



Inter-Departmental Correspondence

**To:** Lovely A. Warren, Mayor  
**From:** James P. Smith, Deputy Mayor  
**Date:** September 14, 2020  
**Subject:** Managerial Review of the Death of Daniel Prude  
**Revised:** September 16, 2020

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**September 16 Revision:** An earlier version of this memo misattributed a statement regarding the “politics” of a Freedom of Information Law request to Municipal Attorney Shani Curry-Mitchell. In fact, Deputy Corporation Counsel Patrick Beath used the word politics in a September 8 email encouraging Attorney Curry-Mitchell to expedite a related FOIL. The attribution has been omitted and Curry Mitchell’s role in the FOIL process has been clarified.

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Per your instruction, I have conducted a cursory management review of the handling of the March 23, 2020 Mental Hygiene Arrest (MHA) of Daniel Prude and the subsequent actions by members of the Rochester Police Department (RPD) and other City employees -- to begin determining ‘who knew what and when’ as I was directed.

It should be noted, that this review was conducted almost exclusively using digital files obtained from the Department of Information Technology and I have included some notes at the end of this document regarding the methodology used to compile and search them.

The information in this memorandum is certainly not complete and I recommend that this matter be subjected to a more robust, thorough and complete review/investigation – one that would include these documents and any others that exist, as well as other communications and interviews with those involved. While this review certainly paints the outlines of the picture and begins to tell the narrative of this incident, there are many details and facts that are undoubtedly available and must be pursued.

From this review, I am offering recommendations for immediate action, observations that brought me to make these recommendations, as well as a timeline from the March 23 incident through September 9 -- along with the corresponding records and emails that I was able to review over these past few days.

Based upon my initial and, as I have noted, somewhat limited review, I am able to provide the following recommendations for your immediate action:

1. **Direct** the City Office of Public Integrity (OPI) to initiate a thorough investigation to determine if any employees – including you and me – violated City or Departmental policies or ethical standards. OPI should be instructed to refer any and all criminal or civil violations it may find to the appropriate authority, including an independent law enforcement agency. OPI should be as transparent as possible with the public, City Council and your Office as they move forward with this investigation. The investigation should not preclude you from taking any immediate disciplinary action you deem appropriate.
2. **Request** the U.S. Attorney General’s Office to conduct an investigation into possible violations of Mr. Prude’s civil rights and bring appropriate charges if warranted.

3. **Engage** an outside agency or agencies to review all training manuals, regulations and general orders that govern the conduct of Rochester police officers. This should include a specific review of areas outside the traditional realm of law enforcement, such as the accreditation standards for mental health professionals.
4. **Request** all that the U.S. Department of Justice conduct a thorough review of the of the Rochester Police Department, including a review of all Body Worn Camera (BWC) footage for use-of-force arrests conducted over the past three years. The findings must be made public.
5. **Engage** an outside agency to review the City's Freedom of Information Law (FOIL) process and possibly other functions, with an objective of greater transparency and openness.
6. **Seek** formal clarification and written guidance on the release of public information during criminal investigations conducted by the New York State Attorney General's Office. Going forward, we must ensure that our policies are legal and fair while also maintaining complete public confidence that the City is acting in the interest of transparency and in keeping with the pursuit of justice.
7. **Enact** a policy that the Mayor and Chief of Police will immediately announce to the public all criminal investigation of an RPD officer or arrest that has been initiated – including but not limited to those that are opened by the U.S. Attorney General, the New York State Attorney General's Office (NYSAG), the Monroe County District Attorney or the RPD Major Crimes Unit.
8. **Adopt** and embrace a robust process driven by an engaged public to bring systemic reform to the Rochester Police Department, City Hall and beyond to remove the pervasive culture of insularity and acceptance from law enforcement. This work must be coordinated and complement the work of the Commission on Race and Structural Equity. While, I realize this recommendation may be the most obvious and words of this nature have been expressed and repeated so often they now seem hollow. Somehow it has to be made clear this time is different and there will be the appropriate follow through on this critical undertaking. Simply put, this has to happen and it **MUST** involve citizens.

In undertaking this review, I cannot recall another moment in my professional career when my personal feelings or emotions have been so provoked. I cannot express strongly enough we can NEVER return to "business as usual."

Below, please find the initial observations gleaned from this review, which formed the basis for my recommendations.

#### **Observation 1: "The Lens of the Badge"**

Review of the attached documentation corroborates an impression articulated in your Aug. 6 letter to Chief Singletary: "I am concerned that these body worn camera videos are not just viewed through the lens of the badge, but through the eyes of the people we serve."

The records reveal a culture of insularity, acceptance and, quite frankly, callousness that permeates the Rochester Police Department: From the cavalier and unsympathetic attitude displayed by the officers present at the MHA; to the investigators in the Major Crimes Unit and the Professional Standards Section who seemingly saw nothing wrong after reviewing the Body Worn Camera (BWC) footage; to the Police Chief and his command staff who continued to describe the death of Mr. Prude as the result of an overdose and “resisting arrest,” even after the Medical Examiner ruled it a homicide and the video showed Mr. Prude did NOT resist his arrest.

Equally disturbing, the “lens of the badge” is not limited to law enforcement. The AMR technician on scene at the arrest displayed the same indifference to Mr. Prude’s welfare, according to the BWC footage; and the municipal attorneys who processed the Freedom of Information Law (FOIL) requests and appeals discuss the BWC footage in terms of data to be redacted or included rather than as a human life lost.

Finally, it appears that the RPD attempted to extend the “lens of the badge” to others. A day after Mr. Prude’s death, an RPD lieutenant sent two emails to the Monroe County Medical Examiner’s Office (ME) - subject line “Please Call Me” – offering to provide background he describes as “sensitive” on the arrest prior to the start, much less the completion, of the autopsy.

This certainly could leave one with the appearance of an attempt to influence the outcome of the ME’s ruling on the manner of death and raises the question of whether such strategies to influence other agencies are used in other circumstances and how often they are successful.

In another email discussing the FOIL, the lieutenant discusses strategies to “buy some more time” and “hold back for a little while” before releasing the information in the FOIL.

## **Observation 2: Questions of Training and Career Guidance**

Two preliminary investigations of the officers’ encounter that included review of the BWC footage concluded there was no immediate evidence of wrongdoing on the part of the officers. The criminal investigation concluded that the officers acted in a manner consistent with their training; while the professional standards investigator found no evidence of excessive force or misconduct. Those conclusions were validated by the subsequent response of other officers, including the command staff and the Chief of Police, who concurred that the behavior of the officers as justified. The officers were not suspended or placed on administrative duty following the MHA, the death of Mr. Prude, or even at the commencement of a criminal investigation by the NYSAG.

None of the officers offered Mr. Prude a blanket or covering, and there is no evidence that this thought occurred to any of them or anyone at RPD who subsequently reviewed videos of the incident. The simple concepts of human decency and dignity appeared to be woefully lacking or non-existent. It is reminiscent of the incident involving Christopher Pate, and one can ask the same question now that was asked then: Is this exceptional behavior or “business as usual” in the Police Department?

These issues raise serious questions about the initial training and career development that guide the standards of conduct and quality of service provided by Rochester's police officers.

Law enforcement agencies are especially insular organizations, with police academy recruits often being trained by former and current officers of the same department, and professional development opportunities fostered by supervisors who spend their entire careers in the same agency. The 24/7 work cycle creates shift schedules that cover nights and weekends, often limiting social interaction outside of work to other police officers. Meanwhile, the unique stressors of the job and the daily exposure to often violent and disturbing activity has the potential to create an "us-versus-them" mindset and a worldview shared by few others.

Social and professional behaviors, customs and habits are bound to become calcified and institutionalized in this environment, leading to both good and bad outcomes.

This administration has attempted to alter the accepted standards of police conduct through several strategies, including an increased focus on improving the diversity of the Department. However, this incident shows us that diversity alone will not correct the pervasive culture of insularity and acceptance in the Police Department. Much, much more needs to be done.

This all should be examined by an outside agency that can recommend systemic changes, as this system has failed the public and officers alike.

**Observation 3: RPD Command's Failure to Fully or Properly Disclose the Nature of Mr. Prude's MHA and Death.**

I could find no written record that the Chief of Police informed you or anyone in the Office of the Mayor of the MHA and subsequent death of Mr. Prude until April 10 – the day the death was ruled a homicide.

The Locust Club was afforded more deference on this matter than the Mayor. On April 2, Deputy Chief Mark Simmons directed an employee to send the BWC footage and related records to the Locust Club. No direction was given to include the Mayor or anyone in City Hall on that email.

I could find no documentation of the Chief's communications with the Mayor as would be expected in a situation of this magnitude; and in this absence must conclude they were limited to informal, oral conversations. It should be noted that from March 23 to Aug. 4 you and Chief Singletary met more than 50 times in one-on-one, Senior Management Team (SMT) or other meetings. Ultimately, it was the Corporation Counsel who brought the BWC footage to the Mayor's attention on Aug. 4.

It is not uncommon for a Department leader to ask the Mayor or Deputy Mayor for additional private time at the end of an SMT meeting to discuss a potential crisis in their Department – such as when DRYS employees tested positive for COVID-19, raising concern that the food-distribution sites might be contaminated. Likewise, all Department heads know how to schedule a private meeting with the Mayor, and the culture within City Hall has always made that access fairly easy.

Chief Singletary's actions regarding this incident are at odds with these practices and it is also dramatically inconsistent with the standard practices during past instances of police brutality or in-custody deaths, such as the fatal TASER death of Richard Gregory or the use-of-force in the arrest of Christopher Pate.

In these cases, and others, the previous Chief provided the Mayor, Deputy Mayor and Corporation Counsel a review of the BWC footage and provided a full account of the arrest and subsequent internal investigations. That did not happen in this case, prompting a new policy directive that had never been necessary before this case: That BWC footage on all use-of-force arrests now be promptly delivered to the Mayor.

Additionally, in response to the Mayor's oral reprimand and her Aug. 6 email in which it was written that the Chief had not been forthright in this matter, Chief Singletary wrote a lengthy email in response, but never offered a defense or rebuttal that this matter had been characterized differently by the Mayor.

This raises questions regarding the reporting of other such arrests, which is why I am recommending that someone outside the Department review past footage related to use of force arrests by RPD and all criminal investigations of RPD activity be immediately announced to the public.

**Observation 4: RPD Does Not Immediately Recognize the Significance of Mr. Prude's Death or Seek Outside Guidance**

I found no record that Chief Singletary sought the opinion or judgment of someone outside of the RPD to review the handling of Mr. Prude; and he instead relied solely on judgments of other police officers.

The first proactive email I found from the Chief to anyone outside of RPD was sent April 10 to Communications Director Justin Roj with the subject line "FYI." In it, the Chief informs Director Roj of the death and the ME's ruling, along with a note that the Mayor and the Corporation Counsel have been 'in the loop' since March 23. The email was sent 8+ hours after the ME's Office notified the RPD of their ruling.

Chief Singletary's benign subject line suggests he may not have fully grasped the significance of the situation, or that he attempted to downplay the event. It is altogether possible that Chief Singletary by this point fully believed Mr. Prude's death was ultimately caused by a drug overdose, which colored his subsequent responses and discussions. But his deviations from normal procedures and practices in such matters is difficult to understand.

As noted in Observation 3, this email is decidedly inconsistent with interactions between previous Chiefs and the Communications Director, and could be seen as less than forthright. It must be asked why Chief Singletary presented Director Roj with such a limited view of the situation.

For instance, the email includes attachments of investigative summaries that found no officer wrongdoing, but does not include the ME's report or BWC footage.

The email text actually reverses the order and changes the wording of the factors listed for the cause of death. The autopsy lists those factors as “complications of asphyxia in the setting of physical restraint,” followed by excited delirium and drug intoxication. In his email to Director Roj, Chief Singletary moves drug intoxication to the top line and changes the line about physical restraint to “resisting arrest” – even though the BWC footage clearly shows Mr. Prude NEVER resisted arrest. This improper characterization is also listed last in this email and not first as its correct description is listed in the ME’s report.

Again, unlike past practices, no suggestion is made to meet to discuss the incident further or view the BWC footage beyond an offer to answer additional questions. Chief Singletary also states he was waiting for a call back from the Mayor, but the Chief should be asked why he did not cc either the Mayor or Deputy Mayor on this significant communication.

Indeed, the Chief’s own subordinates seemed to recognize what he did not – that the Mayor should be notified of the situation.

In a June 4 email to their supervisors, RPD Lt. Mike Perkowski and Capt. Frank Umbrino suggest that the Mayor should be informed of the Freedom of Information Law (FOIL) request that was submitted by the Prude family’s attorney. Deputy Chief Simmons forwarded this thread to the Chief, adding citations from federal FOIL law noting the release of information could compromise a criminal investigation.

Deputy Chief Simmons also mentions the protests taking place across the nation and in Rochester and presciently warns the release of the BWC footage would cause similarly violent protest in Rochester.

These suggestions were sent up the chain of command, and eventually to Corporation Counsel Tim Curtin; but the recommendation to notify the Mayor was never acted upon.

It should be noted that the RPD conversations on this topic continue to reveal a Department wide belief that the Prude incident was justified and the officers’ concerns appear to be focused on a premature release of BWC footage without full context. Tellingly, Deputy Chief Simmons said equating Mr. Prude’s arrest with the causes of protests in other cities would be a “false narrative.”

Nevertheless and regardless of the motivation, those concerns were never fully considered or forwarded to the Mayor as suggested. This observation further supports your policy changes on in-custody deaths and use of force incidents and the announcement of criminal investigations of RPD. To this point RPD was not alone in this failure. As I will note below, the Corporation Counsel and Communications Director did not act either.

#### **Observation 5: Failure of the Corporation Counsel and Communications Director to Recognize the Significance of Mr. Prude’s Death or Inform You**

As stated above, the Corporation Counsel was eventually forwarded a lengthy email thread on June 4 describing the significance of the BWC footage, and did not act upon the suggestion buried within it to notify the Mayor. He also did not review the footage personally

until Aug. 4 – at which point he pulled you out of a meeting to make sure you saw it immediately.

To his credit, the Corporation Counsel appears to be the first person to view the video who had an instinctual or visceral reaction to its content – but that reaction came at least two, and arguably five, months too late.

This FOIL was handled by Municipal Attorney Stephanie Prince who also appear to completely miss the significance of the subject matter. I found no evidence that she ever pushed for Mr. Curtin to look at the BWC footage himself, or suggest that he notify you of its content. In one email, Municipal Attorney Prince discussed the professional appearance of the redaction log with colleague Shani Curry-Mitchell, rather than the treatment of Mr. Prude on the video.

As stated in Observation 1, none of the documents reviewed shows that these attorneys ever displayed a concern for Mr. Prude’s treatment.

As stated above, Communications Director Justin Roj was first informed of Mr. Prude’s “death in-custody” and the ME’s ruling of homicide on April 10.

In his reply to Chief Singletary, Director Roj reports that he had not received any media requests on the incident and will coordinate with the RPD Public Information Officer if he does. Director Roj notably does not request the ME’s report or ask to view the BWC footage.

In his role as the Records Access Officer, Director Roj was also copied in on a June 11 email from Municipal Attorney Prince to the attorney for Mr. Prude’s family outlining the information that would soon be provided in the FOIL response, and still did not ask to see the BWC footage.

In the considerable volume of records and emails related to this case it is inconsistent with standard Administration practices that the Director of Communications was presented only two opportunities to weigh in on this case.

Nevertheless, it has to be noted that Director Roj missed these opportunities and did not review the BWC footage and notify the Mayor of his findings.

#### **Observation 6: Questions Regarding the City’s Handling of the FOIL and Appeal**

The City handling of the initial FOIL and appeal filed by the attorneys for Mr. Prude’s family seemed disorganized.

The remote work environment during the Coronavirus pandemic almost certainly made this task more difficult; but given the nature of the content on the BWC footage, this request should have been prioritized.

The initial FOIL was filed on April 3 and was appealed on constructive denial on May 28 because the Communications Bureau failed to respond within the legal deadline of 20 days. It was ultimately fulfilled on June 11, and the BWC footage provided by U.S. Mail on Aug.12.

I found no written records or emails that explain the decision to fulfill the FOIL request during an active criminal investigation while not informing the public.

This decision revealed a significant gap the City's standard practice of providing the public with information released under FOIL by placing it a publicly accessible, virtual reading room (established in December of 2017). The Law Department has not been in the practice of placing FOIL information released on appeal in the reading room. This gap, and holes in the FOIL process must be corrected – perhaps by moving the entire FOIL process to Law to eliminate procedural “silos.”

On June 4, as Attorney Prince begins collecting information to fulfill the FOIL request, it is at this time that RPD Capt. Frank Umbrino raises his concern that the criminal investigation is still underway and that the Chief and Mayor should provide input on the FOIL request.

This email thread is eventually forwarded to Corporation Counsel Curtin, who forwards it back to Attorney Prince – with the instruction to determine if she can comply with the RPD's request to deny or delay the FOIL.

In her own reply, Ms. Prince provides a summation of her June 4 telephone conversation with Assistant Attorney General Jennifer Sommers, which is now at the center of a dispute between the City and the NYSAG's Office:

*“The request is now a FOIL appeal filed by Elliot Shields for constructive denial of his request. Our response deadline is next Thursday, 6/11. I spoke with Jenn Sommers this morning – what her office typically does and what she's suggested for this matter is to invite Don Thompson (the attorney representing Daniel Prude's family) to come to her office to review the case file (including BWC) in person, provided he agrees to sign an agreement that he cannot scan/copy/otherwise attempt to reproduce the information. This way, the AG is making the file available to the family's attorney, but we are not releasing anything to the public. If Don agrees to the AG's offer, I would contact Elliot and let him know that the matter is being investigated by the AG, but that the AG is making the case file available for Don T. to review in person. We would ask Elliot to agree to adjourn the appeal deadline until after the AG's investigation is complete. This way, the City is not releasing anything pertaining to the case for at least a month (more like 2), and it will not be publicly available. Ultimately, anything we do release would be heavily, heavily redacted as the decedent is naked in the BWC footage, we have to redact his medical treatment, and the reports all discuss his mental health and condition.”*

As you can see, this conversation appears to be about whether the City can provide the Prude family attorney with the FOILED information during the ongoing investigation. A compromise solution is reached to let the attorneys view the BWC footage in Sommers' office without providing them access to it.

Given that this viewing did take place, Attorney Prince's summation appears to be accurate and Assistant AG Sommers seems to have supported the delay of a full release of the information to the Prude family attorney – and by extension the public at large.



In a subsequent email on Aug. 4, Attorney Sommers confirms that the viewing with the Prude family attorneys took place, but notes that she did not release it to them.

The Law Department began providing the information on June 11 and the video was sent by U.S. Mail on Aug. 12.

It should be noted this criminal investigation is being conducted by the NYS Attorney General's Office, which is a departure from the Law Department's normal process of interacting with the District Attorney's Office during a FOIL request.

That may have been a complicating factor, which RPD Lt. Perkowski attempted to clarify in an email when he said the AG and the District Attorney's Office are fulfilling the same role and should be treated the same way.

This confusion of roles between prosecutors raises questions about what rules the Law Department should follow, which is why I am recommending an outside review. This review should include a particular emphasis on interactions with the Attorney General Office during criminal investigations.

As recommended, the City should seek formal and written clarification on the release of public information during criminal investigations conducted by the NYSAG.

It is further recommended that the City adopt a hard-and-fast policy that all investigations of RPD officers, arrests or other actions be treated like any other noteworthy arrest of a private citizen, and immediately announced to the public. While the release of details, such as BWC footage and other evidence, may not be immediately or legally available, the public still has a right to know the process has been initiated; and once notified the public should rightfully be kept abreast of its progress by all of the agencies involved. This is the surest way to ensure accountability and transparency.

#### **Observation 7: Failure to Recognize National Events**

George Floyd was killed by police in Minneapolis on May 26. The FOIL for the information regarding Mr. Prude's death was processed and discussed at length between May 28 and June 11, a period of time in which an estimated 25 million people in 2,000 cities in 60 countries engaged in protest to bring renewed attention to the plight of African Americans who are killed or experience violence at the hands of police.

It is hard to rationalize how anyone who saw the video of Mr. Prude's encounter with the RPD did not fully equate these events beyond a few mentions of bad publicity, politics, process or a "false narrative."

Rochester is in desperate need of healing. We lost almost six months of opportunity to begin that process and also have done considerable damage to the good work this City has undertaken to improve the relationships between the police and the public they serve.

I should note, this observation is not limited to the RPD or the other employees mentioned in this memorandum.

As noted in other observations, the lens of the badge and culture of acceptance appears to extend to City Hall and the highest reaches of the Administration.

The words “homicide” and “in custody” death should have stopped anyone who heard them in their tracks and prompted an immediate quest for more information. That did not happen and it begs the question “why” if there is any hope to make sure it NEVER happens again.

Put another way, the Christopher Pate incident gave this Administration ample reason to question the actions of the RPD. The response at the time – the termination and arrest of the officers with the full cooperation of the command staff – offered assurance that this was an exceptional action rather than business as usual. Now, the Daniel Prude video has us asking these same questions again. Taken together, these incidents reveal that the culture of acceptance and insularity is more pervasive than we realized, which is why I am recommending the U.S. Department of Justice conduct its investigation.

### **Notes on Methodology**

1. In order to honor your request that this review be completed as soon as possible, it is limited in scope. As a result, it does not include information that could be garnered through interviews or subpoenas, including 911 calls and dispatch recordings, cell phone records, or Mobile Data Terminal communications, which further supports my recommendation for a more thorough investigation.
2. This review is based largely on email trails obtained quickly through the Department of Information Technology (IT). I cannot at this time definitively verify if this record is complete or if other pertinent emails were or were not included in the data I could review.
3. IT was requested to provide email from the following employees that contained the keyword “Prude:” Lovely Warren, James Smith, Alex Yudelson, Tim Curtin, Stephanie Prince, Shani Curry Mitchell, Patrick Beath, Justin Roj, Ted Capuano, Laron Singletary, Mark Simmons, Mark Mura, Joseph Morabito, Henry Favor, Fabian Rivera, Elena Correia, Frank Camp, Jacqueline Schuman, Michael Magri, Josiah Harris, Paul Ricotta, Francisco Santiago, Andrew Specksgoor, Troy Taladay, Mark Vaughn, Margarita Perez-Dunham, Michael Perkowski and Matt Ehlers. The resultant emails were provided in several .pst files on a portable storage drive. They were sorted and searched using standard built-in Microsoft Outlook tools. These program tools are limited in functionality and a more thorough evaluation with more advanced search and indexing capabilities would be ideal. As such, the evaluation of the emails for this report should by no means be interpreted as comprehensive, definitive, scientific or exhaustive.
4. Some of information provided in this report may be covered by Attorney Client Privilege, which is a determination beyond my purview. However, in the interest of transparency and restoring public confidence, the broader community should be given the opportunity to review the documentation associated with this incident. I personally would err on the side of disclosing versus withholding information.
5. Minor redactions, largely limited to telephone numbers, addresses and personal emails, were made to the attached documents.

