



## Did Easton Deputy Fire Chief Beat Up His Cop Girlfriend? Jury Says No and Civil Service Commission Orders Him Reinstated

## Bizarre Hiring Practices at Sheffield Police Don't Turn Out Well Got PTSD? History of Shooting Civilians? Sheffield's For You!

## Commission Finds Son of Quincy Mayor Got Special Treatment And Voids Bypass of Higher-Ranked Candidate for Police Appointment

## Commission Allows Woburn Deputy Fire Chief Promotion to Stand But the Hiring Process Was Not Pretty

## Appalling Candidate for Appointment to the Saugus PD Meant to Apply to La Cosa Nostra?

## *Terminated Easton Deputy Fire Chief Demoted But Reinstated After Appeal—Split Commission Vote Rescues Career of Tim Griffin Canned for Domestic Violence—Classic Case of “He Said/She Said”*

**D**eputy Fire Chiefs don't get canned very often for beating up their cop girlfriends, much less indicted and prosecuted. But the sad story of Easton Deputy Fire Chief Tim Griffin shows the problem of relying on “he said/she said” evidence to end a valued employee's career.

Griffin joined the Easton FD in 2001 after serving eight years in the Marines and six in the National Guard. He worked for a year as a firefighter with the Attleboro FD before transferring to Easton. Griffin is also a licensed paramedic. Fire Chief Kevin Partridge was very impressed with Griffin and promoted him to Deputy Fire Chief in 2017 after he had moved up the ranks. Over the course of his career, Griffin had some very minor discipline that included a one-day suspension for insubordination, and two reprimands for verbally abusing another firefighter and violating some medical protocols.



Easton Deputy Chief Griffin  
Acquitted and Reinstated

Griffin's personal life did not go as smoothly. For nine years he dated a single mother, identified only as Ms. A in the Civil Service decision. Ms. A was an auxiliary police officer for the Attleboro PD and a part-time Deputy Sheriff for Bristol County. Griffin terminated their relationship by text in January of 2018; but the breakup was pretty amicable and the two kept in touch.

Eight days after the breakup, Griffin had a tough day at work involving a dustup with a close friend and colleague. He went over to Ms. A's house for comfort and consolation and it didn't end well. According to Ms. A., Deputy Chief Griffin arrived at her home "unannounced," demanded her cell phone, hit her on the head, grabbed her loaded service weapon, pointed it at the ceiling, and threatened to get her fired. She fled the house and came back an hour later after Griffin had left and she called the cops. Oddly, it took her an hour to call the police after she left her home.

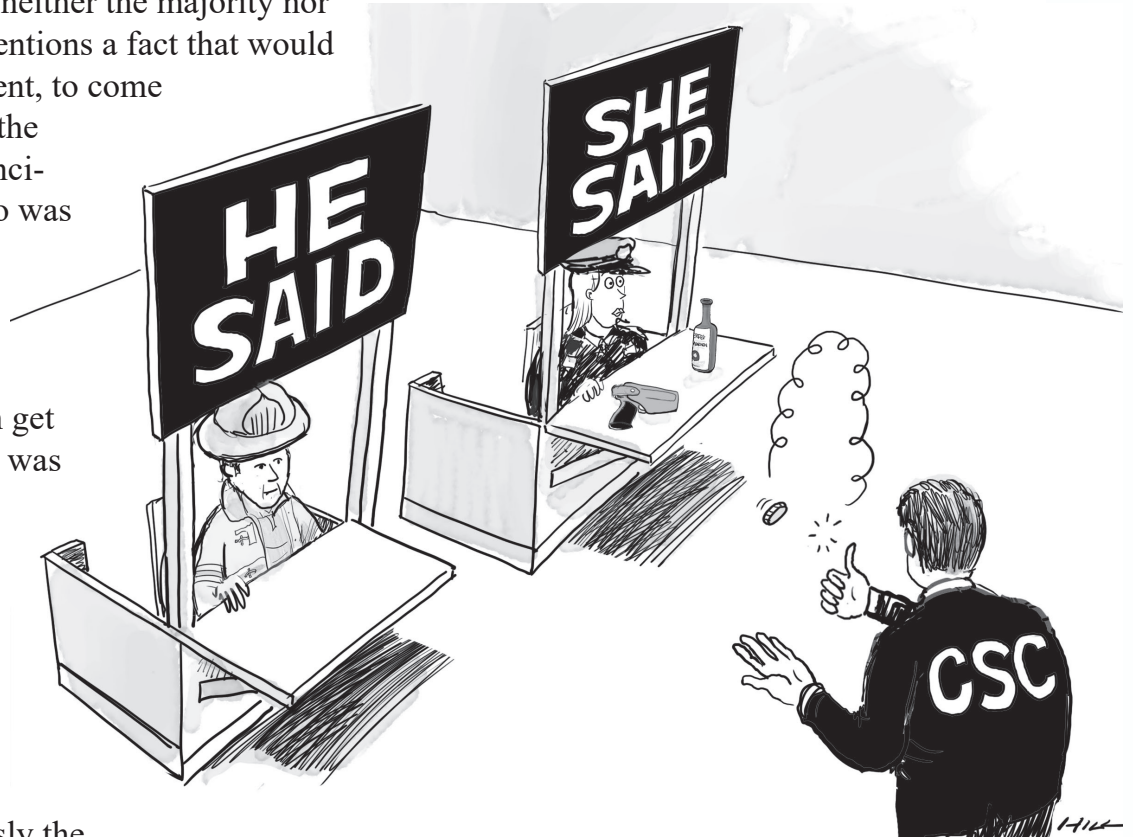
Griffin's version was very different. He says that he met Ms. A in her living room where he found her holstered, but loaded, service weapon next to an opened beer bottle. Ms. A seemed to have been drinking so Griffin cleared the weapon and placed it in a cabinet above the fridge. Ms. A wasn't happy about that and reached for the cabinet housing the weapon. A struggle between the two ensued after Griffin told her to leave the gun alone. During the tussle, her inner lip was cut open, she suffered mild bruises, and tears to her sweater and pants. After Ms. A fled the house, Griffin returned to the living room, picked up his keys and left. Ms. A.'s 14-year-old son was upstairs sleeping during the whole episode.

Thereafter, Griffin was arrested by the Attleboro PD, spent six weeks in jail before being released on bail, and was fired from Easton FD. In November of 2021, he went to trial on criminal charges of domestic assault and battery, assault with a dangerous weapon, and intimidation of a witness. He was acquitted of all charges after testifying on his own behalf. Obviously the jury believed him, not Ms. A.

Griffin also filed an appeal from his discharge with the Civil Service Commission. The result there was not so black and white. In January of this year, three of the Commissioners voted to reinstate Griffin but demote him to firefighter without a chance of promotion for five years. They found that Griffin had shown a deficiency in leadership skills and a disappointing lack of judgment and candor by showing up at Ms. A's home in the first place and then bungling the firearm situation. Holding a senior leadership position in the Easton FD, Griffin should have been able to do a better job of de-escalating. But the majority felt that it was Ms. A who was the aggressor and initiated the physical contact—so no domestic abuse. The injuries were completely minor.

The two other Commissioners, including Chair Chris Bowman, dissented and argued that the termination should not be disturbed. They believed that a preponderance of the evidence showed that Griffin did indeed engage in domestic abuse: they argued that Ms. A’s clothes were torn, she had bruises and a cut lip, and there were red marks on her arms, wrists, chest, and neck. They also took note of the fact that Griffin had refused to testify at the local hearing or cooperate in any way with the investigation of the incident. And they didn’t like the fact that Griffin had been disciplined in the past for a verbal outburst at work and that he failed to abide by Ms. A’s initial request that he not visit her at home. They also did not appreciate the menacing tone and tenor of his texts to her the night all this went down.

Oddly enough, neither the majority nor minority decision mentions a fact that would incline us, in any event, to come down on the side of the Deputy Chief. The incident between the two was investigated by the Attleboro PD—Ms. A’s employer. Would Easton Deputy Chief Griffin get a fair shake when he was being investigated by his ex-girlfriend’s friends and colleagues? Given the sordid history of municipal police investigating themselves, we wouldn’t count on it—obviously the jury hearing the criminal case felt the same way.



It is important to understand that the Civil Service Commission was not obligated to reinstate Griffin just because a jury found him not guilty. The standard of proof that has to be met before the Commission is only that of a “preponderance of the evidence” while the standard of proof before a jury is a much tougher “beyond a reasonable doubt.” So, in order to affirm the termination, the Commission only had to find that Griffin had “more likely than not” engaged in domestic violence. [Griffin v. Town of Easton](#), 35 MCSR 1 (2022).

## ***Got PTSD? Don't Mind Shooting Civilians? There's a Job for You in Sheffield—No Questions Asked!***

**I**t is hard to imagine what was going through Sheffield Police Chief Eric Munson's head in 2018 when he decided to hire a Pittsfield police officer by the name of Chris Colello whose brief stint with the department would end in disaster two years later and eventually cost the town a fortune.

Colello had previously joined the Pittsfield police back in 2008. Two years later he shot a citizen on a domestic call after chasing him into the woods. Family members had called the police after the suspect had threatened to kill himself while brandishing a knife and dousing himself with gasoline. Colello and his fellow officers on the scene claimed they felt threatened, so Colello shot the guy. He lived.

In 2017 Colello shot and killed one Daniel Gillis after being called to a residence while serving a detail. A report had come in to the nonemergency line that Gillis was threatening suicide. Colello arrived and found two officers attempting to deal with Gillis, who had barricaded himself inside the residence. Gillis eventually exited the building brandishing a knife in a threatening manner and making comments about his wish to die. Officer Colello obliged him by shooting him to death.

The Pittsfield Police Department and the State Police “investigated” these incidents and, of course, found Colello had not acted improperly; but no one could exactly say that Colello was guilty of any brilliant police work.

Another family argument in 2017 led to Colello and two colleagues beating the hell out of a civilian, one Chris Esperanza, in his own bedroom after a fight with his step father. Pittsfield police even convinced the district attorney to charge civilian Esperanza with assaulting the officers—a charge that a jury emphatically rejected two years later in finding Esperanza not guilty, apparently convinced by his attorney Judith Knight's arguments that Colello and the two other officers had wildly overreacted and were responsible for escalating what could have been a manageable situation.

After both shooting incidents, Colello claimed to suffer from PTSD. Following the first one in 2010, Colello reported depression, thoughts of suicide, anxiety attacks, and fits of rage. A captain with the Pittsfield PD intervened and convinced him to get treatment and go on paid Section §111F injury leave. Colello's application for Accidental Disability Retirement was even approved in April of 2014 (for the first time), but by 2016, after medication and psychological treatments, Colello was feeling better and was reinstated. A year later he shot and killed Gillis and the whole spiral began again—nightmares, difficulty sleeping, fear of not being able

to do his job—so once again, he claimed §111F leave, checked himself into a 10-day inpatient treatment center and continued therapy until being cleared to go back to work in early 2018.

By that time, Officer Colello thought his fragile psychological condition might be better managed if he found work in a less stressful, more rural, community than Pittsfield and he applied for a job with the Sheffield police. He would have done better to have found another line of work.



Sheffield Chief Eric Munson

Sheffield is one of the more charming rural villages in Berkshire County with a population approaching 3,400. Everybody, or almost everybody, is white. There are more and more New Yorkers with second, third, and even first, homes. A precious private boarding school called the Berkshire School anchors the town where affluent parents pay annual boarding tuition of \$68,000 to get rid of their kids—an amount that exceeds by \$9,100 the \$58,900 Sheffield police officers are paid when they are first starting out and have a year of experience.

The tiny police force has been headed up by Eric Munson since 2012. Chief Munson, knowing all about Colello's checkered Pittsfield background, decided to hire him anyway when he showed up in 2018. But Munson was not the only one responsible for this hire. The Sheffield Selectmen had the last word, interviewed Colello, and even reassured the fragile candidate *that they would not make him revisit the shooting incidents during the interview*. And they didn't. No questions asked.

They signed him up in September of 2018. It didn't go well thereafter. Duh.

So how long did it take Colello to get into trouble and later check out on §111F leave? Just 13 months. And this is how it came to pass.

On October 23, 2019, a nighttime noise disturbance call came in to Sheffield PD and Colello and another officer, Jake Gonska, responded. Arriving at the property, they found Chris Jordano, who operates a tree service, astride a skid steer with a log grabber attached to the front of it. Colello's version of what happened next is that Jordano started screaming at them to get off his property and continued to drive the skid steer in their direction in a threatening way. Colello says that despite the fact that they identified themselves as police officers, Jordano got closer and closer.

Feeling trapped and threatened by the dark and by all the logs piled up around him, Colello drew his weapon and pointed it at Jordano. Colello claimed that Jordano was extremely angry and had a 1,000-yard stare. (How he was able to see that in the dark is just a bit perplexing.) About 20 feet away from the officers, Jordano stopped and turned off the machine. End of story. Jordano ended up being charged with assault but with COVID delays, he has yet to go to trial.



Given the fact that Officer Colello's prior history may show, shall we say, a certain absence of de-escalation mastery, we decided to see what Jordano, the tree guy, had to say about this. His version, as you might imagine, is very different. He told us that this was not the first time that Colello had shown up at his property due to the incessant noise complaints of what he called a "crazy" neighbor. According to him, the police did not identify themselves at all when they first showed up and he could not tell that they were police because it was dark. He was scared by the intrusion and that was the reason he kept coming at them with the skid steer. Once he realized it was the police, he exchanged a few insults with them and turned off the machine. The insult in question was that one of the officers would have less trouble getting out of the way of the skid steer if he weren't so fat.

A few months later, Officer Colello began to run down again psychologically, became sullen and depressed, and started having thoughts about suicide. Colello claimed to be traumatized at having to draw his weapon and relive his prior shootings. Things weren't going well between Colello and Chief Munson either. Colello was upset about his salary, about being on the night shift, and about missing out on a \$2,000 raise. Although he was briefly promoted to sergeant, he soon reverted to patrol, having not found the additional responsibilities and night time shifts to be worthwhile. In June of 2020, a full nine months after the skid steer incident, he met with Chief Munson and told him that the confrontation with Jordano had triggered (as it were) his PTSD and he needed to go out, once again, on §111F leave. The Selectboard rejected Colello's request. (Presumably these were the same nitwits who had hired him back in 2018 and didn't want to hear about the Pittsfield shootings.) In denying Colello and his union's request for leave, the Selectboard members claimed that while they didn't argue that Colello was looney tunes, they did not agree that his mental issues were caused by the confrontation with the tree guy but were sourced to the two shooting incidents while he was serving on the Pittsfield police force. Why, they asked, if Colello was so traumatized by the tree guy, did he wait nine months after the incident to say anything? Good point.

So they denied the benefits and the union appealed to the Department of Labor Relations.

True to form, after claiming the benefits, Colello trotted off to McLean Hospital as an in-patient to its LEADER Program—where he hung out for almost two months. McLean Hospital is a swanky psychiatric institution in Belmont, founded way back in 1811, and originally charged with taking care of what the poet Robert Lowell bitingly referred to as *Mayflower Screwballs*. He should have added “rich” screwballs. It is wildly expensive, costing thousands of dollars a day, and some of its programs don't even accept insurance. For example, feeling like you might be tipping a bit much? We recommend McLean's Borden Cottage program oceanside in toney Camden, Maine, where for \$2,465 a day (no insurance accepted), and a minimum recommended stay of 30 days, you can receive “compassionate” care as these medical kleptomaniacs ravage your bank account. McLean has another pretty ritzy establishment in Princeton, Massachusetts, for Commonwealth drunks and druggies who might prefer to stick closer to home.

LEADER stands for Law Enforcement, Active Duty, Emergency Responder. (No, to our surprise it doesn't stand for Let's Extract All Dollars from Emergency Responders.) The McLean website beguilingly says that those nice compassionate folks at McLean realized that there was an “overwhelming need” for such services for first responders **after the Marathon bombings**. Huh? They *realized* only after the Marathon bombings that cops and first responders can be traumatized by the horrible stuff they see and have to do? It took the Marathon bombings for that to click? Wow. More likely it wasn't until after the bombings that some toxic MBA with his mind in the cash register figured out that this would be another lucrative market for compassionate gouging.

We love the photo below with its sexualized subliminal message that McLean uses to market its public safety LEADER program. How tasteless. What do you think the firefighter there is upset about? Is it the burned corpse of an elderly grandmother unable to escape from the third floor of a triple-decker fire? The charred and decapitated remains of a drunken teenager whose 2004 Honda got wrapped around a tree at 90 mph? Nope. It's the fact that he is not going home with the gorgeous blonde in the picture.

But we digress.

In his dispute with Sheffield over his §111F benefits, Colello's union lawyer cleaned the Town's clock. Sheffield basically argued before arbitrator Timothy Hatfield that Colello was a bullshitter. Yeah, he was a mess psychologically, had some PTSD issues; but these had nothing to do with his brief stint as a cop in Sheffield and absolutely nothing to do



What's He Crying About?

with the confrontation with the tree guy. His issues stemmed directly from the shooting incidents in Pittsfield. They also charged that the “hyperbolic language he used in the incident report” covering the log skid incident was “for the sole purpose of justifying his decision to draw his service weapon” when the tree guy in the skid steer was 70 feet away and posed no danger.

And also, Sheffield said, Colello was unhappy with the job at Sheffield PD, had problems with the chief, and had family issues. But the fatal flaw with Sheffield's strategy, if the Town even had one, was failing to present any expert medical testimony in support of their position. Nothing. The union, however, did.

The arbitrator ultimately was convinced by the testimony union lawyers presented from a no doubt extremely well-compensated but compassionate psychiatrist from the McLean LEADER program, one Dr. Beth Murphy, who bought into the scenario that the tree guy had retriggered Colello's PTSD. Therefore, Sheffield should be responsible for paying §111F benefits. Doc Murphy would also later convince the Berkshire County Retirement Board to approve Colello's application for accidental disability retirement. BTW, Doc Murphy doesn't look much like that gorgeous blonde.



So where does this leave us? Is Officer Colello a grifter who conned his way into an early pension with a hyped up PTSD story? Or is this a legitimate case of PTSD from someone who clearly was never meant for policing work and couldn't handle the stress?

We have no idea. But what we did want to find out was why the hell Sheffield ever hired this guy. We got to talk to Chief Munson but he wimped out and would not discuss the case. The Town Administrator clammed up too. Other people we talked to in Berkshire County speculated that the only reason Munson would have hired Colello is that no one better showed up and he desperately needed the position filled. That makes sense to us but it's going to be a very costly mistake for the real estate taxpayers of cozy little Sheffield. [Town of Sheffield and Sheffield Police Officers Association, Local 474 MASSCOP](#), ARB-20-8358 (January 24, 2022) (Arbitrator's Decision) 48 MLC 190 (2022)

***Cornelius Koch—Both the Son of the Quincy Mayor AND the Nephew of the Police Chief—Was Way Down On the List But (Surprise!), Got Hired Anyway—Commission Not Happy About That and Voids Bypass of Higher Ranked Police Candidate***

**I**t probably came as no surprise to anyone in Quincy politics that the Mayor's less than stellar son Cornelius ended up snagging one of 18 appointments for new cops. But since Cornelius was ranked 32nd on the certification list for these 18 appointments, it took some work to get him there. No worries, his dad Mayor Koch and his lackeys were up to the job—alas, just not sneaky or smart enough to avoid getting caught.

It seems the only qualifications that Cornelius had for the job were “lifelong residency” in Quincy and a bachelor's degree in Political Science from a mediocre college. Not much to go on there but with dad being the Mayor and all, and his uncle being Quincy Police Commissioner Paul Keenan, things were not looking too bad for Cornelius. (Who the hell names a kid “Cornelius,” anyway?—no wonder he was 32nd on the list and needed adult intervention.)

According to the decision by Commission Chair Chris Bowman, the City basically did three things to ram through the appointment. First, working through Quincy Human Resources Director Patricia McGowan, city officials determined all of a sudden that Quincy needed a bigger list because of “unexpected” retirements (something they were not worried about before Cornelius came it at #32). So Quincy decided it needed **25** new officers, not the 18 as originally planned **just a few weeks earlier!** BTW, McGowan testified before Bowman that there was no way Cornelius would have been hired had the city only hired 18 candidates (he ended up being the 19th candidate appointed).

Second, both Mayor Koch and Commissioner Keenan “recused” themselves from the hiring process and hired an outside advisor as a stand-in. But the recusals were bogus. That

advisor, David Bennet, a former state Secretary of Public Safety and Security, failed to serve as effective camouflage for the rampant nepotism here because he never even bothered to show up for one of the two hiring roundtables. The Commission was not impressed. Moreover, the roundtables were chaired by one of the Mayor's direct reports!

And third, Quincy did a hit job on higher ranked candidates—in particular the Appellant in this case, Daniel Neenan—so the city could appoint Cornelius. Neenan was ranked 31st on the list, just one above Cornelius at 32. In bypassing Neenan, the city claimed that there were inconsistencies between the information he supplied on prior and unsuccessful applications to the State Police and his Quincy PD application. They also cited the fact that he had not disclosed his termination from a restaurant bouncer job.

Looking into this more carefully, the Commission found the reasons were most likely BS. To begin with, the restaurant owner himself testified before Chair Bowman that Neenan had not been fired, would be rehired in a minute, and the police background investigator, Sargent Michael Duran, never even bothered to interview him. With respect to any minor inconsistencies between Neenan's State Police and Quincy applications, Chair Bowman found that the process was so tainted that the Roundtable was objectively unable to analyze the significance, if any, of this. The fix was in.

So the Commission voided Neenan's bypass and ordered him placed at the top of the next list. But Cornelius Koch's appointment stands. He is a cop. Neenan may or may not be appointed at the next round. If this were a bank robbery, the Commission's remedy would be a little bit like the state making the bank whole and letting the bank robber off scot-free. But what is being stolen here in these nepotism cases is not so much money but a worthy career from a more qualified candidate.

At the end of the day, at the price of some minor bad press, Mayor Koch was able to get his underperforming seed Cornelius appointed (we made sure the press picked this up by sending a copy of the Commission's decision to editors at the Quincy Patriot Ledger who jumped on it).



Thanks for the Diploma and the Job Dad!

We would be thrilled to see the Commission make a bigger dent in corrupt nepotistic appointments by more frequently revoking the appointments of those in the lucky sperm club, in addition to voiding the bypass of the disfavored candidates. That kind of a remedy might have more of an impact on the kind of hacks that populate Quincy City Hall. [\*Neenan v. City of Quincy\*](#), 35 MCSR 21 (2022).

### ***You Sure You Are Applying to the Right Employer? Maybe Gerard Cioffi Mixed Up the Saugus PD with the Camorra or La Cosa Nostra***

**I**t might be that police officer candidate Gerard Cioffi got his signals crossed when applying for a police officer position with the Saugus PD. Or, since he applied twice, and was twice rejected, maybe not.

When bypassing him both times, Saugus discovered:

- *three recent Saugus police incident reports where he threatened a neighbor and fought with girlfriends.*
- *Two abuse prevention orders.*
- *12 sealed criminal records (no convictions)*
- *negative reports from neighbors describing Cioffi as aggressive with foul language, a hothead, and not someone who ought to have a gun.*
- *a driving record with 2 dozen entries—9 responsible infractions and four surchargeable accidents*
- *and to top it off, a complete lack of attention to detail in filling out the (two) police applications and omitting all sorts of required information.*

Not surprisingly he was turned down by Saugus and then lost his appeal before the Civil Service Commission. As for his appeal strategy, his lawyer came up with the clever notion that he had a terrible childhood and all his screw-ups had made him into a better person. He also tried to argue that Saugus was biased in favor of the successful candidates—one of whom had a brother with the Saugus PD. This effort yielded no results since the three successful candidates that bypassed him came highly recommended, all had law enforcement experience, and solid professional references.

Mr. Cioffi might want to try for a job with the Sheffield PD if La Cosa Nostra isn't hiring. [Cioffi v. Town of Saugus](#), 35 MCSR 11 (2022).

## ODDS & ENDS

### *How Exactly Do You Calculate That Two-Point 25 Year Longevity Credit For Police and Fire Promotions?*

**R**uling in five separate appeals from Boston police officers challenging HRD's method of calculating the 25-year, two-point experience credit applied in police and firefighter promotions, Commission Chair Chris Bowman affirmed HRD's use of the scheduled examination date as the end point for measuring length of service rather than the actual examination date. Boston officers have been arguing for the later actual exam date because the postponement of exams due to COVID 19 would have allowed them to use a later end date and give them greater longevity to qualify for the two-point credit. The decision finds HRD's use of the scheduled date to be rational, evenly applied, and not subject to revision by the Commission. [Conroy v. Human Resources Division](#), 35 MCSR 43 (2022).

### *Woburn Deputy Fire Chief Promotional Process Not a Model of Competency But the End Result Was Just Fine*

**I**n a decision from Hearing Commissioner Paul Stein, the Commission turned down the promotional bypass appeal from a Woburn Fire Captain in finding that the successful candidate for Deputy Fire Chief had more relevant experience, better educational credentials, and performed better during the interview process. Commissioner Stein did criticize the Woburn Mayor for a flawed interview process that left the interviews undocumented, unrecorded, and reliant on largely subjective criteria. Overall, however, the process was found to be legitimate and dedicated to finding the best candidate. [Peary v. City of Woburn](#), 35 MCSR 28 (2022).

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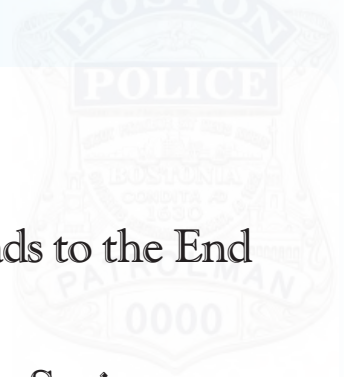
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## Newton Police Chief and Union President Butt Heads to the End Guess Who's Back on Night Shift?

## Civil Service Commission Takes Aim at Public Safety Sexism Female Methuen Fire Lieutenant Done Dirty by Her Chief on Bypass for Promotion to Captain

## Miguel Rodriguez III Can't Find His Way Home But He Wants to Be a Lawrence Police Officer

## Bargain or Else! Fitness-for-duty Exams Now Require Union Accord in Northborough

## *Newton Police Chief and Union President Clash Over Reforms End of the Story? Chief Retires and Union Prez Back on the Night Shift*

For whatever reasons, Newton Sergeant John Babcock and Chief David MacDonald were most definitely not part of any mutual admiration society. In the 2016 picture to the right, they are celebrating the donation to Newton PD of Combat Application Tourniquets by a local hospital. These so-called CATs are considered the gold standard in hemorrhage control and are useful in transporting victims to the hospital. Fast forward two years, it wouldn't have surprised their colleagues if they had used the tourniquets to strangle each other.



Newton Police Celebrate Combat Tourniquets

The only police officer that looks like he should in this photo is the now former Chief, David MacDonald. He looks good: fit and tough. You would not want to mess with him. The

large gentleman on the far left, however, looks like too many cops today: overfed and out-of-shape. That guy is Newton Police Sergeant John Babcock. Not only is Babcock overfed, but he is also overpaid, consistently showing up at the top of the Newton salary lists. In 2020, Babcock's total pay was \$297,640. To put this in perspective, Newton School Superintendent David Fleishman, who consistently ranks at, or near, the top of the Newton salary list, made \$315,517.

So what extraordinary law enforcement skills does Sergeant John Babcock bring to the table to merit such princely compensation? And why do we care?

Well, *we* care because a Department of Labor Relations Hearing Officer, Meghan Ventrella, just made mincemeat of a bogus appeal filed by Babcock's union after Chief MacDonald took Babcock to the woodshed, trimmed his sails, and then cut him off at the knees—to do a lot of metaphor mixing.

But first, some background.

David MacDonald retired as Newton's Chief of Police in June of 2020 after working the job for five years. MacDonald had joined the Department in 1993 as a patrol officer and rose through the ranks, but caught flack in the fallout of the George Floyd frenzy when some of his officers stopped a black resident—a former NBA player and Northeastern University athletic director—when he was out walking with his wife. The police officers thought he might have been a suspect in a fatal Boston shooting and were staking out his neighborhood *at the request of their Boston colleagues*. During the stop, one of the six officers drew his gun, as one might be inclined to do when approaching a murder suspect. The officer later apologized (we are not sure what for) but the Newton PD faced big blowback from the incident with calls for police reform and defunding. MacDonald decided he had had enough and retired.

But not before doing a number on Sergeant Babcock's career. Babcock had been with Newton Police even longer than MacDonald. He began there in patrol back in 1987 but in no way had the same kind of career success. It took Babcock more than 22 years just to be promoted to Sergeant in 2009. But if he wasn't managing to achieve much career success, Babcock made up for it with a big investment of his time in union activities. From 1996 until his promotion in 2009, Babcock was the president of the Newton Police Association, the union representing patrol officers. After his promotion to Sergeant, Babcock was elected vice-president of the Newton Police Superior Officers Association and eventually became its president in 2016.

When first appointed Sergeant in 2009, Babcock headed up the Patrol Bureau but in 2012 he transferred to the Traffic Bureau. In addition to five or six sworn officers, Newton's Traffic Bureau consists of two civilian clerks, 10 civilian parking control employees, and approxi-

mately 50 civilian crossing guards. Babcock was basically running the show with a Captain supervising him.

With Babcock representing the superior officers union and MacDonald recently installed as Chief in 2016, the two were constantly at loggerheads as MacDonald tried to make changes to the Department and Babcock aggressively resisted them as union boss. Mostly the conflicts arose when MacDonald moved to keep Babcock's snout out of the money trough. A year after becoming Chief, MacDonald cut back Babcock's responsibilities for details, telling Babcock that he was creating a detail lieutenant position to supervise them. MacDonald was not pleased when thereafter Babcock muscled in on the detail lieutenant's turf to recommend to a contractor that the size of a detail for an ongoing line stripping project be *doubled* to two sergeants and eight patrol officers. (Like we said, overfed.) After that, Babcock was told explicitly that he was not authorized to order a detail for any vendor.

Next up were contract negotiations over travel time compensation for superior officers. These did not go well at all, with Babcock informing MacDonald that he could not bargain about this issue outside of contract negotiations with the union and MacDonald responding at a meeting by throwing contract documents about bargainable issues in Babcock's face (literally!). After apologies were demanded all around, MacDonald refused to bargain the issue and the matter went to arbitration.

Babcock then sent union lawyers after MacDonald when he tried to change the policy regarding special leaves so that employees could no longer report off-duty using special leave without prior approval, unless they had already accrued special leave. Babcock won that round and MacDonald backed off but not without telling him how unhappy he was with Babcock blocking his efforts to make changes. Babcock, however, was not going to budge from the trough.

Around this time, a Newton police captain had mental health issues and MacDonald ordered him to submit to a psychological test. Babcock and MacDonald argued over the City's authority to order such a test and the union lawyers wound up filing a prohibited practice charge against the City. After they filed the charge, MacDonald told Babcock to stop being an obstructionist. As an aside, since unions resist any attempt to impose physical fitness standards, why should it surprise us that the unions also oppose mental fitness tests?

MacDonald was finally able to take Babcock down as the result of a meeting between Babcock and a parking control officer, one Dorothy Crowley. Crowley was upset, very upset, when her co-workers vandalized her bicycle and then carved the image of a rat in the side panel of her car. She met with Babcock to complain about this treatment and both of them ended the meeting screaming at each other. Crowley stormed out in tears. She later complained about Babcock's nasty conduct to Human Resources and MacDonald had the matter investigated by



a police lieutenant who found that Babcock had behaved in an unprofessional and discourteous manner.

So MacDonald pounced. He informed Babcock that, as a supervisor, Babcock should be able to conduct difficult meetings with subordinates with professionalism and decorum and MacDonald found the Sergeant's clumsy actions merited discipline for conduct unbecoming a police officer. A month later, the City transferred Babcock from his cushy Traffic job to the Patrol Bureau working the night shift. When Babcock complained to MacDonald, the Chief told him that "I am the Chief and I can do what I want to. This conversation is over."

With Babcock now back in the Patrol Bureau (after a two-month medical leave), his superior, Captain Dennis Dowling, thought it would be a good idea if his officers were trained to write their own search warrants and proposed that Babcock attend a search warrant training class. MacDonald, however, having approval authority over any training expenditure over \$200, denied the request, purportedly relying on the recommendations of his subordinates that Babcock would benefit more from refresher courses in basic patrol skills as he had been out of patrol for a very long time.

Soon after, Babcock applied for a Sergeant Specialist position and was interviewed by the Hiring Committee. Only two applicants applied for the job and the committee was divided 2-2 over who should get the nod but the bureau commander recommended Babcock. MacDonald had the last word and rejected the Committee's recommendation and wound up appointing a third candidate.

So Babcock rounded up the union lawyers again and they filed a complaint with the Department of Labor Relations, claiming that all these actions taken against him, the transfer, the night shift, denial of trainings, and so forth were discriminatory and retaliatory for his aggressive union advocacy. Hearing Officer Meghan Ventrella didn't buy it.

While she did determine that the Union had made out a *prima facie* case of discrimination—that's like getting to first base—she went on to find that the City had legitimate reasons for transferring Babcock to a night shift in the Patrol Division. Babcock had been on the receiving end of numerous reminders concerning the chain of command and detail protocols and had received a written warning after he had gotten into a verbal altercation with a subordinate in the Traffic Division. The Hearing Officer also found that there were legitimate reasons for not allowing Babcock to attend specialized search warrant training and for choosing another employee to fill a specialty position. Dismissing the complaint, the Hearing Officer concluded that the Union failed to establish that "but for" Babcock's protected activity as a union boss, the City would not have taken these actions. Enjoy your retirement Chief! [City of Newton and Newton Superior Officers Association, MASSCOP Local 401, MUP-18-6946 and MUP -19-7379](#), 48 MLC 125 (2021).

## ***Civil Service Commission Takes Aim at Public Safety Sexism Female Methuen Fire Lieutenant Done Dirty by Her Chief***

One of the most important Civil Service Commission decisions in recent years came out in December and was authored by Commissioner Cynthia A. Ittleman. It involves a Methuen fire lieutenant passed over for promotion by another candidate who, in addition to being equipped with a penis (which has been shown to be a superb firefighting tool) was part of the good 'ol boys clique at the Department.

We will not devote a lot of space to this case since it doesn't involve the police but the issues presented in hiring and promoting are similar for both professions and the Commission has given clear warning to police and fire departments to tread carefully when considering female candidates for promotion.

The candidate in question was Methuen Fire Lieutenant Tracy Blanchette. A candidate more worthy of promotion you would have a hard time finding. She is well known for her heroic performance during the infamous Malden Mills fire where her efforts in rendering aid to dozens of severely burned victims were recognized by the US Fire Administration as reflective of a new national model for responding to mass casualty events. Blanchette was appointed the first female firefighter in Methuen in 1993, has an unblemished employment and disciplinary record, has taught for years at the Massachusetts Firefighting Academy, and was even named as Firefighter of the Year for her performance at the Malden Mills fire.



Methuen Fire Chief John Sheehy

But when it came time for a promotion to captain, this wasn't good enough for Fire Chief John Sheehy who passed her over for one of his crony buddies, a far less qualified candidate by the name of Matthew Tulley. This Tulley had actually *employed the Chief* in his side electrician business for years and was related by marriage to a City Councilor.

Blanchette was ranked above Tulley by the Assessment Center but, according to Commissioner Ittleman, the Chief used a corrupt, biased, and "deeply flawed" interview process to drag his pal Tulley across the finish line.

Commissioner Ittleman does little in her decision to disguise her contempt for Chief Sheehy, who admittedly did a fine job before her of playing the hack, sexist, low-life fire chief. Commissioner Ittleman found it pathetic that Methuen, with a population exceeding 50,000, has only four female firefighters and took Methuen FD to task for all sorts of sexist discrimination that has been going on at the department for years.

After finding in her 58-page decision that Blanchette was egregiously bypassed by her chief's actions, Commissioner Ittleman fashioned a highly unusual form of relief. Normally in a bypass case, the wronged candidate gets put at the top of the list for the *next* appointment. This would not have been an effective remedy here because the fire captains at the Department are all around the same age as Blanchette, giving her no chance of getting a shot at promotion before retirement. And obviously Commissioner Ittleman did not trust shiftless Sheehy to do the right thing in the unlikely event that she ever did get a chance to be promoted.

So the Commission ordered Methuen to promote Blanchette to fire captain or "to a civil-service supervisory position with salary and benefits equivalent" to Methuen FD's incumbent fire captains. She also ordered the City to make Blanchette whole for any lost salary and benefits since her bypass.



"PICK ME FOR CAPTAIN...I HAVE MY OWN HOSE."

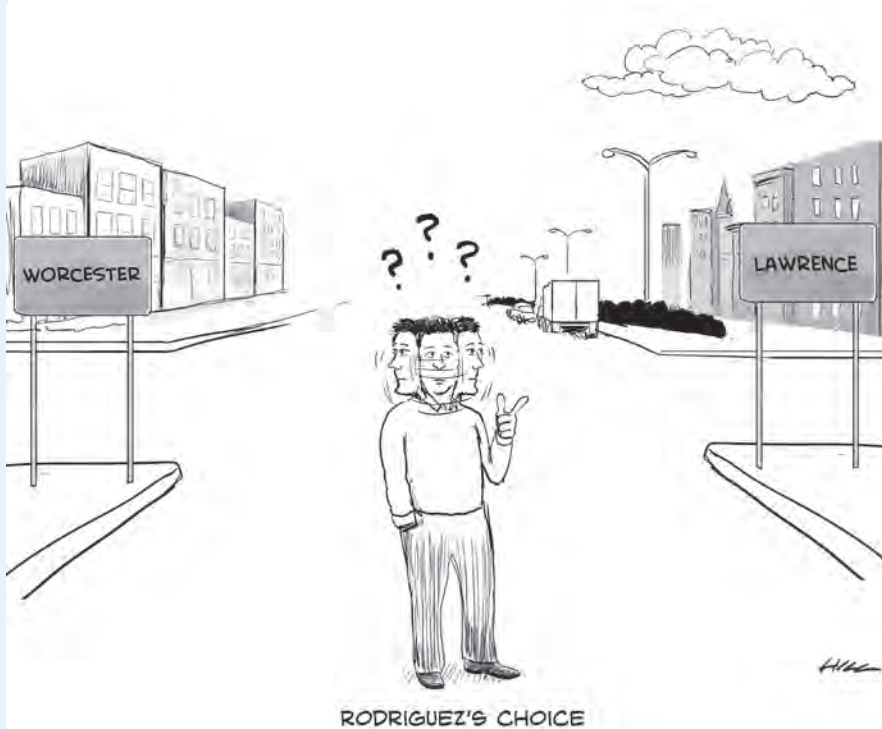
So if you don't think the issues in this case are important to your department and to your career, think again. How do you suppose it's going to go for Chief Sheehy's career when the City starts paying out Blanchette's captain's salary when they don't need an extra captain? How about when the City has to pay damage awards in the six and seven figures to settle lawsuits that Blanchette has also brought against Methuen for sex discrimination in court and before the MCAD?

In November of 2021, Methuen voted a three-year contract extension for Chief Sheehy....but that was before the shit hit the fan at the Civil Service Commission and before the huge damages that Blanchette will surely win from MCAD and in court.

You want to be a Neanderthal chief.....it's not going to go well for you in the future. Adapt or fail. The lawyers are gonna get you and your career if you don't. [\*Blanchette v. City of Methuen\*](#), 34 MCSR 431 (2021).

## ***Miguel Rodriguez III Can't Find His Way Home He Doesn't Know Where He Lives But He Wants to Be a Police Officer***

Sometimes the bypass process unmasks stupidity and lack of character in a way that leads a candidate to be tossed for the stated technical reason—i.e. lack of proof of local residency—but what the municipality is really saved from are more profound defects in the candidate. In this appeal, one Miguel A. Rodriguez III wanted to join the Lawrence police force. He claimed the one-year residency preference but investigators discovered that, well, he was probably living in Worcester.



Rodriguez did grow up in Lawrence and was living there with his mother during part of the year before the exam. But his mom moved to Worcester halfway through the year. She did so with the assistance of a Section 8 Housing Choice Voucher, a program with income-based caps tied to the size of the household. Presumably to qualify for a better deal under the program, Miguel (our Appellant) signed the lease along with his mother as a member of the Worcester household.

So, either he committed fraud in signing the Worcester lease and didn't live there; or he lied on his application to the Lawrence Police that he was a resident of Lawrence. When his duplicity was uncovered during the police application process, Rodriguez claimed that after his mother moved to Worcester he continued living in Lawrence with friends and family, including his grandfather. But Lawrence was unable to discover any documentation proving this contention and bypassed him—not for lying but for not being entitled to the residency preference.

Rodriguez managed to file a *pro se* appeal but then failed to follow through when asked by Commission Chief Bowman to reply to the City's motion to dismiss his appeal.

What a surprise. [\*Rodriguez v. City of Lawrence\*](#), 34 MCSR 451 (2021).

## ***Bargain or Else! Fitness-for-duty Exams Now Require Union Accord in Northborough***

**A** Northborough police officer had some issues, as they say, beginning in 2017 when his superiors requested he submit to a fitness-for-duty psychological exam due to an unspecified “off-duty incident.” Apparently the officer did so voluntarily, but only managed to stay out of trouble for two years when he found himself under arrest for domestic assault and battery in August of 2019. Soon thereafter, the officer, identified only as KA by Department of Labor Hearing Officer Kendrah Davis, had his LTC pulled, was placed on administrative leave, and then investigated by internal affairs.

Quite reasonably, it seems to us, the Department then ordered KA to submit to a fitness-for-duty psychological examination. In response, his union, Mass. Coalition of Police, Local 165, swung into action and filed a charge of prohibited labor practices against Northborough in which the union claimed that Northborough could not subject members to such examinations without bargaining with the union over the criteria and procedure for ordering such fitness-for-duty exams.

The Hearing Officer sided with the union and rejected Northborough’s claim that it had a history of past practice in ordering these exams. It turned out that the Town could only point to two previous exams, and these had not been ordered by the Department but were submitted to voluntarily. Not only that, but also the union was never informed of these exams and was not given the opportunity to bargain the matter.

Before the Hearing Officer issued her decision, KA had already settled with Northborough over his various “issues” but the Town will have to address fitness-for-duty exams in its next collective bargain agreement to subject officers to these in the future. [\*Town of Northborough and Massachusetts Coalition of Police, Local 165\*](#), MUP-20-7911, 48 MLC 143 (2021).

And that’s it for 2021. Please continue to keep us safe from all the crazies and lowlifes!  
(And stay out of trouble.)

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## New Scam at Brockton PD? Paying Off Old Cops to Retire So the Young'uns Don't Die on the Vine

## Salisbury Chief Might Need Some Work on His Hiring Finesse But At Least He Is Not Trading Drugs for Sex!

## Technicality Did Not Gain a Promotion to Lieutenant for an Everett Sergeant Demoted and Suspended for Letting Slide a Colleague's OUI

## DLR Hearing Officer Slaps Down Cambridge Commissioner Branville "Cuz I Say So" Bard But He's Out of Here and Off to Johns Hopkins University

**E**rnie Bell is a detective with the Brockton PD whose family hails from Cape Verde and who joined the Department in 1997—inspired to do so after he was falsely arrested at a Brockton bar and then berated by a racist white cop who called him the N-word. That cop was subsequently fired after yet another racist incident that cost the City a discrimination lawsuit when the same officer went off on a visiting Cape Verdean businessman. Since those days, Brockton has made a lot of progress on the PD diversity front, converting a basically all-white department into one of the most diverse in the Commonwealth at 37% minority.

In this case, Bell was appealing the failure of the Brockton PD to promote him to sergeant despite the fact that he was ranked first on the promotional list. The City didn't bypass him but let him "die on the vine"—in the lingo that describes candidates losing their chance for appointment or promotion from a certification list when the list expires without an appointment. Bell argued that he had been done dirty by a sergeant who had been on the disability list and waited to retire until the day that the sergeant promotional list on which Bell was ranked first expired. That left Bell's promotion dead on the vine and would force him to retake the exam and start the process all over again.



Brockton Detective Ernie Bell

The Commission found that Bell had not really proven his case. He never alleged that the City itself had conspired with the sergeant to keep Bell from being promoted and had shown, at most, that the sergeant might have been jerking him around for reasons we aren't told about.

Or maybe we are?

The Commissioners were very troubled by an allegation that he made in his legal papers that there was a “well known and established” tradition in the Brockton PD whereby officers seeking promotions paid off older officers who were blocking their advancement by delaying their retirement. Bell argued that the Mayor’s Office and the City Council “have moved quickly in making promotions and calling for promotional lists when those next in line are “friends of City Hall.” Unfortunately for Bell, he was not one of those “friends.” Bell also stated that no fewer than three members of the Brockton PD command staff encouraged him to throw some money at the retiring sergeant to get him to retire before the promotional list expired.



RETIREMENT À LA BROCKTON.

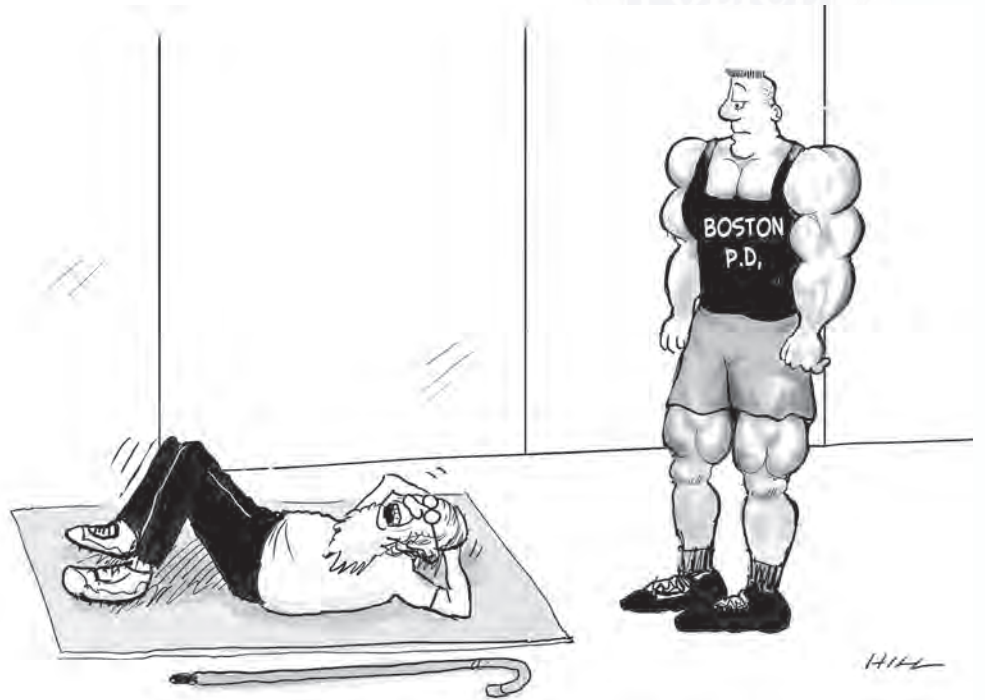
Commission Chair Chris Bowman did not like that at all and ordered Brockton to launch an investigation into the practice, giving it 90 days to do so. Depending on the results, he also indicated he might reopen Bell’s appeal. *Bell v. City of Brockton*, 34 MCSR 423 (2021).

### ***Chaos at Boston PD Human Resources Which Bypass Was it? No Sit Ups—No Job How Old Are You? Huh?***

**A**aron Alidrissi finally got around to taking the civil service exam for the first time when he was just shy of 40 years old. He did well but then found out that Boston PD, given his age, wanted him to undergo an additional physical “exercise tolerance” test that other candidates were not subjected to. He appealed the legitimacy of this test to the Commission and in April of last year, the Commission ordered Boston PD to place his name at the top of the certification list.



As it turns out, instead of filing his *pro se* appeals with the Commission, Alidrissi should have been spending more time at the gym because he went on to flunk the physical fitness *entrance* examination for the Police Academy—being unable to complete 27 sit-ups in one minute or do the necessary push-ups. So, that was it. Offer revoked. Based on his failure to pass the test and gain admission to the Academy, Boston PD said goodbye.



But not really.

For reasons best known to him, Alidrissi had retaken the civil service exam in 2019 and passed it again. In yet another sign of the chaos at the Human Resources Division at Boston PD, Boston then put him at the top of this new list. There were two problems with this. Alidrissi was over 40 when he took the second exam, which made him ineligible, and he had already washed out. Apparently, Boston confused the Commission's order to put him on top of the *first* certification list as applying to the second list. When Human Resources finally figured out its mistake, it revoked the second offer it had made.

Rather than work out his frustration on a Peloton, Alidrissi filed an appeal with the Commission, whining about how unfair it was that he had erroneously been notified he was being considered as a part of the next hiring cycle. Well, that did not go well. Second appeal dismissed.

BTW, the physical exam that Alidrissi flunked was not the Physical Ability Test (PAT) but an additional test that forms a part of the new fitness requirements from the Municipal Police Training Committee for entry into the Police Academy. [Alidrissi v. Boston Police Department](#), 34 MCSR 421 (2021).

## ***Salisbury Chief Might Need Some Work on His Hiring Finesse But At Least He Is Not Trading Drugs for Sex!***

Salisbury is a North Shore beach town on the New Hampshire border with a population just shy of 10,000 and a police department of 16 full-time sworn officers and eight part-timers. The Chief, Thomas Fowler, spent the first 20 years of his policing career in Branford, Connecticut before picking up the top job in Salisbury. The prior Chief, David L'Esperance, retired under a bit of a cloud when he was charged with exchanging drugs and money for sex with women in their twenties with criminal records. Salisbury even brought criminal charges against him for theft but he was acquitted. The Board of Bar Overseers was going to pull his license but backed down after his acquittal. Yep, he was a lawyer.



Chief Thomas Fowler

Commission found that his bypass of Sergeant Leavitt was justifiable for two reasons: first, the successful candidate had a killer interview and presented a real vision and plan for where the Department should be headed; and second, Sergeant Leavitt was also found to be a less than capable administrator, having missed deadlines that caused Salisbury to lose thousands of dollars of grant money reimbursements and also having failed to timely process the renewal of an agreement with a local hospital whereby officers could lawfully administer Narcan—no doubt one of their favorite tasks.

So here is what the Commission found wrong with Chief Fowler's hiring process. He got off to a good start, hiring an outside vendor, Badgequest, to put together an Assessment Center. (Fee: \$6,000). That was done with all five candidates participating after which a ranking was delivered to the Chief, who then interviewed the top three candidates. He was joined in the in-

Many Chiefs running small town departments and not doing a lot of hiring and promoting make mistakes due to lack of experience when handling civil service personnel decisions. That was certainly the case in Chief Fowler's recent denial of promotion to lieutenant for Sergeant James Leavitt. There were three finalist candidates for the job and Fowler went with the lower ranked candidate. His decision was ultimately upheld by the Commission as perfectly reasonable but not without a lot of grousing about the way he got there.

All five Salisbury sergeants went out for the promotion and Chief Fowler pared the list down to three finalists. The

interviews by Town Manager Neil Harrington, who is the official Appointing Authority for Civil Service jobs in Salisbury.

The three candidates were all asked the same 12 questions but the questions were not scored individually and the candidates were not given an overall rating. The interviews were neither recorded nor videotaped. The Chief took notes during the interviews but tossed them later. Hearing Commissioner Paul Stein found this to be a highly subjective interview “process” that lacked any of the usual safeguards to insure a “level playing field” and without a sufficient degree of transparency to assure objective decision making. The interview panel was basically just two guys who got together and reached a consensus in a highly subjective manner.

Commissioner Stein also didn’t like the fact that Chief Fowler used the superior educational credentials of the successful candidate as a reason for bypassing Leavitt. This is because educational cred was 1) never announced as a criteria for the promotion and 2) would have been embedded anyway in each candidate’s final E&E score under the Lieutenant Assessment Center. So this could not be a valid reason for bypass.

But Stein then took Chief Fowler to task for bypassing Leavitt for “poor judgment” when he counseled the Chief that a dispatcher should be disciplined with a long suspension rather than discharged after having been caught circulating a video of a detainee taking a crap in custody. Sergeant Leavitt and his boss, Lieutenant King, had both recommended to the Chief a suspension rather than a discharge for this dispatcher. Why? They thought the dispatcher was capable of learning acceptable behavior through remedial discipline and counseling.

Huh? How does that work? How do you *counsel* someone not to circulate a video of a detainee on the crapper? That is simply too much to ask of any counselor. How would you even go about counseling that? That is simply not a counsel-able violation! That is a “get the hell out of here” event and we think the Chief nailed that one and had every right to rely on Leavitt’s poor judgment in that matter as a reason for not wanting him as his second in command. Go Chief.

Where Chief Fowler needs to do a little work with regard to his hiring, however, is in the matter of employing female officers. Looking over the roster on the Salisbury PD’s website, we see that not a single officer is female. There are female dispatchers, a female administrative assistant, and one female special officer—a Monica Carnes. That is it. C’mon Chief, get with it. This is almost 2022. [\*Leavitt v. Salisbury Police Department\*](#), 34 MCSR 400 (2021).

## ***Taking It Easy On An Off-Duty Officer's OUI Not Just A Suspension and Demotion For Wayward Everett Police Sergeant***

Things were going along OK for Michael Woodford in Everett. In 2017 he was promoted to sergeant. In December of 2019 he did well enough on the promotional exam for lieutenant to place on the eligibility list. After one candidate on the list was promoted, Woodford moved up to the first position. Things were lookin' good.

But in March of 2019 he made a big big booboo and in October of that year (six weeks after the exam) he was demoted back down to officer from sergeant and suspended for two weeks. Woodford agreed to the punishment and did not appeal.

It seems that an off-duty Everett police lieutenant was involved in a car accident on a day that the then Sergeant Woodford was shift supervisor. After the accident, the lieutenant tried to take off and the multiple officers attending the scene were convinced that booze played a big part in the crash. But Woodford declined to conduct an investigation or even order his subordinates to do so. When Police Chief Steve Mazzie found out about the incident, he was not pleased and Woodford was suspended and demoted.



Officer Woodford with Colleagues and Chief Mazzie on Promotion Day

Where Everett screwed up here is that the Department failed to ask HRD to take his name off the promotional list after he was demoted. The City reasonably assumed that Woodford was no longer eligible for promotion to lieutenant because of his demotion to police officer. But he was because he was still at the top of the list. The promotional process continued but the Department never notified Woodford of any vacancies or considered him for promotion.

Because Woodford was first on the list and the City failed to give him any reasons for his bypass or ask HRD to pull his name, the Commission was forced to grant his appeal of the bypass. But the only relief they gave him was to allow him to remain on the list and be considered for appointment or bypass. At the expiration of the current list he was done and would not be placed at the top of the next list. And the decision also makes it clear that in considering his

promotion the City can take into account his dereliction of duty in giving a pass to a colleague involved in what appeared to be an OUI crash. [Woodford v. City of Everett](#), 34 MCSR 393 (2021).

### ***Escaping the Street and Into The Woods Say It Loud—No Cops Need Apply***

The Commission got another appeal from a frustrated police officer denied a job with the Environmental Police. This time it was a Wareham officer, one Blaise Lalli, a resident of Bourne. As we have noted [previously in this column](#), the Environmental Police do not favor candidates with a municipal policing background, having learned the hard way that most of them are a big disappointment.

What was noteworthy about Lalli's application was his almost complete lack of any qualifications. To get the job of EP Officer, you need to have at least two years of relevant work experience in the environmental field and an Associate's or Bachelor's degree in something environmentally science-ey. Lalli had 40 college credits toward a criminal justice degree (unhelpful).

And for work experience, the agency likes to see something like a full-time job as a Harbormaster, Park Ranger, Coast Guard duty, or maybe Fish & Game Warden.

Lalli tried to argue that the calls he had taken as a Wareham police officer that were somehow related to "the environment" provided him with the necessary experience. He cited his work responding to recreational off-road vehicle incidents, hunting complaints, reports of sick and injured animals, illegal dumping and so on.

The Commission affirmed his bypass and encouraged him to get some qualifications before reapplying. [Lalli v. Massachusetts Environmental Police](#), 34 MCSR 397 (2021).

### ***Involuntary Transfers of Two Cambridge Detectives From CID to Patrol No Explanation Given Other Than "Best Needs of the Department"***

Two Cambridge detectives assigned to the CID Division, Beth Halloran and Michael Logan, were involuntarily transferred by Commissioner Branville Bard to the Patrol Division. No reason was given to the officers and the Commissioner refused to provide one. When the officers and their attorney tried to get an explanation, the answer was simply that it was in the best interests of the Department. At the time, Detective Halloran was under investigation by Internal Affairs along with other detectives at CID.

Their union, the Cambridge Police Patrol Officers Association, appealed the transfers to the Department of Labor Relations and Hearing Officer James Sunkenberg sided with the union. In his decision, Sunkenberg wrote that the information was relevant and necessary for the Union to evaluate any potential grievances under the parties' contract and an explanation should be forthcoming from the Commissioner. In doing so, he rejected Cambridge's argument that the information was not relevant because it involved lateral transfers that do not merit "just cause" protection. The Hearing Officer wrote that the information could be relevant to other potential grievances, citing as an example job discrimination based on union activities. *City of Cambridge and Cambridge Police Patrol Officers Association*, MUP -19-7408 (September 23, 2021) (Hearing Officer's Decision), 48 MLC 75.



Cambridge Commissioner  
Branville "Cuz I Say So" Bard

Chief Bard resigned as Commissioner this August to take a job at Johns Hopkins University as a security vice president.

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## Relationships with Toxic Girlfriends Kill the Promising Careers of Everett and Dartmouth Police Officers

## Commission Affirms Demotion and Suspension of the Ware Fire Chief for Allowing His Underage Son to be Appointed a Firefighter

## Bypassing Stay-at-Home Dads Doesn't Cut it Anymore Neither Does Bypassing a Candidate for Non-Existent High School Shenanigans

**W**e have some disciplinary cases to bring you in this issue that are real doozies as careers crashed and burned for officers whose chaotic private lives bled into their police work. Two bypass cases are also worth discussing where the Civil Service Commission took issue with inept background investigations by Boston PD into distant peccadilloes and bit back against the sexist, retrograde expectations of a Lowell hiring panel.

We will begin with the discharge of an Everett police officer brought low by an abusive relationship with a female hearing officer working in the City Solicitor's office. Dino D'Andrea began his career with the Everett police in 2011 just after obtaining a bachelor's degree from Northeastern University in Criminal Justice. D'Andrea did well and consistently ranked among the top 10% of the more than 100 sworn officers in Everett. In 2015 he began "a dating relationship" with Jennifer Gonzalez (a.k.a. Jennifer Peters), a single mom living with her mother and her son. Gonzalez is a longtime paralegal and municipal hearing officer with the city—that is when she is not under arrest for assault and battery. We'll get to that in a minute.

At some point in 2018, the relationship between D'Andrea and Gonzalez went south and D'Andrea tried to end it, having finally had enough of what he called his girlfriend's threats



Dino D'Andrea



and abusive behavior. But after each blowup there was a reconciliation. Everett police chief Steven Massie described their relationship in his Commission testimony as tumultuous and toxic. After a particularly nasty altercation in August of 2019, D'Andrea reached out to his captain and described the most recent argument he'd had with Gonzalez where he alleged that she threatened to get him fired if he ever stopped dating her. Presumably she was suggesting that her position in the City Solicitor's office gave her access to confidential information about D'Andrea and other police officers.

Soon after the August spat, D'Andrea seems to have gone to pieces and was discovered spending loads of time during his shift just sitting in his cruiser in front of his house rather than on patrol. Not that D'Andrea had been a saint before this but his infractions had been pretty minor. His disciplinary record over eight years included counseling for driving his cruiser while talking on his cell phone with his seatback reclined, parking in a restricted space between two disabled persons' spaces rendering all three unusable, and failing to wear the required uniform while serving details.

When a civilian reported to the Department that D'Andrea was just sitting in his cruiser in front of his house while on duty in September of 2019, Everett PD launched an investigation that included a secret three-week drive-by with video surveillance. The investigation concluded that D'Andrea had spent a whopping 55 hours at home during that period when he should have been on-duty. This particularly pissed off Chief Massie because the Encore Boston Harbor casino had just opened in Everett drawing thousands of new visitors to the city and imposing significant demands on the Department.

In most jobs if you don't show up more than a third of the time, the only issue is where exactly the door is going to hit your ass on the way out. But in the *Alice in Wonderland* world of police collective bargaining agreements where the inmates have taken over the asylum, Chief Massie "negotiated" a Last Chance Agreement with D'Andrea's union that the officer signed in January of 2020. Under it, he would be suspended without pay for 20 tours of duty and work an additional six unpaid tours of punishment duty. The LCA was very clear that if there were any future incidents or conduct unbecoming he would be terminated—not suspended.

In February, *the month after he signed the LCA, and not even having finished up his punishment duty tours*, D'Andrea and Gonzalez had an evening out that would end his career with the Everett police. Needless to say, it involved booze—and a club, an SUV, and the two of them beating each other up. The highlight of the evening was when Gonzalez, sitting in the front passenger seat, fell out of the car in front of a restaurant (equipped with cameras) and ended up lying in the street. Their SUV kept going, with D'Andrea at the wheel, and the open passenger side door hit a parked car and a street sign. Some of this was captured by video cameras. D'Andrea stopped the SUV, checked out the damage to his ride, and then his girlfriend, after which the two managed to make their way home together (in the SUV). During

the ride, Gonzalez resumed her verbal and physical attacks while D'Andrea did his very best at the wheel. The evening ended with both of them being handcuffed and arrested for assault and battery after Gonzalez called the Everett police on 911 from her home at 2 AM and screeched, "I need the cops over here...My boyfriend is acting like an animal."

When the lucky officers assigned the call arrived, they reported that Gonzalez had dried blood on her lip, scratches on her arm, mascara all over her face, her hair and clothing out of place, and (heavens!) her hair extensions were all over the floor. But she gave as good as she got. D'Andrea was reported as having scratches on his neck and a bump on his head. The two of them reeked of booze.

Both D'Andrea and Gonzalez were charged with assault and battery, correctly so since the sergeant called in by the responding officers could not figure out who was the aggressor. The charges were later dropped as neither party wanted to testify.

A well-reasoned decision by Commissioner Paul Stein affirmed D'Andrea's subsequent firing by the Everett police, citing the incontestable video evidence of violence on the couple's big night out, D'Andrea's refusal to testify at his own hearing before Everett officials, and his "repeated lapses of judgment" despite the fact he had just returned to duty after a lengthy suspension and was under a Last Chance Agreement. Someone subject to an LCA and having this kind of judgment and inability to escape from a toxic personal relationship should obviously not be on a police force.

A no-brainer decision by Commissioner Stein, no?

Well, not to Paul Camuso, one of two part-time commissioners on the Civil Service Commission, who alone dissented from the vote of his four other colleagues. Long-time subscribers will remember that Camuso was appointed to the Civil Service Commission in 2015 to represent labor interests. (The Civil Service statute requires one of the five commissioners to be a "bona fide representative of labor" and a second commissioner to have experience on the management side as a town administrator, selectmen, or city councilor.) Commissioner Camuso is also a full-time Assistant Deputy Sheriff with the Middlesex County Sheriff's Department.

Camuso objected to D'Andrea being fired because other Everett officers had been tangled up in domestic violence situations and only received suspensions. Camuso felt that the City had been tougher on D'Andrea and that he had been a target for disparately harsh punishment. Camuso would have imposed a lengthy suspension instead.

We agree with Commissioner Stein and the majority of the Commission members. The examples of the other officers receiving lighter discipline cited by Camuso are, in fact, addressed in Stein's decision and he finds these examples irrelevant because, unlike D'Andrea, these officers kept their noses clean after they signed their LCAs. The particular officer cited by

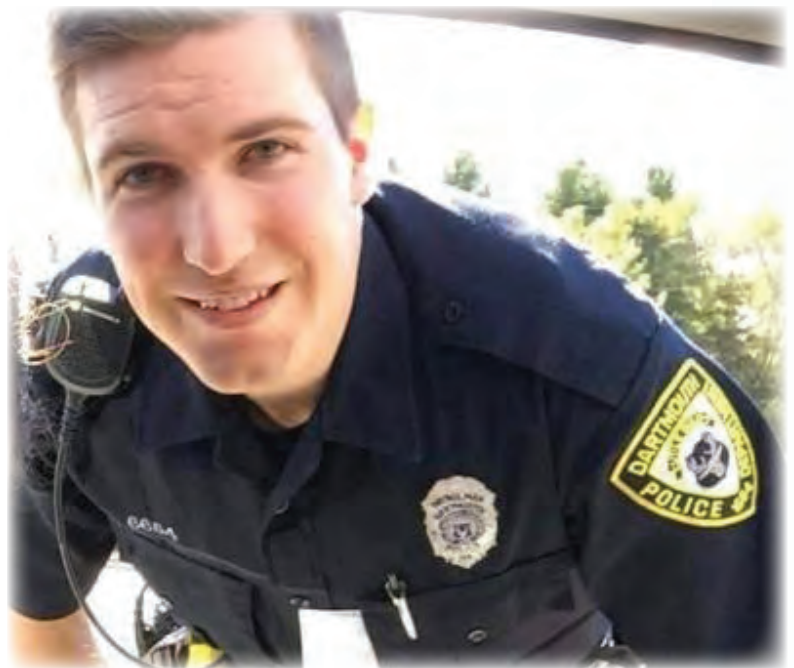
Camuso in his dissent remained employed without incident after he signed the LCA and went through Anger Management training. The ink wasn't even dry on D'Andrea's LCA when he went off the reservation and was arrested.

And Jennifer Gonzalez, the toxic girlfriend? Any repercussions? Her boyfriend did accuse her of threatening to release confidential information about him in city files—a clearly dischargeable offense for a hearing officer in the City Solicitor's office. Well, she is still working for City Solicitor Colleen Mejia. We asked Mejia about this and all we got back from her was a very terse email stating: "the City of Everett does not comment on personnel issues." Talk about circling the wagons and disregarding the public interest. [\*D'Andrea v. City of Everett\*](#), 34 MCSR 369 (2021).

### ***Dartmouth PD Take Its Turn With Toxic Relationships No Sex on Duty But Plenty of Other Bad Stuff Dooms Recent Hire Officer Joshua Luis***

**D**artmouth PD threw the book at a recent hire by the name of Joshua Luis and ended his career after barely a year on the force. The charges against him included having sex with his girlfriend while on duty (he was on duty, she was not), assault and battery (against the same girlfriend) and threatening her with his Taser, kidnapping, untruthfulness to investigators, conduct unbecoming, and unauthorized CJIS use. The Dartmouth PD, it should be recalled, was the department that to date has offered us the most loathsome police disciplinary case of all time involving the firing of the utterly hateful sergeant, Frank Condez who, unhappy with his career path, was found to have falsely accused his Chief of storing child pornography on a family computer. The pictures were of his kids in the bathtub.

In this case, Dartmouth PD had made the mistake (in hindsight) of hiring a four-year veteran of the Bristol County Sheriff's office, one Joshua Luis, as a patrol officer back in 2015. We are not sure we would ever have hired anyone that had worked for lunatic Sheriff Thomas Hodgson, though Luis had managed to put in his time there as a correctional officer without incident. That, however, was before he met the toxic girlfriend referred to in Commissioner Paul Stein's decision in this case as RD. Luis's relationship with



Joshua Luis

RD began around the same time he entered Dartmouth PD in 2015 and fell apart in December 2016 when the couple appeared before a judge in New Bedford to obtain emergency 209A restraining orders against each other. The judge granted RD's request but not that of Officer Luis. The judge was apparently taken in by RD's affidavit recounting a year-long history of mayhem and abuse, culminating with a particularly violent episode leaving both of them battered and bruised. RD also filed a complaint against Luis with Dartmouth PD. The restraining order was subsequently modified to permit Officer Luis to carry his duty weapons, which was a pointless gesture because soon thereafter he was placed on administrative leave (with pay) and fired a year later following a lengthy investigation.

The investigation into the shenanigans of Officer Luis was conducted for Dartmouth PD by retired Carver Chief of Police Arthur Parker, who submitted a 67-page report that concluded that Luis should be fired.

The Commission affirmed the firing but found that Dartmouth and Parker had failed to provide sufficient proof for all of the charges. The "sex on duty" charge, for example, was based on text messages between the happy couple that were a bit ambiguous—

not about the sex part but about the "on duty" part. The kidnapping charge was based on the couple's bizarre late night romp to the Cape that ended up with them being questioned by Mashpee police at 2:13 AM in a mall parking lot where they were discovered arguing with each other in a parked car. Commissioner Stein found insufficient evidence

to prove that Luis had forcibly confined his girlfriend in the car during that bizarre evening or kidnapped her. He also rejected as unproven RD's charge that Luis had pointed a Taser in her direction and assaulted her during another incident earlier in the year.



to  
"WELL, AT LEAST OFFICER LUIS ISN'T HAVING SEX ON DUTY!"

The girlfriend RD was certainly no angel. According to the testimony of Dartmouth dispatcher Katrina Desroches who socialized with the couple, RD had a serious drinking problem and was given to threatening her boyfriend with going to his chief and charging him with

domestic violence. And during the couple's arguments it was often Officer Luis who ended up with bruises and scratches.

Nonetheless, when endorsing Dartmouth's heave-ho to Luis, Commissioner Stein generally found that there was enough in Chief Parker's 67-pager to show a police officer with poor judgment, both on- and off-duty, and one who was prone to "fudging the truth" about his personal conduct, inclined to all sorts of outbursts, and generally lacking in self control.

Specifically, Stein cited as probative the issuance by the New Bedford judge of a restraining order against Luis, the testimony of investigators that he had difficulty telling the truth during their inquiries, and his admitted misuse of CJIS to query all sorts of people, from RD's ex-boyfriend, to her father, her brother, her employer and other personal acquaintances. These charges were enough to convince the Commission that policing was not the career for him. Also not helping his case before the Commissioners was the fact that Luis had failed to testify during his disciplinary hearing before the Dartmouth Select Board's hearing officer. [\*Luis v. Town of Dartmouth\*](#), 34 MCSR 335 (2021).

### ***Commission Affirms Demotion and 30-Day Suspension of the Ware Fire Chief for Allowing His Underage Son to be Appointed a Firefighter***

In our [last issue](#) we reported on the firing of a longtime Ware firefighter who had lied about his age to take the 2004 exam when he was 18-years old. (You have to be at least 19). This wasn't just any firefighter but the son of the Ware Fire Chief Thomas Coulombe (Dad) and a Ware Fire Captain (Mom). The Commission affirmed the son's discharge but also found in that decision that Mom and Dad knew, or should have known, that their son was lying about his age.

Having disposed of the son's appeal in May, Commission Chair Christopher Bowman took care of the father two months later. Dad *had the nerve* to appeal his own demotion and suspension that Ware had imposed after an investigation found that he had enabled his son's dishonesty. Ex-Fire Chief Coulombe even testified before Commissioner Bowman that he was unaware of the minimum age requirements to become a firefighter, despite having been one for 30 years!

Needless to say, Commissioner Bowman did not believe a word of this and found that the Town had proven Chief Coulombe knew, or should have known, that his son was ineligible for appointment as a firefighter and that he failed to take the appropriate action as the Fire Chief to prevent an illegal appointment. [\*Coulombe v. Town of Ware\*](#), 34 MCSR 313 (2021).

## ***Should Being a Stay-at-Home Dad Count Against You For Appointment? No Way, Says Commissioner Cynthia A. Ittleman But Being a Lousy Student Sure Does***

**A**nthony Yan's family hailed from Cambodia and this candidate for appointment to the Lowell PD was fluent in Khmer and in English. He served three years in the Marine Corps and he and his wife have two children. Having been previously appointed to the Lowell PD in 2016, he washed out of the academy because he kept flunking courses. In 2018 he managed to complete his Associate's Degree in Criminal Justice from Middlesex Community College but his transcript was a disaster and showed a 2.63 GPA populated with a bunch of Ds. After finishing up at community college, he went to work for the Essex County Sheriff's office as a correctional officer, having successfully passed through the three-month training academy.

When Yan reapplied for the Lowell PD under a 2018 certification, Lowell quite reasonably took a pass on him, citing his poor academic record and previous failure at the academy. But Lowell went one step further and also bypassed him based on what it considered a poor employment record, claiming as a "character flaw" his and his wife's decision to have him stay home, take care of the kids, and pursue his education, while she went out to work. Hearing Commissioner Cythia Ittleman emphatically rejected this as an acceptable reason for bypassing Yan. She notes in a blistering paragraph that for many years, Yan supported his family while he was in the Marines and his wife stayed home with the kids. Faced with the stratospheric cost of child care and Yan's chance to avail himself of veterans' educational benefits, it was perfectly reasonable for the family to switch roles while Yan pursued his studies.



GETTING READY FOR PATROL!

Now, although Commissioner Ittleman does not outrightly say so, Lowell's criticism of this candidate on these grounds was clearly viewed as mired in sexism and Neanderthal gender attitudes that have not kept up with the brutal financial realities of raising kids and getting an education in the U.S. It seems that some folks making police-hiring decisions in Lowell are

living in the 1950s. But Ittleman did uphold the bypass nonetheless because of Yan's dismal educational record and prior academic washout from the Academy.

As an aside, it also seems to us that a few years of child care are probably excellent training for a police officer. It teaches patience, empathy, kindness, working without much sleep, and the ability manage berserk and howling civilians. Probably a whole lot more useful than breaking down front doors in Kandahar, don't you think? [\*Yan v. Lowell Police Department\*](#), 34 MCSR 365 (2021).

### ***More Sloppy Boston Background Investigations and Unlawful Reliance on Ancient History of Youthful "Indiscretions"***

Our last case merits only a brief discussion, if simply to remind you all about being careful about using stuff from a candidate's ancient history as an express reason for bypass. Boston took a pass on one Luis Diaz who seemed to be a solid candidate. Diaz checked the minority boxes (Black Hispanic), was fluent in Spanish, had a bachelor's degree in Criminology from UMass, and was a lifelong resident of Boston. His most recent employment was as a security officer for a Level 1 trauma hospital in Boston and he had also worked for the Dorchester Trial Court as an intern.

What got him in trouble with the Boston hiring Roundtable was an episode from high school in 2008 where he and some friends were accused of stealing a kid's cell phone. Diaz was initially cited for being an accessory to the theft but was never charged. He denied he had anything to do with the crime but was simply filmed in the wrong place at the wrong time. Once again, Boston conducted a sloppy investigation and did not bother even to contact people named in the incident report. After the bypass, the principal of the school at the time even submitted an affidavit to the Commission stating that he recalled the incident and didn't think Diaz had any role in it. But no one from Boston PD had ever contacted him to ask during the background investigation! In voiding the bypass, Hearing Commissioner Cynthia Ittleman took note of the flawed investigation and also highlighted Commission and other precedent that looks unfavorably on relying on long ago youthful indiscretions of capable candidates as a reason for bypass.

Of course, this candidate was never even proven to have been indiscreet. At the Commission hearing, Mary Flaherty, Director of Human Resources for Boston PD, who had signed the original bypass letter and was now aware of the affidavit from the former principal, testified that the Roundtable would not have voted against Diaz had it been aware of the principal's testimony that Diaz was uninvolved.

Which leaves us with the question as to why Boston couldn't have conducted a more competent background investigation that would have turned up the same information?

Commissioner Ittleman suggests in her decision that “non urban”—as she puts it— police candidates have received more favorable treatment by Boston PD roundtables when shown to have lied about their backgrounds or actually been guilty of youthful thieving.

But she doesn’t go into a lot of detail since Boston had already thrown in the towel on this appeal after Flaherty conceded the Department had screwed up. [\*Diaz v. Boston Police Department\*](#), 34 MCSR 379 (2021).

### ***Sad Ending to Career of Distinguished Female Police Chief***

One of the first subscribers to this publication was Mattapoisett Police Chief Mary Lyons. Very regrettably, her career has come to an abrupt end with an early retirement following her arrest on the Cape in July for drunk driving. She has pleaded not guilty.

It is a shame that the illustrious career of one of very few female chiefs of police should end on such a sour note. We wish her the very best.

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### ***We Want to Hear From You!***

Do you have any advice for your fellow police officials on disciplinary or bypass appeals? An experience you'd like to share in our reporter? Let us know! [Email](#) us.

Lawrence Passes on Candidate That Can't Shoot Straight  
Marcos Belliard-Gonzalez Flunked the Firearms Exam Six Times!

Cambridge Applicant Christine Jean-Baptiste Can't Hold  
a Job, Makes Up a Nursing Degree, Accused of Stealing From  
Fellow Employees But Has "Many Positive Qualities"—Huh?

Bankrupt? Catastrophic Resume? Can't Seem to File Tax Returns?  
Even the Duties of a Crossing Guard Were Beyond This Candidate

Cadet at Academy Tossed After Violent Past Comes to Light  
Maybe Boston PD Could Manage to Check Its Own Files?

Lying About Your Age to Take the Firefighter  
Exam And Getting Fired For It 18 Years Later  
Ware Fire Department Reaches New Nepotism Highs (Lows?)

Grabbing Pussy in Westfield—Seems to Be OK If You're Fire Chief  
Commission Issues Blistering Opinion on Antics of Chief Coulombe  
Orders Three Firefighters Who Stood Up Reinstated

**N**obody ever said that you have to shoot like Wyatt Earp to be an effective law enforcement officer but some basic competence in operating your weapon is always helpful. At the police academy, you are given plenty of opportunities to begin to develop your skills. First up are 16 hours of classroom training on topics such as the names and types of pistols, how to break them down and clean them—then 40 hours of shooting practice at the firing range. One Marcos Belliard-Gonzalez got it into his head that he wanted to be a police officer in Lawrence, no doubt inspired by the ascendancy of Detective Ana Villavizar, Lawrence's first Latina detective whose promotional snafus were profiled in our last issue.

But unfortunately, Gonzalez flunked the firearms qualification test. So the academy at Northern Essex Community College gave him another three hours of remedial training. It didn't help. He flunked the exam another two times. By the time he was dismissed from the police academy, Gonzalez had failed the exam no fewer than *six* times. At the Civil Service Commission hearing before Commissioner Paul Stein, the City of Lawrence let it be known that it incurs expenses of over \$26,000 to hire a police officer candidate and send him or her

to the academy. The City of Lawrence's finances have never been stellar so this is obviously a big number for that struggling municipality. These expenses include background checks, recruit salaries, uniforms, equipment, and training, and they are not recouped if the candidate flunks out.

So clearly it is not in the City's interest to have any candidate fail at the academy and have to show the cadet the door. But it is even less in the interest of the municipality to fill its ranks with police officers who can't shoot straight.

Nevertheless, 15 months after his dismissal from the academy and the termination of his employment, Gonzalez reappeared on the latest certification for a Lawrence police officer position. Not unreasonably, the City, having been burned once by Gonzalez's lack of marksmanship, was not going to drop another \$26,000 sending him to the academy a second time. And so he was bypassed.



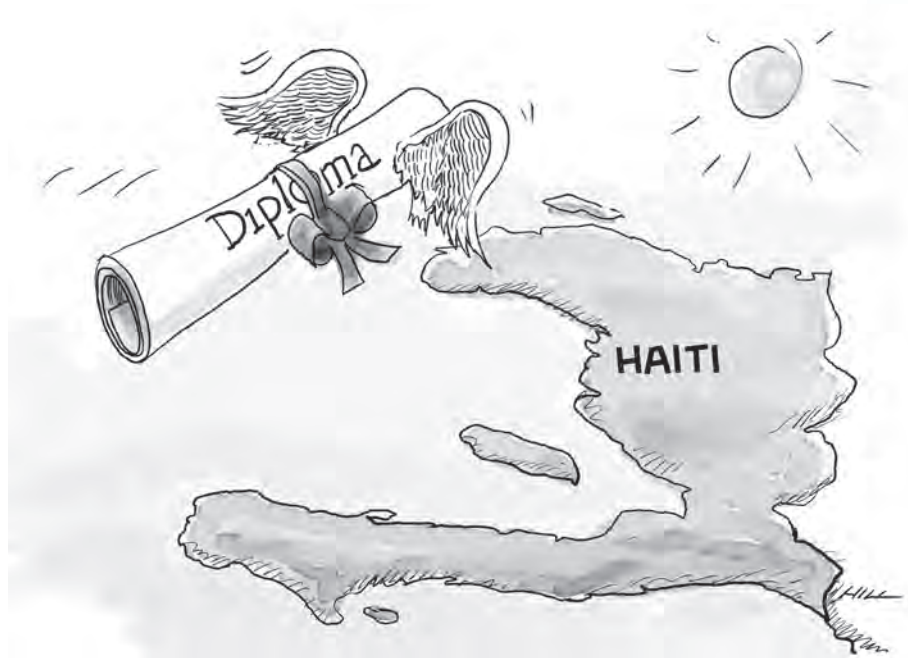
Pathetically, Gonzalez appealed this bypass but didn't seem to have had any coherent arguments to challenge the City's actions. The City also justified passing on Gonzalez the second time because he had previously failed to report a shoulder injury he sustained at the academy during a defensive tactics class, claiming that he had not done so because of peer pressure against reporting what might have only been soreness. Reporting of injuries is important to the City of Lawrence so that it may appropriately process workers compensation claims and reduce the risk of further injuries. *Belliard-Gonzalez v. City of Lawrence*, 34 MCSR 131 (2021).

## ***She Makes Up a Nursing Degree, Lies About Her Employment History, Can't Hold a Job—But Has “Many Positive Attributes!”***

**C**hristine Jean-Baptiste is a Haitian-American who wanted to join the Cambridge Police and applied both in 2015 and 2018. She was bypassed both times and appealed.

Cambridge Police Commissioner Branville Bard did not recommend her for appointment despite what he referred to as her “many positive attributes.” What were these attributes the Commissioner cited? She was a lifelong resident of Cambridge (that’s an achievement); she was a minority (another tour de force); multi-lingual (claiming to speak French and Spanish, in addition to Haitian Creole, but the Commission decision does not indicate this was ever verified); and she had a Bachelor’s degree. (Interestingly, the Police Commissioner, an African-American male, did not mention her gender as a positive attribute.)

Now for the negative attributes. During her interview after her first application, Jean-Baptiste stated that she had a nursing degree from UMass. When investigators checked this out, it turned out to be completely false. Made up out of thin air. UMass had no record of her attendance. During the interview she went so far as to write down the names of the instructors at her nursing program and claim that she could not furnish a transcript because UMass was “having trouble with the system.” She even stated that her mother had taken her imaginary diploma to Haiti!



JEAN-BAPTISTE'S IMAGINARY DIPLOMA HEADING HOME 🤪

What is bizarre about this is that Jean-Baptiste had really attended Newbury College, not UMass, and had written on both applications that she had graduated from there in May 2015. But even these statements contained a minor fib. She did attend a graduation ceremony in 2015 but did not actually receive her degree until a year later when she had completed a missing course.

But if lying about her educational cred was not enough to kill her application, her employment history and her lies about that certainly were.

Her resume was a complete train wreck! She was terminated several times: from Target after 7 months; from TJ Maxx after 11 months; and from South End Buttery after 10 months. She also quit Bertuccis, Starbucks and Aéropostale after short stints. She then worked for the Cambridge Public Schools as a paraprofessional under a one-year contract that was not renewed after she was placed on administrative leave for unprofessional behavior that included arguing and cursing with another staff member in front of students. When digging deeper into her employment history, Cambridge investigators found out that she had failed to disclose that her termination from TJ Maxx occurred after she was charged with stealing the personal property of other employees (on camera, of course).

We don't need to burden you with all the other stuff Cambridge found objectionable about this appalling candidate. Unable to swallow her bypass, Jean-Baptiste resorted to the last refuge of the scoundrel: she played the race card and filed a complaint with MCAD claiming that she was victimized by the racism of the Cambridge Police Department, and its African-American Commissioner, who wanted nothing to do with her. MCAD dismissed that complaint for lack of probable cause. And in her 27-page brief submitted after the Commission hearing on her bypass, Jean-Baptiste again claimed that she had been mistreated in her employment experiences because of racism and that the City showed racial bias against her in the police-application process.



Cambridge Commissioner Bard—Many Positive Attributes!?

Fortunately for the residents and students of Cambridge, this deplorable candidate is not going to carry a badge any time soon despite all those “positive” attributes.

It seems that during these times, municipal officials are so terrified of being accused of racism that they bend over backward to put lipstick on a pig, as long as it is the right kind of pig. This was not a serious candidate. *Jean-Baptiste v. City of Cambridge*, 34 MCSR 136 (2021).

***Bankruptcy? Check! Failure to File Tax Returns? Check! Insubordinate Crossing Guard? Check! Lousy Community Reviews? Check Check!***

**A**lthough pushing 45 years of age, crossing guard Lisa Lima-Soares got it into her head that she could become a Somerville reserve police officer. She scored high enough on the exam but her less-than-stellar background allowed three other candidates to jump ahead and bypass her. Somerville took her candidacy seriously and gave her a two-and-a-half hour

interview. And the interview panel even included Deputy Chief Stephen Carrabino, a trained background investigator who currently oversees the background investigations for Somerville's entire police recruit hiring. And Carrabino did not like what he saw in this candidate.

As an aside, it is hard to figure how Carrabino has been able to squeeze in much policing given the time demands of his extensive educational background. He has a BS in Nursing Science from Boston University, a JD from Suffolk University, and an MA in Public Administration from Harvard Kennedy School. He is a trained background investigator and has been employed by the Somerville PD for 25 years.



Deputy Chief Stephen Carrabino-  
No Thank You to Lima-Soares

The background investigation revealed that Lima-Soares had filed for bankruptcy in 2017, citing student loans and debts from a broken marriage. She also had failed to file tax returns for five years, but stated on her application that she had filed them—then attached a statement saying that *she had not filed them* because she owned a fitness studio during that time and never made more than \$400 a year. The interview panel did not find this credible.

Apart from these peccadilloes, there was also her performance as crossing guard and poor community feedback about her character. Supervising her duties as a crossing guard was Somerville Sergeant Sean Sylvester who testified before the Commission that rather than focusing on the children's safety, Lima-Soares became obsessed with drug dealing going on at a nearby suboxone clinic and repeatedly reported the information to him and narcotics detectives. She was counseled many times on this issue about respecting the chain of command, told narcotics was on it, and ordered to focus on her responsibilities—but paid no attention.

And then there was the community feedback. One Somerville PD officer went so far as to file a statement with the interview panel denouncing her candidacy. Deputy Carrabino was impressed by that because the officer wrote the statement despite fear of retaliation. Her neighbors had absolutely nothing good at all to say about her—to discredit one of them Lima-Soares even claimed that he had a history of criminal involvement with the police which investigators found no record of—leading them to further question her credibility and truthfulness.

Lima-Soares also did not disclose in her application that she had previously applied for the now-disbanded Somerville Auxiliary Police but was rejected for an incomplete application and a poor driving record. (The Commission did not rely on this in sustaining the bypass because of inadequate proof due to difficulty in finding records from the defunct organization.) This was the kind of candidate, though, that had an explanation for everything and a way of bending the facts to her advantage. Deputy Chief Carrabino testified at the Commission hearing that Lima-Soares was “trying to be artful not owning up to things...trying to work the corners instead of owning the situation.”

Not surprisingly, the Commission rejected her meritless appeal. [\*Lima-Soares v. City of Somerville\*](#), 34 MCSR 233 (2021).

### ***Boston Cadet Tossed From the Academy After Violent Past Surfaces Sloppy Boston Recruit Investigations Waste Taxpayer Money Do You Think Boston PD Could Check Their Own Files?***

Presumably Boston PD cadet Joseph Castater was feeling pretty good in early 2018 about his chances of finishing the Academy this second time through and starting a policing career. In 2015, an injury had forced his withdrawal from the Academy. Undeterred, Castater managed to get a spot on a new list in 2017 and was given another offer. But then, on February 13, 2018, Academy staff served him an in-hand separation notice, approved by the Commissioner himself, announcing the end of his Boston police career before it really began. The reason was two Boston PD incident reports from 2009 and 2011 that revealed a violent past and anger management issues that had been previously “overlooked.”

On the one hand, this saga presents Boston PD’s recruit investigation in a less-than-flattering light since Castater would not have been allowed anywhere near the Academy if the original investigation had been half-competent. On the other hand, when officials realized in 2018 that prior investigations had been remiss, the Boston PD didn’t sweep this history under the rug and did a thorough investigation, giving the candidate the opportunity to present his side of the story, and then taking prompt action.

In the first incident in 2009, the Appellant was charged and arraigned on two felony charges of Assault and Battery With a Dangerous Weapon and Entering in the Nighttime with the Intent to Commit a Felony. According to the Boston PD Incident Report, Castater’s former girlfriend had called him after a fight she had with her brother at their father’s home. The incident report has Castater showing up at the home, charging in through the front door with a baseball bat and some buddies, and beating up her brother.

Two years later, in 2011, Castater was charged with another felony, Assault and Battery with a Dangerous Weapon after an incident outside a Boston nightclub. Castater and some

friends were hanging around the nightclub and an out-of-town drunk was staggering about nearby and being obnoxious. Castater shoved the drunk so hard he was lifted up in the air and smashed his skull on the sidewalk, causing a traumatic brain injury that put him in the hospital and deprived him permanently of his sense of smell. Rather than help the now-unconscious drunk, Castater fled the scene. That's what's in the incident report. After nearly 10 court appearances from 2011-2013, the case was scheduled for trial but eventually dismissed when an important witness failed to testify. The 2009 incident was also dismissed on the day of the scheduled jury trial for want of prosecution after witnesses changed their stories.

While investigating another unrelated matter, the Boston PD became aware that the original Recruit Investigation Unit's review of Castater's past had been wholly inadequate and had missed these charges. Castater had "slipped through the cracks." That was some crack given that all this information was in Boston PD's own incident reports. To its credit, Boston reinvestigated the two incidents and directly contacted many of the witnesses while Castater was at the Academy—making up for the deficiencies in the original investigation. Boston officials also gave Castater an opportunity to give his side of the story but after a thorough review determined that this candidate showed a lack of judgment, anger management issues, and a tendency to use wildly excessive force. The Commissioner withdrew the Department's sponsorship and tossed him from the Academy. Castater appealed.

In a unanimous ruling adopting the decision of Chairman Christopher Bowman, the Commission found that Boston PD had acted reasonably and responsibly to correct its original mistake. Castater's lawyer argued that plenty of the successful candidates had criminal charges but the Commission did not find their histories to be comparable or as violent. Castater also tried to paint these two incidents in a light more flattering than depicted in the incident reports but Bowman and the Commission were having none of it. [\*Castater v. Boston Police Department\*](#), 34 MCSR 258 (2021).

### ***New Lows in Nepotism In Ware Lying Your Way Into the Fire Department Officials Weigh Dishonesty vs. Competence***

**T**here were no law-enforcement disciplinary cases of note coming out of the Civil Service Commission in May and June but two absolute doozies touching fire departments we thought worthwhile bringing to your attention.

First, from Ware. Where? Yeah, between Springfield and Worcester. That's all you need to know. Firefightin' was the family biz for the Coulombes. There was Mom (Fire Captain), Pop (Fire Chief) and Brian (Firefighter son). Brian joined the Ware FD when still a pup out of high school in 2005. He was fired in 2020 when officials discovered what was considered "the worst kept secret in the Town of Ware".....which was, that Brian Coulombe had lied about his



age when applying back in 2004 and was only 18 at the time. The minimum age at the time was 19 to apply for a job as a firefighter.

Brian Coulombe might have gotten away with it if he had only kept his mouth shut. But according to Deputy Fire Chief Edward Wloch, Coulombe “kept bragging about the fact that his dad’s got all the pull in the world. He got him to take the test because we knew there would be openings coming up...he bragged about it to everybody....Oh, my dad’s got pull...He knows what he is doing.”



Enabler in Chief? Ware Fire Chief and Dotin’ Dad Tom Coulombe

According to the Civil Service decision, Coulombe’s mother, the longtime captain of the call fire-fighters, filled out the lengthy Ware FD application for her son by hand. The HRD examination fee was charged on her credit card and her email address was listed as a point of contact. Talk about helicopter parenting! The application submitted to HRD says Brian was born in 1984, but he wasn’t...it was 1985.

Ware fire officials were not happy to have to move against Brian. He was a popular and competent fire-fighter....but obviously incapable of keeping his mouth shut. After a new selectman started nosing around the matter in 2019, the

Town hired an outside investigator, Eric Daigle, to look into it. When Daigle interviewed Brian, the firefighter claimed he had no recollection of whether his father was fire chief at the time he applied for original appointment; he also told Daigle that he did not even know now what the minimum age was, even though by this time he was a 16-year veteran of the Department and a Lieutenant. Investigator Daigle thought all this was a crock.

Ware spent \$20,000 investigating the Coulombe family and ended up demoting the Dad from Fire Chief to Lieutenant, after a 30-day unpaid suspension, and firing the son. The Town determined that the Dad had acted unethically by putting in the fix for his underage son. The Dad, Fire Chief Thomas Coulombe, then filed his own appeal with the Civil Service Commission and went to war with the Selectmen, claiming all sorts of stupid stuff. He even filed a complaint with the Attorney General’s office alleging the Selectmen ganged up on him and committed open meeting violations while planning his demise.

Brian Coulombe’s appeal of his termination was heard by Commission Chair Chris Bowman who found that the Town had not acted improperly in deciding to terminate him. There was no bias shown, no undue political influence. The discharge stuck.

What we have here, it seems, is just two out-of-control parents and a “kid” who just couldn’t keep his mouth shut. [\*Coulombe v. Town of Ware\*](#), 34 MCSR 178 (2021).

### ***Accused Pussy Grabber Gets Promoted to Fire Chief in Westfield Firefighters Standing Up to Him Get Fired—Not So Fast! Commission Reinstates Them And Orders Investigation of Chief Egloff***

Current Westfield Fire Chief Patrick Egloff seems to have a problem with women. Over the years he has been accused of grabbing them between the legs, cupping their breasts, pulling their hair, grabbing their buttocks, stalking and harassing them, boasting of performing sexual favors under the desk of the former female Fire Chief, and generally behaving in a bullying predatory way. These are not just accusations. Egloff admitted to pawing a nurse at a St. Patrick’s Day parade and apologized. The State Police investigated many of the charges against the Chief. And so did the City of Westfield, hiring an attorney, Dawn MacDonald, who delivered a \$46,000 report exonerating the Chief and claiming that three firefighters, one a female captain, had organized a conspiracy with the intent of preventing his promotion to Chief. This “conspiracy” included the charge that they had sent out an anonymous letter to the city’s Personnel Director denouncing the then Deputy Chief Egloff for sexual harassment. The three denied this and asserted that they were cooperating with the State Police investigation.



Westfield Fire Chief Egloff

Soon after Attorney Macdonald delivered her report, the three firefighters were terminated by the City and Egloff was promoted to Chief. The firefighters appealed to the Superior Court and it ruled in 2018 that the Westfield Fire Commission had intentionally violated the Open Meeting Law and voided the terminations. That didn’t stop the Fire Commission though.

It reopened the matter and fired the three firefighters once again in late 2019, charging them with insubordination and subverting the chain of command. They appealed to the Civil Service Commission. And they cleaned up.

After no fewer than seven days of hearings, Commission Chair Chris Bowman issued his decision. In it he found that “the decision to terminate...while almost simultaneously *promoting* Patrick Egloff to Fire Chief is one of the most egregious examples of disparate treatment that I have encountered during my decade and a half tenure on the Civil Service Commission.” Bowman found attorney “investigator” MacDonald’s report worthless and biased, and marked by an extraordinary personal animus against the three firefighters. He ordered them reinstated.

Bowman went further. He found the three had been subjected to retaliatory actions for standing up to Egloff that included threats, thefts of equipment, and an appalling incident at a training session that resulted in serious injury to one of the firefighters. (This involved rescue training on ice at a Westfield pond where a sled was mysteriously pulled out from under one of the three, resulting in a broken coccyx. Another one of the three was injured while on the ice and suffered a pinched nerve.)

The Commission also opened its own investigation into “actions necessary to ensure a safe working environment for the [three firefighters]” and ordered the Westfield Fire Commission to investigate the actions of Chief Patrick Egloff and issue “appropriate disciplinary action.”

What a mess. The three (male, of course) Fire Commissioners are standing by their man and appealing the decision of the Commission to the Superior Court. [\*Miltimore v. Westfield Fire Commission\*](#), 34 MCSR 190 (2021).

### ***A Final Note on E&E Credits***

**J**ust another reminder on E&E Credits. Consistent with prior decisions, the Commission affirmed the denial of experience credits on a police lieutenant promotional exam for time served as a Bunker Hill Community College campus police officer since this work does not constitute service in a regular police force. [\*McCarthy v. Human Resources Commission\*](#), 34 MCSR 241 (2021).

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Peabody Mayor Ripped for Appointing Childhood Chums  
But Small Town Nepotism Can Get You Good Hires

Closing the Door on Tattooed Candidates  
Maybe It's Time to Get Over It?

Gardner Patrol Officer Likes to Call Superiors  
“Pieces of Sh\_ t”—They Return the Compliment With a Bypass

Promotion for Lawrence's First Latina Detective?  
Claro Que No!! Siga Las Instrucciones Por Favor!

Scofflaw Taxidermist Won't Be Entering the  
Environmental Police Anytime Soon

COVID Quarantining Rookie on Probation Parties Hard and  
Wraps His Truck Around a Utility Pole

***Nepotism Infects Peabody Public Safety Hiring Process  
It Sure Helps to Be a Boyhood Friend of Mayor Ted Bettencourt  
Amateur Hour Hiring Process Denounced by Commissioner Ittleman***

**T**he recent decision of Civil Service Commissioner Cynthia Ittleman taking Peabody Mayor Ted Bettencourt to the woodshed over a bypass of a firefighter candidate in favor of two of his childhood friends is very instructive for those making public safety hiring decisions in towns and small cities in the Commonwealth.

But before we get started, we just want to highlight one point about bypass appeals. The Commission can place a wrongfully bypassed candidate on top of the next list, but it very rarely vacates the appointment of a successful candidate and orders the redo of the appointment process. So, a Mayor who puts his thumb on the appointment scale might suffer a tongue lashing from the Civil Service Commission, but his buddies will almost always keep their new jobs. So from the Mayor's point of view, it's pretty much "heads I win, tails you lose."

Now we know this is a police reporter and this case involved firefighters: but the issues and lessons to be learned are the same for both professions. First some background.

The City of Peabody needed to hire seven firefighters. Two of the successful candidates were childhood friends of the Mayor. Firefighters joked that there was a “P” line on the certification (referring to the Mayor’s special buddy) and that Bettencourt would do anything he needed to



Mayor Ted Bettencourt

get down to his friend’s name. This was particularly urgent because his special friend had not taken the most recent exam and wasn’t eligible for the next certification.

Ted Bettencourt must be a pretty good mayor since he has been serving successfully for almost ten years and been reelected many times. And based, at least, on the fact that Peabody police and fire rarely appear in cases decided by the Commission, either disciplinary or bypass, it seems that the departments are pretty well run. In fact, the most recent case in the *Massachusetts Civil Service Reporter* from Peabody dates from 2016 when the same Commissioner affirmed Mayor Bettencourt’s bypass of a shaky candidate for a police appointment. [\*Porter v. City of Peabody\*, 29 MCSR 297 \(2016\)](#).

Bettencourt grew up in Peabody and served on the City Council before being elected to his first term as Mayor in 2011. Before then, he had a small-time law practice in the city and was very active in community affairs, coaching sports teams, and seeing to a growing family. In an interview with him over the Commission’s ruling that tossed out his bypass decision, Bettencourt was clearly still stung from the harsh criticism leveled at him by Commissioner Ittleman for putting his hand on the scale.

So here is how he screwed up. The most important thing, obviously, was that he failed to recuse himself from the hiring process involving his two childhood friends. He should not have decided who was going to be interviewed, should not have participated in the interviews, should not have been involved in reviewing background investigations, and so forth. Also, the hiring process itself was marked by a casual amateurism where, for example, there were no uniform questions asked of the candidates, no written policy on how interviews should be

conducted, and no objective rating system for the interviews. Answers were not ranked. No outsiders served on the interview panels either. Very bush league.

The other screw-ups involved the slipshod investigations and reviews of the candidates who were passed over. For example, references were not checked, residencies not investigated, inadequate reviews were conducted of criminal records without looking into the circumstances....you get the picture. Why devote a lot of time to looking into someone's background when you already know what the result is going to be?

The Mayor also seems to have been very ill-served by his director of Human Resources, one Beth Brennan O'Donnell, who also grew up with both the mayor and the successful candidates, and should have provided some adult supervision which she obviously did not in this case.

When we caught up with Mayor Bettencourt, he was still miffed over Commissioner Ittleman's decision finding bias in his appointments and he made some good points. "Look, I have been Mayor for over ten years....I have probably appointed half the police and firefighters in the City. I grew up here, I practiced law here, I coach sports teams, I know everybody here. My dad was a police officer here. If people apply for jobs, the odds are I am going to know them or know their families." Bettencourt told us that this kind of personal knowledge is very helpful in making hiring decisions and there is no doubt he is right about that.

The problem is how to square this kind of local knowledge with the demands of Civil Service law and precedent. Well, clearly Peabody and similar municipalities need to fine tune their hiring procedures to include evaluations of candidates that are more objective. It wouldn't hurt to have some outsiders sitting in on the panels and have written procedures. And investing more resources in reviewing the files of candidates who seem headed for a bypass would be a good idea too. Even if this comes with the cynical idea of simply making bulletproof decisions that are going to favor locals and childhood friends. If you want to help your friends, you better learn how to do the dance correctly.

We told the Mayor to forget about appealing the decision which he was seriously considering doing. Commissioner Ittleman had him dead to rights and the appeal would surely fail. And, anyway, the Commission does not have the power to make cities and towns revoke the appointments of successful candidates simply because a candidate has been wrongfully bypassed. So the Mayor got his way and his two friends were successfully appointed.

And the Appellant in this case who was bypassed? His name is Andrew Nardone and he was a pretty good candidate having already served for five years with the Rowley FD as a paid on-call firefighter and on a *per diem* basis for the Lynnfield FD. Might want to give him a break next time through, Mr. Mayor. [\*Nardone v. City of Peabody\*](#), 34 MCSR 70 (2021).

## ***Tattoos Causing Multiple Bypasses Is It Smart To Give Up on Qualified Candidates Over Their Body Art and Piercings? Not in 2021.***

Take a look at the photo here. These firefighters are rescuing an elderly gentleman, whose legs show the scars of arterial bypasses, from a horrendous house fire in Brockton back in 2018. This was a very dangerous blaze and the balcony two of the firefighters were standing on when this shot was taken was at risk of imminent collapse.

Why are we showing you this? Recently, the Civil Service Commission affirmed two bypasses of otherwise qualified candidates for original appointment as Brockton firefighters and fire alarm operators because they had tattoos that violated Department policy since these would have been visible while in uniform. One of the candidates bypassed is related to one of those firefighters on the balcony in the picture. Do you think that at that life-and-death moment, the elderly gentleman would have been offended by a firefighter with tattoos transferring him to the ladder while perched on a balcony at risk of imminent collapse? Yeah, we didn't think so.



"Put Me Back in the Building! The Tattoos Are Killing Me!"

The issue of tattoos will be coming up with greater frequency in public safety, whether police or fire, and departments have different policies on the subject. In the Brockton cases, one candidate, Ashley Hurst, had a very discreet tattoo on the side of her finger that she described as a mustache to honor her father. This disqualified her from appointment simply because it was visible while she was in uniform.

Corey Matchem was the other candidate disqualified for appointment because of tattoos....as you can see from the picture below...his tattoos are far more extensive. His tattoos cover his face, neck, and hands. He also had what the decision describes as "excessive ear stretching." We wonder what would qualify as "non-excessive" ear stretching?

Matchem and Hurst were represented by the same attorney, Thomas Horgan, who made constitutional claims relating to Free Speech and Equal Protection—the latter argument being based on the fact that there are serving members in the Brockton Fire Department who have



tattoos that violate the policy. Commissioner Paul Stein basically decided the case by relying on the fact that tattoos and body art have long been regulated by the Federal military services, the Massachusetts State Police, and numerous municipal police and fire departments. Such



Corey Matchem

regulation cannot be said to be unreasonable. And it is not the Commission's role to start micromanaging hiring practices. So the appeals went nowhere.

But is it a smart hiring decision? We don't think so. There is a generational shift underway. A huge percentage of people at the hiring age for law enforcement have tattoos. Personally, we think the practice is cretinous, and has for us about as much appeal as a recreational circumcision. But times change and it would be lunacy to pass over so many very qualified candidates simply because of their body art or piercings. The decision in the *Matchem* case has a nice review of various departmental policies and the arguments pro and con, if you care to take a deeper dive.

One last thing. We are not talking here about obviously offensive visible tattoos containing hateful or racist messages. None of the tattoos in these cases were of that category. [\*Hurst v. City of Brockton\*](#), 33 MCSR 41 (2021) and [\*Matchem v. City of Brockton\*](#), 33 MCSR 52 (2021).

### ***So You Really Think You'll Make Sergeant By Insulting the Chief? And Calling Your Sergeant a Piece of "Sh-t"?***

**R**oger Cormier is a long-serving patrol officer with the Gardner PD who has an unfortunate history of "incivility" to his superiors and is not shy about sharing his negative feelings about them with others. Very unpopular with the command staff and certainly not a team player, Cormier nevertheless has been a very effective police officer. He is highly regarded in the community, as attested to by the many civilian letters singing his praises that have poured into headquarters over the years. During his 24-year tenure with the Department he has received four official commendations, served as Officer in Charge on eight occasions, and worked in community policing and foot patrol.

But Cormier could not keep his mouth shut about the shortcomings, real or imagined, of command staff. His sergeant was "a piece of sh-t" and not a leader. He had little respect for the Chief and the Deputy Chief, going so far as to refuse to even speak with the Chief except for

essential communications after he was disciplined in 2011 for showing up late for three details and then being abusive to his superiors after they complained about his tardiness. He dished out the same treatment to his sergeant. And it wasn't just his superiors who were at the receiving end of his frostiness and tongue lashings. Unhappy with dispatch over some screw up, he charged into the dispatch area to discuss the issue with the team in direct violation of a general order to make these sorts of complaints to his supervisor.

So not surprisingly, in 2019 he was bypassed by other candidates for promotion to sergeant since the officials concluded that there was no way Cormier could work with the command staff effectively. Strangely, Cormier appealed the bypass to the Commission, claiming bias. But the Commissioners didn't buy it. *Cormier v. City of Gardner*, 33 MCSR 98 (2021).

### ***First Latina Detective in Lawrence Can't Detect Enough to Follow Basic Instructions or Follow Through on Her Commitments—No Promotion for Her***

The Latino and Anglophone press were exuberant when Ana Villavizar was appointed the first Latina detective in the City of Lawrence in 2017. The *Diario Libre* [trumpeted her appointment](#) as groundbreaking and proudly noted her origins in the Dominican Republic. The *Eagle Tribune* [gushed equally enthusiastic](#), emphasizing that she would be one of 11 detectives working among 135 officers of various ranks in a city in which an estimated 70% of the population is of Latino descent.

The City has consistently made the Top Ten lists for criminality (and COVID infections) in Massachusetts and there sure is a lotta detecting to do if you are up to it.

Detective Villavizar sought a promotion to sergeant in 2020 but apparently her detecting skills were not of much use in helping her to read the exam instructions and she failed to complete the E&E component of the examination. When she filed her appeal to the Commission challenging HRD's refusal to award her any E&E credits, she apparently claimed that she had completed the E&E portion of the examination. But when it came time to prove



Detective Villavizar and Friend—Promoción?  
Claro Que No!

it to Commissioner Christopher Bowman, she folded and stipulated that “upon reflection” she “now acknowledges” that she had not done so. That left her appeal in ruins and she pledged to withdraw it at the pre-hearing conference.

But she never got around to it, despite reminder emails from the Commission, as Bowman icily pointed out in his decision tossing out her appeal. And so the Commission had to waste time writing and voting a short decision turning down her bogus claims. An admirable performance following instructions and honoring commitments? Claro que no! [\*Villavizar v. Human Resources Division\*](#), 33 MCSR 64 (2021).

### ***Renegade Taxidermist Passed Over for Environmental Police***

**H**ere is a case with a very unusual reason for a law enforcement bypass. The candidate in question was a disabled veteran by the name of Anthony Cunha who was applying for original appointment to the Massachusetts Environmental Police. Yes, he had a ruinous driving record, but what made him very special were his taxidermist and hunting violations. Yes, taxidermist violations. Cunha had been previously cited by MEP for all sorts of regulatory noncompliance in connection with this sideline business that included failing to file his migratory bird stamp, keeping unlabeled animals in his freezer, not keeping track of the bears he had killed (yup!), possessing migratory bird species carcasses, and a bunch of other mess ups indicating a pattern of scofflaw indifference to wildlife protection.

Added to this was a citation from MEP for hunting waterfowl out of season. Commissioner Cynthia Ittleman upheld the bypass. Not exactly a tough call. [\*Cunha v. Massachusetts Environmental Police\*](#), 33 MCSR 108 (2021).

### ***COVID Quarantining Rookie on Probation Parties Hard and Wraps His Truck Around a Utility Pole—End of Very Brief Career***

**R**ick Griffin was appointed to the Revere Police in October of 2019. On August 11 of 2020, the Chief contacted him with the news that another Revere police officer had tested positive for COVID and that Griffin should quarantine for 14 days and “lay low and stay away from crowds as well as work and the police station.” Four days later, Officer Griffin received the news that he had tested negative for COVID. Ready to celebrate, he disregarded the Chief’s instructions, stopped by a liquor store, and then went to a barbeque at a friend’s house—watching a hockey game there with his girlfriend and five or six other people.

After about five hours at the party, he hopped into his pickup and crashed it exactly four seconds later—first into a utility pole and then into two other vehicles parked in a driveway—all of this nicely captured on a neighbor’s security camera. The investigation into the incident by



"WELL, AT LEAST HE WON'T HAVE TO QUARANTINE ANYMORE."

the head of the Revere Detectives Bureau, Lieutenant Maria LaVita, found five specific instances of misconduct including driving to endanger, failing to file an accident report, untruthfulness, violating quarantine, and failure to take police action.

Since he was still in a probationary status, Mayor Brian Arrigo fired him summarily soon thereafter. His appeal of his discharge went nowhere. [\*Griffin v. City of Revere\*](#), 33 MCSR 28 (2021).

### ***Johnny Get Your Gun Hey Dude, Hire Me!***

Chris Doherty was a correctional officer who had spent 10 years in the Navy as a construction mechanic and qualified as disabled after having been exposed to burn pits while in Iraq and Djibouti. He tanked his own candidacy for appointment to the Quincy police with immature behavior during his interview and in various interactions at the station when going through the application process. His interviewers, in addition to not appreciating being addressed by Doherty as “dude,” found him to be obsessed with firearms.

During one of his visits to the police station as a part of the application process, Doherty blathered on to a nearby police officer about how many guns he had at home, how he was a firearms instructor in the Navy, and his work as a correctional officer. The officer found this quite bizarre as people don’t usually share their life story with a stranger at the front desk. He engaged in much of the same behavior with the HR Director who eventually questioned his maturity level and suitability for police work. Also not helping his candidacy were three criminal charges, later dropped because Doherty was returning to active duty in the Navy, alleging that he had improperly stored firearms without securing them at his parents’ house back in

2009. The Commission had no problem affirming this bypass. [Doherty v. City of Quincy](#), 33 MCSR 65 (2021).

### ***In Brief***

#### ***No Civil Service Commission Jurisdiction Over State Police Duty Status Proceedings***

Commission Chairman Christopher Bowman was obliged to dismiss a bunch of appeals from state troopers suspended without pay over an overtime cheating scandal. The discipline was imposed under Duty Status Proceedings. The State Police have a two-track disciplinary process and a Superior Court judge ruled that the Commission's jurisdiction was limited to appeals arising from State Police Trial Boards and did not reach Duty Status Proceedings. Clearly the Commission did not agree with this lower court ruling and there may be more to follow on this issue in the coming months. [Glidden v. Department of State Police](#), 33 MCSR 26 (2021).

#### ***No Bias Found in Framingham Officer's Reassignment to Patrol from Detective Slot—Brady Problem Was Real***

Framingham detective Matthew Gutwill was very unhappy about his reassignment to patrol and claimed former Chief Kenneth Ferguson was after him over his Civil Service appeals of a suspension, his complaints about working conditions, and his use of the grievance procedure to contest his reassignment. Hearing Officer Meghan Ventrella at the Department of Labor Relations disagreed and sided with Framingham, ruling that the reassignment was legitimately based on *Brady* concerns after Gutwell had been disciplined for lying and received a *Brady* letter. As it had previously done with other officers receiving *Brady* letters, the Town had removed him from a position that would require frequent court testimony and its actions did not constitute disparate treatment. [City of Framingham and Framingham Police Officers Union](#), MUP-18-6704, 47 MLC 202 (2021).

#### ***Suffolk County Sheriff Fails to Follow "2n + 1" Formula In Making Promotions to Lieutenant or Posting Results***

Department of Labor Relations Hearing Officer Margaret Sullivan took the Suffolk County Sheriff's Department to task for failing to honor provisions in the collective bargaining agreement requiring appointments to follow the "2n + 1" rule. The rule makes it mandatory for Appointing Authorities to consider candidates numbering twice the number of available slots, plus one. The Sheriff's office argued unsuccessfully that the contract provision was ambiguous with respect to promotions and so the rule should not apply to the 14 *promotional* openings to lieutenant which were filled without the required 29 applicants. The Sheriff also

failed to post the results of the promotional exams right away and Hearing Officer Sullivan found the two-day delay to be prejudicial to candidates.

As a remedy, Sullivan declined to rescind all the promotions and instead gave the Union 10 days to request an order to rescind the promotions of the two successful applicants who were ranked below the “2n + 1” line. [Suffolk County Sheriff’s Department and Jail Officers and Employees Association of Suffolk County](#), SUP-19-7686, 47 MLC 173 (2021).

### ***Apology for “Disappearing” the Massachusetts School of Law***

**B**oy did we screw up in the last issue! In a piece on a Winthrop police officer named Ferruccio Romeo, we referred to his alma mater as the “now defunct Massachusetts School of Law.”

For some reason, we confused the Massachusetts School of Law with Southern New England School of Law, an institution which folded in 2010 and whose assets were donated to UMass Dartmouth and became the UMass Law School (where, by the way, many Civil Service Commission hearings take place—in the basement).

We owe a shoutout to Mansfield Police Chief (and attorney) Ronald Sellon for bringing this to our attention. Thank you.

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## Dighton Dispatcher Out In the Cold After His Lust For Cheap Guns and Hot Married Women Is Revealed

## Vlad the Haitian Rejected Six Times By Boston PD, Apparently Unaware That Cops Carry Guns Not Knives

## Reinstated Ferruccio Romeo, Esq., Now Sergeant Romeo, Keeps His Sergeant's Promotion After Colleagues Say His Discharge Should Keep Him Off Promotion List

The Town of Dighton in Bristol County is not a place you would probably find yourself unless you were kidnapped or someone paid you some serious bucks to drop in. Dightonites live quietly and number around 7,000—but it cannot be said of them that they don't know how to have a good time. Every year the town celebrates the Cow Chip Festival, proudly hosted by the local Lions Club. The festival name comes from the signature event that involves setting up squares in the field behind the town hall onto which local farmers lead their cows. Folks then place bets on the square they believe will be defecated on first by one of the cows. We wish we were making this up.

Not surprisingly for a town that celebrates expeditious excrement behind its seat of government, a majority voted for Donald Trump in the 2020 presidential election by more or less the same plurality in 2016. Judging from the crime stats posted on the Dighton PD website, it looks like the biggest issues there are men beating the crap out of women and folks doing stupid stuff with cars and booze.



Dighton Cow Chip Festival—Wagering For "Entertainment Purposes" Only



The star of our show here though is not some incontinent bovine but the town's former police dispatcher, one Adam Foss, who found himself before Timothy Hatfield, a Department of Labor Relations arbitrator begging for his job after he was fired. Foss's offenses were basically twofold. Back in January of 2019, a civilian Wayne Andrews came into the station looking to renew his FID. After chatting a bit with Foss, Andrews changed his mind and decided he might want to surrender his shotgun instead. On that day, Andrews finally left the station without renewing his FID or turning in his shotgun. Foss, however, failed to log Andrew's visit into the computer or in the firearms officer's logbook. There was a reason for that.

Shortly thereafter Foss called up the Department's firearms inspector, Patrol Officer Stephen Ferreira, and told him that he wanted to purchase Andrew's shotgun in a private sale and that he could get a good deal. Ferreira, for obvious reasons, told Foss that this would be a very bad idea.

Foss persisted anyway and called up Andrews at home to make him an offer. During that conversation, Foss realized that Andrews was not all there, apparently believing that the "government" had given him a shotgun as part of some study. Foss gave up the idea of buying the gun and ultimately, Ferreira visited Andrews at home and learned from his family that he was suffering from dementia and convinced him to turn in the shotgun.



Ferreira reported Foss's ethical lapse to Sergeant Shawn Cronin who told Foss that he would report the incident to Sergeant David McGuirk, who was filling in for Chief Robert MacDonald while he was out on medical leave. Inexplicably, no further action was taken against Foss by the Department until he committed yet another offense six months later involving a citizen who claimed she was being harassed by an ex.

This citizen was one Kelly Voci, a Dighton resident married to a Michael Voci. The couple had been subjected to several wellness checks, prompted by calls from the father of Kelly's

child from a previous relationship. Believing her ex was harassing her, she went into the station to complain and once there, she recognized Foss from Facebook. Soon after her visit, Kelly contacted Foss and the two launched into a torrid five-month Facebook relationship that was upsetting enough to her husband Michael to prompt him to barge into the station and confront Foss. Unfortunately Foss was not on duty at the time but the husband ended up complaining to Chief Robert MacDonald and an investigation was launched.

Investigators discovered that Foss had disclosed confidential information to Kelly about the father of her kid, telling her that the Dad appeared to be drunk when he called in to initiate the wellness checks. The Chief also learned that Foss had made an unauthorized CJIS inquiry into Kelly's current husband Michael, presumably hoping to dig up some negative information with the hopes of advancing his relationship with Kelly.

Learning about Foss' previously unethical behavior in the firearms incident at the same time he was conducting the investigation of the Voci matter (we don't know why it took him so long), Chief MacDonald seems to have decided that enough was enough and in August of 2019, the Selectmen fired Foss. Chief MacDonald declined repeated requests by email or phone to be interviewed for this article to explain why on earth it took his department six months to launch disciplinary proceedings against Foss after the firearms incident, leaving us to conclude that there was probably no good reason for the delay but incompetence, cover up, or both. Or maybe his boys were too busy preparing for the Cow Chip Festival.

We say "boys" because one thing is for sure, the department's performance might improve (or not) if it hired a few women as police officers. The Department website lists 17 sworn police officers and not one is female. The only exception listed is a dispatcher Alora Clemens, who is carried on the site as both a dispatcher and police officer.

Anyway, Foss appealed his discharge under the collective bargaining agreement to the Department of Labor Relations. And he got nowhere. His arguments were pretty feeble. He claimed that the Department had it in for him, in particular a fellow dispatcher Theresa Costa who had previously been disciplined for harassing him and helped to conduct the investigation. He also argued that the Chief's investigation had been inept and that Kelly Voci had testified that she had never engaged in sexual relations with him. That was supposed to be a point in his favor.

But he failed to effectively challenge the key findings made by Dighton regarding his ethical lapses arising from the firearms incident and the CJIS violation, all of which showed, as pointed out by the arbitrator, that the "Town cannot rely on Foss to make proper decisions while functioning as a dispatcher...or adhere to the rules and regulations of the Town's Police Department." End of story and civilian dispatch career. [\*Town of Dighton and Massachusetts Laborers' District Council\*](#), 47 MLC 106 (2020).

***When No Really Means NO!  
Rejected Six Times for Boston PD  
Candidate Notches Yet Another Rejection  
This Time From the Commission***

**V**ladimir Damas was rejected no fewer than six times for original appointment to the Boston PD and was bypassed no fewer than three times. He appealed all these bypasses to the Commission and the cases were assigned to Commissioner Cynthia A. Ittleman who decided them all in one fell swoop—and sided with the Department.

Despite his very Slavic sounding name, Damas is a Black Haitian-American who speaks Haitian-Creole fluently and lives in Dorchester. He didn't make it through college after his Dad fell sick but did head off to Harvard University, if only to serve as an assistant cook and store-keeper for eight years. After that he got a job as a Massachusetts correctional officer where his captain found him to be a "very dependable employee" who showed up on time ready to go to work and got along well with his supervisors and co-workers. He never received any discipline at DOC and was licensed by Boston to carry a firearm.

As is depressingly often the case, what dashed Damas's chance for a policing career was not so much bad behavior from long ago but lying about it. Damas had been tossed out of his high school for carrying a knife in the building. He told Boston's background investigator Detective Rafael Antunez that he had been carrying a knife around high school for two years in response to someone who tried to rob him when it was eventually discovered by school officials.



What he did not tell Antunez, or disclose on his first application, was the fact that he had been expelled from high school. The Boston application specifically asks candidates in the education section to disclose expulsions. Damas failed to do so and Detective Antunez dug this nugget up as part of his investigation. When he confronted Damas with it, the candidate

claimed it had “slipped his mind.” That’s right. It had slipped his mind that he got tossed out of high school for carrying a knife.

Damas then dug himself in even deeper when he subsequently changed his story and provided a written statement to Antunez that asserted he had only brought the knife to school once.

Boston also found that Damas had provided misleading information about a melee he was involved in outside a Boston nightclub in 2008 when he was 23 years old. During the ruckus, the police told Damas to stop mixing in because he was inciting the crowd. Damas refused to leave and when the officers tried to arrest him, he was charged with resisting arrest violently and led away in handcuffs. But the charges against him were flimsy and dismissed the same day. Hearing Officer Ittleman found this incident could not serve as a basis for bypass since Boston had failed to really prove that he had acted in a disorderly manner or resisted arrest.

But concealing his expulsion from high school on his application and then making inconsistent statements about the knife were more than sufficient to give Boston a valid reason to take a pass on his candidacy.

What is too bad about this case is that Damas might well be a police officer today if he had just been straightforward and fessed up. By the time of the Commission hearing, he had obviously gotten his act together and was leading a responsible adult life. The high school expulsion was ancient history as Damas was 33 years old when the Commission heard his appeal. He had a sterling record and references from DOC. And Boston could not have lawfully held the nightclub arrest against him as the situation was completely chaotic, charges were immediately dropped, and Damas did not fail to disclose the rumble. But foolishly he lied about high school and paid the price. [\*Damas v. Boston Police Department\*](#), 34 MCSR 12 (2021)

***Fired For Detail Fraud And Then Exonerated  
Ferruccio Romeo, Esq., Notches Another Legal Victory  
This Time Before the Civil Service Commission After  
Colleagues Try to Stop Him From Taking a Sergeant’s Exam***

**F**erruccio Romeo was the long-serving Winthrop patrol officers' union president who was terminated back in 2015 for submitting a request to be paid for a special detail that he allegedly did not perform. The detail involved an eight-hour shift monitoring traffic at a pump station. Romeo worked the pump station detail but he was not physically present at the actual pump station during most of the shift. He wasn’t lounging around at home before the widescreen, however, and was instead at the town hall negotiating a contract on behalf of the Winthrop Police Brotherhood Local 421.

An arbitrator found the town had acted unlawfully and concluded that Romeo had not behaved dishonestly in requesting payment for the detail because he had understood that the detail was mobile and, as a result, his physical presence was not required as long as he was *available* to respond to any incident—which he was. The arbitrator also found that he didn't lie to the Chief during his investigation of the alleged fraud. Romeo's lawyer had argued forcefully that Romeo was being targeted by Winthrop for his aggressive union advocacy. Romeo was ordered reinstated with back pay.

Winthrop did not give up though and appealed the arbitrator's decision to the Superior Court where the Town obtained a reversal. Romeo then appealed the Superior Court decision and won a resounding victory before the Appeals Court in 2019, which sided with the arbitrator. Romeo got his job back. And since he had been unable to take the sergeant's promotional exam during the time his legal appeals were going on, Winthrop also allowed him to sit for a make-up exam. He did so and scored well. Incidentally, Romeo is also an attorney, having obtained a JD from the Massachusetts School of Law.



Sgt. Ferruccio Romeo, Esq.

Three of his colleagues, Timothy Callinan, Giulio Bonavita, and Shawn McCarthy, who were also trying to secure promotions, challenged Romeo's eligibility to sit for the exam before the Commission, claiming it violated Civil Service laws.

In a decision by Chairman Christopher C. Bowman, the Commission disagreed. By the time the appeal was decided this February, two of the officers challenging Romeo's eligibility, Callinan and McCarthy, had already been promoted to sergeant. And so had Romeo. That left the lowest officer on the list, Giulio Bonavita as the odd man out.

Too bad for him, said the Commission, because the Appeals Court had upheld the arbitrator's decision to reinstate Romeo effectively restoring *all* his rights, including the right to take a make-up promotional exam. The Commission no doubt is happy to see the last of Romeo who clogged its docket with two other unsuccessful appeals challenging the same test. In one appeal, he took issue with the scoring of his test and in the other he tried to be placed first on the promotional list.

In the end, it turned out he didn't need to be first on the list because being third was enough to get him the promotion. [\*Callinan v. Town of Winthrop\*](#), 34 MCSR 15 (2021).

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## Not a Good Career Move to Beat the Crap Out of a Black Guy in a Holding Cell in Lynn

## He May Be a Cop, a Captain, And a Lawyer But Somerville Lieutenant Sure Gives a Lousy Interview

## Small Town BS in Avon Favors Local Boy But Commission Disagrees and Tosses Bypass

## Lieutenant John Earley of the Boston PD Wins Award for Dumbest Appeal of 2020

## Bumper Cars Eliza Lopes Ain't Getting Behind a Boston Cruiser Anytime Soon

## ***Violence in a Holding Cell Ends Policing Career of Heroic Lynn Officer Matthew Coppinger After Generations of Lynn Policing In His Family***

Officer Matthew Coppinger was not just any Lynn police officer. He came from a family that had supplied Lynn with police officers for generations. His uncle, Kevin Coppinger, used to be the Chief and is now the Sheriff of Essex County. Coppinger was a local boy who served two overseas deployments, including one in Afghanistan, that earned him a case of combat-related PTSD now being treated by the VA (or doing whatever passes for treatment at that sorry institution). Coppinger was a Black Hawk helicopter pilot and still serves in the Army National Guard.

Although only with the Lynn police for five years at the time of his resignation, he had garnered his share of commendations, including the Trooper George L. Hannah Medal of Valor from Governor Baker, for a heroic intervention along with three other officers. Coppinger and his colleagues had been called to a domestic dispute that led to the timely death of an armed piece of human detritus with a violent histo-



Officer Coppinger Begins His Career

ry of beating up the mother of his children and threatening the world around him, and the police, with guns.

Coppinger's world came crashing down one evening in June of 2020 when three Lynn officers (Coppinger not among them) arrived at an apartment complex to investigate a noise complaint. Three young men were sitting on a porch having some beers and apparently bothering neighbors with their loud and inconsiderate behavior. One of them, Victor White, was a 32-year-old black cook at Tufts University. When the officers told the three to tone it down, they mouthed off and White remonstrated that there was nothing illegal about his drinking beers on his porch. Eventually, the three were handcuffed and bundled into cruisers to be booked for public drinking and a bunch of other minor offenses that were eventually dropped by the prosecutor.



A Maskless Victor White

It would seem from public reports that the three officers overreacted and might have better diffused the situation. Certainly Coppinger went overboard when later, back at a holding cell at the station, he was accused of beating the crap out of White when the cook refused to take off his mask. Apparently Lynn Police had a policy against masks in a holding cell—a policy probably worth revisiting given current circumstances. Fearing COVID infection, White refused to comply with orders to remove the mask so Coppinger removed the mask for him in maybe not the most considerate of ways.

It's true that Victor White probably deserved to get the crap beaten out of him, but by his neighbors and not the police. Unfortunately for Coppinger, the whole incident in the cell was filmed. Union reps who have seen it say the video is "not good" but we don't know because it hasn't yet been released. White told reporters and social media that he was hunched up in a ball in the cell in fear of his life while Coppinger pummeled him mercilessly. Compounding Coppinger's problems was the fact that the use of force report that he penned that night does not, shall we say, exactly match up with the video evidence.

White's story took on a life of its own when demonstrations were held in Lynn protesting police brutality and incompetence and objecting not just to the alleged violence in the cell, but also to the illegality of the original arrests and claiming them to be racially motivated. When word got up to then-Chief Michael Mageary, an internal investigation was launched and it wasn't long before Coppinger got the word indirectly that resigning might be a pretty good



idea and that the Department (and the prosecutor) probably would not be interested in pursuing him were he no longer a police officer.

Anyway, within ten days of the porch incident, Coppinger handed in his resignation and soon after Chief Mageary took a sudden retirement and was gone too. We do not know what the connection is between these two events, if any. But alas for Coppinger, the investigation did not come to an end and the District Attorney even referred the case against Coppinger to an independent Special Assistant District Attorney, one Daniel Bennett—a former Secretary of the Executive Office of Public Safety and Security. An outside investigator was presumably chosen in an effort to mute the howling BLM crowd.

Coppinger soon changed his mind about resigning and filed an appeal with the Commission to try to get his job back. He was not successful.

The Commission does not have jurisdiction over matters involving resignations. So Coppinger's lawyers bamboozled a theory that he had been fraudulently coerced into resigning by Lynn PD but Chairman Christopher Bowman, who heard the appeal, did not buy it.

After testimony from numerous police officials, including former Chief Mageary (who in uniform looks like a 300-pound sausage stuffed into a 100-pound casing), the Commission dismissed Coppinger's appeal. Chairman Bowman found that, at most, Coppinger received advice from a union steward that the City would have no reason to investigate further or pursue criminal charges if he resigned. But City officials were not shown to have coerced or put him under any duress to resign.

It looks like Coppinger just panicked here and was desperately trying to avoid criminal charges when he resigned. When he saw that resigning wasn't going to help and the investigations weren't going away, he figured he might as well try to get his job back. No luck.

Time for him to find a job as a helicopter pilot in civilian life. [\*Coppinger v. City of Lynn\*](#), 33 MCSR 377 (2020).

### ***Somerville Captain's Promotional Bypass Shows Contempt for the Public and "Anemic" Interview Rife with Negativity***

If you are going to read just one of the decisions involving bypasses from this issue, we would recommend the promotional bypass of Lieutenant Sean Sheehan who sought a promotion to captain in the Somerville PD. It's rare that we have an issue that doesn't involve the dysfunctional Somerville PD and this is no exception.

Sheehan has been with the Somerville PD for almost 20 years and on his way up the ladder was given just about every assignment imaginable. At the time of the exam, he was the Patrol Division Commander and had previously served as the Department's Accreditation Manager, Head of the Criminal Investigation Division, Special Operations Commander, and Police Prosecutor—to name just a few of his postings and accomplishments. He also had picked up a BS in accounting, a law degree, and passed the bar exam.

But the bar exam does not require an interview, while promotion to police captain does, and Sheehan totally blew this one. There were basically two finalists for the one open position and Sheehan faced some pretty tough competition. But what doomed his candidacy was also a deadly case of “foot in mouth” disease.

For example, in response to one of the questions during his interview, Lt. Sheehan made the comment, “we are a police department, we are miserable people.” Hello?

Sheehan also told the story about an officer who asked his advice about going into the Narcotics Bureau and how he had responded that he would help him do so but that he himself would never want to work in narcotics because “everybody lies” to officers in that line of work.

For Somerville Police Chief David “Mr. 420” Fallon, this “capitulation to negative culture” was something he was working to tamp down every day, testifying that “negativity is the new corruption” in policing. Fallon said that rather than discourage officers from going into narcotics, Sheehan should have encouraged them to join but with their “eyes wide open.”

Another blunder in the interview that proved fatal to Sheehan's promotional prospects was when he was asked to describe a time when he was responsible for disciplining an officer. Sheehan described an incident where he saw an officer disregard a sergeant's order but Sheehan did not immediately intervene and later even apologized to the sergeant for not reacting right away to the officer's insubordination. Lt. Sheehan went on to say in the interview that he spoke to the insubordinate officer later in the shift and asked “are we cool?” This was not the kind of answer Chief Fallon was hoping for and testified that Sheehan should not have been worried about things being “cool” but focusing on the swift enforcement of rules and establishing a strong chain of command.

The Commission affirmed the bypass but lauded Sheehan as a good witness—honest and straightforward—and praised him as someone who had made a meaningful contribution to the City and the police force. Finding no personal or political bias against Sheehan from the Police Chief or Deputy Chief, the Commission decided that the evidence supported the interview panel's conclusion that Sheehan *really* had a rotten interview and let the bypass stand. [\*Sheehan v. City of Somerville\*, 33 MCSR 364 \(2020\)](#).

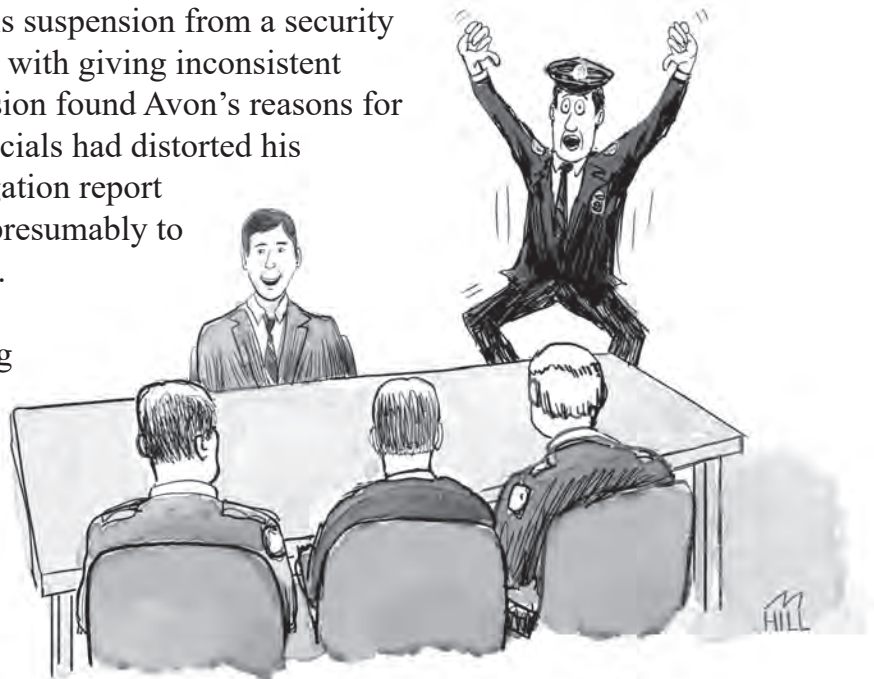
## ***Small Town Bullshit in Norfolk County Behind the Bypass of Qualified Candidate for Avon PD Commission Cites Nepotism and Antics of Police Chief at Interview***

There were three candidates under final consideration for original appointment to the Avon PD—all of them were locals, but some were maybe more local than others. Only two slots were available. One of the contenders, Candidate 2, was the son of a recently retired and beloved employee of the Town Clerk’s office. This gentleman had been recruited as an SPO by none other than the now-retired Chief of Police David Martineau. And the fix was in for him.

Avon is a nondescript suburban community of just over 5,000 people a short drive south of Boston. Rejected for appointment to its police department in this case was the Appellant Michael Hatch, who was passed over for a purportedly “weak performance” at his interview and also for his suspension from a security company, about which he was charged with giving inconsistent answers to interviewers. The Commission found Avon’s reasons for rejecting Hatch pretextual and that officials had distorted his record in both the background investigation report and the interview report. They did so presumably to assure the appointment of Candidate 2.

Badgequest is a private consulting firm that assists cities and towns in recruiting public safety employees. The President is a certain Robert Pomeroy, a former Chief of Police in Plymouth. Badgequest was hired by Avon to help evaluate the police officer candidates. The firm set up an interview process that included two panels of retired police chiefs from surrounding communities. So far so good.

But other municipal officials sat in at the interviews, including then-Chief Martineau, who positioned himself behind the candidates during their interviews and made clear from his facial expressions what he thought of their answers. During Appellant Hatch’s interview, Martineau engaged in a lot of disapproving head-shaking from side to side and plenty of skeptical looks. In contrast, he was all smiles during Candidate 2’s interview. Of course, Candidate 2 got the job.



AVON'S FAIR AND IMPARTIAL INTERVIEWS

The decision from Commissioner Cynthia Littleman found this all to be rotten, small-town nepotism and allowed Hatch's appeal, rejecting the entire process as tainted by bias. [\*Hatch v. Town of Avon\*](#), 33 MCSR 388 (2020).

### ***Dumbest Appeal of the Year Awarded to Boston Lieutenant John Earley—First Pass the Friggin' Captain's Exam And Then You Can Bitch***

The winner of the dumbest Civil Service appeal for 2020 surely has to be Lieutenant John Earley of the Boston PD, who sought an order from the Commission putting an end to captain appointments until a new eligible list has been established. In 2014, the Boston PD administered a Police Captain Assessment Center examination and although Earley participated in that exam, he chose not to complete all its components and so he flunked. When Boston established a 2015 eligible list, 33 candidates who passed the exam were on the list but not Earley, of course, because he bungled it.

This list was extended a few times by HRD, and yet again in November of 2019, after candidates had problems accessing a reading list and prep materials. This delayed the new exam. During this time, Earley could not be considered for a promotion since he wasn't on the original 2015 list because he flunked the 2014 exam.

The law clearly states that HRD has the discretion to extend lists if no new eligibility

lists have been established but Earley argued before the Commission that HRD had some kind of informal policy allowing lists to be extended for only two years. If they had followed this "policy" he could have retaken an exam and been considered for promotion if he passed it.

The Commission decision is clear that the law says in very plain English that lists are automatically extended unless HRD exercises its discretion to revoke a list—which it declined to do so here and for legitimate reasons.

Our readers may remember Lieutenant Earley from news reports back in 2015 when he was placed on paid administrative leave after being charged with crashing his pickup truck



Lieutenant John Earley

into a backhoe in West Roxbury and fleeing the scene of the accident. <https://boston.cbslocal.com/2018/05/04/i-team-boston-taxpayers-shell-out-millions-for-workers-paid-to-stay-home-while-under-investigation/> The charges were eventually dismissed but Earley collected checks totaling more than \$355,000 while staying home for almost 900 days. Sounds like he had plenty of time to study for the next captain's exam. *Earley v. Boston Police Department*, 33 MCSR 344 (2020).

### ***Terror on Wheels Eliza Lopes She Wants to Play Bumper Cars in a Cruiser Nyet! Say Boston and Commission***

**Y**ou have to have a very bloated self-image to think you can appeal your bypass from an original appointment to the Boston PD when your driving record looks like a Youtube compilation of NASCAR crashes. Eliza Lopes successfully landed on the 2017 certification list but during the eleven months before she applied, she had no fewer than three surchargeable accidents for which she was found to be at fault. And in order to hold on to her license, she was even obliged to attend a driver safety class through the National Safety Council. Not exactly someone you would want to put anywhere near a cruiser.

And the accidents were not minor fender benders, either. The first one was triggered by her smashing into another driver after she pressed the gas pedal instead of the brake just two months after she obtained her license. Seven months later, she caused another accident when, swerving to avoid a car on her right, she struck another vehicle on her left. Two months after that, Ms. Lopes rear-ended another driver she happened to be tailgating.

No doubt Ms. Lopes would have found a lawyer shameless enough to take on this doomed appeal but, wisely, she represented herself and saved a few bucks. And apparently she did a pretty good job according to Commissioner Cynthia Ittleman's decision that praised her work ethic and her background. Lopes had put herself through college while holding two jobs and raising kids.

When the hiring roundtable decided to move her application forward, Lopes's RMV driving history only reflected one of these



surchargeable accidents. Boston later claimed that she had failed to disclose the last two accidents, but Lopes came up with the somewhat improbable claim that she had attached a separate sheet to her application detailing all three. That magical piece of paper somehow disappeared. When RMV records were checked again later by the recruit investigator following the roundtable, her dismal record came to light and Boston pulled its offer. And the Commission agreed that the City made the right decision here and dismissed her absurd appeal. [Lopes v. Boston Police Department](#), 33 MCSR 353 (2020).

That's it for 2020. Stay out of trouble and keep subscribing to be sure you do.

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## State Police Screw Up Yet Again

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Commonwealth on the Hook for At Least \$1.3 Million For MCAD Award to Retired African-American State Police Sergeant Cleveland Coats

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MCAD Finds Denial of Career Opportunities, Lost Overtime, And Serious Emotional Distress

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Dramatic Fall for Sergeant Coats From Prestigious Executive Protection Unit to Patrol

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Was it His Race? His Age? Or Was He Just a Screw up? We Will Never Know

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And In Bypass Appeals, Maybe You Shouldn't Call Someone A "Gook" in a Bar Fight if You Want to Do Some Policing in Boston

Well they have done it again. The Massachusetts State Police has managed to cost the taxpayers north of \$1.3 million that the Commonwealth will have to fork over to a retired African-American State Police Sergeant by the name of Cleveland Coats. On her way out the door after 20 years as a Hearing Officer at MCAD, Betty Waxman ruled in favor of Coats and found he had been victimized by discrimination from the clannish old boys club at the State Police that tanked his promising 30-year career and denied him significant overtime opportunities available to the more connected and younger white boys. [\*Coats v. Massachusetts State Police\*](#), 42 MDLR 119 (2020).

Coats sued the State Police not only for race discrimination but also for age discrimination. He picked an excellent lawyer for the job: Lisa Brodeur-McGan is a Springfield attorney who has sued the State Police no fewer than 13 times, usually representing minori-



Retired State Police Sergeant Cleveland Coats

ties and women troopers denied career opportunities and promotions. As of late, she has also been filing lawsuits on behalf of female clients attacking the police Physical Aptitude Tests that discriminate against women by placing an inordinate emphasis on upper body strength and the critical policing skill of hopping over walls. Brodeur-McGan began her career on the other side of the wall, defending municipal police departments against lawsuits until switching sides mid-career, taking on law enforcement's tribal hiring and advancement practices.

Basically, Coats' beef with his employers was that he was not allowed to feed at the trough of bloated overtime money to the same extent as younger, more Caucasian-ey troopers, was given dead-end assignments, and was traumatized emotionally as his once cultish esteem for the State Police that he felt when starting out slipped away as his career went down the drain.

Although we do feel some sympathy for Coats, his complaint is a little bit like that of the mafia foot soldiers in the *Godfather* movies, denied the juiciest rackets and shakedown opportunities by their stern Sicilian Don. Basically Coats is bitching about not being able to abscond with as much money from the taxpayers as his more fairly complexioned brothers. Rather than question whether it is a good thing to pay these people salaries well into the six figures for work that is, for the most part, pretty banal, the MCAD decision finds that ripping off the taxpayer should be an equal opportunity enterprise. Now don't get us wrong. We are not among those critics who feel the State Police are all wrongfully overpaid. From our point of view, their salaries and overtime are a feeble indemnification for having to dress up in uniforms that make them look like something between a Manhattan doorman and a constipated Nazi drag queen. We don't know what kind of hardship pay is appropriate for those dopey outfits, but whatever it is, it ain't enough.

But let's get down to it. Who is Cleveland Coats? Well, it didn't begin so well for Trooper Coats because his parents named him after a not-so-hot city. If we were to name a kid after a city it sure wouldn't be after the Mistake on the Lake. But despite this inauspicious beginning, Cleveland graduated in 1981 from Northeastern University with a BA in Criminal Justice and then from the State Police Training Academy in 1983. His policing career began with brief stints in the auxiliary and reserve forces in the Westford and Lexington police departments.

Coats' first assignment for the State Police was a three-year tour as a uniform patrol officer out of Leominster. He then did another three years at the Concord barracks, during which time he became a canine officer, and was promoted to sergeant in 1995. Canine was clearly his thing and he stayed in that job for 18 years—until he met a promising gubernatorial candidate by the name of Deval Patrick.



Attorney Lisa Brodeur-McGan



## ***Coats Loses the Dog and Picks Up the Gov, But With No Help From the State Police And A Whole Lot of “Volunteering”***

Like other quasi-criminal enterprises, the Massachusetts State Police tries to keep its promotional practices secret and subject to the manipulation of a few key players. Prized assignments are routinely given out on a non-biddable basis to those in the know, often on a temporary basis. Once ensconced, the privileged few have a fast track and a leg up to a permanent appointment. Those who might be interested in a particular posting often are not even aware it is being filled. This serves the masters well because it allows the almost complete exclusion of women and minorities from the more juicy assignments. State Police Lieutenant Carmelo Ayuso testified during the 11-day hearing on Coats’ MCAD case that 99.99% of the choicest non-biddable positions went to the white boys.

Since Coats was demonstrably no white boy, he had to try something different and what drew his interest was a much sought after posting in the Executive Protection Unit. This is a small, highly prestigious unit within the Division of Investigative Services that provides security for the Governor and his family and the Lieutenant Governor (why on earth you would want to spend state money on a Lieutenant Governor is totally beyond us). The unit usually staffs out at around 10 officers and EPU positions are assigned on a non-biddable basis by word of mouth, according to testimony at MCAD from Captain Kevin Scaplen, the EPU Unit Commander from 2009 until July of this year. The jobs are very sought after because they involve international travel, trips to the White House, and generous overtime. Members are stationed at the State House, wear business attire, and are issued unmarked state vehicles with fuel cards to pay for gas. EPU members mingle with the Secret Service, the State Department, and local police departments. Commander Scaplen testified that the EPU is a “pretty tight knit group so you have to be a fit” and members must also have some chemistry with the Governor and Lieutenant Governor.



Captain Kevin Scaplen

Coats wanted in to the EPU big time so he volunteered in 2006 for approximately ten months as a member of gubernatorial candidate Deval Patrick’s security team—the only way in for the unconnected. He would work this job during his off-duty hours and perform such tasks as arriving ahead of time at events, coordinating the candidate’s movements inside and outside buildings, and escorting Patrick during campaign events. Deval’s security team operated under the direction of Boston Detective Sergeant Aaron Gross, who was thereafter rewarded by Governor Patrick with an appointment as Colonel of the Environmental Police.

Coats got along well enough with Patrick and his wife and was permanently appointed to EPU, working there from 2007 until June of 2013 when, at the age of 57, he and a female

trooper were removed from the unit following the resignation of Lt. Governor Murray and a reduction in the EPU force. And that is when Coats' career went to hell. At first he was assigned to the Joint Terrorism Task Force, a position that he was completely unsuited for. This was basically an analytical job involving assessments of individuals who were potential security threats and it required a ton of computer skills and the ability to write detailed reports. Coats did not flourish at this job and was never even sent to the FBI Training Academy in Quantico to learn federal law, although such attendance was usually mandatory for members of the JTTF. He eventually was even told to stop attending supervisory meetings and his access to supervisory screens showing all the cases being investigated was removed. The reports he submitted were judged inadequate—not surprising since Coats struggled with grammar and spelling since childhood due to undiagnosed dyslexia. After 14 months Coats was out of there.

His next tour, before his retirement in October 2015, was to a cruiser as a uniformed Sergeant and finally as a Patrol Supervisor in Troop A (3 p.m. to 11:30 p.m. evening shift—four days on, two days off), where he was assigned to investigate accidents. Not exactly a glorious career finish. He threw in the towel after 32 years and went on to start a private security company that goes by the name of Executive Protection Programs alongside a partner with a background in martial arts. The company provides a range of security and personal protection programs and seminars. Somewhat oddly, the company lists “safety of real estate agents” as one of its specialities—not a species one would usually think of as endangered.

### ***Coats' Lawyer Has A Tough Job Finding Direct Evidence of Bias But Indirect Evidence Comes to the Rescue***

Coats' lawyer Brodeur-McGan had a problem before MCAD in trying to prove that her client was treated disparately because of his race or his age. The problem was that she had very little evidence to present to MCAD of any specific racism or ageism directed at him. And so, she had to make what is called an “indirect” evidence case—showing by attendant circumstances and statistics that Coats had been treated worse than the white boys when it came to his career at the agency.

There *were* a couple of bits of direct evidence but these were not very compelling. In 1983, when Coats was at the Academy, instructors forced him and other African-American recruits to dress as waiters, serve their classmates at a candle-lit dinner, and have their own meals in a separate location! Ah, the “good old days.” Two of Coats' more successful classmates, Timothy Alben and James Hanafin, went on to become Colonel and Lt. Colonel in 2012 and Coats testified they had both laughed during this incident. This anecdote was too ancient to be of any use in proving Coats' own case but was a nice bit of background showing the historically poisonous, racist culture at the State Police.

There was one other incident that got a lot of attention from MCAD and that directly impacted on the Coats case. The Commander of the EPU, Kevin Scaplen, referred constantly to Coats as “Grady”—a character from the 70s sitcom Sanford and Son. In the series, Grady is an elderly, disheveled, bumbling, and decrepit black male. <https://www.youtube.com/watch?v=oAY8SoWAvG4> This bit of racial hazing began in 2012 when a “mock-up” appeared on an EPU wall of various actors and other celebrities in roles from the HBO mini-series “Band of Brothers.” The mock up showed the characters with the faces of EPU staff. Commander Scaplen at the time had suggested that Coats be added to the mock up as the Sanford and Son character, Grady—all in good fun, you see—and continued to call Coats “Grady” over his protests—even telling Coats that he should retire.

But putting those two bits of toxic culture aside, no evidence was presented of racial insults or other direct forms of racial brutalization or elder abuse.

But that was no problem for the seasoned Lisa Brodeur-McGan, Esq. During the 11 days of hearing, the lawyer was able to show her client was denied all sorts of opportunities given the Caucasian fellas, and that the only explanation for Coats being turfed out of EPU, and basically forced to retire after being given crappy assignments, was his race and age and the fact that he did not fit into the pasty fraternity of the State Police. She was certainly helped along in this by Coats’ powerful testimony and demeanor which she described to us in an interview as very reflective, quiet, calm, and military in its poise. Coats clearly did not come across as a litigious whiner but one very dignified and deeply wounded former trooper.

Also going for him was the fact that he had a spotless disciplinary record and outstanding employee evaluations over a 32-year career but which were of no help in preventing his “unceremonious” removal from EPU while substantially younger Caucasian members were allowed to remain. Coats was also able to show that he was denied all sorts of training opportunities and other benefits routinely given the white officers. His transfer to JTTF, and later to the Division of Field Services, were considered by the Hearing Officer as adverse employment actions and signs of disparate treatment because he “earned substantially less in overtime and paid details, lost the prestige of being an Executive Officer in a sought-after unit involving international travel and prominent people, and was thrust into a position for which he lacked training and aptitude and was ultimately returned to road work as a uniformed officer after decades of specialty assignments.”

Coats also managed to prove that his permanent status at EPU took longer to obtain than another white colleague who had joined after him but was made permanent before Coats. Hearing Officer Waxman finally ruled that his transfer out of the unit was less due to a reduction in force following the resignation of the Lt. Governor than an attempt by Commander Scaplen to secure EPU candidates with the right chemistry to fit into and be accepted by the group, i.e. young white boys.

## ***Why Can't the State Police Do a Better Job of Lying? Taxpayers Penalized by Clumsy Testimony of Scaplen and Flaherty***

Obviously the State Police had its own version of these events and it trotted out the EPU Commander Scaplen to testify along with his sidekick Sergeant Stephen Flaherty.

It's hard to quantify how many times and in how many ways Waxman's decision calls these two liars:

- "I discredit his assertion"
- "I do not credit his testimony"
- "It strains credulity"
- "I credit Complainant's testimony over EPU Commander Scaplen's"
- "I do not credit the assertion"
- "EPU [testimony is]" convincingly debunked"
- "Defies credulity"
- "I do not believe [that Gov. Patrick would discuss Coats's transfer with Flaherty]"



THE FIERY PANTS OF SCAPLEN AND FLAHERTY

And on and on and on.....we don't think we have ever read an MCAD decision where witnesses are basically called liars more frequently than these two.

What did they lie about? Well, their testimony basically boiled down to the claim that Coats was a screw up. Did they point to his performance evaluations as back up? Er....no, because Coats' annual evaluations during the seven years he was with EPU were uniformly outstanding. So what were his deficiencies? Commander Scaplen testified that he did not document them for "political" reasons, even though the State Police evaluation system, like any other, mandates that employees be given feedback in order to improve their performance or challenge negative assessments.

Scaplen and his sidekick Sergeant Flaherty claimed that Governor Patrick and his Chief of Staff wanted Coats to transfer out and made reference to Coats' excessive reliance on Google Maps when driving the Gov around (leading to lengthier trips because the Google routes

have more traffic). They claimed Coats had once led the Gov into the wrong floor at a hotel where he was attending a meeting. On a trip to France with the Gov, Coats had behaved like a clod when talking very loudly in English to make himself understood to befuddled Frenchmen. While visiting China, Coats wore an earpiece that was not attached to a radio but gave the impression that it was despite Chinese restrictions on radios and weapons being brought into China. Hearing Officer Waxman did not believe a word of it—or very little of it anyway.

To his eternal disgrace, Commander Scaplen even admitted in his testimony that there was not a single piece of paper that he could produce documenting any of Coats' performance deficiencies. Not one!

And worse, Colonel Aaron Gross, who spoke with Governor Patrick approximately twice a month about work-related matters, testified at the hearing that Patrick had never expressed dissatisfaction with Coats, thereby completely undermining the web of lies Scaplen and Flaherty weaved to trash Coats. Gross, you will remember, provided security for candidate Patrick and was rewarded with the helm of the Environmental Police.

### ***Hearing Officer Waxman Awards Coats \$250,000 for His Bruised Feelings And More For Diminished Overtime***

The inept performances put on by Commander Scaplen and Sergeant Flaherty would cost the Commonwealth dearly. Waxman awarded Coats \$148,000 in lost income for the overtime he *would* have earned had he been kept on at EPU compared to the much smaller amounts he earned in his final assignments. During his last full year at EPU, Coats had earned \$57,318 in overtime that subsequently plunged to \$14,249 at JTTF.

And Waxman went on to award Coats \$250,000 in emotional-distress damages after he described in “compelling” terms that he loved being in the EPU and that his experience in the unit was exciting and fun. The amount of the award was not that unusual as Waxman went on to award the same amount to a Middlesex County corrections officer brutally denied accommodation for her asthma. After he was removed, Coats testified that he became irritable, reclusive, and separated himself from other people, including his family. He stopped attending sports events, socializing with friends, or answering the phone. And he lost the gilded reverence that he previously felt for the State Police.

Well, this is very standard stuff that Complainant's lawyers have their clients trot out to prove emotional distress. The claims always involve an assertion, often quite dubious, that the person is withdrawing from life and becomes depressed because of all the bad things the employer did to him. Coats submitted no testimony of any consultation of mental health professionals or any treatment for depression but incredibly you don't need to do so in order to get emotional-distress damages out of the MCAD. You just have to put on a good show of moping

around before the Hearing Officer and a decent performance proving you were traumatized by your discriminatory treatment. Obviously Coats did a good job with that and obviously he was sincere and wounded.

Coats' attorney Lisa Brodeur-McGan also will be enjoying a very nice pay day from all of this. She was awarded over \$500,000 in legal fees, which she no doubt richly deserved after suffering through no fewer than 11 days of hearings and lengthy case preparation.



"OH WELL, AT LEAST HE'S BLACK!"

And remember, MCAD damage awards carry 12% interest beginning on the day that the complaint is filed until the award is paid! Given the glacial pace of MCAD litigation, most damage awards can easily double after taking into account the interest charges that pile up. So this case, as we mentioned previously, is going to cost the Commonwealth north of \$1,300,000 by the time all is said and done. We learned

from Brodeur-McGan that the State Police is appealing the awards—not on the basis that

Coats did not suffer discrimination—but only on the grounds that the damages awarded are excessive for the disparate treatment he suffered. She also told us she has another matter pending against

the State Police on behalf of Coats and other troopers for retaliatory actions it took against them after filing MCAD appeals.

And Commander Scaplen made out pretty well too. After costing the Commonwealth a boatload due to his incompetence when managing Coats at EPU Scaplen—an incompetence that led to this huge award—he was..... *promoted* on the day MCAD handed down its decision! He is now the Detective Captain of the Division of Investigative Services. Sergeant Stephen Flaherty did just fine too: he is reported as earning \$237,936 in 2019, well above the average earnings of \$130,172 for sergeants. For that money, he could at least have put in a more artful performance before Hearing Officer Betty Waxman!

Although the MCAD decision came down in July, it was not released to the public until much later in the year and in a redacted form. The State Police claimed some of the information in Waxman's decision could jeopardize the security of the Governor. The exhibits and case record is still impounded.

This brings us to a final point about EPU and Massachusetts Governors. Once you realize that EPU members are present with the Governors and their families 24/7 and know EVERYTHING about them, it is not difficult to understand why all Massachusetts Governors have bent over to the ground and given free rein to this often criminalized agency that loots the taxpayers without mercy and refuses any kind of reforms to rein in their white boy hooligans.

So, was Coats the victim of discrimination?

The better question is why on earth should we care if he wasn't able to book overtime like Sergeant Flaherty?...except that we are all on the hook for the \$1.3 million because of this out-of-control agency that answers to no one and vacuums up the taxpayers' money like the autumn leaves.

### ***Bypass Appeals—Boston PD Fighting in Bars and Calling People Gooks Not a Good Sign for a Promising Police Career***

There were no disciplinary appeals decided during this period by the Civil Service Commission so we will wind up this issue with a brief discussion of two bypass cases the Commission decided.

Kevin Davis might have made it onto the Boston police force had he not gotten into a bar fight at a Chinese restaurant in Medway in 2009 during which he hurled racial insults at the staff. Davis and a buddy were ticked off that the bar at the restaurant shut them off after denying entry to their dates who were underage. After mouthing off at the bartender, Davis and friend got into a brawl in the parking lot with employees of the restaurant during which witnesses reported Davis insulting the staff with terms such as Egg Roll, Chink, and Gook. Criminal charges were filed but Davis escaped with a CWOFF six months later. Boston PD bypassed him based on this incident and also because he was untruthful about this event in his application, giving an incomplete and self-serving version of the event. The Commission unanimously dismissed his appeal in a decision by Commissioner Cynthia A. Ittleman. [\*Davis v. Boston Police Department\*](#), 33 MCSR 307 (2020).

And in [\*Montemor v. City of Lawrence\*](#), 33 MCSR 303 (2020), the Commission agreed with the Lawrence PD that Rodrigo Montemor's truly horrendous driving record was enough to prevent him from becoming a police officer. Montemor argued that stints as a professional driver accounted for many of these infractions and that other successful candidates had worse driving histories than he did. The Commission found that, no, he had the worst driving record of them all and that many of the incidents were simply too recent to be overlooked.

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## Redemption Does Not Come Fast Enough For Larcenous Boston Police Candidate

## Somerville Looking for Teetotaler Cops So Long As They Have Relatives on the Force

## Thick Headed New Bedford Candidate Does Get It No is No....Not Now....Maybe Later, Maybe Not

## And No Holiday Bonus For XMAS Eve Duty in Millbury

**T**his will be a short issue as the virus has slowed down appeals and decisions for just about all the Commonwealth's agencies. We delayed publishing a bit hoping for some disciplinary matters but they never came down and so this issue covers just bypass appeals along with a report on an arbitrator's decision on XMAS eve bonus pay.

### ***Larcenous Past Dooms Boston Candidate "Model" Citizen Has Not Been Modeling Long Enough***

**T**here was a lot of huffing and puffing about this bypass appeal at the Commission and it seems clear from the decision, and from what is not in the decision, that some of the Commissioners really wanted to give this candidate a break. But they couldn't because Boston PD's decision to bypass him had been carefully considered and was not unreasonable.

Cedric Cavaco is an African American who grew up speaking Cape Verdean Creole. He had tough beginnings but wound up turning himself into a "model citizen," as Commission Chair Bowman put it in his concurrence. He struggled to get through college, finally finishing up with a Bachelor's degree in criminal justice from Bridgewater State. At the time of his application to the Boston PD, he was participating in a lot of volunteer activities and happily married with a child. When the Commission got the appeal he had been employed by a local financial institution for several years and reached an important position of responsibility.

**BUT** when he was at a low point in his college career in 2009, he was working at a sporting goods store and was charged with larceny for stealing inventory. How much was he stealing? According to the employer, plenty. A merchandise inventory analysis indicated that the loss was approximately \$30,000. Cavaco was charged after he confessed to stealing \$350

worth of stuff. Eventually the case was CWOFF and then dismissed. But the insurance company didn't go along with that and sued him for the entire estimated shrinkage. Cavaco settled these lawsuits in 2017 for \$5,175 when he was trying to get a police job.

And again in 2016, he was terminated from a job in retail at an athletic shoe retail chain for using a merchandise gift card online in the employee store. The store fired him because employees were not allowed to do that since it's a form of double dipping. Cavaco claimed that

he did not know about that policy because he did not go through the regular employee orientation sessions.



And the third problem—although the Commission found that this was never really proven—was the claim of a former employer, who owned a gas station, that Cavaco had been a poor employee and attempted to steal the laptop of a fellow employee in 2011.

Commissioner Cynthia Ittleman, who heard the appeal, was not persuaded that this candidate's history was uniformly marked by personal improvement, pointing to his relatively recent discharge from the athletic shoe company in 2016. Commission Chair Bowman, in his concurrence, dismissed the importance of Cavaco's 2016 firing for the gift certificate snafu as a mistake and argued that the only bad stuff that had been proven was the larceny in 2009, more than ten years ago. He went on to make the unusual argument that bypassing Cavaco "stymied [Boston PD's] stated goal of enhancing the diversity of the police force." He also noted that "Leaders across the political spectrum in Massachusetts have stressed the need to avoid looking at a snapshot of who a candidate was many years ago, but, rather, to look at who that candidate is today, as defined primarily by the intervening years since the misconduct occurred."

Without rejecting Boston's bypass of Cavaco, the Commission did fashion an unusual remedy by which the decision to affirm the bypass was deferred for 60 days and the Boston PD was invited to think about taking a second look at this candidate in a subsequent hiring cycle.

Not a bad solution if you believe in redemption—which we don't. [\*Cavaco v. Boston Police Department\*](#), 33 MCSR 257 (2020).

### ***Drink a Toast at a Wedding and No Police Academy For You! Prohibition Lives On at Somerville PD At Least for Candidates Without Relatives on the Force***

**B**ased on past experience, you can assume that anytime there is an eligibility list for the appointment of new officers in Somerville that there will be some nepotistic slime somewhere in the mix. And so it was the case with the recent bypass of one Daniel O'Donnell, a strong candidate for appointment whose honest answers to alcohol scenarios posed by the interview panel doomed his candidacy.

Before we get to the booze scenarios, let's start with the slime—that's always more fun. The City first requested authorization from HRD to appoint 10 reserve officers which, under HRD's so-called 2N+1 formula, would limit the Department's consideration to the first 21 candidates. But a month later Somerville came back for authorization to appoint 16 candidates. Why the increase?? It was a sham. The City never intended to hire 16 reserve officers and ended up hiring just nine, as originally contemplated. The reason it sought this authorization was to allow it to consider other lower-scoring candidates who did not make the cut under the 2N+1 formula. And why would they want to do that?

Surprise, surprise...one of the lower-scoring candidates who would not have been originally considered among the 21 candidates, but *could* be considered with the larger list of 33 candidates, was the son of a Somerville police captain. And he ended up being appointed along with three other candidates who would not have been considered either. We are shocked!

This little nepotistic move of enlarging the list by Somerville PD to reach relatives clearly ticked off Commission Chair Bowman who threatened in his decision to use the Commission's power to conduct investigations into this hiring sequence and see if the additional lower ranked candidates, including the captain's son, were even legally eligible for appointment. Clearly they were not.

But Bowman had to stay on task and the question on this appeal was not Somerville's perennial corruption and nepotism but whether Daniel O'Donnell deserved to be bypassed for his answers to scenario questions in the interview.

The three-person panel, consisting of Deputy Police Chief Stephen Carrabino, a former Chief of Staff of the Mayor, and the city's Director of Health and Human Services, asked all the candidates how many drinks they would consume if they were to attend a family function such as a wedding on an afternoon when they were scheduled to report to work for a shift

beginning at 6:00 p.m. The successful candidates all said they would drink nothing. Of course they were probably lying, or most of them were anyway.

O'Donnell said he would do his "best" not to consume. He then went on to say that at big family events he normally limits himself to two or three beers. One of the panelists followed up and asked him how he would handle an event where he was the best man and had to give a toast. "Glasses up and take a sip," was the reply.

The second alcohol-related question asked to each candidate was what he would do if he reported to work on the night shift and there was an officer on duty who appeared to be under the influence of alcohol. O'Donnell answered that he would not risk all the hard work he put into establishing himself in a police career and would report the officer to his superior.

And then came the GOTCHA follow up question: Deputy Chief Carrabino asked O'Donnell what if the tipsy officer told him he was at a wedding earlier that day and, as the best man, had to give a toast and drank just one beer. Well, O'Donnell was trapped and couldn't reconcile his two answers...in other words, he indicated that he would hold a colleague to a tougher standard than he would himself. *He* would have consumed alcohol at a wedding but would also have reported a colleague for doing so. Oops.

Chairman Bowman's decision upheld the bypass because he was convinced that the panel was sincerely concerned with a candidate stating that he would be OK drinking during an afternoon where he would have to report for duty at 6:00 p.m.

It is worth noting here that O'Donnell had a clean background report, no criminal record, no history of alcohol abuse, no OUIs, and was a life-long resident of Somerville. He was considered a very strong candidate by the panel *before* the interview. Some of the successful candidates, on the other hand, had criminal records, lousy responses to scenario questions about reporting a corrupt partner, and applications filled with omissions and "misstatements." But they were well coached and got the alcohol question right!

Scenario questions are tough. The answers often just tell the hiring panel how well the candidate has been prepared, not what he actually would do when faced with the temptations and challenges of being a police officer.



Party Pooper  
Deputy Chief Carrabino

We don't think we would have bypassed a strong candidate like O'Donnell simply because of one bad answer to a hypothetical situation. That's over the top. Unless, of course, we were trying to mow down candidates who had better records than our colleagues' children who were marooned further down the list. *O'Donnell v. City of Somerville*, 33 MCSR 291 (2020).

### ***Second Bite at the Apple as Bitter as the First Candidate for New Bedford PD Bypass Upheld in 2019 Tries Again in 2020 From a Different List***

We scratched our heads a bit, (No, a lot!) when looking over the case of one Stephen Lima in his failed bid to join the New Bedford PD. As written up in our [March/April 2019 issue](#), Lima's past record included serious domestic abuse to the point that his wife at the time took out an *ex parte* restraining order. And while serving as a police cadet in the New Bedford PD, he decided he would run his ex wife's name (and that of her new boyfriend) through the CJIS Network and the MNI Index. He seems to have done so using someone else's login credentials at a time when this person was not even on duty. And he got caught. The Commission, not surprisingly, affirmed the bypass. Why he ever brought this first appeal is beyond us. He had no chance.

Well he's back just one year later, appealing his bypass from yet another list. New Bedford bypassed him one more time, citing exactly the same reasons as before. And he re-ap-

pealed! Either he's got a really dumb and/or greedy lawyer, which is not unheard of, or he's one of those incredibly stubborn clients who simply won't listen to anyone. The Commission turned him down once again, pointing out that the domestic abuse and privacy violations dated from less than five years ago, and that it could not be said that enough time had passed to have purged him of his sins. Lima actually argued that the City was using "recycled" reasons to bypass him and that everything should be forgiven because he now has an exemplary record and even, hold your breaths, a "secret" security clearance from the US Army.



Which brings us to this point worth keeping in mind. It *is* possible for a candidate to purge his or her sins and get a favorable ruling from the Commission, or even earlier from the Police Department. It happens all the time. Nobody's demanding perfection.. Departments can miss out on excellent officers if they insist on sainthood. But Jeeeeeze! if the Commission and the Police Department tell you No! because of your past, go home and put in a few years of good work and keep your nose clean before throwing your name in the ring again. [Lima v. City of New Bedford](#), 33 MCSR 285 (2020).

### ***No Holiday Pay for Christmas Eve!! DLR Arbitrator Says No to Millbury Officer's Union***

**D**epartment of Labor Relations Arbitrator Timothy Hatfield found that the Town of Millbury did not violate its contract with the Millbury Police Association, Local 128 (Union), when it did not pay unit members holiday pay for Christmas Eve in 2018.

The parties' contract listed 12 paid holidays (including the officer's birthday) along with the following language for other holidays:

On the day of celebration thereof, and any other day declared a holiday by the state or federal government and required to be observed by this municipality.

The Union argued that President Trump's Executive Order 13854 that closed departments and agencies of the federal executive branch on Christmas Eve in 2018, coupled with the Town's decision to allow Town Hall employees to leave early that day with pay, should have resulted in police officers receiving four hours of compensatory time or some other equivalent. The Union also pointed to the fact that the Police Chief had also compensated dispatchers, represented by the Government Employees Union, Local 5, for the Christmas Eve holiday.

In response, Millbury noted that it was unaware of Trump's Executive Order and contended that the Order did not create a holiday, only a day off for one branch of the federal government. The Town also argued that it had no prior practice of following presidential executive orders, other than on one occasion, 15 years earlier, when the municipality observed the national day of mourning upon the death of President Reagan.

Arbitrator Hatfield held that the Executive Order did not create a holiday or otherwise mandate that the Town observe one. As such, neither the Executive Order nor the Town's actions with respect to other employees, triggered the contractual language regarding additional holidays. In addition, the Arbitrator found that no valid past practice had been created to override the clear language of the contract.

What he didn't write is that it totally sucks to work Christmas Eve and there should be some form of additional compensation no matter what the contract says. [\*In the Matter of Arbitration Between the Town of Millbury and the Millbury Police Association-Local 128\*](#), 47 MLC 2 (2020).

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**“Deescalation” Bedinelli Staying at Patrol in Springfield  
Twice Fired Officer Not Heading Up the Ladder Anytime Soon**

**Boston Shrinks Screw Up Yet Again—Can’t Even Get the  
Candidate’s Name Right or Much Else...Was That a “Red” Dress  
She Was Wearing?**

**Candidate With Domestic Violence History Splits Commission by  
3-2 Vote And Wins Bypass Appeals for Appointment to MBTA and  
Brockton PD**

**Somerville Patrol Union Head May Have Tried to Sabotage  
Maritime Training But City Went Overboard During Its  
Investigation**

**And Another Dispatcher From Hell—This One in Auburn Is Shown  
the Door after 29 years—Bye Bye “Mike Click” MacLean**

***Lucky to Have a Job, "Deescalation" Bedinelli Appeals His  
Denial of Promotion to Springfield Sergeant Anyway.  
But Commissioner Clapprod and the Commission Say NO!!!***

**T**he issue of promoting Officer Anthony Bedinelli to sergeant could not have come at a worse time for the Acting Springfield Police Commissioner Cheryl Clapprod when it arose in March 2019. Bedinelli was nothing short of toxic to a large chunk of this racially polarized city, viewed by many as a violent and out-of-control white cop. Clapprod had just been appointed Acting Commissioner in February of 2019 and charged by Mayor Domenic Sarno with cleaning up the very troubled Springfield Police Department. The appointment would become permanent in September as she became Springfield’s first female Police Commissioner. Over the past few years, the Department had been plagued by scandal after scandal, with one of the most notorious being an after-hours bar fight in 2015 that led to a rumble between civilians and off-duty officers. 14 officers and two civilians were indicted in connection with the fight, as well as for an alleged police cover-up that ensued. Most of the scandals that kept hitting the Department involved charges of police brutality coming from the Latino and Black communities. And the Civil Rights Division of the DOJ and the US Attorney’s Office of



Massachusetts had even launched an investigation in 2018 into the Department's out-of-control narcotics department—an investigation that would lead to a July 2020 report finding the narcs' criminal violence against civilians to be “directly attributable to systemic deficiencies in policies, accountability systems, and training.” The City was routinely paying out a fortune in lawsuit settlements. It was a mess.



Officer Anthony Bedinelli

Anthony Bedinelli was a local boy who had grown up in Springfield. He started with the Department in 1993 after securing an Associates Degree in Criminal Justice from Springfield Technical Community College and serving in the Air National Guard.

After 24 years with the Department, Bedinelli finally passed the exam for promotion to sergeant in late 2017 with a mediocre score and was placed on the eligible list from which five candidates were promoted to sergeant in 2018, four of whom bypassed him. The bypass letter is highly unusual and stated:

It is the department's position that the cumulative career of this candidate shows a pattern of blatant lack of respect to the citizens of Springfield and an appointment / promotion of this individual would be detrimental to the public interest. The department feels any promotion of this officer would create community outrage and be extremely detrimental to community relations and trust.

Wow! A letter like that would usually accompany a discharge or suspension, not the denial of a promotion. But it's not like the City of Springfield hadn't tried to rid itself of Bedinelli, first firing him in 2006 and then again in 2017—but both decisions were modified by inept arbitrators allowing him to remain on the force. The 2006 incident involved an off-duty scuffle at a local bar where he was alleged to have punched a female patron and then made false statements about the matter in an arrest report. The arbitrator agreed that he had acted more like a “bouncer” than a police officer but found the City had not proven the charge about the false arrest report—so Bedinelli skated with a six-month suspension.

In 2017, Bedinelli was fired again, this time for choking and punching the mother of some obnoxious kid named Jonathan Rivera who was acting out because Bedinelli, serving a construction detail, would not allow him to drive down a street leading to his home. The kid mouthed off, things escalated, and Bedinelli and another officer had to draw their weapons. The kid's mother ran out of her house screaming and begging the officers not to shoot her son, which was when she got choked and slugged. Civilian witnesses at the scene gave contradicto-

ry evidence, with one saying Bedinelli had slugged Mom, but not choked her, and another confirming the choke but not the punch. Bedinelli was also taken to task in the discharge letter for failing to submit the proper reports indicating that he used pepper spray during the incident.

Directly contradicting the conclusions of Springfield's Community Police Hearing Board, the arbitrator found that there was not one "scintilla" of evidence indicating that Bedinelli acted in anything but a professional manner during this encounter. As pointed out by Chairman Christopher Bowman in his decision affirming Bedinelli's bypass, this was a completely absurd conclusion contradicted expressly by the findings in the arbitrator's own decision reporting the testimony of witnesses! In any event, Bedinelli escaped that one with just a reprimand. The City's Law Department decided not to appeal the arbitrator's decision but it should have. The case drew a lot of local media.

Bedinelli was not so lucky back in 1997, four years into his policing career, when he was made to serve a six-month suspension for leaving his post at radio dispatch without permission after learning from a 911 call that his two Rottweilers had attacked an eight-year-old child. Based on the address, Bedinelli knew the dogs were his and that they had escaped



Commissioner Cheryl Clapprood and "friend"

from his backyard but he was recorded saying to the caller that "we are not sending a cruiser" and no cruiser showed up for at least a half an hour. (That eight-year-old child still has the scars from the encounter and attended a public hearing to "speak out" against Bedinelli's promotion, still outraged 20 years later that, according to him, Bedinelli had never reached out to him or apologized. Bedinelli says he couldn't on orders from the insurance company lawyer.)

But that's not all. There was also a 2004 incident that led to a reprimand where Bedinelli got embroiled in an off-duty verbal dispute over a parking space, escalating the dispute by getting out of his car, walking over to the other driver's vehicle, whipping out his police badge, and telling her she was acting like a "bitch." There was also another incident in 2015 requiring Bedinelli to attend training sessions after bungling the issuance of a citation to a citizen.

Having had so much luck in the past appealing disciplinary sanctions, Bedinelli decided he would also take an appeal from his bypass for promotion. We sat in for much of the hearing in the basement of Springfield's city hall last fall where the major witnesses were Commissioner Clapprod, Human Resources Manager Lynn Vedovelli, and Bedinelli himself.

Faced with an at best very unappealing client, Bedinelli's lawyer Joseph G. Donnellan offered up the usual stuff in his defense—all of which got him absolutely nowhere with the Hearing Commissioner, Chairman Christopher Bowman. Donnellan claimed the successful candidates were no angels (true) and had even worse disciplinary backgrounds than Bedinelli's (it's worth mentioning here that the only reason Bedinelli was bypassed was that the #1 candidate on the list was indicted, thereby moving Bedinelli up the list). The lawyer also argued that Clapprod's decision was political and that she was catering to the Mayor, hoping to gain favor so as to become the permanent Commissioner.

We were treated to a revisionist recounting from Donnellan of all of Bedinelli's disciplinary incidents which cast him as the noble victim in every single one. Bedinelli's lawyer even tried to slime Commissioner Clapprod by bringing up a 30-year-old incident from early in her career where she was indicted for assault and battery and other felonies in connection with an off-duty chase. She was cleared of those charges but found guilty of a filing a false report which stayed on her record for 21 years until 2013 when the charge was *nolle pros* after her lawyer filed a motion for a new trial. The matter obviously did not affect her rapid and relentless progress up the ranks to the top job in the Department. Why lawyer Donnellan thought it useful to insert this bit of ancient history into the proceedings is beyond us but Commissioner Bowman cut him off at the knees when he tried to bring it up.

Clapprod gave a strong defense of her decision to bypass Bedinelli in her testimony at the hearing. At a diminutive 5'4" and physically fit, she exudes a certain calmness, competence, and command presence that dominated the room (command presence without testosterone—very nice!). Coming across as a serious grownup, she was very well spoken, polished, and persuasive. Bedinelli, she said "distinguished" himself from the other candidates, who also had disciplinary issues, by being unable to keep out of trouble for more than five or six years at a time. She recounted how the appearance of Bedinelli's name on the promotion list drew "public outrage" which she witnessed first hand at public "speak outs" that she attended before making her decision. (*MassLive* had done an article on the candidates). She testified that she had been concerned that Bedinelli's cumulative career showed a pattern of disciplinary problems, specifically with his public interactions and a consistent inability to deescalate potentially violent situations. Although he had managed to convince arbitrators to modify or even overturn some of his previous punishments, the underlying behavior remained and was very troubling.

Bedinelli had testified beforehand that Clapprod had told him privately before the bypass that she might as well resign immediately as Commissioner if she were to promote him to

sergeant. Clapprood denied at hearing having said this but, whether or not the words ever came out of her mouth, they were undoubtedly true.

Massachusetts would benefit from more Police Commissioners like Cheryl Clapprood. But times being what they are, even this calming presence isn't enough for some community members in Springfield who just recently filed a petition seeking her ouster. The petition was put together this July by the Greater Springfield NAACP and two other organizations and charges that Clapprood is not moving quickly enough to reform the Department and is insensitive to minority community demands. Minority might not be the right word. Springfield's population is 44.7% Hispanic, 20.9 % Black, and 31.7% Non-Hispanic White.

The petition even takes Clapprood to task for her recent firing of dimwit detective Florissa Fuentes, who reposted on Instagram a photo of her niece at a Black Lives Matter protest next to two protesters carrying signs that implied that people should shoot back at the police and asked, "Who do we call when the murderer wears the badge?" We will certainly see Fuentes in front of the Commission very soon with some lame appeal.

Coming back to Officer Bedinelli, in public interviews Commissioner Clapprood has taken note of the current difficulties in policing Springfield and the problems the 500-person Department has had in keeping experienced officers once their retirement benefits have vested. Apparently the Department has seen an exodus of officers fed up with a hostile community, the daily dangers, and low public esteem. Many have decided to jump ship in their fifties when pensions kick in but also at a time when their skills would be the most useful to the City.

Even so, whatever skills Officer Bedinelli has accumulated in his 27-year career are not going to be deployed as a Sergeant. At the time of hearing he was serving on the 911 day shift as the Spare Mode Officer. He'll probably stay there as Chairman Bowman quickly affirmed his bypass, noting his "poor judgment" and "inability to deescalate an adversarial encounter."

And good luck to Commissioner Clapprood. She is sure going to need it. [\*Bedinelli v. Springfield Police Department\*](#), 33 MCSR 234 (2020).

### ***Boston Shrink Evaluations Kill Another Candidate Doctor Brown Strikes Again But Commission's Cynthia Ittleman Won't Have It And Voids Yet Another Boston Bypass***

**U**nder no circumstances would you consider Michelle Rogers a particularly compelling candidate for appointment to the Boston Police Department. She managed to score OK on the test and was ranked high enough on the 2015 and 2017 certifications to be selected, but was bypassed because of her psychological evaluations and because officials thought she had misrepresented her medical history.

Rogers' family history was marked by her parents' divorce and father's bankruptcy. Her own work history was nothing to write home about, having been unemployed since 2014 when she quit a job at Boston Medical Center (before finding a new one), thereafter living off her parents and from savings. She "attended" a college in Arizona for a couple of years but apparently did not graduate because of the family's straightened financial circumstances.

Still, the sloppiness and incompetence shown by the Boston Police Department in reviewing her candidacy were simply beyond belief. Faithful readers of this publication will remember the inestimable Dr. Andrew Brown, Boston's "go to" psychiatrist and previously the

target of the Commissions ire for his shoddy work.

[News Highlights Issue 4, December 2016.](#)



So, how did he screw this one up? First of all, when Doctor Brown interviewed Michelle he hadn't been able to consult her medical history prior to the interview. Nevertheless, when he had reviewed the history after the interview he recommended her rejection because of "significant disparities" between her medical records and what she told him in the interview.

At issue were prescriptions for anti-anxiety medicines that it turns out Michelle had never even filled and mental counseling that she never participated in. If he had read her medical history before interviewing her, Dr. Brown could have asked her about these matters and not messed up the evaluation and her future.

Although it is clear that he should have done so, neither Dr. Brown's written report nor his testimony before the Commission indicate which category of psychological condition Ms. Rogers suffered from and how that might impact her policing. The HRD's Medical Standards that Boston is supposed to follow require it to specify which of an enumerated list of A or B conditions the candidate suffers from and how those conditions would prevent him or her from doing the job.

And that's not all. Brown wrote in his report that Rogers wore a "bright red dress" to the interview. It turns out that she does not own a bright red dress and wore a blue dress to her interview—the same one she wore to the Commission hearing. Presumably Dr. Brown men-

tioned the “bright red dress” in his report because he thought it was somehow inappropriate for an interview; but he seems to have gotten her mixed up with another candidate.

Based on his report, Rogers was bypassed for untruthfulness in misrepresenting her medical history.

She appealed. She also took the 2017 exam, did well, and was bypassed again.

The screw ups continued on the second bypass. Due to an “oversight,” when her case got to the Boston Police Department roundtable for discussion of her candidacy from the 2017 list, the roundtable had not been informed by staff that Rogers had been previously bypassed from the 2015 list and that she was currently appealing that bypass to the Commission! So, following the presentation of her application, the roundtable made her an offer of employment subject to the successful completion of medical and psychological exams!! (We should mention here that both the standard MMPI-2-RF and PAI psychology tests she took in connection with both lists were unremarkable.)

And here we go again. Two new headshrinkers interviewed her and wrote reports recommending that she not be hired. Both of these two, Dr. Donald Seckler and Dr. Lance Fiore, repeated the nonsense they had read in Dr. Brown’s report about Rogers lying about her medical history. But these two took it further. At the outset, they were off the mark because they couldn’t even get her name right....calling her Michelle *Roberts* instead of *Rogers*. Seckler also got *her work history wrong* (she was not fired from BMC). Another sign of rushed sloppy work, like the dress.

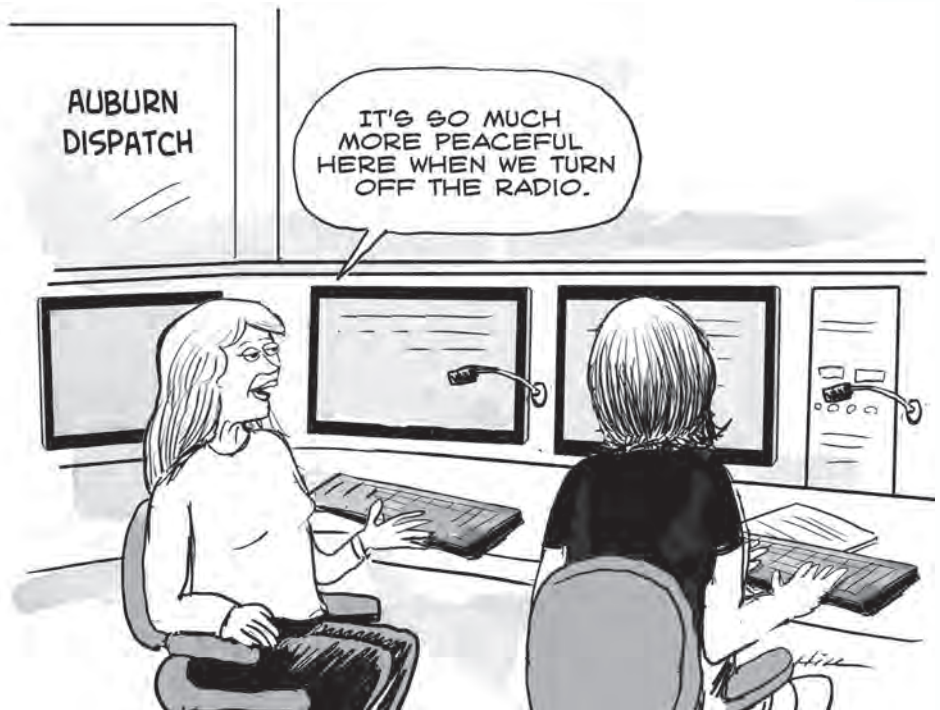
And, like Brown, both of these two failed to list any specific Category A or B conditions in their reports, although Fiore tried to supply one during his testimony at the Commission—sorry, too little and too late. Their conclusions on Rogers’ mental health were found by Hearing Commissioner Ittleman to essentially be a lot of subjective mush. In his report, Seckler tossed out that he thought that Roger’s answers at the interview suggested “borderline personality disorder” and previous trauma, and then made a variety of subjective comments about her interview performance. He even wrote in his report that Rogers was “frequently in tears” during her interview but did not even ask her why! It turns out her aunt had just died and her cousin was on life support. His report then stated that the candidate has “deficits” relating to the “integration of training experiences and accepting direction in a hierarchical command structure” but cites no evidence for any of this. Dr. Fiore’s report isn’t much better and is flawed by his reliance on Seckler’s earlier report and parroting much of its conclusions.

Commissioner Ittleman found all this very vague and subjective and her colleagues sure agreed with her, voting unanimously to overturn both bypasses.

Since the Supreme Judicial Court decided *Boston Police Department v. Kaveleski* in 2012, it's been very clear that HRD Medical Standards must be met to lawfully bypass someone based on a failed psychological condition and that the disqualifying Category A, or conditionally disqualifying Category B, must be identified. Boston PD somehow hasn't got the message. [Rogers v. Boston Police Department](#), 33 MCSR 244 (2020).

### ***Another Dispatcher Goes Postal 29 Years of Maureen “Mike Click” MacLean Was Finally Enough for Auburn***

We have already covered cases of dispatchers messing up and causing chaos in law enforcement. [City of Methuen and New England Police Benevolent Association Local 117](#) (Arbitrator's Decision), 44 MLC 202 (2018) [News Highlights May 2018](#). But Auburn's Maureen MacLean was in a league of her own. Finally shown the door in 2017 after 28 years of “service,” MacLean's disciplinary history reflected 14 separate incidents resulting in a wide range of complaints between August 1993 and June 2017. She was temperamental, difficult to work with, prone to “mike click” so that officers and firefighters would have to call her back, refused to comply with protocols, didn't identify herself on the radio, and was known to slam down the mike and tell her co-worker to take the call when frustrated. MacLean would routinely give officers and firefighters short, one word responses prior to the channel being open. She was also often cited for being rude and unsympathetic to citizens filing complaints or reports of accidents.



Apparently, MacLean really had it in for the Fire Department and was borderline abusive to its firefighters—a treatment she was far less likely to dish out to police officers for some reason. Finally the Fire Chief had enough and she was fired in 2017. One wonders why it took so long. She appealed her discharge and lost. The decision was handed down by arbitrator Timothy Hatfield at the Department of Labor Relations. [In the Matter of: Town of Auburn and Auburn Dispatchers Union, MCOP, Local 388A](#), 46 MLC 221 (2020).

## ***Commission Splits on Domestic Violence Bypass Case Shifting Standards Show Cultural Divide As Richard St. Germain Gets Another Shot at a Police Job***

**R**ichard St. Germain was bypassed for original appointment both by the City of Brockton PD and the MBTA Transit Police and his file drew a very sharp divide among Commission members. Three of them voted to override the bypass. The two others, Chairman Bowman and Commissioner Cynthia Ittleman, strongly dissented—finding that the candidate’s history of domestic violence should have made his appointment a nonstarter.

St. Germain has not had an easy life. He was born in Boston and taken away from his parents at a very early age. Thereafter he grew up in a brutal world of group homes, residential programs, and foster care. Frequently he was bullied and beat up by older kids. He did manage to finish high school but did not get through college despite stints at Brandeis University, Cambridge College, and Bunker Hill Community College. At the time of his application for these two police appointments, he had been employed as a Deputy Sheriff at the Suffolk County Sheriff’s Office where he has full police powers. His employment history before that, mostly in private security, was up and down, and included a long period of unemployment between 2013 and 2014.

Both Brockton and the MBTA bypassed him for more or less the same reasons, and these included a less than stellar driving record, a juvenile history of petty delinquencies, failure to provide sufficient information about his residency status, a spotty employment background, and concerns over whether his sealed criminal record would permit him an LTC in a municipal police force. Also, there was the issue of his “concealing” an accident on the MBTA application, inadvertent errors on the application, and unlawful questions from Brockton and the MBTA about his criminal background from sealed cases.

But all that aside, what this decision really appears to be about is differing perceptions of domestic violence. St. Germain had two domestic violence incidents on his record involving his domestic partner and the mother of his three children. One occurred in 2007 and the other in 2013. In the first of these, his partner told him to move out of their home after she had packed up his belongings while he was out of the house. He was not pleased with his eviction and, upon returning home, began to unpack his things and put them back in a drawer. At this point, his partner tried to stop him and he grabbed her arm. As he closed the drawer, she caught her fingers in it. Police were called, and she was advised of her rights to a restraining order. She declined but St. Germain was arrested and booked on domestic assault and battery. The charges were dismissed and the record sealed.

Incident number two was six years later in 2013 and now the couple was separated. St. Germain had dropped off their three children at their home with their mother, but then returned



15 minutes later and started banging on the front door. He told their mother that he had discovered something about the kids that warranted giving them a time out. She replied that they were now asleep and that he should come back the next day. St. Germain didn't like that answer and pried open a window and broke in. Before she could call 911, the two began arguing and St. Germain grabbed her, spun her around, and took her cell phone. He later tossed the cell phone from his car. The police tracked him down and arrested him, charging him with domestic assault and battery, breaking and entering with intent to commit a felony, and intimidating a witness. They also notified DCF, filed a 51A report, and confiscated his LTC and his Middlesex Sheriff's Department issued firearm. Charges were eventually dismissed and the record sealed.

In testimony before Commissioner Paul M. Stein who heard the case, St. Germain's partner testified that both she and he had a tendency to get "emotional" but that he was not a violent person and that she had never been physically afraid of him. She also praised him for their "current working relationship" after the split and his attentiveness to the kids and conflict resolution skills. She emphasized that he had never hit her or abused her physically. And she admitted that she was dependent on him for support, which just might color her testimony as it does so many victims of domestic violence who often recant their original stories for financial reasons.

Commissioner Stein's decision emphasized the positive aspects of the candidate's background and his tough trajectory through life. And the decision underlines that he had "never committed any domestic physical or verbal abuse of anyone his entire life."

Commissioners Bowman and Ittleman didn't buy it. They would have affirmed the bypasses, noting that St. Germain was involved in two such incidents, including the one in 2013 where, Bowman writes:

[H]e entered the home without permission, grabbed the mother of his children, spun her around and stole her cell phone. Aware that the police had been called, the Appellant fled the scene and threw the cell phone out a car window, destroying the cell phone. This type of disturbing conduct, standing alone, is a valid reason for bypass.

In Commissioner Ittleman's concurrence with Chairman Bowman's dissent, she went on to add that:

[W]ell-established law and policy in Massachusetts are designed to prevent and address domestic violence. This decision should not be interpreted to mean that domestic violence is acceptable. Domestic violence must be condemned in the strongest possible terms.

We think that the minority got this one right. Domestic violence does not necessarily involve beating the crap out of someone but goes to the heart of what makes a good police officer—self control. Although this was not the legal issue before the Commission, it seems to us that St. Germain's background and accomplishments were not so noteworthy as to merit taking

a risk on him. He had a mediocre educational record and a so-so employment history. There is nothing in his record, that the decisions tell us in any event, that is in anyway remarkable. We imagine that the Commissioners that voted to reverse these bypasses were touched by his personal history of being taken from his parents and raised by the state—and nevertheless making a life for himself.

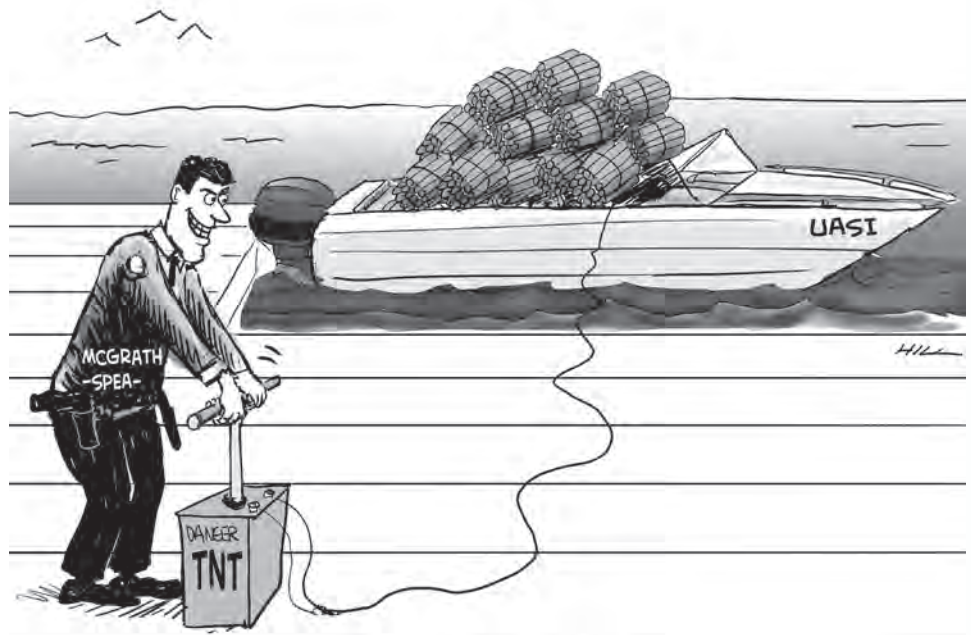
We are too...but not enough to overlook these two incidents. Particularly today when police everywhere are being accused of excessive force, lack of self-control, and poor de-escalation skills.

We would not have taken a flyer on this guy who broke into the home of the mother of his children unwanted and threw her cell phone from a speeding car. Nope. *St. Germain v. City of Brockton*, 33 MCSR 211 (2020) and *St. Germain v. Massachusetts Bay Transportation Authority*, 33 MCSR 222 (2020).

### ***Investigating Police Union Activities Is a Nonstarter in Somerville Union Rights Are Violated By Investigations of Union President's Attempted Sabotage of "Voluntary" Maritime Trainings***

In 2017, there were only three Level 1 Homeland Security Events in the United States. These were the presidential inauguration, the Super Bowl, and Sail Boston. The Metro Boston Homeland Security Region has a so-called Urban Area Security Initiative under which it provides various free trainings to nine local police departments. Somerville participates and, in April, the Somerville Police Chief [David "Mr. 420" Fallon](#)

sent around an email advising police officers that a maritime training was being offered in connection with the Sail Boston event and that four slots were available. The trainings were voluntary, free, unpaid, and much sought after by officers as they were considered an excellent training resource.



BURNING THE SPOT

The vice president of the patrol officers' union SPEA, Alan Monaco, decided he very much wanted to participate and was selected as one of the four officers. The training involved brushing up on maritime skills on a 25-foot SAFE boat in Boston Harbor. According to various testimonies before Department of Labor Relations Hearing Officer Margaret Sullivan, union president Michael McGrath was not pleased with Monaco's decision to attend because the union was then involved in a dispute with the City over whether these trainings should be a mandatory subject of bargaining and the union's status would be undermined if its vice president participated in them on a voluntary basis. McGrath asked Monaco to skip the training and even went so far as to urge him to cancel at the last minute to "burn" one of the spots—thereby not allowing the Department enough time to find a replacement. McGrath denies he put it exactly that way. But instead of following the mandate of the union president, Monaco resigned as union vice president and did the trainings.

When Somerville Chief Fallon (Mr. 420) got word of McGrath's alleged "sabotage" attempt, all hell broke loose and an internal investigation was launched. The City even went so far as to hire an outside investigator, one Alfred P. Donovan, to conduct interviews. It seems that Chief Fallon was concerned that had a Somerville officer failed to show up for the maritime training, it would have jeopardized the City's standing in the UASI program. As a part of the investigation, the City told Union president McGrath and former vice president Monaco not to communicate with other members about the investigation and ordered Monaco to disclose what McGrath had told him about bailing out of the training at the last minute. The union appealed these orders to DLR and, in May, Hearing Officer Margaret Sullivan agreed that investigating these conversations between union members and muzzling them infringed on their rights to conduct union business and that conversations between the union president and vice president were, in this case, confidential and a protected union activity.

But really, "Burn the spot?" [\*City of Somerville and Somerville Police Employees Association\*](#), 46 MLC 210 (2020).

### ***Probationary Period Does Not Include Military Leaves Superior Court Affirms Commission on Appeal from Discharged Probationary Boston Police Officer***

The somewhat hapless Boston police officer Emmanuel Brandao was featured in our [September 2019 issue](#) after he was fired during his probationary period because of an incident in Rhode Island where he lent his car keys to an acquaintance who promptly used them to steal his unsecured Department-issued firearm. Brandao wanted to appeal his discharge to the Commission but it was a no-go. He argued, without any luck, that he was tenured for civil service purposes but having taken military leaves during the probationary period, he had not reached one year of actual service which would have given him civil service status. [\*Brandao v. Boston Police Department\*](#), 32 MCSR 255 (2019). He appealed the

Commission's decision to the Superior Court and lost. You need *actual* service for 12 months during which your supervisors can get a good look at you. His superiors did and had had enough. We mention this here because we we continue to get emails from police chiefs asking about what counts toward the one-year probationary period. Military leaves do not. [Brandao v. Boston Police Department and Massachusetts Civil Service Commission](#), Superior Court No. 1984CV02606-C, Justice Robert Gordon, May 1, 2020.

### ***Superior Court Judge Donatelle Overturns Commission Order to Reinstate State Troopers Caught in Overtime Pay Scandal***

**I**n March of 2019, the Commission overturned the suspension without pay of four state troopers ensnared in the overtime pay scandal, finding that they had been denied due process by the State Police Duty Status Board after it held a very brief hearing on their cases. [Reger v. Department of State Police](#), 22 MCSR 136 (2019). The Colonel appealed the ruling to the Superior Court and Judge Donatelle ruled in her favor at the end of May, finding that the Commission did not have jurisdiction over appeals of the administrative Duty Status Board although it did have express jurisdiction from the Legislature over State Police Trial Board Hearings—the second type of disciplinary hearings authorized by its regulations. [Department of State Police v. Civil Service Commission and Others](#), Superior Court No. 2019-1370-G, Justice Sharon E. Donatelle (May 29, 2020). The Commission has not appealed the decision.

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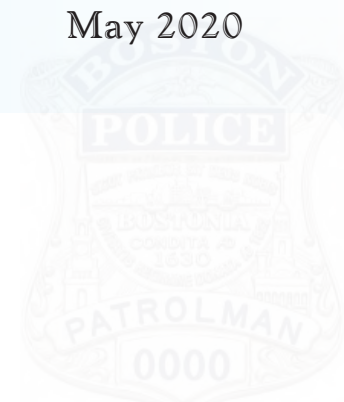
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Do you have any advice for your fellow police officials on disciplinary or bypass appeals? An experience you'd like to share in our reporter? Let us know! [Email](#) us.



**Don't Sleep in Your Car in Whitman!  
Community Caretakers Are on the Prowl**

**Charlton Lieutenant Ends Career With Both Hands in the Till**

**Bully Girl Police Officers In Tony Brookline**

**Lying About His Age to Sweet Sixteen Kills the Chances of a  
Lawrence Candidate**

**And "Hold On Holden" Lt. Carey Loses Porn Appeal**

***Sleeping It Off In A Parked Car?  
Fuhgeddaboutit In Whitman  
Community "Caretaking" Goes Berserk***

**S**o, you get a call at 7 AM from a resident that a guy he doesn't know is sleeping in a truck in front of his house. Your name is Edward Slocum and you are a sergeant with the Whitman Police Department. Whitman is a quiet Boston suburb known for the genius invention of the chocolate chip cookie at the Toll House Inn and for once having a serious shoemaking industry that included Bostonian Shoe.

You have been doing this police thing since 1994 and are very experienced. You even served as acting police chief for a bit back in 2006. One of your strong points is medical emergencies: you are a certified first responder, recertified biannually, and trained to recognize and administer to all sorts of medical emergencies. You have responded to hundreds of drug overdoses, heart attacks, and strokes.



**COMMUNITY CARETAKING à la WHITMAN**

You follow up on the call and you find a beater 2002 Chevy pickup with tools and carpet materials in the back. In the cab, resting peacefully, is a male with his feet on the dash sporting a hoodie sweatshirt with the hood pulled over his head. The Hearing Commissioner for this case, Paul Stein, calls him Mr. B in the decision. Mr. B's driver's license and car keys have been carefully placed on top of the dash so you can't miss them. You bang on the window with your flashlight and start shaking the truck. No response. The occupant just sort of squints at you when you shine your light on him but never opens his eyes or further acknowledges your presence. The truck is locked and you can't get in, so what to do?

Your experience and first responder training has you notice that the gentleman is breathing normally, his skin color is fine, and he is not slumped over but positioned upright. You look for other signs of medical distress such as urinating, vomiting, frothing around the mouth, or evidence of drugs and alcohol use. Nothing. After spending 20 minutes at the scene you conclude that no medical attention is required and Mr. B. is just sleeping and in no danger. Given the early hour, you don't want to canvass the neighborhood and wake people up. You clear the call, and since you are soon going off duty at 8 AM, you advise the day-shift commander of the situation and ask her to look in on the guy later. You know a little something about constitutional law, enough to know that sleeping in a truck is not a crime in itself and doesn't necessarily trigger the right to a forcible search of the vehicle. Besides, your experience and judgment tells you this situation is not a problem. And also, your policing resources are stretched. You are running an understaffed shift and, if you ask for back up, no other officer will be available to cover this small town for the remainder of the shift. It turns out you made the right call. Mr. B. was a danger to no one.

What you didn't know at the time, and find out later, is that the guy in the car was the boyfriend of a woman living nearby. He was visiting her and she asked him to leave late into the night because he was drunk and she did not want her kids seeing him when they came home. Mr. B. then did the right thing. Realizing he was too toasted to drive, he parked his car nearby, put his driver's license and keys on the dash, and decided to sleep it off.

The next shift commander, one Lieutenant Christine May-Stafford, soon checked in on Mr. B but she was not as restrained as Sergeant Slocum. She decided to call firefighters to break into the car and rouse Mr. B. But before that happened, he woke up and opened the car door on his very own. The car interior reeked of booze and Mr. B. was placed in protective custody. He was released later that day without charges. A patrol officer had the truck towed because of his concern that someone would steal all the tools sitting in the bed of the pickup. No field sobriety test was performed but, at the station, Mr. B. blew a 0.162—not kosher but Mr. B. wasn't driving now, was he?

Slocum's superiors and colleagues raised a hue and cry and accused him of screwing up big time. A certain Deputy Chief, now Chief, Timothy Hanlon, led the charge against Sergeant Slocum. In clearing the call, Hanlon's investigation accused him of incompetence, neglect of

duty, and failure to follow the “well-established” community care doctrine. Slocum should have had Mr. B. removed from the vehicle, the investigation concluded. What if Mr. B had woken up and started driving; maybe killing someone because he was still drunk? What if? What if?

Sergeant Slocum was given a 45-day suspension and demoted to patrol. The local Hearing Officer called in by the Whitman Board of Selectmen to hear the charges was the former police chief of Fall River who agreed that Slocum had screwed up.

Slocum appealed to the Civil Service Commission and he and his lawyer cleaned Whitman PD’s clock.

We sat in during a big chunk of the Commission’s hearing of Slocum’s appeal, held in the dungeon that is the basement of the UMass Dartmouth Law School, and it became very apparent to us that the Whitman PD had it in for Slocum and that he didn’t have a lot of friends standing up for him. This was a lynching. Nine (!) officers from the Department testified and you didn’t hear many nice things about the Sergeant.

But if anyone was guilty of incompetence here, or vindictiveness, it was the current police Chief Timothy Hanlon and retired Chief Scott Benton. Hearing Commissioner Stein’s decision excoriates the actions of the Whitman PD. It concludes that Slocum acted appropriately and consistent with the law and recognized Mr. B.’s constitutional rights to sleep in his lawfully-parked friggin’ car without a bunch of yahoos breaking in because he might do something bad when he woke up. Stein shreds the Town’s citation of the community caretaking doctrine, pointing out that it is far from “well established” and there are only two U.S. Supreme Court cases interpreting it when it comes up against constitutional protections covering unlawful searches and seizures. Those two decisions came down by 5-4 votes as the nation’s highest court scratched its head and vacillated between protecting the community and the right of individuals to be left alone by overly aggressive police.



Whitman Chief Hanlon—  
Mr. Community Caretaker

Massachusetts also has very little in the way of case precedent for the community caretaker doctrine when it comes to vehicle searches—there are some appellate court cases but none have directly decided how the doctrine applies to a forcible entry of a parked, locked, and occupied vehicle under the circumstances in this case.

The bottom line is that, yes, it would have been reasonable to break into the car, but it was *equally reasonable not to* and to leave the driver alone. This was a question of judgment and Slocum, it turns out, made the right call. He certainly was not guilty of negligence or ne-



glect or of violating the mystical community caretaker doctrine whose outlines have only been sketched legally in the vaguest of ways.

But what really ground Commissioner Stein’s gears was Whitman PD’s scattershot approach to disciplining its officers. In this case, it meted out an over-the-top discipline to Slocum for what turned out to be a not unreasonable judgment call while, a few years earlier, then Chief Benton had no issue promoting another officer to Sergeant soon after he had received a surprisingly minor discipline for blatant dereliction of duty: the officer had gone AWOL by taking his daughter to an amusement park when he was due to appear in court and then lied about it to his superiors. Instead of a demotion, this officer got a promotion.

Whatever it is that made Sergeant Edward Slocum so unpopular among his colleagues in the Whitman PD, they picked the wrong incident to humiliate him and bust up his career. The Department would be foolish to appeal the Commission’s unanimous ruling to Superior Court.

Edward Slocum has only been disciplined twice during the course of almost a quarter century with the Whitman PD. He once received a written reprimand, from the same Chief Benton, for issuing two firearms licenses with hunting and target restrictions. This was contrary to the Chief’s instructions that had specified licenses *without* restrictions.

And in November 2017, he copped a two-day suspension for.....*sleeping on duty*. [\*Slocum v. Town of Whitman\*](#), 33 MCSR 174 (2020).

### ***Charlton Lieutenant Kisses Career Goodbye for Short Money He Steals Longevity, Vacation, and Sick Pay What Was Gregory Lewandowski Thinking?***

**I**t is not often that you hear a Civil Service Commissioner say that a discharge case is “tragic”—particularly one that involves stealing, or trying to steal, from an employer. But it looks like the policing career of Charlton Lt. Gregory Lewandowski is at an end after he was found to have been playing fast and loose with his longevity pay, vacation days, and (most seriously) his record of used sick days. The Commission affirmed his discharge.

Tragic because Lewandowski was an excellent officer who rose to the #2 position in Charlton’s 20-officer PD. He began his career there in 2002 as an auxiliary officer serving details, transferring to the Millville PD as a full-time officer in 2003, returning to Charlton as a permanent officer in 2005. By 2015 he had risen through



Lt. Gregory Lewandowski

the ranks to become the Department's only lieutenant. Along the way, he picked up a Bachelor's degree in Physical Science and two Master's degrees: one in Criminal Justice and another in Public Administration. His certifications included field training officer, radar and LIDAR operator, and emergency medical dispatcher. And he was physically fit, as all police officers should be, but he really was. In 2008, he received a Tri-Community Exchange Club award for saving the life of a motorist trapped in a burning car. His only disciplinary incident was a two-day suspension in 2017 for failing to bill utilities for details in a timely fashion. He was highly regarded in Charlton.

When Police Chief James Pervier was heading toward retirement in 2016, Town Administrator Robin Craver even thought Lt. Lewandowski could serve as an excellent successor and urged him to boost his profile in town by attending Finance Committee meetings. He did so, but showed up in gym clothes, earning Craver's disappointment and disdain as she told him to dress more professionally. Instead, the lieutenant simply stopped attending the meetings. And Charlton eventually passed him over for the top job, choosing instead his subordinate Sergeant Graham Maxfield—the person whose suspicions about Lewandowski's honesty would eventually end his career.

The first bit of dishonesty involved a double payment for longevity pay. There was some confusion in Charlton about the right start date for employee benefits for Lewandowski because, although he started as a reserve officer in 2002, he subsequently quit, worked for Millville for a couple of years, and then officially started in Charlton in 2005. This was his start date for any benefits; but Lewandowski was not forthcoming in clearing up the mistake as obviously the 2002 date was more advantageous.

As for the longevity pay, this was a relatively minor matter. Lewandowski received the correct annual \$200 payment in July of 2017 for those with between 10 and 15 years of service and then another payment (erroneously in December of that same year.) Chief Maxfield was curious about the second payment and asked Lewandowski for an explanation. Lewandowski's nonanswer and obfuscation roused the Chief's suspicions and he began an investigation into other financial matters.

There was a sticky little issue that came up at the hearing that cast some shade on the Town's case. When Chief Maxfield was a sergeant, he and three of his colleagues had accepted \$1,000 longevity payments when they were only entitled to \$400. Not being the administrator of the longevity bonus (Lewandowski was), Maxfield claimed that he had no reason to know that these payments were erroneous. When the Chief did become aware of the snafu, he immediately repaid the entire longevity payment to the town—not just the extra \$600 overpayment. The Town argued that, in contrast with Lewandowski's acceptance of an obviously erroneous *second* payment, Maxfield's overpayment came in the form of a single larger check that would not be so obvious to the recipient as an overpayment.

Chairman Bowman, however, makes clear in his decision that he does not believe for a second that Sergeant, now Chief, Maxfield was initially unaware that he himself was not entitled to the \$1,000 payment—as town officials maintained at the hearing. Or, as he states in his decision, this argument “is not supported by the record.”

Chairman Bowman does emphasize that, standing alone, Lewandowski’s receipt of the unearned \$200 would never have been enough to justify his discharge. What did justify it was Lewandowski taking six days of vacation in May and June of 2017 and not deducting it from his accrued vacation, *including on payrolls that he, as Lieutenant, signed off on*. Cute. He was able to do that by misrepresenting his start date to HR as 2002, rather than 2005. This gave him an extra week of vacation to which he was not entitled. When Chief Maxfield himself signed off on the additional week of vacation, he directly asked Lewandowski if he had been with Charlton PD for 15 years and the Lt. answered “Yes” when he knew the truthful answer, at least for benefit calculations, was “No.”

But the worst offense involved Lewandowski inflating his sick leave by no fewer than 160 hours (Charlton officials, by the way, said this figure was closer to 274 hours). How was he able to do this?

Well, from looking at the decision, we would have to say that the Town of Charlton certainly isn’t going to win any good governance awards—at least not for accounting for employee benefits.

Up until 2008, Charlton PD entered sick days that were taken into a Sick Book. Finally, it decided to join the 20<sup>th</sup> century, although by this time we had passed into the 21<sup>st</sup> century, and it computerized these records in a Tritech IMC program. But that was on a go-forward basis only. For sick days in the Sick Book, that is pre-2008, a former administrative assistant with the Charlton PD would conduct a fairly comprehensive sick time audit for all the time accrued before 2008 and present all the PD employees with an updated balance for them to verify. Multiple audits were even conducted in 2014 and 2017.

Asked by the Chief to confirm his sick days in December 2017, Lewandowski did his own sick leave calculation and came back with a number that did not include the sick days in



the Sick Book, thereby inflating his balance by at least 160 hours. The Town discovered this sleight-of-hand by digging up the paper records stored in the basement at the police station and discovering Lewandowski's duplicity.

What made this particularly outrageous was that the lieutenant had taken it upon himself to audit other employees' sick days and had even revised downwards, for example, the balance of a long-serving dispatcher to 116 hours from a potential 1,646 hours!

We tried to roughly quantify how much money Lewandowski stole, or rather attempted to steal, from the citizens of Charlton. His salary during his last year on the force was \$118,171 or a monthly of \$9,848.

He took six vacations days to which he was not entitled and that equals roughly **\$2,954**.

He added *at least* 160 bogus hours to his sick day balance, or roughly **\$9,090**.

And let's not forget the \$200 unearned extra longevity bonus, **\$200**.

That gives us a lousy **\$12,244**.

And for that he lost his career and reputation.

Lieutenant Lewandowski did not testify at his local disciplinary hearing. He did testify before the Commission but Bowman found that he had no credible defense or explanation for his defalcations and merely claimed that Chief Maxfield was biased against him. Nevertheless, Commissioner Bowman was obviously impressed by Lewandowski himself and had this to say about the lieutenant in the decision:

There is a disconnect between the person who appeared before me throughout the three days of hearing and the proven charges of untruthfulness here. The Appellant is someone who has worked hard his entire life, including obtaining two masters' degrees. He has dedicated himself to public service in his community; is proud of his family; and clearly enjoyed his job as second-in-command of the Town's Police Department. In that context, what happened here is tragic.

It sure is. [\*Lewandowski v. Town of Charlton\*](#), 33 MCSR 147 (2020).

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## Brookline Policewoman Charges Harassment And Bullying—And Concocted Discipline Commission Agrees

Generally it can be safely stated that a good career trajectory does not begin with suing your boss. We could be wrong about that, but that does seem to be a decent axiom to follow up, or down, the career ladder.

Amy Hall has been a Brookline police officer for almost 20 years. She has three kids and her uncle was once the town's acting police chief. Her brother is a Brookline firefighter and many other family members work for the municipality. Hall seems to have peaked during high school. There she was an inductee to the athletic hall of fame at Brookline High and honored as the school's outstanding female athlete her senior year in 1996. Not only was she a three-time Bay State Conference All-Star in soccer and basketball but she was also the team captain and MVP in both sports. Later on in life, however, no one made her captain at Brookline PD—or lieutenant or sergeant for that matter.

During defensive tactics training early last year, Hall claimed that another female officer was bullying and harassing her. That officer made a comment while practicing striking that the punching bag that she was hitting with padded mitts was Hall's face. Clever, huh?

Well, the Department investigated and discovered that Hall herself had behaved abominably toward this same officer before this incident and lied about it during the investigation. Brookline wound up disciplining *Hall* with a 15-day suspension. Hall did not contest the discipline and agreed to the suspension without appeal. Ten days of this suspension were to be held in abeyance if she was a good girl. She wasn't.

A month later, Hall filed a discrimination complaint with the MCAD against Brookline PD for harassment. Not a good career move. She then started to receive nasty stuff in her mailbox at work. When Hall asked the Department to investigate the nasty mail, it basically flipped her off and refused to even interview her for the "investigation." Then, higher-ups dragged their feet and gave her the runaround when she tried to get a copy of the report generated by the investigation into the nasty mail.



AMY HALL -- BROOKLINE PD PUNCHING BAG.

The Brass then administered the coup-de-grace with three disciplinary charges that gave Hall a five-day suspension, plus the 10 days from the previous suspension that had been held in abeyance pending her good behavior. 15 days in all. Ouch. They claimed Hall had not taken a walk-in citizen complaint at the station in a timely fashion, had conducted personal business while on duty when trying to track down the investigatory report of the nasty mail incident, and was untruthful about this latter incident.

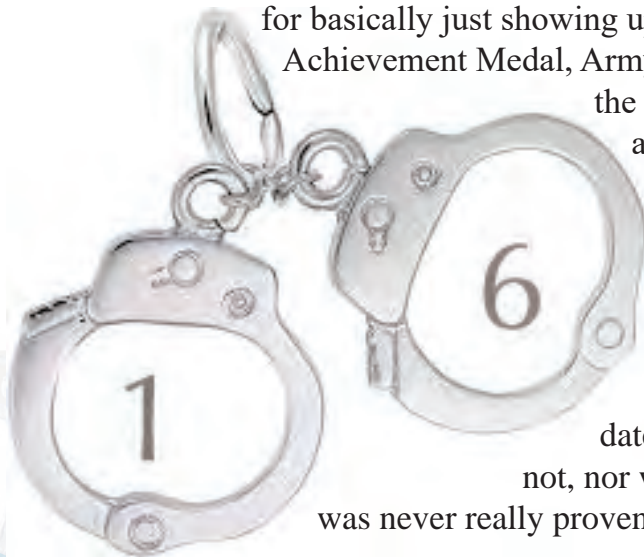
The Commission found all these charges to be bogus, concluding that it all represented a “purposeful attempt to frustrate an employee who had filed an MCAD complaint against the Department.” It modified the suspension to a reprimand, finding only that she could have moved a little faster on that citizen complaint.

By the way, Chiefs might want to inform their departments how long it takes to get a complaint through the MCAD. We routinely see cases that have been in there for almost ten years—that is from the time the initial complaint is filed and the Full Commission signs off on an appeal from the Hearing Officer’s decision. And then there are the court appeals. That’s a lot of time to extract revenge. *Hall v. Town of Brookline*, 33 MCSR 164 (2020).

### ***Sleeping With Sweet Sixteen A Reason For Bypass? Well, Maybe...If You Lie About Your Age***

**R**onald Medeiros, a candidate for original appointment to the Lawrence PD, was #2 on the certification list and was bypassed by no fewer than 13 candidates. The decision on his appeal by Commissioner Cynthia Ittleman doesn’t tell us much about his employment background before he applied to the police. We don’t know what he currently does for a living. We are only told that he was a veteran of the U.S. Army National Guard who spent a year in Afghanistan. We also learn that he earned four BS feel-good medals from the military for basically just showing up for work—that would include the U.S. Army Achievement Medal, Army Good Conduct Medal, the NATO medal, and the Global War on Terrorism Service Medal (all available on eBay for less than \$10). Medeiros had also earned a number of law-enforcement-related certifications such as Defensive Tactics, Basic Life Support, and First Respondent Provider.

When he was a 21-year-old, Medeiros dated a 16-year-old woman for two years. That is not, nor was, a crime in Massachusetts. Although this was never really proven at the hearing, the decision alleges that he was



untruthful about his age at the time and led the woman and her parents on to believe he was 19. At the Commission hearing, Medeiros also gave contradictory testimony about his age at the time of this relationship. When the couple split, the woman got a restraining order against Medeiros, claiming he was harassing her with calls and showing up at her workplace. A month before, the woman's father had run into our Appellant at a mall in North Andover and there was some kind of altercation where, according to the police report, the father apparently assaulted Medeiros.

Before applying to Lawrence, Medeiros had also sought an appointment to the Rockport and North Adams police departments. These applications were withdrawn although both departments asked him about the restraining order and the incident with his former girlfriend's father. No surprise there since these were civil actions of record that Medeiros disclosed in his application.

When Lawrence was checking out the background of their #2 candidate, these two civil actions came up after being fully disclosed. But Medeiros apparently lied to investigators and repeatedly stated to them that the two matters had *not* come up during the screening process for Rockport or North Adams. We don't learn why he would want to lie about that. Investigators also felt he was not fully forthcoming about the facts behind the restraining order. And so Lawrence bypassed him both for being dishonest about his age when dating the young woman and then lying to investigators about the two civil matters not coming up during his Rockport and North Adams police applications. Basically they bypassed him for what they viewed as dissembling and lousy character.

Hearing Commissioner Ittleman takes Medeiros to task for conduct "designed to deceive a young woman in high school (and her parents) into dating him and from finding out that the person who is romantically interested in her is years older than her." She then avers that this misrepresentation is in conflict with the duty of police officers to tell the truth and tarnishes his candidacy.

She may have a point about that but the problem is that it was never proven that Medeiros lied about his age. He denied it and said the parents always knew his age. The only "evidence" of Medeiros lying about his age is an affidavit from the young woman who at the time was trying to get a restraining order; and, more compelling, Medeiros' conflicting testimony about his age at the Commission hearing.

We think that Commissioners Stein and Bowman got this one right. They did not dissent from the result but filed a concurrence saying that Lawrence did have reasonable justification to bypass Medeiros but on *much* narrower grounds—that he lied to Lawrence investigators about whether Rockport and North Adams had looked into the restraining order and the altercation with the woman's dad.

Obviously going out with someone five years younger than you are, who is of the age of consent, cannot justify a bypass. Nor can the unchallenged allegations in an affidavit for a restraining order by a pissed-off ex-girlfriend offer much of a justification.

Medeiros claimed that other successful candidates were not given the same scrutiny as he was. Commissioner Ittleman found, however, that the candidates he cited did not present the same truthfulness concerns and that any criminal charges that had been filed against these candidates were dismissed. *Medeiros v. City of Lawrence*, 33 MCSR 108 (2020).

### ***Nasty Conduct From Long Long Ago Starting Up With Mom Nope...Can't Bypass For That***

**I**n making hiring decisions, police chiefs often seem to have the notion that there is no statute of limitations for bad behavior. In *Morgan v. Boston Police Department*, 33 MCSR 131 (2020), the Civil Service Commission reminded them all again that there certainly is such a limit and that digging way back into the past for nasty stuff to justify a bypass won't cut it.

Malik Morgan was a fine candidate for original appointment. First of all, he already had served 10 years as a Boston Housing Authority and a Boston College police officer. He had super employment references. No record of any discipline. His boss at BHA told investigators that she would trust him "with her life," that he was good at deescalating difficult situations, and worked well with kids. The candidate owned his own home in Mattapan, having grown up in Roxbury, and had a minor daughter whose child support payments he was up-to-date on. Credit report was good, and there were only a few minor infractions on his driving record. Boston PD selected 130 candidates for appointment, bypassing Morgan who was ranked 71st on the certification.

The reasons for the bypass were "felonious conduct" and being "untruthful" to Boston PD background investigators. The Commission rejected the Boston bypass and allowed Morgan's appeal.

The "felonious" conduct in question dated from 16 years before the bypass. Morgan was 18 years old at the time and living with his mother. The two had some sort of altercation about loud music and the police were called in. Morgan was charged with A&B, threats, and destruction of property. After pretrial community service, and writing an apology to Mom, the charges were CWOFF and then dismissed. When Morgan was interviewed about the incident, he stated that the dispute remained verbal and was never physical. Boston did not believe him and thought he had lied to them, arguing to the Commission that the 2001 police report and the CAD log indicated that the altercation was indeed physical. Unfortunately, too much time had passed for the 911 call to be recoverable.



The Commission found that Boston had failed to prove that the candidate had lied about the spat with Mom being physical and that reliance on the CAD log and police report was flawed. It also took aim at the fact that Boston had hired three candidates from the same list whose records included multiple and more recent criminal offenses. One had bought liquor for a minor, one had been the subject of a warrant, and another failed to initially disclose that he had been fired from a job. Clearly Morgan's application was viewed by the Commission as having been scrutinized a whole lot more rigorously than those of the successful candidates, leading Commissioners to the conclusion that the process was tainted by bias or disparate treatment.

Also, in the first paragraph of her findings, Hearing Commissioner Cynthia Ittleman mentions that the Appellant Morgan "is a black man." She never comes back to this point, and never tells us why his race was relevant, but simply leaves it hanging out there—making us wonder if she is suggesting that Boston PD might have been a little more lenient with Morgan if he were white. *Morgan v. Boston Police Department*, 33 MCSR 131 (2020).

### ***Superior Court Sides With Commission on Leominster Discharge Appeal—60 Day Suspension Affirmed for African-American Patrol Officer Crawford***

The Commission won yet another court victory in March when Superior Court Judge Beverly Cannone affirmed its decision reducing a discharge to a 60-day suspension for an African-American patrol officer with the Leominster PD who lost his cool after his sergeant sent him back to better document a CVS shoplifting incident. The City appealed the decision and lost. We covered the Commission's original decision in last year's [July/August issue](#).

The Commission found that Crawford had indeed been insubordinate, but rejected the charge that he had physically threatened his superior or recklessly thrown his weapon into his locker. It also suggested there might be racial overtones to the case. Judge Cannone agreed that Crawford had been treated in an excessively harsh fashion, for whatever reason, and affirmed the ruling.



Judge Beverly Cannone

Leominster Chief Michael Goldman also revoked Crawford's LTC permit, a decision that Crawford appealed to the Superior Court and will have to get reversed if he wants to return to duty. [City of Leominster v. Crawford](#), Superior Court Civil Action 1984CV01851, March 12, 2020.

### ***Holden's "Cell Phone" Carey Loses Superior Court Appeal From His Discharge for Porn and Sexual Harassment***

**A**s profiled in our [November 2018 issue](#), Lt. Chris Carey of the Holden PD was fired mainly for viewing porn sites hundreds of times while on-duty and on a Department-issued cell phone. He was also faulted for the sexual harassment of a female civilian employee.

The Commission upheld the Town's action although it was clear that dark forces within the Holden PD had ganged up on the Lieutenant and that the investigatory process in this case was "amateur hour" at its best. Superior Court Judge Debra Squires-Lee found no fault with the Commission's decision, handing it yet another appellate win against a terminated police officer. [Carey v. Town of Holden](#), Superior Court Civil Action 1884CV03612, March 30, 2020.



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Do you have any advice for your fellow police officials on disciplinary or bypass appeals? An experience you'd like to share in our reporter? Let us know! [Email](#) us.



## Murderous Pics Circulate at Chicopee Sports Events

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## Failing to Protect Her Child From Violent and Married Detective Boyfriend Ends Career of Promising Revere Officer

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## “Mindboggling” Noncompliance with Routine Last Chance Agreement Dooms Much Disciplined Salem Officer

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## After 20 Years You Should Know That Cell Doors Gotta Be Closed But Maybe Not in Haverhill

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## On the Bypass Front, “Command Presence” Doesn’t Cut It And Don’t Expect That Promotion When You Can’t Bypass the Bar

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## More Out-of-Shape Boston Candidates Given a Second Chance

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### ***Chicopee Officers Share Gruesome Murder Scene Pics And One Even Shows Snaps to Parents at Youth Sports Event! But Only Sergeant Godere Gets Fired—Seven Years Later***

One might have thought that the last of life’s indignities to be visited upon a young Chicopee woman, Amanda Plasse, was when Denis Rosa-Roman slit her throat on August 26, 2011 and left her to bleed to death in her apartment. Five years later, it would take a jury less than 24 hours to find Rosa-Roman guilty and send him to prison for life. But it was just a matter of hours before no fewer than four Chicopee police officers who responded to the scene were sending pictures of the bloodied victim around to their colleagues from their phones.

And then, hard to believe, one of the officers who received the pictures, Chad Levesque, went to a youth sporting event in Agawam and began showing the pictures of Ms. Plasse’s mangled corpse to parents at the game. He had received them from our Appellant in this case, Sergeant Jeffrey Godere.

When word got around about the picture sharing, the Chicopee PD immediately launched an investigation that was headed by the current Police Chief, William Jebb—then the Deputy Chief in charge of Internal Affairs. Jebb’s investigation only led to a few slaps on the wrist five months later. One officer got a few tours of punishment duty and the rest were given letters of reprimand. To a man these officers had lied to Jebb during his investigation after a wave of amnesia swept the force that prevented officers from remembering who had sent them the photos and with whom, in turn, they had shared them. But the officers’ reprimands and discipline were not, at first, for lying or unbecoming conduct but incompetence. When the Hampden County District Attorney Mark Mastroianni learned what was going on, he penned Brady letters for two of the officers, including Sergeant Godere.



Chicopee Police Chief Jebb—Playing Politics?

And there the matter rested until *seven* years later when Chicopee fired Godere after placing him on administrative duty for nine months. The City also pushed Officer Levesque (who shared the pics at the youth sporting event) to resign. Godere was charged with untruthfulness for denying during the initial investigation that he had received a picture of the murder victim and then claiming he could not “remember” who had sent him the picture or to whom he sent it.

Sergeant Godere had joined the Chicopee PD in 1994, serving as a special police officer until he received a permanent appointment in 2001. This appeal was not Godere’s first trip to the Commission. In 2016, the Commission reversed his 2015 demotion, agreeing with the Department that Godere had neglected his duty in failing to arrest and perform a background check on a burglary suspect, but found that he had not submitted untruthful reports about the incident to his superiors. Due to Chicopee’s failure to prove the untruthfulness charge, the Commission modified the discipline imposed from a demotion and five-day suspension to just a suspension. [\*Godere v. City of Chicopee\*](#), 65 MCSR 29 (2016).

In the current appeal, Godere was equally successful, managing to convince the Commission to reverse his discharge and let him off with a demotion. He was certainly helped along by his most able attorney [Andrew J. Gambaccini](#), who writes the commentary for our *Civil Service Reporter*. And although the sharing of the photos and lying about it to investigators were deplorable, the arbitrary and delayed process leading to his discharge clearly stinks.

Godere was reprimanded for his conduct in 2012. Why did it take more than five years to bring disciplinary proceedings against him after the initial determination that no discipline was warranted other than a reprimand? And why was he singled out when two other officers did the same thing without any real consequences? One of these two officers is now serving as a detective in narcotics and the other has been promoted to provisional sergeant.

The answer suggested in Chairman Christopher Bowman’s decision is clearly, POLITICS. Since the original reprimand, Chicopee has elected a new Mayor who has appointed a new Police Chief—the same individual who conducted the original investigation. The decision notes that the “civil service system was designed to *prevent* these types of arbitrary decisions.” It is clearly fundamentally unfair to have targeted Godere and also to have waited so many years after clearing him with a simple reprimand.

The Commission was completely unimpressed with Chicopee’s justification that Godere was the subject of a 2012 *Brady* letter and so could not do his job. Nobody told him about the *Brady* letter until six years after it was penned and somehow two other officers involved in the incident were not cited in the letter. And it did not help Chicopee’s *Brady* argument that the then District Attorney who wrote the letter, now Federal Judge Mark Mastroianni, minimized the impact of such a letter in his testimony before the Commission when pointing out that the DA and the Chicopee PD can work around the effects of a *Brady* letter by assigning the officer to duties that do not require regular testimony in court. [Godere v. City of Chicopee](#), 33 MCSR 48 (2020).

### ***Failing to Protect Her Child Gets Revere Officer Fired Child Abuse by Married Detective Boyfriend Ends Two Careers Commission Lets Discipline Stand***

**T**his is a very sad story and once again involves men abusing women—and their kids. Angela Halcovich had been a patrol officer in Revere since 2014. She was originally from Revere, had spent four years in the U.S. Marines, and was honorably discharged as a Staff Sergeant after achieving five promotions. While in the military, she obtained a Bachelor’s degree and worked toward a Master’s, which she completed while working for the Revere PD. So far so good.



Ex Patrol Officer and Victim #2 Angela Halcovich

She was also a single mother with two kids and began a relationship with a married Revere detective, one Marcos Garcia—a bit of bad judgment that would end her career. When Officer Halcovich filed for a restraining order against Garcia in January of 2017, she claimed that he had been abusive to her and her kids for over two years and that he had a problem controlling his temper—a problem she said was exacerbated by his steroid use.

What led to the restraining order was the horrific beating one evening of her younger child by her detective boyfriend after the kid refused to eat his dinner. Garcia took the child upstairs, stripped and handcuffed him, and then went to work with his belt, leaving the boy with extensive bruising on his back, torso, arms and neck. When the child went off to school the next day, his mother told him to wear a hoodie and say that he had fallen down the stairs if anyone asked about the bruises.

Well, you know where this goes. School nurse notices the bruises, Mom lies to school nurse about the origins, and nurse contacts DCF. DCF contacts Suffolk County District Attorney and the State Police investigate. When a doctor at Beth Israel examines the kid, he says that there is no way these injuries came from falling down the stairs. Mom comes clean and Detective Garcia gets charged with assault and battery and resigns from the Department. And Mom eventually pleads guilty to permitting injury to a child and is sentenced to probation in May of 2017. She gets fired from the Revere PD in August of the same year. The grounds for her firing are untruthfulness, failing to report criminal violations, criminal conduct, and conduct unbecoming a police officer. She then appeals her discharge to the Commission.



Ex Revere Detective Marcos Garcia

The Commission affirmed her discharge unanimously and basically focused on the fact that as a person convicted of a misdemeanor punishable by imprisonment for more than two years, she cannot possess a license to carry a firearm. Revere did have the discretion to retain her under these circumstances but chose not to. The decision also notes that Officer Halcovich admitted lying to both a mandated reporter (the school nurse) and the State Police. That is the end of this story.

We don't care much for the result here. We think the discipline is excessive. But on appeal, the Commission, given its limited review powers, could not have reached any other conclusion than to affirm the firing of this single mom. Revere was certainly within its rights to part ways with her. And Officer Halcovich warranted being disciplined for failing to protect her child. But firing her seems excessive. A healthy suspension would have done the trick and

not destroyed this promising officer's prospects at the outset of her career. *Moreover, Officer Angela Halcovich had no record of any prior discipline during her career with Revere PD.*

As much as her younger child, she too was a victim of an abusive steroidal maniac. And some compassion was warranted here. *Halcovich v. City of Revere*, 33 MCSR 74 (2020).

### ***How to Throw Away a Career—Given a VERY Generous Last Chance Agreement Salem Officer Blows It And Gets Fired For Not Honoring Its Conditions***

**O**ur last discharge case involves the termination of a 20-year career Salem patrol officer who, for some unexplained reason, could not manage to keep up with the very basic conditions of a generous Last Chance Agreement he had signed in 2017. What had gotten Officer Ryan Davis in serious trouble was a violent off-duty domestic incident, not at his home, where bottles were flying and Davis managed to get a very nasty cut on his foot. In an apparent effort to conceal the very embarrassing details surrounding this situation, Davis showed up for



Patrol Officer Ryan Davis

his next shift and claimed that he had injured his foot at the station while on duty. His superiors didn't buy it and the evidence from the station's cameras clearly proved the lie. Why Davis couldn't manage to come up with a cover story for an off-duty injury that didn't take place at the station—where he surely knew surveillance cameras are always running—is an excellent question! Davis had a lengthy history of reprimands and suspensions mostly for failing to follow procedures and protocols.

There were some Salem officials who wanted to fire Davis given his less than distinguished employment record. This incident occurred not too long after the notorious Butler case. As has been widely reported, the then husband of Police Chief Mary Butler, he himself a Salem police officer, had indecently assaulted a male prisoner in protective custody and would eventually wind up being sentenced to 3½ to 5 years in prison. [https://www.salemnews.com/news/local\\_news/butler-gets-to-years-in-prison/article\\_467b4065-7db3-52ff-a08f-64cd8d774aa1.html](https://www.salemnews.com/news/local_news/butler-gets-to-years-in-prison/article_467b4065-7db3-52ff-a08f-64cd8d774aa1.html) (Incredibly, Massachusetts has no law explicitly making it illegal for police to have sexual relations with inmates in custody so more general statutes have to be used in such prosecutions.) Davis seems to have gotten lucky and was the beneficiary of a very generous Last Chance Agreement.

The agreement required Davis to accept an 18-month suspension and do three other simple things:



- 1) Give a written apology to his superior officers.
- 2) Maintain his trainings.
- 3) Attend monthly stress counseling sessions with psychologist Dr. Hayden Duggan, founder of On Site Academy, AND provide monthly reports to Chief Butler documenting his attendance at these sessions.

He only managed to comply with #1.

In what Hearing Commissioner Paul Stein called a “mind boggling level of non-compliance,” Davis failed to provide the monthly reports to his Chief, *despite repeated reminders to do so*. Davis also failed to keep up with training modules relating to Use of Force, OUI and Marijuana, and Harassment.

His explanation for these shortcomings was about at the level of the “dog ate my homework” and we won’t bore you with them. The Last Chance Agreement was signed in June of 2017 and Salem fired him a year later.



Salem Chief Mary Butler—Enough is Enough

Commissioner Paul M. Stein authored the decision upholding the firing of Davis and found, quite simply, that the Department had shown that he had failed to document his counseling sessions or stay up to date with his trainings. There was no evidence that Davis suffered from any disparate treatment, bias, or other arbitrary motivation by his superiors.

He was just a screw up. [Davis v. Salem Police Department](#), 33 MCSR 24 (2020).

### ***Three Day Suspension for Not Closing a Cell Door Haverhill Officer Dennis Moriarty Denies the Camera’s Evidence And Then Files a Useless Appeal***

This is the sort of dumb appeal that gets to the Commission only because police officers are not paying their own legal fees. A Haverhill police officer helped place a prisoner in a cell and on the way out failed to check that the door was properly closed. This is not something that should be too tough for a 20-year veteran of the force. Of course, the door was *not* properly closed so the prisoner strolled out of the cell but luckily made no attempt to escape. All of this was nicely caught on video.

Rather than shut up and accept the three-day suspension, Moriarty claimed the door malfunctioned (it hadn't) and that he was being singled out because other officers who were involved in prisoner "escapes" went unpunished. The Commission was not convinced, citing the fact that the incidents listed by Moriarty were not comparable. The Commission also pointed to the fact that the officers involved were at a very early stage in their careers and were committing their first infractions.

In a fast recovery though, the Haverhill PD gave Moriarty its employee excellence award for April-June 2019, citing his meritorious service in a search for an autistic child. [Moriarty v. City of Haverhill](#), 33 MCSR 64 (2020).

### **Bypass Appeals**

#### ***"Command Presence" Doesn't Cut it in a Woburn Promotions Appeal Commission Judges Term Too Subjective***

If you are going to have an officer jump the line for promotion ahead of higher ranked candidates, you've got to come up with something better than "command presence" according to a recent Commission decision involving the #1 ranked candidate for promotion to police sergeant. In this case, the city promoted a narcotics detective ranked #2 behind the Appellant. Both officers were excellent candidates but the city pointed to the detective's "command presence" as the principal reason for his elevation over the Appellant. In a decision by Commissioner Cynthia Ittleman, the Commission found this rationale simply too subjective and hard to prove. Moreover, the Commission faulted the Police Chief and a captain for meeting with the Mayor before the candidate interviews, and presumably presenting him with their recommendations, a bit of bias that rankled the Commissioners. [Hunt v. City of Woburn](#), 33 MCSR 12 (2020).

#### ***Thinking Of Chucking It For The Environmental Police? Not So Fast! It May Not Be As Easy As You Think***

Anybody who has spent any time on New Bedford's homeless and drug-filled streets could be forgiven for wanting to take a break as an environmental police officer. Algimantas Harrell had begun his policing career in New Bedford in 2013 and by 2018 had apparently had enough. He took and passed the Environmental Police Office A/B exam and was ranked #6 on a certification seeking nine



**"SO, WHERE DO THESE HANDCUFFS GO?"**

candidates. The Massachusetts Environmental Police is a law enforcement agency with about 70 officers whose mission is to protect the environment through enforcement, education, and outreach.

Officer Harrell was a pretty good candidate, having attended a technical high school where he focused on arboriculture and later worked in the New Bedford PD Marine Unit. But he was bypassed for a lack of education and experience directly related to the subject of natural resource protection.

According to testimony before the Commission from MEP Lieutenant James Cullen justifying the bypass, municipal police officers don't do well in environmental law enforcement and soon gravitate back to traditional police work. He cited statistics to the effect that only one in five police officers ever becomes a successful EPO. [\*Harrell v. Massachusetts Environmental Police\*](#), 33 MCSR 30 (2020). So, if you want to get a job with these folks, better get to work on your environmental science coursework. Just being a police officer won't cut it.

### ***Changing Physical Fitness Standards for Police Candidates Once Again the Commission Intercedes to Save Out-of-Shape Candidates***

In a decision by Chairman Christopher Bowman, the Commission again allowed appeals from candidates for appointment to the municipal police whose offers of employment had been rescinded after prospective recruits failed the more stringent physical fitness standards adopted by the Massachusetts Municipal Police Training Committee. MMPTC effectively toughened the standards midway through the hiring process for these candidates, having initially told them that the sole requirement for entering the Police Academy was passing the PAT whereas the new criteria required them to meet progressively more difficult fitness standards administered over several weeks. These four candidates passed the PAT but failed the new standards with respect to either the number of required pushups, sit-ups, or the completion time for the 300 meter run.

But it's not as if the candidates were trying out for the Olympics or anything! The standard for the 300 meter run is a leisurely 63 seconds, but candidate David Hernandez couldn't seem to manage that and rumbled across the line at 65.2. Candidate Moccia could only complete 22 pushups in a minute, whereas his age and gender requires 26. And candidate Chase Robichaud definitely needs to work on his abs, coming in at 29 sit-ups during the course of one minute when 33 are required. If these wannabe police officers put as much effort into their physical fitness as their legal appeals, the streets of Boston would be a bit safer. [\*Carnell v. Boston Police Department\*](#), 33 MCSR 68 (2020).

### ***Westfield Officer Cavanaugh Can't Seem to Bypass a Bar So Westfield PD Bypasses Him for Promotion***

The Commission affirmed the promotional bypass of a Westfield patrol officer, a law school graduate, who was ranked first on the eligible list but whose record was tarnished by three recent incidents involving serious off-duty abuse of alcohol. William Cavanaugh was by all accounts a very able young patrol officer—31 years old at the time of his appeal and sporting a law degree, Masters, and BA in Criminal Justice. He came out ranked first for promotion but senior command staff unanimously recommended the second-ranked candidate, citing Cavanaugh's lack of maturity.



"WELL, THAT'S ONE BAR EXAM CAVANAUGH DIDN'T PASS."

By that they meant the three off-duty incidents involving alcohol, the most serious one being a one-car crash at 2:00 A.M. after an evening during which he downed six beers. He claimed that alcohol was not a factor in the crash but it doesn't sound like anyone believed him. In another incident soon after, he got into it with a bouncer at a bar in Agawam where he identified himself as a police officer. Cavanaugh admitted he had been drinking but wisely took an Uber home. He also did not

distinguish himself one night in June 2019 when he refused to pull over after being pursued by a Westfield police cruiser. The cruiser followed him to a bar and then the officer summoned the ranking shift Sergeant. The latter hauled Cavanaugh out of the bar and gave him a "courtesy" ride home after he tried to climb back into the driver's seat of his own car.

The Commissioner hearing this case, Chairman Bowman, found Cavanaugh to be "smart, motivated, personable, and committed to a long career in law enforcement." He also found that Cavanaugh "didn't seem to grasp the seriousness of his actions" or that a "meaningful course correction on his part is needed."

A few more years at a patrol salary might just do the trick. And a few more bar bypasses. [\*Cavanaugh v. Westfield Police Commission\*](#), 33 MCSR 71 (2020).

***Embarrassment of Riches******What To Do With Two Superb Candidates***

Police chiefs often have a tough job deciding between two equally qualified candidates for promotion. In a case from Ludlow, the Chief and the Board of Selectmen were presented with at least two exceptional candidates for promotion to Lieutenant and could have taken either: one was ranked first and the other third. Ludlow ended up reaching down to the third-ranked candidate which, of course, triggered an appeal. The successful candidate was an adjunct professor of criminal justice at local colleges, brought 25 years of community knowledge to the job, and demonstrated impressive professional development. The bypassed candidate, ranked number one, was no slouch either and the case is worth a read to help you through a quite common managerial dilemma requiring impossible choices. [\*Irwin v. Town of Ludlow\*](#), 33 MCSR 79 (2020).

And a final bypass case chiefs might want to take a look through is [\*Melanson v. City of Gloucester\*](#), 33 MCSR 36 (2020). There the Commission overruled the Gloucester PD and granted a bypass appeal from a candidate seeking an original appointment. The crux of the case was the Commission's finding that Gloucester's review of the candidate was not nearly thorough or impartial enough and that the incidents cited in the candidate's background that doomed his application were either long ago and far away or misconstrued. Chairman Bowman alone dissented, finding that the candidate had been shown to have serious issues of personal self-control that had been adequately documented by Gloucester PD, even if the review process was far from perfect.

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Do you have any advice for your fellow police officials on disciplinary or bypass appeals? An experience you'd like to share in our reporter? Let us know! [Email](#) us.



## A Lawrence Police Officer's Youtube Obsession Helps End His Policing Career—No More Bosses To Denounce and No More Detail Money to Steal

## Paying for Tigers and Getting Manatees—Police Candidates Flunk Physical Fitness Tests—But Bowman Rules the Goal Posts Must Be Fixed

## “Retired” Blackstone Police Chief Wins a Final Victory After Rattling Out Patrol Officer to DA with Brady Disclosures

Our last issue covering the cases of 2019 will be a short one because the Civil Service Commission turned its attention elsewhere during the last two months of 2019 and ended up deciding only two police-related appeals. One involved the termination of an African-American officer from Lawrence and the other reached a favorable decision on appeals from two rejected police candidates who had failed fitness tests—tests they had originally passed but were unable to complete successfully when the requirements were toughened. And finally, Blackstone's long-serving former police chief, Ross A. Atstupenas, won a kind of post-mortem victory when a Department of Labor Relations Hearing Officer found that he had not unlawfully retaliated against a patrol officer and former union president. “Post-mortem” because Atstupenas was shown the door in October and replaced by his second-in-command Gregory Gilmore.

## ***Lawrence's William Green Is For Many The Officer From Hell—Civil Service Commission Mercifully Finishes Off a Turbulent and Chaotic Career***

It's probably safe to say that Lawrence police officials would have kissed off Officer William Green many many years ago had he been a Caucasian—which, judging from his videos, he pretty much is. But he has enough African-American ancestry in him to have warranted his superiors to proceed cautiously in the face of relentless accusations from him that the Department was racist, incompetent, and corrupt. In one of his many Youtube videos, for example, he accuses the mayor of doing nothing about the opioid crisis, tolerating racist officers, and putting friends into city jobs. Over the years his constant accusations of racism and his crusade against his own department led to investigations by the Attorney General, the State Police, and the MCAD. These investigations went nowhere as the state agencies dismissed

Green's charges. But now we have a decision from the Civil Service Commission in December affirming Green's 2017 discharge and dismissing his appeal. It's probably safe to say at this point that his career in law enforcement is over.

William Green joined the Lawrence PD in 2005. It did not take him long to accumulate an extensive disciplinary record that included unending absenteeism, abuse of sick leave, insubordination for putting personnel matters on social media, complaints about duty assignments, lousy driving, refusal to follow the chain of command, stealing detail money, letting an



Officer William Green

arrested and handcuffed prisoner escape, denouncing the Department at a public meeting of the City Council <https://youtu.be/04L23aaBeO4>, calling for the mayor's resignation, and the list goes on. You can check out his Youtube channel here: <https://www.youtube.com/channel/UCWyjU2623y1dZ-QwSj1LnGVA>. His own candidacies for mayor and City Council, not surprisingly, fell flat. However, as you will see if you watch Green's videos, he comes across as very poised and articulate.

To be fair, life has not always been kind to Green. In 2011 he was diagnosed with Hodgkin's Lymphoma and had to suffer through grueling treatments that no doubt caused much of his absenteeism and depletion of sick days. But by 2012 he was considered to be in remission.

In December of 2012 he was suspended with pay for about seven weeks after shooting a guy in the chest who was beating another man with a baseball bat outside Lawrence's Club Copa. Green was off duty and working a detail at the club when he shot the man in the chest. As is routine in these cases when the police discharge their weapons, Green was put on leave during the investigation. He was never charged with anything or faulted for his conduct, but obviously this was a traumatic incident. Policing in Lawrence is no picnic. No one died during this altercation but both the victim and the guy with the baseball bat whom Green shot ended up in the hospital. For an unbelievably tacky video Green made of this incident, take a look at <https://www.youtube.com/watch?v=SgWd0WGxnpU>. In the video, he actually reenacts the entire shooting incident with dramatic music in the background, presenting himself as this self-possessed extremely competent officer of the law. It would be funny were it not so completely bizarre and inappropriate.



Along with a bunch of other Lawrence police officers, he was also laid off during the financial crisis but soon was called back.

Another blow to his ego occurred when he was unjustly accused, arrested, and briefly detained by the Lawrence PD in 2014 after some nutbag started calling the Department and threatening to kill officers. By that point in time, Green's reputation had fallen so low among his colleagues that numerous officers and civilian employees believed the voice on the tapes of the threatening calls to be his. It turned out not to be him and all charges were dropped and the Department apologized.

But after a time, the Department had finally had enough of Green's antics and canned him for good in March 2017. Prior to the charges that led to his dismissal, Officer Green had the following official disciplinary history:

February 2009 - received a one-day suspension for being absent without leave and insubordination for using sick leave when he did not have sick leave time available. (Note that this came *two years* before his Hodgkin's Lymphoma diagnosis.)

February 2014 - received a 90-day suspension for misappropriating the City's funds from outside club details that paid officers in cash. The clubs were supposed to give the detail officers money orders or checks but instead some of them started turning over cash directly to the officers (now that's a great idea). According to the Department's response to Green's MCAD complaint, he had kept all the cash proceeds from no less than 19 club details and had stolen more than \$4,000 before being caught and forced to repay the stolen funds.

November 2014 - received a two-day suspension for leaving an arrested prisoner unguarded and allowing him to escape. This happened at Lawrence General Hospital while the prisoner was handcuffed to a stretcher bedrail. Green was the only police officer on-site but left the prisoner alone to go to the bathroom. The prisoner managed to release the handcuffs and took off.

May 2015 - received a reprimand for failing to provide police reports in a complete and timely manner.

November 2015 - received a two-day suspension for insubordination for putting LPD internal personnel matters on social media.

Not surprisingly, the straw that broke the back of Green's career also involved a detail assignment that he drew in November 2016 to provide security for a health clinic in a neighborhood that had experienced several recent shootings. Green showed up 17 minutes late for the detail in an improper uniform with no badge. When his sergeant told him to clean up his act, he went off on her, and said he would not put up with "any of this shit" and he did not appreciate "being watched"—he then told the Sergeant that he would find a replacement for the detail before he left, but took off 20 minutes before his replacement arrived. One of his colleagues,

Wayne Taylor, testified at Green's Civil Service termination hearing that in the 12 years he had administered the Department's details, Green was the only officer to abandon a detail without an excuse. He was fired shortly thereafter.

When Green showed up at the local hearing at City Hall for his termination in April 2017, he was only able to keep it together for 15 minutes before storming out and claiming the charges were all bogus, "administrative," and "lies." [https://www.eagletribune.com/news/merrimack\\_valley/lawrence-officer-walks-out-of-disciplinary-hearing/article\\_4ba376df-a101-5554-933f-2553748bab24.html](https://www.eagletribune.com/news/merrimack_valley/lawrence-officer-walks-out-of-disciplinary-hearing/article_4ba376df-a101-5554-933f-2553748bab24.html). His lawyer then asked the City to close the hearing to the public and a reporter covering the matter was told to leave the hearing room. Apparently the concept of "his lawyer" was even complicated for Green because it was not clear who would represent him at the hearing, his private lawyer or the union lawyer.

To make sure the discharge stuck this time, Lawrence added three other charges. Naturally one of them was for the eight days that he went AWOL when he was scheduled for duty in November and December 2016 and had, unsurprisingly for him, already exhausted his sick leave. (Green had actually already been fired for this offense but the City had to withdraw the discharge for technical reasons since he had shown up once during the time he was charged with being AWOL to testify at a court hearing—so the original charges accusing him of total job abandonment were technically flawed.)

The two other charges arose from an incident where Green was accused by another Lawrence PD officer of assault and battery in late 2015. The first of these was for intimidation and insubordination in the context of the Department's investigation of the assault and battery charges. A lieutenant, Michael McCarthy, was assigned to investigate the matter. Shortly after Green received the criminal complaint, he emailed McCarthy and complained that the investigation had taken much longer than the State Police's investigation of Green's own similar complaint against a white officer and that white officers were not given the same scrutiny. And then, fatal mistake, he called McCarthy and threatened him...saying that he, Green, did not want McCarthy to become "collateral damage" as a result of the investigation. McCarthy took that, quite reasonably it seems, as a threat against him as the investigating officer. This led to the final, and fourth, charge against him, for lying to then Police Chief James Fitzpatrick when the Chief interviewed him about threatening McCarthy.

Hearing Commissioner Cynthia A. Ittleman heard Green's appeal for the Commission and affirmed all the charges in a brief decision. She also secured a unanimous vote from the other Commissioners endorsing her decision. So this is one case that was not even close.

And yet...watching Green's videos online gives us the impression of an intelligent, tortured, and very unhappy human being who, in the right circumstances and setting, could have had a perfectly acceptable career in law enforcement; or maybe something less stressful. Many of his charges against the Lawrence Police Department relating to racism and the privileging

of certain officers obviously could have some truth to them. Although his problems with the Department began well before his dreadful diagnosis for Hodgkin's Lymphoma, that disease, its treatment, and his layoff during the financial crisis cannot have been anything but disruptive to his career and his psychological equanimity.

But the facts are the facts. The Commission's decision makes clear that this was a police officer who stole, who was unreliable, who threatened his superiors, and who could not control himself on social media. And who obviously was unable to accept responsibility for his shortcomings. End of story and end of career. [Green v. City of Lawrence](#), 32 MCSR 405 (2019).

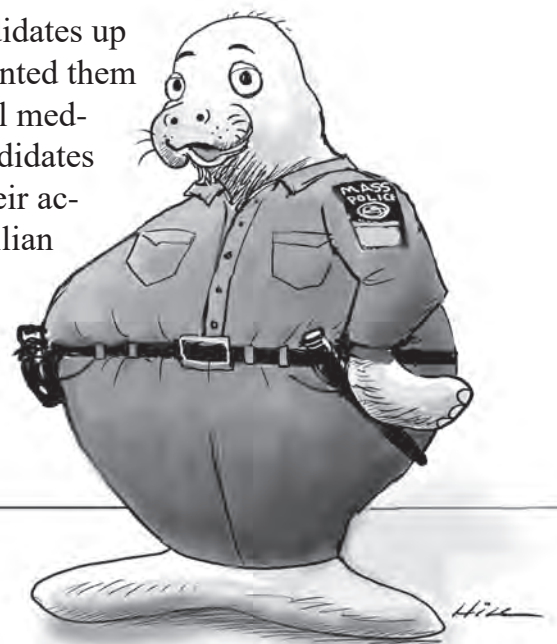
P.S. We highly recommend reading the [MCAD's dismissal of Green's complaint](#) which never even made it to a hearing officer and was tossed for lack of probable cause by an MCAD Enforcement Advisor.

And even more compelling than the MCAD dismissal is the [Lawrence PD lawyers' brilliant and detailed response](#) to the complaint which simply annihilates Green and his career. The City's lawyers are Raquel Ruano of the Office of the City Attorney and outside counsel and labor law expert Andrew J. Gambaccini of Reardon, Joyce & Ackerson, P.C. [Mr. Gambaccini](#) provides expert commentary for our [Massachusetts Civil Service Reporter](#).

## ***Changing Fitness Standards Lay Low Brockton Police Candidates Commission Chief Chris Bowman to the Rescue Mass Taxpayers Paying for Tigers But Getting Too Many Manatees***

**C**ortland Cartwright and Samantha Ackerson were two candidates up for original appointment to the Brockton PD. The City granted them both conditional offers of employment, subject to the usual medical, psychological, and physical fitness (PAT) exams. Both candidates went on to pass all three of these exams and were notified of their acceptance into the Police Academy. They then resigned their civilian jobs. So far so good.

As luck would have it, shortly before their Police Academy start date they were notified of new physical fitness entrance requirements that went beyond their already completed PATs. Specifically, the Massachusetts Municipal Police Training Committee (MPTC), which is responsible for setting the fitness requirements, had toughened up tests relating to the 1.5 mile run, pushups, sit-ups, and a 300 meter run. Mr. Cartwright failed to complete the 1.5 mile run in time or the sit-ups. Ms. Ackerson was laid low by the same run, exceeding



SOMEHOW HE LOST HIS STRIPES

the limit for her age and gender by 19 seconds. As is well known, even the new standards are not particularly demanding but these two candidates were never given the opportunity to train to meet them.

At this point, MPTC rescinded their acceptances to the Academy and Brockton rescinded their offers of employment. Cartwright was able to get his job back but Ackerson's employer was not so accommodating. She was unemployed at the time of the Commission hearing but has since secured employment as a campus police officer at a local college.

The issue of police officer fitness is a sensitive one in the U.S. In a word, the general physical condition of American police is unacceptable. What is supposed to be a "warrior" profession, and often provides preferences in hiring for military veterans, now has far too many officers who resemble a herd of diabetic manatees. The FBI has estimated that 40% of American police are obese and a shocking 80% are overweight. <https://dfw.cbslocal.com/2014/08/14/fbi-80-percent-of-police-officers-are-overweight/> The statistics for police are even worse than for the population at large. We are not going to get into the causes of this—but how things have changed!

Our editors grew up in New York City and we were afraid of the police. Why? Because they looked tough. And they were tough. They were fit enough to chase perps down alleys if they had to. They would beat the crap out of them with their fists, sometimes with just a little help from a nightstick, and didn't need pepper spray, tasers, or other assists that police now lug around. Of course, times have changed. The streets are far meaner. But the police are not! There is simply no excuse whatsoever for the appalling physical condition of American police.

Take a look at the two photos that follow of the Dudley Police Department. Dudley is smallish town outside of Worcester. The first photo is from 1937 and the second is a more recent one. In 1937 everybody looks pretty fit. In the recent photo, far too many of the officers look like promising candidates for gastric bypass.



A fairly typical Massachusetts municipal police departmental photo though is this one from the town of Webster. The obesity in that Department is simply frightening...particularly in the front row where the more senior staff is seated.



Now basically what is going on here is social and cultural decline. And lack of discipline, self-esteem, and will. Rather than get in shape, police unions and management bully or bribe their legislators and employers to rein in any kind of accountability for fitness. Of course there are some exceptions—for example, fitness standards are maintained for many specialty units—but basically there is no accountability. In a competently run state, there would be fitness requirements for police officers who would be tested every few years—not just when they are first hired—and those who failed would have a certain amount of time to get their act together or would have to go find something else to do.

The way American states undermine police fitness is not even in the police's best interest, unless you welcome heart disease, diabetes, stroke, fatty liver disease, and shortened life spans. This article from the New York Post says it all <https://nypost.com/2018/02/18/fat-cops-are-weighing-down-the-nypd/>, including a rant from an officer outraged that his partner, a five-foot-tall female weighing 200 pounds, could not climb any higher than the third floor of an apartment building while they were responding to an “incident” at a housing project. And we all know about some police who now respond more readily with deadly force because they are too weak, out of shape, or poorly trained to respond any other way.

The public is getting screwed. Taxpayers are footing the bill for tigers and getting far too many manatees.

We do offer a solution here though, at least for Massachusetts. And it is this: it has been suggested that the police be given a financial incentive for staying fit. We like the notion but have a better idea. Let's amend the Massachusetts statutes to bar any police officer, on any police force, from performing any detail work if he or she has a body mass index that exceeds

30. That would probably solve the problem real fast. And every couple of years we could lower that number a bit to not just eliminate the obese but also the “overweight” junior manatees who endanger their partners and families. Such a rule would, of course, be expensive for the taxpayer because it would increase the number of years retired police officers would draw on their pensions—years the officers often do not get to enjoy due to their poor health and longevity. Fewer details and more gym—a recipe for a healthy life.

And taxpayers would get far better police.

So getting back to Mr. Cartwright and Ms. Ackerson—the two candidates striving to become Brockton police officers. Obviously the way they were treated was grossly unfair. The rules of the game were changed mid-stream. Chairman Bowman quickly voided the rescission of their offers of employment and put them on the top of the next list. They will have to meet the new standards to get hired but at least they will be on notice of these standards and can train for them.

And what about those new standards? Not surprisingly their implementation was delayed because the majority of student officers in both the Boston and Worcester police academies would not have passed the new entry level standards. Police officials from Boston, Springfield, and Worcester lobbied MPTC to delay the implementation of the new standards and the Committee duly voted in May 2019 to delay their implementation until 2020. Incredibly, these “big city” police departments argued that their departments attract candidates from a “variety of backgrounds” who do not have the “resources” to prepare for the new standards. Huh? Do you need a \$200-a-month health club and a personal trainer to go running, do push ups, and get in shape? A Planet Fitness membership goes for about \$10 a month these days. [\*Cartwright v. City of Brockton\*](#), 32 MCSR 375 (2019).

### ***DLR Hearing Officer Finds Former Blackstone Police Chief Did Not Retaliate Against Patrol Officer and Former Union Head When Notifying DA under Brady of Officer’s Untruthfulness***

**M**axwell Hurwitz has been a patrol officer with the Blackstone PD since 2010 and served for three years as the union president. In 2016 he had some sort of inappropriate interaction with a candidate for original appointment as a police officer outside the Municipal Building. The incident had something to do with Hurwitz’s former employment at Framingham State University and an ongoing investigation by the Department about his time spent at FSU.

Before this time, Hurwitz had many clashes with then Chief Ross A. Atstupenas over Hurwitz’s bypass for promotion to sergeant, comp time, and a slew of other issues. But he was not the only one. Blackstone showed Atstupenas the door in October 2019 and replaced him

with his estranged subordinate Lt. Gregory Gilmore after a consultant submitted a report to the Town noting that officers and civilian personnel described the Chief as a “bully” and “micromanager” who “has favorites” and “regularly screams and yells at officers and employees.” <https://www.valley-breeze.com/2019-10-09/woonsocket-north-smithfield/investigation-former-chief-created-toxic-work-environment> Morale in the Department was at an all time low.

You can access the consultant’s blistering report [here](#).

But the issue in the DLR appeal was whether Chief Atstupenas had unlawfully retaliated against Officer Hurwitz when he notified an ADA by telephone and email that the Town was conducting an investigation of Hurwitz about his lack of candor to investigators arising from the interaction with the police officer candidate. The ADA then notified his colleagues in the Milford and Uxbridge courts that Hurwitz was damaged goods. In his notification to the ADA, the Chief appended a private investigator’s report about the incident leading to the charges of untruthfulness.

Under the Supreme Court case *Brady*, the prosecution must disclose to the defense any evidence it had bearing on the credibility of prosecution witnesses, including the police. In theory, the notification by Chief Atstupenas could have seriously damaged Hurwitz’s career since it might have limited his effectiveness as a witness in criminal proceedings. In fact, the notification had little effect and Hurwitz has testified without a problem at many proceedings since the notification.

The Hearing Officer found that Atstupenas’ notification to the District Attorney office was not any kind of unlawful retaliation against Hurwitz for his union activities or anything else and dismissed the case. [Town of Blackstone and Blackstone Police Union, Local 442, Masscop, AFL-CIO](#), 46 MLC 109 (2019).



Former Chief Ross A. Atstupenas

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## Logan State Trooper Timmy Gillespie Ain't Gonna Move His Jag For No One

## Boston PD Comes Down Hard on Snacking at Your Desk at Headquarters

## No E&E Credits For 22-year Vet of Connecticut State Police Says HRD

## Civil Service Commission Ruling Throwing Out Hair Drug Test for New Hires Is Affirmed by the Supreme Judicial Court

## A Rumble at a Police Officer's Wake in Gloucester—Just the Tip of the Iceberg

The thing about corruption is that it seems to creep up on you bit by bit. You start with a little snack here and there, then you show up for the meal, and pretty soon you're taking an all expenses paid cruise to the islands. The recent appeal of longtime State Trooper Timothy Gillespie is not so much about corruption, but corrupt attitudes, and a delusional sense of entitlement that creeps up on those used to getting their way and bending the rules for their convenience. Even in little things.

Trooper Gillespie started out as a Statie way back in 1982. His career was not a brilliant one and remained solidly unembellished by any promotions. But he did manage to fill up his time with union activities, serving as the State Police Association of Massachusetts (SPAM) union representative and a member of its executive board. And he had a very cushy work gig. Since 2001, Gillespie was assigned to the day shift at Troop F at the Logan Airport Barracks, a unit that operates out of the first two floors of the so-called TSA building on the airport's service road. Timmy was making out OK too moneywise. Although by no means at the top of Troop F's bloated salary heap, by 2018 he was bringing home close to \$190,000 in total compensation, according to the Boston Globe. <https://www.bostonglobe.com/metro/2018/04/18/table-what-state-police-troop-make/rAvxoDOXdHmgsL8wZqh0AN/story.html>

But life wasn't entirely a bed of roses for Timmy. By no means. Most state troopers are provided with a "take-home" cruiser which can be used to commute to and from work, but not those working at Troop F at Logan. There, the "take-homes" are reserved for command staff

and specialized units only. So poor 'ol Timmy had to make do with a \$40-a-day commuting stipend that added up to only \$7,560 during 2017. Still, with all those per diems, Timmy was able to console himself with a high-end Jaguar for his commutes to the airport—parking provided for free in a gated lot just behind the Troop F Barracks.



NO! I WON'T MOVE IT!! NEVER!

But that was not enough for Timmy and a few of his pals with high-end rides. It so happened that the Staties' pricey wheels would sometimes get dinged up a bit in that gated lot. But Timmy found the solution to that problem and started parking in the spots reserved for visitors at the front of the building. And that's what got him in the soup with his superior Lt. Kevin Emmet, Internal Affairs, and then all the way up the food chain to the Colonel, a Trial Board, and finally the Civil Service Commission.

Lt. Emmet had told Timmy a bunch of times to stop parking in the visitor spots because he noticed that by 6:00 a.m. when the lieutenant arrived for his shift that most, if not all, the spots were occupied by troopers' personal vehicles. On January 20, 2016, Lt. Emmet once again noticed Timmy's ride out there in front and told him, yet again, to move it back to the gated lot. But Timmy didn't respond and so Emmet repeated that he should move it or he would write him up on the State Police Employee Evaluation System. To that, Timmy shot back with something to the effect that "You can EES me if that is what you have to do, I'm OK with that. I have broad shoulders."

Lt. Emmet left it at that but went on to write him up. Unfortunately for Timmy, word of his insubordination got back to Troop F Commander Major Christiansen and eventually an Internal Affairs investigation was launched. Timmy claimed that Lt. Emmet had made the whole thing up and he had not heard his superior's order to move his car. But nobody believed him. Not Internal Affairs, not the Trial Board, and not Commissioner Paul M. Stein of the Civil Service Commission who heard Timmy's ridiculous appeal.

And what was 'ol Timmy appealing? The Trial Board's discipline of 10 days loss of accrued vacation time! We should mention that this penalty is the *minimum* punishment for a

*second* Class B violation prescribed by the State Police disciplinary Rules & Regulations. Timmy had received a four-day suspension for another Class B violation back in 2011 so this was number two. Obviously, the new penalty was just a slap on the wrist. His only other record of discipline was a written reprimand in 2013 but the Commission decision does not tell us what the reprimand or first Class B violation were for.

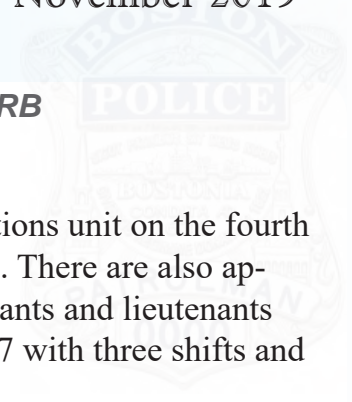
Timmy, as is routine with union officials, claimed that his discipline was retaliatory in nature for his work as a SPAM representative and his forceful advocacy on behalf of Troop F members. The Commission brushed off this claim, as did a hearing officer at the Department of Labor Relations who found, in a related unfair labor practices appeal, that Timmy had not been disciplined in retaliation for his union activities. Timmy also claimed that he had suffered disparately harsh treatment by being subjected to an Internal Affairs investigation rather than a local Troop F investigation. The Commission rejected that bit of entitlement out of hand, ruling that the process here was fully justified by the need for a truly “independent” investigation afforded by internal affairs.

In closing, let us not forget that one of Trooper Timothy Gillespie’s very close pals is none other than the infamous Dana Pullman, the former president of SPAM from 2012-2018, now under federal indictment for taking kickbacks from union lobbyists and wasting union money on personal expenses including meals, flowers, travel, and gifts for a girlfriend. The suckers at the union paid Pullman's extravagant legal expenses in defending against these charges until September when they pulled the plug. Pullman now has to rely on a federal defender.

The judge/magistrate in Pullman’s trial, as is routine in these matters, issued an order barring him from any contact with many of his former SPAM colleagues until the case is decided. The names came from prosecutors in the case who provided Pullman’s lawyers with a list of 51 names of potential witnesses whom he is prohibited from contacting as a condition of his pre-trial release. But this September, Pullman’s lawyers were back in federal court asking the judge to make two exceptions to her order and allow Pullman to keep in touch with two longtime buddies on the union’s executive board. <https://www.masslive.com/boston/2019/09/dana-pullman-former-state-police-union-head-charged-in-kickback-scheme-seeks-permission-to-contact-2-named-witnesses.html>

One of those was Trooper Sergeant Michael Sullivan out of Springfield. And the other? Well you know the answer to that. [\*Gillespie v. Department of State Police\*](#), 32 MCSR 368 (2019).

***LIKE WHAT YOU SEE?  
THERE'S MORE!***



***Boston Comes Down Hard on Snacking at Workstations But CERB Finds That City Will Be Required to Bargain the New Rules***

The Boston PD's Operations Center houses a specialty communications unit on the fourth floor of police headquarters and staffed by 160 civilian employees. There are also approximately 20 police officers who work there, including 12 sergeants and lieutenants who supervise the call-takers and dispatchers. Operations is staffed 24/7 with three shifts and at least three police supervisors on duty at any time.



The Rodents Love the Fourth Floor!

For a number of years, the SEIU that represents the civilian employees has been unhappy with the level of hygiene at the unit and the generally unsanitary workplace conditions. Employees were getting bitten by insects and rodents were running around wild. And the problems were caused in part by sloppy food handling and disposal at workstations.

Preliminary efforts to improve the situation by upgrading trash containers apparently didn't do the trick so the Department issued an order in 2016 barring all personnel, police and civilians, from eating food at their workstations. Employees were to confine their munching and coffee to the break room area. Police Supervisors were given the added perk of being allowed to eat in the conference room.

Boston Police Superior Officers Federation, the union representing the police supervisors, was not happy with this "no snack" rule. It argued that any rule that effectively barred officers from eating and drinking at their workstations should be a mandatory subject of bargaining and could not be imposed unilaterally by the City. And how! They took their objections to a Hearing Officer at the DLR, who told them to get lost because this was purely a matter of convenience not subject to bargaining. The union appealed his ruling to the Commonwealth Employment Relations Board. In September, a three-member panel overruled the hearing officer and found that the new rules impacted mandatory issues of bargaining, specifically the availability of food and the conditions under which food is consumed in the workplace, as well as the nature of the breaks officers received.

CERB sure got that right. If not being able to have coffee at your desk is not a mandatory subject of bargaining, then we might as well toss out all labor laws. Jeeez. [City of Boston and Boston Police Superior Officers Federation](#), MUP-16-5618 (September 27, 2019) (Decision on Appeal of Hearing Officer's Decision) 46 MLC 64 (2019).

***No Credit For 22 Years of Law Enforcement Says HRD Even Though Candidate Had Stellar Record as Connecticut State Trooper. Commission Begged to Differ***

Greg Naylor had worked for over 22 years in law enforcement in Connecticut and was eligible for retirement in February 2017. During two of these years he worked as a municipal police officer for the Town of New Milford. For the remaining 20 years, he served as a Connecticut state trooper operating out of the Troop B Barracks in North Canaan that covers 13 towns in the northwestern part of the state. During that time, he was also assigned as the resident state trooper for the nearby town of Norfolk. Norfolk borders Berkshire County, by the way. A resident state trooper in Connecticut is much like a Massachusetts municipal police officer. Small towns can contract with the state police to provide the services of a municipal police officer. The trooper lives in the town and his salary and expenses are paid by the town to the state police. During his career, Naylor also held the rank of detective within the state's Bureau of Criminal Investigation and had extensive training and experience within the Bureau of Field Operations.

In 2012, Naylor was awarded the Medal for Outstanding Service by the Connecticut State Police, an award given to a trooper who "successfully performs an extremely complex or difficult investigation" and who "may demonstrate exceptional skill or ingenuity in the apprehension of a wanted person." While assigned as resident trooper in Norfolk, Naylor obtained an unheard of 70% success rate in solving home burglaries, the most rampant form of criminality in that small town, mostly due to the need for drug money. Norfolk First Selectwoman Susan Dyer had this to say about Naylor: "Almost since day one, he has been like a dog with a bone who won't give up until he finds it." <http://www.nornow.org/2013/02/02/state-trooper-naylor-honored-for-investigative-skills/>



Outstanding Service in Ct. Not Good Enough for HRD

Naylor had a successful career in Connecticut and when he retired, he was still young and thought he could put his experience to work in Massachusetts for a change. So he took the civil service exam for municipal police officer in 2017. Such a seasoned officer would be a great catch for a small town, wouldn't you think?

Naylor scored well on the exam and was flummoxed when the state's Human Resources Department denied him E&E credit for his 20 years as a Connecticut state police officer. Ludicrously, under HRD's wacky rules, such an "out-of-state" law enforcement credit is not available for an original appointment—only for a promotion. Naylor filed an appeal with the Commission and in 2018, HRD filed a summary decision motion to get the appeal dismissed. It failed and the Commission put down the appeal for a full hearing. [\*Naylor v. Human Resources Division\*](#), 31 MCSR 113 (2018).

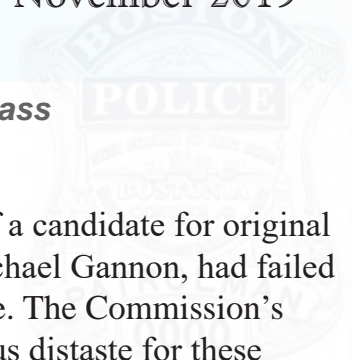
Naylor got good news in October as the Commission ruled in his favor, noting in its decision the complete lack of logic in HRD's position barring Naylor credit and writing that it defied common sense.

You have to wonder when you see a decision like that what the hell is going on at HRD. When it denied the credit to Naylor, it wrote to him that, "*Credit [in original appointments] is only given for Municipal police experience (In Title). State Police is not a civil service title and therefore is not creditable for additional points for this exam.*" OK, technically they were right. But even a moment's worth of reflection would have revealed the imbecility of their position. And, in reality, technically they were **not** right because a resident Connecticut state trooper is for all intents and purposes a *municipal* police officer.

OK, HRD got it wrong, but nonetheless they hunkered down and stuck to their guns, filed a motion for summary decision in 2018, and put Naylor through a year of waiting until the Commission issued its final decision in late September 2019. And that decision orders HRD to give Naylor the credit.

HRD's idiocy fortunately did not prevent Naylor from getting a job as a reserve officer in Chatham for the summer of 2018 where he served on bike patrol. That doesn't sound too bad! Welcome to Massachusetts.

A few months later Chatham PD swore him in as a full-time officer. [\*Naylor v. Human Resources Division\*](#), 32 MCSR 351 (2019).



**Supreme Judicial Court Throws Out Hair Drug Test Used to Bypass Boston PD Candidate—Original Commission Ruling Affirmed**

**B**ack in 2015, in a 4-0 vote, the Commission reversed the bypass of a candidate for original appointment to the Boston Police Department. The candidate, Michael Gannon, had failed a hair drug test by Psychemedics that read positive for cocaine use. The Commission’s decision, authored by Commissioner Cynthia Ittleman, cited its previous distaste for these tests, and the fact that Gannon tested negative for drug use in four other tests conducted by the same company at various times. The decision distinguished away the various Commission precedents affirming discipline or bypass decisions based on hair drug tests as factually different and supported by other negative information unrelated to the drug test.

Boston PD didn’t care much for that ruling and appealed to the Superior Court, succeeding there in persuading a judge to overrule it. The Commission and Gannon appealed that decision to the Appeals Court, but the Supreme Judicial Court transferred the case to its own docket on its own motion before the Appeals Court could rule on the matter. (It’s good to be the King!)

And in a ruling handed down on the last day of October, the SJC threw out the Superior Court decision and reinstated the original Commission ruling rejecting the drug test. It’s a big win for the Commission and Commissioner Ittleman, not to mention Michael Gannon.

Gannon was a police cadet who vociferously denied ever having used cocaine “in any way, shape or form whether it be shot, sniffed, smoked, never.” He asserted that his friends did not take drugs, and that there was “no possible way” that he touched cocaine or snorted it even once. Psychemedics operates in 20 states and its RIA tests and follicle washing technique have been criticized for false positives, with concerns centering on what its critics cite as the test’s occasional inability to reliably distinguish between ingesting cocaine and being exposed to it environmentally. This despite the fact, much touted by the company, that the hair samples are washed a gazillion times in an effort to eliminate environmental contamination.

Overcoming a vigorous dissent by Associate Justice Scott Kakfer, a majority of the SJC affirmed the Commission’s ruling and found that the Psychemedics hair drug test was simply not sufficiently reliable to sustain the burden on the Boston PD of proving by a preponderance



Psychemedic’s Ad Touting Hair Test

of the evidence that Gannon had ingested cocaine. Kakfer's dissent basically argues that the test was reliable enough, Gannon's scientific expert was not convincing, and that the Commission owed more deference to Boston PD's personnel decisions given the downside of putting a druggie on the force. He might have a point, but he didn't carry the day with his colleagues. <https://www.mass.gov/files/documents/2019/10/30/p12653.pdf>

***More Turbulence in Gloucester Police Department  
Its Finest Act Out at Colleague's Wake!  
Two Unions at Each Other's Throats***

Gloucester has had a turbulent few years over in its police department, and it doesn't show any signs of letting up. In 2016, Chief Leonard Campanello was fired for tampering with evidence touching on affairs he was accused of having with two women. The Chief was found to have done a factory reset on his department-issued phone. Investigators were able to determine based on phone records that the Chief had exchanged 634 texts in one day with one of these women, but they were unable to recover the content. Many regretted the loss of Campanello as he had received national acclaim for his opioid policing policy that empha-



sized "steering addicts to rehab, not jail" as a flattering article in the New York Times put it. <https://www.nytimes.com/2016/01/25/us/massachusetts-chiefs-tack-in-drug-war-steer-addicts-to-rehab-not-jail.html?mtref=undefined>

Then there were the whistleblower suits from Gloucester police officers—one of them from Leon Stuart, former head of the patrolmen's union, who was fired after an off-duty confrontation with a civilian at a

gas station. Stuart's suit alleged his discharge was in retaliation for complaints he made about police misconduct involving changes to arrest reports and labor violations by superior officers.

And Batting Cleanup is the New Gloucester Chief Edward Conley!

Tensions between Gloucester's police officers and their superiors surfaced again publicly in September when a Department of Labor Relations hearing officer handed down her decision involving the patrolmen's union and the superior officers' union. The dispute had its origins, of all places, in an altercation between officers at a wake for Gloucester patrolman Heath Mose-



ley. Yeah, at a wake. Like in a funeral. That kind of wake. The decedent was a much beloved officer, with four children, found dead unexpectedly in his home at the age of 42.

All the officers were in uniform and things got nasty when Lieutenant David Quinn made a sexually graphic remark to his brother, Detective Thomas Quinn, following a conversation the detective had with former chief Campanello, who was also in attendance **at the wake**. An argument between the brothers soon ensued and both were eventually issued one-day suspensions for their inappropriate conduct, **at the wake**.

The hearing officer, Kerry Bonner, found in favor of the patrolmen's union in ruling that the superior officers had engaged in prohibited practices when Police Chief John McCarthy (since replaced) subjected the President of the Gloucester Police Patrolmen's Association Leon Stuart (since fired) to questions regarding his union activities as part of the internal investigation. She also faulted Chief McCarthy for making negative comments about the Association President's stance regarding a pending grievance concerning pay for beach details to an individual member of the bargaining unit.

As of April of this year, Gloucester has a new police chief. Edward Conley spent 22 years with the Chelsea PD and three years as the Chief for Manchester-by-the-Sea before getting the nod from Gloucester Mayor Sefatia Romeo Theken. (She is of Sicilian origin and a helluva cook: <http://www.theothercape.com/stories/2016/9/15/sefatiacooks>) Maybe he can get the children at Gloucester PD to play nice with each other. At least at the wakes of their colleagues, we hope. *[City of Gloucester and Gloucester Police Patrolmen's Association, MCOP, Local 344](#)*, MUP-17-6076 (September 5, 2019) (Hearing Officer's Decision) 46 MLC 42.

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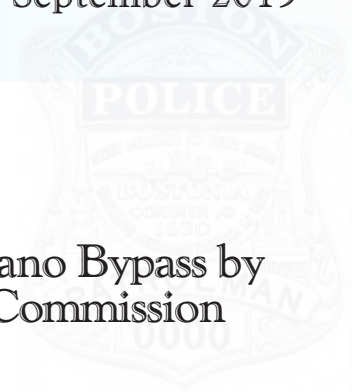
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## Sanity Triumphs—Jessica “Bad Choices in Men” Strano Bypass by Mansfield Affirmed on Appeal to Superior Court—Commission Majority Overruled

The men involved in Mansfield police officer candidate Jessica Strano’s life shared one characteristic. They were all *bags*. Bags? Yeah, **Bags**: dirtbags and scumbags. Oh yes, and did we forget? Petty criminals. Last year a majority of the Civil Service Commission seemed to have gone off the rails and voted to overturn her bypass by Police Chief Ron Sellon who had wisely rejected her candidacy. Sellon is both an attorney and a graduate of the FBI National Academy and has been Mansfield’s police chief since 2013.

Sellon had good reason to take a pass on Strano. The candidate was in the habit of dating and marrying criminals, had no real law enforcement experience, and totally blew her interview with the police panel.

The Town was attempting to fill just one slot and Strano had scored higher than the successful candidate. Our January 2018 issue covered the case in detail and we strongly disagreed with the Commission majority’s finding that this candidate with appalling boyfriends had somehow been victimized by Mansfield’s hiring process. (We reproduce the Strano cartoon from that issue to jog your memories.) We concluded that, “The 3-2 majority in this case does exactly what the Civil Service Commission is not supposed to do: substitute its judgment for that of the local authorities. Maybe Mansfield will appeal it.”

Well, Mansfield did and won. Superior Court Judge Paul Wilson concluded in a very thoughtful and well-written 23-page opinion issued this August, exactly as we did, that the majority of the Commission overstepped its authority and substituted its judgment for that of the Mansfield PD, rather than considering whether the bypass was made after an impartial and reasonable review.

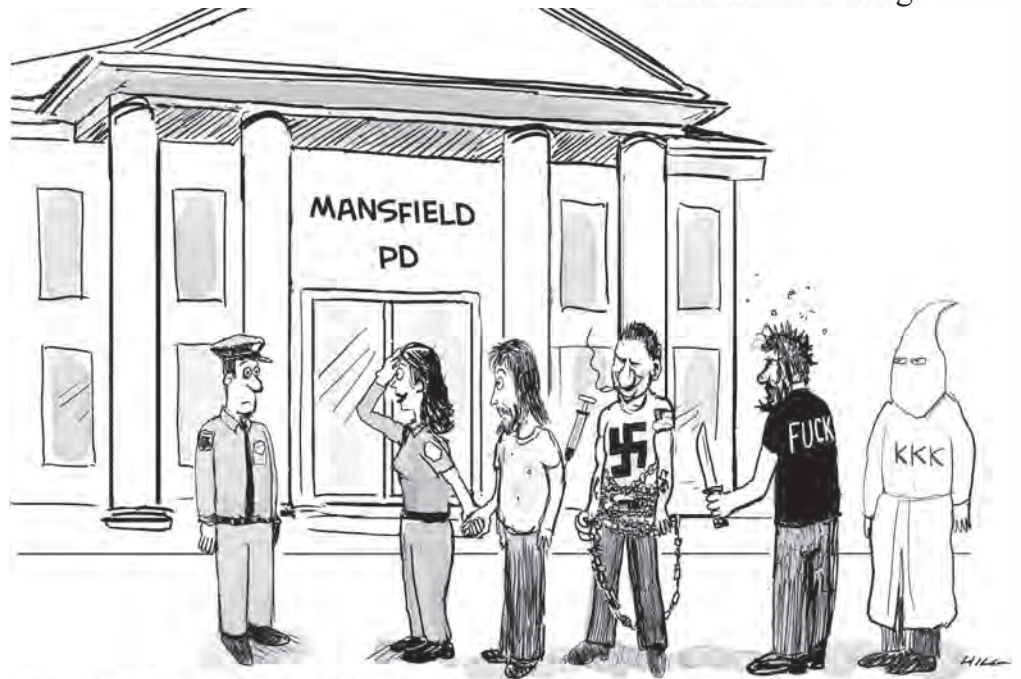


Chief Ron Sellon and Friend

Two of the Commissioners, Chief Chris Bowman and Cynthia Ittleman issued strong dissents from the Commission's original majority decision. Bowman's dissent, quoted by Judge Wilson, notes that the process was fair and that Strano's disastrous interview alone was enough to justify the bypass.

Commissioner Ittleman's objections focused more on Strano's low-life associations in justifying the bypass.

Congratulations to Chief Sellon for digging in and to the Town for stepping up to push this appeal! [\*Town of Mansfield v. Civil Service Commission\*](#), Sup. Ct. Civil Action No. 2017-3987 (August 23, 2019).



OFFICER STRANO REPORTING FOR MY FIRST DAY OF DUTY, MR. CHIEF, SIR!

### ***Lowell PD Wastes Time and Money in Court and Before the Commission By Not Providing an Immediate Written Reason for Promotional Bypass***

**D**aniel Otero is a police officer in Lowell who has made a number of appearances before the Civil Service Commission. In 2000, he escaped minor disciplinary action arising from a booze-fueled union-sponsored bus trip to Boston for a political rally when he and seven other officers were disciplined for offenses that included lying to investigators about police shenanigans on the trip. The Commission later threw out the discipline for lack of proof and disparate treatment. Otero was back with a vengeance 16 years later (still a patrol officer) when his five-day suspension was affirmed for conduct unbecoming in a tacky case where he was found to have falsely accused a fellow officer of sexually abusing his own child. The accusation came after Otero began dating the wife of this fellow officer and triggered investigations by the Lowell PD, the DA, and DCF—all of which concluded that Otero's accusations were unfounded. A Superior Court judge affirmed the Commission's ruling against Otero upholding the discipline.

In 2016, Otero was ranked first on the promotional list for Sergeant but was bypassed because of his disciplinary record, including the false accusations against a colleague, and because the chosen candidate had a better record. Otero appealed this bypass to the Commission and lost. He appealed the Commission's decision to the Superior Court and Judge Doug-

las Wilkins found that Lowell had screwed up the process by failing to *immediately* provide reasons *in writing* for the Otero bypass. The law clearly says *immediately* and Lowell took at least a month to get around to it. As such, Judge Wilkins sent the case back to the Commission for it to order the placement of Otero's name at the top of the next list and give Otero another bite at the apple. Judge Wilkins did *not* say that Lowell was not justified in bypassing him, only that it had to do the process over again and get it right procedurally. And Wilkins gave the Commission the leeway to figure out exactly what to do for a remedy.



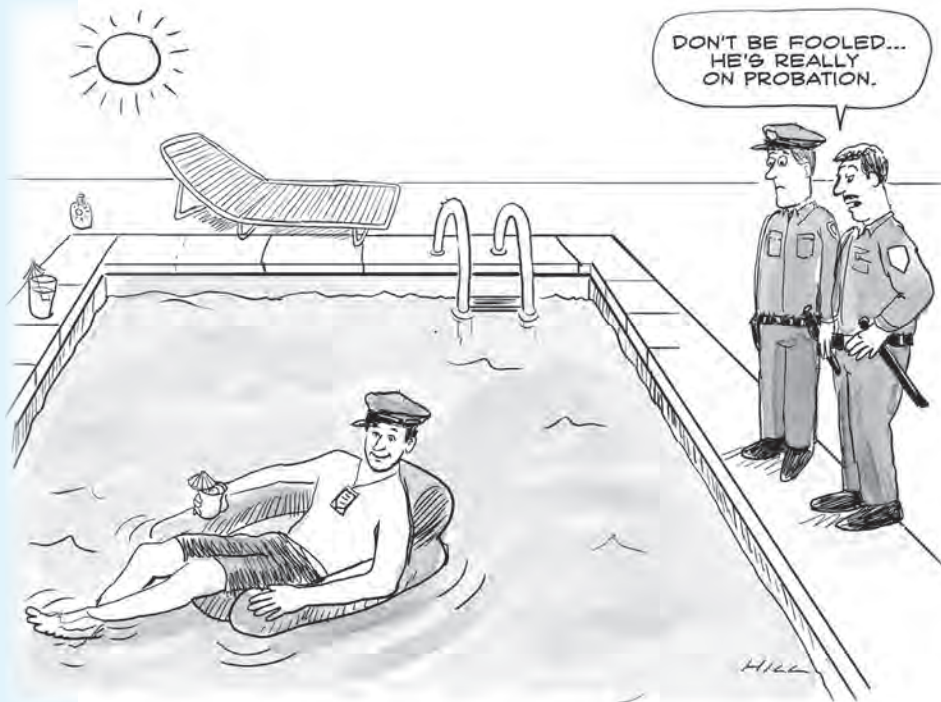
The Commission pretty much did as it was told, ordering Otero's name to be placed at the top of the next list, but rejected his claim for retroactive seniority in the event he gets the promotion. The additional remedy of retroactive seniority is one that the Commission can order but does so only in the case of original appointments, not promotions.

We think it is safe to say that Otero's promotional prospects won't fare any better on the next list, but this time Lowell PD will make sure to immediately provide a *written* statement explaining the reasons for the bypass. And that is something all of you should not forget to do in the future or you may find yourself wasting time and money at the Commission and maybe the Superior Court. [Otero v. City of Lowell](#), 32 MCSR 289 (2019).

### ***Probationary Officers Must Actually Serve to Become Tenured. Well, Duh. Leaves Do Not Count Toward One Year Probationary Minimum***

**E**manuel Brandao managed to land a spot with the Boston PD and graduated from the Academy in June of 2017. On his last day of training, the Police Commissioner swore him and the other student officers in so that they could work during the "Sail Boston" event that was held the following weekend.

Brandao later interrupted his one-year probationary period with two absences for military leave—one for five weeks in 2017 and another for almost the entire 2018 calendar year. He had resumed his police duties beginning in 2019 but was fired soon thereafter in March after an unfortunate incident while off-duty in Rhode Island. Apparently, Brandao failed to secure his Department-issued firearm in his car and then gave the keys to a civilian acquaintance. The acquaintance then used the keys to steal the firearm.



The Commission rejected his appeal, finding that he had served only a total of 197 days as a police officer because of his extensive leaves and that he was still on probation when they fired him. Therefore, no tenure and no appeal to the Commission. Brandao did not appear to have a leg to stand on but argued that he had not been properly notified that his probationary period would not include any time spent on leave—although this would appear to be a blindingly obvious point.

Strong and quite clear case law exists to the effect that the one-year probationary period means one year of actual service. It's not very difficult to figure out why. The rules are intended to give police departments time to evaluate probationary officers and clearly they need to be on the job for that to happen.

Moreover, Brandao had received a copy of the *Boston Police Academy Rules and Procedures* that states quite clearly that a probationary period does *not* include time spent on a leave of absence.

The message here for police chiefs is that they should make it crystal clear to probationary officers (and document that they have done so), that leaves don't count toward service time. [Brandao v. Boston Police Department](#), 32 MCSR 255 (2019).

## ***Good Candidate But What About Those Youthful Indiscretions? Worth the Risk or “Come Back When You’re Ready?”***

This case involved a situation very familiar to police chiefs where you have a promising candidate who seems to check all the boxes but there are youthful indiscretions, usually involving alcohol, that make you want to push the pause button. But you worry that by doing so you might be missing out on a promising candidate.

Michael Marchionda was applying for original appointment to the Boston PD and he did look good, if not spectacular, on paper. He grew up in Boston, had a B.A. in Criminal Justice, and worked security for the Red Sox and Brigham and Women’s Hospital. His references were excellent. His boss at the hospital cited his calm demeanor in stressful situations, volunteerism, and mentoring of new employees. He had no reprimands or any kind of employment disciplinary history. His neighbors had only good things to say.

Boston bypassed him twice—both times for youthful incidents involving booze and/or being obnoxious and less than forthcoming with authorities. The first episode was in high school, eight years before he applied to join the Boston PD. A friend at a party had vandalized a motor vehicle and Marchionda refused, initially, to disclose his name to police investigators. Two years later, now six years before he applied to Boston, he and some friends were arrested for underage alcohol violations at a New Hampshire college and lying about stuff to the campus police. In a dumb effort to get the police to back off, he insinuated that his father worked for the Boston PD and knew the Commissioner. All this was technically true, but his father worked in maintenance for the Boston PD, not as a police officer.

The third incident involved him mouthing off to New Hampshire law enforcement when they stopped his girlfriend on suspicion of OUI. This occurred three years before his application to the Boston PD. The municipal police officer’s report says Marchionda was “verbally combative and belligerent”—so much so that the New Hampshire officer placed him in handcuffs and put him in protective custody back at the station.

Boston PD bypassed Marchionda because of these incidents that suggested to reviewers that he lacked judgment and sufficient maturity to be a police officer. Commissioner Cynthia Ittleman, who heard the case, agreed but noted that with the passage of time, and continued positive employment without further run-ins with the police, Marchionda might want to give it another shot.

Marchionda’s lawyer argued that many of the successful candidates also had booze-fueled run-ins with the police but Commissioner Ittleman noted that these incidents had occurred seven and ten years before their applications for employment with Boston. Marchionda’s most recent incident was only three years in the past. And none of these other candidates had been obnoxious to the police.

Deciding how much time should elapse between this sort of antisocial conduct and a successful application for employment with the police is very much of a judgment call that each department will approach differently. It depends on the length of time the candidate has been “clean”; how strong is his/her candidacy; how good are the other candidates; and a slew of other considerations. We would have to agree with the Boston PD and with Commissioner Ittleson that three years, as was the case here, simply is not enough time. [\*Marchionda v. Boston Police Department\*](#), 32 MCSR 303 (2019).

### ***An Open Letter to Somerville Police Chief David Fallon Please Reconsider Your Subscription Cancellation And What About that “420” Out-of-the-Office Message?!***

**W**e were very surprised that Somerville PD decided to cancel its subscription to this publication. Surprised because the city has played such a starring role in these columns as Somerville PD appears again and again before the Commission with seemingly unending screw ups. Here is just a brief summary of the cases we have reported from Somerville just since we started this pub:

\*\*A unanimous Commission reversed Somerville’s bypass of a candidate for original appointment to the Somerville Police Department after finding that she was singled out for harsher treatment than other successful candidates when evaluating her work history, credit reports, isolated drug use, and completeness of her employment application. The decision takes note of a **“woefully inadequate” background investigation**. The Commission also found the bypass unsustainable because the City substituted non-medical reasons for bypassing this candidate after her initial medical disqualification had been reversed by a second psychiatric opinion. [\*DuVal v. City of Somerville\*](#), 30 MCSR 447 (2017).

\*\*A unanimous Commission affirmed the discharge of a previously undisciplined **Somerville police officer who pummeled a private citizen** on the street who was not posing a physical threat to him, and then lied about the reasons for this misconduct. [\*Diaz v. City of Somerville\*](#), 32 MCSR 156 (2019).



Somerville Police Chief David Fallon—Mr. 420!



\*\*An appeal from a candidate bypassed for original appointment to the Somerville Police Department was granted by Commission Chairman Christopher C. Bowman whose decision highlights an interview process compromised by a **nepotistic intervention** of Somerville's Personnel Director in favor of his nephew. Although the Personnel Director did not participate directly in the interview of his relative, he did participate in the hiring process for the relevant list and made decisions that ultimately favored the appointment of his nephew, such as bypassing other candidates and going further down the list. [Lima v. City of Somerville](#), 30 MCSR 103 (2017).

\*\*The Commission affirmed the discharge of a Somerville police officer for conduct unbecoming where he had **harassed and intimidated a female citizen with text messages** after she had requested police assistance with a noisy tenant. The Appellant also was cited for unlawfully obtaining the woman's cell phone number from the Department's CAD system. [Haynes v. City of Somerville](#), 29 MCSR 525 (2016).

\*\*The Commission allowed the appeal from a Somerville Police Lieutenant challenging a five-day suspension for various acts of harassment against Department employees because the **City utterly failed to document its case** with percipient witnesses, relying instead on the testimony of an investigator from the Office of Professional Standards and a former municipal police chief serving as a consultant. [Mulcahy v. City of Somerville](#), 31 MCSR 134 (2018).

Well, you get the point, something is rotten over in Somerville when you get this many cases in such a short period of time. Time for somebody to clean house.

So we decided to get in touch with Chief Fallon to see if we could change his mind about dumping our publication. But that was not so easy. On July 16 of this year we shot him an email and got back this out-of-office message:

**Subject:**Automatic reply: Massachusetts Police Chiefs Reports Cancellation - Somerville?  
**Date:**Tue, 16 Jul 2019 14:37:05 +0000  
**From:**David Fallon <[dfallon@police.somerville.ma.us](mailto:dfallon@police.somerville.ma.us)>  
**To:** [REDACTED]

I will be out of the office until 4/20 with limited access to email, please address any time sensitive matters to Deputy Chief Steven Carrabino

Chief Fallon

4/20, huh? Now that is one out-of-date, out-of-office message! By three months! Gotta update those things Chief! C'mon. Well, maybe things have gotten so out-of-office, out-of-date, and out-of-hand in Somerville that even the police are celebrating 420!

### ***Almost Every Premise of Your Appeal is Wrong! Don't Try to BS Your Way through the Commission.***

**W**inthrop officer Giulio Bonavita sure knows how to piss off a Hearing Commissioner. Bonavita was trying to get a two point credit toward his promotion to sergeant based on 25 years of service. The problem was that he only had 24 years and two months of service. To get to 25 years, he would have to submit an employment verification form showing his service as a reserve police officer beginning in 1992 until he became permanent in 1994. He failed to do so or submit any proof that he had served as a reserve police officer. So HRD gave him no credit for any service as a reserve officer.

He also claimed in his appeal papers that two other police officers in the running for promotion had received the credit. That was false too. Neither had.

And, finally, he asserted that these two candidates had been given seniority for service up until October 2018. That was also inaccurate. Like Bonavita, they had been credited for service up until the date of the examination in April 2018.

In his very terse and clipped two-page decision dismissing Bonavita's appeal, Commission Chair Bowman icily noted that "almost every premise of Mr. Bonavita's appeal is wrong." [\*Bonavita v. HRD\*](#), 32 MCSR 254 (2019).

### ***Fitness for Duty Examinations Must be Bargained Newton Police Union Wins Appeal***

**T**he Commonwealth Employment Relations Board has just upheld a ruling by a Department of Labor Relations Hearing Officer who held that the City of Newton violated labor laws when refusing to bargain with the Newton Police Superior Officers Association over fitness for duty examinations issues and when it imposed a fitness for duty policy as a condition of continued employment.

As reported in our [\*Massachusetts Labor Relations Reporter\*](#), in September 2016 Newton Chief of Police David MacDonald, out of concern for the amount of sick and vacation time being used by a captain, and his general concern that this captain was not acting like himself, placed him on paid administrative leave pending the results of physical and psychological fitness for duty examinations. On that same day, the captain underwent a physical examination, including a drug and alcohol screen. The following day, the City's employment manager forwarded a referral letter to a psychologist and the Union sent a letter to the Chief demanding to bargain over the psychological examination before it was conducted. The Union sought to negotiate over the selection of the evaluator, the information provided to the evaluator, the testing protocol, the results, and to whom the results would be communicated. The City declined

to bargain and in October, the captain underwent a psychological examination. He was found fit for duty by both the psychologist and the medical doctor and he returned to work.

Newton claimed that it had no legal obligation to bargain over the decision to send a superior officer for a fitness for duty examination or the impacts, including the criteria and procedures for these examinations. It asserted the union had waived these rights in the collective bargaining agreement. CERB found otherwise, ruling that the management rights and medical examination provisions of the parties' collective bargaining agreement were insufficiently specific to support a waiver by contract and that the record contained no evidence that the Union was ever made aware of the three prior instances where the City had required examinations of superior officers. *City of Newton and Newton Police Superior Officers Association, MASSCOP Local 401, MUP-16-5532* (August 20, 2019) (Decision on Appeal of Hearing Officer's Decision), 46 MLC 20.

And that's it. It's been a relatively quiet summer for decisions covering police disciplinary and other appeals before the Commission. From what we have seen coming along in the pipeline, don't expect that to last.

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## Commissioner Cynthia Ittleman Smashes Windows in Beverly—Hiring Process Just Too Too Cozy There

### In Medford They Visit the Sins of the Detective Father on the Candidate Son!

### Leominster Told to Rehire an African-American Officer Canned for Losing His Cool with the Wrong Folks—All He Will Need to Begin Collecting That Check Again Is an LTC

**W**e have a pair of bypass cases to go over with you from Medford and Beverly that don't exactly present these departments in their best light. The case from Beverly could even serve as a poster child for nepotism in the hiring process. The appeal from Medford involves a rejected African-American candidate victimized by bias, not because of his race, but mostly because of management antipathy towards his dad, a former Medford police detective. Other candidates also turned out to be more connected.

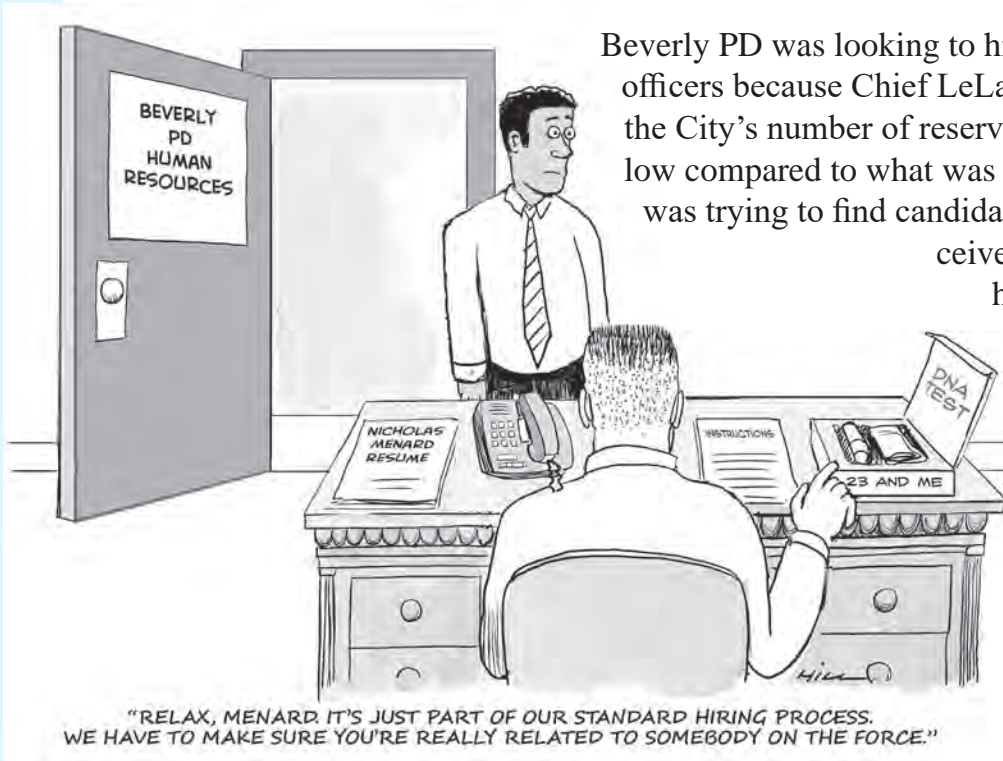
In Beverly, the PD is headed by one Chief John LeLacheur. Originally appointed in 2013, LeLacheur's contract was extended for five years in 2016. The Chief came to Beverly from New Hampshire, where he had served for 29 years as a State Police officer before retiring as a captain in 2013. This year got off to a bit of a rough start for the Chief when the girlfriend of some deviant, held on domestic assault charges, was upset at her boyfriend's high bail. So she showed up at the station with a baseball bat, and started smashing windows! Chief LeLacheur humorously tweeted soon after: "When you come into the station and find out your friend can't be bailed, please don't take out our windows with a baseball bat and expect not to join him." We like the "please" in that tweet.

The Chief is going to need a bit of that sense of humor after the skewering Commissioner Cynthia Ittleman just gave Beverly PD over its hiring practices in [Menard v. City of Beverly](#), 32 MCSR 243 (2019).



Chief LeLacheur

The candidate who got passed over was a pretty good one. Nicholas Menard had been a Cambridge firefighter for eight years and an EMT for 13. He had attended college, been a rescue diver and boat operator in the Marine Unit, and was a hazmat technician. He had great references, a clean driving record, lived in Beverly, and was studying for an M.A. in Human Resources Management. Obviously he had plenty of NARCAN experience as an EMT. His only negative was “fair to poor” credit history. He also had police experience, having worked closely with the Cambridge PD Bomb Squad and trained with the State Police regarding hazardous materials.



Beverly PD was looking to hire permanent reserve police officers because Chief LeLacheur was concerned that the City’s number of reserve police officers was quite low compared to what was authorized. The Chief also was trying to find candidates who had already received police academy training, hoping to save the City a few bucks.

Commissioner Ittleman’s decision in the *Menard* bypass appeal found that Beverly’s hiring process resulted in four out of five candidates being related to members of the Beverly PD and that it used “subjective and fluid methods” of assessing candidates that were riddled with factual inaccuracies. These methods were applied in such a way as to ensure the appointment of the “connected” candidates.

Here are just some of the things the Commission found faulty or pointed out as potentially abusive. First of all, the candidates’ interview score counted for 75% of their total score. Their examination scores only counted for 25%. (This case actually involved the candidate being bypassed twice. In the most recent certification, the interview counted for 50%.) The interview panels consisted of three Beverly police officers—a patrol, a sergeant, and a captain. Chief LeLacheur sat in on the interviews for the second certification (but not the first) and gave each candidate an overall grade.

Second: in both certifications the panels gave a *group* score to each candidate as opposed to individual grading. That’s not a great method. The interview forms also gave no clue as to what the criteria for grading the candidate interviews might be so the standards were entirely

subjective. One of the captains serving on the panels, Timothy Hegarty, was also involved in the hiring process in various ways and had even provided a reference for one of the candidates interviewed by his panel! This candidate listed eight members of the Department, including Hegarty, whom he had known well for at least 10 years. It gets worse. Hegarty's son, also a Beverly PD officer, had provided a reference for the same candidate!!

The result of this "process" was, of course, that the unconnected Appellant got a lousy interview score and was bypassed by four candidates, three of whom had relatives on the force. Chief LeLacheur did not help himself much when he testified before the Commission that his decision not to appoint the Appellant was based on a "feeling." That is probably true of most hiring decisions but you can't say so out loud.

Feelings aside, the Beverly panels scored the connected candidates much higher on certain interview questions than the bypassed candidates even though they gave more or less the same answers to the same questions. And the City inaccurately concluded in justifying Menard's bypass that he had no law enforcement experience!

Moreover, Beverly seemed to have deftly glossed over the negatives of the connected candidates. One of them had been involved in a fight five years earlier that left the victim so bloodied that he required two surgeries. Another one of the favored candidates had a lousy driving record. And three of the selected candidates had very limited law enforcement experience, mostly in the form of brief internships.

What seems to be clear from this case, at least, is that Beverly PD will have to be a whole lot smarter about putting its thumb on the scale for favored candidates if it hopes to escape Commission reversals of its bypasses.

It would be hard for us to imagine Commissioner Cynthia Ittleman heading over to Beverly to smash in the windows of the police station. But she did the legal equivalent of just that to the Beverly PD's hiring practices in her recent decision. For his part, Chief LeLacheur told us in an email that he was disappointed with the ruling but would abide by it, which presumably means that it won't be appealed.

### ***Medford Visits the "Sins" of the Father on the Son And Doesn't Like Anti-Trump Facebook Posts***

***LIKE WHAT YOU SEE?  
[THERE'S MORE!](#)***

**T**he next bypass case we want to share with you has a lot of similarities with the Beverly appeal. You've got connected candidates getting preferential treatment. You've got negative misrepresentation of the "unconnected" candidate's background. And blatant bias on the interview panel. But what was odd about this case, involving one bypassed Kevin Braxton, was that he *was* connected. Or maybe he thought he was.

Now Braxton cannot be said to have been the ideal candidate for appointment as a reserve officer, although the decision doesn't tell us all that much about him. He was 34 years old and suffered through a string of less-than-ideal jobs in his 20s—Trader Joe's, Home Depot, and a low-paying position at a community health center. But when he took the exam, he had been working at TSA for two years (though having a hard time getting to work on schedule).

He did have one thing going for him, however, big time. His dad had been a long-serving detective with the Medford PD and his grandfather was one of Boston's first black motorcycle policemen.

But this background turned against him during his interview when one of the panelists happened to be Captain Kevin Faller, who had previously served as his father's supervisor. Things had not ended on a sweet note between these two. The relationship had soured over a sick leave issue when Braxton's dad called in sick for detective duty (claiming a knee injury) but was nevertheless working details. Hummmm.....This sick leave issue led the removal of Kevin's dad from the Detective Division.

So, you guessed it, Captain Faller's rating of Kevin's interview was the lowest of the interview panel. Of course, given this history, what the hell was Faller even doing on the panel?

Commission Chief Christopher Bowman, who heard this case, knocked out the bypass for a lot of other reasons too, and not just because of a biased member of the interview panel:

- Braxton submitted his application for employment five hours late and that was listed as one of the reasons for his bypass. However, another (successful) candidate, whose dad was a Medford police officer, submitted his application five DAYS late and that was not held against him. What transpired there was that the background investigator went to that candidate's dad and asked him why sonny boy's application had not come in yet. Cute. In Braxton's defense, his late-filed application occurred just at the time his wife gave birth to their first child.
- In justifying the bypass, Medford PD painted an inaccurate picture of Braxton's employment background. The Department referenced his "16 jobs since 2004" and pointed to his tardiness getting to work at TSA. Chairman Bowman wrote that while it was true that Kevin was "unsure" about his career path during his later teens and early 20s, he did become more focused in his late 20s. And although his TSA supervisor did note his excessive tardiness, she also gave him a glowing recommendation, calling him an "excellent employee" and a "go-to officer" when she needed assistance. Kevin had also recently been recognized as the employee of the month. Bowman rejected Kevin's employment history as a justification for his bypass.
- And, of course, no bypass appeal would be complete today without social media issues,



right? Investigators discovered that Kevin’s Facebook page had a profile image of Donald Trump performing a Nazi salute while standing in front of a swastika. He was grilled about



Bad Thing to Post in Medford

this at the interview. Now that was particularly rich given that in October 2016, the President of the Medford Police Patrolmen’s Association admitted “poor judgment” after photographs of Medford officers in uniform were shown mockingly arresting someone dressed up like Hillary Clinton in an orange jumpsuit. The Patrolmen’s Association had also posted a photo of three officers grouped around someone with a Trump mask on with a caption stating: “Make America GREAT again in West Medford Square.” Given this sorry history, Chairman Bowman wrote that Medford could not bypass Kevin based on his photo of Trump as Nazi, where he was only exercising his First Amendment rights, and that, in any event, he had promptly deleted the post and deactivated the account when Beverly background investigators took note of it.

- Medford PD misrepresented Kevin’s driving record, claiming his license has been suspended five times. It was only suspended twice, a decade ago, and for payment reasons. More recently, his record was clean except for one surchargeable accident (failure to yield) which was almost five years old.

And then finally, you knew it, there is the issue of race. Although not formally cited by the Commission’s decision reversing the bypass, race *is* discussed in the decision’s “Findings” section and also gets a paragraph in the analysis. There Commission Chairman Bowman tells us that, of the nine candidates, six were minorities but only one of the six (an Asian) was appointed. Four of six minority candidates were bypassed and the sixth one presumably had lousy scores. All those minority bypasses didn’t look right so the Commission decision notes that it had “weighed the proffered justifications for bypass here carefully.” [Braxton v. City of Medford](#), 32 MCSR 201 (2019).

## Disciplinary Appeals

### Gross Insubordination in Leominster

**W**e have just one disciplinary appeal to discuss with you in this issue. It comes out of Leominster and involves an African-American officer, Cedric Crawford, who was terminated for gross insubordination. Crawford had been employed by the Leomin-

ster PD for around six years as a patrol officer. He was a 14-year military veteran, with combat tours of duty in Kuwait and Iraq, but had received a general discharge from the National Guard in 2017 for “continuous and willful absences.”

The Commission reversed the termination and substituted a 60-day suspension, finding that the City had failed to prove a number of the critical elements it relied on to justify ending Crawford’s career.

What got Crawford in trouble was the insistence of his superior officer, Sgt. Vang Lee, that Crawford better document a CVS shoplifting case with direct confirmation from the reporting party. Crawford had arrested the shoplifter after stopping his car and did not feel further documentation was necessary given the fact that the suspect confessed to the crime and items from the store were found on his front seat. Sgt. Lee was known around the station as a stickler for better documentation by his officers and told Crawford that he was “sick and tired of guys not speaking with the [reporting party.]”

Crawford did as he was told and returned to CVS to talk to the relevant witness. When he was writing up the report back at the station, Sgt. Lee entered the report room and told him that he expected him from “now on” to always speak to the reporting party. At that point Crawford “stood up from his chair and stood in very close proximity, nose-to-nose almost, with Sgt. Lee, and yelled at him, eventually throwing his tactical vest against the wall, and saying ‘I can’t take this shit no more, I’m going home.’”

Crawford then went downstairs to the locker room at which point Sgt. Lee heard a loud bang from that general direction. Rushing downstairs, Lee and another officer found Crawford sitting on a bench facing his open locker, resting his head on his hands. Crawford asked Lee why he was “badgering” him. Sgt. Lee responded he was just trying to make him into a better officer. Crawford began to cry and said he “had a lot of shit going on.” At that point, Sgt. Lee, obviously worried about him, told him to go home for the rest of his shift. Crawford then stood up, unholstered his loaded firearm and placed it on the shelf in his locker. He then threw his duty belt and undershirt into the locker and went home.



Chief Michael Goldman

When Chief Michael Goldman learned of Crawford’s conduct the next day, he placed him on administrative leave and suspended his license to carry. Over the next few days, Chief Goldman reviewed the Department’s audio and video recordings that captured Crawford’s behavior and converted his LTC suspension to a full revocation. After a hearing requested by Goldman to see if Crawford should be discharged, the Mayor decided he should be and Craw-

ford got the axe. (By the way, if you want to see an incredibly patient Chief Goldman during a recent traffic stop with an obnoxious, live-streaming motorist, check out <https://www.youtube.com/watch?v=jQDIWN8ABS0>.)

The Mayor's termination letter says Crawford was being fired for gross insubordination for leaving the station without acknowledging Sgt. Lee and the requests he made to amend the shoplifting report. It also charges Crawford with approaching Sgt. Lee in a "very confrontational manner" before throwing his tactical gear against the wall and later turning on him in the hallway "in a very aggressive manner and it looked like you were about to physically attack him." And finally, Crawford was accused of recklessly tossing his loaded firearm into his locker.



Documentation Stickler  
Sergeant Vang Lee

When it got a hold of Crawford's appeal, the Commission found that the City had not proven the most serious of the charges leveled against him. It rejected the claim that Crawford had mishandled his firearm in the locker room, left the OIC room without acknowledging Sgt. Lee, or turned on him in an aggressive manner as if he was about to attack him. It did find that Crawford was guilty of insubordination and conduct unbecoming for yelling at Sgt. Lee at close proximity, throwing his tactical vest against the wall, and

telling Sgt. Lee that he was going home in the middle of the shift. For that he deserved a 60-day suspension, not a discharge. But the Commission's decision was made contingent on the Superior Court reversing the District Court's decision to affirm Chief Goldman's revocation of Crawford's license to carry a firearm—a decision that might not be forthcoming for a few years. So Crawford may have won a very Pyrrhic victory here.

What overhangs this case is the question of racial bias. Some readers may remember Leominster police officer John Perrault, who was fired in 2012 for calling Red Sox outfielder Carl Crawford a "Monday" and bragging about heckling him on Facebook (while surrounding the post with other racial slurs). In his decision, Commissioner Bowman repeatedly references Crawford's race and notes that the Leominster PD has only two African-American officers in a 70-member department. We note, however, that only 4% of Leominster's population is black, so having only two officers is not really so much out of whack proportionately. Bowman seems to suggest, but does not say so outright, that Leominster officials viewing the videos of the incident were influenced, consciously or not, by stereotypes of hyper-aggressive male African-Americans. He also tells us that Crawford has filed a complaint with MCAD challenging his discharge, presumably on racial grounds. What seems to have really ticked Chairman Bowman off also is that Chief Michael Goldman never even interviewed or talked to Crawford when conducting his investigation.

Goldman may have had his reasons for having his mind already made up, if that was the case. Crawford had a not insignificant amount of prior discipline. In 2018 he was suspended for 10 working days for neglect of duty when he locked himself out of his cruiser and failed to respond to a call for service. In 2017, he received a written warning and two training notices for neglect of duty and deficient performance. And in 2015, he received two training notices and a verbal reprimand, also for neglect of duty.

Reviewing Leominster's disciplinary history, the Commission found that Crawford had also been victimized in this case by disparately harsh treatment. The decision cites, in particular, another officer who had recently been given only 20 hours of punishment duty for a comparable incident involving neglect of duty and confronting a sergeant in a "loud and angry manner."

A final point is this. If a police chief can skirt Civil Service Commission jurisdiction over disciplinary matters by simply pulling an officer's LTC and thereby preventing his reinstatement, civil service protection doesn't mean a whole lot. Chairman Bowman's decision in this case discussing this point cites an unpublished Appeals Court case involving a collective bargaining agreement where the Court wrote that:

Just cause for dismissal is not established by the unadorned fact that a chief exercises his discretion to refuse to issue an employee a firearm, because, if that were all that was needed to dismiss a police officer, the officer's contractual right not to be discharged except for just cause is meaningless.

Part-time Commissioner Paul A. Camuso, who also happens to be an Assistant Deputy Superintendent at the Middlesex Sheriff's Office, made an even better point in his concurrence with Chairman Bowman's decision. He does not believe that it is an inherent requirement for a police officer to carry a firearm at all because officers on restricted or limited duty do not have to do so. Thus, Camuso rejected the majority's conclusion that Crawford's reinstatement needed to be conditioned on getting back his LTC from the Superior Court. [\*Crawford v. City of Leominster\*](#), 32 MCSR 205 (2019).

## ***Odds and Ends***

***You Wanna Be a Sergeant?  
Read the Bloody Instructions***

Once again an exasperated Civil Service Commissioner, this time Paul Stein, turned down an appeal from a less-than-attentive patrol officer who failed to secure E&E credits for a sergeant's promotional exam. Here it was the turn of Officer Michael Buccella from Avon. Buccella had attached in PDF his documentation for his E&E credits (college transcript and verification of his tenure with Avon PD) to his application. But that is not what the instructions say—as outlined by the gazillion emails and reminders HRD sends out telling police

officers what to do. The E&E claim application is separate from the written exam application and has to be filled out separately online. That's how the software works.

Rejecting Bucella's appeal from the denial of these credits, Stein noted icily: "457 of the 461 police officers who took the same examination complied fully with the same instructions." Guess the other three who lost their credits had better things to do than file a useless appeal. [\*Bucella v. Human Resources Division\*](#), 32 MCSR 226 (2019).

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## Oh That Social Media....

### Some Police Just Can't Put it Down

#### Springfield Captain's Latest Embarrassment

**S**pringfield police captain Richard LaBelle is the latest Massachusetts police officer whose obnoxious and intemperate social media posts have gotten him into trouble. LaBelle was suspended for just one day in early 2018 after a dispute on Facebook arising from players from the New England Patriots “taking a knee” before a game.

A cartoon had been posted on a MassLive Facebook page showing a white man wearing a white T-shirt with an American flag logo saying, “That’s offensive!” as he points at a kneeling football player meant to be Colin Kaepernick, while the man’s back is to an unarmed black man (as written on his shirt) sprawled face down with blood pooling around him. When a citizen left a positive comment about the cartoon, LaBelle let her have it, calling her a lying bigot and morally reprehensible. He also attacked another citizen’s post, commenting that this person “could not keep a job bagging groceries.” Although LaBelle was off-duty during these fun and games, one of the citizen posts disclosed that the author knew he was a Springfield police officer.



Captain Richard LaBelle

Strangely, that fact did not deter him at all. The suspension given LaBelle was for discourtesy to the public where the Department felt that it had a right to expect that its police officers (and particularly captains!) should treat all citizens with courtesy and respect. The Commission affirmed the suspension, noting that it did not abridge LaBelle’s First Amendment rights but simply corrected his boorish behavior.

You would think LaBelle would know better. In 2017, a Springfield police officer, one Conrad LaRiviere, was fired for “insensitive comments” he posted in response to a man driving a car through a crowd of anti-fascist protesters in Charlottesville. He lost his appeal.

LaBelle himself has bigger fish to fry. A few days after the Commission handed down its decision in this case in April, he was suspended for five days and put on administrative leave after drawing his gun while off-duty over a confrontation in a Walmart parking lot. The Hampden District Attorney is investigating.

LaBelle is no stranger to the Civil Service Commission. He started out at the Springfield PD in 1997 and spent five years working the night shift in the Records Division. He was subsequently bypassed for promotion to sergeant and appealed unsuccessfully to the Commission. The Department had bypassed him based on its concerns with a 2001 motor-vehicle accident that resulted in the death of two children. In that incident, LaBelle was charged with motor-vehicle homicide but ultimately convicted only of negligent operation of a motor vehicle. The bypass was also affirmed because the Appellant's night-shift position in the Records division gave him little contact with the public or other departmental personnel. *LaBelle v. City of Springfield*, 21 MCSR 412 (2008).

Then Police Commissioner Edward Flynn provided a written statement to HRD explaining his reasons for bypassing La Belle, saying that the officer "did not exhibit any self-awareness, for example, when he stated [at the interview] that he 'had a good temperament' and that he 'did not fly off the handle' despite the fact that the clear consensus of supervisors was that he had significant self-control issues." *LaBelle v. Springfield Police Department*, 32 MCSR 162 (2019).

## ***Be Sure to Fire Those Officers On Probation On Time!***

### ***Maybe Even a Bit Early? Lesson From Stoughton PD***

**M**unicipal police officers serve a probationary period of one year before winning any civil service rights. What that means is that you need to fire that promising candidate you cheerfully hired in May (who went on to wreck three cruisers in June, July, and August) *before* the year is out so that she has no rights of appeal of her discharge to the Commission. And don't wait until the last minute like Stoughton did! The question came up recently there where officials waited until the last minute to show Officer Kimberlyn Lydon the door just one day short of her completing her 12-month probationary period. Now that is cutting it far too close. (Technically, Lydon "resigned" but later tried unsuccessfully to withdraw her resignation letter. The decision doesn't inform us why Lydon was let go.)

So Lydon appealed, of course. The problem here was to decide exactly when to start measuring the year. Is it when you start as a police recruit, finish the academy, or take the oath of office? Well in Stoughton, recruits are not allowed to cover shifts or details or engage in any police work, other than training, until they are administered the Stoughton Police Department Oath of Office. So the Commission ruled that you start counting the 12 months beginning

when the recruit has taken the oath and so has full police powers; and, as a result, Lydon was out of luck. She was short just one day.

Here is a detail from the case that troubled the Commission. Lydon argued that she became a police officer once she was issued a badge and gun. She was issued both halfway through the Academy so she could participate in firearms training. Although the Commission found it shocking and reckless that recruits could hold onto their firearms months prior to being sworn in as police officers, it ruled that Lydon's service started when she took the oath for purposes of securing civil service status.

*Lydon v. Town of Stoughton*, 32 MCSR 194 (2019).



OFFICER LYDON'S LAST DAY ON THE FORCE.

## ***Late Night Out in East Boston Ends Somerville Officer's Career***

***And What About Those Homophobic Slurs?  
Somebody Forget to Mention Those??***

**H**enry Diaz joined the Somerville PD in 2008. He moved to the U.S. from the Dominican Republic when he was a kid, graduated Somerville High School, and received a Bachelor's degree in criminal justice from Curry College. He served in the army for eight years and was deployed to combat duty in Iraq from 2004-2005. When Somerville fired him for beating up a civilian while off-duty, he had no record of any previous discipline.

And it happened like this. One June night in 2017 at around 2 a.m., Diaz and a friend left a bar in East Boston after Diaz had consumed three 16-ounce beers over the course of the evening. While driving around looking for a bite to eat, a male civilian walked in front of the car Diaz was driving and Diaz was lucky to be able to bring the vehicle to a sudden stop and avoid any injuries. The civilian, who is only identified as DB, approached the door on Diaz's side of the car and the two exchanged insults....specifically each one called the other a "maricon"—a well-known homophobic slur in Spanish.

There was some back and forth between the parties. Diaz and his friend then got out of the car and everybody, including a friend of DB's at the scene, started swapping insults. But no violence. Diaz's friend told DB that Diaz was a Somerville police officer, which does not seem to have impressed DB much, because he responded, "Go back to Somerville you corrupt cop; this is little Colombia; we run this place." To which Mr. Diaz supposedly replied with words



to the effect: “No, this is America, if you want to be pulling shit like this, go back to Colombia.”

Fine. Just another night in East Boston. So all the parties eventually dispersed and went their separate ways; except unfortunately for Diaz, a video camera picked up what happened next. From the Commission decision: “At the 1:45:35 mark in the video, Mr. Diaz takes six or seven quick steps across the street, stands in front of DB and punches DB in the head and side, causing DB to fall backwards onto the ground, at which time Mr. Diaz leans down and punches DB in the head three additional times.”

DB filed a complaint with the Boston PD and it investigated. Apparently Diaz was not aware of the video that recorded the whole incident. He gave a statement to investigators that he only struck DB because he felt that he was in “imminent danger” because DB was going to strike him—patently false according to the clear evidence from the camera.

Somerville canned Diaz, despite the absence of prior discipline, pointing to his total failure to deescalate the situation, his lying to investigators about acting in self-defense, and the brutality of his attack. The Commission agreed. Only it went one further.

There is a little technical point it is important to understand about Commission hearings—these are *de novo* which means that the Commission does not have to rely solely on the evidence from the local disciplinary hearing but can collect its own evidence. And the Commission did so here in finding that not only was the Diaz firing totally justified but that he should *also* have been cited for conduct unbecoming a police officer when using the gay slur “maricon”—something the Somerville police had (oops) neglected to do. [Diaz v. City of Somerville](#), 32 MCSR 156 (2019).

***LIKE WHAT YOU SEE?  
THERE'S MORE!***

## ***State Police Overtime Pay Scandal***

***Even the Lawyers for the State Police Can't Follow the Law***

**D**espite being told by numerous judges since at least 2008 that the Civil Service Commission has jurisdiction over State Police disciplinary appeals, lawyers for the State Police continue to argue that the Colonel can use an internal “administrative” proceeding to punish officers and avoid Commission appeals. Once again they were told that this just ain’t so.

What makes the State Police’s position on this issue so outrageous, other than the fact that the agency is blatantly breaking the law, is that the state laws were specifically changed in 2002 at the behest of the State Police Association of Massachusetts to transfer disciplinary appeal jurisdiction from the District Courts to the Commission. The reason for this change was

exactly to offer greater protection to troopers and sergeants from random and unilateral executive action without the expense and delay of court proceedings.

This matter involves appeals from four troopers caught up in the infamous overtime scandal in 2018. Their rights to any kind of procedural due process were completely ignored and they were suspended with two days notice without pay (or health insurance). Here is how the “process,” if you want to call it that, worked.



"IS THIS LIKE A DETAIL OR DO WE HAVE TO SHOW UP?"

On August 13, 2018 the four troopers were told that they were being placed on paid administrative leave and a “duty status” hearing was scheduled for two days later. A day afterward, the four got letters from Internal Affairs saying that they were the subjects of an investigation into overtime abuse— basically, getting paid for work they never did and shifts they never showed up for.

On August 15, a “Duty Status hearing” was held by the so-called “Duty Status Board” regarding

each of these men and at the end of the hearings they were suspended without pay. No due process at all here. The only evidence presented at these hearings was hearsay memos detailing the payroll violations. Not much of a “hearing” was it?

Anyway, following their suspensions, the troopers appealed to the Colonel requesting a real hearing. They also appealed to the Commission, as is their right.

At the Commission hearing on the suspensions for the four troopers, the State Police refused to present any evidence, arguing yet again that the Commission lacked jurisdiction despite a number of court decisions against them on this issue over the years. The Agency claimed that the troopers would eventually get their hearing from the State Police and that the State Police decisions could then only be appealed to the Superior Court, not to the Commission. Obviously what the State Police should have done is schedule a real Trial Board hearing whose decision could have been appealed to the Commission.

Writing for the Commission, an exasperated Chair Christopher Bowman found in favor of the four troopers and reinstated them to their positions. He ruled that the State Police had

failed to justify any cause for the suspensions before the Commission (in refusing to give any evidence) and violated the troopers' due process rights. *Reger v. Department of State Police*, 32 MCSR 136 (2019). The State Police filed a motion to reconsider soon after the decision came down which the Commission denied.

### ***East Longmeadow Fires an Officer For Lying About a Gentle Shove? Or Was it For Not Getting Along with the Chief's Son?***

Officer Michael Calcasola got fired by the East Longmeadow PD in 2017 for allegedly lying about a very minor shoving incident with a security guard. The discipline seems extremely harsh for such a minor peccadillo, particularly since Longmeadow failed to prove that he had lied at all; moreover, Calcasola had no prior discipline and was considered an active and dutiful police officer. At least that's what the Commission thought when it ordered him reinstated and voided the discharge.

East Longmeadow keeps policing in the family. The Chief is Jeffrey Dalessio and his son is Sgt. Joseph Dalessio. The son was Officer Calcasola's superior and according to the Commission decision, they had history between them. Sgt. Dalessio was known to needle and irritate Calcasola and was unhappy about his performance in processing civilian fingerprints and restraining orders. (The Sergeant, of course, dutifully reported this to his Dad, the Chief.) In addition, Calcasola testified at the Commission hearing that Sgt. Dalessio made multiple disparaging statements and comments in poor taste in front of other officers when Calcasola's wife was pregnant. So, there was definitely bad blood between these two.

Calcasola, as we have said, had a good record. He began with the East Longmeadow PD in 2015 so he had only served a couple of years when he was fired. Previously, he had graduated from Westfield State University where he obtained a Bachelor's Degree in Criminal Justice.

The episode that led to his termination started when a call came in for a choking incident at a local business. Calcasola contacted the EMTs and followed them to the scene. Once there, they all waited for a private security guard to lead them to the victim. But this security guard,



Police Chief Jeffrey Dalessio and Son Police Sergeant Joseph Dalessio

called Mr. B. in the decision, was in no hurry and continued to chat on the phone, apparently unaware or unconcerned about the gravity of the situation. Another guard led the EMTs and Calcasola to the victim and the blockage was cleared and the victim hauled off to the hospital.

Calcasola then called his superior on the shift, Sergeant Dalessio, to let him know about the incident. Dalessio asked him to ask the security personnel why they had called the EMTs before calling East Longmeadow PD since a 911 call was the proper procedure. At the time, Sergeant Dalessio was at home having dinner with his Dad, the Chief, and watching television.

When Calcasola went to interrogate the security guard, things did not go well. Mr. B. was defensive and angry and seems to have placed his hands on Calcasola, who responded by telling him never to lay his hands on a police officer. There was (maybe) a little bit of shoving back and forth, nothing serious. Eventually, Sgt. Dalessio showed up and (helpfully) asked Mr. B. if he wanted to file a complaint with the Longmeadow PD against his colleague Calcasola. According to the testimony of Mr. B., the Sergeant then helped him write out the one-page complaint, even telling him to white out some of it and insert that Calcasola was “rude and sarcastic.” He also advised Mr. B. to insert that during the incident, “my arm was up but I didn’t make contact”—thereby suggesting that Calcasola was the aggressor. Mr. B. also testified that there were two different forms of handwriting on the complaint because Sgt. Dalessio filled out some of it. Dalessio testified that he “did not recall” helping fill out the form or the use of white-out in the complaint. But the Commission did not believe him. Mr B. was also found not to be the most reliable of witnesses either but he had no reason to lie about Dalessio helping him with the complaint.

In any event, after the complaint was filed, the matter was investigated by the Longmeadow PD which found that Calcasola had lied to investigators about Mr. B. being the physical aggressor and about Mr. B. being the first to shove him in the chest.

There was video of the incident but it was entirely inconclusive because columns partially blocked the view of the office from the security cameras. Also inconclusive was the testimony of the other officer who was there, Officer Edward Rice.

Nevertheless, the Longmeadow PD went ahead and fired Calcasola and the Town Manager went along.

Obviously this seems like a rather heavy penalty for a very minor incident. Hearing Commissioner Cynthia A. Ittleman clearly did not believe the testimony of Mr. B. about who started this and ruled that East Longmeadow had failed to prove that Calcasola had lied.

As we have said before in this column, there are some cases where you never really know what exactly is going on. Somebody obviously had it in for Officer Michael Calcasola—was it Sgt. Dalessio? His Dad, Chief Dalessio? The Town Manager? All of the above?

One thing is for sure. This case most certainly wasn't about a minor shoving match with a rude security guard or any lies that might have been told about the incident. If we were the East Longmeadow Chief of Police, we would sure want to investigate why a certain Sgt. Dalessio was so super helpful in making sure that Mr. B. filed a complaint against our officer Michael Calcasola. Setting up a brother officer is a far bigger offense than whatever happened here.

But then again, in that case, we would be ordering an investigation of our own son.

In closing, let's just say we are happy that Calcasola got his job back and hope East Longmeadow is not dumb enough to appeal this to the courts. [\*Calcasola v. Town of East Longmeadow\*](#), 32 MCSR 185 (2019).

## ***And Then There Are the Bypass Appeals***

### ***The Candidate That Offered to Trade Sex for a Green Card***

**N**ot only do you wonder why some candidates even bother apply to become police officers but also when they are inevitably bypassed for their atrocious histories they compound the dysfunction by appealing.

Take, by way of example, a certain Omar Martinez who thought he might take a pass at sporting a badge for the Chelsea PD. We learn in the decision by Chair Christopher Bowman that Martinez, an auto-glass worker, had a slew of restraining orders relating to domestic violence. He seemed to like fighting in public and in one incident left a victim unconscious on the street (and didn't call the EMTs). And then there was his driving record. Our candidate was arrested in 2010 on Route 93 during a snow storm driving at 100 mph, weaving in and out of lanes without signaling, and causing other drivers to swerve to avoid crashes. Would you hire this guy?



But our personal favorite from the Martinez file involves a nugget from the interview the police background investigator had with his ex-wife. According to her, Martinez came to her home in late 2016, just before their divorce was finalized, and demanded to have sex with her.

When she refused, he told her that he would stop helping her with her immigration problems if she did not put out. The denial of the Martinez appeal by the Commissioners was unanimous. [\*Martinez v. City of Chelsea\*](#), 32 MCSR 173 (2019).

Martinez was not the only candidate recently bypassed based in part on his driving record. Only this candidate, Alex Diaz, won his appeal because the Lowell PD considered stale driving records going back as far as 20 years. And the City also wrongly relied on the candidate's payment-default license suspensions although it was its policy not to do so—for the simple reason that the default only shows the inability to pay the fine and not the candidate's driving ability. There were also successful candidates on this list whose driving records were worse than Diaz's. More interesting though was that the Commissioners took issue with Lowell's failure to give Diaz any credit for his *positive* driving record in the transportation battalion in the Army National Guard. Bypass reversed. [\*Diaz v. Lowell Police Department\*](#), 32 MCSR 122 (2019).

### ***New Bedford Stumbles Again***

**A**nd finally, Commissioner Paul M. Stein took New Bedford PD to task yet again for bypassing a very strong candidate, Andy Pereira, for original appointment when the City wrongfully concluded that he had lied about his medical discharge from the military. (He had not.) Moreover, New Bedford also erroneously considered negative information about the candidate from a New Bedford police officer whose own brother was competing for appointment from the same certification list. This officer had also once dated Pereira's significant other!

All this was bad enough but New Bedford also erred in justifying the bypass based upon juvenile and other stale information when its own application instructions indicate candidates are not required to disclose this kind of material. [\*Pereira v. City of New Bedford\*](#), 32 MCSR 128 (2019).

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### ***We Want to Hear From You!***

Do you have any advice for your fellow police officials on disciplinary or bypass appeals? An experience you'd like to share in our reporter? Let us know! [Email](#) us.



## How to Discourage Disciplinary Appeals?

Read Them Stats from the Civil Service Commission.

## Definitely Not Good News for Bad Boys and Girls

**M**any years ago, when we first started posting Civil Service Commission decisions online, we would get outraged calls from police officers threatening us with all sorts of nasty stuff, including bodily harm, if we did not take down a decision that presented them in, shall we say, an unfavorable light. In those days, some of these officers were apparently not aware that decisions on their appeals would become very much public and follow them around for the rest of their lives thanks to Google. An officer appealing a minor bit of discipline today would do well to consider whether to just suck it up and do the time rather than let his or her less-than-finest hour be shared with all of humanity for the amusement of the many. Forever.

Although it is to be assumed that most officers today would be aware that any Commission decision would be posted online on multiple websites, Chiefs might nevertheless consider reiterating this point to their staff at the appropriate moment. Another point worth making is that the chances for a successful disciplinary appeal just are not very good. Here are some recent statistics:

Since 2006, that is for a period of 13 years, only *one in five* disciplinary appeals resulted in any kind of favorable relief for the person filing the appeal. And that's *any* kind of relief at all. A lot of these decisions essentially affirm the substance of the discipline imposed but might make slight modifications to the penalty. So, the odds of a truly successful appeal wiping out the discipline are even less than one in five. Recently, the Commission released its stats for 2018 which are slightly better than the 22-year average. In 2018, the Commission issued 18 decisions in disciplinary cases and rejected in their entirety two thirds of these appeals. Not exactly encouraging.

And appeals to the courts from Commission decisions are starting to disappear. In 2006, for example, 25 out of 191 substantive decisions were appealed to the courts. By 2015, that number was down to 10. How many last year? Just one of the 91 substantive decisions decided by the Commission was appealed. That's right. One.



Commentators have various explanations for this phenomenon but there seem to be basically two reasons. First of all, it is the person *filing* the appeal who has the burden of proof before the Commission and that is not nothing to overcome. Secondly, Commission decisions are thought to be far more artfully crafted recently in the sense of being bulletproof from appeals. That gives pause to lawyers and their clients considering the time and expense involved in court appeals. For a fuller discussion of Commission statistics, please click [here](#) to review the recent commentary of attorney Andrew J. Gambaccini who writes for our *Massachusetts Civil Service Reporter*.

And by the way, the statistics for bypass appeals are not much better as you will see if you take a look at Gambaccini's column.

## ***Slugging It Out in Westford***

### ***Two Officers Let Loose in Station House Brawl Did Someone Miss the In-Service De-Escalation Training?***

**S**o here is a good example of an officer who took an appeal and should not have. And his moment of clownish behavior will follow him around for life.

You sort of wonder reading about Officer Timothy Galvin whether he picked the right profession. He joined the Westford PD in 2011. His father, Dennis Galvin, was a retired state police major who had been a candidate for the Board of Selectmen and State Rep. But wherever the apple fell, it didn't land anywhere near the tree, as you will see.

Our story begins one day in 2016, when he and another Westford officer, Jon Aslam, started beating the crap out of each other in the Report Writing Room at the police station. According to testimony before the Commission and at the local hearing, it seems likely that Galvin was the aggressor. Before it was over, it took two sergeants and a Deputy Chief to break up the fight and pull the two apart.



The origin of the fight arose from Officer Aslam putting in for a personal day for Thanksgiving, following which a rumor spread that his decision to do so would force another officer to "order in" or work the holiday. This rumor was false. Aslam had made arrangements

for his shift to be covered by a detective so there was no question of anyone being ordered in on that particular Thanksgiving.

On the day of the fight, Galvin and Aslam were discussing the matter in the parking lot at the station and Galvin was telling Aslam that a lot of officers were upset about Aslam's personal day. But Galvin would not reveal to Aslam who these officers were and did not seem interested in Aslam's explanation that the shift had been voluntarily covered. By the time they got to the Report Writing Room, things had taken a turn for the worse and punches were flying.

Westford Police Chief Thomas McEnaney was outraged by the incident. The local paper quotes him as declaring, "We are not going to tolerate this! This cannot happen. Two officers in full uniform with guns involved in a fist fight in the station. It has never happened in my 30 years here!" The Chief punished each officer with a five-day suspension. Galvin appealed his suspension, but Aslam did not. And why not? The same local paper quotes him as saying, "I did not appeal because I was an active participant in an altercation."

Now, how refreshing is that? Someone taking responsibility for his own mistakes and not running off to the union lawyer. And how very unusual.

On the other hand, we have the more typical reaction of Officer Timothy Galvin. Galvin had a lengthy disciplinary history that Town Manager Jodi Ross revealed in a 2016 memo before the local disciplinary hearing, as reported in the *Lowell Sun*. [http://www.lowellsun.com/todayshadlines/ci\\_32521923/westford-officer-slammed-police-fist-fight](http://www.lowellsun.com/todayshadlines/ci_32521923/westford-officer-slammed-police-fist-fight). According to that memo, between 2012 and 2016, Galvin had received two verbal warnings, eight written warnings, and two written reprimands "in connection with the vehicle location system, mobile data computers, insubordination, maintenance of police vehicles, multiple instances of neglect of duty, repeated instances of incompetence, repeated instances involving departmental property, storage of weapons, and multiple instances involving reporting for duty." Now that is quite a list for just a few years on the force!

The Hearing Commissioner assigned to his appeal was Cynthia Ittleman who made short work of it. The conduct was simply indefensible, even if, as Galvin argued, the other guy started it—which did not seem likely. In any event, Ittleman did not care who started it and was not at all impressed that Galvin refused to take any responsibility for his actions and did nothing to deescalate the situation. She was impressed that Aslam did *not* appeal. The spectacle of two officers having at it in the station house was hardly something to inspire public confidence. Ap-



The Outraged Police Chief McEnaney

peal dismissed. *Galvin v. Town of Westford*, 32 MCSR105 (2019). Presumably Galvin won't be stubborn enough to appeal the Commission's decision to court. But don't count on it. Someone might want to tell him that the odds are not at all in his favor.

### ***A Trio of Bypasses from New Bedford But Commissioner Stein Knocks Out Only One***

The Commission decided three bypass cases from New Bedford during this period. It affirmed two of them and rejected the third after Commissioner Paul Stein determined that the candidate had not been shown to have lied about his residency on a previous application for a firearms permit.

The two cases that New Bedford prevailed in were not even close. In *Goncalves v. City of New Bedford*, 32 MCSR 110 (2019), the City had rejected a candidate who had served for a little over a year as a Bristol County Deputy Sheriff. Michael Goncalves was a New Bedford native whose brother is a respected member of the New Bedford PD. There was nothing spectacular about Michael's background: he had an associate's degree in Elementary Education from Bristol Community College and then studied for an additional two years at Bridgewater State College without apparently obtaining a degree. His work experience included gigs in security for the RMV and for a private security firm.

What got him into trouble was the year or so he worked as Deputy Sheriff, a position from which he was fired in 2014 for "fraternizing" with a female prisoner. The prisoner was part of an all-female highway work crew that he was supervising. Goncalves and the prisoner had known each other growing up and investigators discovered various love notes between the two and a sneaky way of communicating with each other via an "untraceable" landline at a body shop run by a friend of Goncalves. The Deputy Sheriff also put money on the female prisoner's phone card so she could keep in touch. How dumb is that? Commissioner Stein comments in his decision that he is at a complete loss to explain why Goncalves and the inmate engaged in extended snail mail and telephone communications when they knew these were being monitored.

Goncalves' defense, such as it was, seemed to amount to the claim that he had not slept with the prisoner and that he had been going through a tough time as a single person when the romance was sparked. He never denied that what he had done was completely inappropriate. How could he? They had him dead to rights.

Obviously when Goncalves made the list for a New Bedford appointment in 2016 he could not attempt to hide the fact that he had been recently fired by the Bristol County Sheriff. Rather strangely though, New Bedford Police advanced his application to a Captain's Board, presumably as a courtesy to his brother. But no further. The Board could not see hiring some-

one who had already shown such terrible judgment in a law enforcement position. And Goncalves did not help himself by performing less than brilliantly in the interview.

### ***Domestic Violence and Messing with CJIS***

As we have often said, with some appeals you just have to scratch your head and wonder why on earth anyone would bother applying for a police job given their record and why they would then go on and appeal their rejection.

Stephen Lima had some military experience and an Associate's Degree in Criminal Justice. While serving as a police cadet in the New Bedford PD, he decided he would run his ex-wife's name (and that of her new boyfriend) through the CJIS Network and the MNI Index. He seems to have done so using someone else's login credentials at a time when this person was not even on duty. And he got caught.

Oh, and the ex-wife? Lima physically and emotionally abused her to the point that she took out an *ex parte* abuse prevention order that a judge eventually extended for one year; and then goosed it up with a firearms surrender order. All this was going on while Lima was applying to join the New Bedford PD. Obviously Lima could not be a police officer if he could not lawfully carry a weapon. New Bedford said "No, Thanks" to his application and Commissioner Stein wholeheartedly agreed. [\*Lima v. City of New Bedford\*](#), 32 MCSR 98 (2019).

### ***Now, What About That 2006 LCT? You Live Where? Fairhaven? C'mon!***

**N**athan Goldrick was a competent candidate for appointment to the New Bedford PD. He was raised in neighboring Fairhaven, received a BA from Bridgewater State College in physical education, and had been working as a professional trainer for a number of sports clubs since graduation. He had grown up around firearms (his father being a correctional officer) and obtained his first FID in 1998 and then an unrestricted LTC in 2006.

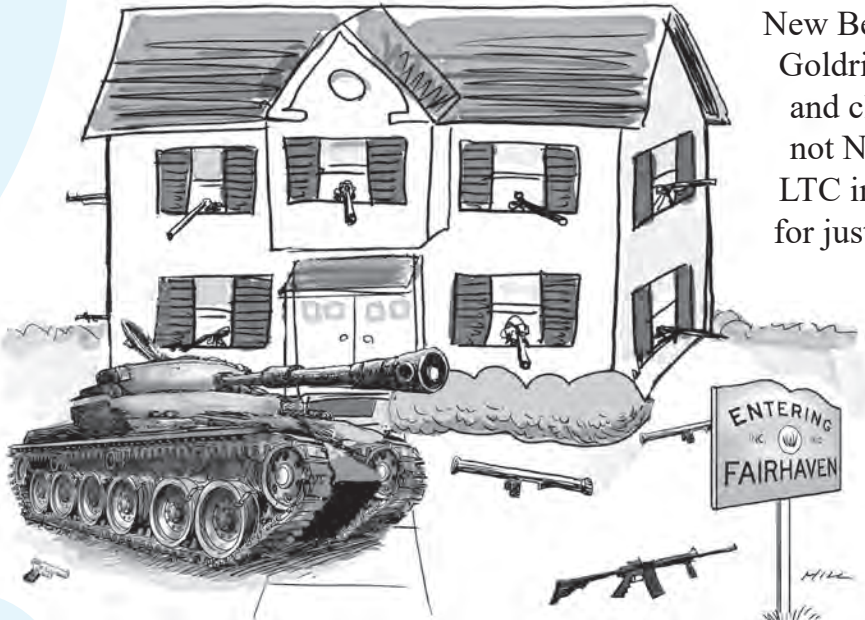
When he applied for the position with New Bedford PD in 2016, the background investigator became convinced that he had lied about his residency on the 2006 application to Fairhaven for an unrestricted LTC. Why would he do such a thing? In 2006, Goldrick was living part of the time in New Bedford with some friends although he still considered Fairhaven his true, official residence. One reason for that was because Fairhaven is where he grew up and where he kept his guns. And Goldrick liked guns.



Fitness Coach Goldrick

When he applied for an LTC in 2006, New Bedford wasn't issuing unrestricted LTCs but Fairhaven was. And Goldrick wanted to carry. The most that a firearms applicant could generally get out of New Bedford at that time was a license limited to target practice and sports. The investigator looking at his background for the New Bedford police appointment took note of the fact that Goldrick belonged to a bunch of gun clubs and wanted an unrestricted permit. He

also noted that on the New Bedford police application the candidate listed his 2006 address as New Bedford. He, therefore concluded that Goldrick must have lied about his residency and claimed that he still lived in Fairhaven, not New Bedford, when applying for the LTC in 2006. Candidates had been bounced for just this reason in the past.



"HOME IS WHERE THE ARMORY IS."

Anyway, citing the 2006 LTC application, New Bedford PD bypassed him. He didn't even get to the Captain's Board—not having a brother on the force.

Commissioner Stein did not agree with New Bedford on this one.

Although Goldrick in 2006 was renting a room in a duplex that belonged to friends in New Bedford, his official "residence" had never changed from his childhood home. He listed Fairhaven as his home address for filing his taxes, he voted in Fairhaven, he registered his car there, and he gave Fairhaven as his home address to employers and health insurers. He also spent a lot of time at the family home in Fairhaven and slept there many nights during the month. And for Goldrick, the fact that he kept his collection of guns in Fairhaven provided an overwhelming rationale for treating that community as his residence.

Although Goldrick in 2006 was renting a room in a duplex that belonged to friends in New Bedford, his official "residence" had never changed from his childhood home.

Part of the problem with this case is the fluidity and vagueness of the term "residency." Different Massachusetts statutes have different definitions for the term. Its meaning isn't exactly spelled out on firearms applications either. Residency is often confused with the somewhat more precise term of "domicile"—which often means the place you consider home—not necessarily where you are sleeping. In any event, wrote Stein, "it is inconceivable to believe that a 23-year old Mr. Goldrick could possibly parse the statutorily ambiguous meaning of the term "residing" in these laws, an ambiguity that appellate courts have explicitly recognized, so that he could be found to have "perjured himself" by listing his "Residential Address" on the 2006 LTC application form as his family home in Fairhaven, which he then still considered his permanent residence (i.e., domicile) and where all his firearms were kept."

That sounds reasonable to us, but Stein only carried the case by a vote of 3-2 at the Commission. Chairman Bowman and Commissioner Ittleman voted to affirm the bypass but don't tell us why. *Goldrick v. City of New Bedford*, 32 MCSR 91 (2019).

### ***Three Generations of Woburn Officers Still Not Enough—An Unexpected Bypass***

Sean Gibbons would have seemed to be a shoo-in for appointment as an intermittent reserve police officer in Woburn. He had a degree from UMass Lowell in Criminal Justice (Minor in Arabic Studies), served two years as a paid, uniformed police cadet with the Lexington police, and had done internships with the Money Laundering Division at DEA and the Burlington PD. The background investigation came up clean and the Police Chief was on board. And his past employers gave him superb recommendations.

In addition, and not to be underestimated, was the fact that Sean would have been the third generation in his family serving the Woburn PD. His late grandfather was a long-serving officer with the Department, his father is a current patrol officer, and his uncle is a lieutenant. The bypass made little sense to Commissioner Stein and he reversed it with unanimous consent of his 4 colleagues. So, what happened here?

In Woburn, the Mayor makes the final call on police appointments. Mayor Scott Galvin gave as his reasons for bypassing Gibbons (while overriding the Chief's recommendation) the fact that the successful candidates had better law enforcement backgrounds than Gibbons and more direct experience serving the Woburn community. Stein's review of the credentials of the successful candidates when compared to Gibbons' demolishes these reasons.

Gibbons also argued that the Mayor was biased against his family, pointing to numerous promotional bypasses that his uncle had been through, and the fact that Gibbon's grandfather may have riled up the Mayor with his vocal support of an enhanced pension for an officer injured in the line of duty. Stein did not buy into these arguments, finding little reason to believe that Gibbons had been the victim of bias or political influence. Still, the Commissioner did find that Mayor Galvin's decision was made without an impartial review and was based on flawed and subjective conclusions.

It is also noteworthy that the successful candidates were every bit as "connected" as the Gibbons family, many with relatives working for the City in various capacities. Maybe Gibbons was just not connected enough. In any event, the Commission's decision will give him



Woburn Mayor Galvin—  
Not Convinced

another chance to become a third-generation police officer with the Woburn PD when the next list comes around. [Gibbons v. City of Woburn](#), 32 MCSR 14 (2019).

## **Bits and Pieces**

### ***Time in Service Does Not Include Service as a School Police Officer***

**A** Brockton patrol officer's challenge to his disqualification from taking the promotional sergeant's exam was dismissed because he failed to meet the requirement that he have three years of service in the force. The officer tried to argue that the time he spent in service as a school police officer for the Brockton Public Schools should be counted toward the three years, but the law says otherwise.

A candidate must have accrued at least three years of actual service "in the force" for which he seeks promotion. The civil service statute, along with the appellate court precedent that have construed it, make clear that this officer's prior service as a Brockton school police officer—a non-civil service position with a different appointing authority—is not service "in the force" within the meaning of the law. [Montrond v. City of Brockton](#), 32 MCSR 65 (2019).

### ***No E&E Credits for Time Served as Campus Police Officer, Prior to 2014***

**C**ommissioner Stein ruled that following statutory changes in 2014, time spent as a campus police officer at a public university may qualify for the 25-year experience credit. However, this did not help one of the Appellants here because he held that position in 1993 when the duties of campus officers were not as clearly described as including all the duties of a "regular" police officer. The law touching on campus police officers was changed in 2014 to more clearly define their duties as those of "regular" police officers. [Ralph v. Human Resources Division](#), 32 MCSR 73 (2019).

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## Five-Day Suspension of Weymouth Lieutenant Tossed by Commission—No Neglect Found in His Telling Responding Officers to Call Home

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## Stow Special Police Officer May Be Old, Says MCAD, But Still a Lousy Cop

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## Bypass Cases Focus on Miserable Driving Histories, Misleading Job Applications, and a Nurse Who Can't Follow Orders

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## Meanwhile, a Boston Patrol Officer Won't See Sergeant Anytime Soon With His Disciplinary Record and an Active Last Chance Agreement

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Civil Service Commissioner Paul M. Stein is a very experienced hearing officer and when he tells you in the first few paragraphs of a police disciplinary decision that the Appellant has a “good reputation,” is a “trusted mentor,” never “shirked his responsibilities,” and could be called “overly protective” when it comes to officer safety and courtesy to dispatchers—well, you know that the Appellant is gonna get some real good news from the Commission. And Weymouth police lieutenant John Burke did just that. But by the skin of his teeth.



Weymouth Lt. John Burke

The case was a bit unusual. One evening in October of 2016, Burke was assigned to the evening shift and was serving as the Watch Commander. It was a very busy night. There was an ongoing investigation of a rape and kidnapping that had occurred earlier in the day that a detective wanted Burke up to speed on. A serious motor vehicle crash reconstruction was also being monitored from the station.

Then a call came in from a resident reporting that his son was “acting stupid” but “not out of control.” The father helpfully added that his child was a “real drunk and also had a warrant out for his arrest.”

The dispatcher entered the call in the computer log as a DK and dispatched two cruisers and patrol officers to the scene—one of them a K9. The dispatcher then ran the subject and confirmed an outstand-

ing straight warrant on him stemming from an incident a few months back that triggered the issuance of a summons for failure to appear on a criminal complaint of assault and battery on ambulance personnel. Nice.

The son is what we used to be able to call a rotten kid. The decision talks about his having “psychological issues.” Rotten kids have lots of psychological issues. That’s why they are called rotten kids.

The dispatcher soon found out that Weymouth PD’s master card on the rotten kid was annotated with the word “Caution” in bold red type near the top of the page and the notes section stated “CAUTION...Known combative toward police and first responders. Tends to flee....”

In any event, when this call came in, one of the officers at the station, a sergeant, was very familiar with this rotten kid. He had been one of the responding officers a few months back when the kid was found staggering on the sidewalk, administered Narcan, and transported to the hospital where, en route, he managed to free one of his legs and kick one of the ambulance technicians. This is the incident that led to the summons.

A week later the kid was back at it again. The same sergeant responded to a disturbance call from the teen's parents, who reported an “intoxicated male who was not welcome at home,” says the incident report. When the Weymouth police showed up there was a struggle and the kid swore and spit at the officers. This was the second incident.

So the snafu that led to Lieutenant Burke’s suspension was the third one in just a few months involving this kid. When the sergeant heard the dispatcher take the call, he recognized the name and went into Lt. Burke’s office to give him a heads up that the responding officers should be careful. Lt. Burke broke off the meeting about the rape/kidnapping with the detective and went over to the dispatcher to tell her that she should not put information about the warrant and the rotten kid out over the air but instruct the officers to call the station “right away.” His reason for wanting to go “off air” was his concern that communicating “on air” might put his officers at risk and fuel social media. And further, as noted in Commissioner Stein’s decision, “Transmitting a message that a subject with mental issues, who had not yet been convict-



ed of any crimes, was about to be arrested on a warrant for assault and battery on ambulance personnel, could reasonably trigger media attention that a routine welfare check would not.”

For whatever reason, the two officers who responded to the third call did not pick up the dispatcher’s message to call home before entering the house. True to form, the rotten kid took off leading to a chase, with officers (one of them K9) ably assisted by the muzzled dog Arco. During the arrest in the woods behind the home, the kid managed to kick one of the responding officers in the face, breaking his glasses and causing minor facial injuries before being shoved into an ambulance with the help of some EMTs.

When the K9 officer found out later from the dispatcher about the warrant information and the kid’s frisky tendencies, he chided her with the comment, “We probably would have handled it a lot differently and no one would have gotten hurt” if the officers had known about the warrant. Getting no response from her, he “kind of chuckled” then said, “Have a good day” and signed off.

So there we have it. Chief Richard Grimes ordered an investigation of the entire incident which ultimately led to Lt. Burke being issued a five-day suspension. The main reason for the suspension was that he had not had the dispatcher communicate the warrant info quickly enough and thereby endangered the responding officers, leading to the injuries and the brief hospitalization of one of them. He was also reprimanded for not ordering the arrest of the rotten kid and for making the officer apologize to the dispatcher for chiding her about not communicating the warrant info faster. But obviously the heart of the matter was the delay in communications.

The Commission voted to toss out Burke’s suspension, but only by a bare majority vote of 3-2. The Hearing Commissioner, Paul M. Stein, voted with the majority while Commission Chair Christopher Bowman and Commissioner Cynthia Ittleman wanted to sustain the suspension.

The majority found that Lt. Burke had, in fact, acted swiftly to communicate the info to the responding officers in telling dispatch to do so “right away”. They found that he was justified in his belief that she had equally efficient means of doing so without resorting to a public channel. They also noted that Weymouth policy does *NOT* require warrant info to be communicated to responding officers by radio—only by a “suitable and appropriate” method. So no policies were broken here. The majority also found that Lt. Burke’s actions were taken with the good faith belief that he was acting within his discretion to keep the info “off the air” because of an honest judgment that such an approach was more likely to protect his officers than put their safety at risk.

Lt. Burke, by the way, seems to be one helluva police officer. You can read about one of his more spectacular busts here: <http://www.wickedlocal.com/article/20100226/NEWS/302269745>. *Burke v. Town of Weymouth*, 31 MCSR 367 (2018).

## ***57-Year-Old Stow Special Police Officer Whiffs at MCAD He May be Old, But That's The Least of His Problems!***

**57**-year-old John Connors has been a special police officer in the delightful town of Stow since 2002. When not working there, he's done stints as an officer in Bolton, Harvard, Hudson, Maynard, Rutland—a lot of details but also shifts. Most of the time though, he has been working for Stow, while doing part-time work here and there as a mechanic on the side.

His dream is to become a *real* police officer, by that we mean a full-time one *with benefits*. But bucolic Stow seems to have little interest in getting in any deeper with him. The town just wants to “lease” him short-term. Stow PD turned him down many times when he put in for full-time positions, usually without even bothering to give him an interview. And when the Department caved, once, and let him go through the process, the interview was a complete fiasco.

Now Stow's police department is not under civil service so Connors could not appeal any of his beefs to the Civil Service Commission. He decided instead to try his luck with the Massachusetts Commission Against Discrimination. His theory was that the only reason he was being denied his dream job was because of his age. He also claimed that he was being denied choice assignments for the same reason. His lawyer should have been embarrassed to take the case given that Connors had basically no evidence of age discrimination to present to MCAD, which, in any event, is not known among attorneys as a venue favoring elderly white males with axes to grind.

MCAD is also not known for lightning adjudication. Connors filed his case in 2010 and just got a decision in December of this year. They told him to forget about it. The Hearing Officer, one very capable and experienced Judith Kaplan, made it pretty clear in her decision that the last thing she would ever want to do is give Connors a career boost, acidly commenting at the beginning of her decision that he was the only special police officer serving in Stow who did not have a full-time job elsewhere.

When siding with Stow on its decision not to hire him full-time, Kaplan cited first the complete absence of any evidence presented by Connors of age bias in the Stow PD but then focused on all the *legitimate* reasons the PD had for not wanting him full-time—most of which boiled down to lack of self-control and anger management issues.

And there was a lot of evidence of this presented to MCAD. Police chiefs from a number of neighboring towns had complained to Stow about Connors screaming at motorists and civilians while serving details. Once he got so upset working a detail that he began to throw and kick traffic signs. A former Stow police chief testified before MCAD that Connors was also unreliable and irresponsible in notifying the Department of his plans, making it difficult to

fill the shifts. He had a habit of losing it in meetings and phone calls with various police chiefs, screaming and cursing at them and slamming his fists on tables.

Then there was the time in 2011 when the director of an assisted living facility in Worcester called the station to lodge a complaint about Connors after he went berserk at a meeting over transferring his father to another facility. Connors called the director an “asshole and a fucking immigrant” who should go back to where she came from. An internal investigation followed and a Stow detective interviewing nursing staff at the facility got an earful about how abusive Connors routinely was to staff, constantly reminding them that he was a police officer, and making disparaging comments about immigrants (a clever strategy for securing better care for a patient given the staffing makeup of Massachusetts elder care homes!) Connors was not disciplined over this incident but the investigating officer recommended administrative suspension.



STOW OFFICER JOHN CONNORS....A BIT OLD BUT STILL VERY SPECIAL!

When he finally got that interview for the full time position at Stow, it was catastrophic. Officials were dumbfounded by his answer to the following, not very original or surprising, question: “What is your weakest attribute?” Connors’ answer was to go completely off-topic and spend two minutes ranting about how he disliked Democrats and favored Republicans. He told the panel that President Obama and Governor Patrick (this was 2010) were ruining the state and the country and needed to be replaced.

We sure don’t have much of a problem agreeing with Hearing Officer Kaplan having brushed off this ridiculous age-discrimination complaint from Connors. What we find mind-boggling is that he is still listed on the Stow Police Department web site as a special police officer after they spent a lot of time and money trashing him before the MCAD as a nutbag. They must have good insurance. [Connors v. Town of Stow](#), 40 MDLR 121 (2018).

## ***Bypass Appeals Marked by Lousy Drivers, Lying on Applications, and Disciplinary Records that Don't Encourage Promotions***

**T**he remaining police appeals decided by the Civil Service Commission during November and December related to bypasses for appointment as a police officer.

The first driving case involved a 34-year-old African-American named Akim Dorn who was trying to join the Boston PD. Akim was ranked 52<sup>nd</sup> among candidates competing for 130 slots and so things were looking pretty good for him. He had served with the military police in Qatar, been a member of the Army National Guard since 2009, and currently was working as a campus police officer for Boston College. None of that though could save him from an atrocious ten-year history of reckless driving that included a recent episode where he fell asleep at the wheel and crashed into another vehicle.

Chairman Christopher Bowman decided the appeal and made a memorable point about deciding cases involving bad driving records. He wrote that he gives less weight to entries on driving records such as expired registrations and lack of inspection stickers that might be attributable to socioeconomic factors and may not have much relevance to how well someone might perform as a police officer. Bowman also looks carefully at whether a candidate has had to drive for personal or business reasons.

Dorn tried to argue that he had extensive driving experience both as a campus police officer and in the military without any infractions, but that fact could not overcome his very spotty civilian record and Bowman turned down his appeal. *Dorn v. Boston Police Department*, 31 MCSR 375 (2018).

Another driving record appeal involved a candidate for appointment as a Haverhill police officer. This person, Dante Perella, completely flummoxed officials because he kept changing his story about his driving record. First he said he had no citations or accidents. When the investigator confronted him with some very solid evidence to the contrary, he changed his story and filled out a new questionnaire fessing up. But at the interview, he went back to his original version and once again denied he had any accidents or citations. Sounds like he clutched. Badly. *Perella v. City of Haverhill*, 31 MCSR 393 (2018).

Anthony Sansevero's hopes for appointment to the Quincy PD were dashed by the Commission when it affirmed his bypass despite his having received a superb score of 98. Obviously he is a smart cookie. But Sansevero's problem was that he had a history of failing to follow procedures and getting caught at it.

The candidate was a nurse with a BA from Boston College and nursing degrees from Laboure College and UMass. He had been fired from one nursing job after he gave over-the-counter meds to patients without getting a physician's sign-off in violation of explicit proto-

cols. He was suspended from another job after causing a spill of narcotics that was not properly witnessed or documented. Quincy Chief Paul Keenan testified convincingly before the Commission that he was genuinely concerned about taking on a police officer who might have trouble following rules and regulations. [Sansevero v. City of Quincy](#), 31 MCSR 398 (2018).

Joseph Vigliotti filed a promotional bypass appeal against the Worcester PD over its refusal to promote him to sergeant. Vigliotti had been an officer in Worcester since 2001 and had previously served for ten years at the Worcester County Sheriff's Department. In a very brief decision unanimously supported by Commission members, the bypass was affirmed based on Vigliotti's lengthy disciplinary history that included lying about not seeing a colleague strike a suspect and being removed from a Presidential security detail at the request of the Secret Service after making inappropriate comments about a bomb.

But what finally sealed his fate with Worcester officials was the fact that at the very time he was seeking this promotion, he was subject to a ten-year Last Chance Agreement dating from 2015 that arose from a domestic dispute at the home of his girlfriend where police found he had engaged in violent criminal conduct and conduct unbecoming an officer. For that incident, in addition to the Last Chance Agreement, Vigliotti got 30 tours of punishment duty.

Worcester Police Chief Steven Sargent generously testified before Commissioner Bowman that, even so, Vigliotti could be considered for promotion in the future if he demonstrated a pattern of good behavior and judgment going forward. But not now. [Vigliotti v. City of Worcester](#), 31 MCSR 404 (2018).



Joseph Vigliotti

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## Long Serving Holden Lieutenant Gets the Ax Was It Really Just Cell Phone Porn or Harassing the Ladies?

## Dracut Deputy Chief David Chartrand Wins His Appeal From 10 Day Suspension—Released Scathing Reprimand Letter To Newspaper as a Disclosable Internal Affairs Report—Suspension Downgraded to Reprimand

The Civil Service Commission turned its attention to other matters during September and October so we have only two police cases to report to you. Both are disciplinary cases and they are doozies. Both involve long-serving senior officials, one a Lieutenant from Holden and the other a Deputy Police Chief out of Dracut.

Let's start with Holden. In early November, the Commission voted to affirm the discharge of Lieutenant Christopher Carey who was fired from the Department in 2017 for a string of offenses, the most important being those of spending a whole lot of time on his Department-issued cell phone watching porn and being obnoxious to female employees. Carey had been with the Holden PD for 27 years....he was married, lived in Town, and rose through the ranks from dispatcher to Lieutenant where he was in charge of internal affairs. He was also a certified rape/sexual assault investigator. He had no disciplinary record to speak of.



"HOLD ON, HOLDEN! I'M COMING!!"

Every once in a while we get a case that we know is fishy, probably rotten to the core, and though we read the words of the Commission's decision and gather what press reports we can, try to talk to the participants, we nonetheless have a profound sense at the end of the day that what is really going on is not what is in the record or what people are telling us. That is the case here.

Although affirming Carey's discharge, the Civil Service Commission itself was not so very happy with the results. Four Commissioners noted in their concurrence that they reached their decision "with little contentment" and that the record was tainted by the "problematic origin of the charges and the behavior of certain officers...none of which has any proper place in a public safety program." Chairman Bowman, who heard the case, wrote that the "manner in which the initial and ensuing charges against Lt. Carey arose was both peculiar and unorthodox..." Two of the sergeants who investigated Carey were promoted to provisional lieutenant one day after he was terminated. Rotten in Denmark, huh? Basically it seems the Holden PD ganged up on this guy.

The Town of Holden itself seems to be one of those places where absolutely nothing has ever happened. It has about 16,000 people. Everybody is white. Worcester is nearby. There is no industry except for the 100-employee Alden Research Laboratory, which is actually a very nifty little company that does all sorts of state-of-the art hydraulic monitoring and develops fish protection strategies.

One of the only two (2) points of interest in Holden listed on its Wikipedia page is a steel rotating boom used for testing water meters. In terms of notables who flew out of the town to crush the world, we find a few athletes, a professional poker player, and a Worcester County sheriff. That's it.

The Holden PD, by the way, manages one Chief, one Lieutenant, four sergeants, and approximately nine patrol officers. There are 12 civilian dispatchers.

What seems to have set off the fishing expedition into Lt. Carey's cell phone, and his subsequent discharge, is a series of run-ins with a family of officers that included a Dad, a Son, and a Daughter—all of whom worked as police officers at one time or other for the Holden PD. We don't get their names from the Commission decision but the suggestion is that these three had it in for him—big time.

Here is some of the background. Lt. Carey, while in charge of the Department's Internal Affairs Unit, questioned whether the Father, who had received \$300 in "drug buy" money for a sting that did not go forward, had ever returned the money to the Department. He had not, and after Lt. Carey's inquiry, he had to repay it. Then there was an incident with the Son. Lt. Carey was asked by Chief David Armstrong to investigate after the Son's illegally parked car in a neighboring town was towed. The Son (drunk) went to the tow lot and got into it with the tow-lot dispatcher, prompting a call to the police. Lt. Carey recommended a three to five day suspension but the Chief let it slide with a written reprimand.

Soon after there were a series of incidents involving the Daughter where she was suspected of drunk driving. In one, the call was cleared by the Brother who was on duty—with no action. Now there is a surprise. And there was also a memo that Lt. Carey wrote to the Chief

saying that the Daughter was screwing up field sobriety tests (not her own) and needed a sit down with the Chief to go over her professional shortcomings.

So clearly there was not a lot of love between Dad, Daughter, and Son in this police family and Lt. Carey. And so Daughter, it seems, originated a rumor that Lt. Carey had engaged in some form of unspecified criminal behavior 20 years earlier! None of these claims were ever substantiated but the Holden PD was obligated to turn over the investigation to the State Police. Lt. Carey was then put on administrative restriction (limited duties) that curbed his use of cruisers, details, overtime, and command. It said nothing about removing his access to the evidence room.

The Daughter was interviewed by the State Police and accused Lt. Carey of inappropriately “liking” swimming suit photos of female employees on Facebook and of engaging in inappropriate behavior toward her many years ago at a private residence. Apparently nothing became of the supposed 20-year-old criminal charges against him but it was enough to launch an investigation into other matters. Around this time it also came to light that Lt. Carey had removed a handgun from the Evidence Room that the Holden PD was holding for a civilian woman for safekeeping as custodial property (not evidence) so that the woman could come and pick it up. He only did so at the request of a colleague who lacked the authority or the access code to enter the room. In so doing, Lt. Carey failed to correctly document the removal.

In any event, with the accusations from the Daughter triggering a State Police investigation and the evidence room brouhaha, Chief Armstrong told Lt. Carey he was placing him on administrative leave. The Chief asked him for his keys, fob, Department-issued cellphone, weapon, and badge. These he turned over. But when the Chief asked for the password for the department-issued cellphone, Lt. Carey refused to give it up.



Better Days (2015):

Chief Armstrong commends Lt. Carey and others for their hard work setting up a communications center. Lt. Carey is the big guy in the center holding the pad. Chief Armstrong is at the far right. The sergeant is Adam Porcaro who investigated Carey and was promoted the day after Carey was fired.

Now it's possible that the Department would have been unable to get into the iPhone 4S except that Lt. Carey used the same password for both the Department security door and for his cellphone. Investigators guessed he might have and bingo! They were in.

What they found was a web browser history filled with porn sites. Although the Commission decision spares us this detail, the local press reported that of the 600 searches in Lt. Carey's cell phone, 246 were for porn.

At this point, Chief Armstrong was apparently concerned that the search of the cellphone might be viewed as some sort of disparate targeting of Lt. Carey so he asked the sergeants conducting the investigation to check their own Department-issued cell phone and "self report" whether any pornographic sites appeared in their browser histories. And they both reported, astonishingly, that no such sites were found on their cell phones. The Chief was also told by these same sergeants that other supervisors' cell phones were checked and no porn was found. Seriously.

Testifying before the Commission, Chief Armstrong said he had no idea how the departmental cell-phone/porn investigation was performed. Not his finest hour.

And then the witch hunt, oops...the investigation turned up the sexual harassment of a civilian employee. This woman was a long serving full-time computer project coordinator for the Department and testified that over a long period of time, she had been sexually harassed, bullied, demeaned, and body shamed by Lieutenant Carey to the point of preventing her from coming to work, tanking her morale, and forcing her to take mental health days.

The sexual harassment that this computer specialist convincingly testified to before the Commission was not of a type where the harasser asks for sexual favors. Nope. It was of the nasty, boorish, obnoxious inappropriate type such as asking her to discuss the phrase "once you go black, you'll never go back" and making fun of her extensive butt when she was bent over trying to install a surge protector. He also repeatedly called her a "secretary" and demeaned her work and career potential. More just "not nice" behavior than sexual harassment but behavior that falls squarely within today's generously broad definitions of employment-based sexual harassment.

When Lt. Carey was ultimately fired, Holden PD gave as reasons: accessing porn sites on a Town-issued cell phone, sexually harassing the computer specialist, failing to provide the pass code to his phone when asked, and incorrectly documenting the transfer of the firearm out of the evidence room. There was also another minor charge that involved Lt. Carey using another officer's name without his permission as the reporting officer when filing an incident report for an identity fraud complaint for which Lt. Carey was the victim. There was nothing nefarious going on here. Only that Carey did so hoping that the complaint would be taken more seriously than if the identity of the reporting officer and victim were the same. But he

never asked the officer for permission and then lied about the incident during the investigation, giving the Department another reason to get rid of him.

When the Commission got a hold of this case, it was bothered by the fact that the investigation seems to have owed its origin to the machinations of officers Father, Daughter, and Son. It also did not care so much for the fact that the two sergeants that investigated Lt. Carey were promoted to provisional lieutenants one day after he was fired! A bit of a conflict of interest, that, no? Chairman Bowman was bothered enough about this point to reopen the hearing after it closed to take more evidence on this issue. After doing so, he concluded that Holden PD would have been a whole lot better off using an outside investigator. Nonetheless, at least one of the sergeants in question testified reluctantly against Lt. Carey and was uncomfortable painting him in a bad light and, career motivations aside, Bowman concluded that the facts were the facts.

Ultimately, the Commissioners found that the charges brought against Lt. Carey were sufficiently proven and substantial to overcome their nasty origins and could not be dismissed as a mere pretext to get rid of the Lieutenant. The only thing that might have changed the Commission's collective mind and softened the penalty was the principle of progressive discipline which might have taken into account Lt. Carey's previously clean record. But ultimately the number of the charges and their gravity, combined with his refusal to testify on his own behalf at the local disciplinary hearing, convinced the Commissioners that he did not deserve a break. At least not from them.

Our own view of this case is that this previously undisciplined officer, who gave his entire life to the Department, was done in by a vendetta of officers pissed off that he seems to have taken his supervisory and internal affairs responsibilities a bit too seriously. And they succeeded. This is not to minimize Lt. Carey's obnoxious behavior towards the female civilian employee or his exceptional zeal for on-duty pornography. (Would the Department have been able to pile on as much if the phone search had revealed 246 on-duty searches for exotic travel sites instead of pornography? Is the point that he was screwing off or watching porn?) Clearly, Holden PD had a sufficiently strong legal case for canning him so that the Commission could not disturb it even had it wanted to. But we here are sticklers for progressive discipline. And it seems to us that the appropriate penalty for the boorish behavior and cell phone porn should have been a nice long unpaid suspension. The other charges barely require discussion as they were obviously just trivial garbage tossed in to strengthen Holden's case. [\*Carey v. Town of Holden\*](#), 31 MCSR 311 (2018)

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## ***Personnel or Internal Affairs Record?***

### ***Bad Blood Between Dracut Deputy Chief and Lieutenant Leads to Public Release of Scathing Letter of Reprimand And the Town Manager Piles On Too***

**T**he relationship between Deputy Chief David Chartrand and Lieutenant Michael Fleury of the Dracut Police Department began to go downhill one night in 2009 when then-Sergeant Fleury was on-duty and the officer-in-charge. A call came in reporting that people were being held hostage by someone with a shotgun. And then, quoting from the Commission's decision:

When Sgt. Fleury arrived at the scene, the street was dark. Fleury approached the house with a patrol officer. There was a man standing in the middle of a dark street with a shotgun. Fleury yelled "gun!" to the patrol officer with him and kept telling the person with the shotgun to stop and put the shotgun down but the person kept approaching Fleury and Fleury drew his service weapon. Ultimately it was determined that it was the Appellant [Deputy Chief Chartrand] who was holding the shotgun. There was an investigation in this regard and Fleury and the two patrol officers wrote incident reports.

According to testimony given by Lieutenant Fleury at the Commission, since the time of this incident he has been unable to catch a break from Chartrand. Correspondence he receives from the Deputy Chief is often derogatory and Fleury never gets additional assignments. He can do nothing right in Chartrand's eyes.

Things between the two escalated in September 2015 when Fleury worked 20 hours in a 24 hour period. The Department did not have a formal rule at the time that specifically barred a lengthy shift such as this one but Deputy Chief Chartrand clearly thought that Fleury was pigging out and violating Departmental norms to make a few bucks. Three weeks later, Chartrand had a letter of reprimand hand delivered to Fleury that was absolutely scathing. Here are the sections quoted in the decision:



Deputy Chief David Chartrand

The message that you have put forth to officers within the department is that greed is acceptable, and that making money takes priority over safety.

You need to do some soul searching and dedicate yourself to performing your duties as a supervisor not just making money that is available to you from the department.

Take some time to reflect on the potential consequences that could have occurred had you had to have been involved in a critical incident. Your physical condition and your mental acuity would both be called into question. Both would form a foundation to build a case that your decision making was impaired, as well as your ability to perceive the incident in a reasonable manner. Situations such as that are ripe for aggressive litigation alleging negligence and malfeasance. Your individual decision to work that many hours for person-

al gain could have placed you, the department, and the town in jeopardy of unnecessary legal liability.

Your ... responses do little to alleviate concern, but are indicative of your consistent passive aggressive reaction when your actions are questioned.

Your reference to assigning yourself due to an interest in public safety is profoundly unbelievable.

The last paragraph of the letter then stated in part,

Be aware that if some ambiguity did not exist as to the specifics of the departmental rule restricting hours of work to 16 (sic) in a 24 hour period, your conduct would warrant disciplinary action up to and including suspension without pay. ... You have the right to submit a response letter that will be retained with this letter.



Lieutenant Michael Fleury

Now all this might have ended there except that in 2016 a local paper put in a public records request seeking all internal investigation reports from 2014 through 2016. Preoccupied at the time with a Municipal Resources, Inc. study that was highly critical of the Department, Deputy Chief Chartrand took two months to respond to the public records request. As part of his answer, he released the letter of reprimand he had sent to Fleury a year earlier.

In doing so, Chartrand deftly characterized the letter not as a personnel record but as an internal affairs report. Personnel records are exempted from disclosure under the public records laws but internal affairs reports are not. At least not since the Appeals Court issued its decision in *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, et al.*, 58 Mass. App. Ct. 1 (2003). When the

letter was published in the *Lowell Sun*, Lt. Fleury and his family were “shocked, angry, and embarrassed” by the article, he told the Commission. No kidding. At the hearing, Fleury reported that, as a result of the article, he was still the “butt of jokes” in social settings and had been approached by people asking him how many hours he had worked when on details.

There being little love lost between the Town Manager Jim Duggan and David Chartrand, the Deputy Chief was eventually issued a 10-day suspension over the release of the letter with a number of other charges thrown in relating to truthfulness and Chartrand’s claim that the 20 hours of work put in by Lt. Fleury violated some “unwritten” Departmental policy. The Town Manager also tagged Chartrand for not responding to the newspaper’s public records request within 10 business days and not redacting from the letter the vicious personal attacks and harsh language. He also failed to follow PD procedures in place for internal affairs investigations.

Chartrand's claim that Town Manager Duggan had it in for him stems from his successful opposition to one of Duggan's pet projects: removing the position of Chief of Police from the civil service. Chartrand also claimed that a member of the Board of Selectman, a former Dracut police officer, was biased against him because he had lost out to Chartrand for the job of Deputy Chief.

So what do we have here? First, the Dracut PD did not have a black and white policy barring Fleury from working 20 hours within one 24 hour period. So Chartrand's letter of reprimand lacks a certain legitimacy and overstates the policy. Secondly, Chartrand plays cute and characterizes the letter as part of an internal affairs matter but never conducts an internal affairs investigation or even tells Fleury that he is being investigated. Obviously the characterization of the letter as relating to internal affairs was simply done to allow Chartrand to release it to the press and embarrass his colleague.

When the Commission got a hold of this mess, the Commissioners were split. The majority, which did not include the Commissioner who had heard the case, Cynthia Ittleman, felt that Dracut had failed to prove the most important charges except for those involving Chartrand's failure to provide proper "due process" for his supposed internal affairs investigation. Given Chartrand's previous record of solid performance, and the fact that the Department's rules restricting hours of work had not been "unambiguously enforced" in the past, the majority decided that a letter of reprimand for Chartrand was sufficient punishment and nixed the 10-day suspension.

Commissioner Cynthia Ittleman would have modified the 10-day suspension down to three days, finding that the only violation that Dracut had clearly established was that Chartrand had violated the public records law in taking two months, rather than 10 business days, to respond to the newspaper's public records request.

Commission Chair Bowman would have simply allowed Chartrand's appeal. He didn't think that any disciplinary action was warranted because, in his view, all Chartrand did was provide the newspaper with a document he deemed to be a public record. And to penalize him for doing that would have a chilling effect on the need for transparency in government affairs. Bowman's view was that there is sufficient ambiguity in the public records law between what is a personnel record and what is an internal affairs report that any discipline here would have been inappropriate. He is surely right.

Our view on this case is that Dracut officials, all of them, ought to grow up. And stop wasting valuable Commission time on nonsense such as this. [\*Chartrand v. Town of Dracut\*](#), 31 MCSR 322 (2018)



## ***Residency Preferences...Show Me the Proof***

**R**esidency preferences given candidates applying for police officer positions can often put candidates over the top and allow them to clinch the job. In a recent case, however, the Commission made it clear it might be willing to conduct investigations at the behest of bypassed candidates that claim that the successful candidates benefited from unmerited preferences. The case did not involve the police but originated as an appeal from a failed candidate for appointment as a Pittsfield firefighter. In *Brady v. City of Pittsfield*, 31 MCSR 307 (2018), Justin Brady claimed that he was not selected for an entry-level position because three of the successful candidates should not have appeared ahead of him on the list because they did not qualify for residency preferences. Brady claimed that the three had not lived in Pittsfield for the requisite one year before taking the exam.

Commission Chair Bowman dismissed the appeal but allowed Brady 30 days to file a petition with the Commission stating why it should initiate an investigation of Pittsfield's residency preferences. Pittsfield then has another 30 days to tell the Commission why no investigation should take place.

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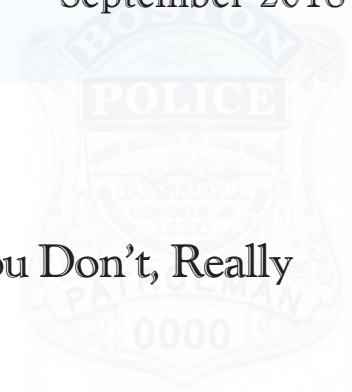
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## Driving Drunks Home In Holyoke— Damned If You Don't, Really Damned If You Do!

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## Bypassing in Lawrence—Daddy Definitely Counts

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## Superior Court Tells Officers Moccio and Doherty to Forget About It

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## Boston Mediation Program for Civilian Complaints on Hold

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**A** good friend who was a highly placed elected official in Massachusetts once told us the story of about what happened to get him to stop driving drunk. He was returning home from a fundraiser while still in public life and weaving along the highway when a state trooper pulled him over. The trooper immediately recognized him (of course, it was his license plates that gave him away). “Sir, we are taking you home right now! I will follow you until you get there.” Fifteen minutes later our friend staggered out of his car at his front yard and went over to thank the trooper. The trooper cut him off and before driving off, spat out: “Today is the luckiest day of your life! Don’t count on it happening again.” It turned out that our friend had recently done a significant political favor for the trooper’s boss. Needless to say, our friend stopped driving drunk before putting the state through the expense of an OUI process, or worse yet....

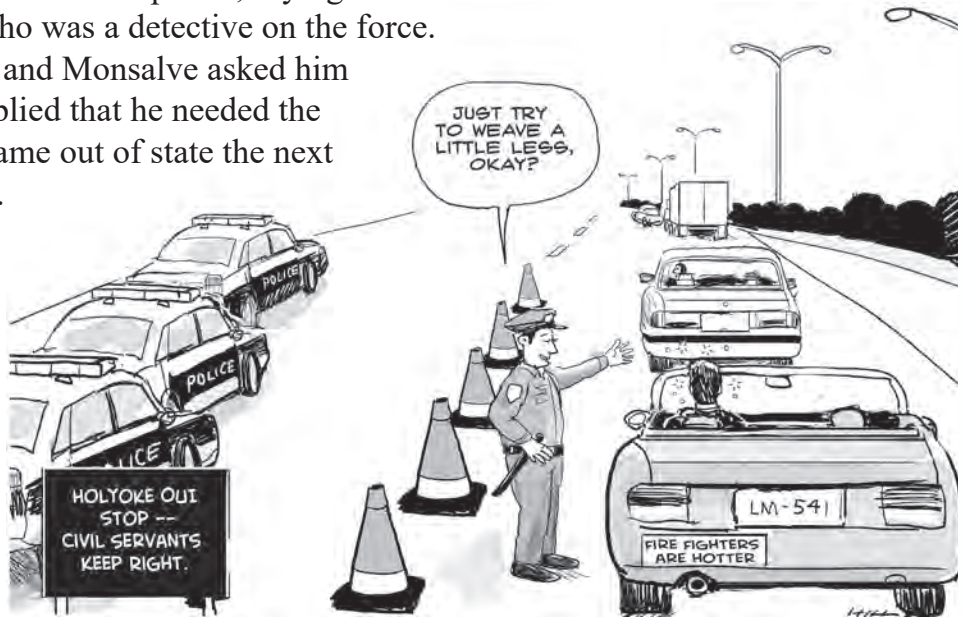
In Holyoke, at least according to police testimony in *Monsalve v. City of Holyoke*, 31 MCSR 225 (2018), this kind of lenient intervention is fairly routine. Apparently police officers often drive people home or take them into protective custody without conducting breathalyzer tests. *Who* happens to get the benefit of this special treatment is not clear from the case.

Sgt. Jorge Monsalve has been employed by Holyoke PD since 2003. He has no record of any discipline. In October of 2016, he was working the midnight shift where he was called to assist two officers who had pulled over a truck that was being driven down a residential street with its lights off. The officers immediately smelled alcohol coming from the cab. The driver had glassy eyes and slurred speech. When Sgt. Monsalve showed up, the driver seemed eerily familiar to him, at which point he confessed that he was a Holyoke firefighter. Sgt. Monsalve made the decision to park the driver’s truck and give him a ride home. So far so good. Not an unusual event in Holyoke. But here is where it went really wrong.

Unlike our political friend, this tipsy firefighter learned nothing from the episode and was spotted out and about later that very night by the same officers who had initially stopped him. And he was back driving his truck!! The officers activated their lights and a high speed chase ensued until Sgt. Monsalve told them to abandon it since the firefighter in all probability was simply driving the vehicle back to his home. Which is what he did.

When Monsalve and the officers arrived at the firefighter's house, the firefighter became belligerent and refused to hand over his cell phone, saying he was going to call a good friend who was a detective on the force. The officers put him in handcuffs and Monsalve asked him what was going on. The drunk replied that he needed the car to drive his son to a hockey game out of state the next day and had simply gone to get it.

So at that point Monsalve got on the phone and called his lieutenant, Laurence Cournoyer, and updated him on the matter. Cournoyer told the sergeant that he "could do nothing" and that the firefighter "just wanted his truck." To his credit, Monsalve replied that he simply wasn't comfortable doing nothing. The lieutenant then told him that he could place the driver in protective custody or arrest him and that he, the lieutenant, would stand behind him either way.



Monsalve then did a query of the Department's internal database and learned that the firefighter had previously been arrested for OUI many years before but the database did not indicate the disposition of the matter. He then walked back to where the driver and the two officers were standing and asked him in an incredulous tone, "You've had an OUI before?"

Nevertheless, after consulting one of the officers present, Monsalve decided to place the firefighter in protective custody and not arrest him. At the police station, he was processed and placed in a cell, but was never administered a breathalyzer.

Monsalve's protective custody report did a pretty good job of hiding the facts, stating in full that the firefighter "was encountered [at his home address]. While speaking with him he had slurred speech and smelled of an alcoholic beverage. He was assisted to the Holyoke Police Department."

That was it. That's the full report. Nothing about driving drunk (twice), the chase, or anything else. Buried.

You wouldn't be reading about this except that a local reporter somehow found out about the incident a few days later, prompting Chief James Neiswanger (now retired) to order an investigation of the incident. The investigators came back with a recommendation that Monsalve be disciplined for failing to file criminal charges, taking Lieutenant Cournoyer's advice, and producing a ridiculous report. Strangely, the reporter never seems to have written up the story.



Sergeant Jorge Monsalve  
Holyoke PD's Fall Guy

A "Captain's mast" considered these recommendations and found that, "*considering the number of rides home provided to other OUI offenders in Holyoke,*" the best course forward was some form of minor discipline for the abbreviated and misleading report. But nothing in the way of discipline for letting this drunk back loose on the roads. Chief Neiswanger agreed with the recommendations and suspended the sergeant for just 2 days without pay. In his letter accompanying the suspension though, the Chief raked Monsalve over the coals for selective enforcement, failure to make an arrest, and for having exposed the city to the potential liability of paying a huge judgment if the firefighter had hit and killed someone on his second joyride ride around the city.

Monsalve filed an appeal with the Mayor who affirmed the suspension, stating that Monsalve had screwed up by placing the firefighter in protective custody and not arresting him.

Lieutenant Cournoyer, who had told Monsalve to do whatever he wanted with the drunk got no discipline. Just a written reprimand.

When it got its shot on appeal, the Civil Service Commission threw out the suspension. And we think it was a good call.

In a decision written by Commission Chair Christopher Bowman, and joined by three other Commissioners, the panel found that Monsalve had obviously screwed up but that he had been victimized by disparate punishment. It reached this conclusion based on multiple examples of even more glaring incidents of Holyoke police failing to take reasonable steps in response to serious OUI-related stops. These examples were introduced into evidence at the hearing. The majority also found it particularly outrageous that Lieutenant Cournoyer wasn't punished or suspended since he had authorized Monsalve to do exactly what he ended up doing.

One Commissioner, Cynthia A. Ittleman, disagreed with her colleagues and voted to affirm the suspension without modification. But she didn't feel strongly enough about it to write a dissent and explain her reasons.

As Chairman Bowman pointed out in his decision for the majority, police officers are given inherent authority about when to make an arrest and obviously Monsalve's use of discretion did not work out here.

But in our view, this kind of discretion has worked out very well for someone like our friend and certainly for many others who are scared straight. The trick here is to exercise that discretion intelligently. And if a Department has a "culture and history," as Chief Neiswanger put it in his disciplinary letter to Monsalve, of offering people a free ride home instead of arrest, then you can't pile on one of your colleagues when this kind of discretion backfires just because a local reporter is snooping around and discovers one of your firefighters is a pinhead.

Clearly Monsalve was getting the message from Lieutenant Cournoyer to go easy on the firefighter. We think that Monsalve's real mistake here was not arresting the drunk when the Sergeant found out later in the evening that our firefighter had previously been arrested for OUI, even though the disposition was unknown. Clearly, as events played out, this guy was a repeat offender, and a jerk, and needed more of a wake up call than a ride home in a cruiser. Monsalve should have been able to figure that out after 13 years of policing.

### ***Who's Your Daddy?***

***In Lawrence it May Matter***

***Maldonado Bypassed in Biased Process***

***LIKE WHAT YOU SEE?  
[THERE'S MORE!](#)***

Over the years, we can't say we haven't noticed that some police and many municipal officials often have a gigantic blind spot when it comes to conflicts of interest. What should set off alarm bells and send them running from obviously conflicted situations often does not. Conflicts emerge when people want to help their friends and relatives or punish their enemies. [\*Maldonado v. City of Lawrence\*](#), 31 MCSR 212 (2018) was of the "punishing your enemies" variety.

Jose Maldonado put in to join the Lawrence PD long after his dad, Harold, had retired in 2003 after 20 years on the force. The two principal actors in the rejection of his application were Sgt. Det. Maurice Aguilar and Lawrence Personnel Director Frank Bonnet—the latter is the real villain here. But let's not get ahead of ourselves.

In 2016, Lawrence PD requested a Spanish language certification to fill seven vacancies. Jose Maldonado was ranked fifth as a veteran but was bypassed. Here are the details:

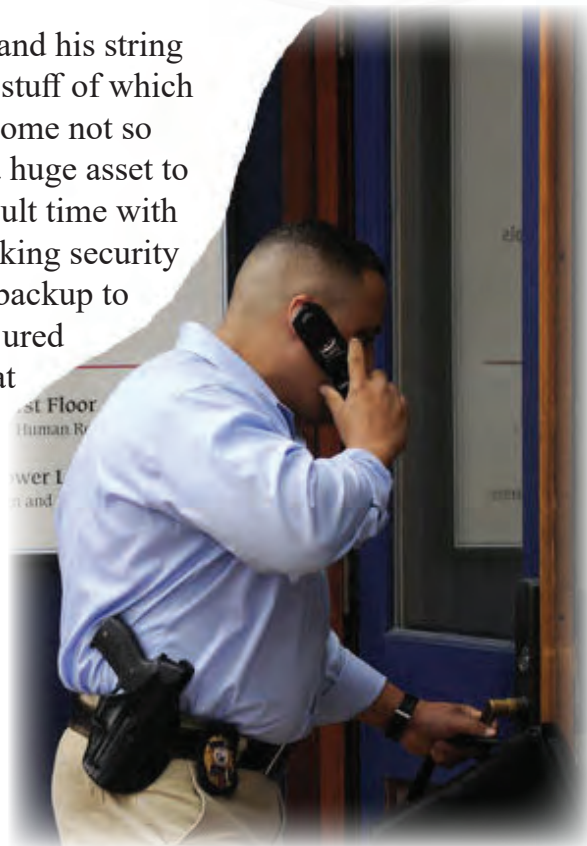
No one could say that Jose was a brilliant candidate. He was a veteran but had washed out nearly two years into a four-year term on what is called an “adjustment disorder.” Maldonado apparently did not much like his job assignment of guarding a remote missile silo, finding the work tedious and unable to endure the long separations from his family. Although he bailed early from the military, his discharge was nonetheless legally considered an “honorable” one.

Maldonado’s educational background was unremarkable and his string of restaurant and debt collection jobs was not exactly the stuff of which dreams are made. He had some good job references and some not so good. One employer called him a “stellar employee and a huge asset to the team” while another described him as having a “difficult time with authority” and no work initiative. He was fired while working security at retail chain Lord & Taylor for providing unauthorized backup to another retail store after its loss prevention officer was injured by a shoplifter. He doesn’t seem to have been very good at filling out the police questionnaires either, as there was a bunch of stuff missing from his application—missing because of sloppiness and not because of any intent to mislead. And he was divorced.

Under a clean process, Lawrence officials could have come up with any number of valid reasons to legitimately bypass Maldonado. But they just couldn’t help themselves and put their fingers on the scale in an effort that backfired and led to the Civil Service Commissioner throwing out the bypass. Here is what happened:

As we said, Maldonado’s dad Harold is a former Lawrence police officer who retired in 2003 after twenty years on the force. Since then, he has been keeping himself busy with his own firm that provides investigatory services for state agencies. Harold had history with Det. Sgt. Aguilar—the officer chosen to conduct the background investigation for Lawrence on Jose Maldonado’s application. The first bit of history was that Aguilar apparently held Harold partially responsible for his own application to the Lawrence PD being turned down the first time he applied to the force many years back. People have very long memories but what exactly Harold Maldonado did to help kill his job application we are not told in Commissioner Cynthia Ittleman’s decision.

The second incident involved a call from 2013 where Harold Maldonado was arrested for disorderly conduct by the Lawrence PD in connection with domestic violence allegedly committed by a man who was dating someone in the Maldonado family. Sgt. Aguilar showed up



Det. Sgt. Aguilar Closes the Door on Maldonado’s Police Career

at the arrest after Harold had been handcuffed. Harold denied Aguilar's charge at the Commission hearing that he asked Aguilar to remove his handcuffs and that Aguilar refused to do so. But Harold says Aguilar did his best to see to it that Lawrence PD added to the charges against him arising from this domestic brouhaha. Harold, the father, also says that he got word back from former colleagues on the force that Aguilar was doing his best to torpedo his son's application to join the Lawrence PD.

Incredibly, Aguilar told Jose Maldonado during his background investigation that he had "history" with his father but that it would not get in the way of his conducting a proper investigation. Maldonado was not much reassured and when he met with Lawrence Personnel Director Frank Bonet to discuss his application, he asked Bonet why on earth Sgt. Det. Aguilar was the one conducting the background check given all this history. According to Maldonado, Bonet just blew him off. In his testimony before the Commission, Bonet testified to not knowing about the history between Maldonado's father Harold and Aguilar but this testimony was not viewed as being credible.

When Maldonado was passed over, the letter from Mayor Daniel Rivera to HRD requesting approval of the bypass cited an incomplete application that prevented the city from conducting a thorough investigation and a determination of whether he was entitled to a residency preference. The letter also mentions poor work performance and his early separation from the military.



Frank Bonet; 30 Years of Experience?

For the Commission, many of these reasons were pretty much bogus but there was still enough there to bypass him if the Lawrence Police Department had played straight. According to Commissioner Ittleman's decision, the City exaggerated the extent of the missing information on Maldonado's application and misrepresented how fruitless its attempts were to obtain further information from him. It was also true that Sgt. Det. Aguilar had to rush through the background check because he was only given two weeks to do it. Additionally, the City was found to have asked Maldonado unlawful medical questions and questions about his criminal background that it should not have. Despite these flaws, Commissioner Ittleman emphasized that if Lawrence had not chosen what appeared to be a biased investigator conducting the background and had conducted a proper review of his candidacy, it clearly could have lawfully bypassed him based on the negative job references and his failure to provide contact information for his military supervisor.

Frank Bonet, the Lawrence Personnel Director, who testified before the Commission and was up to his eyeballs on this bypass, is really the person who should have stepped in and fixed the process. He was the supposed expert. Maldonado told him about the bad blood between



Aguilar and his father, yet Bonet went right ahead with the bypass anyway. On his *LinkedIn* page, Bonet describes himself as having “30 significant and progressive years in hands-on experience in human resources and management and leadership, training and development, and project management.” He seems to have left those at the door in this case.

As for Sgt. Det. Maurice Aguilar, he may not have distinguished himself conducting background investigations, but he sure did while on duty April 26, 2016, when he sent low-life Antonio Gonzalez to his final resting place during a horrific domestic violence incident. Officers were called to Gonzalez’s dwelling where he had viciously stabbed his girlfriend in the head and terrorized her for hours. She had previously obtained a restraining order against him and only survived this incident because she pretended to be dead. When the police arrived, Gonzalez was holding his own small child hostage at the window of the third floor apartment and brandishing a gun with which he was threatening civilians and the police. Sgt. Det. Aguilar took him out. Gonzalez’s pathology report shows he was coked out of his mind. The Essex County District Attorney later found Aguilar’s actions in the fatal shooting to be beyond reproach. *Maldonado v. City of Lawrence*, 31 MCSR 212 (2018). <https://www.bostonglobe.com/metro/2016/12/15/lawrence-officer-justified-fatal-shooting-armed-man-who-stabbed-his-girlfriend/r7T3okf5wrYy4M7G3iSG5J/story.html>

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## ***Superior Court Appeals***

### ***Moccio and Doherty Lose Again***

**T**wo police disciplinary cases that we have covered in this publication were recently heard on appeal by the Superior Court. In each of them, the judges upheld the Commission’s decision.

Readers may remember our write up of the [Moccio](#) case from Agawam. Moccio was fired for using excessive force in a jail cell on a drunk who had been acting up at a bar in the Six Flags Theme Park. We thought Agawam had been a little harsh with Moccio given his lack of disciplinary history and would have preferred a long suspension. The Commissioner affirmed the discharge and [so did Judge Michael Callan](#).

[Denise Doherty](#) was a State Police officer assigned to do background investigations for security officers. She was found to have conducted incompetent and unprofessional background investigations and punished with the forfeiture of two days time off. She stupidly appealed this slap on the wrist, lost before the Commission, and lost again [before Superior Court Judge Robert Ullman](#) who agreed that given her obnoxious behavior and arrogance, the discipline imposed was “relatively lenient.”

It never ceases to amaze us that officers appeal these minor disciplinary actions. Not only do they almost always lose, but now all the internet knows about their professional shortcomings that would otherwise go unnoticed.

### ***Department of Labor Relations Nixes Mediation Program of Citizen Complaints Against Police—For Now***

Since 2016, the City of Boston has implemented a mediation program for citizen complaints against police officers. The program was intended to be an alternative to the standard complaint intake and internal investigation process that can lead to officer discipline. Boston's two police unions sought to bargain over aspects of the proposed program, particularly focusing on the criteria for officer eligibility and which mediation service to use. In late August, the Department of Labor Relations affirmed the decision of a hearing officer that the city had failed to bargain to resolution or to impasse with the unions and ordered Boston to stop using the mediation program for any new appeals until it addresses or rejects union objections. [\*City of Boston and Boston Police Patrolmen's Association and Boston Police Superior Officers Federation\*](#), MUP-16-5315 and MUP-16-5350 (August 30, 2018) (Decision on Appeal Hearing Officer's Decision), 45 MLC 4 (2018).

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## Love Triangle Ends Two Policing Careers—One in Plainville and One in North Attleborough

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### Zero Tolerance for Unproven Domestic Violence

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### Boston Officer Escapes Firing Following Charges of Stealing and Storing Military Grade Explosives—For Now

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### State Trooper Casille “The Snooze” Fonseca Gets a 270-Day Salary-Free Nap

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**O**n a summer night at the end of July 2016, David Gould found his girlfriend Julie Ann Barrett in a car kissing another man. He was not pleased. In fact, he had followed them from a bar in his car and then surprised them together along a quiet street in Wrentham. The two lovers had driven from the bar in their own cars and were now together making the most of a few stolen moments in Barrett’s car.

Not an unusual situation except that David Gould was a police sergeant in North Attleborough, his girlfriend was a police officer in Plainville, and her friend for that night, James Moses, was a police detective in Plainville. Gould approached the vehicle yelling obscenities, punched Moses in the face, but took it no further. A fairly modest response under the circumstances. Officer Julie Barrett bolted the scene and drove home to Wrentham and Sergeant Gould followed her there. (They had been living together for a couple of years at her house along with her three kids from a prior marriage.)



David Gould

What happened next would end Gould’s policing career...at least for now, and probably for good. Some sort of altercation apparently took place in Barrett’s house. What, exactly, we do not know for sure. According to North Attleborough police authorities and the Civil Service Commission, it is more likely than not that Gould beat Barrett up. He was terminated soon

after for conduct unbecoming, domestic violence, and assaulting Detective Moses. But the evidence was, let us say, complicated.

Here is what we know. Barrett and Gould both now deny that he ever hit her. But that testimony before the Commission (Gould refused to testify at the earlier local hearing) was contradicted by numerous statements and texts made by Barrett after the fateful night to relatives, friends, and the police. In these texts and statements, she claimed that Gould hit her, and she was afraid that he might have broken her nose. The authorities view Barrett's later disavowals as a classic denial from a domestic violence victim who retracts her statements for financial or other reasons, and then resumes her relationship with her tormentor. Which is what happened here. The relationship resumed. In fact, two days after this incident, Julie Barrett invited Gould to join her on a vacation.



Julie Barrett

If Gould did hit Barrett, whatever injuries he may have inflicted were not very serious. Police officials from Wrentham and Plainville who saw her soon after the incident saw no signs of physical injury. Pictures taken at the time tell the same story. Even Barrett's ex-husband, who saw her the day after the altercation, saw no signs of any injuries. And it is possible that Barrett made those statements and sent those texts accusing Gould of breaking her nose because she was furious at him for texting her colleagues at Plainville PD the night of the incident and telling them that he had caught her "fucking" Plainville Detective Moses. Moses, by the way, signed an accord and satisfaction with Gould and the assault charges against Gould for punching the detective were dropped. The domestic violence charges against Gould were also abandoned by the district attorney after Barrett refused to cooperate.

The Civil Service Commission received Gould's appeal after North Attleborough fired him. The appeal was assigned to the Commission Chairman Christopher C. Bowman, who held no fewer than five days of hearings on the matter. In his decision, made unanimous by the other four Commissioners, Bowman finds that, despite the denials of Gould and Barrett, which he suggests are simply made in the interest of protecting their careers, it is probably true that Gould smacked Barrett around and such conduct simply cannot be tolerated in a police officer. Essentially, he says there should be zero tolerance for domestic violence, principles of progressive discipline notwithstanding. And, he also shouldn't have punched Detective Moses.

We disagree with the Commission's decision. But we don't disagree on Bowman's factual conclusions or his application of the law. We don't see that given the current state of the law around police discipline and more or less zero tolerance for domestic violence that the Commission could have done anything but affirm the discharge. But we find the results here are excessive and without mercy.

Gould had been with the North Attleborough police for 28 years and risen to sergeant. He had *no record of any discipline*. All that was in his file was a few training letters. Gould's father had previously served as the town's Police Chief for many years. His brother is currently a lieutenant at the NAPD, and another brother is a special police officer with the same department.

So, let's get the easy stuff out of the way. One of the two reasons that Gould was discharged was because he punched Detective Moses. Moses admitted at the hearing that he was grossly intoxicated during the entire incident—a nice revelation given that he had driven his car from the bar to the quiet spot along the road to meet up with Barrett. Moses was not interested in pursuing any charges against Gould and even apologized to him for kissing his girlfriend. If all that Gould had done was to punch Moses, it is doubtful that he would have been discharged. For us, punching someone who is kissing your girlfriend in a car seems to square more with foreseeable human nature than any significant criminality or conduct unbecoming. And Moses did not suffer any serious injuries.

On the domestic violence charges, let's assume that everything that Bowman and NAPD concluded about the facts is true. Gould did smack Barrett in the nose, smashed up some furniture in the house, and generally went berserk. Then the two of them colluded to save their careers and deny the whole thing. Is that not too a very human reaction? Should this be career ending? Plainly most people think so.

The law says again and again that police officers are to be held to a higher standard of conduct in their personal and professional lives than the public at large. Police should set an example given their enormous responsibilities. But do we expect them to behave like saints and superhumans? Gould reacted to his girlfriend's perfidy as many might have. Whatever violence he inflicted on Barrett was not particularly serious. And let's not forget that she was hardly defenseless...she was, after all, a police officer trained to deal with conflict. Moreover, Gould had no disciplinary record. Being violent was not part of his CV, at least according to his personnel records. And he was seriously provoked. Critically, violence was never proven by any third party, medical, or scientific evidence. It was "proven" by texts and recollected conversations.

Let's be clear here. Domestic violence is unpardonable. Gould should have been punished severely. We are neither suggesting that he should not have nor do we condone his violence, if any. But we do think the appropriate penalty should have been a very long suspension without pay. Not a discharge after 28 years of discipline-free service and no background whatsoever of domestic violence.

But in the hysteria of our Me Too era, principles of progressive discipline and due process get thrown out the window. And Gould got thrown out with them. We have to say that if Gould had injured Barrett, and such injuries were proven to be reliable by medical evidence, we obvi-

ously would not find his discharge to be excessive. But this was not the case here. The NAPD hearing officer and the Civil Service Commission simply concluded that it was more likely than not that he was violent with her because of stuff she said later and the texts she sent. That is a very one-sided and inconclusive bit of proof.

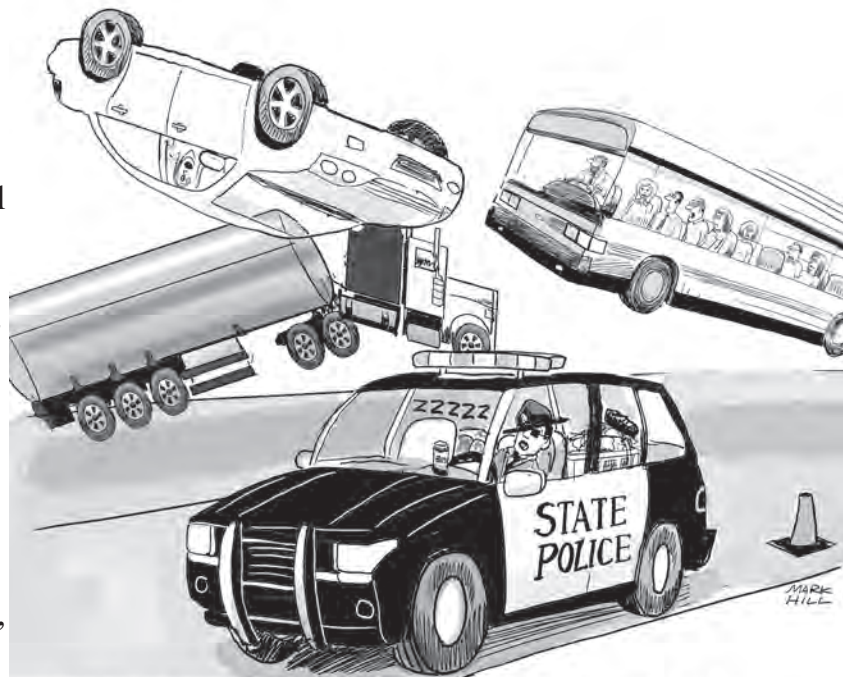
To get another point of view, we asked a psychologist friend about Gould's conduct. He said what would concern him most about Gould was not that he might have been mildly violent with his treacherous girlfriend, much less with a detective who was kissing her, but that his sending of texts to Barrett's colleagues at the Plainville PD denouncing her for "fucking" Moses showed a dangerous lack of self-control inappropriate to policing responsibilities. He also felt that these texts might have provoked Barrett to exaggerate whatever altercation took place.

A final note. Plainville police officer Julie Barrett has been suing the police departments of Plainville and North Attleborough, district attorney personnel, and the State Police for unlawfully seizing her cell phone during the investigation of Sergeant Gould and/or wrongfully disclosing its contents. She says that confidential information on that phone has been leaked to her colleagues to her great personal embarrassment and distress. She no longer works for the Plainville PD. The Plainville police chief would not tell us if she had been fired or quit; nor would he return our calls. [\*Gould v. Town of North Attleborough\*](#), 31 MCSR 186 (2018).

### ***Catching Some Shut Eye During a Detail 270 Day Suspension Affirmed Against State Trooper***

***LIKE WHAT YOU SEE?  
[THERE'S MORE!](#)***

In this case, the Commission affirmed the 270 day suspension (without pay) of State Trooper, Casille E. Fonseca for inattention to duty during two details. Added to the charges were drinking alcohol before a shift, although not to the point of drunkenness, and lying to investigators. The clear implication here is that the trooper was getting some shut eye while serving two details. In one, the Braintree detail, he peacefully "rested" through a serious roll-over accident nearby and failed to respond in any way. In another, an MSP Detective Lieutenant caught him snoozing during a detail in Worcester. To make matters worse, Fonseca was caught out of uniform, smelling of booze, and the back seat of his cruis-



**TROOPER "THE SNOOZE" FONSECA DOES ANOTHER DETAIL.**

er was so cluttered with personal items that there was no room to secure a prisoner. Fonseca passed a field test for sobriety but according to Lieutenant Steven Hennigan he reeked of booze. Afterwards, Fonseca was found to have lied to investigators about both incidents. For example, he claimed that his cruiser was ½ mile away from the Braintree accident and that the traffic blocked his view—palpably false assertions that Hearing Commissioner Paul M. Stein had little trouble disregarding.

Fonseca's inattention to duty was nothing new and could not have come as much of a surprise to his superiors. In 2004 and again in 2007, he served suspensions for dozing off on duty. Prior to his employment with MSP, he was employed as patrol officer for the New Bedford PD.

For 2017, Fonseca is reported to have received an annual salary of \$99,667 and detail income of just \$554. The Commission's decision in his case says he was serving an average of six details a week at the time of these 2015 details that led to his suspension.

Well, at least he avoided that "other" MSP detail scandal. And at least *he showed up* for his details. Kind of. Well, he was in the cruiser anyway. [\*Fonseca v. Department of State Police\*](#), 31 MCSR 198 (2018).

### ***More Explosive Love Literally!***

***LIKE WHAT YOU SEE?  
THERE'S MORE!***

**T**his is one of the oddest cases we have come across in recent years. The Commission in [\*Merricks v. Boston Police Department\*](#), 31 MCSR 169 (2018), modified the discharge of a Boston police officer to a ten-day suspension. The officer in question was Kirk Merricks and he was disciplined for the unlawful storage of military-grade explosives at a home in Plymouth and for conduct unbecoming arising from a minor domestic incident with the wife he wanted to divorce. The Commission found that Merricks deserved only a ten-day suspension for the conduct unbecoming charge related to the domestic incident but that the charges connected to the explosives were not proven.

First, the cast of characters:

Kirk Merricks—A Boston patrol officer who started working for BPD in 2001. Prior background was with the Marines for six years but never deployed on active duty. Served in the Army National Guard from 1996-2003 as a military police officer where he did one year in Afghanistan. Lived in Dorchester and at his wife's home in Plymouth. Prior discipline included a five-day suspension in 2008 for calling in sick 11 times and failing to consult a physician for his illness on one date. Also in 2008, suspended for 15 days for refusing to complete a report for an apparent Assault and Battery



Cheryl Merricks—Merricks's estranged wife. Merricks married her in 2009.

Son A—Cheryl's older son from a previous marriage who enlisted in the Marines in early 2013.

Son B—Cheryl's younger son from a previous marriage who enlisted in the Navy in August 2013.



Kirk Merricks

By May of 2013, the Merricks's marriage was on the rocks. Merricks had been living with Cheryl at her home on Paddington Way in Plymouth while commuting into work in Boston to his job at the Boston PD. Four years into their marriage in May 2016, Merricks wanted out. There were some ugly scenes in the home in Plymouth as the marriage imploded with a lot of bickering about finances. Merricks was also upset that Cheryl had called his girlfriend. (Very bad form for a wife to do that!) During one of these scenes on May 31, Cheryl called the Plymouth PD and when officers showed up Merricks was outside on the porch. He denied any violence had taken place and was just waiting for his laundry to dry before leaving.

Cheryl confirmed that there had been no violence, just a lot of yelling. Later it was discovered that Officer Merricks had kicked a hole in the door of the bathroom when Cheryl had locked herself in to call 911. But that was it. He never touched her.

Later that night, after the call had been cleared and Merricks had left for work, Cheryl called the police again although nothing more had taken place and Merricks had not returned to the home. She told officers that she wanted an emergency restraining order just to make sure Merricks did not come back. She repeated that no threats or abuse had been made but she just did not want him returning and removing stuff from the house. After the on-call judge spoke to both her and the responding officer from Plymouth PD, he declined to issue an emergency 209A order. Soon thereafter, she went into court and obtained such an order but then had it withdrawn a few weeks later. Bottom line, Merricks was never violent with her.

Then on July 11, 2013, five days after Son A returned to the Marines from a leave spent in Plymouth, Cheryl called the police and said she had found explosives in her house. The MSP bomb squad showed up and found a quarter pound TNT explosive stick wrapped in a military green cloth container in a back bedroom. Next to the TNT was a Boston PD evidence

bag containing assorted ammunition. They also checked out the shed in the back where they found four grenades with primers that were intact and fully functional. They then discovered fuses and blasting caps. All this stuff was military hardware stolen from the government. But the question was, “Who stole it?” Merricks had a man cave in the basement of the house where he kept his guns. He owned a shotgun, a .45 Glock (his duty weapon) a personal Glock, and an old western rifle.

Later that afternoon, Merricks was arrested for possession of explosives, receipt of stolen property, and possession of ammunition without a license. He was indicted in September 2013 for possession of explosives and four counts of receiving stolen property. The criminal case against Merricks was dismissed by the DA a year later because he could not locate a “necessary witness.” The necessary witness was Cheryl, his wife, who refused to testify.

BPD Commissioner Evans fired Merricks in January 2017 after two separate hearings on the 209A issue and the explosives matter.

In her decision, Commissioner Cynthia Ittleman, joined by all her colleagues, destroyed both the reasoning and results of an investigation by the Boston PD that led to Merricks’s termination. Merricks’s discharge was annulled in its entirety, but the Commission felt a ten-day suspension would take care of the very minor domestic “violence” issue. How did Boston PD screw up? Simply put, it never proved beyond a preponderance of a doubt that Merricks had anything to do with the explosives. Here are some of the problems Commissioner Ittleman cites concerning Boston’s case.

1. No direct evidence was found connecting Merricks with the explosives.
2. His duties in the military had nothing to do with explosives. He simply got the same basic training about their use as every other recruit.
3. The explosives were never reported lost and there was no proof they had been sent to any of the bases where Merricks served.
4. Boston investigators never met Cheryl or interviewed her on the phone because she refused to make herself available.
5. The Plymouth PD recorded its interview with Cheryl but the Boston PD was never able to obtain a copy.
6. Merricks’s fingerprints were never found on the explosives because they were too dangerous to test.

But here is the real problem with Boston’s case. Cheryl reported that she found the explosives on July 6, 2013 but she waited *five days* until July 11, 2013 (after Son A had returned to his Marine base) to report this to the police. So, could Son A have planted the explosives? Maybe. Could Cheryl, in the midst of an highly contentious divorce with Merricks have

done so? Possibly. Son A apparently had no access to explosives in his capacity as a grunt in the Marines but strangely Boston investigators never really nailed this down. They relied on a phone call to his superior—a phone call investigators failed to document and then failed to obtain any kind of written statement from this officer. And, oh yeah, who waits five days after discovering explosives in their house to call police?

Sloppy work by BPD, clearly, with a lot of conjecture. Boston should have done better before ending Merricks's career so casually with evidence that a first-year lawyer could have demolished in court.

After the Commission voided the discharge, a press flack for the Boston PD huffed and puffed about the Commission getting in the Department's face (the flack didn't say that exactly but wanted to) and Boston is appealing the decision to Superior Court. [Merricks v. Boston Police Department](#), 31 MCSR 169 (2018).

**LIKE WHAT YOU SEE?  
THERE'S MORE!**

### ***Stylien Case Back on Reconsideration***

***Boston PD Lawyer Peter Garaghty Wastes Commission Time  
Bogus Reconsideration Motion Given the Boot***

Readers may remember the *Stylien* bypass case from our previous issue. There the Commission reversed the bypass of a Haitian-American candidate for original appointment to the Boston Police Department. The bypass had been based upon a stale felony CWOFF and his driving record. [Stylien v. Boston Police Department](#), 31 MCSR 154 (2018)

Peter Garaghty, who describes himself on his LinkedIn page as an experienced in-house counsel, is a BPD lawyer and “Special” Assistant Corporation Counsel. He filed a useless time-wasting reconsideration motion claiming that the Commission was not entitled to take administrative notice of its own previous decisions where Boston had entered into settlement agreements with candidates where Boston agreed to disregard ancient CWOFFs.

Chairman Bowman also reiterated to Garaghty his point in the original decision that when reviewing someone's driving record, the BPD needs to consider the context of that person's driving. That is, if I have a perfect driving record, but always take the T and rarely drive—a perfect driving record doesn't mean a whole lot. But Alex Stylien worked a job that required him to do a whole lot of driving on Boston's chaotic streets during rush hours and the infractions that he was guilty of were very minor given the amount of time he was out on the road. How hard is that to understand for an “experienced” Special Assistant Corporation Counsel? [Stylien v. Boston Police Department](#), 31 MCSR 209 (2018).

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### **Comments?**

If you have any thoughts or concerns you'd like to share with us, send us an [email](#). We may publish them in a future issue.



## Gardner Officer Tried Out Taser and a Smack in the Face For Medical Treatment

## Somerville Flubs Another Disciplinary Case—Division Commander Skates

## Abington Bypasses Candidate for Being Brazilian—Or Is It For Being a Scofflaw? And is Chief Majenski a Liar?

## Boston Loses Two Bypasses—One for Language Proficiency and One for a Stale CWOFF

## Ex-Revere Police Chief Not Getting Back His Tenured Lieutenant Post Any Time Soon

This last couple of months have brought us a number of significant bypass appeal cases that we would like to share with you along with disciplinary appeals involving a Gardner officer discharged for aiming his Taser at an out-of-control patient at a local hospital and then smacking him in the face. A Somerville lieutenant managed to get the Civil Service Commission to set aside a five-day suspension for harassing other employees where the City did a lousy job proving the case. A dispatcher in Methuen was not as lucky but did get her suspension for incompetence reduced from five to two days after convincing a Division of Labor arbitrator that the botched call at issue did not merit emergency treatment. There were also a number of cases where officers contested the denial of E&E credits for time served as a state trooper in Connecticut and for bungling on-line applications by failing to follow instructions. And former Revere Police Chief Joseph Cafarelli, who apprehended the Marathon bomber, was told to take a hike in his effort to be reinstated in his former position as a lieutenant.

### *Taserman from Gardner*

Joseph Wolski wasn't exactly a babe in the woods. He had served as a police officer in Gardner since 2007, and before that he had done stints with the Winchendon PD and the Mass Environmental Police. And there were also the five years he spent in the USAF as a military police officer.

But December 28, 2016 had been a long day for Wolski and his partner Derek Ferreira. At around 1:00 PM they got a call about a male under the influence of drugs and alcohol threatening suicide. They arrived on the scene to find the gentleman totally out of control and a struggle ensued during which Ferreira injured his hand. Eventually they got this deranged citizen under control and dragged him off to the local hospital where ER personnel calmed him down. But soon enough he was acting up again. In a room nearby, another patient was also

going berserk. Both officers took turns chatting with this patient, but eventually Wolski went into his room, pulled his Taser, and began to threaten him with bobbing and weaving motions. When the patient tried to raise himself from the bed, Wolski gave him a smack in the face with his hand. All of this was witnessed by hospital personnel.



"NO COPAY FOR THIS TREATMENT."

Later in the day, Wolski sealed his fate by boasting about the incident in texts to his partner. The hospital

security adviser didn't appreciate Wolski's conduct at the hospital and reported the incident to Gardner Chief of Police Neil Erickson. And he jumped on it.

After the usual dissembling and denials by Wolski and his partner, the truth eventually came out. Wolski was immediately suspended and terminated soon thereafter by the Mayor. Wolski did not have much of a disciplinary record but there were hints of a certain lack of self-control. In 2012, he received a written reprimand over two incidents, including one where he took off his badge to "meet the challenge" of a civilian that confronted him physically. He also was suspended for a day in 2016 for escalating a verbal confrontation with a department store employee in the presence of an intern. And then there were the three days of volunteer work his Chief made him perform in lieu of suspension during the same year arising out of some improper inquiries Wolski made to another police department regarding an ongoing State Police murder investigation.

Wolski was essentially done in by his partner Ferreira's testimony recounting the whole sorry story at the hearing, after which the Commission unanimously affirmed his discharge. [Wolski v. City of Gardner](#), 31 MCSR 81 (2018).

## ***Somerville Flubs Another Disciplinary Case***

**I**t doesn't seem possible to get an issue of this publication out the door without something coming up that involves the city of Somerville. Well, here we go again. Lieutenant Michael Mulcahy has been employed with the Somerville PD for 30 years. He still is. Since 2015, he has served as the Department's Administrative Lieutenant (Division Commander of the Patrol Division) and shift commander of overall patrol operations. In 2016, Somerville's then Chief Nic Malmstrom slapped Mulcahy with a five-day suspension for harassing his subordinates and co-workers after a number of complaints had been filed against him. Mulcahy was accused of making derogatory and slanderous remarks about members of a dispatcher's and police sergeant's family. (Accusing their deceased father of driving "dead people" to the polls, for example) Another complaint was filed against him for spreading rumors that a police sergeant was being investigated by the "Feds." Mulcahy had been previously called out by his captain for his big mouth. The captain warned him in a 2015 letter to stop harassing a Somerville police sergeant and his girlfriend.

Somerville hired two investigators to look into the charges against Mulcahy. One of them was Lieutenant Timothy Mitsakis, the Lieutenant assigned to the Office of Professional Standards. The other was Alfred Donovan, a former Tewksbury Police Chief, now retired, who peddles his services as a police conduct investigator under the rubric of APD Management. Together these two submitted an investigative report that they claimed "sustained" the accusations against Mulcahy. Commission Chair Christopher C. Bowman later found the cover letter of this report "hard to follow"—not a good start from a consultant. The City then held a local disciplinary hearing. Incredibly, neither at the local hearing nor at the Commission hearing did the City bother to present the testimony of witnesses charging Mulcahy with harassment. They only submitted the report prepared by Donovan and Mitsakis. Pure hearsay, of course.

As a result, the Commission granted Mulcahy's appeal and annulled the five-day suspension. At hearing, Mulcahy presented a plausible defense of his innocence which Chairman Bowman wrote he might have chosen not to believe had Somerville bothered to present some witnesses. (The recorded testimony of some of the witnesses submitted to the Commission after the hearing, *at its request*, did not change any minds.)

Reading between the lines, it seems pretty clear the Commission didn't think Mulcahy was any kind of angel. But Somerville did such a pathetic job presenting its case, the Commission had no choice but to toss out the suspension. [\*Mulcahy v. City of Somerville\*](#), 31 MCSR 134 (2018).

***LIKE WHAT YOU SEE?  
THERE'S MORE!***

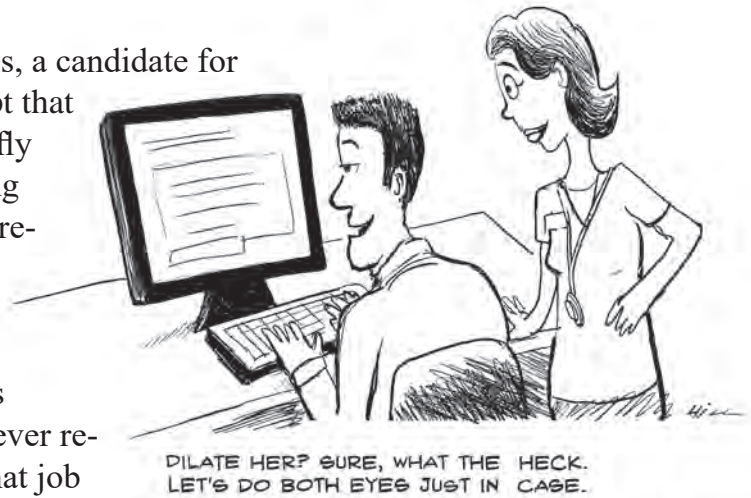
## ***Methuen Police Dispatcher Screwed Up—But Not That Badly Suspension Reduced from 5 to 2 Days***

**A**fter finding that the City had failed to show just cause for one of the two charges that it relied upon to impose a five-day suspension, an arbitrator for the Department of Labor Relations reduced a five-day suspension imposed by the City of Methuen on a police dispatcher, Sherri Ventrillo, to two days. The arbitrator ruled that although the dispatcher had violated one section of the Dispatch Operations Manual relating to the obligation to contact a caller to inform him of a delayed response time, the New England Police Benevolent Association was able to establish that this infraction was of diminished importance because the situation could not be classified as an emergency. In this case, the dispatcher had verified that no one had sustained any injuries.

Ventrillo had taken a call from an individual reporting a road rage incident in a Market Basket parking lot but failed to inform the caller once she knew that the officer who had been dispatched was delayed. The caller had reported that the operator of a gray pick-up truck had been driving erratically, almost struck his wife, and had attempted to start a physical altercation before driving off. The officer did not arrive on the scene until 40 minutes later and could not locate the caller. The City had originally become aware of the incident through a *Facebook* post criticizing the Department's response to the call. Although the dispatcher had been subject to a prior two-day suspension in 2013, the Arbitrator ruled that the City's failure to meet its burden of proof with respect to both charges required the reduction of the discipline from five to two days. [\*City of Methuen and New England Police Benevolent Association Local 117 \(Arbitrator's Decision\)\*](#), 44 MLC 202 (2018).

## ***Bypassed for Impersonating a Doctor***

**W**e don't know much about Michael Lewis, a candidate for appointment to the Boston police, except that he hails from Trinidad and Tobago, briefly attended Merrimack College, and wound up being ranked at number 76 on a 2017 certification that resulted in 130 appointments. He was 38 years old at the time of the Commission hearing, making him a bit on the elderly side for a law enforcement debutant. From 2010 to 2014, he worked as a surgical coordinator at a Boston hospital. He never received any medical training and got fired from that job for signing a doctor's name to a form authorizing a minor eye dilation procedure for a patient who was thereafter to undergo major corneal surgery. The medical office in question was a very busy one and Lewis took the liberty of signing the form





for the doctor, assuming that he had an “implied” agreement with her to take charge in these situations when green lighting such minor dilation procedures. When one of these minor procedures did not go well, and the patient complained, management discovered Lewis had acted on his own and canned him.

The BPD Roundtable reviewed Lewis’s candidacy and decided to bypass him for appointment. The panel concluded that he had shown poor judgment, violated hospital policies, and suffered from a lack of credibility and truthfulness. It did so despite a letter submitted by the doctor that stated her strong disagreement with the hospital’s decision to terminate Lewis, praised his competence as an employee, and said she would hire him again on the spot since he was the best admin she had ever had.

The Commission dismissed Lewis’s appeal, finding that BPD had carefully reviewed Lewis’s application and done a sufficient background investigation—despite the complete lack of cooperation from the hospital. The bypass was made for a valid reason as truthfulness is an essential quality for a law enforcement official and Lewis did not have the authority to sign for the doctor. Commission Chair, Christopher C. Bowman wrote that he, for one, was “stunned” to review the letter from Lewis’s former boss, a highly accredited doctor, that sought to minimize the candidate’s actions. [\*Lewis v. Boston Police Department\*](#), 31 MCSR 148 (2018).

### ***Bypassed for Exaggerating Spanish Language Skills***

***LIKE WHAT YOU SEE?  
[THERE'S MORE!](#)***

**I**n contrast to the prior case, the Commission hammered the BPD in the following two appeals and reversed its bypasses by unanimous votes.

Paul Dabene was a 24-year-old candidate from the North End who was bypassed for untruthfulness, but in his case, it arose from his supposed exaggeration of his Spanish language skills on a cadet application. Dabene was a budget examiner for the Massachusetts State Police when he applied to the BPD for appointment in 2015. On his cadet application, Dabene indicated that his skill level for reading Spanish was “good” but his reading and writing skills were only “fair.” That would seem to be a reasonable response given that he had taken four years of honors Spanish in college but had not had much opportunity to use the language since.

The three choices on the form were fair, good, and excellent. When he was interviewed by BPD, the interview was conducted by Detective Rafael Antunez (whose Spanish is excellent). Antunez asked him “Que hicistes hoy?” or “What did you do today? Although Dabene understood the question, he was unable to formulate a response to it in Spanish. This was, to say the least, embarrassing. Dabene was not offered a cadet position (Boston never told him why).

But he scored very well on the 2015 exam, receiving a score of 91, and put in another application for an original appointment as a police officer. Only on this one, he did not list any fluency in Spanish. When reviewing his application, the Department noticed the discrepancy and asked him about it. He said that his interview with Detective Antunez had shown how rusty his Spanish had become and, despite all his course work in college, he did not feel comfortable listing it as an additional language. The Roundtable went on to bypass him, essentially concluding that he had lied about his proficiency on the first police-cadet application.

In reversing the bypass, the Commission pointed out Boston's lack of any standards for objectively measuring foreign language fluency and the contradictory testimony offered by BPD officials at hearing as to how the candidate should have filled out his application. Chairman Bowman asked BPD witnesses at the full hearing how he, Bowman, should fill out a BPD application given that he had four years of high school Spanish, could count to ten, and could ask the question "Tu tienes agua?" At first, officials (unnamed) said he should fill it out at a proficiency level of "good." But on further reflection, they said they were not sure, acknowledging that the question of proficiency is highly subjective and there were no guidelines in place.

BPD has recently changed its application form, warning applicants that they may be tested on their ability to speak a foreign language during the interview process. [\*Dabene v. Boston Police Department\*](#), 31 MCSR 143 (2018).

**LIKE WHAT YOU SEE?  
[THERE'S MORE!](#)**

### ***Bypass for Long Long Ago Felony CWOFF***

**T**he Commission smacked down another Boston bypass in [\*Stylien v. Boston Police Department\*](#), 31 MCSR 154 (2018). That case involved one Alex Stylien, an African-American candidate bypassed for an ancient felony CWOFF and his less than perfect, but hardly disqualifying, driving record. Stylien is 36, fluent in Haitian Creole, married with one child, and works as the Head Case Worker at a Boston special-education day school. During his 11-year tenure at this school he has taken exactly one (1) sick day and was described by his supervisor as someone who meets his responsibilities and can be counted on.

Stylien went to Mount Ida College and worked at an Abercrombie and Fitch retail store to help pay his way. In 2002, approximately 16 years ago, two of his friends came into the store and left with \$281.90 worth of stolen merchandise...a heist facilitated by Stylien who took the security tags off the items and did not require his buddies to pay. Stylien admitted to felony larceny (over \$250) and the case was dismissed after a year of probation. In 2018, Stylien filed a motion for a new trial in the matter and the judge, at the stipulation of the parties, withdrew Stylien's 2002 admission and again dismissed the case.

How police departments should handle candidates with an ancient felony CWOFF has been a longstanding matter of contention with the Commission. Essentially, police chiefs can take these stale CWOFFs (and the conduct in question) into account when reviewing candidates but cannot use CWOFFs to automatically disqualify candidates. And in this case, says the Commission's decision, it was particularly inappropriate for Boston to give Stylien the boot because the CWOFF was stale (16 years old) and was not shown to be accompanied by any kind of pattern of criminal behavior. It was a one-off; and Stylien has been law abiding ever since.

As to Stylien's driving record it really wasn't particularly bad and far better than other candidates that Boston has allowed to join the force. Stylien's record over the last 10 years included one speeding violation, one minor safety violation, and a "failure to stop" that led to a surchargeable accident. Given that Stylien has a special 7D drivers license that allows him to drive students to school daily through Boston's convoluted roadways during rush hour, the Commission did not think that his record showed any kind of pattern of poor driving warranting a bypass. The takeaway from this is that the Commission will look at the candidate's driving history in the context of where the candidate has been driving and how many hours a day he is on the road. It will also assign more significance to infractions that are more recent.

### ***Bypassed For Being Brazilian or Less Than Law Abiding? Only Abington Knows for Sure***

**A**bington is located in Plymouth County and has around 16,000 residents. It is basically a bedroom community with little commercial or industrial activity. As of the last census in 2010, the inhabitants were carried as 92.5% white. Hispanics or Latinos of any race were less than 2% of the population.

One of them, Joao Paulo Leite Pereira de Araujo, looked like a pretty good candidate to become an Abington police officer. He was in his early 30s, married with two kids, owned a house in town, and had been working corrections for Norfolk County for the last five years where he had received several letters of recommendation and multiple evaluations rating his performance as good to excellent. He was first in his class at the Norfolk Sheriff's Department Corrections Academy, a defensive tactics instructor, and a new recruit trainer. He practiced Jiu Jitsu and had received a number of awards for his excellence in that sport. And he spoke Portuguese fluently and Spanish well (really). His statement in his application for appointment as a full-time police officer says, "I have two beautiful daughters who will grow up in the Town



Chief David Majenski

of Abington. I want to make my girls proud, and serve and protect the community we live in.” Not bad.

Araujo had the right to a review process conducted in a fair, impartial manner, free of personal or political bias. But according to the Commission, he sure did not get one from Abington Police Chief David Majenski and Deputy Police Chief Christopher Cutter. At first, things went along swimmingly. Araujo had already been appointed a volunteer Special Police Officer and received favorable reviews for his performance. He scored high enough on the exam to be ranked 8<sup>th</sup> out of 14 (not too shabby for a nonnative speaker). Abington was looking to appoint three new officers so, after a few candidates dropped out, his chances looked pretty good. That is before Deputy Chief Cutter started investigating his immigration status.



Deputy Chief Christopher Cutter

Araujo, Cutter discovered, grew up in Brazil. He came to the US on a B2 visa in 2001, decided he liked the country, and became a temporary resident in 2005. He picked up a green card in 2007 and became a US citizen in 2009. After digging around a bit, Cutter discovered that, in all probability, Araujo unlawfully overstayed his original B2 visa and failed to report his income to the IRS for a period of three years after he first arrived in the US. And it was at that point in time that Abington’s review of his background took a turn for the worse and ultimately led to Chief Majenski to produce a mostly bogus list

of two dozen allegations against him to justify his bypass. And he also fired Araujo from his volunteer position as a Special Police Officer. On appeal, the Commission determined that most of these reasons were unsupported by the record, taken out of context, or simply untrue. Not only that, but Cutter and Majenski subjected Araujo to a disparately harsh background examination that went further back in time and was much more exhaustive than that given to native-born candidates.

By a 4-1 majority, the Commission voted to reverse the bypass and put Araujo’s name at the top off the next certification list. The dissenting Commissioner, Cynthia Ittleman, who had heard the appeal, agreed with the majority’s other conclusions but voted to affirm the bypass because of the candidate’s “failure to pay taxes” for three years when he first arrived in the US. That may have been overstating the case a bit because the evidence had never established that Araujo *owed* taxes. It did establish that he had failed to file a return and report his income to the IRS, which is a very different offense with very different penalties. Nowhere in the evidence was it ever established that Araujo would have owed the IRS taxes on whatever amount of income he failed to report and an accountant would have had to testify in order to establish that.

The rejection of Araujo's application by Chief Majenski and Deputy Cutter is going to cost Abington some bucks in legal fees, if not damages. Araujo filed a national-origin discrimination appeal with the MCAD, as well as a discrimination charge with the Civil Rights Division of the US Department of Justice. The MCAD case is still pending but the DOJ found that there was insufficient evidence to conclude that Abington had discriminated against Araujo. But one can argue here that unlawful immigrant bias may not have played much of a role since Araujo had already been appointed a Special Police Officer. If Abington police didn't like Brazilian immigrants, they presumably would have figured out a way not to appoint Araujo as a Special Police Officer. The Chief and Deputy Chief only piled on when they discovered he overstayed his visa and may not have reported his income. Clearly, they were offended with his less than scrupulous attention to immigration niceties and income-reporting requirements. But this is very different than an anti-immigrant or national-origin bias. In any event these matters were well in the past and, as for the immigration issues, it obviously did not bother the feds since they were fully aware of his status since his arrival in the US and gave him a green card and citizenship. [\*Araujo v. Abington Police Department\*](#), 31 MCSR 59 (2018).

Discrimination aside, what clearly troubled the majority of the Commission was that of the over two dozen allegations Chief Majenski came up with to justify the bypass to HRD, most were "either unsupported by the record, taken out of context or simply untrue." That is a very harsh and unusual condemnation of a police chief from the Commission and about as close as it gets to calling a chief a liar. Clearly Abington needs to pick up its game when it comes to candidate reviews.

A final note: Abington filed a motion with the Commission to reconsider its decision and it was, of course, denied. [\*Araujo v. Abington Police Department\*](#), 31 MCSR 152 (2018). 99 times of 100, parties to lawsuits who file reconsideration motions lose them (that is an unofficial statistic). It is a cardinal rule of human behavior that no one wants to admit they made a mistake. If you are paying your own legal bills, don't waste your money on reconsideration motions. Head up to the next level—or move on.

### ***Revere Police Chief's Contract Not Renewed And They Don't Want Him Back as Lieutenant Either***

When Mayor Brian Arrigo was elected Mayor of Revere in 2015, defeating the incumbent Dan Rizzo, one of his priorities was to get rid of Police Chief Joseph Caffarelli and name his own chief. One with a softer approach to policing—more community focused. He did so in July 2017 when Caffarelli's contract ran out. And that is when the fun began. A letter went out from the Mayor's office in late 2016 to the Police Chief saying that his contract would not be renewed but that he was entitled to return to his tenured position as a police lieutenant at the expiration of his contract the following year on June 30. Caffarelli never responded to this letter and, in July of 2017, the Mayor wrote him to tell him that he could not



Chief Joseph Caffarelli

come back as a lieutenant because he had failed to respond to his previous letter. The letter from the Mayor was not a gentle one, pointing out that there were Revere officers who were not thrilled with the prospect of Cafarelli returning to his prior position as a lieutenant—most particularly some of the sergeants on the current active lists for promotion to lieutenant. The Mayor also mentioned sweetly that Cafarelli might be subjected to certain unspecified disciplinary actions if he sought reinstatement.

Cafarelli appealed Revere's refusal to reinstate him to the Commission but the Commission did not want any part of it. In its decision, it points out that appeals involving reinstatement after leaves of absence must be filed with HRD, not the Commission. And that there is no appeal to the Commission from whatever HRD decides, only one to the courts.

Cafarelli formally retired on August 20, 2017 and receives an annual pension of \$134,368. It's odd that he is messing around with this but maybe this action formed part of a larger litigation strategy against the city and the new mayor. Some may remember that it was Cafarelli's Metro North SWAT team that arrested Marathon bomber Dzhokhar

Tsarnaev in 2013 and it was Cafarelli himself who ripped the terrorist's shirt and pants open to verify he was not wearing a suicide vest after hauling him out of the boat in Watertown. Now that cannot have been a whole lot of fun. [Cafarelli v. City of Revere](#), 31 MCSR 94 (2018).

### ***Odds and Ends—Computer Screw Ups and Wacky HRD Rules***

Police chiefs would do well to remind their employees to be very careful when uploading documentation for E & E credits for promotion. In [Foley v. Human Resources Division](#), 31 MCSR 132 (2018), the Commission dismissed an appeal from a candidate for promotion to sergeant in the Everett Police Department who claimed that he had been wrongfully denied E & E credits. Evidence showed that he had simply failed to upload supporting documentation to the correct part of the website and never followed up when he failed to receive a confirmation email from HRD indicating his application was complete.

And in [Duga v. Town of West Springfield](#), 31 MCSR 100 (2018), the Commission dismissed the appeal from a candidate for appointment to the West Springfield Police Department who had failed to respond to an HRD notice indicating that he had made the eligibility list because he had not checked his junk and spam folders. Explicit instructions from HRD warn candidates *to check these folders* when awaiting important communications, such as this one, and so this candidate was done in by his own negligence.

Finally, in *Naylor v. Human Resources Division*, 31 MCSR 113 (2018), the Commission told HRD to prepare for a full hearing to explain its bizarre policy to allow E & E credits for service as a State Trooper for promotional appointments but not original appointments. The matter came up on an appeal from a seasoned officer who had served 20 years as a Connecticut State Trooper but was denied any credit for it when he took the exam for an original appointment as an entry-level police officer.

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