

**From:** [Gregory Gelembiuk](#)  
**To:** [Police Chief Search](#)  
**Cc:**  
**Subject:** Concerning the search for a new Police Chief  
**Date:** Tuesday, July 21, 2020 12:57:44 PM

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Dear Police & Fire Commissioners,

I am writing to ask that you conduct an extensive and robust search for appointment of our next Police Chief, taking sufficient time to recruit the best candidates nationally and utilizing a process with as much input from community members as possible. Please do not accede to the Mayor's demand, apparently driven by short-term political considerations, for a rapid, truncated selection process. Madison will have to live with the new Chief for years and quite possibly decades. Aspects of how policing is currently conducted in Madison are completely unacceptable and require fundamental change (more on this below). The new Chief should not be an internal hire, since this would be very unlikely to produce the changes the community is demanding. Former Chief David Couper once told me that given resistance from entrenched systems in police departments and from police unions, a Chief with sufficient "fire in their belly" is required for fundamental change to actually occur. Please make this a consideration. Madison policing needs a sea change.

It's particularly important to solicit and receive input from marginalized communities, and especially those most impacted by policing. These are precisely the communities that often have the least input into city processes.

Sociologist Alex Vitale captures the common problem well:

Giving a community power to influence local policing might sound great at first. But how do you define "community"? In his book "Citizens, Cops and Power: Recognizing the Limits of Community," Steve Herbert shows that those who actively participate in community affairs do not usually represent the full diversity of views and experiences in urban neighborhoods, especially those that are racially divided. Community meetings tend to be dominated by longtime residents, homeowners, business owners and landlords. The views of renters, youths, homeless people, immigrants and the most socially marginalized are rarely heard. As a result, the problems identified through community participation tend to focus on quality of life concerns, involving low-level disorderly behavior, rather than serious crime. This emphasis on minor offenses can easily facilitate an increase in the destructive broken-windows-style policing that has led to the criminalization of millions of mostly black and brown people.

I appreciate the PFC's recognition of the need to provide means of input for all residents, as indicated in "we are committed to listening to all residents in the City of Madison, including those who have the greatest challenges to providing feedback in the technological driven environment that we are now operating in." Thought should be given to mechanisms of input that would be inclusive of all, including those most marginalized. I'll add that I am actually somewhat leery of computerized community input surveys. Such surveys often tend to cast questions quite rigidly and narrowly. Furthermore, it's clear that in Madison, online policing-related surveys have been filled out very disproportionately by residents who are white, older, and homeowners, with relatively minimal participation by people of color and residents who are renters and younger. This can generate a very skewed perspective.

At a later stage of this process, I believe it is absolutely crucial that the PFC ensure fulfillment

of the MPD Policy & Procedure Review Ad Hoc Committee recommendation that "the PFC should consider ways to involve the Madison community in the selection process through community panels and interviews". There will need to be a mechanism set up, probably via a virtual meeting format (given the pandemic), for community members/organizations to be able to ask questions of applicants.

As former Chief David Couper wrote in response to the Mayor's statement:

Given both the local and national crises, this should not be a decision that is rushed. The community needs to speak clearly to the PFC as to what they want in a police chief and for the PFC to understand the direction the police department needs to go in order to improve police services and, especially, to build trust among people of color in Madison.

In some cities, the final four candidates for a chief's position appear at community meetings to both listen and state their positions on matters concerning community members. The choice our community makes will have great significance for the success of both the city and its police. The road ahead will be both steep and difficult. They might want to talk with me...

### **The current system is failing Madison's Black community**

Policing and the criminal justice system in Madison exemplify structural racism and often overt racism. Current practices are deeply anti-Black. Black residents [are arrested at over ten times the rate of white residents](#), and that disparity appears to be increasing over time. This is one of the highest arrest rate disparities in the nation.

Reporter Steve Elbow published an article this year entitled "[None of this has changed': Madison's racial disparities have gotten worse, despite decades of reports, task forces and funded programs](#)". Excerpt:

Today, the disparities are as wide as ever. In 2004, blacks, who made up 6% of the city's population, accounted for about 15% of traffic citations and 29% of arrests. Last year, at 7% of the population, blacks were issued a quarter of city traffic citations, and in 2018 constituted 43% of arrests. In the same time frame, the proportion of black juveniles arrested went from 49% to 66%. In 2010, blacks made up 44% of inmates at the Dane County Jail; in 2018, it was 46%.... According to the Dane County report, in 2009 black kids were arrested at a rate 4.71 times that of whites; by 2019, an arrest was 7.46 times more likely to happen to a black kid. And once in the juvenile justice system, social workers recommend formal judicial proceedings against black kids 65% of the time, compared with slightly less than 40% for white youth. Once in the Juvenile Detention Center, black kids average a 35% longer stay than white kids. That translates into a population at the detention center that is 86% black, up from 73% in 2011.

In every city in which a proper statistical study has been conducted, the study has found a higher likelihood that, all else equal, police will stop, conduct searches, make arrests, etc., with individuals who are Black relative to those who are white. In addition, studies in other cities have found overpolicing of neighborhoods with a high proportion of residents of color (e.g., greater allocation of patrols to such neighborhoods, etc.) — a pattern that is evident even after other relevant variables (e.g. crime rates) are controlled for. Though proper statistical studies have not yet been conducted in Madison (doing so is MPD Policy & Procedure Review Ad Hoc Committee recommendation #19), there's every reason to believe the same is happening in Madison. This should be an important consideration, even if other factors are also contributing to the criminal justice disparities in Madison. Washington Post criminal justice reporter Radley Balko has a nice roundup of many studies [here](#), and he notes:

The modern criminal justice system helped preserve racial order — it kept black

people in their place. For much of the early 20th century, in some parts of the country, that was its primary function. That it might retain some of those proclivities today shouldn't be all that surprising. In any case, after more than a decade covering these issues, it's pretty clear to me that the evidence of racial bias in our criminal justice system isn't just convincing — it's overwhelming.

### **Examples of individual MPD cases illustrating disparate handling**

The discussion below covers some of the same incidents highlighted in a letter being submitted by the Community Response Team and Urban Triage, but also describes additional incidents and details.

#### *The case of Alize Carter.*

Alize Carter is a Black woman who was hit and seriously injured by the white driver of a truck, in a hit-and-run incident on June 21. She was crossing University Avenue, approaching a crowd of predominantly Black folks, when the truck barreled through the crowd, striking her. The driver then sped away. MPD officers were apparently nearby, but responding officers waited before getting her proper medical attention (i.e., it apparently took 30 minutes to get an ambulance). Officers asked a witness to move her across University Avenue, which was done.

As Rob Chappell [reported](#) in Madison365:

S said she immediately called the woman's mother while other witnesses flagged down an ambulance that happened to be nearby. EMTs in that ambulance told witnesses to call 911, as the ambulance was en route to another call.

S said police arrived some time later without an ambulance, and immediately began pushing people back away from the victim — including S and the victim's brother.

"When police arrived, they came up to us and instantly started pushing us back after I repeatedly told them that I was with (the victim) and I was her ride and had been downtown with her and obviously felt obligated to stay with her," S said. "After telling him that I was on the phone with (the victim's) mom he kept pushing me back. Then (the victim's brother) said that it was his sister and he wasn't about to move because he wanted to be with his sister. At the time she couldn't move and couldn't feel anything from her waist down. When (the victim's brother) wouldn't move, they sprayed them with pepper spray which hit the entire crowd that was around."

A Madison police incident report says the police "dealt with several uncooperative individuals while attending to the victim." The report makes no mention of pepper spray.

Videos posted to social media show people suffering with burning eyes, and others tending to them.

S said police did not, in fact, attend to the victim — at least not right away.

"When the police first arrived they weren't even worried about her. Not one officer went to her," she said. "Even when they were pushing us back, not one went to her."

As a Capital Times [article](#) notes, "Police subsequently arrived on the scene and, according to reports, pepper sprayed Carter's brother as he stayed to support her."

As Madison365 [later reported](#):

Police came under criticism for deploying pepper spray against the victim's brother and friends who wanted to stay at her side. Police say they had to deploy the spray to

clear a path for paramedics to reach the victim, but video shows a relatively small group gathered around the victim before being sprayed.

Video indeed shows just a small group of friends and family were around Alize when pepperspray was used. The MPD claim that pepperspray was deployed to “clear a path for paramedics” does not appear true. In addition to its effects on family/friends, Alize also was hit by the pepperspray, which entered her wounds, causing further pain. In addition, witnesses report that one (Black) MPD officer called witnesses the “N” word.

The white driver of the truck was Brendan J. Oneil. Apparently, MPD had identified him within 70 minutes of the hit and run. But rather than immediately arresting him, MPD allowed him to turn himself in, days later. He was only charged with a misdemeanor and was immediately released upon posting a \$350 bond.

Alize had been seriously injured. Her injuries included broken bones. Under Wisconsin statute, Oneil should have been charged with a felony.

Wis Stat 346.74 Penalty for violating sections 346.67 to 346.73.

(5)(c) Is guilty of a Class E felony if the accident involved injury to a person and the person suffered great bodily harm.

939.60. (14) “Great bodily harm” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

As NBC15 reported in [“Hit-and-run victim speaks out, citing long road to recovery”](#):

“I relive this dream every night. I have nightmares every single night,” Carter said. “Same dream of me getting ran over, the tire going over my face, me trying to move, the tire going across my stomach.”

Carter said she was out early that Sunday morning, and saw a protest. Moments later she said she crossed the street and found herself underneath a truck.

“When he ran me over my skin came off on multiple places of my body. my knees are messed up and my arms,” she said.

She said bones and ligaments are broken in her hands and she also has a concussion.

“It hurt me because I’m a tattoo artist and I can’t use my hands,” she said.

Her life and her career now on hold....

Officers arrested a suspect later released on \$350 bail.

“That’s a PlayStation 4. My life is no greater than \$350? He could have killed me,” she said. “But if it was me, a black person running over a white person, I would have got attempted murder.”

[Here is an extremely informative Zoom live recording](#), from an Urban Triage interview of Alize and others, discussing the details of the incident and showing and reviewing video of the police response.

Yet despite the fact that all the criteria for great bodily injury were very clearly satisfied, MPD only booked the white perpetrator on a misdemeanor. Oneil still hasn’t been charged with a felony and still isn’t on CCAP. Chief Wahl provided a misleading account of events to elected officials. On July 10, D.A. Ozanne [stated that the D.A.’s office still hadn’t received a referral from MPD](#), and thus hadn’t filed charges in the case (while Chief Wahl denies responsibility,

saying the arrest should serve as a referral).

*The case of Toshiana Northington (a personal acquaintance of mine)*

Again, a case of a white assailant and a Black victim. From [a Madison365 article](#) by Rob Chappell:

Madison mother says she was attacked by a man shouting racial slurs outside the Woodman's on Madison's east side on Thursday.

Toshiana Northington said in an exclusive interview Sunday that she was dropping her children off at the front door of the grocery store because it was raining. She said she had the car stopped in front of the door for less than five minutes when she heard another car blaring its horn. She said she got out of the car to help her children get out and indicated to a driver behind her that she would only be a moment; she then heard that the horn was coming from a car parked in a handicap-accessible parking spot, which was boxed in by the traffic in front of the door. She said the driver of that car, later identified as David Lythjohan of McFarland, began shouting the n-word when she stepped out of the car.

"When I got out of the car and told the person to wait, I feel like once he realized that it was a Black person, he went into a rage," Northington said. "So I told him, 'one minute,' the whole thing, he kept blowing his horn and saying like, 'f\*\*\*\*\*g n\*\*\*\*r,' 'move out the way,' 'stupid n\*\*\*\*r,' you know, all those like that."

Northington said she ultimately did get her kids out of the car and turned her van around to find a parking spot, and Lythjohan began backing his car toward her van, causing her to stop and start as he was unsure where he was going. That's when she said Lythjohan got out of his car, punched her driver's side window, opened the driver's side door and punched her.

She said she leaned back across the passenger seat and began kicking to get him off of her.

"My legs were going crazy out the door, trying to kick him off of me," she said.

Northington said her 11-year-old son tried to come to her aid.

"My son saw what was going on. My son came to help me. And when I finally got out of the car, that's when I saw (Lythjohan) grab my son by his neck and punched him in his nose. And my son is 11," Northington said. "And then that's when all the tumbling started going and he grabbed my 4-year-old and pushed her to the ground. My 4-year-old ran up and was crying and screaming, so then he grabbed her, pushed her to the ground ... We were all literally fighting in the rain."

Northington said Woodman's security personnel detained Lythjohan while she called police, who took Lythjohan's statement first.

"I don't know if it was because he was an older man or what, but he immediately started telling his story and they just went straight for him and eliminated the whole process that it was me and my kids that got attacked," she said.

She said initially, police said you weren't going to arrest him and told her they would write him a ticket, but then another Woodman's security employee told them there was security video.

A Madison police incident brief says the video shows Northington's children pulling

him away, and shows him getting kicked. Woodman's declined to release the video. Madison365 has requested the official reports and video from the Madison Police Department.

The incident brief does not mention racial slurs. Northington said she is sure she told police about them, and that other witnesses heard them.

"I am really hurt and saddened that it's not mentioned because it feels like they're trying to sweep it under the rug," she said in a text message Monday.

Northington said police decided to take Lythjohan into custody after viewing the video. She later posted video of his arrest to Facebook.

The police incident brief says Lythjohan was arrested on charges of battery and disorderly conduct.

An ally who contacted Dane County Jail Thursday said Lythjohan was booked into the jail and released on \$650 bond later in the evening. As of Monday evening, no charges have been filed.

"(Lythjohan) went back to living his life. Now, I'm going to be off of work because every time I walk on my foot, that swells right back up and my ankle is sprained and I have bruised ribs. And my son has a bruise. Has bruising in his nose and his neck," Northington said. "I've been having nightmares. I can't keep myself calm. When I'm outside, I'm even more aware of my surroundings because I don't want this to happen again. I don't know. It's just been really traumatic for my family."

Northington said she is a phlebotomist and trains other phlebotomists at a plasma center, and will also soon graduate with a medical assistant degree. It's a job that requires her to be on her feet, so she can't work with a sprained ankle. In a Facebook post, she said her son offered to lend her a shoe because her foot was swollen.

"I want (Lythjohan) to have more charges than what he has. And I want this to be a hate crime," she said. And she's not alone — since being posted Friday, an online petition urging District Attorney Ishmael Ozanne to charge Lythjohan with a hate crime has garnered nearly 4,000 signatures.

[Here](#) is a bit of video of the assailant, David Lythjohan, being taken in police custody.

You can see the extent of Toshiona's injuries, affecting her mobility, in the video [here](#).

So again, a white assailant and a Black victim. The victim who was attacked suffers significant injury (rendering her temporarily unable to work). The police treat the white assailant sympathetically and almost let him go without charges. Then he is booked only on misdemeanor charges and is quickly released on a low bond. And the initial police report generated completely omits that the assailant was yelling racial epithets when he attacked.

*For a contrast, let's look at the case of Yeshua Musa (Devonere Johnson) a Black BLM protester*

Yeshua loudly protested on behalf of Black Lives Matter at some downtown restaurants/bars.

Here's video of Yeshua's protest at Cooper's Tavern:

[https://www.youtube.com/watch?time\\_continue=49&v=vSgl0vCoLMY&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=49&v=vSgl0vCoLMY&feature=emb_logo)

As you can see, he had a bullhorn, spoke loudly about racists and Jesus, at one point said "I am f\*cking disturbing the sh\*t out of this restaurant, and I got a f\*cking bat [he had a bat with the words 'Black Lives Matter' printed on it]", and as he exited said "Thank you guys. I love your

shirt.”

He was arrested upon leaving Cooper’s Tavern. [This Madison365](#) article contains video from two different vantage points, showing his arrest. Yeshua was violently arrested by five MPD officers. As the Madison365 article notes, “A Madison Police Department incident report says Musa sustained abrasions on his arms and legs, and was taken to a hospital for medical clearance before being transported to Dane County Jail”. As the article further notes, at the time of his arrest “Court records indicate no active criminal cases involving Musa and no active arrest warrants”.

As the article also notes, “Facebook friends of Musa said he has been a frequent participant in protests following the police killing of George Floyd last month. On several occasions, they said, he and fellow protesters disrupted dining experiences in restaurant outdoor seating areas with a megaphone, with the intent, in part, to create discomfort and make the point that Black people often feel discomfort while doing ordinary things.”

Subsequently, Yeshua was charged to the max. Specifically, he was charged with two counts of Threats to Injure/Accuse of Crime (Wis Stat 943.30(1), Felony H), two counts of Disorderly Conduct (Wis Stat 947.01(1), Misdemeanor B), one count of Resisting or Obstructing an Officer (Wis Stat 946.41(1), Misdemeanor A), one count of Escape-Criminal Arrest (Wis Stat 946.42(3)(a), Felony H), and two federal counts of Hobbes Act violations (18 USC subsection 1951, which prohibits interference with interstate commerce by violence or threat of violence). The Hobbes Act charges alone carry a penalty of up to 40 years in prison and were invoked on the basis of the restaurants buying food, beverages and supplies made outside Wisconsin, alleging extortion by Yeshua.

[This article](#) from the Wisconsin State Journal reports the allegations against Yeshua from the criminal complaints and [this article](#) by Mason Muerhoff discusses very questionable aspects of the criminal case. Separate from the Cooper’s Tavern case, the owner of another restaurant said he had provided free burgers, chips and beer for Johnson and two others to “smooth things over”, and this apparently provided key grounds for the second federal extortion charge.

A waitress from another restaurant posted on Facebook, noting the Yeshua had protested at her restaurant also, and had never asked for anything. She was wondering if her testimony on that might be useful in his defense.

The federal charges appear to be part of a Trump Administration initiative to crack down on BLM protesters as hard as possible, and MPD is cooperating with and participating in this. As a [Vice News article](#) notes:

Attorney General Bill Barr is targeting protesters with harsh, federal prosecutions for civil disturbances that potentially carry decades in prison..... [O]f the cases reviewed by VICE News, at least 12 involved situations where the defendants were accused of damaging property used in “interstate commerce,” such as a police car, or attempting to do so..... When it comes to choosing which cases to pursue and which charges to apply, federal prosecutors have broad discretion. But usually, they don’t consider individual cases of vandalism, defacing property, or even rioting to be worthy of federal charges.... “Those are traditionally treated as state crimes or normal federal crimes,” said Patrick Cotter, a former prosecutor from the Eastern District of New York. “The politics of the defendants certainly sound like they are playing a role in the DOJ decisions as to who to target. That, of course, is improper in the most profound sense. But not surprising for this DOJ.” .... It’s usually very easy to establish a connection to “interstate commerce” in a case, legal experts said. But that doesn’t mean it’s always prudent to do so. “These are laws that are out there that they can charge, but there’s a real question about whether they should, as an exercise of discretion. And that to me



is what's really disturbing about these cases. Why are they doing it? Because they don't have to," Barkow said. "By taking it federally and by bringing charges that have such grotesquely long punishments, it's hard to read these cases as anything other than political theater."

Yeshua injured no-one and damaged no property at the restaurants. He had left Cooper's Tavern voluntarily. It appears that MPD and local/Federal prosecutors have taken circumstances subject to ambiguous interpretation and characterized those in a manner that would permit the leveling of maximal charges. Note the sharp contrast with MPD's decision to book (white) Oneil and (white) Lythjohan, who actually seriously injured (Black) people, with light misdemeanors (allowing quick release on low bond).

#### *The case of Devon Snyder (a personal friend of mine):*

In his viral article "[The never-ending timeline of racism](#)", Devon Snyder, a Black Madison resident, relates an incident from February, when he was pulled over on Madison's West side:

It's February 2020 and I just bought the nicest car I ever owned in my life. I leave the dealership with such joy, and determination, when all of a sudden, I see flashing red and blue lights. I didn't even own the car for five minutes and I get pulled over. My mom's words echo in my head once again: comply even if you're not in the wrong. My heart is racing. Am I going to die? Am I going to get arrested? Am I going to be the next Sandra Bland? Do I reach to get my license and registration, or is the cop going to think I'm reaching for a gun? My life flashes before my eyes. "Whose car is this? Do you know why I pulled you over today?" asked the police officer. "Sir this is my car. I don't know why you pulled me over," I frantically explain. "How did you afford this car? I pulled you over because you did a rolling stop, and your lights weren't on," explained the cop. My lights were on and I didn't do a rolling stop. "Sir, I just picked this car up from the dealership. I was on my way back home," I stutter. The cop smirked, and asked for my license and registration and went back to his car. What is going to happen to me? I don't want to die. I don't want to go to jail. I want my mom. The police officer comes back to my car with my license and registration, and tells me "it's my lucky day" and to head back home.

This is what it means to be black in America. The never-ending timeline of racism. Racism is built in the DNA of America. And as long as we turn a blind eye to the pain of those suffering under its oppression, we will never escape those origins. White silence is violence. This is why we protest. This is why we say Black Lives Matter. This is why we don't trust the police. This is why we've had enough.

"That's not a chip on my shoulder. That's your foot on my neck." - Malcolm X

#### *The case of Phillis Coleman*

On July 10, the car of Phillis Coleman, a Black woman and Milwaukee resident, was pulled over on E Washington Av. The officer initially pulling her over may have been from the Capitol Police, but they were quickly joined by multiple Madison Police Department officers. Earlier her car had been stolen and then was recovered, but the records system had not yet been updated by Milwaukee police. When she was pulled over in Madison, her plate was run and it came back as stolen. Witnesses report that she was surrounded by MPD officers with guns drawn. She complied with all commands and was handcuffed and continued to be held at gunpoint. Her car was searched. She was placed in a squad car where she observed that her driver's license photo, identifying her as the owner of the vehicle, was on the computer



display. The officers continued to treat the situation as felony car theft even though the identifying photo of her (as the legitimate owner of the car) was visible.

Phillis later reported that while she was held at gunpoint, she was terrified. She's been traumatized. She posted today: "I'm the woman who was held at gun point by Madison police. I need help finding a lawyer."

Kaitlyn Koterbski posted on Facebook, on July 10:

A black woman was pulled over on E Washington about an hour ago and she was outside of her car while police stood surrounding her with their guns drawn. At least three separate officers had drawn their guns throughout the incident. The police continued to hold their guns pointed towards the woman while she was standing still and not resisting whatsoever and held their guns up while searching in her car. Around 8-10 police cars showed up and parked their cars to block all cameras from being able to film their actions. An officer [MPD Sergeant Gonzalez] attempted to arrest me for pulling over and filming the police. The woman was eventually released from the handcuffs and was standing next to her vehicle. If anyone has more information or witnessed the event, please share!

Lyv Jaxyn posted:

i was driving and came on this yesterday: 10 squad cars on east wash with a Black woman in cuffs in the back of one car. my friend and i got out so 12 knew they were being watched. these madison cops are such politicians. friendly faces out immediately after pulling guns. talking about "oh the media doesnt see the good we do." i asked if she is being arrested and 12 said "no." i asked "so does she know shes free to go?" 12 said "yes we told her". i got closer to yell out to her that shes free to go - they blocked me and lied to her telling her she had to stay. we pressed the cops and they said well she cant drive with a suspended license even to go to the dmv (they let white ppl do this all the time). eventually they let her go only if we rolled with her to "obey all the laws." they still followed us to the dmv to scare more Black folks out there. then dmv says license cant get renewed til septemeber which again, is some shit they dont do to white people. we rode with her to mke bc we know these cops would target and pull her over again if she was alone. shes home safe now. incredibly kind and brilliant person

[Here is a video](#) that was posted, capturing a later portion of the incident.

*Cars striking BLM protesters or aggressively driving into crowds of protesters.*

There have been repeated incidents in which white drivers have struck BLM protesters and, to the best of my knowledge, MPD officers have never ticketed or charged any drivers in these cases.

For example, as Wisconsin State Journal reporter Emily Hamer [wrote](#):

Around 8 p.m. at the intersection of John Nolen Drive and Williamson Street, a red car sped through a small crowd of protesters. Brooks, 41, said he had the wind knocked out of him and sustained abrasions after being hit by the car. He landed on his nose, chin and chest, and had his chin split open.

Brooks said he was "very sore, but not seriously injured." He said a woman had her foot run over, but she also seemed to be OK.

A Rob Chappell [reported](#) in Madison365:

A red Camaro... attempted to get through the crowd, which surrounded it. Eventually the car accelerated through the crowd as it turned around, striking at least two people. Police arrived to render aid but did not pursue the vehicle.

[Here](#) is video of the incident. The recklessness and speed of the driver is evident. It appears to clearly fit the statutory definition of misdemeanor hit and run, but MPD chose not to seek and charge the driver.

#### *Questioning of Sedrick Ferguson*

I'm including [this video](#) not because it contains anything dramatic or highly revelatory, but because it seems to exemplify the kind of low-level casual disrespect that many Black Madisonians (especially young men) report experiencing from police on an ongoing basis. Sedrick Ferguson was a passenger in the car of Kelsey Nelson who was involved in BLM protests and was arrested on June 24 for an alleged nonviolent offense (burglary) stemming from events of May 30. As Amelia Royko Maurer noted: "The arresting officer was impatient, edgy, escalating and completely tone-deaf in his behavior. The passenger in the vehicle, Sedrick Ferguson repeatedly gave his name to the officer who did not seem to believe him. The officer literally asked him, in a casual tone, 'Oh I know you! Was it your brother? What your brother killed on McKenna?' The officer wouldn't stop asking Sedrick this question, Sedrick repeatedly told the officer he was not 'that Sedrick' and then the officer spoke about Sedrick in the 3rd person, as if he was lying, right in front of him. The officer forced Sedrick out of the car as well", then said he'd pat him down and made him wait on the curb while he ran his name for warrants. Being treated in this manner is fundamentally demeaning.

#### *MPD's handling of harassment of Kaleem and Lisa Peyton Caire's children*

On July 19 a white man, Randy Abendroth, harassed Kaleem and Lisa Peyton Caire's children, who are commissioned youth artists downtown. He harassed them from his truck and then parked the truck at his home nearby and walked back to harass them further. He told them they "didn't belong here" and that their art would be destroyed. He demanded their names and addresses. A jogger who witness the harassment called the police and tenants in the building came out to aid Caire's children. When MPD officers arrived, they joked with the man and he went home.

[Here is a Facebook video](#) in which Lisa Peyton Caire describes the incident, and MPD's response. Caire is clearly highly distressed. She states in part:

The police came and they did nothing. They laughed with him. They joked with him. And they sent him on his way. They did not give my children his name. They did not treat it seriously. All of the witnesses who were with my children were upset because they said it was not handled properly. He harassed them intentionally. He drove home, he parked, and he walked back to confront them and the police came and they did nothing but joke with him. My daughter asked and her friends "What if he comes back again? What if he comes back when we're out here this week and our brothers and our boyfriend and my mom or my dad can't come down here and sit on the corner where I'm sitting right now

to look over them to assure they are safe. What if he comes back?" They said "Oh he won't come back. We talked to him. You'll be fine. We talked to him. You'll be fine. Don't worry about it. He won't come back." That was the police's response to my children and their friends calling because they were harassed by a passerby who felt that what they're doing is racist that they didn't belong on the street that half of them live on in Madison, United States of America 2020. Now we know that if the shoe was on the other foot and if this gentleman felt threatened by my children in some way that that police interaction could have looked very differently and probably would have looked very differently. They certainly would not have chuckled and laughed, talked with him like he was a friend, someone familiar, and allow him to walk home, particularly after he intentionally went home, parked his car, and came back to confront young people minding their business, doing what they were doing at no harm to him other than his racist behind believing that they didn't belong here. They were a fixture he didn't want to see on this street and what he feels he owns, and the police allowed him to leave with the sense that he had done absolutely nothing wrong.

Kaleem Caire subsequently posted [video](#) capturing part of the incident (before police arrived) on Facebook, along with photos of the individual and a caption stating:

WHAT A RACIST LOOKS LIKE IN MADISON: This guy, Randall (Randy) Abendroth, a Vice President at EMS Industrial Inc of Madison had the nerve to drive up and harass my daughter, her boyfriend and their friends (watch the video), then proceeded to park his car, get out and come over to confront, harass and threaten them and others who came to support them. Thankfully, some of the people residing in the building upstairs and passers by came to their aid. I look forward to seeing this man's face today when I talk with him about apologizing to my daughter and her friends. Word of caution to everyone, do not EVER threaten or harass my children, or anyone in my family or extended family. We don't bother you. Don't you bother us. Our daughter's art partner broke into tears because she was scared.

I could cite many other individual cases illustrating the disparate treatment characteristic of MPD, but this letter is already far too long.

### **MPD handling of Black Lives Matter protests**

On May 30 - June 1, MPD responded in a militarized manner to protesters. MPD's use of force was grossly disproportionate and drastically escalated event, sparking rioting. The officers indiscriminately used pepper spray, tear gas, and impact projectiles (40mm rounds) against peaceful protesters, in a manner that was in flagrant violation of MPD policy.

MPD policy states:

Officers may use O.C. spray when they reasonably believe they are facing active resistance, or its threat, from the subject. O.C. spray is not to be used against subjects who are offering only passive resistance.

But during the protests, MPD officers used O.C. spray all over the place against people who were engaged in only passive resistance or who weren't engaged in resistance of any kind (i.e., not even passive resistance).

For example, as Isthmus journalist Dylan Brogan [reported](#):

Officers in riot gear formed a line around 6 p.m. at the intersection of Johnson and State streets to clear the people who were blocking traffic. Police started spraying pepper spray at demonstrators at close range and walking forward to push people onto the 300 block of State Street. Brittany, a UW-Madison student, was hit with mace while trying to help someone who fell to the street as officers marched toward them.

'I was trying to help this girl up and they spray mace right in my eyes,' says Brittany, whose eyes were bloodshot and barely able to open. 'Fuck, my face hurts.'

Sharon Irwin (Tony Robinson's grandmother) was trying to de-escalate folks - just trying to help - and was peppersprayed in the face. She later described those events to me. Shadayra Kilfoy-Flores witnessed these events and posted on Facebook:

My friend Sharon Irwin was maced trying to STOP people from breaking into Goodman Jewelers. I had to wash PEPPER SPRAY out of my friend's hair. She was keeping the peace. The police sprayed her dead in her face.

Another friend, Nicole Desautels, wrote:

I started livestreaming on State Street at 6:49 pm on May 30th. The police used tear gas and pepper spray on peaceful protesters. It was disgusting. It was clear the police were there to agitate.

A reporter for Tone Madison [wrote](#):

lines of police in riot gear deployed tear gas and pepper spray indiscriminately to split up protestors.... Police in Madison have also joined the nationwide trend of openly assaulting journalists covering the protests. NBC 15 reporter George Balekji was interviewing a protest medic on live TV Sunday night, walking north on State Street past Mediterranean Café, when riot cops threw a tear-gas canister that hit Balekji in the shoulder as it detonated. "Protest was peaceful at this point, no warning was given to stop walking. Why use the tear gas in this scenario?" Balekji asked in a follow-up tweet. The cops in the riot line would have had a clear view of Balekji, the people Balekji was interviewing, and NBC 15's camera person.

Meanwhile, for impact projectiles, the current MPD policy reads, in part:

4. Impact projectiles may only be used under the following circumstances:
  - a. To overcome violent or assaultive behavior or its threat when the officer reasonably

believes that the subject poses an articulable threat of harm to an officer or to another person.

b. To control persons in order to prevent them from harming themselves or others.

Additionally, an officer must reasonably believe that a lesser degree of force would be insufficient to control the situation, or that it is necessary to deliver force at a safe distance from the subject.

5. The intentional deployment of impact projectiles at the face, head or neck is considered deadly force...

8. Absent an imminent risk of harm to officers or citizens, impact projectiles will not be used in crowd control situations. Impact projectiles will not be used to move or disperse crowds.

The level of injury that such impact projectiles can inflict is discussed in [this LA Times article](#). Excerpt:

A homeless man in a wheelchair had his eye bloodied in downtown Los Angeles. A San Jose activist suffered a ruptured testicle after a blast to the groin. A radio reporter interviewing protesters in Long Beach suffered a neck wound. And an untold number of others sustained cuts, bruises and worse during the demonstrations that followed the death of George Floyd at the hands of Minneapolis police....

A 2017 analysis of 1,984 people struck by rubber or plastic bullets found that 3% were killed and 15% permanently injured. The peer-reviewed study, published in the journal BMJ Open, reviewed 30 years of scientific papers worldwide on injuries from kinetic impact projectiles, or KIPs, which include rubber-coated bullets, beanbag rounds, sponge rounds and more.

Dr. Rohini Haar, the study's lead author and an emergency room physician, said that the so-called sponge rounds fired by the 40-millimeter launcher had not reduced problems.

"Because these sponge rounds are used so pervasively, we see a ton of injuries from them," said Haar, a public health lecturer at UC Berkeley. She said there had been a 'false narrative' that 'less-lethal' weapons were less problematic, resulting in little rigorous review of their impact.

JT Jenkins, a friend who I know to be highly reliable in testimony, attended the Madison protests to provide medical assistance and video document events. He wrote me the following:

I personally witnessed 2 youth take rubber bullets [technically, 40mm sponge rounds] to the face. But we were being pushed so hard by the cops I couldn't stop and get bullets from ground or interview the kids. But yeah one had an open wound above eyebrow.

I also have video of them spraying OC spray to face of people treating others on the ground. And video of people throwing up in all directions from the CS gas

It was a lot of gas.

When Madison alders queried Chief Wahl about these events in a letter, he provided an account and case reports that omitted such information.

JT Jenkins commented regarding Chief Wahl's response to the letter from alders:

He lies. I have plenty of video to back it up.

Under MPD policy, officers are supposed to report others who use force in violation of policy, but that didn't happen during the protests (the principle of police solidarity trumped policy). And in incident reports, it's ever so easy for officers to justify whatever action they took - e.g. writing that there was a "threat" of active resistance when there was none, to justify their use of O.C. spray, or writing that they were aiming for the lower body when they shoot someone in the face with an impact projectile. Given the incident report, the use of force will then be judged as within policy.

If you want to verify for yourself that pepperspray and tear gas were being used against protesters in a deliberate manner that completely violated MPD policy, here are a few of many, many videos showing it: [Video 1](#), [Video 2](#), [Video 3](#).

### **At this point MPD requires a sea change**

The issues delineated above need to be addressed, and that won't occur easily. Real change would require an external hire of an authentic dedicated reformer as Chief.

As recently retired MPD officer Steve Mackesey [noted in a recent interview](#), discussing the shooting of Tony Robinson and other incidents:

Mackesey says he witnessed a culture at MPD that was "incapable of living up to the standards the community expects from its police force."

"There are plenty of outstanding officers in Madison. But if MPD is so great, so much better than other departments, then why do these incidents keep happening?" asks Mackesey. "How is it that MPD is never, never, never at fault? And what is just as bad is that within the department, dissent isn't tolerated. You are called a traitor, maybe even harassed, unless you fall in line."

I'll add that I and the organization that I'm part of (the Community Response Team) have been working for systemic reform of Madison policing since 2012. One thing I've learned is that MPD is very resistant to change. For example, OIR Group, which performed a comprehensive review of MPD, has a reputation among police oversight professionals of making its recommendations quite palatable to police department (not overly critical or demanding). In part, this reflects the fact that OIR Group needs to be able to obtain positive referrals from police departments it has worked with, to continue to obtain new clients. So its recommendations are good, but not overly harsh. However, MPD was resistant to a very large proportion of OIR's recommendations, which was highly unusual. Mike Gennaco of OIR told me that they did not normally encounter police departments this resistant to their recommendations for reform, and he sent me examples of more typical responses – those contained none of the resistance and defensiveness that characterized much of the MPD response. The MDP Policy & Procedure Review Ad Hoc Committee had to go through each OIR recommendation MPD disagreed with, seeking compromises and making final decisions on recommendations. I will note that Captain Mary Schauf was the MPD representative to the Ad Hoc Committee for some of those discussions, and I found her responses much more reasonable, and less resistant than those of Vic Wahl. But still, this is a police department that

appears quite resistant to reform.

I'll add that racially disparate policing is far from the only serious problem with MPD. One should not conclude, for example, that all goes well with policing of white people. It doesn't – especially in policing of individuals from low income backgrounds, people with mental health issues, etc. But I devoted much of this letter to the racial disparities since I believe that's one very critical matter to consider in the hiring of a new Chief.

Sincerely,

Dr. Gregory Gelembiuk