearms. According to Attorney General John Ashcroft the agreement reached with DOJ "provides the foundation for meaningful reforms in the manner in which MPD manages use of force by its officers--reforms that all the parties agreed were necessary."

In D.C. Council testimony on March 2, 2016, Police Chief Cathy Lanier emphasized the importance of MPD's model policies evolving over time to meet new standards. "MPD will reengineer its use of force policy and associated training," she said, "to protect the safety of both the public and police officers."

In his confirmation hearing as Mayor Bowser's nominee for chief of police on March 24, 2017, then-Acting Chief Peter Newsham described the earlier use of force MOA and its importance. With the conclusion of the partnership with the DOJ he said, "we transformed MPD from a police department with a troubling record on use of force to a national model" including the conduct of use of force investigations. "It is essential," he said, "that our community knows that all allegations of use of force are investigated thoroughly and impartially" (emphasis added).

His successor, Chief Robert J. Contee III, wrote in response to the first ODCA use of force case study on March 15, 2021, "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 continue to increase transparency and broaden the depth of our investigations." Accordingly, he said, "MPD agrees with all of the report's recommendations and will begin working on implementation immediately."

One of those recommendations was to make Use of Force Review Board reports public and MPD subsequently began posting summaries of major use of force decisions. In what was the first indication of a change of direction under Chief Smith, the MPD stopped publishing the summaries. This followed an arbitrator's decision in a case brought by the police union—a decision MPD could have but failed to appeal. Publication of the summaries was restored last year only after the D.C. Council enacted legislation requiring their publication.

Mr. Bromwich and I co-authored a column published in The Washington Post on January 29, 2016, on MPD's history with use of force reform concluding that, "The District's experience teaches that it is possible to reform police departments and sustain those reforms." But, we added, to implement and sustain those reforms, "leadership is critical from the police chief and her command staff, as well as from civilian political leaders."

The current chief and the Executive Branch of the District government, as demonstrated in this report, appear to have backed away from this commitment to continuous improvement in use of force investigations. Mr. Chairman and Councilmembers, this places squarely before the District's legislative branch the challenge to assert the leadership necessary to protect and sustain the MPD record as a leader on use of force policy and practice.

Thank you.

Sincerely yours,



Kathleen Patterson  
District of Columbia Auditor



# MPD AND THE USE OF DEADLY FORCE: THE KARON HYLTON-BROWN CASE

JULY 2025



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The two sketches on the front cover were drawn by the late Bill Hennessy, the preeminent courtroom sketch artist in the D.C. courts for 40 years. Mr. Hennessy passed away in December 2024.

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## Executive Summary

On October 23, 2020, at approximately 10:11 pm, Karon Hylton-Brown, a 20-year-old Black man, was mortally wounded when struck by a Toyota Scion while he was riding a moped in the Brightwood neighborhood of Washington, D.C. Hylton-Brown was struck by the Toyota as he emerged from an alley and was attempting a left turn onto the 700 block of Kennedy Street, NW. Neither Hylton-Brown nor the driver of the Toyota had a chance to avoid the impact. Hylton-Brown suffered catastrophic head injuries and died several hours later at MedStar Washington Medical Center.

For approximately three minutes before the collision, Hylton-Brown was pursued by two Metropolitan Police Department (MPD) vehicles. Four MPD officers were following Hylton-Brown in an unmarked vehicle driven by Officer Terence Sutton. Sutton's supervisor, Lieutenant Andrew Zabavsky, participated in the pursuit in a separate vehicle. Hylton-Brown's death touched off days of vigils and protests at the scene of the crash and at Fourth District MPD headquarters in Northwest DC.

The vehicle pursuit that caused Hylton-Brown's death was referred to the United States Attorney's Office for the District of Columbia ("DC USAO"), which conducted a year-long criminal investigation of the MPD members. On September 23, 2021, Officer Sutton and Lieutenant Zabavsky were indicted by a federal grand jury on charges arising from the death of Hylton-Brown. Sutton was charged with second degree murder, and both Sutton and Zabavsky were charged in connection with an alleged coverup following the crash.

More than a year later, Sutton and Zabavsky were tried before a jury in the United States District Court for the District of Columbia. The trial lasted two months. It included the testimony of the three other MPD members who were in Sutton's car at the time of the crash, video footage from multiple sources, including from the body-worn-cameras ("BWCs") of the officers involved in the pursuit, and substantial additional physical and documentary evidence. On December 22, 2023, the jury returned a verdict of guilty on all three counts: it found Sutton guilty of second-degree murder, and both Sutton and Zabavsky guilty of two separate charges of obstruction of justice. In September 2024, Sutton was sentenced to more than five years in prison, and Zabavsky was sentenced to four years in prison. However, two days after he was inaugurated, President Donald J. Trump issued full and unconditional pardons to Sutton and Zabavsky.

This report centers on MPD's internal investigation of the incident and the subsequent steps in the MPD administrative process. This was the unusual case where the MPD administrative investigation, findings, and conclusions were based largely on the evidence collected by the U.S. Attorney's Office and presented at the 2022 trial of Officer Sutton and Lieutenant Zabavsky. Because MPD did not drive the investigation,

we have comparatively little to say about *how* it was conducted – both because the USAO’s investigation was done without significant participation by MPD and because it is protected by grand jury secrecy.

Instead, we evaluate MPD’s review of the evidence and its assessments of whether the actions of not only Officer Sutton and Lieutenant Zabavsky, but also the MPD officers who were riding in Sutton’s car – Carlos Tejera, Ahmed Al-Shrawi, and Cory Novick – complied with existing law, MPD policy, and best policing practices. We also evaluate the discipline imposed on each of the involved members.

## **I. The MPD Administrative Investigations**

MPD conducts administrative investigations in cases involving allegations of misconduct or the serious use of force against MPD members. As a matter of historical practice, MPD has deferred conducting the administrative investigations of serious use of force cases while the US Attorney considers whether criminal prosecution is appropriate. In this case, MPD conducted two separate administrative investigations. The primary investigation focused on the vehicle pursuit and allegations of false statements in the immediate aftermath of the pursuit and collision. The second investigation focused on the more limited issue of whether the MPD members had violated MPD’s BWC policy.

During the 11 months between the time of the crash and the date of the indictment, MPD internal investigators were specifically directed by the U.S. Attorney’s Office prosecutors not to take investigative steps that might create risks for the integrity of the criminal investigation and any potential prosecution. In practical terms, that meant the administrative investigations were largely suspended during the criminal investigation. And that directive remained in place until the trial was completed in December 2022.

The MPD Final Investigative Report (the “Report”) of the vehicle pursuit, crash, and the death of Karon Hylton-Brown, was dated January 19, 2023, less than a month after the jury returned its guilty verdicts. The subjects of the investigation were Sutton, Zabavsky, and the three officers in Sutton’s MPD vehicle at the time of the pursuit and the crash. Our review of MPD’s investigation centered on the 172-page report, its numerous attachments, and our interview of the MPD investigator, who relied on a massive volume of evidence, including the evidence presented at Sutton and Zabavsky’s criminal trial. The evidence included BWC camera footage and footage from CCTV and private video cameras in the vicinity of the pursuit, as well as the forensic analysis and relevant documentation collected and analyzed during the investigation. This evidence was provided to the review team and considered in connection with our analysis.

The Report described the specifics of the pursuit and the events at the scene of the crash. The Report then summarized the conversations among Sutton, Zabavsky, and Captain Franklin Porter on the night of the incident after Sutton and Zabavsky returned to the Fourth District MPD offices. This summary included details of the alleged false and misleading statements made by Sutton and Zabavsky that served as part of the factual predicate for the charges of conspiracy to obstruct justice and obstruction of justice contained in the indictment.

The Report concluded that the contacts between Hylton-Brown and the MPD personnel became a vehicle pursuit once Hylton-Brown “openly displayed his intent not to stop for the two emergency vehicles [Sutton’s and Zabavsky’s] behind him with their emergency lights activated.” The Report further found that Sutton’s and Zabavsky’s actions violated then-existing MPD policy that forbade conducting a vehicle pursuit “for the purpose of affecting a stop for a traffic violation.” In addition, the Report found that all of the MPD members involved in the vehicle pursuit – Sutton, Zabavsky, and the three other MPD members who were passengers in Sutton’s car – violated MPD’s vehicle pursuit policy.

The Report also found that both Sutton and Zabavsky made false statements in the immediate aftermath of the crash. It concluded that Sutton’s draft statement of the incident on the PD Form 10 Accident Report minimized the extent of the interaction with Hylton-Brown and that it falsely narrated various aspects of the pursuit. In addition, the Report found that the draft PD Form 10 deliberately minimized the extent of Hylton-Brown’s injuries and the damage sustained by the vehicle that collided with Hylton-Brown. The Report found these statements to be in violation of MPD General Order 120.21, which prohibits willfully and knowingly making false statements.

With respect to Zabavsky, the Report characterized as false several statements – some of which were more accurately described as material omissions and failures to disclose relevant information in a timely way – and described obstructive behavior in Zabavsky’s interactions with other members of MPD. The Report found that the omissions included failing to timely notify the watch commander (Captain Porter) of the crash, the serious nature of Hylton-Brown’s injuries, and to timely notify both the Major Crash Unit and the Internal Affairs Bureau. In addition, the Report found that Zabavsky made affirmative false statements when he claimed to the watch commander that he had not already reviewed Officer Sutton’s BWC footage, when in fact he had, and by falsely describing the pursuit of Hylton-Brown as a traffic stop on the PD 42s he filled out for the officers riding in Sutton’s car.

The Report marshalled the evidence and found the allegations of misconduct against each of the involved officers to be fully supported by the evidence. In addition, the Report found that the passengers in Sutton’s car – Officers Tejera, Al-Shrawi, and

Novick – participated in a prohibited vehicle pursuit. The Report was reviewed and approved through the IAB chain of command.

As to the separate MPD investigation into the alleged BWC violations, it found that all of the members involved in the vehicle pursuit violated MPD policy by failing to activate their BWCs at the outset of the vehicle pursuit, and that Sutton and Zabavsky also violated the policy by deactivating their BWCs prematurely.

## **II. Use of Force Review Board Proceedings and Decision**

The next steps in the internal MPD adjudication process proceeded along two parallel tracks – determinations by both MPD’s Use of Force Review Board (UFRB) and the Disciplinary Review Division (DRD). The UFRB considered only the vehicle pursuit issues in the case, not those actions of the members before or after the vehicle pursuit and ensuing crash. Based on the 172-page report and the investigator’s oral presentation, the UFRB determined that all five MPD members violated the Department’s vehicle pursuit policy.

## **III. The MPD Disciplinary Process**

In January 2023, the UFRB transmitted five virtually identical two-page memos to MPD’s Disciplinary Review Division, which had already received the Final Investigative Report. The memos set the stage for DRD’s consideration of appropriate discipline based on the Final Report’s findings and the UFRB’s policy violation finding.

The DRD issued nearly identical Notices of Proposed Adverse Action to Officers Tejera and Al-Shrawi, which charged them with violations of the MPD vehicle pursuit policy and a second charge focusing on the damage to MPD’s reputation caused by the incident. By that time, Officer Novick had resigned from MPD. For both Tejera and Al-Shrawi, the recommended discipline was a 20-day suspension. Neither contested the charges, and both served their suspensions from June 14, 2023, through July 8, 2023.

Sutton’s Notice of Proposed Adverse Action (NPAA) was comprised of three separate charges of misconduct, with a total of 19 separate specifications. The first charge centered on the violation of MPD’s vehicle pursuit policy and listed nine specifications. The second charge focused on the criminal charges against Sutton and included six specifications – one each for the underlying conduct that was the basis for each of the three criminal charges (2<sup>nd</sup> degree murder, conspiracy to obstruct justice, and obstruction of justice) and the second for the fact of the charge itself. The third and final charge focused on the obstructive conduct engaged in by Sutton in completing the PD Form 10. The NPAA proposed that Sutton be terminated from MPD based on the gravity of his conduct in what, according to the head of the DRD, was not a close call.

Zabavsky's NPAA identified five separate administrative charges and 20 specifications arising from the vehicle pursuit and related events. The first charge centered on the vehicle pursuit itself and differed in many respects from the specifications addressed to the officers because of Zabavsky's supervisory role. The second charge in the Notice contained four specifications centered on alleged "neglect of duty" and focused on his supervisory failures and failure to timely notify relevant MPD units. The third charge focused on Zabavsky's false statements and obstructive behavior, and the fourth charge was based on Zabavsky's criminal convictions. The DRD's memo concluded that Zabavsky should be terminated from MPD. We were advised that the decision to recommend termination for Lieutenant Zabavsky, like the decision regarding Sutton, was not a difficult decision.

As of early February 2023, the MPD administrative process was suspended for Officer Sutton and Lieutenant Zabavsky pending further proceedings in their criminal case – at the time, they had been convicted but not yet sentenced. This delay was not required by law or internal MPD policy but instead was a discretionary decision made by the MPD General Counsel, Mark Viehmeyer. In the meantime, Sutton and Zabavsky remained on indefinite suspension without pay. At the time, their focus and the focus of the public was on the sentences they would receive as the result of their criminal convictions. In September 2024, Sutton received a sentence of 5 ½ years imprisonment on the second-degree murder and obstruction charges. Zabavsky received a sentence of four years on the obstruction charges.

#### **IV. The Presidential Pardons, Administrative Settlements, and DC Council Testimony**

On January 22, 2025, two days after he took the oath of office, President Donald J. Trump issued full and unconditional pardons to both Sutton and Zabavsky, extinguishing their convictions and nullifying their sentences. The day before, President Trump had foreshadowed the pardons in a statement that provided a false summary of the facts. According to President Trump:

They [Sutton and Zabavsky] were arrested, put in jail for five years because they went after an illegal. And I guess something happened where something went wrong, and they arrested the two officers and put them in jail for going after a criminal.

As the facts described in this report make clear, neither Sutton nor Zabavsky had spent any time in jail; they remained free on bail for the duration of the criminal proceedings against them. Karon Hylton-Brown was not "an illegal"; he was an American citizen. And Hylton-Brown was not wanted on any criminal charges at the time of the incident.

In the wake of the Presidential pardons, MPD began settlement discussions with counsel for both Sutton and Zabavsky. In early February, MPD and Sutton reached a settlement on the pending administrative matters. The settlement provided, among other things, that it did not constitute an admission by Officer Sutton that he “engaged in any wrongful, tortious, or unlawful activity,” and that he did not “engage in any criminal conduct, prejudicial conduct, or untruthful statements.” Instead of termination, MPD and Sutton agreed to a 25-day suspension based solely on his failure to adhere to the MPD vehicle pursuit policy. No discipline of any kind was imposed for the conduct that the jury had found to be obstruction of justice.

The settlement with Lieutenant Zabavsky took into account his intention to retire from MPD rather than return to duty. As a result, the settlement provided for Zabavsky to submit his retirement application, including a request for all back pay and lost benefits that had accrued for more than three years. Zabavsky was fined \$2,500 instead of receiving a disciplinary suspension.

MPD’s rationale for the discipline imposed on Sutton and Zabavsky, which was radically different from MPD’s public statements following the trial and the significant prison sentences imposed on both members, was that MPD “disagree[d] with the jury’s findings.” When we asked MPD Chief Pamela Smith about the discipline, she acknowledged that she did not review any part of the 172-page IAB Report. According to Chief Smith, “I rely on the lawyers whom I pay to do this job to provide me with the facts of the case.” In explaining why she relied exclusively on MPD’s lawyers rather than digging into the facts herself, Chief Smith said, “I’m trying to run a police department. That’s why the lawyers are here.” When we asked Chief Smith to point out the flaws or weaknesses in the IAB report that served as the basis for the original termination recommendations, she was unable to do so.

The failure to articulate a credible explanation for the lenient treatment of Sutton and Zabavsky was repeated in two separate appearances by Chief Smith before the DC Council on March 11, 2025, and June 10, 2025. On March 11, in response to specific questions about the disparity between the trial jury’s obstruction verdicts and MPD’s settlements, Chief Smith testified that, “It’s my understanding that there was no coverup and there was no obstruction of justice... [based on]...the body worn camera footage, the fact that when the officer responded to the station and spoke with his supervisor, and also the draft report that came out of it that there was no coverup.” But in fact, the Internal Affairs Bureau had found that there *was* substantial evidence of false and misleading statements, and the Disciplinary Review Division conducted its own review of the IAB report and recommended termination based on those facts. Chief Smith acknowledged to us that her Council testimony was, at a minimum, incomplete and potentially misleading in suggesting that she was relying on the IAB investigation rather than on the review by her lawyers that overruled the IAB findings.

Three months after her initial DC Council testimony, a month after our interview, and several days after the DC Auditor, Kathleen Patterson, gave Chief Smith a heads up that she would be questioned about the MPD internal investigation by the DC Council. Chief Smith was again questioned by Councilmembers about MPD's handling of the discipline regarding Officer Sutton and Zabavsky. In response to a question, Chief Smith said she had "not yet met with the team to obtain what the actual findings are with regards to the internal affairs investigation. I had that material with me, but I think I left it on my desk, but if you don't mind I can get back to you on that..." Thus Chief Smith, on the third occasion when she was asked about the rationale for the lenient discipline, did not provide a substantive answer.

## **V. Recommendations**

Based on our review of the vast documentary record in this matter, our interviews of key MPD personnel, our experience over the past 20 years working with and conducting oversight over MPD, and our knowledge of best practices in the law enforcement community more generally, we make the following recommendations to MPD.

### **A. Recommendation #1 – MPD Should Create a Policy Explicitly Prohibiting Obstruction of an Administrative or Criminal Investigation**

Actions that in any way obstruct or interfere with an administrative or criminal investigation threaten to undermine the integrity and accuracy of those investigations. MPD does not currently have policies that specifically prohibit obstruction of an investigation or obstruction of justice. That gap in MPD policy meant that the actions of Sutton and Zabavsky that impaired, impeded, and interfered with the investigation could not be labeled as a clear, distinct violation of MPD policy. Addressing this policy gap would promote accountability and preserve the integrity of administrative and criminal investigations.

### **B. Recommendation #2--IAB Reports of Investigation Should Include an Executive Summary and Table of Contents**

We had no concerns with the substance of the IAB Final Investigative Report in this matter – it was thorough and reflected a mastery of the facts collected in an unusual way because the investigation was driven by the USAO rather than MPD. Because the Report was so lengthy, it would have been helpful for the investigator or one of his supervisors to have prepared a brief executive summary and a table of contents for the report to help guide the reader. The executive summary would have conveyed the basic facts and bottom-line findings of the report. A table of contents would have previewed for the reader where the report was going and the sequence of topics that would be covered.

**C. Recommendation #3 – MPD Use of Force Policy and Training Should Incorporate the Totality of the Circumstances Test as Articulated in the Supreme Court’s 2025 Decision in *Barnes v. Felix***

The development of use of force policies and training to implement those policies has long relied on decisions by the United States Supreme Court to define the reasonableness and appropriateness of the use of deadly force and, by inference, all uses of force by law enforcement officers. This has been the case for at least 40 years, since the Court decided *Tennessee v. Garner* in 1985. The recent *Barnes v. Felix* decision deepens the judicial development of the concept of “totality of the circumstances.” It makes clear that “totality of the circumstances” is not limited to the circumstances that exist at the moment force is used but instead extends to relevant events that occur before the “climactic moment.” As the Supreme Court pointed out in *Barnes*, this wider lens will in some cases benefit the officer through providing further justification for the use of force, while in other cases (such as *Barnes*) it will do the opposite. In any event, use of force investigations should review an expanded set of facts to ensure that the full context of the interaction between law enforcement officers and civilians is captured and assessed.

**D. Recommendation #4 – The UFRB Should Make Improvements to the Decision Point Analysis Matrix (DPAM)**

MPD’s use of force policy requires the preparation of a decision point analysis matrix to assist the UFRB in considering the use of force described in each IAB investigative report. We found the DPAM in this case to be more of a distillation of the 172-page report than an analysis, and we found that it did not identify a number of relevant decision points. To meaningfully assist the UFRB in its deliberations, we urge the UFRB and its staff to focus on the analytic purpose of the DPAM and do more than summarize the investigative report.

**E. Recommendation #5 – The UFRB Should Review the Totality of the Use of Force Including Relevant Facts and Events Before and After Force Was Used**

MPD’s policy requires the UFRB to review the actions of all MPD members involved in the use of force, “including events leading up to...and following the use of force.” Executive Assistant Chief Jeffery Carroll acknowledged that during his years serving on the UFRB, including as chair, it has generally limited itself to reviewing the use of force itself rather than the surrounding events. However, the surrounding events can frequently shed important light on the use of force itself, and whether there is evidence that the involved members knew that their conduct was improper--*i.e.* – whether their actions violated MPD policy.

We made similar recommendations to the scope of IAB and UFRB’s review in our prior reports for the ODCA in 2021. Although MPD previously agreed to implement these recommendations, it does not appear to be happening in practice at the UFRB level. Accordingly, we recommend that the UFRB expand in practice the scope of its review consistent with MPD’s written policy.

**F. Recommendation #6 – The Implementation of UFRB Recommendations Should Be Tracked**

In this case, the UFRB made only one recommendation, which was that MPD’s vehicle pursuit policy should be amended to clarify that it is the shared responsibility of all MPD members involved in a vehicle pursuit, including passengers, to follow the requirements of the policy. We were advised that this recommendation was not adopted by then-Chief Robert J. Contee and his senior staff in early 2023 because, at about the same time, MPD was considering the scope of the broader duty to intervene in use of force and misconduct matters. MPD apparently does not systematically track UFRB recommended changes that are not adopted. Therefore, it has no mechanism to revisit recommendations that were not implemented for reasons other than the substance of the recommendation. This gap in MPD’s processes allows otherwise proper and constructive recommendations to be neglected and forgotten. Therefore, we suggest that UFRB recommendations that are not implemented should be tracked and revisited on at least an annual basis.

**G. Recommendation #7 – The UFRB’s Recommendation in this Case to Revise the Vehicle Pursuit Policy Should Now be Adopted**

As described in Recommendation #6 above, the UFRB’s January 2023 recommendation growing out of the vehicle pursuit of Karon Hylton-Brown that the vehicle pursuit policy be modified to clearly establish the duties of a passenger in a car involved in a prohibited vehicle pursuit was not implemented for reasons that did not go to the merits of the recommendation but instead to its timing. Since the circumstances that prevented the adoption of the recommendation more than two years ago almost surely have changed, we recommend that the UFRB’s recommendation be promptly adopted and implemented.

**H. Recommendation #8 – The Buffer Period for the Audio of Body Worn Cameras Should Be Extended to Two Minutes**

BWC footage has become an indispensable tool for conducting administrative and criminal investigations in MPD. Shortly after MPD introduced BWCs in 2016, the “video buffer” period – *i.e.*, the amount of videotape footage that is preserved before it is manually activated – was increased from 30 seconds to two minutes. In 2022, the District of Columbia Office of Police Complaints (OPC) recommended that the BWC “audio buffer,” also be extended from the factory setting of 30 seconds to two minutes.

In September 2022, Chief Contee rejected the recommendation. We disagree with MPD's position, which was based on concerns regarding the intrusion on unrelated and sensitive conversations. The virtue and utility of expanding the sound buffer to two minutes are convincingly demonstrated by this case, in which none of the involved MPD members activated their BWC until the accident took place. More relevant evidence is always better than less, and it is difficult to understand the reasons why the audio buffer should not be the same length as the video buffer.

**I. Recommendation #9 – The Chief of Police Should Familiarize Herself with the Record in High-Profile Cases**

It is vital that the Chief of Police, who is ultimately responsible for the discipline imposed on MPD members, be familiar with the facts of high-profile cases such that she can answer the questions asked by members of the community and elected representatives conducting oversight. And yet, Chief Smith stated that she did not review the Final Report of Investigation, the Notices of Proposed Adverse Action, or any materials relating to the trial and convictions of Sutton and Zabavsky. As a result, she was unable to describe the rationale for the MPD discipline in either of two DC Council hearings, or in our interview. An important responsibility for the head of any law enforcement agency is to be familiar with the facts of significant cases and be able to articulate the reasons for her decisions in order to maintain the public's trust and confidence. Chief Smith failed to do so here. We recommend that she and her successors make it a practice to do so in the future.

**J. Recommendation #10 – The Chief of Police Should Issue Decisional Memos Providing the Reasons for Her Decisions**

MPD should prepare decisional memos that set forth the factual and policy basis for discipline. Such memos will serve to ensure a disciplinary system that is rational, fair, and consistent and that can serve as the basis for comparison in future cases involving similar conduct. To enhance the transparency and regularity of the disciplinary process, we recommend that such decisional memos setting forth the disciplinary decision and the factual and policy basis for each decision be required in every case in which the discipline involves either a suspension of more than 10 days or termination.

**K. Recommendation #11 – The Chief of Police Should Share the Reasons for Rejecting IAB Findings and DRD Recommendations with Relevant Personnel**

MPD personnel in the Internal Affairs Division, and in the elite Force Investigation Team of the IAD, conduct serious use of force and misconduct investigations. They play a critical role in ensuring that such matters are investigated by well-trained and professional investigators. MPD has worked to professionalize its

internal investigations over the past 25 years, and the investigation in this matter reflected solid and professional work. The same is true of the work performed by the UFRB and MPD personnel involved in the disciplinary process.

The administrative investigation in this matter substantiated a number of violations by Officer Sutton and Lieutenant Zabavsky, as well as the officers who were passengers in Sutton's vehicle. The investigative and disciplinary process produced recommendations that Officer Sutton and Lieutenant Zabavsky should be terminated from MPD. That discipline was dramatically reduced during the settlement process, and yet neither Chief Smith nor anyone in the MPD front office has explained the outcome in this case to either relevant IAB personnel or DRD personnel. As a principle of good management and promoting institutional morale, cohesion, and transparency, the Chief or her designee should provide an explanation – either in person or in writing – for any disciplinary recommendation that exceeds a 10-day suspension that is substantially reduced by the Chief of Police. The Department owes its members involved in the process such an explanation.

## **VI. Conclusion**

The events that followed the vehicle pursuit and crash that killed Karon Hylton-Brown in October 2020 were not fully resolved until more than four years after Mr. Hylton-Brown's death. The US Attorney's Office conducted a lengthy criminal investigation that led to the indictment of Officer Sutton and Lieutenant Zabavsky by a grand jury on profoundly serious charges, including second-degree murder for Sutton, and obstruction of justice for both Sutton and Zabavsky. The charges were the basis of a nine-week federal jury trial, which ended with the conviction of Sutton and Zabavsky and, almost two years later, with substantial sentences of imprisonment.

With President Trump's grant of full pardons, the court proceedings abruptly ended. MPD's response to the pardons and Chief Smith's statements about them failed to address legitimate concerns about a lack of accountability. When what followed were settlements negotiated with Sutton and Zabavsky that were extremely lenient and not explained publicly, it further undermined the accountability and transparency that are so important for any major city police department in maintaining trust with the community. Chief Smith's unwillingness or inability to explain the outcomes in two DC Council hearings and our interview with her have further exacerbated the situation.

The District of Columbia has invested considerable resources in time and money in a comprehensive approach to use of force. MPD owes its members and the public a robust and reliable system for investigating, reviewing, and internally adjudicating uses of force and misconduct. That system must ensure that appropriate policies are in place for investigating such incidents, that MPD investigators fully and properly investigate such cases, that the Use of Force Review Board is demanding and rigorous in its reviews of serious uses of force, that the Disciplinary Review Division fairly and

consistently proposes discipline for MPD members who have violated policy and engaged in misconduct. But that system succeeds only when the ultimate discipline imposed by MPD is fair and credible.

## **I. Introduction**

On October 23, 2020, at approximately 10:11 pm, Karon Hylton-Brown, a 20-year-old Black man, was mortally wounded when struck by a Toyota Scion while he was riding a moped in the Brightwood neighborhood of Washington, D.C. Hylton-Brown was struck by the Toyota as he emerged from an alley and was beginning to make a left turn onto the 700 block of Kennedy Street, NW. Neither Hylton-Brown nor the driver of the Toyota had an opportunity to avoid the impact. As a result of the collision, Hylton-Brown suffered catastrophic head injuries. He died several hours later at MedStar Washington Medical Center.

For several minutes before the collision, Hylton-Brown was being pursued by two Metropolitan Police Department (MPD) vehicles in a circuitous route through streets and alleys in the vicinity of the crash site. Four MPD officers – Terence Sutton, Carlos Tejera, Cory Novick, and Ahmed Al-Shrawi – were following Hylton-Brown in an unmarked Chevrolet Malibu driven by Sutton. Their supervisor, Lieutenant Andrew Zabavsky, was driving a marked MPD vehicle and participated in the pursuit. All five MPD members were part of the Fourth District Crime Suppression Team.

The incident and Hylton-Brown's death touched off days of vigils and protests at the scene of the crash and at Fourth District MPD headquarters in Northwest DC, leading to numerous arrests, including of Hylton-Brown's father. Among other things, the protesters sought greater transparency about the events that led to the crash and Hylton-Brown's death.

As in all cases in which a person dies as the alleged result of the actions of MPD personnel, the incident that caused Hylton-Brown's death was referred to the United States Attorney's Office for the District of Columbia ("DC USAO"), which is responsible for the prosecution of both local and federal crimes in the District of Columbia. Following the referral, the DC USAO conducted an extensive, year-long criminal investigation of the officers involved in the incident. Although criminal prosecutions of MPD officers for actions they have taken while on duty are extremely rare, on September 23, 2021, Officer Sutton and Lieutenant Zabavsky were indicted by a federal grand jury on charges arising from the death of Hylton-Brown.

In the three-count indictment, Sutton was charged with second-degree murder (Count One); Sutton and Zabavsky were both charged for conspiracy to obstruct justice in connection with an alleged coverup following the crash (Count Two); and both were charged with a substantive count of obstruction of justice (Count Three). None of the other officers, who were passengers in the unmarked Chevrolet Malibu driven by Officer Sutton, were charged with any crimes, although potential charges against them were not formally declined by the U.S. Attorney's Office until more than two years after

the incident. The indictment was assigned to United States District Judge Paul L. Friedman.<sup>1</sup>

After extensive pre-trial litigation, on October 25, 2022, two full years after the incident, a jury trial commenced in the United States District Court for the District of Columbia before Judge Friedman. The trial lasted two months, even though the core events in question, including the facts that gave rise to the cover-up allegations, lasted only a few hours. The voluminous evidence presented during the trial included the testimony of Officers Tejera, Novick, and Al-Shrawi, substantial video footage (including from the body-worn cameras (“BWCs”) of the officers involved in the pursuit, and substantial additional physical and documentary evidence. Neither Sutton nor Zabavsky testified in their own defense. After several days of deliberations, the jury returned a verdict of guilty on all three counts – it found Sutton guilty of second-degree murder, Sutton and Zabavsky guilty of conspiring to obstruct justice, and both men guilty of obstructing justice. Officer Sutton was sentenced to more than five years in prison, and Lieutenant Zabavsky was sentenced to four years in prison. The officers remained free pending the outcome of their appeals until early 2025 when they received full pardons from President Donald J. Trump two days after he was inaugurated.

In this report, we review MPD’s internal investigation of the incident, starting with the preliminary internal investigation conducted in the immediate aftermath of the incident in October 2020, extending through the completion of the internal investigation in January 2023, and ending with the sequence of events in early 2025 that included the Presidential pardons, and MPD’s subsequent settlements with Sutton and Zabavsky in late February and early March 2025. Unlike the other MPD death cases we reviewed in 2020 and 2021, MPD’s administrative investigation in this case was largely the product of the criminal investigation conducted by the U.S. Attorney’s Office, in which MPD played an extremely limited role.<sup>2</sup> Rather than conducting its own independent investigation, in which the witnesses interviewed and the evidence collected were the result of choices and decisions made by MPD investigators, here the administrative investigation, findings, and conclusions were based largely on the evidence collected by the U.S. Attorney’s Office and presented at the 2022 trial of Officer Sutton and Lieutenant Zabavsky. As a result, because MPD did not drive the investigation, we have comparatively little to say about how it was conducted.

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<sup>1</sup> See *United States v. Sutton*, 1:21-cr-00598 (PLF) (D.D.C. 2021).

<sup>2</sup> Office of the District of Columbia Auditor, A report by The Bromwich Group and Steptoe & Johnson LLP, *The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019*, (Mar. 23, 2021)(“March 2021 Report”), <https://dcauditor.org/report/the-metropolitan-police-department-and-the-use-of-deadly-force-four-case-studies-2018-2019>; Office of the District of Columbia Auditor, A report by The Bromwich Group and Steptoe & Johnson LLP, *The Metropolitan Police Department and the Use of Deadly Force: The Deon Kay Case*, (May 25, 2021)(“May 2021 Report”), <https://dcauditor.org/report/the-metropolitan-police-department-and-the-use-of-deadly-force-the-deon-kay-case/>.

However, we do evaluate MPD’s review of the evidence and its assessments of whether the actions of not only Officer Sutton and Lieutenant Zabavsky, but also Officers Tejera, Al-Shrawi, and Novick complied with existing law and MPD policy, current best policing practices, and the standards established by the June 2001 Memorandum of Agreement (“MOA”) between MPD, the District of Columbia, and the U.S. Department of Justice. Although its provisions are no longer mandatory, the MOA established the framework for wholesale MPD reform that began to be implemented more than 20 years ago and remains relevant in 2025, particularly with respect to use of force, the internal processes for handling review of uses of deadly force, and MPD’s disciplinary process. We note that because of the passage of time between the October 2020 incident and this report, MPD has revised and modified the most relevant policies – its use of force and vehicular pursuit policies – multiple times, including implementing certain changes to its vehicle pursuit policy that we recommended in 2021. However, as a matter of due process and fundamental fairness, the conduct of the officers involved in Hylton-Brown’s death are properly measured against the policies in effect at that time rather than against subsequently revised versions of the policies.

Changes to these MPD policies are by no means the only developments over the past five years that are worth noting. At the time the DC Auditor asked us to review this matter,<sup>3</sup> police reform in the District of Columbia was being broadly embraced, as it was in many cities throughout the country. The police reform movement was, at least in part, the result of the broad public outcry following the March 2020 killing of Breonna Taylor in Louisville during a botched police raid, and the May 2020 killing of George Floyd in Minneapolis. In D.C., in July 2020, the DC Council established a Police Reform Commission, which issued a detailed report in April 2021, entitled “Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission” (“DC Police Commission Report”) that contained numerous recommendations for police and public safety reform.<sup>4</sup> The DC Council also passed a temporary, emergency bill – the Comprehensive Policing and Justice Reform Amendment Act of 2020 – that took a number of important reform steps, including revising the ban on the use of choke holds, banning the use of tear gas on protestors,

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<sup>3</sup> At the same time as we were asked to review the Hylton-Brown matter by the DC Auditor, we were also asked to review the death of Deon Kay, the other DC civilian who died as the result of the use of deadly force by MPD personnel. *Id.*

<sup>4</sup> Council of the District of Columbia, Robert C. Bobb & Christy E. Lopez, *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission*, (Apr. 1, 2021), <https://dccouncil.gov/police-reform-commission-full-report/>.

and requiring the prompt release of the name and body camera video of any officer involved in a serious use of force.<sup>5</sup>

Over the past five years, the winds of reform have died down—in part because of changes in the national dialogue on use of force and police reform, and in part because of concerns about rising crime levels in the District of Columbia. This dynamic is not unusual: Enthusiasm for police reform waxes when crime is not a paramount public concern, but it wanes when crime, especially violent crime, trends upwards. And that has certainly been the case in D.C. over the past several years, where violent crime, until quite recently, has surged even though its decline on the national level preceded the recent decline in D.C.

The surge in violent crime in D.C. beginning in 2020 and continuing in subsequent years is reflected in the crime data and differs substantially from national trends. The FBI's 2022 crime statistics, released in October 2023, showed that at a national level, from 2021 to 2022, the most serious categories of violent crime dropped substantially—homicides declined 6.1%, rapes declined 5.1%, and aggravated assaults declined 1.1%, continuing a downward trend from 2020. The opposite was true in the District of Columbia. All major categories of violent crime increased during that period, many by astonishing amounts. According to MPD data, homicides were up 35% compared to 2022, robbery was up 68% from 2022, and motor vehicle theft was up 82%.<sup>6</sup> In fact, 2023 was the first year in the last half-century that the number of homicides in the District of Columbia exceeded the number of homicides in Baltimore, long known as one of the most violent cities in the country (274 vs. 262).<sup>7</sup> However, in 2024, violent crime in D.C. dropped by 35% and homicides dropped from 274 to 187, a decline of 32%.<sup>8</sup> Although police departments frequently explain declines in crime rates as the consequence of specific policing strategies and tactics, policing remains an inexact enterprise, with many variables that affect increases and decreases in crime rates.<sup>9</sup>

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<sup>5</sup> Khalida Volou, *Over Police Union Objections, DC Council Unanimously Passes Sweeping Police Reform Package*, WUSA9 (June 9, 2020), <https://www.wusa9.com/article/news/local/dc/dc-council-proposes-police-reform/65-44ba6c15-d7c8-42e7-89aa-524eaa60ea4d>.

<sup>6</sup> Metropolitan Police Department, *District Crime Data At a Glance, 2025 Year-to-Date Crime Comparison*, (June 3, 2025, 10:04 AM), <https://mpdc.dc.gov/page/district-crime-data-glance>.

<sup>7</sup> THE BALTIMORE SUN, *Baltimore Homicides*, (June 3, 10:10 AM), <https://homicides.news.baltimoresun.com/?range=2023>.

<sup>8</sup> U.S. Dep't of Justice, U.S. Att'y Off. for the District of Columbia, *2024 Violent Crime Outcomes* (Dec. 31, 2024), <https://www.justice.gov/usao-dc/media/1382896/dl?inline>.

<sup>9</sup> Rohit Acharya and Rhett Morris, *Why did U.S. Homicides Spike in 2020 and Then Decline Rapidly in 2023 and 2024*, The Brookings Institution, Dec. 16, 2024, <https://www.theatlantic.com/ideas/archive/2022/05/george-floyd-anniversary-police-reform-violent->

Not surprisingly, the surge in crime from late 2020 to the present has had a substantial impact on discussions about policing reform and has dampened the community's and D.C. Council's enthusiasm for it. The most significant reform bill, the Comprehensive Policing and Justice Reform Amendment Act of 2022 ("2022 Reform Act"), did take a number of important steps. For example, it made permanent several of the reforms contained in the 2020 emergency bill, including the revised ban on choke holds, the release of body camera footage, requiring officers to use de-escalation tactics before using force, and barring the hiring of officers previously disciplined for serious misconduct.<sup>10</sup> While Congressional Republicans passed a resolution seeking to override the bill, it was vetoed by President Joseph R. Biden. Only a few months earlier, President Biden refused to veto a similar Congressional override of D.C. Council legislation that included lowering the penalties for certain crimes<sup>11</sup> – underscoring the delicate reality of implementing meaningful reform in the nation's capital in the current political climate.

Since then, in the words of Mayor Bowser, "[t]he pendulum is swinging back to the middle" – *i.e.*, away from the reforms that the city had previously embraced.<sup>12</sup> Most notably, the DC Council passed the Secure DC Act in 2024, which rolled back several notable reforms.<sup>13</sup> For example, the 2022 Reform Act made it illegal for officers to chase a car unless the officers reasonably believed the chase would not cause death or serious bodily injury to any person. But, the 2024 Secure DC Act created an exception such that the officers need not consider whether the chase puts the *suspect's* life at risk.<sup>14</sup> The 2024 Secure DC Act also permitted police officers to review body-worn camera footage before drafting their initial reports – something the D.C. Police Reform Commission

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[crime/630174/; https://www.brookings.edu/articles/why-did-u-s-homicides-spike-in-2020-and-then-decline-rapidly-in-2023-and-2024/](https://www.brookings.edu/articles/why-did-u-s-homicides-spike-in-2020-and-then-decline-rapidly-in-2023-and-2024/)

<sup>10</sup> Mary Walrath-Holdridge, *12 DC Police Officers with History of "Serious Misconduct" Dismissed Amid Police Reform*, USA TODAY, Apr. 26, 2024, <https://www.usatoday.com/story/news/nation/2024/04/26/dc-police-reform-officers-dismissed/73471513007/>.

<sup>11</sup> Scott Wong, *House Passes Resolution to Overturn D.C. Police Reform Bill*, NBC NEWS, Apr. 19, 2023, <https://www.nbcnews.com/politics/congress/house-poised-pass-resolution-overturning-dc-police-reform-bill-rcna80389>.

<sup>12</sup> Peter Hermann, *As Homicides and Carjackings Increased, D.C. Retreated on Police Reforms*, THE WASHINGTON POST, Jan. 1, 2024, <https://www.washingtonpost.com/dc-md-va/2023/12/29/homicides-dc-police/>.

<sup>13</sup> See generally *id.*

<sup>14</sup> DC Justice Lab, *Car Chases, a high-speed police chase needlessly puts DC residents at risk*, (June 16, 2025, 11:40 A.M.), <https://dcjusticelab.org/library/policing/car-chases/>.

specifically recommended prohibiting.<sup>15</sup> Finally, the 2024 Secure DC Act diluted the 2022 bill’s prohibition on neck restraints by narrowing the definition of a neck restraint.<sup>16</sup>

Efforts for more transparency in the disciplinary process have also been delayed and in some cases temporarily reversed or not fully implemented. In 2022, MPD began releasing summaries of use of force investigations to the public.<sup>17</sup> While these reports were short and often lacked important details, they were a small step toward transparency. At the beginning of 2024, MPD stopped this practice, and the previous reports were taken down. According to the MPD, an independent labor arbitrator determined that the postings “violated the District’s personnel rules,”<sup>18</sup> a substantial blow to transparency. However, the arbitrator’s decision was overridden by 2024 legislation that reinstated the requirement to publish use of force summaries, which are once again posted on the MPD website. The 2022 Reform Act also required MPD, by the end of 2024, to maintain a publicly available database of sustained allegations of officer misconduct.<sup>19</sup> While that database is publicly available at present<sup>20</sup>, the identities of the officers are not publicly released, and recent legislative proposals have sought to further restrict this information.

An important element of the D.C. reform equation has been that the MPD chiefs and top-level command staff who developed and implemented the reforms required by the MOA moved on long ago. Charles Ramsey was recruited from Chicago in 1998 to reform an MPD mired in scandal, misconduct, and the excessive use of force. Ramsey requested that DOJ conduct a pattern-or-practice civil rights investigation of MPD, negotiated the MOA, and served as MPD chief until December 2006. His successor, Cathy Lanier, led MPD through the final steps of compliance with the MOA and served until 2016. Lanier’s successor, Peter Newsham, who played several key roles over

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<sup>15</sup> ACLU District of Columbia, *We Deserve to be Safe from Crime and from Abuse of Power – Bill 25-345, “Secure DC Omnibus Amendment Act of 2024,”* (June 16, 2025, 11:55 A.M.), [https://www.acludc.org/sites/default/files/public\\_aclu-dc\\_secure\\_dc\\_one\\_pager.pdf](https://www.acludc.org/sites/default/files/public_aclu-dc_secure_dc_one_pager.pdf).

<sup>16</sup> WMAU, Jenny Gathright, *Your Questions About the Massive D.C. Crime Bill, Answered*, Feb. 20, 2024, <https://dcist.com/story/24/02/20/secure-dc-crime-bill-frequently-asked-questions/>.

<sup>17</sup> As part of our earlier reports, we recommended full release of use of force investigation reports.

<sup>18</sup> Office of the District of Columbia Auditor, *77% of Auditor Recommendation In Place or In Progress*, (February 8, 2024), at 7. <https://dcauditor.wpenginepowered.com/wp-content/uploads/2024/02/2024.Recommendation.Compliance.Report.2.8.24-1.pdf>

<sup>19</sup> *Id.*

<sup>20</sup> Open Data DC, *MDP Adverse Action*, <https://opendata.dc.gov/datasets/DCGIS::mpd-adverse-action/explore>, (last visited June 16, 2025).

many years in implementing the MOA and reforming MPD, served as chief until 2020. All three played key roles in the transformational police reform that took place from 1998 to 2016. Although Chief Newsham's immediate successor Robert Contee III (2021-2023), did not follow the same change-driven approach as his predecessors, he did accept all of the reform recommendations contained in our two 2021 reports. However, based on her actions to date and her response to the recommendations in the draft of this report, MPD's current chief, Pamela A. Smith, has not demonstrated the same commitment to reform efforts.

## II. Background

As we described in our March and May 2021 reports, the modern-day history of MPD reform has centered on the Department's use of force against civilians. It traces back to 1999, when the Department of Justice opened a pattern-or-practice investigation of MPD. Even before that, Chief Ramsey had begun to implement significant changes, including the creation of the Force Investigation Team (FIT), an elite group of investigators drawn from different parts of MPD and trained to investigate the most serious uses of force by MPD members, including uses of deadly force. The DOJ investigation culminated in a settlement in 2001 – the MOA referred to above – and for the next seven years, until June 2008, MPD was subject to federal oversight by DOJ and an independent monitor.<sup>21</sup> That oversight centered on use of force policies, use of force investigations, and the Use of Force Review Board, MPD's internal review panel for serious uses of force, although it extended to a number of additional issues.

In 2015, the Office of the District of Columbia Auditor retained the Bromwich Group LLC, headed by Michael R. Bromwich – the MPD independent monitor from 2002 to 2008 – to review MPD's existing policies and practices relating to use of force. Although the results of that review were in many respects positive – namely, that many of the reforms implemented during the 2002-2008 period remained in place – other reforms had eroded over time, including matters traceable to the elimination of FIT, MPD's elite use of force investigative team. The review found that the abolition of FIT, and its merger into the Internal Affairs Division, had led to a significant decline in the quality of MPD's internal investigations of serious uses of force. This 2016 report made numerous recommendations, many of which MPD agreed to implement.<sup>22</sup>

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<sup>21</sup> Michael R. Bromwich, Office of the Independent Monitor, *Final Report of the Independent Monitor for the Metropolitan Police Department* (June 13, 2008), <http://policemonitor.org/MPD/reports/080613reportv2.pdf>.

<sup>22</sup> Office of the District of Columbia Auditor, The Bromwich Group, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015*, (Jan. 28, 2016), ("January 2016 Report"), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>.

In July 2020, ODCA retained the Bromwich Group to conduct a review of the four fatal use of force incidents that had occurred in calendar years 2018 and 2019. The review assessed, among other things, the MPD administrative internal investigations that followed these four fatal incidents to determine whether those investigations were consistent with the law, MPD policy in force at the time of the incidents and reflected best police practices. The Bromwich Group was joined in this effort by experienced policing experts, two of whom had worked with MPD during the federal monitorship and the 2015-16 review, and two lawyers from the law firm Steptoe LLP. In late 2020, we agreed to review the underlying facts and the MPD internal investigations of the death of Deon Kay, which occurred on September 2, 2020, and Karon Hylton-Brown, which occurred on October 23, 2020.

In our March 2021 report, we analyzed the four cases from 2018 and 2019, which all involved the deaths of Black civilians at the hands of MPD officers. The men killed by the actions of MPD personnel were Jeffrey Price, Jr., killed on May 4, 2018; D’Quan Young, killed on May 9, 2018; Marqueese Alston, killed on June 12, 2018; and Eric Carter, killed on September 16, 2019. We examined the actions of the involved officers, the quality of the MPD internal investigations and chain of command review process, and the review performed by the UFRB.<sup>23</sup> In addition to determining whether MPD personnel complied with applicable law, MPD policies, and best policing practices, we also made recommendations for potential improvement in policies, practices, and training. MPD’s implementation of those recommendations is the subject of a separate report to be released in the near future.

The March 2021 report described significant shortcomings in all four cases, including the failure to apply basic principles of de-escalation that could have reduced the need to use deadly force during the incidents, and tactical failures that needlessly exposed MPD members and civilians to serious danger. In addition to issues with the underlying conduct, we found serious deficiencies in the way the MPD administrative investigations were conducted, and the tools and methods used by the UFRB to review those investigations. As a result of our analysis, we made 28 recommendations, including: a) the need to expand the scope of use of force investigations beyond the moment when force was used; b) the need to formulate specific recommendations for changes in policy and training based on use of force investigations; and c) the need to dramatically improve the transparency of use of force investigations by publicly releasing MPD internal investigative reports and UFRB decisions.<sup>24</sup>

The May 2021 report performed a similar analysis with respect to the case involving the death of Deon Kay. Mr. Kay was killed by an MPD officer after Kay drew

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<sup>23</sup> March 2021 Report.

<sup>24</sup> March 2021 Report at 93-111.

a gun on that officer in a parking lot during a brief interaction at 225 Orange Street, SE. We agreed with the UFRB's conclusion that because Mr. Kay was wielding a firearm, the MPD officer's use of deadly force that killed Mr. Kay was justified. We also agreed with the UFRB's critique of the tactics used by the MPD officers and its conclusion that the incident should serve as the basis for additional training for the involved officers, who lacked a plan and thus unwittingly created a situation in which the use of deadly force ultimately proved necessary. Based on our review of the shooting and MPD's internal investigation, we made seven recommendations, including the need for MPD to develop policies on foot pursuits and the appropriate use of social media as an investigative technique, as well as the need for UFRB to be clearer and more specific about its conclusions and recommendations.<sup>25</sup>

Although the incident involving the death of Deon Kay occurred less than two months before the death of Karon Hylton-Brown, the resolution of the latter case took four years longer to be fully resolved, as described in detail below.

### **III. Review of the Death of Karon Hylton-Brown**

#### **A. Summary of Facts**

##### **1. The Pursuit of Karon Hylton-Brown**

On Friday, October 23, 2020, four members of MPD's Fourth District Crime Suppression Team (CST) – Officers Terence Sutton, Carlos Tejera, Cory Novick, and Ahmed Al-Shrawi – were working the 3:30 pm to 2:00 am evening shift.<sup>26</sup> Although MPD does not list CSTs among its specialized units, each of MPD's seven police districts has a CST. Its members are generally in uniform, but they patrol in unmarked MPD vehicles, focusing on areas with elevated crime rates and where criminal activity is believed to be taking place. Its goals are both preventive and reactive – CSTs hope to deter crime from happening and respond to crime promptly when it does. Unlike patrol officers, members of a CST are not anchored to specific patrol areas within their assigned district. Instead, they roam more freely throughout the district to which they are assigned.<sup>27</sup>

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<sup>25</sup> May 2021 Report at 40-43.

<sup>26</sup> The Fourth District extends to portions of the upper Northwest and Northeast quadrants of DC and includes Carter Baron, 16th Street Heights, Fort Totten, Lamond/Riggs, Shepherd Park, and Petworth. Metropolitan Police Department, *Fourth District Community*, (June 3, 2025, 11:05 am), <https://mpdc.dc.gov/node/207162>.

<sup>27</sup> Metropolitan Police Department, Internal Affairs Division, *Final Investigative Report Concerning a Vehicular Pursuit (Resulting in a Fatality) and Allegations of Misconduct Involving Officer Ahmed Al-Shrawi, Officer Cory Novick, Officer Carlos Tejera, Officer Terence Sutton, and Lieutenant Andrew Zabavsky of the Fourth District, IS# 20-003076 and CCN 20-152-108*, (Jan. 19, 2023), at 2. ("MPD Final Investigative Report").

That evening, the four Fourth District CST officers (Sutton, Tejera, Novick and Al-Shrawi) were patrolling in an unmarked Chevrolet Malibu. Sutton was driving, Tejera was in the front passenger seat, Novick was seated behind Sutton, and Al-Shrawi was seated behind Tejera. Lieutenant Andrew Zabavsky was serving as the supervisor of the CST at that time because no sergeant – the rank of the MPD member who would ordinarily be the front-line supervisor for the officers – was working the evening shift. Zabavsky was driving a marked Ford Explorer. At approximately 9:58 pm, the four officers in Sutton’s car and Zabavsky met with Officers Kathryn Pitt and Nicole Armone at 7<sup>th</sup> and Kennedy Streets, NW. Officer Pitt briefed Zabavsky and the four CST members on her observations and interactions with Karon Hylton-Brown earlier that evening. Pitt told them that she had seen Hylton-Brown three different times that evening at three different locations – 1) driving a moped without a helmet on the sidewalk and passing other vehicles without regard to traffic rules; 2) in a verbal disagreement with another person, which according to Pitt nearly turned physical; and 3) sitting on the moped. Zabavsky, the four members of the CST, and Pitt and Armone were all familiar with Hylton-Brown because of frequent interactions with him over time. Among other things, MPD personnel believed that Hylton-Brown was a member of the “KDY Crew,” documented by MPD as a gang that operated in an area centered on Kennedy Street, NW, and bounded by 5<sup>th</sup> and 7<sup>th</sup> Streets, NW.<sup>28</sup>

Following the discussion with Pitt, both Sutton and Zabavsky resumed driving around the area. At 10:07 pm, Sutton spotted Hylton-Brown sitting on the moped in the 400 block of Kennedy Street. Both Sutton and Zabavsky turned their vehicles around and approached Hylton-Brown. Sutton got close enough to Hylton-Brown to ask why he was not wearing a helmet; Hylton-Brown responded, “Fuck you, leave me alone.” Hylton-Brown then took off on the moped, without a helmet, ran through a red light, and came close, according to the officers, to causing an accident with an oncoming motorist. In response, Sutton and Zabavsky activated their emergency lights and began following Hylton-Brown.

Over the next several minutes, Sutton and Zabavsky engaged in a pursuit of Hylton-Brown, at speeds ranging up to 40 mph, through streets and alleys in the neighborhood. At one point during the pursuit, Zabavsky’s vehicle overtook Sutton’s vehicle, but Sutton’s unmarked vehicle was generally in the lead throughout the duration of the pursuit. At times, Sutton and Zabavsky used their emergency lights but at other times the lights were turned off. In a response to an unrelated radio transmission on the Fourth District Ops-A radio channel, and to share what he was doing, Zabavsky said, “7<sup>th</sup> and Ingraham, chasing Karon on a scooter right now.” The pursuit continued on streets and through alleys in the area. During the pursuit both

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<sup>28</sup> *Id.* at 3.

Hylton-Brown's moped and Sutton's vehicle traveled the wrong way on Jefferson Street, NW.

The entire chase, from beginning to end, was summarized in the following demonstrative exhibit, compiled and presented at the 2022 trial of Officer Sutton and Lieutenant Zabavsky, and based on body-worn camera footage, other video footage, radio transmissions, and other evidence.

[Composite Video of MPD Vehicle Pursuit, October 23, 2020](#)

Toward the end of the pursuit, Sutton followed Hylton-Brown eastbound in the 700 block of Jefferson Street, NW. Hylton-Brown then turned from Jefferson Street north into an alley adjacent to 731 Jefferson Street, with Sutton in close pursuit and his vehicle's emergency lights and siren activated. Once in the alley, Sutton increased his speed from 20 mph to 26 mph. As Hylton-Brown began a left-hand turn from the alley onto Kennedy Street, he was struck by a Toyota Scion traveling eastbound on Kennedy Street. The passenger side of the Scion struck Hylton-Brown, who was thrown into the air before landing on the passenger side windshield of the Scion, bouncing off it, and landing on Kennedy Street near a parked car. The collision occurred at 10:11 pm, according to the clocks built into the BWCs in use by the MPD personnel.<sup>29</sup>

Hylton-Brown lay in the street with blood pooling around him from a grievous head wound. Jonathan Urrutia-Chavez, the driver of the Scion, who had four other members of his family in the car, had no opportunity to stop prior to impact, and was directed to stop after the collision by another MPD member, Officer Tyler Toth. Toth was not involved in the pursuit but witnessed the crash while driving on Kennedy Street. Urrutia-Chavez and other members of his family were subsequently told they could leave the scene.<sup>30</sup>

## 2. The Aftermath of the Crash

After witnessing the collision, Officer Sutton stopped his Chevrolet Malibu in the alley. Sutton and the other three officers in the Malibu got out of the vehicle and for the first time activated their BWCs.<sup>31</sup> All four approached Mr. Hylton-Brown, and Sutton said, "Karon!" but Hylton-Brown did not respond. Lieutenant Zabavsky arrived at the

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<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 8-9.

<sup>31</sup> This failure by the MPD members riding in Officer Sutton's car to timely activate their BWCs violated MPD policy and was the basis for adverse findings against them. The same was true for Lieutenant Zabavsky. See the discussion at 30-32.

scene less than 20 seconds after impact. Officers Novick and Al-Shrawi attempted to provide medical assistance to Hylton-Brown, who had a large laceration to his head but was still breathing. Despite Hylton-Brown's serious injuries, neither Zabavsky nor Sutton promptly contacted either MPD's Major Crash Unit or Internal Affairs.<sup>32</sup>

Reginald Ruffin, a friend of Mr. Hylton-Brown's arrived at the crash site almost immediately. On seeing Hylton-Brown lying in the street, Mr. Ruffin said to Officer Toth, "What the fuck?...What y'all chasing him for. I'm just being curious...I just let him ride the moped. Then I seen y'all. He lost his key to his car. Y'all just hopped on him." Officer Toth replied that he was not involved in the pursuit. Ruffin then approached Officer Sutton and had a similar conversation with him, stating, "What y'all hop on him for." When Sutton responded with a description of the crash, Mr. Ruffin responded, "No, you hopped up on him on 5<sup>th</sup> Street," suggesting that he had seen the chase when it started. As captured on Officer Sutton's BWC, Ruffin went on to explain that Hylton-Brown was using Ruffin's moped to find keys that he had dropped earlier while riding the moped.<sup>33</sup>

DC Fire and Emergency Services personnel arrived at the crash scene at 10:18 pm, seven minutes after the collision. They checked on Mr. Hylton-Brown's injuries, placed him on a stretcher, and transported him to MedStar Washington Hospital at 110 Irving Street, NW, arriving at 10:33 pm. Hylton-Brown was admitted to the hospital unconscious and in critical condition with a head laceration and multiple facial lacerations.

At the crash scene, Zabavsky had a discussion with an unidentified Black male who also questioned why MPD personnel were chasing Hylton-Brown, stating, "You know they can't be chasing him, man...They can't chase him, though, you know that." When the man asked Zabavsky about Hylton-Brown's condition, Zabavsky responded, "He's clearly drunk. I mean he's alright. He's drunk. He's living." The autopsy, conducted of Hylton-Brown, conducted on October 27, 2020, showed no evidence of alcohol in his system, although there was evidence of marijuana and oxycodone.<sup>34</sup>

In the hour following the collision, a sizable group of people, at least some of whom seemed to be friends and acquaintances of Mr. Hylton-Brown, gathered behind the line of police tape and continued to question why MPD personnel had been pursuing Hylton-Brown, directing verbal attacks and obscenities at the officers.<sup>35</sup>

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<sup>32</sup> MPD Final Investigative Report at 9.

<sup>33</sup> *Id.* at 10-11.

<sup>34</sup> *Id.* at 13 and Attachment 16.

<sup>35</sup> *Id.* at 13.

At 10:20 pm, Zabavsky approached Sutton and asked him who was handling the traffic crash report. Sutton said, "I guess we'll do it." Three minutes later, Zabavsky asked Sutton whether his BWC was still operating; Sutton responded that it was but added, "I can go off." A few minutes later, after their BWCs had been turned off, Sutton and Zabavsky had a private conversation near Zabavsky's MPD vehicle, visible on the BWC of one of the other officers, who had properly kept his BWC running at the scene. Shortly after that conversation, Sutton returned to his unmarked car and drove it into and through the crime scene and over the debris from the collision. Sutton and the three MPD colleagues who had been riding with Sutton in the Malibu returned to the Fourth District station. Sutton began drafting the account of the collision on an MPD PD-10, the form for documenting an accident report.<sup>36</sup>

Sutton drafted a three paragraph account of the accident, which stated, among other things, that 1) he and his fellow CST members had at times during the pursuit lost sight of Hylton-Brown, which was not true; 2) that Hylton-Brown appeared only to have suffered "superficial abrasions to the left eyebrow line," when in fact he was seriously injured, was bleeding profusely from his head, and was unconscious; and 3) characterized the damage to the Scion that collided with Hylton-Brown as "minor damage to the front bumper and a crack to the passenger side of the windshield," which minimized the extent of the damage. Thus, all three statements were either false or misleading.<sup>37</sup>

Captain Franklin Porter was the Fourth District Watch Commander that evening. When Lieutenant Zabavsky and Officer Sutton returned to the Fourth Street station, Captain Porter was unaware that they had been involved in the Hylton-Brown collision. Captain Porter had not been monitoring the Fourth District Ops channel Sutton and Zabavsky had used to communicate during the pursuit. He was aware from Officer Toth that a collision had taken place that required DC's Fire and Emergency Services to respond to the scene, but he had learned nothing to suggest that anyone from MPD was involved in the incident. He had received no communications from Zabavsky, Sutton, or any of the other MPD officers at the scene.<sup>38</sup>

At approximately 11:30 pm, Zabavsky and Sutton came to Captain Porter's office, ostensibly to seek advice on whether their actions in pursuing Hylton-Brown on

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<sup>36</sup> *Id.* at 15. This premature deactivation of their BWCs by Sutton and Zabavsky was subsequently identified as a violation of MPD policy. See below at 30-32.

<sup>37</sup> *Id.* and Attachment 3 to MPD Final Investigative Report.

<sup>38</sup> *Id.* at 17.

the moped constituted a vehicular pursuit and was therefore governed by MPD's vehicular pursuit policy. When Porter asked Zabavsky if he had reviewed the BWCs of the involved MPD members, Zabavsky said he had not. (In fact, he had not only reviewed his own BWC footage, but he had also reviewed Sutton's and Tejera's approximately 20 minutes before the meeting with Porter.) Porter directed Zabavsky to have the involved members dock their devices so that Zabavsky could review the relevant footage. Neither Zabavsky nor Sutton informed Captain Porter about the severity of Hylton-Brown's injuries, nor that Zabavsky himself was very much involved in the incident.<sup>39</sup>

At approximately 11:49 pm, the MPD officer who had accompanied Mr. Hylton-Brown to the hospital and had been providing periodic updates to Officer Sutton advised him that Hylton-Brown had suffered a skull fracture and was unlikely to survive. After receiving the news, Zabavsky returned to Captain Porter's office. He informed Porter of Hylton-Brown's condition, while at virtually the same time notifying MPD's Major Crash Unit. Lieutenant Zabavsky asked for Porter's guidance on whether the BWC footage established a vehicle pursuit; Zabavsky said he had reviewed the BWC footage and was uncertain. Porter reviewed the footage from the BWCs of both Officers Sutton and Tejera and told Zabavsky that it was in fact a vehicle pursuit. Porter then notified the Internal Affairs Division, which neither Sutton nor Zabavsky had done. Shortly after midnight, Porter went to the crash site to meet with personnel from the Major Crash Unit and the Internal Affairs Division, including IAD agent Joseph Della-Camera.<sup>40</sup>

Captain Porter obtained additional information about the pursuit from Zabavsky and came to suspect that Zabavsky was himself involved in the pursuit in some fashion. However, when Porter specifically asked Zabavsky whether he was involved in the pursuit, Zabavsky denied it, stating that he was around the corner from it. Zabavsky explained his failure to immediately notify the Major Crash Unit and Internal Affairs by saying he was unaware of the extent of the injuries suffered by Hylton-Brown. Early on the morning of the 24<sup>th</sup>, Agent Della-Camera notified supervisors at the US Attorney's Office of the "Vehicle pursuit with injury" involving the CST team and Hylton-Brown and describing it in the subject line as "an unauthorized pursuit."<sup>41</sup>

Later that day, the police powers of Officers Sutton, Tejera, Novick, and Al-Shrawi were suspended and assigned to "non-contact duty" until reviews by IAD and the USAO were complete. At 2:55 pm that afternoon, a physician at Washington

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 18-19.

<sup>41</sup> *Id.* at 19 and Exhibit 8.

Hospital Center pronounced Mr. Hylton-Brown dead as a result of the injuries suffered in the collision 16 hours earlier. Three days later, Internal Affairs added Lieutenant Zabavsky to the list of MPD personnel being investigated by IAD in connection with the pursuit of Hylton-Brown.<sup>42</sup>

### 3. Community Reaction

The reaction of members of the community was immediate, starting with the interactions between MPD personnel and friends and acquaintances at the scene of the crash and continuing in the form of vigils and protests for more than a week. Demonstrations took place both at the crash site and Fourth District headquarters on Georgia Ave., NW, culminating in the arrest of nine people, including Hylton-Brown's father, Charles Brown, on November 1.<sup>43</sup> The *Washington Post* described Hylton-Brown's death as "another flash point in a national reckoning over the policing of minority communities." Media reports described Hylton-Brown as a well-known figure in his neighborhood and sympathetically as someone who had discovered new meaning in his life with the recent birth of his daughter.<sup>44</sup> A year later, the *Post* described the 2020 protests as "some of the most volatile anti-police protests this city has endured since the killing of George Floyd." Demonstrators, who included Hylton-Brown's mother, threw objects at MPD personnel guarding the Fourth District station that had become a target of community anger, with police responding with grenades and chemical spray.<sup>45</sup> Like her ex-husband the week before, Ms. Hylton-Brown was arrested.

The questions raised by the family and supporters of Karon Hylton-Brown centered on what happened to him, why did it happen, how did it happen, and who was responsible. They demanded transparency.<sup>46</sup>

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<sup>42</sup> *Id.* at 20 and Exhibit 10

<sup>43</sup> Tom Jackman, *Karon Hylton's Father Among Nine Protesters Arrested Saturday Night Outside D.C. Police Station*, THE WASHINGTON POST, Nov. 1, 2020, [https://www.washingtonpost.com/local/public-safety/karon-hyltons-father-among-9-protesters-arrested-saturday-night-outside-dc-police-station/2020/11/01/d58b08f0-1c8d-11eb-b532-05c751cd5dc2\\_story.html](https://www.washingtonpost.com/local/public-safety/karon-hyltons-father-among-9-protesters-arrested-saturday-night-outside-dc-police-station/2020/11/01/d58b08f0-1c8d-11eb-b532-05c751cd5dc2_story.html).

<sup>44</sup> Justin Jouvenal, *Fatherhood Said to Have Inspired Karon Hylton*, THE WASHINGTON POST, Oct. 31, 2020, [https://www.washingtonpost.com/local/public-safety/karon-hylton-interview-with-father/2020/10/30/6a0642d2-1ab4-11eb-82db-60b15c874105\\_story.html](https://www.washingtonpost.com/local/public-safety/karon-hylton-interview-with-father/2020/10/30/6a0642d2-1ab4-11eb-82db-60b15c874105_story.html).

<sup>45</sup> Clarence Williams, *The Mother at the Front Lines of D.C. Anti-Police Protests*, THE WASHINGTON POST, Dec. 21, 2021, <https://www.washingtonpost.com/dc-md-va/2021/12/20/karen-hylton-police-protests/>.

<sup>46</sup> WUSA9, *DC Community Leaders Demand Investigation into Death of Karon Hylton-Brown*, YOUTUBE (Aug. 4, 2021), <https://www.youtube.com/watch?v=m7hFBlj4WGw>.

## B. Preliminary IAD Investigation, Criminal Investigation, and the Indictment

On October 26, 2020, three days after the collision, IAD Agent Della-Camera submitted a 21-page Preliminary Report on the vehicle pursuit and its aftermath. It included the inaccurate assertion that Officer Sutton and the other members of the CST had lost contact with Mr. Hylton-Brown during the pursuit and “canvass[ed] the area,” although the source of that information was not specified. The Preliminary Report noted that because of the delayed notification of IAD, none of the civilian witnesses who had spoken with Sutton and other officers at the scene were still on the scene to be interviewed, although their comments questioning the vehicle pursuit were included in the summaries of footage from the BWCs of Officers Sutton, Novick, Al-Shrawi, and Zabavsky.<sup>47</sup>

In addition to these summaries of BWC footage, the Preliminary Report included summaries of the BWC footage of eight additional MPD officers and supervisors who at various times were at the scene of the collision. The Preliminary Report prepared by Agent Della-Camera was reviewed and approved on October 27 by several levels of his chain of command within the Internal Affairs Bureau, including by then-Assistant Chief Wilfredo Manlapaz.<sup>48</sup>

Although the vast majority of matters referred by MPD to the USAO to consider possible criminal prosecution are declined, this matter was not. In November 2020, a grand jury investigation was opened into the circumstances surrounding the vehicle pursuit leading to Mr. Hylton-Brown’s death. When that occurred, the MPD administrative investigation was largely held in abeyance and information from the criminal investigation was not shared with Agent Della-Camera.<sup>49</sup>

Approximately ten months later, on September 23, 2021, a federal grand jury returned a three-count indictment in the United States District Court for the District of Columbia. The case was assigned to Senior US District Judge Paul L. Friedman. Count One charged Officer Sutton with second degree murder, in violation of DC Code §22-2103. Count Two charged Sutton and Zabavsky with conspiracy to obstruct justice, in

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<sup>47</sup> Metropolitan Police Department, Internal Affairs Division, *Preliminary Report Concerning an Unauthorized Vehicular Pursuit Resulting in a Fatality by Officer Terrence Sutton, Officer Carlos Tejera, Officer Cory Novick, and Officer Ahmed Al-Shrawi of the Fourth District IS#20-003076; CCN 20-152108*, (October 26, 2020), (“MPD Preliminary Report”).

<sup>48</sup> Assistant Chief Manlapaz retired from MPD in April 2023. Metropolitan Police Department, *Biography, Wilfredo Malapaz (Retired)*, (June 5, 2025, 10:09 am), <https://mpdc.dc.gov/biography/wilfredo-manlapaz-retired>.

<sup>49</sup> We learned this through periodic discussions with Agent Della-Camera.

violation of 18 U.S.C. §371. Count Three charged both Sutton and Zabavsky with a substantive count of obstruction of justice, in violation of 18 U.S.C §1512(b)(3)(2).<sup>50</sup>

In its introductory paragraphs, the indictment, citing the MPD order on vehicular pursuits that was in effect at the time, alleged that MPD policy regarding vehicular pursuits permits a pursuit in order to “apprehend a fleeing felon,” which Mr. Hylton-Brown was not. The indictment stated that the pursuit policy requires the MPD vehicle involved in the pursuit to have all emergency devices (lights and siren) activated during the pursuit, which was not the case. In addition, the indictment referred to the portion of the then-applicable MPD Order that specifically prohibits such a pursuit in connection with mere traffic violations, which was the case here. And the indictment went on to state that the MPD vehicular pursuit policy in effect at the time required a continuous reevaluation of the aspects of the pursuit in deciding whether it should be continued, which did not occur. Finally, the introductory paragraphs described in detail the steps in the pursuit conducted by Sutton and Zabavsky, ending with the collision, their failure to promptly notify the Major Crash Unit and IAD, and their failure to provide Captain Porter with accurate information about what actually happened.<sup>51</sup>

Count One narrated the details of the pursuit from the beginning through the collision and charged Sutton with

“acting with conscious disregard of an extreme risk of death and serious bodily injury to Karon Hylton-Brown, caused Hylton-Brown’s death – that is, as described above, SUTTON caused a traffic collision from which Hylton-Brown sustained injuries and died.”<sup>52</sup>

Count Two charged both Sutton and Zabavsky with conspiracy to obstruct justice by attempting to prevent an MPD internal investigation and avoid referral of the incident to federal authorities – *i.e.*, the United States Attorney’s Office for the District of Columbia (DC USAO) – so that criminal charges could be properly considered. The indictment alleged various means by which the alleged conspiracy was implemented, including through delayed internal notifications of the crash and of Hylton-Brown’s injuries to MPD officials and federal authorities, failing to collect and preserve relevant evidence, and misleading their MPD supervisor, Captain Porter, about the circumstances and result of the crash.

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<sup>50</sup> United States v. Sutton, Sealed Indictment, Sept. 23, 2021, ECF No. 11:2 (D.D.C. 1-cr-00598-PLF). United States v. Sutton, 1:21-cr-00598-PLF, Docket No. 1.

<sup>51</sup> *Id.* at ¶¶8-17.

<sup>52</sup> *Id.* at ¶¶ 19-29.

Finally, Count Three charged both defendants with obstruction of justice – that is, achieving the object of the conspiracy alleged in Count Two – through “engaging in misleading conduct toward another person,” by concealing relevant facts about the crash and Mr. Hylton-Brown’s injuries.<sup>53</sup>

In response to the indictment, DC Councilmember Charles Allen (Ward 6) said the coverup-related charges are “why we talk about having accountability and oversight for policing and public safety.” Councilmember Janeese Lewis George (Ward 4), who had been pressing for information about the investigation for some time, commented that Mr. Hylton-Brown’s family and friends finally “felt they were being heard,” and expressed hope that the indictment was a “step forward for our community and our city.”<sup>54</sup>

### C. Pre-Trial Litigation and the Trial

The indictment was the initial step in the case’s lengthy journey through the federal court system. Pre-trial discovery and litigation spanned more than a year before the case was tried before a jury beginning in October 2022. Virtually every step of the proceedings was litigated at length by defense counsel for Sutton and Zabavsky.<sup>55</sup> Below is an abbreviated summary of the pre-trial proceedings.

- September 24-October 7, 2021 – Initial bail determinations for Sutton and Zabavsky (neither was detained). Their attempts to modify their conditions of release, in order to make them less restrictive, extended into December.
- October 2, 2021-May 31, 2022 – Discovery litigation, which included scores of separate filings relating to defendants’ numerous discovery requests.<sup>56</sup>

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<sup>53</sup> *Id.* at ¶¶ 30-50.

<sup>54</sup> Peter Hermann and Spencer S. Hus, *D.C. Officer Charged With Murder After Deadly Pursuit*, THE WASHINGTON POST, Sept. 24, 2021, [https://www.washingtonpost.com/local/public-safety/karon-hylton-terence-sutton-indictment/2021/09/24/927fe35a-1d2c-11ec-8380-5fbadbc43ef8\\_story.html](https://www.washingtonpost.com/local/public-safety/karon-hylton-terence-sutton-indictment/2021/09/24/927fe35a-1d2c-11ec-8380-5fbadbc43ef8_story.html).

<sup>55</sup> In addition to the steps of the pre-trial litigation process described above, the Government attempted to disqualify counsel for Sutton on the grounds of an alleged conflict of interest. That motion was litigated extensively before Judge Friedman but some of the specifics of the alleged conflict were not made public and remained under seal.

<sup>56</sup> Litigation various discrete discovery issues extended for many months past May 2022, up to the beginning of trial in October, but the majority of the filings occurred during this earlier period.

- June 6-August 3, 2022 – Pre-trial motions, Court hearing on those motions, and the Court’s decisions denying defendants’ various motions to dismiss the indictment.
- August 8, 2022-October 19, 2022 – Various motions related to the admissibility at trial of certain categories of evidence and hearings on those motions.
- October 18-21, 2022 – Jury selection – 12 jurors and 4 alternates selected.
- October 25 – December 21, 2022 – Trial.

During the trial, the Government called a total of eleven witnesses, including the three MPD officers – Tejera, Al Shrawi, and Novick – who were in Officer Sutton’s car during the chase and at the time of the crash. The defense called five witnesses, including Officer Novick, whom the defense recalled as its own witness, and former Assistant Chief Wilfredo Manlapaz, who at the time of the trial was the head of MPD’s Internal Affairs Bureau.

Unlike in many cases where the prosecution relies primarily on witness testimony, the government in this case relied heavily on other types of evidence – video footage from the officers’ BWCs, neighborhood closed-circuit television cameras, and private residential cameras, as well as technical measurements of the speed at which Sutton’s car was traveling in the alley just before the crash (approximately 25 mph). In many respects, the witness testimony was secondary and corroborative in proving the facts and circumstances of the pursuit and the crash, but it was central to proving the conspiracy to obstruct justice and the obstruction of justice.

On December 21, 2022, after five days of deliberations, the jury unanimously convicted Officer Sutton of second-degree murder (Count One), and both Sutton and Zabavsky of conspiring to obstruct justice (Count Two), and obstruction of justice (Count Three).<sup>57</sup> In comments after the jury rendered its verdict, then-MPD Chief Contee said, “We have confidence in our judicial system, and we trust that the jury examined all the facts, deliberated carefully, and arrived at their decision fairly.”<sup>58</sup>

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<sup>57</sup> Paul Dugan, *D.C. Officers Convicted in Connection with Moped Rider’s Death*, THE WASHINGTON POST, Dec. 21, 2022, <https://www.washingtonpost.com/dc-md-va/2022/12/21/karon-hylton-death-officers-convicted/>.

<sup>58</sup> Peter Hermann and Ellie Silverman, *D.C. Police Chief Says Support of Trump’s Pardons Reflects Her Core Beliefs*, THE WASHINGTON POST, Mar. 2, 2025, <https://www.washingtonpost.com/dc-md-va/2025/03/02/dc-police-pardons-chief-trump-sutton-zabavsky/>.

The schedule for litigating the defendants' post-trial motions was originally set for April 2023, but they were not ultimately resolved until September 2023. Litigation concerning the preparation of a pre-sentence report extended over several additional months, delaying sentencing until September 2024 – almost two full years after the jury returned its verdict in the case. The specifics of the sentencing proceedings are discussed below.

While the post-trial process relating to sentencing consumed a full 19 months after the trial jury's December 21, 2022, verdict, the MPD administrative investigation, which had largely been suspended since the Preliminary Investigative Report was completed in October 2020, was completed and approved within MPD in January 2023, within a month of the jury's verdict.

#### **IV. The MPD Administrative Investigations**

##### **A. Background**

MPD conducts administrative investigations in cases involving allegations of misconduct or the serious use of force. As a matter of historical practice, MPD has deferred conducting the administrative investigations of serious use of force cases while the US Attorney considers whether criminal prosecution is appropriate. The main reason for this practice is to avoid any potential taint of the criminal investigation through compelling the testimony of involved officers. In this case, there were two separate administrative investigations – the first focusing on the vehicle pursuit and allegations of false statements, and the second investigating potential violations of MPD's BWC policy.<sup>59</sup>

During the 11 months between the time of the crash (October 20, 2020) and the date of the indictment (September 13, 2021), MPD internal investigators were directed by the U.S. Attorney's Office prosecutors not to take any investigative steps that might create risks for the integrity of the criminal investigation and any potential prosecution. In practical terms, that meant that the administrative investigations were largely suspended during the criminal investigation. According to the two FIT investigators who handled the primary administrative investigation, no interviews of witnesses were conducted during that period, although physical evidence, test results, and forensic analyses of various kinds were provided to the Internal Affairs Bureau.<sup>60</sup>

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<sup>59</sup> We were advised that investigations of BWC violations are, as an administrative matter, handled separately from the incidents to which they are related and are opened only after the United States Attorney's Office has either declined prosecution or the criminal prosecution has ended. Email from Agent Christopher Tilley to Michael R. Bromwich, May 31, 2025, re *BWC Violations in Hylton-Brown*.

<sup>60</sup> Numerous discussions and emails during 2020 and 2021 with Joseph Della-Camera and March 18, 2024, Interview of Agent Christopher Tilley.

In this case, MPD's vehicle pursuit and false statements administrative investigation was suspended for over two years throughout the lengthy pre-trial proceedings and the trial. Those stages of the cases took more than two years – October 20, 2020-December 21, 2022. As we have noted in prior reports, MPD has historically been slow to complete administrative investigations in cases involving criminal referrals to the DC USAO, delays for which MPD and the DC USAO have generally shared responsibility.<sup>61</sup> However, in recent years MPD had shown substantial improvement in the speed with which it resolved the administrative investigations after the USAO declined prosecution. We noted this improvement in our 2021 reports for the DC Auditor. In any event, the delays in this case were the result of clear instructions from the DC USAO. MPD was not responsible for the delays.<sup>62</sup>

## **B. The Vehicle Pursuit and False Statements Administrative Investigation, Report and Findings**

Dated January 19, 2023, the MPD Final Investigative Report of the October 20, 2020, vehicle pursuit, crash, and the death of Karon Hylton-Brown, was prepared by Christopher M. Tilley, an agent with MPD's Force Investigation Team. The subjects of the investigation were not limited to Sutton and Zabavsky but also included the officers who were in Sutton's MPD vehicle at the time of the pursuit and the crash – Officers Al-Shrawi, Novick, and Tejera. The criminal investigations of those three officers remained open through the trial – and their trial testimony – until the DC USAO issued prosecutorial declinations for all three on December 23, 2022, shortly after the trial ended.<sup>63</sup>

Pursuant to applicable MPD rules and regulations – and the collective bargaining agreement between MPD and the DC Police Union – the report was required to be completed by February 6, 2023, to preserve MPD's ability to administratively discipline Officer Sutton, and by March 7, 2023 to preserve MPD's ability to administratively discipline Lieutenant Zabavsky.<sup>64</sup> Our summary and analysis of the administrative investigation report and its findings are based on a thorough review of the 172-page report, its numerous attachments, and our interview of Agent Tilley.

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<sup>61</sup> January 2016 Report.

<sup>62</sup> March 2021 Report; May 2021 Report.

<sup>63</sup> Interview of Christopher M. Tilley, Mar. 28, 2024.

<sup>64</sup> MPD Final Investigative Report at 169-170.

## 1. The Vehicle Pursuit and False Statements Investigation and Report

Agent Tilley is an 18-year veteran of MPD and has been a member of FIT since it was reconstituted in 2020.<sup>65</sup> FIT conducts investigations of the most serious use of force cases and of vehicle pursuits ending in death. Agent Tilley is one of the most senior members of FIT, whose personnel is drawn primarily from the ranks of internal affairs investigators and homicide detectives.<sup>66</sup>

Agent Tilley inherited the responsibility for the administrative investigation and report from Agent Della-Camera in June 2022, several months before the trial began, and after Della-Camera was promoted to sergeant and reassigned. Tilley attended the two-month trial of Sutton and Zabavsky virtually every day; on the few days when he was unable to attend, one of his MPD colleagues attended and took detailed notes, which they shared with Tilley. Agent Tilley obtained copies of all trial transcripts at the end of December 2022 and relied on them to ensure the accuracy of his report. Because of the strict timelines imposed by collective bargaining agreements and the need for supervisory review, Tilley submitted his report on January 19, 2023.<sup>67</sup>

During the course of the administrative investigation, Tilley had access to all of the evidence previously collected by Agent Della-Camera, including BWC camera footage, and footage from CCTV and private video cameras in the vicinity of the pursuit, as well as all of the forensic analysis and other relevant documentation compiled during the investigation.<sup>68</sup> According to Tilley, and as described above, he understood that, because of the concerns of the prosecutors, he could not, prior to trial, interview the three other officers in Officer Sutton's car at the time of the crash – Officers Al-Shrawi, Novick, and Tejera. In addition, for the same reason, Tilley understood that he should not prior to trial interview Captain Franklin Porter, the Fourth District Watch Commander at the time of the incident, or any other potential MPD or potential civilian witnesses – including friends of Hylton-Brown who had relevant knowledge of the events. Trial counsel for Sutton and Zabavsky declined Tilley's requests to interview the defendants either before or after the trial.<sup>69</sup>

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<sup>65</sup> For a discussion of the history of FIT in MPD, see the original 2001 Memorandum of Agreement between the Department of Justice and Washington DC <https://www.justice.gov/crt/memorandum-agreement-united-states-department-justice-and-district-columbia-and-dc-metropolitan>, and our discussion of FIT in our 2016 report. January 2016 Report, at 13-22.

<sup>66</sup> Christopher Tilley Interview.

<sup>67</sup> *Id.* Tilley is one of the most experienced investigators in FIT and, according to Executive Assistant Chief Jeffery Carroll, one of the very best. Interview of Jeffery Carroll, Apr. 23, 2025.

<sup>68</sup> *Id.* For purposes of our review, we were provided with access to all the investigative materials relied on by Agent Tilley in preparing his report.

<sup>69</sup> *Id.*

After the trial, Agent Tilley interviewed Tejera and Al-Shrawi, both of whom had been called as government witnesses during the trial. According to Tilley, their statements during post-trial interviews were consistent with their trial testimony; he noted no significant differences. By the time the trial concluded, Novick was no longer an MPD employee – he had resigned from MPD and joined the Calvert County Sheriff’s Office. Through counsel, Novick declined to cooperate with the MPD administrative investigation and sit for an interview, although Tilley had the benefit of observing Novick’s bifurcated trial testimony – both for the prosecution and defense – and reviewing the transcript of that testimony.<sup>70</sup>

The first portion of Agent Tilley’s Final Investigative Report was a detailed chronological narrative that began with a description of the interactions between MPD officers and Karon Hylton-Brown during the day on October 23, 2020. It then provided a comprehensive and detailed account of the pursuit of Hylton-Brown by the MPD personnel in marked cars driven by Sutton and Zabavsky. The narrative was based largely on body-worn camera footage, CCTV footage, and relevant MPD radio traffic, supplemented by citations to the trial testimony of the officers riding in Sutton’s car.<sup>71</sup> The description of the pursuit was followed, in Tilley’s Report, by the events at the scene of the crash, including the injuries to Hylton-Brown, discussions among the MPD members, and exchanges between Zabavsky and civilians who came to the scene of the crash. The Report then summarized the conversations among Sutton, Zabavsky, and Captain Porter on the night of the incident after Sutton and Zabavsky returned to the Fourth District MPD offices. This summary included details of the alleged false and misleading statements made by Sutton and Zabavsky that served as the predicate for the indictment’s charges of conspiracy to obstruct justice and obstruction of justice.<sup>72</sup>

The Report briefly summarized the audio-recorded statements provided by Officers Tejera and Al-Shrawi during their interviews in late December 2022 after the jury verdict, as well as a summary of former Office Novick’s trial testimony. It also summarized the information provided in post-verdict interviews by three other MPD officers who had information relevant to the investigation, as well as information provided by Captain Porter in his interview.<sup>73</sup> Over the course of forty-four pages of the Report, Tilley summarized in painstaking detail the footage he reviewed from the body-worn cameras of the four officers in Sutton’s car, from Zabavsky’s BWC, as well

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<sup>70</sup> *Id.*

<sup>71</sup> MPD Final Investigative Report at 1-8.

<sup>72</sup> *Id.* at 8-20.

<sup>73</sup> *Id.* at 20-62.

as from the BWCs of other MPD members who came to the crash scene. Finally, the Report summarized relevant radio transmissions, the footage from numerous CCTV cameras, and the relevant physical evidence.<sup>74</sup> The Final Investigative Report was clear, detailed, and thorough. In addition to the body of the report itself, it included 40 attachments consisting of a wide variety of evidence and information.

## 2. Report Summary and Conclusions

### a. Improper Vehicle Pursuit

The Report concluded that the contacts between Hylton-Brown and the MPD personnel became a vehicle pursuit once Hylton-Brown “openly displayed his intent to not stop for the two emergency vehicles [Sutton’s and Zabavsky’s] behind him with their emergency lights activated.” The Report further found that Sutton’s and Zabavsky’s actions violated then-existing MPD policy that forbade conducting a vehicle pursuit “for the purpose of affecting a stop for a traffic violation.”<sup>75</sup>

The reason for these prohibitions is that the dangers inherent in conducting such a vehicle pursuit outweigh the relative insignificance of the risks posed to the public by mere traffic violations.<sup>76</sup> Further, among other violations of the vehicle pursuit policy, the Report found that the MPD members lacked the basis for launching a pursuit in the first place, and also failed to broadcast the incident or notify relevant MPD personnel, including Captain Porter and the dispatcher. According to the Report, the failure to make the required notifications suggested that Officer Sutton and Lieutenant Zabavsky knew that their pursuit was unjustified and therefore improper under MPD policy. In short, the Report found that all of the MPD members involved in the vehicle pursuit – Sutton, Zabavsky, and the three other MPD members who were passengers in Sutton’s car (Tejera, Novick, and Al-Shrawi) – violated MPD’s vehicle pursuit policy.<sup>77</sup> Specifically with respect to the case of the passengers in Sutton’s car, the Report found that they failed to discourage Sutton from commencing or continuing an impermissible pursuit and, like Sutton and Zabavsky, failed to make the required notifications that a vehicle pursuit was under way.<sup>78</sup>

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<sup>74</sup> *Id.* at 71-115.

<sup>75</sup> *Id.* at 134.

<sup>76</sup> Metropolitan Police Department, General Order, *Vehicle Pursuits*, OPS 301.03, Part IV, F (July 20, 2023). [https://go.mpdconline.com/GO/GO\\_301\\_03.pdf](https://go.mpdconline.com/GO/GO_301_03.pdf). The vehicle pursuit policy was subsequently changed at the end of 2021, in response to deficiencies we pointed out in reviewing a previous case involving a flawed and dangerous vehicle pursuit that resulted in the death of a motorcyclist. March 2021 Report, at 12-28.

<sup>77</sup> MPD Final Investigative Report at 136.

<sup>78</sup> *Id.* at 143-145.

## b. False Statements

The Report found that both Sutton and Zabavsky made false statements in the immediate aftermath of the crash, which subsequently served as part of the basis for the criminal charges and convictions for obstruction of justice. It concluded that Sutton's draft statement of the incident on a PD Form 10 minimized the extent of the encounter by characterizing the vehicle pursuit "as two attempted traffic stops and canvassing," rather than a vehicle pursuit, and that the draft statement falsely narrated various aspects of the pursuit. In addition, the Report found that the draft PD Form 10 deliberately minimized the extent of Hylton-Brown's injuries and the damage sustained by the vehicle that collided with Hylton-Brown. The Report found these statements to be in violation of MPD General Order 120.21, which prohibits, "Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his or her official duties."<sup>79</sup>

With respect to Zabavsky, the Report painted with a broader brush. It characterized as false several statements – some of which were more accurately described as material omissions and failures to disclose relevant information in a timely way – and described obstructive behavior in Zabavsky's interactions with other members of MPD. The Report found that the omissions included failing to timely notify Captain Porter of the crash, failing to describe the serious nature of Hylton-Brown's injuries to relevant MPD personnel, and failing to timely notify both the Major Crash Unit and the Internal Affairs Bureau. In addition, the Report found that Zabavsky made affirmative false statements when he claimed that he had not already reviewed Officer Sutton's BWC footage, when he had, and by falsely describing the pursuit of Hylton-Brown as a traffic stop on the PD 42s he filled out for the officers riding in Sutton's car.<sup>80</sup>

## 3. Report Findings

The Final Investigative Report concluded with a section labeled "Findings" that marshalled the evidence presented and reached bottom line determinations whether the allegations of misconduct against each of the involved officers were supported by the evidence – or "sustained," using MPD's nomenclature – by a preponderance of the evidence.

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<sup>79</sup> Metropolitan Police Department, General Order, *Sworn Employee Discipline*, PER 120.21, Attachment A, No. 5 (Nov. 27, 2022). [https://go.mpdonline.com/GO/GO\\_120\\_21.pdf](https://go.mpdonline.com/GO/GO_120_21.pdf).

<sup>80</sup> MPD Final Investigative Report at 149-152. A PD 42 is a form filled out by MPD members to document injuries that occur while a member is on duty.

a. Sutton

As to Sutton, the Report sustained multiple policy violations. First, it found that Sutton's role in the vehicle pursuit of Hylton-Brown and in subsequent events was not justified and that he violated six separate provisions of the MPD vehicle pursuit policy, as well as the MPD policy on use of deadly force – the weapon in this case being Sutton's MPD vehicle. Second, the Report found that Sutton violated MPD's prohibition on making false statements, pointing specifically to several statements made in the draft PD Form 10 narrative that misrepresented the pursuit of Mr. Hylton-Brown to disguise that Sutton had engaged in a prohibited vehicle pursuit.

Third, the criminal conviction of Sutton by itself, according to the Report, constituted "prohibited conduct" that violated MPD policy, even though the conviction was the result of the misconduct contained in the vehicle pursuit and false statement violations rather than separate or additional conduct. Fourth, the Report found that Sutton engaged in conduct that "is prejudicial to the reputation and good order of the police force," and/or reflected a failure to follow MPD rules or regulations. Again, this allegation did not involve additional acts of misconduct but instead was the consequence of the underlying misconduct – the prohibited vehicle pursuit and the false statements – and the criminal indictment and jury's guilty verdicts.<sup>81</sup>

b. Zabavsky

The Report's findings regarding Lieutenant Zabavsky dealt with the vehicle pursuit and false statements, as well as allegations of neglect of duty. The Report's vehicle pursuit findings as to Zabavsky were more broadly tailored to the responsibilities of a supervisor, although several were identical to the pursuit findings regarding Sutton. The Report faulted Zabavsky – and found that he engaged in misconduct – for several actions and failures to act in connection with the pursuit. First, the Report found that Zabavsky was, along with Sutton, engaged in a prohibited vehicle pursuit. Second, the Report found that Zabavsky failed to direct Sutton to terminate a prohibited vehicle pursuit, which, as Sutton's supervisor, he was obligated to do. Third, the Report found that Zabavsky violated the requirement to notify the watch commander, Captain Porter, of any vehicle pursuit "as soon as practical;" instead, the evidence showed that Zabavsky waited 80 minutes to contact Captain Porter and, even then, did not acknowledge that the incident was a vehicle pursuit. Fourth, the Report found that despite what Zabavsky observed at the crash scene, he failed to timely notify the Major Crash Section of MPD, which has principal responsibility for a vehicular incident that causes major injuries. Fifth, the Report found that Zabavsky made no efforts to preserve the crime scene, nor did he attempt to obtain statements from available witnesses, or in the alternative direct his subordinates to obtain such witness

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<sup>81</sup> *Id.* at 152-158.

statements. In addition, the Report found that Zabavsky's misconduct also constituted neglect of duty, as did his failure to promptly notify Major Crash and the Internal Affairs Bureau, thus delaying and prejudicing the Internal Affairs and criminal investigations.<sup>82</sup>

On the issue of making false statements, the Report found several specific false statements, as well as material omissions in his oral and written statements. It found that Zabavsky mischaracterized the vehicle pursuit as a brief attempted traffic stop and withheld important information about the extent of Hylton-Brown's injuries from Captain Porter. In addition, the Report found that Zabavsky lied in his initial conversation with Porter about whether he had reviewed the BWCs of the other MPD members involved in the incident. Zabavsky said he had not reviewed them, but he in fact had – as shown by the audit trail on the BWCs. Further, Zabavsky's claim that he did not contact the Major Crash Unit or IAD because he was unaware of the extent of Hylton-Brown's injuries was undermined by the BWC footage showing that Zabavsky stood close to Hylton-Brown's body. Thus, according to the Report, "any reasonable officer" would have realized the extent of Mr. Hylton-Brown's injuries and therefore have made the required notifications. Finally, the Report found that Zabavsky filled out the PD Form 42s for the officers under his command, falsely characterizing the pursuit as an attempted traffic stop rather than as a vehicle pursuit.<sup>83</sup>

In addition to the charges based on the prohibited vehicle pursuit and the false statements, the Report found that Zabavsky – like Sutton – was convicted of crimes in U.S. District Court and that his conduct as proven at trial "is prejudicial to the reputation and good order of the police force," and/or reflected a failure to follow MPD rules or regulations, including his failures to adequately supervise Sutton and other CST members.<sup>84</sup>

c. Tejera and Al Shrawi

The Report's treatment of the conduct of Officers Tejera and Al-Shrawi was far more abbreviated than its discussion of the conduct of Officer Sutton and Lieutenant Zabavsky. Neither Tejera nor Al-Shrawi was driving an MPD vehicle as part of the pursuit, nor was either officer in a supervisory role. In addressing Officer Tejera's role

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<sup>82</sup> *Id.* at 146-149.

<sup>83</sup> When we interviewed Agent Tilley in March 2024, he told us that he had spirited discussions with his superiors on the false statement charges, which he acknowledged were as important for the significant omissions as for the affirmative false statements. Tilley's view was that the MPD prohibition against making false statements was broad enough to include omissions. Tilley's findings remained intact, and his superiors signed off on those findings.

<sup>84</sup> MPD Final Investigative Report at 161-163.

in the pursuit, the Report found, based on review of the BWC footage, that he aided the pursuit by pointing out Hylton-Brown at various points, and, as he acknowledged during his trial testimony and administrative interview, he never advised Sutton to end the improper pursuit. In addition, the Report found that Officer Tejera failed to notify the Fourth District dispatcher during the pursuit and that, like Sutton and Zabavsky, his conduct and the resulting death of Hylton-Brown had an adverse impact on MPD's reputation in the community.<sup>85</sup>

As to Officer Al-Shrawi, the Report found that he participated in the improper vehicle pursuit as one of the officers in Officer Sutton's car, did not discourage Sutton from initiating or continuing the pursuit, and – like Officer Tejera – did not communicate with the Fourth District dispatcher regarding the pursuit. Officer Al-Shrawi admitted both in his trial testimony and his interview with IAD that the only justification for stopping Hylton-Brown was for traffic violations, which by MPD rule is insufficient to justify a vehicle pursuit.<sup>86</sup>

### C. The Body-Worn Camera Investigations

As mentioned above, the administrative investigation of potential body-worn camera (BWC) policy violations was, as an administrative matter, handled separately from the main MPD internal investigation. Since their introduction in 2016, BWCs have transformed the landscape of MPD internal investigations of use of force and other incidents involving potential misconduct. As of October 2020, when the Hylton-Brown vehicle pursuit occurred, the MPD policy on BWCs required them to be activated “as soon as a call is initiated via radio communication from [the Office of Unified Communications] on their mobile data computer (MDC), or **at the beginning of any self-initiated police action.**” (emphasis added). And, in these circumstances, the policy required BWCs to remain activated until “a pursuit has been terminated, and the member has returned to service through the dispatcher.” None of the MPD members involved in the vehicle pursuit activated their BWCs at the start of the vehicle pursuit. The only reason that valuable BWC footage of the pursuit was recovered and used for investigative purposes was because the BWCs are set to retain two minutes of video footage (without sound) prior to manual activation.<sup>87</sup>

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<sup>85</sup> *Id.* at 164.

<sup>86</sup> *Id.* at 165-166. The Report applies the same analysis to the conduct of Officer Novick even though he resigned from MPD in December 2021.

<sup>87</sup> Metropolitan Police Department, General Order, *Body Worn Cameras*, SPT 302.13V.A3 and 11a(1), (Mar. 12, 2024). <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Enabling%20Sound%20During%20the%20Pre-Event%20Buffer%20on%20Body-Worn%20Cameras.pdf>. The manufacturer's setting captures 30 seconds of pre-activation video, but

Separate BWC investigative reports for Officers Sutton, Tejera, and Al-Shrawi and Lieutenant Zabavsky were prepared by FIT Agent Sarah Mancuso. Her investigation was based on the review of the members' BWC footage, other relevant evidence, and post-trial interviews of Tejera and Al-Shrawi conducted by Agent Tilley. Tejera claimed that he failed to activate his BWC at the beginning of the pursuit of Hylton-Brown because he was on his computer preparing a report in a different matter. Tejera activated his BWC after the crash and after he got out of Officer Sutton's car. Officer Al-Shrawi explained his belated BWC activation by citing his general practice of not activating his BWC until he is "fully outside the car" and that he was caught off guard when Mr. Hylton-Brown "took off." The policy contains no exception for being occupied with unrelated work, and Al-Shrawi's explanation suggests he had a fundamental misunderstanding of the requirements of the BWC policy. They were required to activate their BWC at the outset of the vehicle pursuit.<sup>88</sup>

Sutton and Zabavsky were found to have violated both the activation and deactivation requirements of MPD's BWC policy. Agent Mancuso's review of Officer Sutton's BWC showed that he turned it on only after the crash when he emerged from his car and approached the crash site, and that he deactivated the BWC as he walked with Zabavsky towards Zabavsky's parked MPD cruiser and deactivated it when Zabavsky asked him whether his BWC was still operating and Sutton said, "I can go off."

Officer Tejera's BWC captured Sutton and Zabavsky in conversation before they left the scene and after both had deactivated their BWCs. Through their counsel, Sutton and Zabavsky declined to be interviewed in which they would have had the opportunity to provide an explanation or extenuating circumstances for why they failed to activate or deactivate their BWCs consistent with MPD policy.<sup>89</sup>

The BWC investigative reports for all four MPD members – Sutton, Zabavsky, Tejera, and Al-Shrawi – were forwarded to the Disciplinary Review Division on or about January 20, 2023.

## **V. Use of Force Review Board Proceedings and Decision**

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police departments can expand the length of pre-activation video and/or audio. In 2017, MPD expanded the video setting to two minutes but did not expand the audio. Teletype 05-068-17, May 18, 2017.

<sup>88</sup> Body Worn Camera Violation Investigations of Carlos Tejera and Ahmed Al-Shrawi, Jan. 17, 2023.

<sup>89</sup> Body Worn Camera Violation Investigations of Terence Sutton and Andrew Zabavsky, Jan. 17, 2023.

Once the Report was completed and submitted on January 19, 2023, the next steps in the internal MPD adjudication process proceeded along two parallel tracks – adjudication by both MPD’s Use of Force Review Board (UFRB) and the Disciplinary Review Division. We turn first to the UFRB.

The UFRB has now been operating with its current mandate and in its current form for approximately 20 years; its current form and jurisdiction were originally a requirement of the 2001 MOA but the operation of the UFRB is now mandated by DC law.<sup>90</sup> The Board’s jurisdiction extends not only to all uses of force by MPD members, but also to vehicle pursuits resulting in death.<sup>91</sup>

Since November 2023, Jeffery Carroll has served as one of MPD’s two Executive Assistant Chiefs. Chief Carroll has served with MPD since 2002 and began his work with UFRB in late 2015. He became the UFRB Chair in April 2017 and remained in that position for six full years, until April 2023. At that point, he became the head of the Internal Affairs Bureau. Chief Carroll described to us various challenges he faced as chair of the UFRB, including the difficulty in drawing out the views of other Board members on the cases under review, which has been a perennial problem for UFRB chairs. Chief Carroll pointed to the use of the Decision Point Analysis Matrix (DPAM) as one of the tools he used to encourage discussion, including advising Board members to take notes on their copies of the DPAMs for them to rely on when the Board discussed a case. MPD’s use of force policy describes the role of the DPAM as follows:

UFRB shall use the decision point analysis matrix to provide a meaningful independent analysis of the decision points faced by all MPD participants of the event. UFRB shall review use of force incidents and consider: compliance with official MPD guidance (i.e. policy, procedure, and training), whether proper tactics were used, risk management issues, adequacy of training, analysis of the events leading up to and following the incident, and whether the level of force used was appropriate for the incident. The analysis shall carefully scrutinize the various decision points of the member who used force as well as those of any member that is relevant to the use of force. Where appropriate, the analysis shall

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<sup>90</sup> D.C. Code § 5-353.0. The statute, which was enacted in April 2023, requires the Board to include three members appointed by the mayor and two by the DC Council – none of whom can have prior law enforcement experience. Because this matter was handled by the UFRB in January 2023, the Board was comprised entirely of MPD members.

<sup>91</sup> “UFRB shall review all IAD use of force investigations of MPD members, chain of command investigations forwarded to UFRB by the IAB assistant chief, and vehicle pursuits resulting in a fatality.” Metropolitan Police Department, General Order, *Use of Force*, GO-RAR 901.07 II.J 1. at 19 (Mar. 28, 2024). [https://go.mpdconline.com/go/go\\_901\\_07.pdf](https://go.mpdconline.com/go/go_901_07.pdf).

identify any policy, training, equipment, or tactical concerns raised by the actions of the participants.<sup>92</sup>

The DPAM should provide a summary and analysis of the incident that is based on the final FIT report. It is designed to ensure that members of the UFRB are fully prepared to discuss specific cases and make appropriate fact-based judgments.<sup>93</sup>

The UFRB staff originally prepared a draft of the DPAM in March of 2021, before the indictments and trial of Sutton and Zabavsky, and completed the document sometime between the jury's December 2022 jury verdicts and the UFRB's January 27, 2023 hearing of the case. The DPAM was a 22-page summary of Agent Tilley's 172-page report, providing the central points of the factual narrative without the extraordinary level of detail contained in Tilley's report. The DPAM identified two decision points – 1) "Was a Vehicle Pursuit authorized?" and 2) "Authorized Traffic Stop?"

When we interviewed Chief Carroll about the Board's January 2023 consideration of this case, we advised him of our concern that the DPAM prepared by UFRB staff did not meet the requirements of the applicable MPD policy – GO 901.07. That policy requires the DPAM to "provide a meaningful independent analysis of the decision points faced by all MPD participants" in the event. Without specifically agreeing with our concerns about the DPAM in this case, Chief Carroll said that he had made various efforts as UFRB Chair to fulfill the requirements of MPD policy, acknowledging that he had tried different methods for both developing the matrix and causing UFRB members to use it in analyzing cases, with limited success. According to Chief Carroll, "We grappled with this for years," he said, recounting the Board's efforts to find ways to improve the matrix. Chief Carroll identified the central challenge here as showing people the value of the tool and taking the time to identify decision points, rather than just skipping to a conclusion that may feel obvious. "In their mind, they read the report and see clearly that it's not a justified pursuit because you can't pursue a vehicle for a traffic violation," he said.<sup>94</sup>

Although the DPAM and the UFRB's deliberations focused on the events leading up to the crash, the UFRB is specifically authorized to examine post-incident conduct:

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<sup>92</sup> Metropolitan Police Department, General Order, *Use of Force*, GO 901.07(II)(J)(7)(b) (Nov. 3, 2017), [https://go.mpdonline.com/go/go\\_901\\_07.pdf](https://go.mpdonline.com/go/go_901_07.pdf).

<sup>93</sup> *Id.* II.J 7 (b) at 18. Interview of Executive Assistant Chief Jeffery Carroll, Apr. 23, 2025.

<sup>94</sup> *Id.*

UFRB shall review the actions of all members involved in the events leading up to the use of force, as well as in its use (not just the actions of the member who used force). The actions of the members leading up to *and following the use of force shall be reviewed* to identify commendable actions or conduct warranting corrective intervention or training.<sup>95</sup>

According to Chief Carroll's recollection and the memos he sent on January 27, 2023, the UFRB considered only the vehicle pursuit issues in the case, not those actions of the members before or after the vehicle pursuit and ensuing crash. When we asked Chief Carroll about this, he said that the Board under his leadership focused solely on the force aspects of the incident rather than taking the broader and more holistic view of the incident authorized by GO 901.07. According to Chief Carroll, the Disciplinary Review Division more appropriately addresses the non-force-related aspects of the incident, including disciplinary matters arising from the use of force, and it receives investigative reports at the same time as the UFRB, which is reflected on the face of Tilley's Report.<sup>96</sup>

At the UFRB hearing, Agent Tilley made a detailed presentation of the case to the UFRB. Five voting members of the UFRB were present, as were four non-voting members of MPD. The UFRB reviewed three cases that day, including the case of the five MPD members involved in the Hylton-Brown vehicle pursuit – Officers Sutton, Tejera, Al-Shrawi, and Novick, and Lieutenant Zabavsky.<sup>97</sup> Chief Carroll acknowledged that the 172-page report was likely the longest and most detailed investigative report in all his years on the UFRB. He recalled that during the hearing Agent Tilley displayed portions of BWC footage from some of the MPD members involved in the incident.

The January 27, 2023, memo summarizing the UFRB's consideration of the Hylton-Brown matter is extremely brief – approximately one page in length. It does not discuss Tilley's presentation, nor any discussion of the case among UFRB members. In

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<sup>95</sup> *Id.* at 7 (a) (*emphasis added*).

<sup>96</sup>*Id.*

<sup>97</sup> As noted previously, Officer Novick had resigned from MPD in 2021 and taken a job with the Calvert County Sheriff's Office. According to Chief Carroll, the UFRB reviewed his conduct because of the chance that he might reapply to MPD in the future, a phenomenon referred to as "wandering cops." Dorothy Moses Schulz, *Wandering Cops: How States can Keep Rogue Officers from Slipping Through the Cracks*, Manhattan Institute (Mar. 16, 2022), <https://manhattan.institute/article/wandering-cops-how-states-can-keep-rogue-officers-from-slipping-through-the-cracks#>.

addition, the notes various UFRB members took on their copies of the DPAM during or immediately after the hearing shed no light on the substance of the discussions.<sup>98</sup>

According to the January 27, 2023, memo, the UFRB unanimously determined that all five MPD members violated the Department’s vehicle pursuit policy and that the pursuit was not justified. It made a single policy recommendation – that the vehicle pursuit policy be amended to explicitly require passengers in any vehicle involved in such a pursuit to timely question whether a proposed or ongoing pursuit is consistent with MPD policy, state any such concern to the other involved MPD members, and report as misconduct any pursuit that violates the policy.

We spoke to Michael Tobin, the former executive director of the Office of Police Complaints, who served as a voting member of the UFRB for several years and attended the January 2023 meeting. Mr. Tobin generally recalled Tilley’s presentation of the investigation, which covered all the issues, including the post-crash actions of Sutton and Zabavsky. Consistent with Chief Carroll’s recollection, Tobin’s recalled that the discussion focused solely on the vehicle pursuit portion of the case and confirmed that the misconduct issues detailed in Tilley’s report were not discussed.<sup>99</sup>

When we advised Tobin that the UFRB’s recommendation to revise the vehicle pursuit policy to clarify the responsibilities of all participants in the pursuit had not been implemented, he said he was not aware of that but was not surprised. He said that MPD frequently has not followed up on the UFRB’s recommendations and was unsure at what level the failure to implement took place.<sup>100</sup> Chief Carroll told us that he was aware that the recommendation addressed to the responsibilities of passengers in a car engaging in an improper pursuit had not been adopted but was unsure of the reason. We are not aware of a feedback loop to inform the UFRB chair and its members whether its recommendations have been adopted and implemented – and if not, the reasons for their rejection.<sup>101</sup>

As to the UFRB’s recommendation in this case, we learned from Maureen O’Connell, the Director of MPD’s Policy and Standards Branch, that the UFRB’s recommendation on the duties of passengers during vehicle pursuits was considered at

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<sup>98</sup> UFRB Decision Point Matrices, provided by MPD. We note that one of the annotated DPAM documents noted that “Commander Bryant concurs with the findings relative to this investigation.” Commander Bryant is not listed as a member of the UFRB nor as a non-voting member present for the discussion.

<sup>99</sup> Interview of Michael Tobin, Mar. 24, 2025.

<sup>100</sup> *Id.*

<sup>101</sup> Jeffery Carroll Interview.

the same time as revisions to MPD's more broadly-based policy on the duty to intervene were being considered.<sup>102</sup> According to Ms. O'Connell, MPD senior personnel determined at the time that it might be needlessly confusing to create a policy requiring intervention applicable solely to passengers involved in a vehicular pursuit when a broader duty to intervene was being fashioned.<sup>103</sup>

## VI. The Disciplinary Process

On January 27, 2023, the same date as the UFRB hearing and decision, Chief Carroll transmitted five virtually identical two-page memos to Hobie Hong, the Director of MPD's Disciplinary Division. Director Hong had already received Agent Tilley's Final Investigative Report the week before, at approximately the same time it was transmitted to Chief Carroll and the UFRB. The memos set the stage for Director Hong to consider appropriate discipline based on the Report and the vehicle pursuit policy violation finding. Chief Carroll's memos were limited to describing the requirements of the vehicle pursuit policy and the findings that each of the five members involved in the pursuit – Sutton, Zabavsky, Tejera, Al-Shrawi, and Novick – had violated the policy. The transmittal memos did not contain any reference to other conduct engaged in by the MPD members, which was covered by the Report – or the body-worn camera violations committed by all five members.<sup>104</sup>

### A. The Disciplinary Review Division

MPD's Disciplinary Review Division (DRD) is responsible for evaluating allegations of misconduct, including excessive use of force, that have been sustained by an investigation, and then proposing appropriate discipline for the MPD member(s) involved in the incident. Since early 2019, DRD has been led by Hobie Hong, a lawyer who heads a staff of nine, comprised of sworn personnel and civilian staff members. According to Director Hong, on average DRD handles approximately 800 cases per year.<sup>105</sup>

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<sup>102</sup> Metropolitan Police Department, General Order, *Code of Conduct*, PER-201-26 at 3 (June 12, 2024), [https://go.mpdconline.com/GO/GO\\_201\\_26.pdf](https://go.mpdconline.com/GO/GO_201_26.pdf).

<sup>103</sup> Telephone Call with Maureen O'Connell, Director, Policy and Standards Branch, Metropolitan Police Department. <https://mpdc.dc.gov/biography/maureen-occonnell>.

<sup>104</sup> Although the UFRB hearing and recommendations considered Novick's conduct, the UFRB did not send a memo to the DRD director because of Novick's prior resignation from MPD. For further discussion of the BWC violations, see *infra*, at 30-32.

<sup>105</sup> Interview of Director Hobie Hong, Apr. 28 and 30, 2025.

Director Hong was responsible for preparing an administrative charging document, referred to as a Notice of Proposed Adverse Action (NPAA), and making specific recommendations as to the appropriate discipline. At the time the NPAA was provided to the MPD member, they were invited to submit any evidence that tends to negate the charges. The NPAA noted that the DRD relies on a “preponderance of the evidence” standard when assessing an investigation’s factual record.<sup>106</sup>

#### 1. Tejera and Al-Shrawi Notices of Proposed Adverse Action

Director Hong issued nearly identical Notices of Proposed Adverse Action to Officers Tejera and Al-Shrawi on February 3, 2023. Both Notices charged the officers with two offenses: violations of the MPD vehicle pursuit policy, citing the UFRB’s decision, and a second charge focusing on the damage to MPD’s reputation caused by the incident.<sup>107</sup>

Director Hong’s memos to Tejera and Al-Shrawi included four specifications related to the vehicle pursuit that merited “adverse action” – *i.e.*, discipline:

- Specification No. 1: Both officers violated MPD’s deadly force policy through their roles as willing participants in the vehicle pursuit, which led to the death of Mr. Hylton-Brown.
- Specification No. 2: Both officers failed to notify the Fourth District dispatcher about the vehicle pursuit.
- Specification No. 3: Both officers violated MPD’s vehicle pursuit policy because of the absence of evidence that Mr. Hylton-Brown had engaged in conduct more serious than traffic violations, which are not adequate grounds for starting or continuing a pursuit.
- Specification No. 4: Both officers failed to activate their body-worn-cameras at the beginning of the encounter with Mr. Hylton-Brown, as required by MPD policy.<sup>108</sup>

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<sup>106</sup> *Id.* Director Hong advised us that in the less serious cases that are referred to the unit, its commander most often follows the discipline proposed by DRD. If the commander does not do so, an explanation is required.

<sup>107</sup> Notice of Proposed Adverse Action Memoranda from Director Hobie Hong, Metropolitan Police Department Disciplinary Review Division, to Officers Carlos Tejera and Ahmed Al-Shrawi, both of whom received the memos on February 3 (“Tejera and Al-Shrawi Memos”).

<sup>108</sup> “Members...shall start their BWC recordings...at the beginning of any self-initiated police action.” The vehicle pursuit was a “self-initiated police action,” requiring immediate activation of each involved member’s BWC. Metropolitan Police Department, General Order, *Body Worn Cameras*, SPT 302.13. V, A,

The second charge centered on the damage done to MPD's reputation as a result of the incident, Mr. Hylton-Brown's death, and the subsequent criminal proceedings.

The pursuit, criminal investigation, indictment, and trial received significant media coverage locally and nationally, damaging the reputation of the Department. Your actions brought discredit upon the department and were prejudicial to the reputation and good order of the Metropolitan Police Department (MPD).<sup>109</sup>

Following the description of the charges, the memos addressed the so-called "Douglas Factors." The *Douglas Factors* are a set of considerations that are applied in disciplinary matters throughout the federal government and MPD in fashioning the extent of any punishment to MPD personnel.<sup>110</sup> For both Tejera and Al-Shrawi, the memos discussed all 12 of the *Douglas Factors*, finding that five constituted aggravating factors, one (the absence of any prior disciplinary record for either member) was a mitigating factor, four were "neutral" factors, and three did not fall into any of these categories. For both Tejera and Al-Shrawi, the recommended discipline was a suspension of 20 workdays.

Tejera and Al-Shrawi both received notice of their proposed 20-day suspension in writing on February 3, 2023. The Notices of Proposed Adverse Action advised them that they had 15 days to contest the facts set forth in the Notice. Along with the Notices, Tejera and Al-Shrawi received a copy of Tilley's 172-page Final Investigative Report.

On April 20, 2023, both Tejera and Al-Shrawi received Final Notices of Adverse Action from Commander Kimberly Dickinson, the Director of MPD's Human Resources Management Division. The Final Notices stated that neither Tejera nor Al-Shrawi had contested the factual basis for the charges against them or the proposed 20-day suspension. The Final Notices repeated the factual basis for the 20-day suspensions and stated that the members would need to begin serving the suspensions within 30 days of the Final Notice. The Final Notices also advised Tejera and Al-Shrawi that they had ten

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3. [https://go.mpdconline.com/go/go\\_302\\_13.pdf](https://go.mpdconline.com/go/go_302_13.pdf). The BWC issue was not addressed in the Final Investigative Report because the BWC issues were assigned MPD investigation case numbers separate from the vehicle pursuit investigation case number.

<sup>109</sup> Tejera and Al-Shrawi Memos at 3.

<sup>110</sup> The Douglas Factors were formulated by the Merit Systems Protection Board in its 1981 landmark decision, *Douglas v. Veterans Administration*, M.S.P.R 280. The Douglas Factors were described in that decision as "nonexclusive criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct." The twelve Douglas Factors range from the nature and seriousness of the offense to the existence of any mitigating factors. [www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf](http://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf).

days to file a written appeal to the MPD Chief of Police on the existing record. Neither Tejera nor Al-Shrawi appealed the suspension. Both Tejera and Al-Shrawi served their suspensions from June 14, 2023, through July 8, 2023, without availing themselves of their rights to appeal to the MPD Chief or to union arbitration.

## 2. Sutton

Like Tejera and Al-Shrawi, Sutton received his Notice of Proposed Adverse Action (NPAA) on February 3, 2023. The NPAA summarized three separate charges of misconduct as outlined in Tilley's Final Investigative Report, with a total of 19 separate specifications. The first charge centered on the violation of MPD's vehicle pursuit policy and listed the following specifications:

- Hylton-Brown was not a fleeing felon and did not pose an immediate threat of death or serious bodily harm.
- Sutton improperly initiated the vehicle pursuit and improperly continued it.
- Sutton lacked a sufficient factual predicate for initiating the pursuit because Hylton-Brown had only committed traffic violations.
- Sutton did not notify the Fourth District dispatcher of the pursuit.
- Sutton did not use his MPD vehicle lights or sirens properly during the pursuit.
- Sutton failed to stop at multiple stop signs during the pursuit.
- Sutton did not maintain a safe distance between his vehicle and Hylton-Brown's moped during the pursuit.
- Sutton did not timely activate his BWC at the beginning of the interaction with Hylton-Brown and the ensuing pursuit.
- Sutton turned off his BWC prematurely, before he left the scene of the crash.<sup>111</sup>

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<sup>111</sup> Notice of Proposed Adverse Action Memoranda from Director Hobie Hong, Metropolitan Police Department Disciplinary Review Division, to Officer Terrance Sutton at 1-4. Notice of Proposed Adverse Action (Sutton), at 1-4.

The second charge in the NPAA focused on the criminal charges against Sutton. There were six specifications – one each for the underlying conduct that was the basis for the criminal charge (2<sup>nd</sup> degree murder, conspiracy to obstruct justice, and obstruction of justice) and the second for the fact of the charge itself. The specifications did not summarize the evidence that supported the jury’s verdict – only the charge itself and the conviction on that charge.

The third and final charge focused on the obstructive conduct engaged in by Sutton in completing the PD Form 10 – pointing to the false draft narrative of the encounter (Specification No. 1), the portion of the narrative that minimized the extent of Hylton-Brown’s injuries (Specification No. 2), the misleading information about the damage sustained by the vehicle that crashed into Hylton-Brown (Specification No. 3), and a catch-all specification that included the vehicle pursuit, the premature deactivation of his BWC, and the drafting of the narrative (Specification No. 4). Specification No. 4 also included the fact that Sutton’s conduct led to his indictment and conviction on three criminal charges, all of which had “received significant media coverage,” and which in turn was “prejudicial to the reputation and good order of MPD.”<sup>112</sup>

Similar to his method with the Tejera and Al-Shrawi NPAAs, Director Hong applied the 12 *Douglas* Factors to Sutton’s misconduct to arrive at the appropriate penalties. In Sutton’s NPAA, Director Hong found that six of the *Douglas* Factors were aggravating factors, two were mitigating factors, three were neutral factors, and two did not fit into the other three categories.<sup>113</sup> One of the latter three categories was whether, “The proposed penalty is consistent with that imposed against other members for like or similar conduct.” The memo asserted that it was consistent. At the end of the memo, Director Hong proposed that Sutton be **terminated** from MPD because of his misconduct and advised him that he had 21 days to respond to the Notice in writing and request a departmental hearing. Sutton acknowledged receipt of the Notice of Proposed Adverse Action on February 3. Notably, on that same date, Sutton declined in writing to have an adverse action hearing. Subsequently, Sutton reversed his position and, through a February 16, 2023, letter from his counsel, requested an adverse action hearing. According to Director Hong, he checked with MPD’s General Counsel, Mark Viehmeyer, on whether Sutton could change his position on requesting a hearing. Hong was told to allow the change of position and to put an adverse action hearing back on track.<sup>114</sup>

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<sup>112</sup> *Id.* at 5-6.

<sup>113</sup> *Id.* at 6-9.

<sup>114</sup> *Id.*

Our review suggested an error in analyzing the *Douglas* Factors that did not affect the discipline recommended by Hong – termination – but may have affected the subsequent review conducted by MPD after President Trump pardoned Sutton. In the NPAA, Director Hong found that Sutton had no sustained investigations over the past three years and counted that as a mitigating factor. But Sutton had a sustained investigation in early 2019, less than two years before the Hylton-Brown incident, and *it was for a violation of MPD’s vehicle pursuit policy*. Thus, although it was literally true that by the time Hong considered the appropriate discipline for Sutton in early 2023, approximately four years had passed since the 2019 incident, the Hylton-Brown-related violations occurred less than two years after the 2019 incident, and Sutton was not on active duty between the October 2020 incident and the date of Director Hong’s analysis. Therefore, it appears to have been an error for Director Hong to count Sutton’s disciplinary record as a mitigating factor; instead, it should have been considered an aggravating factor, as it was for Zabavsky.

When we asked Director Hong if recommending termination with respect to Officer Sutton was a difficult decision, he said it was not – that in view of the underlying facts, and the jury’s verdict supporting those facts, “termination was front and center.”<sup>115</sup>

### 3. Zabavsky

The Notice of Proposed Adverse Action provided to Zabavsky, which was served on his counsel on February 6, 2023, identified five separate administrative charges and 20 specifications arising from the vehicle pursuit and related events. Charge One involved the vehicle pursuit itself and differed in many respects from the specifications addressed to the three officers because of Zabavsky’s supervisory role. It charged Zabavsky based on the following specifications:

- Zabavsky participated in a prohibited vehicle pursuit.
- Zabavsky did not direct Sutton to terminate the pursuit.
- Zabavsky did not notify the watch commander of the pursuit.
- Zabavsky did not make a timely notification to the Major Crash Unit.
- Zabavsky failed to adequately preserve the crime scene.
- Zabavsky failed to timely activate his BWC.

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<sup>115</sup> Hobie Hong Interview.

- Zabavsky prematurely deactivated his BWC.<sup>116</sup>

The second charge in the Notice, which contained four specifications, charged “neglect of duty” and included specifications that Zabavsky, as the senior MPD member involved in the pursuit, failed to adequately supervise Sutton and the other officers involved in the pursuit, failed to preserve the crime scene following the crash, failed timely to notify the Fourth District watch commander about the crash and Hylton-Brown’s injuries, and failed promptly to notify the Major Crash Unit. These specifications were identical to some of the specifications relating to the vehicle pursuit charges, but they were specifically directed to Zabavsky’s supervisory role in the pursuit and its immediate aftermath.<sup>117</sup>

The third charge focused on Zabavsky’s false statements and obstructive behavior, including the following: withholding and falsifying to Captain Porter the nature of the pursuit and crash; falsely stating that Zabavsky had not yet reviewed the BWC footage from the other MPD members involved in the pursuit when he had already done so; making false excuses for not immediately summoning the Major Crash Unit to the scene; and minimizing the incident in the PD Form 40s he filled out for the four MPD officers involved in the incident.<sup>118</sup>

The fourth charge was based on Zabavsky’s criminal convictions. It contained four specifications – two of which focused on the fact of conviction, while the other two focused on the conduct that served as the basis for those convictions.<sup>119</sup> Finally the fifth charge focused on the entire series of events beginning with the prohibited vehicle pursuit and extending to Zabavsky’s criminal trial conviction – all of which, according to the charge, were damaging to the reputation and good order of MPD.<sup>120</sup>

Director Hong’s application of the *Douglas* Factors to Zabavsky’s conduct generally mirrored his application of the Factors to Sutton’s conduct. Hong noted that that Zabavsky had, within the prior three years, a sustained allegation of misconduct,

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<sup>116</sup> Notice of Proposed Adverse Action Memoranda from Director Hobie Hong, Metropolitan Police Department Disciplinary Review Division, to Officer Andrew Zabavsky at 1-3. It is not clear from the Notice why these two BWC charges were included under the vehicle pursuit-specific charge rather than separately.

<sup>117</sup> *Id.* at 3-4.

<sup>118</sup> *Id.* at 4-5.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 6-7.

which resulted in a 15-day suspension. Thus, the application of the Factors resulted in seven considered to be aggravating factors, none of the 12 to be mitigating factors, three to be neutral factors, and two of the factors not fitting within any of the three categories.<sup>121</sup> The Memo concluded that Zabavsky should be **terminated** from MPD. On February 6, 2023, the Memo was served on Zabavsky. He acknowledged service of the Memo and requested an adverse action hearing, which according to the Memo was originally scheduled to take place on March 14, 2023.<sup>122</sup>

When we asked Director Hong the same question about whether his decision to propose termination for Lieutenant Zabavsky was difficult, his answer was the same – it was not a difficult decision.<sup>123</sup>

## **B. Delay in MPD Disciplinary Proceedings for Sutton and Zabavsky**

The MPD administrative process was suspended for Officer Sutton and Lieutenant Zabavsky pending further proceedings in their criminal case. This delay was not required by law or internal MPD policy but instead was a discretionary decision made by the MPD General Counsel, Mark Viehmeyer. Mr. Viehmeyer conveyed that decision to Director Hong. In the meantime, Sutton and Zabavsky remained on indefinite suspension without pay, an employment status that began in December 2021 and lasted until they reached settlements on February 28, 2025 (Sutton), and March 2, 2025 (Zabavsky).<sup>124</sup>

When we asked Mr. Viehmeyer for the basis of his decision to suspend the administrative process pending both the sentencing process in the U.S. District Court and any subsequent appeals – even though appeals to the DC Circuit Court of Appeals and the Supreme Court, could extend for two years or more – he acknowledged that the decision was not dictated by any MPD rule, practice, or protocol, but instead an exercise of discretion on his part. Mr. Viehmeyer subsequently advised us that he was influenced in suspending the administrative process by the fact that “the judge who had presided over the case allowed both members to remain free pending their appeals.”<sup>125</sup>

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<sup>121</sup> *Id.* at 7-11. The two factors that were not aggravating, mitigating, or neutral were the consistency of the proposed penalty with other comparable cases (Douglas Factor #6), and whether alternative sanctions were appropriate to address the misconduct (Douglas Factor #12). The Notice concluded that the proposed punishment was consistent with prior cases and implied that no alternative sanction would serve as an adequate deterrent.

<sup>122</sup> *Id.* at 11.

<sup>123</sup> Hobie Hong Interview.

<sup>124</sup> Email from MPD General Counsel, Mark Viehmeyer, to Michael R. Bromwich, Apr. 25, 2025, re: *Terence Sutton and Andrew Zabavsky*.

<sup>125</sup> Email from MPD General Counsel Mark Viehmeyer to Michael R. Bromwich, June 13, 2025.

## VII. Post-Trial Motions and Sentencing

The sentencing process from the date of the jury verdict to the date of sentencing took almost two years, an unusually long period of time. The delays were caused by the litigation of numerous post-trial motions by counsel for Sutton and Zabavsky, as well as numerous defense requests for postponement of the sentencing.

The District Court post-trial docket in the case reflects more than 200 filings of various kinds between January 2023 and September 2024. The motions included requests by defense counsel for sanctions against the prosecutors for alleged misconduct during the trial, requests by the National Fraternal Order of Police (the national police union) to file supportive briefs on behalf of Officer Sutton,<sup>126</sup> and motions to set aside the jury's guilty verdicts on various grounds. The Court held two hearings on the various motions, in May and June 2023.

### A. The Decision on the Rule 29 Motions

The most substantial of the post-trial motions, and the Court decision most relevant to the weight of the evidence, was the Court's 98-page opinion and order, issued on December 6, 2023, denying the motions to set aside the guilty verdicts.<sup>127</sup> In the opinion, Judge Friedman described the factual background of the case and the legal standard for deciding whether to grant a motion for judgment of acquittal. The legal standard for granting the motion is whether the evidence is insufficient to sustain a conviction — *i.e.*, whether no reasonable jury could find the defendants guilty beyond a reasonable doubt of the charges against them. In a case where the jury has rendered a guilty verdict, the Court must find that no reasonable factfinder could find that the elements of the crime were satisfied. In summarizing the legal standard, the Court wrote:

In other words, a motion for judgment of acquittal should be granted only when 'viewing the evidence most favorably to the government and according the government the benefit of all legitimate inferences therefrom, a reasonable jury *must necessarily* have had a reasonable doubt as to the defendants' guilt.<sup>128</sup>

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<sup>126</sup> Because he was a supervisor, Lieutenant Zabavsky was not a member of the union, which only represents officers.

<sup>127</sup> *United States v. Sutton*, Opinion and Order, Dec. 6, 2023, ECF No. 526, (D.D.C. 1:21-cr-00598-PLF).

<sup>128</sup> *Id.* at 12, citing *United States v. Weisz*, 718 F. 2d 413, 437-438 (D.C. Cir. 1983) (emphasis in original).

The Court then went on to describe the legal elements of each offense for which the jury had returned guilty verdicts. For the second-degree murder count against Sutton, the elements the jury must find are malice aforethought and causation. The Court found that although Sutton did not intend to kill Hylton-Brown, the jury was justified in finding that Sutton was aware that his pursuit created “an extreme risk of death or bodily injury” and that he chose to disregard that risk – which satisfied the element of malice aforethought. And the jury was also justified in finding that the pursuit by Sutton through the alley and at high speeds caused the death of Hylton-Brown, satisfying the element of causation.<sup>129</sup>

For the obstruction of justice charge, which related to both Sutton and Zabavsky, the Court summarized the elements as knowingly engaging in “misleading conduct” specifically designed to interfere with the communication of information to a law enforcement agency with respect to a potential federal offense. In this case, that offense was a potential federal civil rights violation. The conspiracy to obstruct justice required the jury to find an agreement among two or more people to commit a specified offense – here, the obstruction of justice – and at least one overt act by one of the members of the conspiracy to advance that goal.

As it did with the second-degree murder charge, the Court analyzed at length both the law and the facts supporting the jury’s verdict, finding that “the government produced ample evidence at trial in support of the obstruction of justice counts as to both Mr. Sutton and Mr. Zabavsky.”<sup>130</sup> As part of its jury instruction on the conspiracy count, the Court submitted a list of alleged overt acts and instructed the jury that its members had to agree unanimously on at least one overt act that advanced the conspiracy. The jury ultimately agreed unanimously that Sutton and Zabavsky’s interactions with Captain Porter, the Fourth District Watch Commander, on the evening of October 20, was an overt act that advanced the conspiracy.<sup>131</sup>

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<sup>129</sup> *Id.* at 32-44.

<sup>130</sup> *Id.* at 51.

<sup>131</sup> *Id.* at 50-51. The overt act that the jury agreed on was a series of five false and misleading representations Sutton and Zabavsky made to Porter the evening of the incident, including denials by both that they had engaged in a vehicle pursuit, Zabavsky falsely alleging that Hylton-Brown was drunk, and both Sutton and Zabavsky withholding information about the extent of Hylton-Brown’s injuries. Sutton, Verdict Form, Dec. 21, 2022, ECF No. 426 at 2. The Court specifically pointed to Captain Porter’s testimony as being sufficient, standing alone, to support conviction of the conspiracy to obstruct and obstruction of justice charges. *Id.*, at 96.

## **B. Additional Post-Verdict, Pre-Sentencing Litigation**

Between the Court's ruling on the Rule 29 motion, in December 2023, and the sentencing of Officer Sutton and Lieutenant Zabavsky on September 12, 2024, counsel for the two MPD members filed more than a dozen additional motions – some of them raising new issues and many of them asking for extensions of time to file various sentencing-related materials. Other than granting the requested postponements of various steps in the sentencing process, none of the substantive defense motions were granted.

The most substantial motion filed by both defendants during this period was the request for a new trial based on numerous claims of both erroneous rulings by the Court and misconduct by the prosecution. The claims included that the Court lacked jurisdiction to hear the case to begin with, that the government selectively prosecuted Officer Sutton and Lieutenant Zabavsky because they were white, that certain evidence offered by the government should not have been admitted into evidence, and that certain evidence that the defendants were barred from offering should have been admitted. In an 81-page opinion that covered much of the same ground as the decision on the Rule 29 motions, the Court denied the motions.<sup>132</sup>

## **C. Sentencing**

In the run-up to the sentencing of the two defendants, counsel for Officer Sutton and Lieutenant Zabavsky submitted extensive briefs and numerous letters of support that advocated for far more lenient sentences than provided for by the applicable federal sentencing guidelines. Counsel for Officer Sutton requested a sentence of probation for both the second-degree murder charge and the obstruction-related charges, without specifying the length of probation. Counsel for Lieutenant Zabavsky requested a probationary sentence of four years for his convictions on the conspiracy and obstruction charges.<sup>133</sup>

In stark contrast to the defendants' sentencing memoranda, the government's submission argued aggressively for a sentence of 18 years' imprisonment for Officer Sutton and a sentence of 10 years and one month for Zabavsky based on the guilty verdicts and the range of sentences provided for under the applicable sentencing guidelines. In addition, the government asked that both defendants be imprisoned pending appeal.<sup>134</sup>

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<sup>132</sup> *Sutton*, Opinion and Order, Jan. 25, 2024, ECF No. 530.

<sup>133</sup> *Sutton*, Sentencing Memorandum by Andrew Zabavsky, Aug. 6, 2024, ECF No. 629, and Sentencing Memorandum by Terrence Sutton, Aug. 6, 2024, ECF No. 632.

<sup>134</sup> *Sutton*, Sentencing Memorandum by USA as to Terrence Sutton, Aug. 6, 2024, ECF No. 630; Sentencing Memorandum by USA as to Andrew Zabavsky, Aug. 6, 2024, ECF No. 631. On this issue,

The sentencing proceedings in the cases were spread over three days, from September 10 to September 12. While disputes over the application of sentencing guidelines in the federal system are frequently difficult and complex, the arguments over the proper application of the guidelines consumed the better part of two full court sessions, with lengthy arguments by both the government and counsel for the two defendants.

In addition to legal disputes about the proper application of the guidelines, numerous witnesses presented the Court with information about Hylton-Brown, Sutton and Zabavsky. These witnesses included members of Hylton-Brown's family – his father, mother, and the mother of his child – and numerous MPD colleagues of Sutton and Zabavsky who discussed various aspects of the case and their knowledge of the MPD members' careers and character. In addition, several witnesses, including former MPD Chief Peter Newsham, argued that the prosecution itself was misguided and that it had created grave fears among rank-and-file police across the country that they could be criminally prosecuted for good-faith efforts to do their jobs, and even for speaking up on behalf of the two defendants during the sentencing proceedings. Numerous MPD members who worked with Sutton, and several members of his family, paid tribute to his character and the devotion to his work as a police officer.<sup>135</sup>

At the conclusion of the sentencing proceedings, both defendants addressed the Court. Officer Sutton described his passion for being a police officer, the ways he worked to develop ties with all members of the community – including Hylton-Brown, with whom he said he interacted almost every day. At the end of his brief statement, he said,

“I prided myself on never shying away from any types of incidents and learning the most I possibly could as an officer, as well as making the connection with the public, whether it be the average hardworking citizen or a known criminal.”<sup>136</sup>

In his statement to the Court, Lieutenant Zabavsky described in detail the physical and mental health difficulties suffered by both of his elderly parents and the burdens their care had imposed on him and his sister. Unlike Officer Sutton's

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former MPD Chief Peter Newsham appeared at the September 10 sentencing proceeding to discuss some of the novel aspects of the prosecution. Chief Newsham argued that neither Sutton nor Zabavsky should be incarcerated pending appeal and criticized the government for charging Sutton with second degree murder based on a vehicle pursuit.

<sup>135</sup> See e.g., *Sutton*, Sentencing Hearing Testimony at 129-136, 142-149, (Sept. 10, 2024).

<sup>136</sup> *Id.* at 71.

statement, which focused on his career in policing, Zabavsky's plea for leniency said nothing about his history with MPD and instead was based almost exclusively primarily on the need to care for his mother.<sup>137</sup> Neither Sutton nor Zabavsky addressed the facts of the case, other than to express sympathy for Mr. Hylton-Brown's death, and in Zabavsky's case, offer an apology.

Before imposing sentence, Judge Friedman reviewed the evidence that supported the jury's guilty verdicts on both the murder and obstruction charges and described the difficulty of balancing the reckless vehicle pursuit that caused Mr. Hylton-Brown's death and the cover-up that followed against the backdrop of the virtuous and distinguished careers of both MPD members. Despite the government's arguments for extended terms of incarceration – 18 years for Sutton and 10 years for Zabavsky – Judge Friedman sentenced Sutton to 5 ½ years on the second-degree murder count and four years on each of the obstruction counts, with all three sentences to run concurrently. He sentenced Zabavsky to four years imprisonment on both obstruction counts, with both sentences to run concurrently.<sup>138</sup>

Subsequent to sentencing, counsel for Sutton and Zabavsky each filed Notices of Appeal to the U.S. Court of Appeals for the District of Columbia Circuit. Prior to January 20, 2025, no substantive motions or briefs on behalf of Sutton Zabavsky were filed in the DC Circuit. Notably, the original date established for the filing of opening briefs was January 21. On January 14, counsel for both Sutton and Zabavsky requested additional time to file those briefs. We could not determine whether the request for additional time was informed by the knowledge that both Sutton and Zabavsky would receive presidential pardons shortly after President Trump was inaugurated. Our questions on that issue directed to counsel for Sutton and Zabavsky went unanswered.

### **VIII. The Presidential Pardons**

On January 22, 2025, two days after he took the oath of office, President Donald J. Trump issued full and unconditional pardons to both Sutton and Zabavsky, extinguishing their convictions and nullifying their sentences.<sup>139</sup> The operative

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<sup>137</sup> *Id.* at 72-80.

<sup>138</sup> *Id.* at 99-100. In addition to the prison sentences, both defendants were sentenced to three years supervised release following their release from prison, including 100 hours of community service, and a *de minimis* monetary special assessment.

<sup>139</sup> Presidential Actions, The White House, Executive Grant of Clemency for Terrence Sutton (Jan. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/executive-grant-of-clemency-for-terrence-sutton/>; Presidential Actions, The White House, Executive Grant of Clemency for Andrew Zabavsky (Jan. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/executive-grant-of-clemency-for-andrew-zabavsky/>.

language in the Executive Grants of Clemency was that the President provided Sutton and Zabavsky with “full and unconditional pardons” for their convictions.<sup>140</sup>

The day before, President Trump had foreshadowed the pardons in a statement that provided a wholly inaccurate summary of the facts of the case. According to President Trump:

They [Sutton and Zabavsky] were arrested, put in jail for five years because they went after an illegal. And I guess something happened where something went wrong, and they arrested the two officers and put them in jail for going after a criminal.<sup>141</sup>

As the facts described in this report make clear, neither Sutton nor Zabavsky had spent any time in jail: they remained free on bail for the duration of the criminal proceedings against them. Karon Hylton-Brown was not “an illegal”; he was an American citizen. And Hylton-Brown was not wanted on any criminal charges at the time of the incident. We have no information on who transmitted that false information to President Trump.

Just one day prior to the pardons, the DC Police Union issued the following statement:

We are actively working with the White House and President Trump to address two glaring miscarriages of justice involving DC police officers, Officer Terrence [sic] Sutton and Lieutenant Andrew Zabavsky, who were wrongly convicted of murder. These officers – men of integrity and dedication – were targeted by corrupt prosecutors who weaponized the legal system against them.<sup>142</sup>

Although the reference to “corrupt prosecutors” and “weaponization” of the legal system has regrettably become the language to describe investigations and prosecutions which some elements of the public dislike, there is no evidence that the investigation

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<sup>140</sup> The pardons further stated that. “I HEREBY DESIGNATE, direct, and empower, the Pardon Attorney, as my representative, to sign a grant of clemency to the person named herein. The Pardon Attorney shall declare that her action is the act of the President, being performed at my direction.” *Id.* We have been unable to determine whether that step formalizing the pardons was ever taken. As stated above, our questions about the events leading up to the Presidential pardons have gone unanswered.

<sup>141</sup> Zolan Kanno-Youngs, *Trump Pardons 2 D.C. Officers Convicted in Fatal Chase and Cover-Up*, THE NEW YORK TIMES (Jan. 22, 2025), <https://www.nytimes.com/2025/01/22/us/politics/trump-pardons-police-officers-sutton-zabavsky.html>.

<sup>142</sup> Haisten Willis, *Trump Teases Pardons for DC Officers Convicted in Police Chase Death*, THE WASHINGTON EXAMINER (Jan. 22, 2025), <https://www.washingtonexaminer.com/news/white-house/3297382/trump-teases-pardons-dc-officers-convicted-chase-death/>.

and prosecution were handled in anything other than a professional and apolitical manner by career prosecutors and investigators. We asked the DC Police Union for its basis for alleging that the prosecutors in the case were corrupt. We received no response.

On the same day the pardons were issued, MPD Chief Pamela Smith issued the following statement:

The Metropolitan Police Department acknowledges President Donald Trump's executive action in this matter. The men and women of the Metropolitan Police Department work tirelessly to prevent crime and ensure the safety of those that live in, work in, and visit the District of Columbia. Every day, our members perform inherently dangerous work that requires professional judgment and split-second decision-making.

The prosecutions of Officer Terence Sutton and Lieutenant Andrew Zabavsky were literally unprecedented. Never before, in any other jurisdiction in the country, has a police officer been charged with second-degree murder for pursuing a suspect. These members could never have imagined that engaging in a core function of their job would be prosecuted as a crime. The Department recognizes the risks involved in vehicle pursuits, which are reflected in our pursuit policy. But violations of that policy should be addressed through training and discipline – not through criminal prosecution.

The Department thanks President Trump and Interim U.S. Attorney Ed Martin for supporting our officers.<sup>143</sup>

The statement provided no limiting principle to the view that all violations of the vehicle pursuit policy should be handled exclusively through training and discipline, not through the criminal process. It also seemed to contradict Chief Contee's statement on behalf of the MPD, which expressed confidence in the jury's verdict and fairness of the processes afforded by the judicial system.

We interviewed Mark Viehmeyer, MPD's General Counsel, about Chief Smith's statement and related matters. Mr. Viehmeyer has served with MPD for more than 25 years in various capacities, and as General Counsel since 2020. Mr. Viehmeyer told us that he was not involved in any of the early stages of the case, from the time of the incident, through the criminal investigation, the indictment, and the trial. With respect to President Trump's pardons of Office Sutton and Lieutenant Zabavsky,

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<sup>143</sup> Full text of press statement provided by General Counsel Mark Viehmeyer in email to Michael R. Bromwich, March 20, 2025, re: Terence Sutton and Andrew Zabavsky. The statement does not appear on the MPD website.

Mr. Viehmeyer said that although he had no advance notice of the pardons, he was aware that the DC Police Union was seeking them, but that he was unaware of the channel of communication between the union and representatives of President Trump.<sup>144</sup>

Mr. Viehmeyer stated that he had personally drafted the statement in the name of Chief Smith immediately after the pardons, with limited input from MPD's Public Information unit. When pressed about the breadth of Chief Smith's statement – which suggested that all vehicle pursuits, no matter how egregious – should be handled exclusively through police internal discipline and training, Mr. Viehmeyer insisted that, despite the breadth of its wording, the statement was “narrowly targeted to this specific incident.”<sup>145</sup> When we later asked Chief Smith about the statement and whether it was universally true that vehicle pursuit matters should not be handled through the criminal justice system, her Deputy General Counsel, Nicole Lynch, answered the question for Chief Smith by saying, “It doesn't say never.” Chief Smith then repeated that answer: “I didn't say never.”<sup>146</sup>

## **IX. The Post-Pardon Administrative Process and Settlements**

The January 22 Presidential pardons of Officer Sutton and Lieutenant Zabavsky resulted in the dismissal of the pending appeal in the DC Circuit and, ultimately, the dismissal of the case and nullification of the convictions in the District Court. The appeal was dismissed by a *per curiam* order of the D.C. Circuit on February 24, 2025. The following day Judge Friedman signed orders dismissing the cases against Sutton and Zabavsky as moot in light of the Presidential pardons.<sup>147</sup> None of the consequences of the criminal convictions survived the pardons, but the administrative disciplinary proceedings, which had been suspended pending sentencing and the appeals, were unaffected and remained pending. MPD was thus still required to adjudicate the matter administratively and issue the discipline to Sutton and Zabavsky that it deemed appropriate.

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<sup>144</sup> Viehmeyer noted that the union had devoted substantial efforts to repeal of the police reforms enacted by the DC Council in the wake of George Floyd's death and that although the House and Senate had passed legislation designed to do so, the legislation was vetoed by President Biden. *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Interview of Chief Pamela A. Smith, Apr. 29, 2025.

<sup>147</sup> *Sutton*, Order as to Terrence Sutton, Feb. 24, 2025, ECF No. 705; *Sutton*, Order as to Andrew Zabavsky, Feb. 24, 2025, ECF No. 706. As a precaution in the event there was a snag in dismissing the case, counsel for Officer Sutton filed a brief in the DC Circuit raising various claims that the District Court had rejected. *United States v. Sutton*, Corrected Appellant Brief, Jan. 27, 2025, Document No. 2096813 (USCA Case #24-3131, Document No. 2096813).

Pursuant to the administrative investigation conducted by Internal Affairs and the disciplinary review handled by the Disciplinary Review Division, both Officer Sutton and Lieutenant Zabavsky faced termination. However, no adverse action hearing of any kind was ever held. Instead, in the wake of the Presidential pardons, MPD began settlement discussions with counsel for both Sutton and Zabavsky.

On February 28, MPD and Sutton (with the participation of the DC Police Union) reached a settlement on the pending administrative matters (the underlying vehicle pursuit case, including the allegations of obstruction of justice, and the BWC violation case). The settlement provided, in substance, that:

- The settlement agreement was the proper vehicle to resolve the outstanding administrative issues, in light of the Presidential pardons issued in January; it did not constitute an admission by Officer Sutton that he “engaged in any wrongful, tortious, or unlawful activity;”
- MPD’s own review of the record “determined that Officer Sutton did not engage in any criminal conduct, prejudicial conduct, or untruthful statements,” focusing solely on the draft report written by Sutton;
- Instead of termination, MPD and Sutton agreed to a *25-day suspension* based solely on his failure to adhere to the MPD vehicle pursuit policy, with no discipline at all for any of the behavior that the jury had found to be obstruction of justice;
- Officer Sutton was required to undergo additional training on the MPD vehicle pursuit policy;
- All back pay and lost job benefits would be provided to him, dating back to December 2021; and
- Officer Sutton would initially be assigned to a non-patrol position.

On March 2, 2025, MPD entered into a settlement with Lieutenant Zabavsky. The central difference that separated Sutton and Zabavsky at the time their settlement agreements were negotiated was that Zabavsky had notified MPD that he wanted to retire from MPD rather than return to duty. As a result, the settlement provided that Zabavsky was to submit his application for deferred retirement, including all back pay

and lost job benefits that had accrued since December 2021. Pursuant to DC law, he thus was fined \$2,500 instead of receiving a disciplinary suspension.<sup>148</sup>

To understand the rationale for the discipline imposed on Officer Sutton and Lieutenant Zabavsky compared to the initial proposals of termination – and the Court’s sentences of years of incarceration – we interviewed MPD General Counsel Viehmeyer and Chief Smith. Mr. Viehmeyer said that MPD “disagree[d] with the jury’s findings” and rejected the idea that MPD’s exoneration of Sutton and Zabavsky in the settlement agreements undermined the jury’s verdict – even though the jury’s burden was satisfied by proof of the defendants’ guilt beyond a reasonable doubt, while the MPD administrative standard was the much less demanding preponderance of the evidence. Mr. Viehmeyer tried to explain that the lesser punishment flowed from the Presidential pardon and the dismissal of the charges, although he was unable to explain how those actions in any way affected the strength of the evidence or MPD’s interests in having its members act properly and lawfully. Mr. Viehmeyer acknowledged that he had not reviewed the 172-page internal affairs report – although he said his deputy had done so – or spoken to the Internal Affairs investigator.<sup>149</sup>

Chief Smith joined MPD in May 2022. As its Chief Equity Officer and Assistant Chief of its Homeland Security Bureau over the next 14 months before she was appointed to lead MPD, Chief Smith played no role in MPD’s disciplinary process. According to data provided to us by MPD, approximately a dozen termination cases arose within MPD between Chief Smith’s appointment and the settlements in the Sutton and Zabavsky settlements.<sup>150</sup>

We had an extended discussion with Chief Smith about her involvement in determining the appropriate discipline to impose on Officer Sutton and Lieutenant Zabavsky, and why it varied so dramatically from the jury’s verdicts and the Court’s sentences. Chief Smith acknowledged that she generally does not review any of the underlying investigative materials and reports in MPD cases, even when termination is recommended, and that she did not review any part of the 172-page IAB report in this matter. According to Chief Smith, “I rely on the lawyers whom I pay to do this job to provide me with the facts of the case.” In explaining why, she relied exclusively on

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<sup>148</sup> D.C. Code, Section 5-804(b) establishes a range from \$0 to \$5,000 for any member “who would have received suspension as discipline had he or she remained a member of the Metropolitan Police Department.”

<sup>149</sup> *Id.*

<sup>150</sup> Before we received the MPD data, Chief Smith estimated that she had reviewed “probably less than 25” termination cases. Pamela Smith Interview. Based on MPD’s data, the number was almost certainly less, given that there were only 10 termination cases in all of 2023, and four in 2024.

MPD's lawyers rather than digging into the facts herself, Chief Smith said, "I'm trying to run a police department. That's why the lawyers are here."<sup>151</sup>

MPD's General Counsel and Deputy General Counsel attended the interview of Chief Smith and answered many of the questions we directed at her. In explaining MPD's view of the effect of President Trump's pardons, Deputy General Counsel Nicole Lynch argued that the pardons followed by the ministerial dismissal of the case in the U.S. District Court "erased the criminal part" of the case, treating the evidence introduced during the criminal trial and the jury verdicts as a nullity. Chief Smith added that given the pardons and the post-pardon dismissals, the only "remaining facts" were those relating to the vehicle pursuit policy, ignoring the fact that the IAB report covered in substantial detail the obstructive conduct engaged in by Sutton and Zabavsky.

In explaining MPD's rejection of the IAB report's conclusions and the jury's verdicts, Ms. Lynch said that the lawyers reviewing the case for the MPD Chief will not always concur with IAB's findings of fact and that they did not do so in this case. She stated that she and General Counsel Viehmeyer reached a different conclusion based on "the entirety of the evidence," arguing that although they stood behind IAB's findings, "We've come to a different conclusion" than both IAB and the trial jury. When we asked Chief Smith to point out the flaws or weaknesses in the IAB report, she was unable to do so.<sup>152</sup>

We pointed out to Chief Smith the vast discrepancy between the statements made by former Chief Contee, who accepted the jury's verdict, and her post-pardon statement implicitly criticizing both the U.S. Attorney's Office and the Court for handling the cases as a criminal rather than administrative matter. When we asked her about her statement that violations of policy should be handled internally through discipline and training, she said she stood behind that view.<sup>153</sup>

Turning to the settlement agreements she signed, we asked Chief Smith if she was comfortable with the assertion in the Sutton settlement agreement that he had not engaged in "any criminal conduct, prejudicial conduct, or untruthful statements," she stated, "Yes, I absolutely felt comfortable based on my conversations with the General

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.* Deputy General Counsel Lynch further explained the "entirety of the evidence" by referring to various pieces of evidence that the Court had barred from the case — including Hylton-Brown's alleged affiliation with a gang, his alleged involvement in drug dealing, his criminal record, and his possession of \$3,000 in cash — that the Court deemed inadmissible under the Federal Rules of Evidence.

<sup>153</sup> Pamela Smith Interview.

Counsel's Office." Chief Smith acknowledged that she did not review any of the underlying materials but instead received some unspecified briefing materials prepared by her counsel. When we requested those materials, MPD counsel declined to provide them.<sup>154</sup>

## X. Chief Smith's DC Council Testimony

On March 11, 2025, Chief Smith testified before the DC Council's Committee on the Judiciary and Public Safety as part of the Annual Performance Oversight Hearing focusing on MPD and the Office of Police Complaints. Toward the end of the hearing, Chief Smith was asked a series of questions by Councilmember Janeese Lewis George of Ward 4 about the Hylton-Brown case. The questions and answers follow:

**Councilmember George:** Ok. I have about 3 minutes left. I want to address one of the elephants in the room that you know I have to address.

**Chief Smith:** Yes, ma'am.

**Councilmember George:** As you know, as a Ward 4 Councilmember, two MPD officers were convicted of second-degree murder, conspiracy to obstruct, and obstruction of justice for actions that took within the course of their duties as law enforcement officers. A jury found those two officers guilty, they were subsequently recently pardoned, it has become the information of my community that these officers have been reinstated, and so I have to ask you because I literally got two emails this morning, I've been getting emails non-stop, there's also two listservs where the ongoing back and forth commander chief about this. Have these officers been reinstated, and if so, why have they been reinstated given the... the pardons are there, but I guess the pardons do not change the facts of what occurred on October 23, 2020, particularly not just the second degree murder but the obstruction of justice. So why were those officers reinstated? First, are they reinstated and if so, why are they reinstated given that the facts of what happened on October 23 have not changed, regardless of the pardons that have been given?

**Chief Smith:** So, to answer your initial question, ma'am, they have been reinstated. When the incident occurred, they were suspended pending the outcome of their criminal case. As you know that after their pardons and the convictions were vacated and dismissed, we completed our administrative review. And when we talk about a pardon, then the U.S. Attorney's Office dismissed the case with prejudice which now

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<sup>154</sup> *Id.*

lends me the responsibility of looking at the case, specifically, for any policy violations, in this case the pursuit violation. MPD, and again, it is as if once the pardons came through and the dismissal of their cases with prejudice, it is as if – again, I can only focus on the policy violations and MPD’s history with pursuit of – is that we have never terminated anyone for pursuit violations and that’s where we are with that.

**Councilmember George:** I understand the pursuits is one of the, I guess internal violations. In regards to the obstruction of justice, is there no internal violations that are connected to obstruction of justice?

**Chief Smith:** It’s my understanding that there was no coverup and there was no obstruction of justice.

**Councilmember George:** Is that based on....

**Chief Smith:** The body worn camera footage, the fact that when the officer responded to the station and spoke with his supervisor, and also the draft report that came out of it that there was no coverup.

**Councilmember George:** So then why were they found guilty before in trial?

**Chief Smith:** I’m not sure, I can only tell you what I’ve been told with respect to...based on the investigation that was conducted by the Department, our Internal Affairs division.

**Councilmember George:** So, obstruction of justice is not, I guess, even on the table and it’s now just the vehicular pursuit?

**Chief Smith:** Yes, ma’am.<sup>155</sup>

Chief Smith’s testimony was misleading and incomplete. In response to Councilmember Lewis George’s questions, she stated unequivocally that there was no coverup and no obstruction of justice. In fact, the Internal Affairs Bureau had found that there was substantial evidence of false and misleading statements, and the Disciplinary Review Division conducted its own review of the IAB report and recommended termination based on IAB’s investigation and its 172-page report. Although the findings and recommended discipline were based on the violation of

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<sup>155</sup> Metropolitan Police Department, OCT Video On Demand, Mar. 11, 2025, [https://video.oct.dc.gov/VOD/DCC/2025\\_03/03\\_11\\_25\\_Judici\\_2.html](https://video.oct.dc.gov/VOD/DCC/2025_03/03_11_25_Judici_2.html), at 53:05 to 58:43.

MPD policies rather than the law of conspiracy and obstruction of justice, the findings rested on the same set of facts that served as the basis for the jury's finding of obstruction of justice.

Moreover, Chief Smith's answer about the basis for a finding of no obstruction was both a non-sequitur and inaccurate. The body worn camera footage played no role in such a finding, and the statements Sutton and Zabavsky made to their supervisor were the basis for IAB's finding of false statements and the jury's verdicts of conspiracy obstruction of justice. As for Chief Smith's claim that her conclusion of no coverup was based in part on the "draft report," it was unclear whether she was referring to Sutton's draft report that was false and misleading or the IAB report, which spent many pages documenting the evidence supporting the finding of false statements. Her reference to "draft reports" suggests the former; her reference to the investigation by "our Internal Affairs Division" suggests the latter. Chief Smith acknowledged to us that her Council testimony was, at a minimum, incomplete and potentially misleading in suggesting that she was relying on the IAB investigation rather than on the review by her lawyers that overruled the IAB findings. She told us that she would clarify her testimony with Councilmember Lewis George.<sup>156</sup>

In the aftermath of news coverage of Chief Smith's DC Council testimony, Judge Friedman criticized Chief Smith's denial that Sutton and Zabavsky engaged in a coverup. Judge Friedman told a reporter for the *Washington Post*, "I think it sends the wrong message when the chief of police in effect attacks the judicial process and a finding beyond a reasonable doubt...What [Sutton and Zabavsky] did to obstruct justice was clear, convincing, overwhelming and beyond a reasonable doubt."<sup>157</sup>

In response, then-Interim United States Attorney Edward Martin stated,

Judge Paul L. Friedman is making unfounded assumptions about our accomplished African American woman Chief of Police, attributing her words as an attack on him and his court without evidence...In reality, his very own actions

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<sup>156</sup> Pamela Smith Interview. Mr. Viehmeyer and Ms. Lynch took issue with our conclusion that Chief Smith testimony was inaccurate and misleading, arguing that Chief Smith's reference to "the investigation that was conducted by the Department, our Internal Affairs Division," included the reversal of IAB's conclusions by Department's lawyers. But, at best, the lawyers reviewed the IAB investigation; they did not conduct a factual investigation of their own. In short, we found the argument that Chief Smith's testimony was accurate to be utterly unconvincing.

<sup>157</sup> Peter Hermann, *Judge Criticizes D.C. Police Chief for Denying Cover-Up in Deadly Pursuit*, THE WASHINGTON POST, Mar. 18, 2025, <https://www.washingtonpost.com/dc-md-va/2025/03/18/judge-paul-friedman-pamela-smith-karon-hylton-brown-dc-police/>.

undermine the constitutional process that grants the President the plenary power to issue pardons.<sup>158</sup>

Although Judge Friedman’s comments were unusual, he neither made any “unfounded assumptions” about Chief Smith, nor did anything to undermine the President’s pardon power. He was responding to what he viewed as a mischaracterization of the evidence that supported the jury’s verdict on the obstruction of justice charges.

Three months after Chief Smith’s initial DC Council testimony, a month after our interview, and several days after the DC Auditor, Kathleen Patterson, gave her a heads up that she would be questioned about the MPD internal investigation by the DC Council, Chief Smith was again questioned by Councilmembers about MPD’s handling of the discipline regarding Officer Sutton and Zabavsky. In response to a question from Councilmember Brooke Pinto, Chief Smith said,

I have still not yet met with the team to obtain what the actual findings are with regards to the internal affairs investigation. I had that material with me, but I think I left it on my desk, but if you don’t mind I can get back to you on that...<sup>159</sup>

Later in the hearing, Councilmember Lewis George asked Chief Smith whether she thought it was appropriate for her or her lawyers to “disregard or reject a jury’s verdict,” Chief Smith, responded:

I’m not General Counsel and clearly not an attorney. In all fairness, it would behoove me to be able to get back to you on that question, Councilmember Lewis George. I just don’t have the answer to that.<sup>160</sup>

Councilmember Lewis George’s question was virtually identical to the question we had asked several weeks earlier during our interview of Chief Smith. We found it surprising that she still was unable or unwilling to answer the questions under oath in a public hearing – especially after she previously informed us that she intended to clarify her earlier remarks to the Council.

## **XI. Analysis**

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<sup>158</sup> *Id.*

<sup>159</sup> Testimony of MPD Chief Pamela Smith before the D.C. Council’s Committee on the Judiciary and Public Safety, June 10, 2025, at 6:21:37.  
[https://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=9649](https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=9649)

<sup>160</sup> *Id.* at 6:46:28.

## **A. Preliminary Investigation**

In our reviews of MPD administrative investigations over the past five years, MPD was responsible for conducting the investigation from the time of the incident through the preparation of the report and adjudication by the UFRB. In those cases, the administrative investigation was paused while the U.S. Attorney's Office conducted a review, but prosecution was declined in every case. Thus, we were able to review all aspects of the MPD investigation, including its completeness, its analysis, and its findings and conclusions.

This case was different because, from the time of the crash and for two full years, MPD's internal investigation was held in abeyance because of the US Attorney's Office investigation. The investigation was then merged into the grand jury investigation. The Preliminary Investigation report was completed within a week of the incident but without the benefit of interviewing any of the MPD members involved in the pursuit or other witnesses to any relevant events that preceded the pursuit and the crash. As a result, Agent Della-Camera's report was based largely on his extensive review of BWC footage from the involved members and the limited forensic evidence immediately available. He was unable to identify and interview civilian witnesses, in part because of the delays by Sutton and Zabavsky in notifying Internal Affairs. All the MPD members involved in the pursuit and the crash—Sutton, Zabavsky, Tejera, Al-Shrawi, and Novick—declined through counsel to be interviewed. Agent Della-Camera had no way to compel interviews of the involved members without endangering the possibility of criminal prosecution.

In our past reviews, we have encouraged MPD personnel to conduct as much of the administrative investigation as possible while the USAO considers whether to prosecute rather than allowing evidence to age and witnesses to become unavailable with the passage of time. Because from the outset the USAO took seriously the possibility of criminal prosecution, the prosecutors closed off the flow of information to Agent Della-Camera and limited the investigative steps he was able to take.

## **B. Final Investigative Report**

As described above, the Final Investigative Report runs 172 pages and includes as attachments 379 pages of exhibits. We found the factual recital in the report to be exhaustive and to make use of a wide variety of evidence, including:

- BWC footage captured by the cameras of various MPD members,
- footage captured by CCTV and private establishment cameras,
- radio transmissions,

- the trial testimony of Officers Tejera, Al-Shrawi, and Novick, and Captain Porter,
- post-trial interviews of the above MPD members, except for Novick,
- forensic science reports,
- civilian and other police witness statements, and
- the Karon Hylton-Brown autopsy.

We found the Final Investigative Report to be complete and thorough, with its conclusions fully supported by the evidence. The Report reviewed the key testimonial, documentary, and video evidence multiple times in different ways – for example, constructing a narrative at the outset of the Report based on a synthesis of the evidence, and then separately documenting the BWC evidence even though it had been relied on in the initial narrative.

Our only concern is that the completeness of the report – and some of its repetition – may have deterred MPD personnel up the chain of command from reading and fully absorbing the entire document. As we will suggest in a recommendation, it may be helpful to prepare an Executive Summary of investigative reports this lengthy and consider moving some of the details into appendices or additional attachments.

### **C. UFRB Proceedings**

As described above, in January 2023, the Final Investigative Report was submitted to the Use of Force Review Board, whose jurisdiction extends to vehicle pursuits resulting in death. Prior to the consideration of the case by the Board, MPD staff prepared the Decision Point Analysis Matrix. Although the DPAM identified two decision points – “Was a Vehicle Pursuit authorized?” and “Authorized Traffic Stop?” – our review found that there were many more decision points, including

- 1) whether it was worth engaging Hylton-Brown at all;
- 2) whether, once Hylton-Brown seemed determined to evade and avoid the MPD members, it made sense to continue following him, much less engage in a vehicle pursuit;
- 3) whether, and at what points during the pursuit, could have (and should have) the pursuit been terminated because the risks continued to escalate;
- 4) whether, and at what points during the incident, should Zabavsky have contacted the Major Crash Unit and IAD;
- 5) whether Zabavsky should have permitted Sutton to draft the initial MPD report on the incident; and

6) whether, and what points during the incident, should Zabavsky have preserved the crime scene.

The addition of these additional decision points might well have prompted a more spirited and thorough discussion of the vehicle pursuit in this case, even though it almost surely would have had no impact on its finding that the vehicle pursuit of Mr. Hylton-Brown violated MPD policy.

We agree with the UFRB's sole policy recommendation that the vehicle pursuit policy should be modified to include that it is the responsibility of all passengers in a vehicle involved in an improper pursuit to speak up during the pursuit and immediately report a vehicle pursuit policy violation. As noted above, that recommendation was rejected in early 2023 because it was considered at the same time as revisions to MPD's policy addressing the broader duty to intervene. Although that argument may have carried some force at the time, it should have been rejected in the interests of clarifying the shared responsibility of MPD members to prevent improper (and dangerous) vehicle pursuits. That is particularly the case because MPD apparently lacks the ability to track UFRB recommendations that are rejected for a timing-specific reason but are not reconsidered.

In addition, we note that the UFRB in this case – and in other cases – took a narrow view of its mandate. MPD General Order 901.07 provides:

UFRB shall review the actions of all members involved in the events leading up to the use of force, as well as in its use (not just the actions of the member who used force). The actions of the members leading up to *and following the use of force shall be reviewed* to identify commendable actions or conduct warranting corrective intervention or training.<sup>161</sup>

As discussed above, the UFRB did not review the actions of the MPD members that occurred before or after the vehicle pursuit and ensuing crash, and that this limitation on the scope of the UFRB's review has been consistent for at least the last several years. Not only is the unduly narrow view inconsistent with the plain language of the GO, but it is also inconsistent with the idea there is value added when a group of senior MPD supervisors and leaders reviews holistically a serious use of force to include what has happened before and after the use of force.

This need for a broader view of use of force incidents was recently underscored by the United States Supreme Court. In *Barnes v. Felix*, 605 U.S. \_\_\_ (May 15, 2025), the Supreme Court rejected the so-called “moment of threat” rule that had been embraced

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<sup>161</sup> Metropolitan Police Department, General Order, *Use of Force*, GO 901.07 (II)(J)( 7) (2024).

by certain federal circuits, which focused on evaluating the officer’s conduct solely “at the precise time an officer perceived the threat.”<sup>162</sup> Instead, the Supreme Court reiterated that the inquiry “must consider all the relevant circumstances, including facts and events leading up to the climactic moment.”<sup>163</sup> This analysis is consistent with prior rulings from the Court – which underlie use of force training curricula throughout the country – and which require the consideration of the “totality of the circumstances” when assessing whether a seizure is “objectively reasonable.”<sup>164</sup> The spirit of that broad view of “totality of the circumstances” is also consistent with the definition of the UFRB’s scope contained in MPD policy, but which the UFRB has narrowed in practice.

#### **D. Disciplinary Proceedings**

The disciplinary proceedings in this case were extraordinary and unusual in many respects, primarily because of the criminal charges brought against Officer Sutton and Lieutenant Zabavsky. As described in detail above, disciplinary proceedings were held in abeyance from the time of the incident (October 2020), through the indictment (September 2021), the conclusion of the trial (December 2022), and the sentencing (September 2024). And because of the USAO’s decision not to issue prosecutorial declinations as to Tejera and Al-Shrawi until after the jury returned its verdicts, none of the disciplinary matters went forward until January 2023, more than two years after the incident.<sup>165</sup>

We found the Notices of Proposed Adverse Action as to all four of the MPD members – Officers Sutton, Tejera, and Al-Shrawi, and Lieutenant Zabavsky – to be appropriate distillations of the facts set forth in the Final Investigative Report. The 20-day suspensions imposed on Officers Tejera and Al-Shrawi were generally consistent with the discipline imposed by MPD in other vehicle pursuit cases over the past ten years. In those cases, the details of which were shared with us by MPD, the suspensions imposed were between 20 and 30 days.

In contrast, we found the discipline imposed on Officer Sutton and Lieutenant Zabavsky to be grossly inadequate to the misconduct that led to their indictment and convictions by a jury. MPD internal investigators found both members to have violated the vehicle pursuit policy, to have made false statements, to have engaged in prohibited conduct as demonstrated by the unanimous jury verdicts, and to have engaged in

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<sup>162</sup> *Barnes v. Felix*, 605 U.S. \_\_ (May 15, 2025)

<sup>163</sup> *Id.*

<sup>164</sup> *Graham v. Connor*, 490 U.S. 386, 397; *Tennessee v. Garner*, 471 U.S. 1, 9 (1985).

<sup>165</sup> Because Officer Novick had resigned from MPD before the trial, he was not subject to the MPD internal disciplinary process. We did not speak with anyone from the USAO about the reasons for not issuing prosecutorial declinations until after the criminal case was completed.

conduct that is “prejudicial to the reputation and good order of the police force.” The trial evidence, jury verdicts, and sentences of incarceration imposed by the Court further reinforce the strength and validity of these findings.

Nor do the presidential pardons issued by President Trump, apparently based at least in part on his misunderstanding of the facts, change the underlying reality. The Internal Affairs Bureau, based on a report by one of its premier investigators, found that Sutton and Zabavsky engaged in egregious misconduct. The Disciplinary Review Division proposed termination for both members based on its review of the Internal Affairs report and the underlying evidence. And though the Presidential pardons extinguished the criminal consequences of those actions, they do not erase the facts themselves. The decision to reduce the discipline from termination to a 25-day suspension (Sutton) and termination to voluntary retirement and a \$2,500 fine (Zabavsky) undermined the integrity of the processes developed by MPD over many decades to create investigative and disciplinary systems that are fair, consistent, and non-political. Chief Smith’s public attack on the prosecution – which contradicted Chief Contee’s earlier expression of confidence in the jury verdict – paired with her misleading testimony to the DC Council and her failure to clarify her testimony when given the opportunity only compound the harm to MPD’s credibility.

It is true that Chief Smith had the power in effect to nullify the findings, conclusions, and recommendations of her own Department. However, her decision to impose such lenient discipline – without personally reviewing the evidence and relying solely on the views of two MPD lawyers – has sent a confusing and disturbing message to those members who work within that system and to all MPD members who are subject to it.

## **XII. Recommendations**

Based on our review of the vast documentary record in this matter, our interviews of key MPD personnel, our experience over the past 20 years working with and conducting oversight over MPD, and our knowledge of best practices in the law enforcement community more generally, we provide the following recommendations to MPD. Because MPD has in its response to the draft of this report rejected all of our recommendations and done so for insufficient and unconvincing reasons, we briefly describe MPD’s stated objections to each recommendation and our response.<sup>166</sup>

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<sup>166</sup> For our overall response to MPD’s objections to our draft report, see our July 14, 2025, letter attached to this report.

**A. Recommendation #1 – MPD Should Create a Policy Explicitly Prohibiting Obstruction of an Administrative or Criminal Investigation**

Actions that in any way obstruct or interfere with an administrative or criminal investigation threaten to undermine the integrity and accuracy of those investigations. For that reason, multiple federal and District of Columbia statutes address the various methods and means for obstructing investigations and explicitly prohibit them. Surprisingly, according to MPD personnel with whom we raised the matter – and our own review of relevant general orders – MPD does not have policies that specifically prohibit obstruction of an investigation or, more broadly, obstruction of justice.

MPD policy prohibits false statements but no policy specifically and explicitly prohibits obstruction. Although the IAB Final Investigative Report in this matter identified several false statements, the acts and omissions of Officer Sutton and Lieutenant Zabavsky were in some respects a better fit for obstruction of the investigation. Yet MPD did not and still does not have a policy that prohibits obstruction other than if they take the form of false statements. The grand jury found 15 overt acts that supported the indictment’s obstruction count, but only two of them that constituted false statements. That gap in MPD policy meant that the actions of Sutton and Zabavsky that impaired, impeded, and interfered with the investigation could not be labeled as a clear, distinct violation of MPD policy. Addressing this policy gap would promote accountability and preserve the integrity of administrative and criminal investigations.

MPD’s response claims that this recommendation is “already implemented.”<sup>167</sup> It plainly has not been. The General Order cited in MPD’s response, which includes vague and confusing language about “compromising a felony, or any other unlawful conduct,” does not address obstruction of justice. Our recommendation was based on information from IAB that no such obstruction of justice policy exists. IAB’s understanding, together with the opaque language of the policy cited by MPD, is persuasive evidence that such a policy plainly prohibiting obstruction of justice needs to be created.

**B. Recommendation #2--IAB Reports of Investigation Should Include an Executive Summary and Table of Contents**

We had no concerns with the substance of Agent Tilley’s report in this matter. The Final Investigative Report was thorough and reflected a mastery of the facts of a case that was more challenging than most because the USAO, for understandable reasons, screened off MPD’s Internal Affairs Bureau from the investigation and the evidence collection and analysis process prior to trial. Tilley’s Report contains a combination of facts developed through the trial process and the independent

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<sup>167</sup> MPD Response at 13.

investigation he conducted. Although it is somewhat repetitive, the Report reflects a through mastery of the relevant facts.

However, because the Report is so lengthy, it would have been helpful for Agent Tilley or one of his supervisors to have prepared a brief (five pages or less) executive summary and a table of contents for the report. The executive summary would have conveyed the basic facts and bottom-line findings of the report. A table of contents would have previewed for the reader where the report was going and the sequence of topics that would be covered. These two additions would have been especially helpful in a report of this length but would be helpful in both simple and complex cases – where the investigative reports are short but especially where they are long. While MPD supervisory personnel should not be excused from carefully reviewing IAB reports in their totality, we recommend that going forward Internal Affairs personnel should prepare an executive summary and table of contents to guide that review.

MPD rejects this recommendation as “duplicative and unnecessary for most cases.”<sup>168</sup> MPD’s response itself proves the value of both an executive summary and table of contents: it cites sections of the report that it claims serve the role of an executive summary, but they are 130 pages deep into the report. Although MPD correctly points out that most MPD reports are not as long as this one, a brief executive summary and table of contents are helpful in most if not all cases especially given how expansive IAB investigations are required to be and how many people within IAB need to review investigative reports, generally on a tight timeframe.

**C. Recommendation #3 – MPD Use of Force Policy and Training Should Incorporate the Totality of the Circumstances Test as Articulated in the Supreme Court’s 2025 Decision in *Barnes v. Felix***

The development of use of force policies and training to implement those policies have long relied on decisions by the United States Supreme Court to define the reasonableness and appropriateness of the use of deadly force and, by inference, all uses of force by law enforcement officers. This has been the case for at least 40 years, since the Court decided *Tennessee v. Garner* in 1985. Although the leading Supreme Court cases have generally arisen in the context of civil lawsuits against law enforcement officers, the principles articulated in those decisions apply to the development of balanced and appropriate use of force policies and the training on those policies.

The *Barnes v. Felix* decision deepens the judicial development of the concept of “totality of the circumstances.” It makes clear that “totality of the circumstances” is not limited to the circumstances that exist at the moment force is used but instead extends

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<sup>168</sup> *Id.*

to relevant events that occur before the “climactic moment.” As the Supreme Court pointed out in *Barnes*, this wider lens will in some cases benefit the officer through providing further justification for the use of force, while in other cases (such as *Barnes*) it will do the opposite. But it reinforces the recommendation we made in our 2016 report, and that IAB investigations have implemented to a substantial degree, that investigations of use of force – and especially deadly force – should not be artificially limited to the moment that force is used. Instead, the investigation should review an expanded set of facts to ensure that the full context of the interaction between law enforcement officer and civilian are captured and assessed.

MPD rejects this recommendation as “already implemented.”<sup>169</sup> This reflects an approach, consistently shown in its response to these recommendations, that there is no room for improvement in MPD’s policies, practices, and training. Given that *Barnes v. Felix* is the most significant Supreme Court decision addressing use of force in several decades, it is difficult to accept the notion that it should have no effect on the language of MPD policy and no impact on its training. The current use of force policy, GO 901.07, explicitly cites *Graham v. Connor*, the 1989 case that is relied on in law enforcement training throughout the country. Now that the Supreme Court has clarified the meaning of *Graham* through *Barnes v. Felix*, it is hard to understand why MPD would suggest that its policy and training should not be tweaked to fully incorporate this new decision.

#### **D. Recommendation #4 – The UFRB Should Make Improvements to the Decision Point Analysis Matrix**

MPD’s use of force policy requires the preparation of a decision point analysis matrix to assist the UFRB in considering the use of force described in each IAB investigative report. During the more than 20 years we have reviewed DPAMs, we have observed that to be most helpful, they must truly provide a review of all the relevant decision points and conduct some meaningful analysis.

We found the DPAM in this case to be more of a distillation of the 172-page report than an analysis, and we found that it did not identify a number of relevant decision points. To meaningfully assist the UFRB in its deliberations, we urge the UFRB and its staff to focus on the analytic purpose of the DPAM and do more than summarize the investigative report.

MPD rejects this recommendation as “not actionable.”<sup>170</sup> We do not claim that the DPAM is not used. Indeed, it is MPD policy because we recommended it approximately 20 years ago. Our point is that it is not living up to its potential. In our

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<sup>169</sup> *Id.*, at 13-14.

<sup>170</sup> *Id.*, at 14.

report, we identify a large number of decision points that were not included in the DPAM and refer specifically to observations from the former chair of the UFRB about the practical challenges he faced in employing DPAM with fidelity. Again, MPD seems reflexively opposed to acknowledging that its current practices are capable of improvement.

**E. Recommendation #5 – The UFRB Should Review the Totality of the Use of Force Including Relevant Facts and Events Before and After Force Was Used**

MPD’s policy requires the UFRB to review the actions of all MPD members involved in the use of force, “including events leading up to...and following the use of force.” Chief Carroll acknowledged that during his years serving on the UFRB, including as chair, it has generally limited itself to reviewing the use of force itself rather than the surrounding events. However, the surrounding events can frequently shed important light on the use of force itself, and whether there is evidence that the involved members knew that their conduct was improper--*i.e.* – whether their actions violated MPD policy.

For example, in this case, the post-crash actions of Officer Sutton and Lieutenant Zabavsky that formed the basis of the criminal obstruction of justice charges further supported an administrative finding that they violated the vehicle pursuit policy and knew that they had done so. Focusing narrowly on the use of force itself can lead to reviewing the use of force through too narrow a frame.

We made similar recommendations to the scope of IAB and UFRB’s review in our prior reports for the ODCA in 2021.<sup>171</sup> MPD previously agreed to implement these recommendations and has reported to us that the recommendation was implemented in UFRB practice and in MPD’s use of force policy in GO 901.07, as revised in 2022. As discussed above, GO 901.07 does require a broader review of use of force incidents. But, as illustrated here, it does not appear to be happening in practice at the UFRB level. Accordingly, we recommend that the UFRB expand in practice the scope of its review consistent with MPD’s written policy.

MPD argues that this requirement is already “required by policy.”<sup>172</sup> We agree. Our concern is that it is not followed in practice, which we demonstrate in this report.

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<sup>171</sup> See March 2021 Report and May 2021 Report.

<sup>172</sup> MPD Response at 14.

## F. Recommendation #6 – The Implementation of UFRB Recommendations Should Be Tracked

One of the functions of the UFRB is to determine whether the incident being reviewed highlights the need for changes in policy, training, equipment, or tactics that are not limited to the specific case but instead are applicable as a general matter to all MPD members. Based on its analysis, the UFRB can recommend to the MPD Chief changes on any of those dimensions.<sup>173</sup>

In this case, the UFRB made only one recommendation, which was that MPD's vehicle pursuit policy should be amended to clarify that it is the shared responsibility of all MPD members involved in a vehicle pursuit, including passengers, to follow the requirements of the policy. Specifically, according to the UFRB, this means that passengers in a vehicle conducting a pursuit must advise the driver if they believe the chase is improper, and if it is, the member must report the prohibited pursuit as misconduct.<sup>174</sup>

We were advised that this recommendation was not adopted by Chief Contee and his senior staff in early 2023 because, at about the same time, MPD was considering the scope of the broader duty to intervene in use of force and misconduct matters, and that implementing two overlapping changes at the same time might have caused unnecessary confusion.<sup>175</sup>

The problem is that MPD apparently does not systematically track UFRB recommended changes that are not adopted. Therefore, it has no mechanism to revisit recommendations that were not implemented for reasons other than the substance of the recommendation – whether because of issues of timing, temporary resource limitations, or other non-substantive reasons. We were told by former Office of Police Complaints Executive Director Michael Tobin that the failure to implement UFRB recommendations has been a frequent occurrence. This gap in MPD's processes allows otherwise proper and constructive recommendations to be neglected and forgotten. Therefore, we suggest that UFRB recommendations that are not implemented should be tracked and revisited on at least an annual basis.

MPD misunderstands our basis for the recommendation.<sup>176</sup> We understand the reasons why the UFRB recommendation to make explicit that all participants in a

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<sup>173</sup> MPD General Order, *Use of Force*, GO 901.07(II)(J)(b) and (e).

<sup>174</sup> The recommendation did not address whether the conduct must be reported even if the driver immediately ends or modifies the prohibited chase once the passenger speaks up.

<sup>175</sup> GO-PER-201.26 IV(6).

prohibited vehicle pursuit – even passengers in a vehicle – have a duty to end a prohibited pursuit was not accepted at the time it was considered in 2023. As we further explored this issue, we were advised by multiple sources that rejected UFRB recommendations are not tracked or revisited. If that is incorrect, MPD should share its tracking process.

**G. Recommendation #7 – The UFRB’s Recommendation in this Case to Revise the Vehicle Pursuit Policy Should Now be Adopted**

As described in Recommendation #7 above, the UFRB’s January 2023 recommendation growing out of the vehicle pursuit of Karon Hylton-Brown that the vehicle pursuit policy be modified to clearly establish the duties of a passenger in a car involved in a prohibited vehicle pursuit was not implemented for reasons that did not go to the merits of the recommendation but instead to its timing. Since the circumstances that prevented the adoption of the recommendation more than two years ago almost surely have changed, we recommend that the UFRB’s recommendation be promptly adopted and implemented.

MPD’s response to this recommendation is unconvincing.<sup>177</sup> Our understanding is that the recommendation to revise the vehicle pursuit policy was not adopted because the Department was simultaneously implementing a broad duty to intervene policy, GO 201.26, and that the vehicle pursuit policy revision was therefore viewed as “duplicative and unnecessary.” However, a reasonable officer would not necessarily translate the broad and general language in the duty to intervene policy to the context of a vehicle pursuit. Instead of continuing to view the specific revision of the vehicle pursuit policy as “duplicative and unnecessary,” especially given the notoriety of this case, a revision of the vehicle pursuit policy should instead be viewed as providing appropriate reinforcement in an especially important context at an important time.

**H. Recommendation #8 – The Buffer Period for the Audio of Body Worn Cameras Should Be Extended to Two Minutes**

In less than a decade, BWC footage has become an indispensable tool for conducting administrative and criminal investigations, in MPD and throughout the nation. BWC video can incriminate a law enforcement officer who is guilty of misconduct and exonerate an innocent officer in the face of fabricated claims of misconduct. Shortly after MPD introduced BWCs in 2016, the “video buffer” period – *i.e.*, the amount of videotape footage that is preserved before it is manually activated by the MPD member – was increased from 30 seconds to two minutes.

In 2022, the District of Columbia Office of Police Complaints (OPC) recommended that the BWC “audio buffer,” – *i.e.*, the amount of videotape footage that

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<sup>177</sup> *Id.*

is preserved *with recorded* audio that is preserved before it is manually activated by the MPD member – also be extended from the factory setting of 30 seconds to two minutes. In a brief but persuasive four-page memo, OPC set forth the reasons for extending the buffer: 1) enhancing evidence collection, 2) resolving community complaints, 3) improving training, 4) reducing civil liability, and 5) providing the police officer’s perspective on the relevant events. In September 2022, Chief Contee rejected the recommendation on the grounds that expanding the audio buffer would “essentially create where everything officers say during their shift would be recorded, including things like personnel-related discussions between employees and supervisors and even personal conversations while on break.”<sup>178</sup> We disagree with MPD’s position and believe it vastly overstates the intrusion on unrelated and sensitive conversations that would be caused by expanding the audio buffer. The collection of irrelevant and sensitive conversations would be limited to the two minutes before an incident requiring BWC activation arises rather than capturing all conversations, and such audio recordings would only be preserved in those cases in which a triggering BWC activation has occurred.<sup>179</sup> Indeed, it is hard to square this position with the fact that MPD already agreed that the video buffer – which could similarly capture unrelated and sensitive moments – should be extended to two minutes.

The virtue and utility of expanding the sound buffer to two minutes are convincingly demonstrated by this case. None of the involved MPD members activated their BWC until the accident took place, which means that none of the discussions in Officer Sutton’s car prior to the crash were captured, nor were the discussions between Sutton and Zabavsky during the pursuit. Those discussions might have provided further evidence that their violations of the vehicle pursuit policy were knowing and willful and might have provided further relevant evidence bearing on the state of mind of the various MPD members. On the other hand, the sound captured during that period might have provided exculpatory evidence, or at least mitigating evidence, suggesting that one or more of the members were unaware that their pursuit violated MPD policy. In any event, more relevant evidence is always better than less, and it is difficult to understand the reasons why the audio buffer should not be extended to be of the same duration as the video buffer.

Rather than addressing the substance of this recommendation, MPD’s response is to point to what other jurisdictions do, as though that should necessarily dictate

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<sup>178</sup> Letter from Robert J. Contee, III to Michael Tobin, Executive Director, D.C. Office of Police Complaints, September 9, 2022.

<sup>179</sup> Chief Contee’s letter to Mr. Tobin stated that MPD would be reaching out to other law enforcement agencies to determine whether they used a two-minute audio buffer. Based on our own very limited inquiries, we have learned that the Chicago Police Department uses a two-minute audio buffer.

MPD's policy and practice.<sup>180</sup> MPD showed leadership in 2017 when Chief Newsham expanded the video buffer to two minutes from the factory setting of 30 seconds. For the reasons set forth in our recommendation, MPD should enlarge its audio buffer to two minutes to match its video buffer. Our information on Chicago's two minute audio buffer, questioned in MPD's response, is based on information from Chicago Police Department Superintendent Larry Snelling on June 13, 2025.

**I. Recommendation #9 – The Chief of Police Should Familiarize Herself with the Record in High-Profile Cases**

It is vital that the Chief of Police, who is ultimately responsible for the discipline imposed on MPD members, be familiar with the facts of high-profile cases such that she can answer the questions asked by members of the community and elected representatives conducting oversight. It is safe to say that no case in Chief Smith's brief tenure has provoked more controversy and more discussion than the death of Mr. Hylton Brown, the criminal prosecution of Officer Sutton and Lieutenant Zabavsky, the January 2025 Presidential pardons, and the discipline imposed by MPD on both members. And yet, Chief Smith stated that she did not review the Final Report of Investigation, the Notices of Proposed Adverse Action, or any materials relating to the trial and convictions of Sutton and Zabavsky. As a result, she was unable to describe the rationale for the MPD discipline in either of two DC Council hearings, or in our interview.

Chief Smith mischaracterized the facts in her March 11 Council testimony, deferred to MPD lawyers to explain the rationale for the settlements with Sutton during our interview with her, and told the Council in its June 2025 hearing that she had left relevant materials in her office and would need to get back to the Council.

We fully understand the breadth and importance of the responsibilities of MPD chiefs in running the Department. But an important responsibility is to be familiar with the facts of significant cases and be able to articulate the reasons for her decisions. As the face of the department, the Chief must be able to speak to these decisions – especially those facing substantial public scrutiny – clearly and with all of the relevant facts in order to maintain the public's trust and confidence. Indeed, the failure to do so could very well undermine all other efforts employed by the Department to maintain the public's trust and credibility. We respectfully submit that Chief Smith failed to do so here and recommend that the Chief and her successors make it a practice to do so in the future.

MPD's response attributes to us claims that we do not make – *i.e.*, that Chief Smith was the MPD chief at the time of vehicle pursuit and Hylton-Brown's death – and

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<sup>180</sup> MPD response at 15.

offers new reasons why Chief Smith did not accurately respond to questions about the settlements with Officer Sutton and Lieutenant Zabavsky.<sup>181</sup> The new reasons do not square with what actually happened. None of the questions she was asked at the two DC Council hearings called for the disclosure of confidential personnel information. In saying it “rejects the premise of this recommendation,” MPD is rejecting the premise that the chief of police should familiarize herself with the facts relating to significant cases, including in this case the most consequential –and highly-publicized – disciplinary decision during Chief Smith’s tenure. This cannot be correct and the Chief’s office cannot seriously contend otherwise. The Chief is the face of the Department and must be prepared to act as such when the spotlight shines brightest.

**J. Recommendation #10 – The Chief of Police Should Issue Decisional Memos Providing the Reasons for Her Decisions**

To ensure that MPD maintains a record of fair, consistent, and defensible disciplinary decisions, whether such discipline is imposed through the unilateral imposition of discipline by the MPD chief or by settlement, MPD should prepare decisional memos that set forth the factual and policy basis for the discipline. Such memos will serve to ensure a disciplinary system that is rational, fair, and consistent and that can serve as the basis for comparison in future cases involving similar conduct.

Our review of MPD’s disciplinary framework as set forth in General Order 120.21 and our understanding of MPD’s somewhat complicated disciplinary and appellate system tell us that no such decisional memos are required or completed as a discretionary matter. To enhance the transparency and regularity of the disciplinary process, we recommend that such decisional memos setting forth the disciplinary decision and the factual and policy basis for each decision would enhance the disciplinary process in every case in which the discipline involves either a suspension of more than 10 days or termination.

MPD’s response to this recommendation suggests that it already issues decisional memos, although we see no requirement in GO 120.21 requiring them and do not recall having seen examples of them. We would welcome further discussions with MPD to resolve this recommendation.

**K. Recommendation #11 – The Chief of Police Should Share the Reasons for Rejecting IAB Findings and DRD Recommendations with Relevant Personnel**

MPD personnel in the Internal Affairs Division, and in the elite Force Investigation Team of the IAD, conduct serious use of force and misconduct investigations. They play a critical role in ensuring that such matters are investigated

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<sup>181</sup> *Id.*

by well-trained and professional investigators who possess the skill and tenacity to collect the relevant facts and arrive at findings and conclusions that are fully supported by the facts. MPD has worked to professionalize its internal investigations over the past 25 years, ever since the U.S. Department of Justice found the quality of investigations to be unacceptably poor. The FIT investigation in this matter reflected solid and professional work.

The same improvements have been made over the same period of time in the MPD disciplinary process. In a series of *Washington Post* articles in late 1998 that triggered the Justice Department pattern-or-practice investigation, the disciplinary system was found to be, at best, in disarray, and at worst non-existent in many cases.<sup>182</sup> It has come a long way since then. The Disciplinary Review Division appears to be a professional operation competently led and professionally run.

As described in detail in this report, the administrative investigation substantiated a number of violations – of the vehicle pursuit policy, the prohibition against making false statements, and the rules governing the use of body-worn cameras – against Officer Sutton and Lieutenant Zabavsky, as well as the officers who were passengers in Sutton’s vehicle. Based on the same basic facts, a federal jury returned unanimous guilty verdicts against Sutton and Zabavsky. The investigative and disciplinary process produced recommendations that Officer Sutton and Lieutenant Zabavsky should be terminated from MPD. That discipline was dramatically reduced during the settlement process to a 25-day suspension for Sutton and a minimal fine for Zabavsky, with the understanding that he would retire from MPD.

Neither Chief Smith nor anyone in the MPD front office has explained the outcome in this case to either relevant IAB personnel or DRD personnel. In a paramilitary organization such as MPD, members are unlikely to complain about not being consulted or informed of the reasons for implicitly or explicitly rejecting the findings and recommendations they have worked hard to develop. But as a principle of good management and promoting institutional morale, cohesion, and transparency, the Chief or her designee should provide an explanation – either in person or in writing – for any disciplinary recommendation that exceeds a 10-day suspension that is substantially reduced by the Chief of Police. The Department owes its members involved in the process such an explanation.

MPD in effect rejects the common-sense suggestion that IAB and DRD personnel be provided with constructive feedback. When the findings of an IAB investigator or

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<sup>182</sup> Jeff Leen, Jo Craven, David Jackson, and Sari Horwitz, *District Police Lead Nation in Shootings – Lack of Training, Supervision Implicated as Key Factors*, THE WASHINGTON POST ((Nov. 15, 1998) (first of five articles)).

the disciplinary recommendations of DRD personnel are rejected or substantially modified, they deserve to know why. Chief Smith and her lawyers believe they identified flaws in the IAB findings and conclusions that have not been communicated to the investigator, and flaws in the termination recommendations that have not been communicated to DRD. In the absence of such feedback, there is the serious risk that people serving in those important functions will conclude that factors other than the merits of a case drive disciplinary decisions, which could demoralize personnel working in these important roles. Such feedback will not compromise the independence of those functions. Quite the contrary – it will facilitate a more coordinated and transparent system.<sup>183</sup>

### **XIII. Conclusion**

Our review of this case is the last in a series of reviews we have conducted since 2018 involving the deaths of young Black men caused by MPD members. The events that followed the vehicle pursuit and crash that killed Karon Hylton-Brown in October 2020 have been filled with twists, turns, detours, and delays – and were not fully resolved until more than four years after Mr. Hylton-Brown’s death. The US Attorney’s Office conducted a lengthy criminal investigation that led to the indictment of Officer Sutton and Lieutenant Zabavsky by a grand jury on profoundly serious charges, including second-degree murder for Sutton, and obstruction of justice for both Sutton and Zabavsky. The charges were the basis of a nine-week federal jury trial, which ended with the conviction of Sutton and Zabavsky and, almost two years later, with substantial sentences of imprisonment. Although their appeals had not yet run their course, our review of the trial proceedings and post-trial motions suggests that their chances of success on appeal were small.

With President Trump’s grant of full pardons outside the normal channels of the pardon process, without any direct involvement of MPD but apparently in response to pressure from the police union and a grossly inaccurate understanding of the facts, the court proceedings abruptly ended. MPD’s response to the pardons and Chief Smith’s statements about them failed to address legitimate concerns about a lack of accountability. When what followed were settlements negotiated with Sutton and Zabavsky that were extremely lenient and not explained publicly, it further undermined the accountability and transparency that are so important for any major city police department in maintaining trust with the community. Chief Smith’s unwillingness or inability to explain the outcomes in two DC Council hearings and our

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<sup>183</sup> We have been advised by DRD Director Hobie Hong that since 2019, only 15% of the MPD members for whom termination has been proposed by DRD have actually been terminated. According to recent news accounts, this compares with a rate of 90% of termination recommendations being implemented by the Commissioner of the New York City Police Department. *Tisch Refuses to Fire Officer Who Killed Driver, Despite Judge’s Finding*, THE NEW YORK TIMES (July 3, 2025) <https://www.nytimes.com/2025/07/03/nyregion/tisch-rivera-nypd-firing-decision.html>

interview with her – and to explain why MPD did not follow through with the recommendations of termination advocated by experienced MPD personnel – have further exacerbated the situation.

MPD owes the D.C. community and the public a robust and reliable system for investigating, reviewing, and internally adjudicating uses of force and misconduct. That system must ensure that appropriate policies are in place for investigating serious uses of force, that MPD investigators fully and properly investigate such cases, that the Use of Force Review Board is demanding and rigorous in its reviews of serious uses of force, that the Disciplinary Review Division fairly and consistently proposes discipline for MPD members who have violated policy and engaged in misconduct. But that system fails unless the ultimate discipline imposed by MPD is fair and credible. Ultimately, that responsibility lies with the MPD Chief of Police – the buck stops with her. In this case, the buck was dropped.

July 2025



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Michael R. Bromwich

Michael G. Scavelli  
Ida Adibi  
Lisa Arnold



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

July 9, 2025

Kathleen Patterson  
D.C. Auditor  
1331 Pennsylvania Avenue, N.W.  
Suite 800S  
Washington, D.C. 20004

Dear Ms. Patterson,

Thank you for providing the Metropolitan Police Department (MPD) with an opportunity to review and respond to the District of Columbia Auditor's (ODCA) draft audit, "*The Metropolitan Police Department and the Use of Deadly Force: The Karon Hylton-Brown Case.*" We recognize the critical nature of this event for the community, the Department, Officer Terence Sutton, and Lieutenant Andrew Zabavsky, and hoped that, consistent with past audits, the audit would present a balanced, impartial review and best-practice recommendations for the MPD to implement. Unfortunately, the audit failed to meet these expectations as detailed below.

At its core, the audit challenged the Department's disagreement with the jury's findings in the criminal cases involving Officer Sutton and Lieutenant Zabavsky. Put simply, the Department reached a different conclusion because it had access to information that the jury was precluded from hearing and had the knowledge of MPD practice and policy, which the jury did not. Among other omissions, the jury was prohibited from hearing about Mr. Hylton-Brown's extensive and violent criminal history, that he was a member of the KDY gang that caused havoc to this community,<sup>1</sup> that he was wearing an ankle monitor and carrying over \$3,000 at the time of the incident, or that the Fourth District crime suppression team (CST) including Officer Sutton and Lieutenant Zabavsky, were briefed just a short time before this attempted stop by another officer concerned about in-fighting within the KDY gang because of her earlier observations of Mr. Hylton-Brown that evening. These facts, in addition to Mr. Hylton-Brown's flight from police and the numerous traffic violations they observed him commit, provided a legal basis for the members to conduct a *Terry*<sup>2</sup> stop. Instead, the jury was left with the incorrect impression

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<sup>1</sup> <https://www.washingtonpost.com/dc-md-va/2025/04/23/kennedy-street-crew-sentenced-dc/>  
The last of 17 members of D.C.'s notorious Kennedy Street Crew convicted in a sweeping gang investigation were sentenced to prison this month, capping a sprawling probe of what authorities have labeled one of the city's most violent and sophisticated street operations. Among them was [name omitted] whom prosecutors said helped lead a criminal enterprise that for years terrorized a roughly 12-block stretch of Northwest Washington's Brightwood Park neighborhood, where residents lived in the shadow of gun violence tied to the drug trade. 'Put simply, the KDY Crew is a driver of the cycle of violence associated with drug trafficking and firearms that has plagued the Kennedy Street neighborhood for years,' assistant U.S. attorney Matthew W. Kinsky wrote in a court memorandum.

<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1.

that the police were solely attempting to stop Mr. Hylton-Brown, because he was not wearing a helmet.

The murder charge against Officer Sutton was unsupported by the undisputed facts of the case. Officer Sutton's vehicle never made physical contact with the moped and was three car-lengths behind the moped at the time Mr. Hylton-Brown pulled out onto Georgia Avenue. The Major Crash detective expressly found that Mr. Hylton-Brown was the cause of the accident because he failed to yield the right of way when he entered Georgia Avenue, but again, the jury was prohibited from hearing this information. The law authorizes police to stop suspects, and while MPD's policy is more restrictive than the law, an administrative violation of MPD policy does not constitute a criminal violation of the law.

Similarly, the obstruction of justice charges do not stand up to scrutiny. Both Officer Sutton and Lieutenant Zabavsky immediately activated their BWCs following the crash and CST members promptly provided first aid to Mr. Hylton-Brown. Within three minutes of the crash, Lieutenant Zabavsky requested an ambulance and spoke with the EMT personnel once the ambulance was on the scene. Officer Sutton immediately checked on the welfare of the individuals in the striking vehicle, obtained their information, and took photos on the scene. The CST members kept their BWCs activated the entire 22 minutes that they were on the scene of this accident, with Officer Sutton and Lieutenant Zabavsky only deactivating their BWCs after the ambulance had left the scene.

Much of the obstruction case relied on a *draft* crash report started by Officer Sutton, which he prepared without a review of his BWC, never reviewed, and never finalized. His draft report described Mr. Hylton-Brown as "unresponsive," while the prosecution argued he should have used the word "unconscious." The prosecution criticized Officer Sutton's draft description of Mr. Hylton-Brown's injury as a "superficial abrasion on the left eyebrow line" even though the independent Medical Examiner described it similarly as a "roughly 1-inch vaguely circular abrasion on his forehead." Before Officer Sutton had a chance to finalize the report, it was taken over by the Major Crash detective assigned to the case who stated in the Internal Affairs report that he did not find any inconsistencies or issues with Officer Sutton's draft crash report. In sum, parsing word choices in a draft report that was never finalized, reviewed, or submitted simply does not support the finding of obstruction of justice.

The author of the audit, Mr. Michael Bromwich, made clear throughout the audit that he believed that both Officer Sutton and Lieutenant Zabavsky should have been terminated from MPD. However, ultimate responsibility for the decision and discipline imposed in these matters lies with me. I acknowledge and respect that others feel strongly regarding these cases, but I am confident I made the correct decision based on the totality of the circumstances, including the information the jury was not permitted to hear, my experience in law enforcement, and comparable administrative cases. Accordingly, and as detailed more thoroughly below, I reject the audit's findings and recommendations.

### **The Audit Ignored the Legal Effect of the Pardons**

While MPD based its ultimate disciplinary decisions for Officer Sutton and Lieutenant Zabavsky upon its own thorough independent review, it is also important to recognize the controlling case law governing pardons, which was not addressed in the audit. When the D.C. Circuit Court *per curiam* ordered that the judgments against Officer Sutton and Lieutenant Zabavsky to be vacated and the cases to be remanded with instruction to dismiss them as moot, it did so following the precedent established in *U.S. v. Schaffer*, 240 F. 3d 35 (D.C. Cir. 2001) (*en banc*). *Schaefer* arose out of the December 22, 2000, full and unconditional pardon by then-President Bill Clinton where the independent counsel advanced the suggestion that Schaffer's criminal conviction was "established as a matter of law" even after the pardon was issued. *Id.* at 37-38. The D.C. Circuit disagreed, stating that the suggestion that Schaffer's conviction was a *fait accompli* was wrong since "[f]inality was never reached on the legal question of Schaffer's guilt." *Id.* at 38. The Circuit Court in *Schaffer* explained the effect of such a vacatur and dismissal following a Presidential pardon as follows:

When a case becomes moot on appeal, whether it be during initial review or in connection with consideration of a petition for rehearing or rehearing *en banc*, this court generally vacates the District Court's judgment, vacates any outstanding panel decisions, and remands to the District Court with direction to dismiss. [internal citations omitted] Because the present mootness results not from any voluntary acts of settlement or withdrawal by Schaffer, but from the unpredictable grace of a presidential pardon, vacatur is here just and appropriate. *See U.S. Bancorp*, 513 U.S. at 24-25.

Given this posture of the case, the efficacy of the jury verdict against Schaffer remains only an unanswered question lost to the same mootness that the independent counsel so readily concedes.

*Id.*

Like in *Schaffer*, Officer Sutton's and Lieutenant Zabavsky's cases were pending appeal at the time of the pardons. The jury verdicts in the district court were merely the first phase of the criminal process that became moot upon entry of the pardon. The audit's repeated reliance upon those vacated verdicts is misplaced given this jurisdiction's binding precedent in the *Schaffer* decision, which the audit failed to consider.

### **Consistent with *Schaffer*, MPD Followed its Administrative Process for the Administrative Violations**

When the indictment was issued in this matter, Officer Sutton and Lieutenant Zabavsky were placed on indefinite suspension without pay pursuant to the collective bargaining agreement and MPD practice. Thereafter, these members remained in this status until the criminal matter concluded consistent again with MPD practice and the fact that the members were on release pending their appeals, as the trial court admitted there were substantial questions to be decided on appeal. To be clear, MPD was not involved in the executive pardons that were issued to these members.

Once the pardons were issued, MPD followed its administrative process, consistent with *Schaffer*. After the court vacated the convictions and dismissed the criminal cases, MPD conducted a thorough review of the remaining administrative matter. Following MPD's practice under the discipline system in place at the time, this review was conducted by the Office of the General Counsel, which found administrative, not criminal, misconduct, and identified the appropriate disciplinary penalty consistent with past comparable discipline cases. This review also recognized Officer Sutton and Lieutenant Zabavsky's years of exemplary service to the community and high achieving performance evaluations.

### **This was an Unprecedented Prosecution**

Any impartial evaluation of this matter must begin with the acknowledgement that the prosecution in this matter was unprecedented. It is undisputed that no law enforcement officer in the nation had *ever* been criminally charged for the law enforcement action that occurred here. Police pursuits are part of law enforcement operations nationwide, and in some cases have led to tragic outcomes. Yet no law enforcement officer in any other jurisdiction had ever been criminally prosecuted for murder as the result of a pursuit before this case. Indeed, the audit cited no other cases and completely ignored the fact that a police officer had never before been prosecuted for murder for engaging in a pursuit. It is inexplicable how a police pursuit can be considered murder without a change in the murder statute. The police must be able to engage in these core functions without fear that they will be subjected to unprecedented criminal prosecution. Neither Officer Sutton nor Lieutenant Zabavsky could ever have imagined that their actions would be considered criminal since no police officer had ever been prosecuted for engaging in such routine law enforcement operations like this before. While the fact that this prosecution was literally unprecedented was undisputed by the prosecution, Officer Sutton and Lieutenant Zabavsky were prohibited from presenting this information to the jury.

### **The Murder Charge was Unsupported**

MPD determined that Officer Sutton was not the cause of Mr. Hylton-Brown's death, recognizing the voluntary nature of Mr. Hylton-Brown's actions. First, to find that Officer Sutton caused his death, MPD would have to believe that somehow Officer Sutton caused Mr. Hylton-Brown to flee from the attempted traffic stop or that Mr. Hylton-Brown did not have a legal obligation to stop for the police, both of which are nonsensical. Instead, Mr. Hylton-Brown chose to flee from the police, drive in a reckless manner, operate a vehicle under the influence of multiple drugs, and forgo wearing a helmet. Ultimately, it was Mr. Hylton-Brown who chose to fail to yield the right of way when exiting the alley onto Georgia Avenue, and indeed the Major Crash detective assigned to this case determined that Mr. Hylton-Brown was the cause of the accident, due to his failure to yield the right of way when he exited the alley.

The murder charge was also unsupported by the undisputed facts that the MPD vehicle never made physical contact with the moped and was three car-lengths behind the moped at the time Mr. Hylton-Brown pulled out onto Georgia Avenue. It is important to understand that the MPD pursuit policy is more restrictive than the law; a murder conclusion ignores that the law authorizes police to stop suspects and does not constrain

police from following traffic regulations when in pursuit of a suspected violator of the law. Violation of an agency policy intentionally drafted to be more restrictive than the governing law cannot serve as a basis for a criminal charge.

The jury was also precluded from hearing any evidence related to Mr. Hylton-Brown's extensive criminal history as a violent drug dealer that included multiple arrests for illegally possessing a gun, assault, assault on a police officer, robbery, and selling drugs, and the fact that he was a member of the KDY gang. These prior criminal offenses all occurred in the same area around Kennedy Street (PSA 403), which is why Mr. Hylton-Brown was well known to these CST members. The court also precluded evidence that Mr. Hylton-Brown was wearing an ankle monitor and \$3,186 in U.S. currency was strapped to his leg at the time of this matter. Relatedly, a Fourth District officer was precluded from testifying about her concerns that she shared with Sutton, Zabavsky and the other CST members just minutes before their encounter with Mr. Hylton-Brown – namely, that there was in-fighting within the KDY gang and that she feared retaliation because she saw Mr. Hylton-Brown a little earlier that evening involved in a verbal altercation with another KDY member that almost turned violent.

These facts, in addition to the testimony that Mr. Hylton-Brown was turning his body in such a way as to conceal something on his person (“blading”) while he operated the moped, supported the members' argument that there were several reasons they wanted to stop Mr. Hylton-Brown in addition to his flight from police and the numerous traffic violations they observed him commit. However, the court precluded this evidence and did not allow the defense to argue that there was a legal basis to conduct a *Terry* stop. Instead, the jury was left with the incorrect impression that the police were solely attempting to stop Mr. Hylton-Brown, because he was not wearing a helmet. While the jury was precluded from hearing these facts, they were available to Mr. Bromwich but were omitted or not considered in the audit.

### **The Obstruction of Justice Charges were Unsupported**

MPD found that neither member obstructed justice nor attempted to obstruct justice in this matter. The audit's comparison of MPD's resolution of the administrative matter to the jury verdict in the criminal matter was inappropriate for the following three reasons: 1) the jury verdict was vacated by the dismissal and any reliance on that verdict is inconsistent with this jurisdiction's binding precedent in *Schaffer*, 2) MPD conducted a complete review of *all* the evidence in this matter, including evidence and arguments the jury was prevented from hearing, and 3) MPD is in the best position to understand MPD policy and practice with which the jury was unfamiliar. Moreover, the audit misstates or outright omits facts and information, evidence, and testimony that contradicts the jury's obstruction of justice finding.

The members took no action to obstruct justice on the scene

The Department's review of all of the evidence and application of MPD policy<sup>3</sup> revealed that these members' actions that evening was the opposite of a "cover-up," and the evidence relied upon by the prosecution did not support such a claim. The actions of the members on the scene of the crash belie any attempt to hide the incident. If the members intended to conceal the incident, they would not have stayed on the scene and communicated on the radio, as they did that evening. Instead of leaving or letting other members handle the crash, the members activated their BWC as soon as they exited the CST vehicle and rushed to provide first aid to Mr. Hylton-Brown. Within three minutes of the crash, Lieutenant Zabavsky notified the dispatcher of the accident and requested an ambulance be sent to the scene. Lieutenant Zabavsky spoke with the EMT personnel once the ambulance was on the scene. Prior to leaving the scene, Lieutenant Zabavsky requested MPD report numbers. Officer Sutton immediately checked on the welfare of the individuals in the striking vehicle, obtained their information, and took photos on the scene. These affirmative actions demonstrate that the members actively assisted on the scene of the crash and disprove that they tried to conceal the incident. These facts were not included in the audit.

The CST members kept their BWCs activated the entire 22 minutes that they were on the scene of this accident. The prosecution's claim that Officer Sutton and Lieutenant Zabavsky prematurely deactivated their BWC to discuss their alleged cover-up is an assertion with literally no evidence to support the theory. To the contrary, they deactivated their BWCs after the ambulance had left the scene, after receiving report numbers, and just prior to the other CST members departing the scene.

Next, the jury was incorrectly led to believe that MPD policy and practice required Officer Sutton and Lieutenant Zabavsky to request that the Major Crash Investigations Unit ("Major Crash") respond to the scene immediately at the time of the crash. To be clear, MPD policy is not specific as to *when* Major Crash should be called. Instead, the directive only requires that Major Crash be notified for a fatality or a crash involving a serious injury in which the person may die. The timing of a Major Crash notification has an element of judgment. Here, Lieutenant Zabavsky did notify Major Crash as soon as he received notification from the hospital that Mr. Hylton-Brown's injuries were likely fatal. MPD's review did not find any misconduct for failing to summon Major Crash from the scene since the testimony at trial was that Mr. Hylton-Brown was unconscious but breathing. Further, Officer Sutton was recorded asking "is he [Hylton-Brown] up?" to the officers providing first aid, reflecting his perception that Mr. Hylton-Brown had been knocked out but would regain consciousness.

Some of the most instructive trial testimony on this point was provided by Michael Miller who was the lead detective in the Department's Major Crash unit for 26 years before his

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<sup>3</sup> MPD's Office of the General Counsel (OGC) has reviewed several dozen pursuit investigations as part of its review of discipline cases, knows MPD's vehicular pursuit policy and practice, and evaluated this pursuit in that context. By contrast, the defense was precluded from questioning the Internal Affairs official at the criminal trial regarding other pursuit investigations; therefore, the jury did not possess any information about other pursuit investigations and had no point of reference for its deliberations.

retirement in 2016. In fact, Mr. Miller was the subject matter expert who helped draft the Department's general order regarding traffic investigations when Major Crash was first created. Mr. Miller testified that "everything was being taken care of" by Officer Sutton, Lieutenant Zabavsky, and the other CST members at the crash scene, that the crash scene was continually secured, and that Officer Sutton, Lieutenant Zabavsky, and the other CST members did "what they were supposed to do," and complied with the MPD general order. Further, he testified there was no unreasonable delay in the notification to Major Crash. Mr. Bromwich failed to include any reference to Mr. Miller's testimony in the audit.

The members took no action to obstruct justice at the station

The members' actions at the station show that they acted diligently. After leaving the scene, they responded directly to the station and Lieutenant Zabavsky and Officer Sutton reported to Watch Commander Franklin Porter. During this initial conversation, it is undisputed that Lieutenant Zabavsky told his supervisor "we tried to stop" Mr. Hylton-Brown. After Watch Commander Porter responded that it would not be their fault if the moped fled from a stop and was involved in an accident, Officer Sutton did not downplay or minimize their involvement but rather clarified that the members had been following the moped for two minutes. Inexplicably, this conversation was omitted from the audit.

Lieutenant Zabavsky continued to meet with Watch Commander Porter at the station while Officer Sutton prepared the crash report. Lieutenant Zabavsky agreed with Watch Commander Porter during their second conversation that the attempted stop had turned into a pursuit.<sup>4</sup> Also during this time, the CST members were communicating with the officer present at the hospital with Mr. Hylton-Brown. Once that officer reported that Mr. Hylton-Brown's injuries were critical, Lieutenant Zabavsky immediately called Major Crash on his own initiative and reported this information to Watch Commander Porter. Thereafter, Lieutenant Zabavsky continued to communicate with his supervisor at the station and on the scene while Major Crash responded. Finally, before checking off that shift, Lieutenant Zabavsky designated ("tagged") the BWC footage involved in this matter for investigation, which preserved the BWC for a longer period of time than the normal retention period.<sup>5</sup> Again, these actions are consistent with MPD policy and practice and discredit the theory that the members were attempting a "cover-up."

The draft crash report did not support an obstruction of justice charge

There is no merit to the prosecution's assertion that the *draft* crash report prepared by Officer Sutton was untruthful or otherwise supported their "cover-up" claim. After returning to the station, Officer Sutton started drafting the crash report in the Department's report writing system. The Department's review determined that this draft report fairly described the matter and was consistent with MPD report writing standards. Officer Sutton

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<sup>4</sup> Again, the audit misstates material facts in this matter. According to the audit, IAD concluded that Lieutenant Zabavsky "did not acknowledge that the incident was a vehicle pursuit" during this conversation with Watch Commander Porter at the station. Audit pg. 28. The IAD report did not make this finding. To the contrary, the record reflects that both men agreed the attempted stop turned into a pursuit during their second conversation that evening.

<sup>5</sup> This information was also not included in the audit.

appropriately ceased those efforts once he received the calls from the hospital that made clear that Major Crash would handle the investigation. Officer Sutton did not review any BWC footage during the time he was drafting the report.

During the criminal trial, the prosecution argued that word choices Officer Sutton used in the draft report supported the obstruction of justice charge. The draft report described Mr. Hylton-Brown as “unresponsive,” while the prosecution argued it should have stated “unconscious.” The prosecution challenged the description of the injury as a “superficial abrasion on the left eyebrow line” when in reality, the autopsy report validated the draft report’s description of the injury, describing it as a “roughly 1-inch vaguely circular abrasion on his forehead.” The prosecution disputed Officer Sutton’s draft description of the vehicle damage; yet, the photos of the striking vehicle support the draft report’s description of the vehicle damage.

Police policy expert Mr. Miller also found Officer Sutton’s draft report to be quite detailed, which would not have been the case if he wanted to conceal the facts. And notwithstanding the prosecution’s semantics arguments, the Major Crash detective did not note any inconsistencies or issues with the draft report prepared by Officer Sutton, and, in fact, he relied upon it to complete the final crash report. Although these facts were included in the IAD report, they were not included in the audit. IAD Report pg. 65.

In summary, MPD’s review found that the members’ actions on the scene and subsequently at the station complied with MPD policy and practice and were not criminal.

### **The Audit Ignored Significant Prosecutorial Issues**

In addition to the unprecedented nature of this prosecution, there were several other irregularities that cannot be ignored, including at least two significant *Brady*<sup>6</sup> violations committed by the prosecution. The audit failed to include any discussion of these events and thereby fails to present a balanced consideration of this matter. In fact, the audit inexplicably claimed that “there is no evidence that the prosecutions were handled in anything other than a professional and apolitical manner.”

The first violation involved an eyewitness to the incident who voluntarily provided a statement to an uninvolved MPD officer shortly after the inditement because he “didn’t want to see somebody [Officer Sutton and Lieutenant Zabavsky] get in trouble for something they didn’t do.” In his initial statement that was recorded on BWC, the witness provided information favorable to the defense stating that he saw Mr. Hylton-Brown throw something when he was being followed by the police, which would support the members’ position that they had reasonable articulable suspicion for a *Terry* stop. However, instead of promptly providing this exculpatory evidence to the defense, the prosecution delayed informing the defense while they separately met with the witness. Ultimately, this witness recanted his favorable testimony and stated that the prosecution’s investigator, Special Agent Sean Ricardi, told him to “just say you lied, and you’ll never have to see me again.” See *U.S. v. Sutton*, December 6, 2022 trial transcript.

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<sup>6</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

The second *Brady* violation involved a prosecution witness with a criminal record. The prosecution not only failed to disclose the witness's criminal record to the defense, it affirmatively represented in open court that the witness did *not* have a criminal record. Undisputed testimony in the criminal trial showed that Special Agent Ricardi provided the prosecutors with this witness's criminal record, which included the conviction at issue, prior to a witness conference. But during the trial the same prosecutor represented to the Court and defense counsel that the witness did not have a criminal record. This witness then proceeded to provide false testimony regarding his criminal record. This falsity was only brought to light by defense counsel when it challenged the prosecution. Neither of these prosecutorial issues were mentioned in the audit.

### **The Audit Contained Substantive Errors and Omissions**

While it is clear that Mr. Bromwich disagreed with the discipline imposed in this case, the audit itself contained several substantive errors and omissions that cannot stand unaddressed. In short, Mr. Bromwich viewed and included only the evidence presented by the criminal prosecutors and did not include arguments and evidence supportive of the sworn members even though the Department provided Mr. Bromwich with full access to the complete criminal record and administrative file. Further, the material facts related to the attempted stop, crash, and conversations at the district station were also omitted or misstated in the audit. As a result, the audit did not accurately describe the circumstances regarding this matter.

#### The audit omitted and misconstrued material facts regarding the attempted stop and the crash

The audit misstated and omitted important facts and arguments regarding the members' basis for attempting to conduct a *Terry* stop. As described above, Mr. Hylton-Brown was a member of the KDY gang with a lengthy criminal history, but this information was not included in the audit. Instead, the audit misleadingly indicated that Mr. Hylton-Brown "was not wanted on any criminal charges *at the time of the incident*" and that the KDY gang was a "loosely affiliated gang." Audit pgs. 12 & 49. These statements are contradicted by Mr. Hylton-Brown's extensive criminal record, including his arrests for possession with the intent to distribute a controlled substance and his status as a fugitive from justice six months prior to this incident, which was detailed in the IAD report provided to Mr. Bromwich. IAD Audit pg. 117. Further, no impartial reviewer would describe the KDY criminal gang as a "loosely affiliated gang."<sup>7</sup> The fact that the members were precluded from arguing they were attempting to make a *Terry* stop and the factors that supported that attempted stop were also omitted from the audit.

As mentioned above, the audit omitted mention of Mr. Hylton-Brown's culpability for failing to yield the right-of-way when he entered Georgia Avenue, a violation of traffic laws cited both in the Internal Affairs report and determined to be the cause of the accident by the Major Crash detective. Worse, the audit apparently invented a contributing factor to the crash, asserting that "because of obstructed views, neither Hylton-Brown nor the driver

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<sup>7</sup> See fn 1.

of the Toyota had an opportunity to avoid the impact” There is no evidence in either the IAD report or the criminal trial record to support this claim. Indeed, not even the criminal prosecutors put forth such an argument. Yet Mr. Bromwich proffered this groundless “obstructed view” claim as fact.

The audit also sought to portray this matter as a lengthy pursuit at dangerous speeds, which it was not. The audit stated that Hylton-Brown was pursued by police for *several* minutes and described it as a “lengthy pursuit.” Audit pgs. 1, 12, & 13. In fact, the pursuit was three minutes in duration. However, the audit never provided this exact time, which is always a critical detail in a police pursuit. IAD report pg. 115. Similarly, the audit only provided “up to 40 mph” as the speed of the CST vehicle. However, the IAD report described in detail how the CST vehicle also travelled at low speeds and included that the vehicles stopped at times, which would demonstrate to an impartial reviewer that this was a comparatively low-speed pursuit. *Id.* at 80-82. Similarly, the audit claimed that the CST vehicle was in “close pursuit” in the alley before the accident when in actuality the police vehicle never made contact and was three car-lengths behind the moped.

The audit never addressed Mr. Hylton-Brown’s decision-making on the evening that resulted in his death and was did not provide a full accounting of the drugs and alcohol that were in Mr. Hylton-Brown’s system on the night of the accident. The audit only stated there was evidence of two drugs – marijuana and oxycodone – while the hospital tests also detected a third drug (Benzodiazepine) in Mr. Hylton-Brown’s system. While it is true that the autopsy conducted three days after the accident did not detect this third drug, this discrepancy should have at the very least been noted to present the complete evidence on such a crucial issue. Audit pg. 14. In addition, this portion of the audit stated that the autopsy did not show evidence of alcohol in Mr. Hylton-Brown’s system but, again, this presented an incomplete picture. *Id.* In fact, the toxicology records *did* show that acetone – a form of alcohol – *was* detected in Mr. Hylton-Brown’s blood on the night of the accident.<sup>8</sup> In addition, Officer Cory Novick testified that Mr. Hylton-Brown’s vomit smelled of alcohol. While by no means conclusive, these facts provide support for Lieutenant Zabavsky’s stated belief that Mr. Hylton-Brown was under the influence of alcohol, and should have at least been mentioned in the audit.

One of the most glaring material misstatements in the audit was the assertion that IAD’s review of Officer Sutton’s BWC “showed that . . . he deactivated the BWC as he walked with Zabavsky towards Zabavsky’s parked MPD cruiser and deactivated [his BWC] when Zabavsky asked him whether his BWC was still operating and Sutton said, “I can go off.” Audit pg. 31. This assertion was never included in IAD’s report and is an incorrect characterization of Officer Sutton’s BWC footage. Contrary to the audit’s assertion, Officer Sutton did not deactivate his BWC at that time; instead, he kept it activated for eight more minutes. BWC reflects that Officer Sutton actually said the following to Lieutenant Zabavsky before deactivating his BWC: “Alright, are we done?” and that Lieutenant

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<sup>8</sup> This issue was the subject of a *Brady* motion for sanctions in the criminal case. See *U.S. v. Sutton*, docket entries 442 and 510.

Zabavsky responded: “Yeah.” It was only at that point that Officer Sutton deactivated his BWC and not at the point in time claimed in the audit.

The audit contained a material omission regarding the events at the station

The audit omitted important pieces of the first conversation between Lieutenant Zabavsky, Officer Sutton, and Watch Commander Franklin Porter while at the station. Audit pgs. 15-16. Again, the facts favorable to the members were left out. In particular, Watch Commander Porter testified that he did hear over the main radio that this traffic crash involved injuries, that an ambulance was transporting the injured person to the hospital, and that Lieutenant Zabavsky told him that “we were attempting to stop” the moped that was involved in the crash during this first conversation. (emphasis added), *U.S. v. Sutton*, November 17, 2022, trial transcript. After Watch Commander Porter told the members that it would not be their fault if they attempted to stop the vehicle and it was involved in an accident after it fled, Officer Sutton voluntarily clarified to Watch Commander Porter that they were “following the moped for two minutes.”<sup>9</sup> This important exchange was not included in the audit.

The audit incorrectly described MPD discipline in these cases

Even after numerous interviews with the Director of the MPD Disciplinary Review Division (DRD), the General Counsel, and the production of the entire administrative and criminal file, the audit still failed to accurately describe the DRD Director’s statement and relevant disciplinary documents. MPD’s DRD Director was interviewed twice by Mr. Bromwich and produced several rounds of documents in response to Mr. Bromwich’s requests. Thereafter, Mr. Bromwich produced a summarized version of those interviews and provided the Director with the opportunity to review and edit the summary. The Director provided Mr. Bromwich with edits that were misstated in the audit.

Specifically, in response to Mr. Bromwich’s question about whether recommending termination for Officer Sutton was a difficult decision, the DRD Director stated “it was not because of the criminal conviction at that time. Similarly, with regard to Lieutenant Zabavsky, the Director submitted “it was not a difficult decision because of the criminal conviction at that time.” Instead, the audit stated with regard to Officer Sutton, “that in view of the underlying facts, and the jury’s verdict supporting those facts, ‘termination was front and center,’” even though the Director specifically struck *all* of the quoted language. Audit pg. 41.

Second, the audit alleged that there was an “error in analyzing the *Douglas* Factors that did not affect the discipline recommended by [the DRD director] – termination – but may have affected the subsequent review conducted by MPD after President [Donald] Trump

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<sup>9</sup> While the IAD report and criminal trial testimony estimated the pursuit at three minutes, this estimate starts at the moment when the stop was attempted at 5<sup>th</sup> and Kennedy Streets at 2208 hours. IAD report pg. 115. However, the actual pursuit time would have to be less than three minutes, commencing only after the attempted stop became a pursuit. As such, the two-minute statement provided by Officer Sutton was a reasonable estimate especially considering he had not had the opportunity to review BWC when he made the statement.

pardoned Sutton.” Audit pg. 40. In this paragraph, the audit alleged that the Notice of Proposed Adverse Action (NPAA) should not have assessed *Douglas* Factor 3 as “mitigating,” because Officer Sutton received a prior sustained investigation in 2019. The audit’s assertions in this regard are incorrect. In 2019, an investigation found that Officer Sutton had engaged in a justified pursuit but that communications should have been made on a different radio channel. Officer Sutton received an Official Reprimand (corrective action) that was to be removed from his personnel folder after one year. *Douglas* Factor three of the NPAA correctly stated that Officer Sutton did not have any sustained investigations *which resulted in Adverse Action* in the past three years, because an Official Reprimand is corrective, not adverse action. The DRD Director explained this to Mr. Bromwich however, the incorrect information was included in the audit.

Finally, the audit failed to include any recognition of the other fatal pursuit cases that MPD considered in determining the appropriate penalty in this matter even though these materials were provided to Mr. Bromwich. In those comparable cases, the administrative matters resulted in suspensions from duty as the penalty for the involved members. Again, the audit appears to have purposely excluded any information that did not support Mr. Bromwich’s conclusion that termination should have been imposed in this matter.

The audit misrepresented MPD’s commitment to reform

While praising the reform efforts of other Chiefs of Police, the audit asserts “Since Chief [Peter] Newsham’s departure, his successors, Robert Contee III (2021-2023) and Pamela A. Smith (2023 – present) have not demonstrated the same commitment to reform efforts.” Audit pg. 9. This claim is false. Chief Contee agreed in whole or in part to implement all recommendations from the last audits Mr. Bromwich authored. In a 2022 report to Council, you wrote, “Based on the information provided by the Department and the documentation reviewed by members of The Bromwich Group, it appears that most of our recommendations are either fully implemented or in progress. Chief Robert J. Contee, III, and his team are to be congratulated on this significant progress.”

During my tenure, MPD cooperated fully with ODCA’s audit “*MPD Policies Curb Influence from Hate Groups*,” and in particular your recommendations to ensure that recruiting updates its hate group keywords for background investigations; to provide training to the entire department on extremism symbols and groups; to provide in-service training on implicit bias and impartial policing; that such annual training be tracked; and that Office of Police Complaint allegations are tracked and reconciled with policy.

Other than disagreeing with the department’s decision not to terminate Officer Sutton and Lieutenant Zabavsky, Mr. Bromwich produced no evidence to indicate either Chief Contee or I are resistant to reform.

## **MPD's Response to Recommendations**

### *Recommendation #1—MPD Should Create a Policy Explicitly Prohibiting Obstruction of an Administrative or Criminal Investigation*

MPD rejects this recommendation as already implemented. The current disciplinary system expressly addresses such misconduct. MPD policy expressly prohibits compromising a felony or any other unlawful act, conduct unbecoming, and detrimental conduct, with a penalty of termination available depending on the severity of the misconduct. (See General Order 120.21 (Sworn Employee Discipline), Attachment A).

### *Recommendation #2 – IAB Reports of Investigation Should Include an Executive Summary and Table of Contents*

MPD rejects this recommendation as duplicative and unnecessary for most cases. First, as to the recommendation for “a bottom-line findings of the report,” the IAD agent included both a “Summary and Conclusions” section (see pages 134-152) and a “Findings” section (see pages 152-168) in his investigative report, so it is unclear how further summary is needed or warranted. Most IAB reports are not long enough to warrant a table of contents; the length of this report was due to the criminal trial. Despite having reviewed several IAB reports in its previous audits, this recommendation was never previously made by Mr. Bromwich. Agents are, of course, free to include tables of contents on a case-by-case basis as they deem appropriate.

### *Recommendation #3—MPD Use of Force Policy and Training Should Incorporate the Totality of the Circumstances Test as Articulated in the Supreme Court's 2025 Decision in Barnes v. Felix*

MPD rejects this recommendation as already implemented. General Order 901.07 (Use of Force) provides the following:

Part II.A.1 “Members shall only use force that is objectively reasonable.”

Definitions, Part III.7 “Standard requiring the reasonableness of a particular use of force must be judged from the perspective of a reasonable law enforcement officer on the scene in light of the totality of the circumstances confronting the member.”

Regarding deadly force: Part II.A.8 “Members shall not use deadly force against a person unless the member actually and reasonably believes that deadly force is immediately necessary to protect the member or another person (other than the subject of the use of deadly force) from the threat of serious bodily injury or death, the member's actions are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstance.

Part II.G.1 “The scope of serious use of force and deadly force investigations shall be broader than the actions of the member(s) at the point that serious or deadly force is used. The actions, tactics, and decisions of all MPD participants in the event shall be assessed against MPD policy requirements to inform training and identify opportunities for improvement.”

Further, despite Mr. Bromwich’s repeated references to use-of-force, this was not a use-of-force case. Mr. Bromwich is incorrectly using a term of art used in law enforcement and defined in MPD General Order 901.07 as “any physical coercion used to affect, influence, or persuade an individual to comply with an order from a member is considered a use of force.” Instead, MPD General Order 301.03 (Vehicle Pursuits) and 304.10 (Field Contacts, Stops, and Protective Pat Downs) govern this matter. This did not become a use of force matter simply because it was reviewed by the UFRB, as their jurisdiction is extended to “all IAD use of force investigations of MPD members, chain of command investigations forwarded to UFRB by the IAB assistant chief, and *vehicle pursuits resulting in a fatality*.” (See GO 901.07 Part II.J.1).

*Recommendation #4—The UFRB Should Make Improvements to the Decision Point Analysis Matrix*

As written, this recommendation is not actionable. As reflected in the audit, MPD has used DPAMs for more than 20 years.

*Recommendation #5—The UFRB Should Review the Totality of the Use of Force Including Relevant Facts and Events Before and After Force Was Used*

As acknowledged in the audit, the recommendation that the UFRB review the totality of the Use of Force is already required by policy. (See GO 901.07 (Use of Force) Part II.J.7)

*Recommendation #6—The Implementation of UFRB Recommendations Should Be Tracked; and  
Recommendation #7—The UFRB’s Recommendation in this Case to Revise the Vehicle Pursuit Policy Should Now be Adopted*

These recommendations are premised on the audit’s assumption that the UFRB recommendation was not implemented because it was not tracked. This is not true. In an April 2, 2025, email, Policy and Standards Director O’Connell advised Mr. Bromwich that MPD had decided the addition would be “duplicative and unnecessary” since MPD was implementing duty to intervene language in General Order 201.26 (Code of Conduct) and all officers were being trained in Active Bystandership for Law Enforcement (ABLE). This was MPD’s substantive response and it has not changed. There is no evidence in the audit that UFRB recommendations are not tracked and implemented when approved. Accordingly, the recommendations are rejected.

*Recommendation #8—The Buffer Period for the Audio of Body Worn Cameras Should Be Extended to Two Minutes*

MPD rejects this recommendation and reiterates the response it provided to the Office of Police Complaints in 2022. At that time, MPD surveyed 26 other jurisdictions. Of those jurisdictions, 21 had shorter video (without audio) buffer times than MPD, while Chicago, Houston, and San Diego matched MPD's two-minute video buffer. Kansas City, Missouri reported having both audio and video for their buffer, but their buffer was only for 30 seconds. While the audit asserts that Chicago now has a two-minute video and audio buffer, that is contrary to the information provided to MPD when we sought verification.

*Recommendation #9—The Chief of Police Should Familiarize Herself with the Record in High-Profile Cases*

MPD rejects the premise of this recommendation. First, the assertion that the death of Mr. Hylton-Brown and the criminal prosecution of Officer Sutton and Lieutenant Zabavsky occurred during my tenure as Chief of Police is false. Indeed, Mr. Hylton-Brown's death occurred nearly two years before I joined MPD in my civilian role as its Chief Equity Officer.

I reject the assertion that I was unable to describe the rationale for the disciplinary decisions in hearings before the D.C. Council. For context, these were MPD's performance oversight and budget hearings focused on wide-ranging policing performance and finance issues, not hearings dedicated to this case. My responses to multiple Councilmembers' questions during these hearings, including some apparently scripted by ODCA, struck a balance between the information that could be shared publicly and confidential personnel information that could not be disclosed, regardless of the publicity surrounding the case. The public's desire for more information is understandable, but I am nevertheless required to abide by the privacy rules applicable to personnel actions.

*Recommendation #10—The Chief of Police Should Issue Decisional Memos Providing the Reasons for Her Decisions*

I reject this recommendation as already covered by MPD policy. General Order 120.21 (Sworn Employee Discipline) Part II (B) and (C) authorize members to appeal adverse actions and terminations to the me as the Chief of Police. My responses to those appeals are served on the member and constitute final agency action for purposes of implementation of discipline and appeal to the Office of Employee appeals, as appropriate. In those responses, I articulate my assessment of the underlying disciplinary matter, the arguments raised in the appeal, and my response to those arguments.

Settlements of disciplinary matters can occur throughout the disciplinary process and involve a range of officials negotiating with members and their representatives over terms and conditions of the agreements. This process is highly successful, resolving the vast majority of cases and ensuring that members have a voice in the disciplinary process. As they did in this case, settlements authorized by me reflect the charges that are sustained

against the member, the specific policies that have been violated, the penalty to be imposed, and any additional required training, as applicable.

*Recommendation #11—The Chief of Police Should Share the Reasons for Rejecting IAB Findings and DRD Recommendations with Relevant Personnel*

I reject this recommendation which would have me communicate directly with the IAB investigators and DRD director concerning their independent roles in the investigative and disciplinary process. IAB investigations are sensitive; they always involve allegations of serious misconduct and may be criminal in nature. DRD is responsible for discipline Department-wide and must have the authority to make independent decisions on each case, weighing the seriousness of the misconduct, the relevant aggravating and mitigating factors, and the discipline that was imposed in comparable cases. If I was to provide a written, or worse, in-person examination of their work, it would have an irrevocably chilling effect on the independence of IAB's investigative and DRD's disciplinary functions. MPD's disciplinary process is purposefully structured so that each stage of the process functions independently and free from MPD command influence. Intentionally imposing that interference in a paramilitary organization, especially from the highest authority in MPD, would undermine the institutional morale, cohesion, and transparency this recommendation cites in support.

This recommendation is particularly inapt as applied to this case. Here, criminal convictions existed at the time IAB completed its investigation and DRD proposed discipline. As such, IAB and DRD were constrained and required to follow the prosecution's evidence and arguments. However, by the time the case was presented to the me, those convictions no longer existed as a matter of law under the precedent established in *Schaefer*, above. I was required to review this case with a "clean slate" and conduct an independent review. Thus, the administrative cases considered by me were materially different than the criminal cases evaluated by IAB and DRD, which naturally led to a different disciplinary outcome.

**The Audit Violated Auditing Standards**

Prior audits performed by the Office of the DC Auditor (ODCA) have been performed in accordance with Generally Accepted Government Auditing Standards also known as the Yellow Book. *See e.g., "36 Fired MPD Officers Reinstated"* at 8. The Yellow Book provides generally accepted government auditing standards for auditors of government entities to perform their audits and produce their reports. One of the core standards is objectivity, which is defined as independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality . . . and being free of conflicts of interests. *See* GAO Yellow Book 3.11. The GAO provides that an auditor's objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. *Id.* As was made clear during my interview with Mr. Bromwich, he did not view his role in this audit to be that of an objective, impartial auditor. As a result, the audit clearly reflects his bias and agenda.

Mr. Bromwich makes no secret of his decades-long relationship with and admiration for his former colleague Senior Judge Paul Friedman, the judge who oversaw the criminal trial in this matter. Senior Judge Friedman made all of the rulings in this case concerning what the jury would and would not be permitted to hear. Senior Judge Friedman determined whether or not the prosecution would be sanctioned for their *Brady* violations. It was Senior Judge Friedman who rejected Officer Sutton and Lieutenant Zabavsky's motions to set aside the verdicts, and Senior Judge Friedman who rejected Officer Sutton and Lieutenant Zabavsky's motions for a new trial. It was also Senior Judge Friedman who took the extraordinary step of providing his personal opinions on both this case and the administrative matter to the Washington Post, an action that was particularly concerning since the civil case related to this matter is still pending. Mr. Bromwich thought so much of this article that he went to the extra effort to bring a copy of it with him to my interview. It was after that interview that Mr. Bromwich confessed that he had spoken to Senior Judge Friedman about the criminal case during a lunch date while the criminal case was pending. Mr. Bromwich admitted that he never previously disclosed this relationship with Senior Judge Friedman to you. When this seemingly obvious impropriety was pointed out to Mr. Bromwich, his retort was "sue me."

It is undisputed that under the Yellow Book auditing standards, Mr. Bromwich should have disclosed his relationship and potential conflict of interest to both you and the Department. Mr. Bromwich's relationship with Senior Judge Friedman created a lack of objectivity that was apparent in the interviews that he conducted and thoroughly tainted his findings and recommendations in this audit.

For all of the reasons described above, I am compelled to reject the audit's findings and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Pamela A. Smith". The signature is written in a cursive, flowing style.

Pamela A. Smith  
Chief of Police

cc: Betsy Cavendish, General Counsel, Executive Office of the Mayor

# The Bromwich Group

July 15, 2025

Chief Pamela A. Smith  
Metropolitan Police Department  
441 4<sup>th</sup> Street, 7<sup>th</sup> Floor  
Washington, D.C. 20001

Re: Response to July 9 Letter

Dear Chief Smith:

This letter responds to your July 9, 2025, letter (“the July 9 letter”) to D.C. Auditor Kathleen Patterson concerning our draft report that reviews MPD’s handling of the Karon Hylton-Brown matter (“the draft report”).

As you know, the draft report is the most recent in a series of reviews the Bromwich Group LLC and Steptoe LLP have jointly conducted for the D.C. Auditor since 2020. These reviews have been of six incidents since 2018 in which MPD members have caused the deaths of young Black men. In those prior reviews, published respectively in March and May 2021, we followed the same process as in the current review; we examined the administrative process within MPD, and made recommendations—in the same form as those made here—on ways MPD could improve. MPD agreed to implement **all** of the recommendations in both reports—a total of 35 recommendations. As then-Chief Contee stated in response to our May 2021 report:

In closing, we would like to thank your office and The Bromwich Group for your continued work on this important issue. MPD is committed to ensuring our use of force policies, training, and practices remain a model for the nation, and we believe the implementation of these recommendations will further strengthen our agency.<sup>1</sup>

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<sup>1</sup> [https://dcauditor.wpenginepowered.com/wp-content/uploads/2021/05/MPD.2020.Deadly.Force\\_Deon\\_Kay\\_5.25.21-1.pdf](https://dcauditor.wpenginepowered.com/wp-content/uploads/2021/05/MPD.2020.Deadly.Force_Deon_Kay_5.25.21-1.pdf)

Indeed, the successful implementation of many of these reforms—including into the IAB process and the vehicle pursuit policy—were acknowledged in the draft report. More broadly, as you know, even before the 2021 reviews, I have worked closely with MPD Chiefs Ramsey, Lanier, and Newsham in various capacities, including as MPD’s independent monitor from 2002-2006. I have enormous respect for MPD, the strides it has made over the past 25 years to become one of the finest police departments in the country, and the commitment of the men and women who serve in MPD.

Thus, it was with surprise, disappointment, and concern that we received and reviewed your July 9 letter. Both the substance and tone are marked departures from MPD’s response to prior reports of this kind. Instead of coming to grips with our concerns and engaging constructively with our report, your letter inappropriately wages a character attack on Mr. Hylton-Brown, attempts to relitigate in great detail the criminal case brought by the U.S. Attorney’s Office against Officer Terence Sutton and Lieutenant Andrew Zabavsky, rebukes us for *not* relitigating the criminal case, and claims that we violated standards for conducting such a review because of alleged bias. Although we will consult with ODCA and consider making certain minor changes to the draft report to correct any factual inaccuracies alleged in the July 9 letter, we reject the principal arguments in the letter as irrelevant, inappropriate, legally flawed, and wrong, as discussed below.

The central misconception underlying the entire July 9 letter is stated at the outset: “At its core, the audit challenged the Department’s disagreement with the jury’s findings in the criminal cases involving Officer Sutton and Lieutenant Zabavsky.” July 9 Letter at 1.<sup>2</sup> To the contrary, our review challenged not the Department’s disagreement with *the jury’s findings* but the Department’s **unexplained rejection of its own IAB investigation, UFRB adjudication, and disciplinary recommendations of termination for both Sutton and Zabavsky**. The focus of our review was on MPD’s administrative processes, not on the criminal trial. That is why our draft report scrupulously describes and analyzes the 172-page IAB report and contains not a single reference to the transcript of the nine-week trial. We refer you, for instance, to the Summary & Conclusions section of the IAB report, which provides nearly ten pages (pp. 133-142) laying out the applicable policies and explaining how Sutton and Zabavsky violated them. Each and every one of the conclusions in that section were made by the investigator—based on the totality of his thorough investigation—and not the jury in the criminal case.

The July 9 letter fails to meaningfully engage with any of the IAB’s conclusions, which are, in fact, the core of our report. Instead, it attacks certain rulings at the criminal trial and Mr. Hylton-Brown personally. This approach wholly misapprehends both the purpose and findings of the IAB investigation and the central point of our review. Most significantly,

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<sup>2</sup> The July 9 Letter insists on characterizing our review as an audit, seemingly to set up the claim later in its letter that we violated Yellow Book auditing standards. We never claimed that this was an audit or that we adhered to Yellow Book standards. It is a multidisciplinary review, the same as all the work we have performed for the D.C. Auditor over the past ten years.

these arguments raise significant doubts about the legitimacy of your as-yet unexplained reasons for overruling the recommendations of IAB and the UFRB.

One of the most glaring—and illustrative—examples is the July 9 letter’s repeated assertion that Judge Friedman barred the defense from arguing that there was a legal basis to conduct a *Terry* stop of Hylton-Brown. *See* July 9 Letter at 1, 2, & 5. The letter contends that, as a result, the jury was left with the “incorrect impression” that the police “were solely attempting to stop Mr. Hylton-Brown because he was not wearing a helmet.” It argues that this misunderstanding renders the murder charges “unsupportable” and criticizes our review team for allegedly failing to consider these facts. *See* July 9 Letter at 5.

Putting aside whether this evidence has any bearing on the viability of the prosecution’s charges, they were, in fact, considered by both our review team and the IAB in evaluating whether a policy violation occurred. They were detailed extensively in the IAB’s report, on which the UFRB and Disciplinary Review Division (DRD) relied.

As the IAB Report explained, the relevant question was not whether the officers had reasonable suspicion to conduct a traffic stop, but whether they had the authority to initiate a vehicle pursuit. According to General Order 301.03, Part IV, A, #1 and #2, officers may only engage in a pursuit if they have “probable cause to believe the crime committed or attempted was a felony involving an actual or threatened attack that resulted, or could have resulted, in death or serious bodily harm,” or if they reasonably believe the suspect poses an “immediate danger of death or serious bodily injury” to the public. *See* IAB Report at 136–37. The IAB Report explains in detail why neither standard was met.

Furthermore, the IAB Report directly addressed the defense’s argument at trial—reiterated in the July 9 letter—that there was “reasonable suspicion” to conduct a *Terry* stop. The Report acknowledged that the officers ultimately had reasonable suspicion to lawfully make contact with Mr. Hylton-Brown, but it emphasized that this suspicion did not arise until after the pursuit had already begun. It concluded that none of the reasons offered by the involved officers for initiating the stop rose to the level of reasonable suspicion—let alone probable cause—to justify a pursuit. *Compare* IAB Report at 137 *with* July 9 letter at 1. In the end, the IAB Report correctly concluded that “the threshold requirement to initiate a pursuit, described in General Order 301.03, Part IV, A, #2, was not met in this incident.”

The July 9 letter also emphasizes derogatory information about Mr. Hylton-Brown—including his criminal history, alleged gang affiliation, the fact that he was wearing an ankle monitor, and that he was carrying \$3,000 in cash at the time of the crash—and argues that the jury was deprived of this relevant evidence. The exclusion of such evidence, however, would come as no surprise to any experienced criminal attorney. More importantly, its exclusion is, once again, beside the point. The IAB investigator—and correspondingly, our review team—considered this information and determined that it did not provide the officers with sufficient cause to initiate the pursuit in the first place. *See* IAB Report at 137.

The July 9 letter goes on to detail other instances where it argues the jury was “misled” or got the facts wrong in rendering their verdict. July 9 Letter at 4-8 (discussing why the murder and obstruction of justice charges are “unsupported”). But, again, these arguments wholly miss the point. Our review did not (and was not intended to) examine the sufficiency of the criminal charges against the officers but instead whether the MPD’s own administrative process worked appropriately. That process afforded the IAB investigator full access to the relevant information. Based on that review, the investigator and the entire IAB chain of command concluded that Officers Sutton and Zabavsky violated MPD’s vehicle pursuit policy, made false and misleading statements to their superiors, and engaged in other inappropriate and obstructive conduct. A separate review similarly confirmed violations of MPD’s body-worn camera policy. The July 9 letter never reconciles its *post-hoc* objections to the trial evidence with the findings of the Department’s own IAB, UFRB, and DRD.

The same is true of the July 9 letter’s argument about the legal effect of President Trump’s pardons. The letter discusses the legal effect of the pardons and faults our draft report for not doing so, but again our draft report addresses the pardons only as needed to understand the sequence of events that led to MPD’s final decision on discipline for Sutton and Zabavsky. Just as we have no business reviewing the Court’s evidentiary rulings, we have no mandate—or reason—to conduct a legal analysis of the pardons. Contrary to your letter’s claim that the draft report reflects “repeated reliance upon those vacated verdicts,” July 9 letter at 2, it does no such thing. Needless to say, we do take seriously the facts provided in sworn testimony during the trial but only to the extent they 1) were incorporated in the IAB report that served as the basis for its findings and conclusions regarding MPD policy violations; and 2) served as the basis for the recommendations of MPD’s Disciplinary Review Division that termination was warranted for both Sutton and Zabavsky. In any event, the pardons do not create a world in which that sworn testimony never happened and other evidence introduced in Court was never presented, as your July 9 letter seems to suggest.

The Letter also makes several attacks on the U.S. Attorney’s Office—your office’s partner in ensuring public safety in the District of Columbia—that likewise have virtually nothing to do with our draft report, including the USAO’s exercise of bringing “unprecedented” charges in the first place and asserted *Brady* violations made by defense counsel. These arguments appear to be intended for a different audience. Indeed, the argument that we should have adopted the July 9 letter’s factual assertions is, in effect, an invitation for us to criticize and undermine the IAB report, an invitation we decline to accept. As stated in the draft report, we found the IAB report, compiled by one of the most experienced and respected MPD IAB investigators, to be thorough and fair. MPD’s quarrel is with MPD’s investigator, not with the draft report. These arguments are equally inappropriate for us to address in a report focused on the conduct of MPD, not the USAO.

The July 9 letter has a brief section, starting at page 10, on alleged substantive errors and omissions in the draft report. Those “substantive errors and omissions” include our characterization of the KDY crew as a “loosely affiliated gang,” our statement that “obstructed views” may have contributed to the crash because neither Hylton-Brown nor the

vehicle with which he collided could have easily seen each other, and our use of certain adjectives (“lengthy,” “close pursuit,”) to describe the pursuit that led to Hylton-Brown’s death.

The letter also criticizes as an omission our failure to address “Mr. Hylton-Brown’s decision-making on the evening that resulted in his death.” July 9 letter at 10. We disagree with this characterization. Both the IAB report and our investigation thoroughly considered the facts leading up to Mr. Hylton-Brown’s death. The report of MPD’s Major Crash Unit, which concluded that Mr. Hylton-Brown failed to yield the right of way, is included in the IAB report. *See, e.g.*, IAB Report at 65. The report also addressed in detail whether Mr. Hylton-Brown committed any traffic violations prior to the crash. *See, e.g.*, IAB Report at 119–124. Our review took all of these facts into account and—consistent with the IAB’s findings—concluded that they do not excuse the fact that Officers Sutton and Zabavsky violated the vehicle pursuit policy. Indeed, if a suspect’s decisions during flight could absolve officers of responsibility for violating pursuit policy, the policy itself would be rendered meaningless.

At the end of the July 9 letter, you argue that our review violated Yellow Book government auditing standards and allege that I personally had a “bias and agenda” in conducting this review. July 9 letter at 16-17. The basis for questioning my objectivity is the fact that I have known the trial judge, the Honorable Paul L. Friedman, for more than 30 years, and had lunch with him during the more than three years this matter was pending. My relationship with Judge Friedman is not a secret—in fact, our prior reports for the D.C. Auditor were discussed publicly in open court during the trial, and Judge Friedman openly acknowledged my presence on the one day I attended the trial. If our task was reviewing the way Judge Friedman handled the trial, that may have been grounds for concern of our objectivity. But as we have noted here and elsewhere, that was not our mandate. No court or ethics tribunal in the country would deem my relationship with Judge Friedman an impairment of my objectivity in reviewing the way MPD entities handled this matter.<sup>3</sup>

Finally, your rejection of the recommendations is deeply troubling. The report outlines a number of common-sense recommendations, many of which are informed by our years-long working relationship with MPD. The July 9 letter’s terse dismissal of each recommendation stands in stark contrast to the receptive and constructive approach MPD has demonstrated over the 23 years we have worked together.

As just one example, you dismiss Recommendation #4—which proposes improvements to the UFRB’s use of the Decision Point Analysis Matrix (DPAM)—as “unactionable” on the grounds that “MPD has used DPAMs for more than 20 years.” Our report does not suggest that DPAMs are not in use. In fact, MPD’s adoption of DPAMs

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<sup>3</sup> As for the claim that we violated Yellow Book standards, we have never claimed to be following Yellow Book guidelines in any of the reviews we have conducted. MPD has never before claimed that we should. As you should know, they simply do not apply to a review such as this.

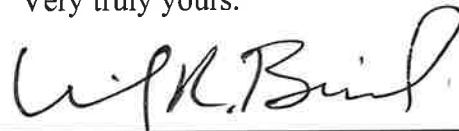
Letter to Chief Pamela A. Smith  
July 15, 2025  
Page 6 of 6

began during my tenure as independent monitor, guided in large part by the expertise of one of my colleagues on the monitoring team, former police chief Dennis Nowicki. Our recommendation—which was also included in our March and May 2021 reports—is that while DPAMs are being used, they are not being used effectively, and meaningful improvements can and should be made.

It is difficult to understand why MPD would not remain open to enhancing a process it has already acknowledged as valuable in reviewing uses of force. We respectfully urge you to set aside any objections to our criticism of your disciplinary decisions and to reconsider the recommendations in our report. These recommendations are intended to advance a shared goal: ensuring that MPD continues to serve as a model police force for the rest of the country.

To advance this shared goal, I welcome the opportunity to speak with you—one on one—to further discuss our review and the reasons for our recommendations.

Very truly yours.



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Michael R. Bromwich

cc: Kathleen Patterson  
Office of the District of Columbia Auditor

Michael G. Scavelli  
Ida Adibi  
Lisa Arnold

Step toe LLP