

Report of Investigation
of Sitka Police Department

Eric Smith
Retired Superior Court Judge
P.O. Box 672117
Chugiak, AK 99567

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Introduction

I was commissioned by Mary Ferguson to conduct an investigation of the Sitka Police Department pursuant to a settlement into which she entered in Mary Ferguson v. City of Sitka and Jeff Ankerfelt, 1SI-18-176 CI. Our contract provided that Ms. Ferguson recognized that I would "conduct that investigation as a wholly neutral investigator who will not serve as an advocate for any person or party" and that the investigation would be

an investigation into the practices of the Sitka Police Department, with a particular focus on allegations of improper behavior, sexual harassment, retaliation for complaints that are filed with police management, abuse of power, police misconduct, and violations of city state and federal statutes and any city of Sitka Manuals.

As I explained to Ms. Ferguson and the many people with whom I spoke, while it was necessary for me to understand what had happened in the past, I did not intend to re-litigate any past issues; rather, my focus was on what, if any, suggestions I might have for improvements in the Sitka Police Department.

I have now completed that investigation. In this report, I will first summarize my findings and recommendations. I will then lay out the way in which I conducted the investigation, followed by a description of the relevant historical background. I will then discuss the basis for my findings and recommendations.

Summary of Findings and Recommendations

Findings

1. Chief Robert Baty has substantially changed and improved what was, previous to his taking over as chief, a police department plagued by infighting and turnover. The department is run in a more professional manner with clear lines of accountability and clear expectations of following the chain of command; and at least at this stage, there appear to be relatively few signs of dissention or ongoing turnover. The current staff is increasingly diverse, with several Alaska Native members of the Department and, at present, one female police officer.

2. Lt. Jean Achee has been very effective in the improved management and administration of the department.

3. Chief Baty has placed an important emphasis on community policing and on diversity within the department.

4. Chief Baty has implemented regular meetings of the sergeants to coordinate their policies and expectations of the police officers. These meetings have been important and helpful, but they have not entirely eliminated conflicting expectations that can cause some confusion among the officers and the dispatchers.

5. Chief Baty worked hard when he became chief to meet all of the employees, and he has maintained an open door, provided, of course, that the chain of command is followed. He has not,

however, held any all-staff meetings, and there is some perception that the sworn members of the department are treated more favorably than the non-sworn members (i.e. the dispatchers and jail staff).

6. While there may well have been issues of racism, sexual harassment and gender discrimination in the department in the past, that is not the case at this time. There has not, however, been any formal training conducted in these areas since Chief Baty took over the department. Chief Baty has indicated, however, that he plans to institute such trainings when feasible, given the current impediments imposed by the COVID crisis.

7. I did not find any clear violations of city or state law or relevant manuals since Chief Baty became chief. While there were troubling allegations of retaliation, misconduct, abuse of power, and improper behavior in the past, I did not find any such issues after Chief Baty became chief, other than the matters identified below in findings #9 and #10 below.

8. Cooperation between SPD and the other law enforcement agencies with whom I was able to speak appears to be reasonably good, provided that those other agencies provide Chief Baty with prior notice of their intentions to conduct any operations in Sitka. Chief Baty's expectation in this respect is consistent with that of all other law enforcement agencies.

9. With all due respect to Chief Baty, he is somewhat rigid with respect to any challenges to his authority. In this respect,

he seems to have taken the litigation filed against SPD by Ms. Ferguson and Ryan Silva somewhat personally; and he has taken some actions that provide an appearance, at least, of retaliation.

10. With all due respect to Sergeant Lance Ewers, while his manner appears to have improved since he demoted himself from lieutenant to sergeant, he has been and remains a lightning rod for internal turmoil. Chief Baty and Lt. Achee appear to be aware of this problem, but they do not seem fully to accept the depth of the concerns or the impact of the very troubling patterns of Sgt. Ewers' behavior while he as a lieutenant.

11. Allison Kirby made an important allegation regarding a request by a currently-employed SPD officer illegally to access APSIN files. There has been no formal follow-up to that allegation, apparently due to an inability to coordinate a meeting between Ms. Kirby and SPD management.

Recommendations

1. The Department should place a high priority on formal training in the areas of sexual harassment, gender discrimination, and the rights of whistleblowers.

2. While the sergeants' meetings have been important and helpful, the sergeants should go to a professionally facilitated retreat to assist in ironing out any issues. The facilitator should be consulted as to whether it would be helpful to include Chief Baty and Lt. Achee in that retreat.

3. Chief Baty should convene regular all-staff meetings so that all of the staff feel fully involved in department operations and can raise any concerns they may have.

4. A concerted effort should be made to investigate and evaluate Ms. Kirby's allegation of misconduct regarding a request by an SPD employee to use the APSIN network for personal purposes.

5. Chief Baty should be more sensitive to the possibility that he can seem retaliatory against those who disagree with him, given some of the troubling actions he took with respect to Ms. Ferguson and Mr. Silva.

6. Sgt. Ewers should continue to undergo training and careful supervision to provide ways in which to improve the manner in which he interacts with others in the department.

The Investigation

My investigation consisted of reviewing key documents and speaking with a wide variety of people whom I believed would have helpful information for the investigation. I began by reviewing some of the pleadings filed in the lawsuits filed by Ms. Ferguson and Mr. Silva against the City of Sitka and the depositions of Chief Baty, former Chief Ankerfelt, and Lance Ewers that were conducted by counsel for Ms. Ferguson. I then read the following documents:

- The "vote of no confidence" against then Lt. Ewers
- The investigation by the City of that vote
- Ms. Ferguson's complaint to the Equal Employment Opportunity Commission
- The investigation by the City of that complaint

After I completed my review of these documents, I began making telephone calls. (Due to the COVID pandemic, I was unable to travel to Sitka to speak to people in person.) During the course of these conversations, I was provided with a variety of other documents to review, including written statements from Mr. Silva, notes taken during the investigation of the vote of no confidence, and a police report regarding allegations of domestic violence by Mr. Silva against his wife. (The City Attorney was extremely helpful in getting me this file.) I also obtained depositions from other cases filed against the department by Mr. Silva and Noah Shepherd. A full list of the documents I reviewed is attached to this report.

I called 62 people, and spoke with 54 of them, 11 of whom either declined to talk to me or told me they were not allowed to do so; 8 never returned my calls. I spoke first with Chief Baty, as I wanted to obtain his perspective before I talked with anyone else. He was very helpful and open with me. After speaking with him, I sought to reach three general categories of people. The first was current employees of SPD. With regard to this category, I was able to speak with Lt. Achee, Serena Wild (the administrative assistant), all three sergeants, and almost all of the other staff - two persons declined to talk to me when I called, and one never returned my calls. All of those with whom I spoke were helpful, candid and thoughtful, although some requested that I treat their comments as confidential.

The second category was former employees of the police department. I interviewed Ms. Ferguson, Mr. Silva, and Noah Shepherd, all of whom had filed litigation against the City and no longer worked there. I was able to speak with former Chief Sheldon Schmitt, who provided me a very helpful and candid background. Former Chief Ankerfelt politely declined to talk to me, but he sent me a detailed response he had prepared for his attorney in response to the complaint filed in Mr. Silva's case. A number of former officers, jailers and dispatchers agreed to speak with me, including Jack Ford and Alisson Kirby, both of whom had written highly critical letters about SPD to the Sitka Assembly. Some of

those individuals also requested that I treat the conversations as confidential. A couple of former employees declined to talk to me when I called, and a number of former employees never returned my calls despite repeated attempts.

The third category consisted of other persons who either had had dealings with the department or otherwise had information that I believed might be of use to me. There were three general groups who fit into this category. The first included City of Sitka officials - in particular, I spoke with the City Administrator, the City Attorney, and two members of the Assembly. (I sent an email to all of the Assembly members inviting them to call, but only two did so.) I was able to obtain a lot of very helpful information from these individuals.

The second group was the two attorneys who had worked on the litigation, both of whom also were very helpful.

The third group consisted of the Sitka Tribe and persons employed by state and federal agencies who currently or previously worked with SPD, including persons employed by other law enforcement agencies, probation officers, and assistant district attorneys. The Tribe was very helpful. But I unfortunately had somewhat limited success speaking with the state and federal employees in this group, particularly with respect to the law enforcement officers. I was able to talk to some of those individuals (a couple on a confidential basis), including the

sergeant in charge of the regional drug task force, who was incredibly helpful. But a number of these individuals did not return my calls, and others were blocked by their supervisors or attorneys. The most significant roadblocks placed in my way were by the FBI and the Coast Guard. The Coast Guard staff informed me that their attorney had refused them permission to speak to me; that attorney never returned my calls when I sought an explanation. The FBI informed me that I could not speak to the special agents who worked with SPD unless I followed regulations that applied only to requests made in the context of litigation against the FBI, which included a requirement that I obtain a court order, a complete impossibility in my case.¹ My efforts to persuade the FBI that the regulations both did not apply to me and made it impossible for me to proceed were unavailing, as were my attempts to arrive at a compromise.

I believe that I was able to get a good sense of how the current employees of SPD felt about the department. I also obtained a lot of helpful historical and background information from the prior employees and those individuals from other agencies who did speak to me. It was unfortunate that several of the prior employees who declined to talk to me (either directly or by not

¹ The regulations are set forth at 28 CFR 16.21-29. They apply by their terms to "all federal and state proceedings in which the United States is not a party", 28 CFR 16.21(a)(2) (emphasis added), and hence have no relevance to my request to speak to the FBI agents, since there is no relevant "proceeding" (such as an ongoing court case) associated with my investigation.

calling me back) were among the persons whose perspective I believe could have been particularly helpful. But I do not think that the lack of this information unduly impeded my investigation.

The lack of cooperation from some of the other agencies was more problematic. I heard a number of allegations that these agencies faced difficulties in working with SPD, but with the exception of the head of the regional drug task force, I was unable to obtain sufficient information to corroborate or negate those allegations. Given these constraints, as well as the requests for confidentiality by some of the persons with whom I spoke, this report can only address interagency cooperation in a relatively narrow respect.

Three final notes. First, while most of the people with whom I spoke did not request that their comments be treated as confidential, some did make that request in quite strong terms; and it was clear from my discussions and the number of people who did not return my calls that the issues raised in this investigation remain controversial. Other than the individuals listed above, I therefore have not identified the people with whom I spoke, and with limited exceptions, I will not identify any names in the following discussion of the relevant background and the basis for my findings and recommendations. Rather, I will simply note where the information that is presented is based on

interviews. I have, however, supplied citations to any documents discussed in this report.

This leads to the second note. Those who spoke to me on a confidential basis made it clear that they did so in part out of a fear of retaliation. I have endeavored to write this report in a manner that protects that confidentiality, but I recognize that despite my best efforts, some clues might remain as to who a specific source might be. Out of respect to everyone with whom I spoke, I therefore request that anyone who reads this report does not try to figure out who told me what, but instead focuses on my analysis and whether that analysis supports the findings and recommendations in this report.

Finally, as noted above, the purpose of my investigation was not to re-litigate what happened previously, but to identify what, if any, recommendations I might have to improve the operations of the Sitka Police Department. As such, this report will not directly address the merits of such matters as the substantive allegations in the "vote of no confidence" or the allegations made by Ms. Ferguson or Mr. Silva in their lawsuits. I will, however, discuss as appropriate how those allegations pertain to the recommendations identified above and discussed below.

Historical Background

The terms of the settlement with Ms. Ferguson stated that the relevant time period for this investigation is 2015 - 2020. The Chief of the SPD in 2015 was Sheldon Schmitt. At that time, the department had two lieutenants. One was Jeff Ankerfelt, who had been hired as a lieutenant in June 2014 - Chief Schmidt explained to me that he had hoped to hire someone from within the department, but that would have required them to take a pay cut, and the people he was considering did not want to do that. So he hired Mr. Ankerfelt, who had a lot of experience. The other lieutenant retired in early 2014, and Lance Ewers was hired to replace him. Mr. Ewers had been working as a trainer at the Sitka Police Academy.

The general consensus among those with whom I spoke was that while he was a very good grant writer, Chief Schmitt was largely absent from the department and provided very little oversight. Day to day management of the department therefore fell to Lt. Ankerfelt and Lt. Ewers. Lt. Ankerfelt was generally liked - almost everyone described him as a very nice man. Lt. Ewers, on the other hand, generated a great deal of controversy and difficulties within the department. This culminated on June 22, 2016, when the "Union Members of the Sitka Police Department" sent a letter to Chief Schmidt asking that Lt. Ewers be fired because

"we have lost all confidence in his ability to effectively supervise, sustain and positive work environment, and to maintain professional community interactions."² Attached to the letter was a 18-page "vote of no confidence", signed by every member of the department but one, which laid out a wide variety of allegations of specific inappropriate actions taken by Lt. Ewers and substantial concerns about the hostile way in which he interacted with members of the department.³ Among the key allegations that were raised was a perception that Lt. Ewers followed a "good people" policy, which essentially consisted of telling his officers that they should not cite "good people" for tickets and taking special actions on behalf of Lt. Ewers' friends and those whom he felt were influential members of the community.⁴

Some of the people with whom I spoke believed that this letter and vote of no confidence were done entirely at the behest of the then president of the union, who allegedly was upset because he was not hired as lieutenant, and Mr. Silva and Ms. Ferguson. But while those three individuals did play a leading role in getting the letter together, it was clear from my conversations with those who had worked at the department at the time that morale was

² Letter from Union Members of the Sitka Police Department to Chief Sheldon Schmitt, June 22, 2016, at p. 1.

³ The "vote" consists of the attachment laying out the allegations to the Letter, followed by a document entitled "vote of no confidence" which contains all of the signatures.

⁴ Attachment to Letter to Chief Schmitt at pp. 1-2.

incredibly low due to Lt. Ewers' actions and management style, and that almost everyone who worked there did not want to work for Lt. Ewers. The vote of no confidence therefore was a genuine request for help from almost every employee.

In response to the letter and attached vote of no confidence, Chief Schmitt placed Lt. Ewers on administrative leave, and the City of Sitka appointed a committee to undertake a study of the complaint against Lt. Ewers. This committee, which consisted of the interim city attorney as chair, the fire chief and the city planner, none of whom really were independent evaluators, interviewed 23 members of the department, including some who signed the complaint and some who did not, and issued a report on August 10, 2016, concluding that Lt. Ewers had "not committed any overt wrong-doing or egregious errors[, but] some of [his] management practices and policy approaches may require supervisory review by the Chief or City Administration."⁵

After the committee released its report, Lt. Ewers was placed back in his position and sent to an FBI academy for leadership training. On November 1, 2016, Lt. Anderfelt was promoted to be chief, and Chief Schmidt was allowed to retire (formally, a position of "Transition Advisor" was created for him, which he held for about 9 months starting on November 1, 2016), although

⁵ Memorandum from Rachel Jones, Chair, SPD Investigatory Committee, to Mark Gorman, City Administrator, dated August 16, 2016, at p. 1.

most of the people who spoke with me felt that in reality he was fired.

It frankly is unclear why the City took these steps with respect to Lt. Ewers and Lt. Ankerfelt. The people who signed the complaint against Lt. Ewers had approached both Lt. Ankerfelt and Chief Schmidt asking for help, to no avail - the letter from the union stated that they took the vote of no confidence route only after all of their other efforts had failed.⁶ According to almost everyone with whom I spoke, morale at the department, which had already been low, plummeted after the report was released exonerating Lt. Ewers, as most of the employees felt that that report was a whitewash.

This response is understandable, for the committee was not an independent one; and the report itself seemed to focus so totally on specific details that it lost the forest for the trees. In particular, the report seemed to ignore a key issue regarding Lt. Ewers: the perception by almost every employee that he was pushing an inappropriate "good people" policy. While both lieutenants adamantly denied that such a policy was in place, the fact remains that, as I learned in my interviews, many officers felt that the policy existed, a perception that adversely colored the way in which they did their jobs.

⁶ Letter to Chief Schmitt, note 4 supra, at p. 1.

In addition, while recognizing that Lt. Ewers' management style was problematic, the report seemed not to recognize, much less take into consideration, the fact that Lt. Ewers had totally lost the trust of almost everyone in the department. Under these circumstances, and in light of Lt. Ankerfelt's evident unwillingness to respond to the employees' concerns about Lt. Ewers, it is difficult to understand why the City decided to retain Lt Ewers and to promote Lt. Ankerfelt to chief.

Most of the people with whom I spoke felt that when he returned from the FBI academy, Lt. Ewers' behavior initially improved, but they stated that this did not last very long; and they felt that the same issues remained with his behavior and manner while he remained a lieutenant. This was a significant issue, because the consensus among everyone I interviewed was that Chief Ankerfelt was not very present at the department, much like his predecessor. This apparently was due in part to some serious issues he was dealing with as a personal matter. But as a result, even though another person was hired as lieutenant to replace Mr. Ankerfelt, Lt. Ewers was perceived as continuing to run the department with the full support of Chief Ankerfelt, and his manner continued to be an issue. Morale accordingly by all accounts remained low; turnover continued to be a problem; and I consistently was told of cliquish behavior that seemed to revolve around those who supported and were supported by Lt. Ewers and

those who did and were not. Several people mentioned in this respect that if they criticized Lt. Ewers, he would often respond by simply refusing to acknowledge them for a period of time. And the general consensus was that there was little point to going to Chief Ankerfelt with any concerns regarding Lt. Ewers, for at least two reasons: he most likely would take Lt. Ewers' side, and he simply was too nice a person to be much of a disciplinarian.

Three significant situations were identified to me that seem emblematic of the difficulties at SPD under Chief Ankerfelt and Lt. Ewers. These each culminated in litigation against the SPD, and cumulatively seem to have be the genesis for the change in leadership from Chief Ankerfelt to Chief Baty. I will address each in turn. I will then address the transition to Chief Baty.

Noah Shepherd. Mr. Shepherd started as a jailer; he was made a patrol officer in 2018. He went to the Anchorage Police Academy for training in December 2018, but broke his elbow during a drill and had to leave, since he could no longer participate in the training. According to Mr. Shepherd, Lt. Ewers falsely told a number of SPD employees that Mr. Shepherd had quit; and he created a very hostile work environment when Mr. Shepherd returned, causing Mr. Shepherd to quit. Mr. Shepherd then filed a lawsuit against Lt. Ewers and the City, alleging defamation and breach of the implied covenant of fair dealing, which was settled by the City on a no-fault basis.

I was not able fully to corroborate Mr. Shepherd's allegations regarding Lt. Ewers' actions towards him because most of the individuals with direct knowledge of the situation declined to speak to me. But Mr. Ewers admitted during a deposition that was taken in Mr. Shepherd's case that he had told department staff that Mr. Shepherd had had to leave the academy and that he felt Mr. Shepherd was "homesick".⁷ Mr. Ewers denied that he had meant to disparage Mr. Shepherd by making this comment - he said that he was merely speculating about why Mr. Shepherd decided to leave.⁸ While he did (eventually) acknowledge that he should not have speculated about Mr. Shepherd's reasons and express that he was sorry,⁹ he appeared not to understand that his comment could readily have been taken as derogatory because it suggested that Mr. Shepherd had quit, rather than being compelled to leave due to an injury.

This is significant in two respects. First, it corroborates in some respects Mr. Shepherd's claim that Lt. Ewers spoke negatively about Mr. Shepherd regarding his leaving the academy. Second, and more important, it indicates that notwithstanding the substantial criticism of and concerns about his treatment of his

⁷ Deposition of Lance Ewers, Shepherd v. Lance Ewers and the City of Sitka, 1SI-19-35 CI, January 7, 2020, at p. 192.

⁸ Id. at pp. 198-99, 205.

⁹ Id. at pp. 205-06.

employees, Mr. Ewers did not then and still seems not to understand how his words and manner could be harmful.

Ryan Silva. Everyone with whom I spoke described Mr. Silva as a highly intelligent, competent and hard-working officer. But the general consensus was also that he is very strong-willed and prefers to do things his way, which could make it difficult to supervise him, particularly if he felt that his supervisor was incorrect on a particular matter. This latter aspect of Mr. Silva's personality was almost guaranteed to lead to conflict with Lt. Ewers and Chief Ankerfelt given the manner in which Lt. Ewers supervised the department with Chief Ankerfelt's full support, and that certainly proved to be the case. But unfortunately, the way in which Lt. Ewers and especially Chief Ankerfelt handled the conflict only led to more difficulties, culminating in a lawsuit filed by Mr. Silva against Chief Ankerfelt and the City of Sitka.

At the time that Chief Ankerfelt took over as chief, Mr. Silve was working as an Investigator for SPD. His direct supervisor was Lt. Ewers. Mr. Silva's role in pulling the "vote of no confidence" together, and his continuing concerns about he perceived to be the "good people" policy discussed in that vote, undoubtedly was an ongoing source of tension between him and his lieutenant and chief. But those tensions only increased. One significant source was a dispute that arose in late 2017 over some automatic weapons that Lt. Ewers had purchased - Mr. Silva was concerned that they were

fully automatic, and he brought those concerns to Chief Ankerfelt, who ordered that the weapons be altered. Believing that Chief Ankerfelt had tried to hide what had happened, Mr. Silva took his concerns to the City Administrator, who in turn reported directly back to Chief Ankerfelt, who got pretty angry.¹⁰

Shortly after these events, according to Mr. Silva, Lt. Ewers began to investigate his time sheets. Chief Ankerfelt denies this, saying that he had assumed direct supervision over Mr. Silva because the other lieutenant had been unable to supervise him and that he had had ongoing concerns over the amount of overtime that Mr. Silva had claimed.¹¹ Chief Ankerfelt placed a limit on the amount of overtime that Mr. Silva could claim, which Mr. Silva felt was retaliatory for his complaints about the automatic weapons issue. This led to a meeting that both men describe as very angry, shortly after which Mr. Silva was removed from his position as investigator and placed back on patrol. (He filed a grievance with the union but this was unavailing.)¹²

Mr. Silva terms this action a demotion. Chief Ankerfelt called it a reassignment, noting that Mr. Silva was allowed to serve as a training officer for the other investigators, one of

¹⁰ This account is based on my conversation with Mr. Silva and Chief Ankerfelt's response to Mr. Silva's complaint that was filed in Mr. Silva's lawsuit.

¹¹ Deposition of Jeff Ankerfelt, Ryan Silva v. City of Sitka and Jeff Ankerfelt, 1SU-18-136 CI, May 21, 2019, at pp. 137-38, 152, 199-200.

¹² This account is based on my interview with Mr. Silva and the deposition of Chief Ankerfelt, note 11, supra, at pp. 133-34.

whom was Ms. Ferguson.¹³ Chief Ankerfelt may be technically correct that he "reassigned" Mr. Silva, but this obscures the perceptual impact of what he did. Unlike patrol officers, investigators can set their own hours, are not required to wear a uniform, and have greater flexibility in how they pursue their cases; they also have a five percent pay differential (as do officers on the night shift).¹⁴ In addition, there can be no question that being an "investigator" carries the connotation of greater prestige, especially given the more serious cases that are assigned to an investigator. The real world meaning of Chief Ankerfelt's decision therefore can only be termed a demotion, and it gave an appearance, at the very least, of a retaliation for Mr. Silva's actions regarding the weapons issue and the concerns over overtime.

The situation unfortunately continued to deteriorate. Mr. Silva was periodically deployed to the Coast Guard as a drug investigator, but over the course of the winter and spring of 2018, he and Chief Ankerfelt had an ongoing dispute over his deployments, with Chief Ankerfelt seeming to threaten that he would block more deployments that spring. Mr. Silva raised his concerns with the City Administrator about this, to no avail.¹⁵ He also allegedly

¹³ Deposition of Jeff Ankerfelt, note 11, supra, at pp. 44.

¹⁴ Deposition of Jeff Ankerfelt, Mary Ferguson v. City of Alaska and Jeff Ankerfelt, 1SI-18-176 CI, July 8, 2020, at pp. 5-6, 61.

¹⁵ This account is based on my conversation with Mr. Silva and Chief Ankerfelt's response to Mr. Silva's complaint that was filed in Mr. Silva's lawsuit.

attacked Lt. Ewers and Chief Ankerfelt at a shift briefing in May 2018, which led to a written reprimand some months later.¹⁶ The witnesses to this incident were among those who declined to talk to me, so I was not able to corroborate what happened.

A further and substantial dispute arose in late June 2018, when Mr. Silva was assigned to investigate an allegation of sexual abuse. According to Mr. Silva, the possible suspect was the son of a family friend of Lt. Ewers; and when Lt. Ewers learned about the case, he took Mr. Silva off the case. Lt. Ewers and Chief Ankerfelt both deny any impropriety,¹⁷ which, given the fact that the only witnesses are Mr. Silva, Mr. Ewers and Chief Ankerfelt, makes it difficult to ascertain what actually occurred. There is no question, however, that the issue contributed to the ongoing tensions.

As best I can determine, Mr. Silva was deployed to the Coast Guard at some point shortly after he was removed from the sexual abuse case. On August 6, 2018, he was served with a formal reprimand regarding his alleged comments at the shift meeting in May discussed above.¹⁸ Chief Ankerfelt indicated in the written comments he sent me that he waited to issue the reprimand for over

¹⁶ Memorandum from Chief Ankerfelt to Mr. Silva, August 6, 2018, titled "Written Reprimand".

¹⁷ Deposition of Jeff Ankerfelt, note 11, supra, at pp. 156-57.

¹⁸ Memorandum from Chief Ankerfelt to Mr. Silva, August 6, 2018, titled "Written Reprimand".

two months for two reasons: noting that Ms. Ferguson was (and still is) Mr. Silva's significant other, he wanted to keep her active and engaged; and he was trying to protect the person who told him about the comments at the shift meeting. But with all due respect to Chief Ankerfelt, this is somewhat difficult to credit. As discussed below, Ms. Ferguson was reassigned to patrol from her investigator position in June 2018, not long after Mr. Silva made the alleged comments and well before the memorandum was issued. The comments were allegedly made in public and to several officers, which would suggest that it would have been relatively easy to protect the person who brought the comments to Chief Ankerfelt's attention. It also is unclear why Chief Ankerfelt did not raise the matter with Mr. Silva before taking this very formal action. And the reprimand was issued shortly after the City was notified that Ms. Ferguson had filed a sexual discrimination and sexual harassment complaint against the other lieutenant, Lt. Ewers, and Chief Ankerfelt. It accordingly is understandable that Mr. Silva believed that the reprimand was retaliatory.

A week after he issued the reprimand, Chief Ankerfelt opened a formal Administrative Investigation into Mr. Silva's actions regarding the sexual abuse case, and he notified Mr. Silva that he had been placed on forced administrative leave.¹⁹ The notice

¹⁹ Deposition of Jeff Ankerfelt, note 11, supra, at p. 232.

apparently gave no reason, and as best I can determine, no explanation was given to the department's employees as to why this action was taken, to the further detriment of the department's morale. Chief Ankerfelt's written comments to me state that he took this action due to the dispute over the sexual abuse case and the conduct for which Mr. Silva was reprimanded. But it is difficult to understand why he did not provide those reasons publicly.

Shortly after he was placed on administrative leave, Mr. Silva filed a lawsuit against the City of Sitka, SPD, and Chief Ankerfelt, alleging violations of the state whistleblower act, a federal statute pertaining to military deployments, the covenant of good faith and fair dealing, and his First Amendment rights. City officials apparently decided to drop the Administrative Investigation at some point after the suit was filed - Chief Ankerfelt testified at his deposition that he was not given a reason, and then City Administrator Brady did not provide a reason in his deposition.²⁰ According to Mr. Silva, the case was settled on a no fault basis - one provision allowed him to stay a member of the department until September 30, 2020, so he could remain deployed with the Coast Guard.

²⁰ Deposition of Jeff Ankerfelt, note 11, supra, at pp. 229-30; Deposition of Keith Brady, Ryan Silva v. City of Sitka and Jeff Ankerfelt, 1SU-18-136 CI, May 22, 2019, at pp. 16-17.

As noted above, Mr. Silva was consistently described as strong-willed and somewhat resistant to compromise, which undoubtedly contributed to the problems he had with Lt. Ewers and Chief Ankerfelt. But their actions at the very least gave the impression that they were retaliating against him because he pushed back and took his concerns to the City Administrator (who, it must be noted is the step above the police chief in the chain of command). Put differently, while it is outside the purview of this report to make a determination of the substantive merits of Mr. Silva's allegations, there can be no doubt that there was an appearance of retaliation; and as with Mr. Shepherd's situation, the perception of what was done is a significant concern.

Mary Ferguson. Ms. Ferguson was hired as a part-time traffic officer in March 2014; she ultimately became a patrol officer in November 2015. Chief Ankerfelt was a strong supporter of her career for much of her time at the department - based on my interviews and his depositions, he felt highly of her skills, particularly in doing investigations. Chief Ankerfelt made her a detective in March 2017. She had a very good reputation in the department for her abilities, particularly in investigation and working with witnesses and victims.

Ms. Ferguson did encounter what she alleges was a fairly consistent pattern of sexual harassment and gender discrimination which went unanswered by the department. This began January 2016,

when she was sexually harassed by a sergeant who was supervising her. She complained about this to then Lt. Ankerfelt, who apparently took no action about the complaint,²¹ and in fact promoted that individual to lieutenant after Mr. Ankerfelt became chief. Ms. Ferguson also was concerned about a number of what she termed sexually demeaning comments by Lt. Ewers, with whom she had had ongoing difficulties throughout her time at the department. The most significant of these occurred in April 2018, when Ms. Ferguson met with Lt. Ewers to discuss what she felt was an unfair distribution of cases between her and the other detective (who had been appointed after Mr. Silva was reassigned to patrol). Lt. Ewers responded by saying that women's and men's brains were wired differently, that women could multitask better than men, and that she should read the book "Men Are From Mars, Women Are From Venus".²² Ms. Ferguson felt that this was a particularly sexist thing to say, which given the context is a very understandable reaction.

Ms. Ferguson raised her concerns about these comments to Chief Ankerfelt and the City Administrator, to no avail. On June 26, 2018, not long after she spoke with the City Administrator, Lt.

²¹ Chief Ankerfelt did state in a deposition that he informed Chief Schmidt about the allegation, Deposition of Jeff Ankerfelt, note 14, *supra*, at p. 14, but he was the sergeant's supervisor and so logically was the person who should have taken some action.

²² Declaration of Charging Party, attached to Charge of Discrimination, July 27, 2018, at 4.

Ewers asked to meet with her to discuss her case load. (That meeting was recorded and transcribed.) At that meeting, which was also attended by a sergeant, he complimented her skill as a detective and asked a number of questions about pending cases, and he strongly suggested that she no longer needed Mr. Silva to be her Field Training Officer.²³ He also raised concerns about the number of cases she had that were outstanding,²⁴ and he ordered her to follow the chain of command, apparently due to her meeting with the City Administrator.²⁵ Ms. Ferguson pointed out in that context that she had gone to the Chief and the Administrator because they were the relevant chain of command given that her issue was with comments made by Lt. Ewers.²⁶ She also defended her work on the cases, and there was an apparent agreement that she would work with the sergeant on working through the cases that could be closed.²⁷

The sergeant prepared a memorandum memorializing that conversation and a subsequent one he had with Ms. Ferguson later that day. According to the memo, Ms. Ferguson was unwilling to accept some suggestions he had regarding closing cases, expressed substantial concerns over losing her assistance from Mr. Silva,

²³ Transcript of Recorded Meeting Between Mary Ferguson and Lance Ewers and Isaiah Clark at 6-15.

²⁴ Id. at pp. 15-35.

²⁵ Id. at pp. 35-38.

²⁶ Id. at pp. 36-37.

²⁷ Id. at pp. 33-35, 38.

and indicated that she was not willing to meet with Lt. Ewers without a union representative.²⁸

There was no discussion at either meeting regarding Ms. Ferguson's suitability as a detective, much less any sense that, notwithstanding some concern over the case load, that she was not doing her work effectively.²⁹ She nevertheless was reassigned to the night patrol shift by Chief Ankerfelt on July 1, 2018, some five days after the meeting. This was a very problematic change for Ms. Ferguson, since she has young children who need to be cared for at night, a fact of which Chief Ankerfelt was well aware.³⁰

Chief Ankerfelt stated at his deposition that he reassigned Ms. Ferguson for two reasons. First, in his view, she had made it clear at the meeting with Lt. Ewers that she was unwilling to accept any directions from her supervisors³¹ - a statement she never made at that meeting, although it is clear that she felt that she could not work under Lt. Ewers' supervision because she did not trust him.³² Second, Chief Ankerfelt stated that he believed that she had not handled a sexual assault investigation properly - the same one that was in dispute between the chief and

²⁸ Memorandum from [Redacted] to Chief Ankerfelt, Lt. Ewers, Lt. Smith, "Meetings with Detective Ferguson", dated June 26, 2018.

²⁹ See generally id.; Transcript, note 23, supra.

³⁰ Deposition of Jeff Ankerfelt, note 14, supra, at pp. 51-55.

³¹ Id. at p. 47.

³² See Memorandum, note 28 supra, at 2 (noting that Ms. Ferguson "would not meeting with Lt. Ewers without a Union Representative."

Mr. Silva.³³ With all due respect to Chief Ankerfelt, this is somewhat difficult to credit, as Lt. Ewers did not seem to raise any negative issues regarding that case at the meeting on June 26, 2018.³⁴

Chief Ankerfelt did make it clear at the deposition that he believed that Ms. Ferguson would not work with him, although he was generally unable to point to any specific examples other than concerns Ms. Ferguson had raised about Lt. Ewers, mostly to government officials other than those in the SPD.³⁵ But he admitted that he did not ask Ms. Ferguson whether the memo the sergeant had prepared was accurate.³⁶ He also admitted that he notified her about her reassignment in a memo that did not provide an explanation as to why he had done so - the only communication was that he told her when he handed her the memo that she was hard to work with.³⁷ Needless to say, combined with the fact that she had to work the night shift, only exacerbated the problems created by the reassignment itself.³⁸

³³ Deposition of Jeff Ankerfelt, note 14, supra, at pp. 17, 39.

³⁴ See Transcript, note 22 supra, pp. 6-10.

³⁵ Deposition of Jeff Ankerfelt, note 14, supra, at pp. 41-46.

³⁶ Id. at p. 48.

³⁷ Id. at p. 17.

³⁸ Ms. Ferguson alleges that Chief Ankerfelt told some union representatives that he was tired of doing things "for this little girl" and that Ms. Ferguson was scared to be on the street. Chief Ankerfelt denied saying this. The labor lawyer's report discussed below did confirm that some of these statements were made, but generally discounted them. I believe that they are emblematic of Chief Ankerfelt's strong animus towards Ms. Ferguson at the time that she was reassigned, and provide some support for her claim that she had been reassigned because Chief Ankerfelt was annoyed with her and with the fact that she had

Ms. Ferguson stated that she felt humiliated by this chain of events, which is understandable for at least reason: i) as noted above, with respect to Mr. Silva's reassignment, the change from investigations to patrol gives the appearance of a demotion, not just a change in assignments; ii) there does not seem to be any question that she was good at her job;³⁹ and iii) there was a strong appearance that she had been penalized for standing up to Lt. Ewers. She decided to file both a complaint with the Equal Opportunity Employment Commission alleging sexual harassment and gender discrimination, based primarily on the conduct of her sergeant early her career as a patrol officer and on the comments discussed above by Lt. Ewers,⁴⁰ and a lawsuit against the City of Sitka, alleging violations of the civil rights laws, the whistleblower laws, and the implied covenant of good faith and fair dealing. She was placed on administrative leave on July 27,

registered complaints about him and Lt. Ewers to the other governmental officials.

³⁹ Subsequent to her reassignment, Ms. Ferguson did come under some criticism for the number open cases she had as an investigator. Deposition of Robert Baty, Ferguson v. City of Sitka and Jeff Ankerfelt, 1SI-18-176 CI, February 25, 2020, at 18, 120, 126-27. But this seems very post hoc, as it is based on a review done at Chief Baty's request some time later by a retired officer who became a friend of the chief's, id. at 20-22, 127; and, as noted in the text, the case load issue, while raised, does not seem to have been a major one during the June 2018 conversation between Ms. Ferguson and Lt. Ewers, since they arrived at an approach to evaluate how to proceed. It is noteworthy in this respect that at his deposition, Chief Baty at times seemed to indicate that she had too many cases and at times to indicate that he was neutral on the matter. Id. at 127, 129.

⁴⁰ Charge of Discrimination, note 22, supra.

2018, the date that she filed the EEOC complaint, apparently based on a suggestion made by her attorney in a letter to the city.⁴¹

As it had done with the vote of no confidence, the city did not hire an outside investigator to evaluate the EEOC complaint. Rather, it hired the city's labor lawyer to do so, which with all due respect to the City seems difficult to understand, given the nature of the allegations and the context in which they arose. The lawyer submitted a report on September 24, 2018, concluding that while there were some possibly inappropriate comments made by the sergeant, there was no basis for Ms. Ferguson's allegation of gender discrimination, and that there also was no basis for her claim of retaliation.⁴² Ms. Ferguson was asked to come back to work on patrol after this, but refused; and she remained on administrative leave, although she was told she was not allowed to come to the station.⁴³

Ms. Ferguson presents as very dedicated, very strong-willed, and very sure that she has been treated unfairly. A number of those with whom I spoke also felt that she was the victim of retaliation by Chief Ankerfelt. Again, the purpose of this investigation was not to make a determination as to the merits of

⁴¹ Answer to Request for Admission 3 submitted by Ms. Ferguson to her attorney, Ferguson v. City of Sitka.

⁴² Letter from Kimberly Geariety to Brian Hanson, September 24, 2018.

⁴³ This is based on my interview with Ms. Ferguson and the answers she submitted to her attorney to interrogatories filed by the City in her case.

this issue. But there most certainly was a strong appearance of retaliation, again underlining the importance of the perception that whistleblowing was disfavored and could readily lead to adverse results at the SPD under Chief Ankerfelt.

After Chief Baty was appointed, he contacted Ms. Ferguson to see if she was willing to return to work. She attempted to talk to him about her lawsuit, but he declined to do so without her attorney being present. She did make it clear to him that she was not willing to work under the direction of Mr. Ewers, who, as discussed below, had voluntarily taken a demotion to sergeant. Chief Baty was not willing to accept this condition, and was adamant that she had to return to patrol if she came back to work. When Ms. Ferguson refused to do so, he fired her.⁴⁴

Ms. Ferguson subsequently settled her lawsuit on a no fault basis. As noted above, one provision of the settlement was that she could hire a retired judge or justice to conduct an "investigation" of the SPD.

The transition to Chief Baty. In December 2018, Chief Ankerfelt notified the City that he planned to retire sometime in the spring of 2019. He indicated at his deposition that he did so largely because he was facing increasing personal issues regarding both his health and that of his family,⁴⁵ but it is hard not to

⁴⁴ Deposition of Robert Baty, note 30, supra, at pp. 87-89.

⁴⁵ Deposition of Jeff Ankerfelt, note 11, supra at 11-12.

conclude that he also was motivated to do so in light of the three lawsuits that had been filed against the department.

As relevant here, the principal event that occurred after Chief Ankerfelt's announcement of his retirement and before his replacement by Chief Baty was the voluntary demotion taken by Mr. Ewers from lieutenant to sergeant. There appear to be several reasons why this step was taken. Mr. Ewers told me that he decided to become a sergeant because he felt that he was not as effective as an administrator as he could be as a patrol sergeant and that he found the position stressful. He testified at his deposition that he did so for "quality of life", in the sense that he would be paid more money and deal with less stress.⁴⁶ But while he minimized the point in his deposition,⁴⁷ there undoubtedly was a considerably stronger reason to become a sergeant: once he became a sergeant, he would only be terminated for cause, and he could be protected by the union in the event that he was subject to discipline or being fired.⁴⁸

This protection was particularly important once Chief Ankerfelt decided to retire, for that decision placed Lt. Ewers' position in some jeopardy. As a lieutenant, he was an at-will employee, which meant that he could be fired by a new chief. As

⁴⁶ Deposition of Lance Ewers, note 7 supra, at p. 38.

⁴⁷ Id. at pp. 41-44.

⁴⁸ This is based on my interviews with current and former SPD officers who are members of the union.

noted above, he remained highly controversial within the department, and the allegations of his conduct were at the heart of all three lawsuits. Both he and Chief Ankerfelt accordingly and understandably had to have been very concerned about what a transition to a new chief might mean for him professionally.

Mr. Ewers approached Chief Ankerfelt about a demotion sometime in February or March 2019. There already were four sergeants serving in the SPD, which was the maximum number allocated in the organizational chart. Chief Ankerfelt went to speak to the City Administrator, who agreed that a fifth sergeant position would be created and that Mr. Ewers would take that position.⁴⁹ The demotion subsequently was formalized in March 2019.⁵⁰

This step was not without controversy. Many of the people with whom I spoke believed that Chief Ankerfelt created the new position purely to ensure that Mr. Ewers could not be fired by the new chief. And given the ongoing issues between Mr. Ewers and several of the staff who were still working at SPD, the decision to make him a sergeant was very problematic for morale. It is noteworthy in this respect that even though Sgt. Ewers had become a sergeant in part to get the protections available to a patrol

⁴⁹ Deposition of Jeff Ankerfelt, note 11 supra, at pp. 80-83, 170-71.

⁵⁰ Email to me from Serena Wild, dated December 8, 2020 - Ms. Wild kindly provided me with the relevant dates of employment of Ms. Ferguson, Mr. Silva, Chief Schmitt, Chief Ankerfelt, Chief Baty, Lt. Achee, and Sgt. Ewers.

officer, he ultimately decided not to join the union,⁵¹ which, based on my conversations with several employees of the department, apparently means that he is entitled to the substantive protections of the union contract and can avail himself of the procedures; but he may well have to pay for them.

Chief Baty was hired in April 2019. There does not appear to have been much of a search for a new chief. As best I can determine from my interviews and the deposition of the then-City Administrator, the City became aware of him only a short time before he was hired, and decided quite quickly to retain him on an interim basis. This is not to say, however, that the City chose rashly. Chief Baty has considerable experience as an officer and administrator in many parts of Alaska, both as a state trooper and as a chief in rural communities, including Cordova, Yakutat and Whittier.⁵² He was highly recommended and is highly qualified to be a police chief in a community like Sitka.

Everyone with whom I spoke, including Chief Baty agreed that when he became Chief, Mr. Baty made it clear that he was not interested in what happened in the past. He wanted to focus on the future and to take every step he could to change the culture and morale in the SPD. He made it a point not to ask about the prior controversies, although he seemed well aware of the general

⁵¹ Deposition of Lance Ewers, note 7 supra, at p. 41-42, 44.

⁵² Deposition of Robert Baty, note 39, supra, at pp. 7-8.

allegations and issues when I spoke with him. And a key priority was to install a clear respect for following the chain of command. He made it abundantly clear to the staff that if they had a problem with a supervisor, they should first speak with that person and then move up the chain of command, culminating in him. But he made it equally clear that while his office was open, he would not hear any disputes until they had moved through the chain of command, and he fully expected that no one would go outside of the department (e.g. to the City Administrator or the Assembly) without first completing the chain of command process.

I will address the other changes made by Chief Baty in the discussion of my findings below.

Findings

Based on my hours of interviews and my review of the relevant documentation and depositions, my findings can be broken down into five areas: management of the department by Chief Baty (including any violations of law or policy); racism/sexual harassment/gender discrimination; coordination with other agencies; allegations of retaliation against whistleblowers; and the allegations made by Allison Kirby. I will address each area in turn.

Management

With very few exceptions, every person with whom I spoke viewed Chief Baty's management of the SPD favorably.⁵³ They generally agreed that the department now is run in a more efficient and professional manner, and that morale has improved considerably. They also indicated that Lt. Achee, who was hired by Chief Baty shortly after he became chief, has done an excellent job managing the operations of the department. And there was a general sense that provided that the chain of command was followed, both the chief and the lieutenant had an open door.

Aside from what was perceived by most of those with whom I spoke as lack of adequate day-to-day management under the two prior

⁵³ Chief Baty was hired as interim chief in April 2019. He still, formally at least, is on interim status. But as I understand it from the City Administrator and the City Attorney, the City has been unable to transition Chief Baty to a full-time position due to some complications associated with enabling Chief Baty to continue to collect his retirement from his time as a trooper.

chiefs, two of the key issues that most comments mentioned were the constant turnover in the department and the relative lack of diversity prior to Chief Baty's arrival. Chief Baty identified both of these issues as important priorities. He actually has faced ongoing turnover since he became chief, as at least five officers and three other employees have left since that time. Chief Baty told me that everyone who left had planned to leave; of those to whom I was able to speak about it, one retired, one said they thought Chief Baty was a good guy (and otherwise declined to talk to me), and others spoke of issues they had with the work environment, particularly with respect to Sgt. Ewers.

Chief Baty has taken several steps both to reduce turnover and to increase diversity in the department. In particular, he hired a number of new patrol officers, some new and some with considerable experience; and as of the time of this report, there are not any vacancies of which I am aware in patrol or in the other departments. Some of the experienced new officers were hired on a two weeks on/two weeks off basis, which apparently has been a valuable way to keep these officers on the police force. Among the new hires are a female patrol officer, an Asian lieutenant, and an Alaska Native patrol officer. There also is increased diversity in the dispatch and jail divisions of the department.

Another problem that had faced the department prior to the appointment of Chief Baty was a strong perception of the existence

of cliques in the department, which undoubtedly was an outgrowth of the fallout from the actions taken by the City and Chief Ankerfelt after the vote of no confidence. This problem appears to have been ameliorated as of the time of this report, for at least two reasons. First, there are very few employees remaining in the department who worked there prior to Chief Baty's arrival. Second, it appears that the attention to rotating the patrol officers through different shifts managed by each of the sergeants has ensured that every officer works with every other officer and with every sergeant, which is a valuable structural way to avoid factions.

A related and valuable step taken by Chief Baty has been to require the sergeants to meet on a regular basis to address any issues that have come up and to arrive at solutions. He has also tasked them with evaluating the department's policy and procedures. And he has made it clear that these meetings should also serve as a way to ensure that the sergeants' expectations of the staff are as consistent as possible, and to announce any changes that they plan to institute in emails to the staff.

Chief Baty also has taken steps to improve the department's relations with the community. He has met with a variety of community leaders and has established an ongoing relationship with the Sitka Tribe, of which he is a member. And he has promoted community policing, encouraging his officers to get out into and

be a more integral part of the community. It was clear from my conversations with current department employees that this focus on community policing was an important element contributing to their job satisfaction.

There were, however, several concerns that were raised regarding management of the department under Chief Baty. First, while they were pleased that he took the time to meet each of them individually, many were surprised that he did not convene an all-staff meeting when he arrived, and they noted that he does not tend to set up meetings that involve the department as a whole. Instead, the only regular meetings that are held are the shift change briefings and the sergeants' meetings. When combined with some changes in the allocation of offices, which led to a physical distance between the sworn and not-sworn employees, this has led to a perception that the sworn employees are more favored. I do not think that either Chief Baty or Lt. Achee intended this result, but I believe that they should be more sensitive to the way in which the changes in office locations and the lack of general meetings has affected the feelings of the not-sworn employees. Regular staff meetings could well ameliorate this issue.

The second concern that was raised relates to the sergeants' meetings. There was a general consensus that each of the sergeants has different expectations regarding such matters as the way in which reports are written, expectations of the dispatchers, the

way in which to prepare a search warrant, and the use of patrol vehicles. Everyone agreed that such differences are a natural and sometimes helpful outgrowth of the fact that the sergeants are different people with different strengths and emphases. But while some of the people with whom I spoke did not see a problem with these different expectations, others found it difficult to navigate around them; and they did not believe that the sergeants' meetings had fully ameliorated this problem.

This leads to the third concern: the role that Sgt. Ewers plays in the department. There is a general consensus that he is a very smart and capable man with a very strong and sometimes overbearing personality. But I did not get the sense that anyone views him neutrally - they either like him and find him easy to work with, or they most certainly do not; and those in the latter category tended to say that they found ways to avoid dealing with him entirely or at least to avoid open conflict. Needless to say, this kind of situation is hardly unique in any organization, but it is of particular concern given Sgt. Ewers' divisive history in the department and what appear to be some ongoing tensions, tensions that are not restricted to those who were working in the department prior to Chief Baty's arrival.

As noted above, a central criticism of Mr. Ewers when he was a lieutenant was that he treated department employees abusively and reacted extremely poorly to any perceived slights or challenges

to his authority. This issue did not resolve throughout his tenure as lieutenant, and the appearance of favoritism associated with the way in which he became a sergeant contributed to the problem.

In short, Sgt. Ewers remained a controversial figure when Chief Baty arrived. Both Chief Baty and Lt. Achee clearly recognized this in my conversations with them, and they stated that they continued to work with Sgt. Ewers regarding the way in which he treated those whom he supervised. Sgt. Ewers told me that he recognizes that when he was the lieutenant, he acted like a drill sergeant, putting people on the defensive, and that he realizes that he still has the potential for acting that way. And I was informed by some of his critics that Sgt. Ewers has improved in this respect.

But it was also clear from my conversations that the tension remains. One major reason some of the people with whom I spoke wished to remain confidential was a fear of reprisal from Sgt. Ewers. Ongoing tensions with Sgt. Ewers contributed to the decision of some employees to leave the department. And several people indicated that Sgt. Ewers still has a habit of utterly ignoring people with whom he is unhappy.

The most significant issue in this respect, however is that there is a perception among some, but not all, of those with whom I spoke that Sgt. Ewers is the first among equals, with an outsize influence on the other sergeants and even on the chief and

lieutenant, as well as a tendency to dominate any room or meeting. They also perceive that he remains resistant to criticism or any disagreement with his expectations. This has led to a belief that the sergeants' meetings are to some extent run by Sgt. Ewers and that he remains in a favored position in the department.

With all due respect to Chief Baty and Lt. Achee, I do not believe that they are fully sensitive to this dynamic. Chief Baty sent a very negative signal in this respect when he made it clear upon his arrival that he had no interest in what had happened in the past, for he made it appear that he was entirely uninterested in what everyone with whom I spoke indicated had been an ongoing problem in the department. It also strongly appears that to the extent that they have thought about the matter, both Chief Baty and Lt. Achee accept Sgt. Ewers' version of the prior history. Lt. Achee, in fact, told me that if I wanted to get the real story as to what had happened, I should talk to the one person who did not sign the vote of no confidence. And Chief Baty seemed uncritically to accept Sgt. Ewers' version of events when substantial issues arose in the context of one person who recently left the department.⁵⁴

⁵⁴ I received a number of comments about this incident from several individuals. But in the interest of preserving confidentiality, I will not go into the details of that dispute.

From a somewhat formal standpoint, this is understandable, for the City's investigation of the vote of no confidence generally exonerated then Lt. Ewers. But even that investigation noted a strong concern with the way in which he treated the employees, and morale was further damaged by what many at the time thought was a whitewash. More important, as discussed above, a key difficulty that arose under the past administration of the department was the perception given by then Lt. Ewers and Chief Ankerfelt that people who challenged the supervisors' authority - and in particular the actions of Lt. Ewers - would be penalized. As such, by refusing to show an interest in evaluating what actually had happened over time under then Lt. Ewers' management, Chief Baty sent a signal that he supported Sgt. Ewers and was not interested in the ongoing concerns that remained. The result is a perception among some in the department, as well as among others outside the department with whom I spoke, that Sgt. Ewers is favored and retains some sort of special status.

I do not believe that either Chief Baty or Lt. Achee either intended or now intend this result, and as noted above, they both are aware of issues relating to Sgt. Ewers' manner. But there are two steps that can be taken to ameliorate this issue. First, they need both to continue to pay particular attention to way in which Sgt. Ewers interacts with other department employees, and to continue to train him in this regard. It would also be important

that they convey that they are sensitive to the issue and neutral about any disputes that may arise. This appearance of neutrality is all the more important given the signal they sent of complete disinterest in prior history.

Second, it would be very helpful if the sergeants held a professionally facilitated retreat to address the ways in which they manage their shifts, their expectations for their officers, the dispatchers and the jail staff, and their thoughts as to what changes might be made in the department's policies and procedures. This would be helpful for at least two reasons. First, such a meeting in a retreat context would provide both the time and physical distance needed really to talk things through. Second, the use of a professional facilitator would ensure that there were no internal power dynamics at play and that the discussions could be as frank and comprehensive as possible. This in turn would undercut any perception among those who are concerned about the matter that Sgt. Ewers somehow dominated the results, thereby leading to a more widespread acceptance of those results.

It is not clear whether it would be helpful to have Chief Baty and Lt. Achee at that retreat. They obviously have a lot to contribute and their perspective would be helpful and valuable. But they also are the sergeants' supervisors, which might impede the frankness of the discussion. I recommend that the facilitator

be consulted on this issue, as they could best determine the appropriate framework given the goals of the retreat.⁵⁵

Sexual Harassment, Gender Discrimination, and Racism

As noted above, Ms. Ferguson raised some significant issues regarding sexual harassment and gender discrimination while she was employed at the department, and others with whom I spoke also indicated some concerns, at the very least that Chief Ankerfelt did not take the matter very seriously. It is noteworthy in this respect that the attorney who evaluated the EEOC complaint was critical of the fact that the department did not take any steps when Ms. Ferguson informed then Lt. Ankerfelt that she had been harassed by a sergeant.⁵⁶

Allison Kirby, a former employee of the SPD, sent a letter to the Assembly in which she charged that there was a serious problem of racism in the department. Some of those with whom I spoke also

⁵⁵ Two other issues were brought to my attention regarding management of the department. The first involved a number of allegations both orally to me and communicated in a letter from former officer Jack Ford, that the department did not competently address drug issues in Sitka. This issue is largely outside of the purview of this investigation, and to the extent that I as a retired judge even am qualified to evaluate it, I was again precluded from obtaining key information due to the fact that many of those who knew the most about this issue declined to talk to me.

The second issue concerned an allegation that Chief Baty improperly brought his family and friends on a trip using an official boat to have a party on an island where a search had to be conducted for human remains. Chief Baty explained, however, that he had made arrangements with the trooper academy to have recruits do the search, and he decided to have a barbeque there to thank them. He did invite families to that barbeque. One could argue that involving the families perhaps might not have sent a proper picture, but overall it is hard to find any real fault with the way in which Chief Baty handled this situation.

⁵⁶ Letter from Kimberly Geariety to Brian Hanson, September 24, 2018 at p. 8.

indicated that they heard racial slurs during the time that Chief Ankerfelt was in charge.

But every person with whom I spoke informed me that they have not perceived any form of sexual harassment, gender discrimination or racism in the department since Chief Baty took over. They also were unanimous that he and Lt. Achee would not stand for it. I therefore do not believe that this is a problem at this time.

I also was informed, however, that there had been no formal training in these areas for a long time, including the time since Chief Baty was appointed. Needless to say, it would be difficult at present to have such a training, given the pandemic. But all agreed that it would be very helpful for the department to require such training when it is possible to do so, and Chief Baty indicated to me that he both was supportive of the idea and planned to hold those trainings. I recommend that such trainings in fact be scheduled on a regular basis.

Cooperation with Other Agencies

The SPD does not operate in a vacuum - it has to have a good and effective network of communication and cooperation with other law enforcement agencies that work in Sitka and elsewhere. But there have been complaints that Chief Baty was unwilling to work with other agencies and needlessly placed roadblocks in their way. Jack Ford, a former officer at the department, raised substantial

concerns in this respect in letters he sent to the Sitka Assembly,⁵⁷ concerns that were echoed by some of the people with whom I spoke. And Mr. Ford and Mr. Silva were quite adamant in their conversations with me that Chief Baty was utterly unwilling to work with other agencies to facilitate the service of warrants and to provide technical assistance when those agencies came to Sitka. Indeed, they blamed Chief Baty for the failure of certain drug operations due to a lack of cooperation.

Chief Baty was equally adamant that he was more than happy to help, provided that he was informed in advance that the relevant law enforcement agents were coming to Sitka. According to Chief Baty, the issues raised by Mr. Ford and Mr. Silva basically were generated by a lack of adequate notice. Chief Baty did admit in this context that he did not trust Mr. Silva at all, which made it more difficult to work with him while Mr. Silva was deployed with the Coast Guard.

As noted above, my ability to get to the bottom of this issue basically was hamstrung by the fact that most of the people working at the relevant agencies either would not or were not allowed to talk to me, thereby precluding me from corroborating what little information I could glean from the very few who did talk to me, mostly on a confidential basis. I accordingly cannot say whether

⁵⁷ Letter entitled "To the Sitka Assembly"; Letter entitled "To Whom It May Concern". My copies of these letters are undated.

any of these agencies either do or do not have difficulties working with Chief Baty or the SPD as a whole.

I was able, however, to speak with the sergeant who directs the regional drug task force, who provided me with very helpful and credible information - credible in part because he is a very credible man and in part because both Chief Baty and Ms. Ferguson encouraged me to talk to him. The sergeant informed me that he had a good working relationship with Chief Baty. But he said that a key to that relationship was that he was expected to provide advance notice to the Chief of any operations he planned to undertake in Sitka. The sergeant made it clear that he felt that this expectation was entirely appropriate and one that applied to all of the communities in which the drug task force worked. But he also noted that due primarily to the difficulties between Chief Baty and Mr. Silva, there had been some greater tension in Sitka.

The sergeant confirmed that the problem appears to have been that Mr. Silva, and Mr. Ford, did not tend to provide any advance notice that Mr. Silva was coming to town, or to seek formal permission to use Sitka resources. It further appears that both Mr. Ford and Mr. Sitka often assumed that the supervisors would know what was going on and hence did not need formally to communicate, which was very problematic from Chief Baty's perspective, given his strong emphasis on following the chain of command. And in at least one instance, Mr. Silva only gave Chief

Baty formal notification and a request for assistance late in the evening of the day before Mr. Silva arrived - assistance that ultimately was provided, albeit somewhat grudgingly due to the late notice.⁵⁸

At bottom, given the sergeant's information and the lack of any real communication from other agencies, the most I can conclude about the interagency cooperation issue is that it appears to be unlikely that there will be difficulties between the SPD and other agencies if the notice required by Chief Baty is provided. But the sergeant did state that he often can obtain the necessary cooperation through informal contacts with the relevant local police department - including Sitka - rather than a formal written request for assistance, and that such formal notice tended only to be necessary in Sitka if Mr. Silva was involved. Indeed, he noted that it probably would have been best not to involve Mr. Silva in Sitka given the antipathy that exists between him and Chief Baty. I will address the ramifications of that issue below.

Whistleblowers

Chief Baty made it abundantly clear when he became chief that he expected all employees to follow the chain of command. This

⁵⁸ This description is based on an email chain that I received from Chief Baty about this incident. Mr. Silva has asserted that the operation failed due to a leak from the department. The director of the drug task force agreed that the search came up empty, but was unwilling to speculate as to what happened - he said there could be any number of reasons why they did not find what they were looking for.

meant that any issues they had with their supervisor had to be brought to that person's attention; if not satisfied with the result, then they should proceed to each higher level of the department, culminating with the chief. Chief Baty strongly reaffirmed his commitment to this policy in speaking with me, although he did recognize that the chain extended above him to the City Administrator and perhaps even the Assembly if an employee was dissatisfied with his response.

This focus on the chain of command is entirely appropriate. Indeed, it is likely that one of the underlying causes of the difficulties facing Chief Ankerfelt was that he did not really enforce discipline and seemed to care about following the chain of command only when he felt threatened by people who went outside the department when they felt that the Chief simply would not listen. But Chief Baty does give the impression that he does not like to be challenged, and he also can appear to let his personal antipathy about a situation color his decision-making.

This seems most evident with regard to the litigation that was filed by Ms. Ferguson and Mr. Silva. Jack Ford alleged in his letter that he was told that Chief Baty felt that the lawsuits would not have happened had proper discipline and chain of command procedures been followed. While I could not corroborate Mr. Ford's allegation, due to the fact that other potential witnesses to those comments declined to talk to me, Chief Baty's affect in speaking

with me did provide some support for that perception about his attitude toward the lawsuits, as did the fact some of the people with whom I spoke stated that Chief Baty made it very clear that he was unhappy that Mr. Silva was allowed to remain an employee of the department for several months after the lawsuit was settled.

The significant point here is that some of his actions do suggest that Chief Baty's feelings about the litigation have colored both his actions with regard to Ms. Ferguson and Mr. Silva and his attitude toward them. With respect to Ms. Ferguson, while Chief Baty did try to persuade her to return to the department, arguing that things had changed now that he was in charge,⁵⁹ he was utterly unwilling to bend regarding the terms of her return - she was going to have to return to patrol and she was going to have to be supervised at times by Sgt. Ewers, notwithstanding the entirely dysfunctional relationship between them.⁶⁰ When Ms. Ferguson tried to talk to him about this, Chief Baty largely cut her off, primarily on the grounds that they were involved in a lawsuit.⁶¹ While this was understandable up to a point, there certainly were ways to finesse the problem. One possible solution would have been to have the attorneys listen in, although that admittedly might have curtailed the discussion somewhat. A second possibility

⁵⁹ Deposition of Robert Baty, note 39, supra, at pp. 30, 38, 93, 98-100.

⁶⁰ Id. at p. 36, 37.

⁶¹ Id. at p. 35, 40.

would have been to let Ms. Ferguson explain her position, so that Chief Baty understood precisely where she was coming from, without getting into a discussion of the merits of her concerns. They could then have talked through ways that Ms. Ferguson's concerns could have been alleviated.

I recognize that Ms. Ferguson really wanted to come back as an investigator and that she absolutely did not want to work under Sgt. Ewers. I also recognize that Chief Baty has made the decision not to hire any investigators at this time and that the patrol officers would rotate under each of the sergeants; and he did ask Ms. Ferguson to return before he ordered her to do so. But it seems that a structure could have been developed to minimize any contact between Ms. Ferguson and Sgt. Ewers, or at the very least an earnest effort should have been made to see what might be possible. But based on both my interviews with Ms. Ferguson and Chief Baty and on Chief Baty's deposition in the Ferguson case, no such effort was made, primarily because Chief Baty had made his decision, and Ms. Ferguson had no choice but to accept or reject it. Indeed, Chief Baty's rigidity in this respect was evidenced during his deposition, when he was pressed regarding Ms. Ferguson's statement in a letter to him that she did not want to "managed" by Sgt. Ewers - he responded that Sgt. Ewers would "supervise" not "manage" Ms. Ferguson because "management" involved discipline and "supervision" did not; and he consistently refused to answer

whether he could have addressed any concerns over "supervision" purely because she had said "manage" in her letter.⁶² It accordingly is difficult to escape the impression that Chief Baty's recalcitrance here was generated in part by the fact that he simply did not like the fact that in his view she had stepped outside the chain of command and had sued the department.

The situation with Mr. Silva is more troubling. As noted above, Chief Baty was very frank with me regarding his feelings towards Mr. Silva: based on his dealings with Mr. Silva, he simply does not trust him. To his credit, Chief Baty did not allow those feelings to block an agreement to let Mr. Silva conduct an operation in Sitka after Mr. Silva gave him formal notification of his intended operation.⁶³ And Mr. Silva did not seem fully to recognize the importance that Chief Baty placed on receiving a formal notification. But it does seem that Chief Baty placed a special emphasis on such formalities when it came to Mr. Silva's operations.

While emblematic of Chief Baty's attitude toward Mr. Silva, this issue is admittedly a relatively minor one and certainly could readily have been resolved.⁶⁴ But Chief Baty has taken two other

⁶² Id. at pp. 90-94.

⁶³ Email from Chief Baty to Ryan Silva, September 10, 2020.

⁶⁴ Mr. Silva told me that he had made several efforts to reach out to Chief Baty and Lt. Achee, but they declined to talk to him or to give him a clear sense of their expectations. Chief Baty and Lt. Achee denied that Mr. Silva did so and asserted that they made their expectations clear. This obviously is a "he said, he said" situation, one that is difficult fully to corroborate with respect to

steps, both taken after Mr. Silva filed his lawsuit, that seem much more problematic and even retaliatory toward Mr. Silva. The first consists of two written reprimands he issued to Mr. Silva - one on September 16, 2019⁶⁵ and the second on September 26, 2019⁶⁶ - that grew out of Mr. Silva's attendance at criminal trial in Sitka while he was on military leave from the department. Mr. Silva had been subpoenaed to be a witness, and the DA asked Mr. Silva to sit with them at counsel table throughout the trial to provide technical assistance, given his knowledge about the case. Mr. Silva submitted a request for overtime pay for the time he spent at the trial on September 9, 2019;⁶⁷ and he sent an email to the Sitka Assembly on September 13, 2019, stating that he had not been adequately compensated for the time he spent at the trial and complaining about inquiries made by Lt. Achee about the matter and by Chief Baty to the Coast Guard regarding Mr. Silva's military leave status.⁶⁸ These actions led Chief Baty to issue the two reprimands.

the claims of either side. It is, however, something that is far from unusual in any organization and generally can be worked out over time.

⁶⁵ Memorandum from Chief Baty to Mr. Silva, September 16, 2019, titled "Written Reprimand".

⁶⁶ Memorandum from Chief Baty to Mr. Silva, September 26, 2019, titled "Written Reprimand".

⁶⁷ Memorandum from Chief Baty to Mr. Silva, September 16, 2019, titled "Written Reprimand" at p. 1.

⁶⁸ Memorandum from Chief Baty to Mr. Silva, September 26, 2019, titled "Written Reprimand" at p. 1.

The first addressed the request for overtime. Mr. Silva apparently did not notify either Chief Baty or Lt. Achee about either the subpoena or the DA's request. When the trial was over, Chief Baty issued the first formal reprimand, stating that Mr. Silva had violated the SPD policies and procedures (formally the OPM) on the grounds that he was required to provide advance notice of the subpoena and that assisting the DA was not part of his regular duties and so required direct authorization from a supervisor.⁶⁹

The second reprimand was based on the email that Mr. Silva sent to the Sitka Assembly. Chief Baty wrote that Mr. Silva's complaint about pay should have been filed as a union grievance and that his complaints should have been addressed first with Lt. Achee, then with him, and then with the City Administrator. As with the first reprimand, he informed Mr. Silva that if he did not follow the chain of command, he would be subject to further discipline "up to and including discharge."⁷⁰

Mr. Silva told me that he assumed that Chief Baty had to have known he would be at the trial, since it was a high-profile matter and he had been one of the principal investigators in the case. He nevertheless should have formally informed the chief that he

⁶⁹ Memorandum from Chief Baty to Mr. Silva, September 16, 2019, titled "Written Reprimand" at pp. 1, 2.

⁷⁰ Memorandum from Chief Baty to Mr. Silva, September 26, 2019, titled "Written Reprimand" at p. 1.

had to go to the trial and provide assistance. It also is difficult to understand why he sent a complaint almost immediately to the Assembly, rather than trying to work the situation out internally.

Chief Baty is correct that the OPM required notification of the subpoena and the DA's request, given that Mr. Silva was on military leave. He also is correct that the OPM requires that Mr. Silva not to go directly to the Assembly, but to attempt to resolve issues through the chain of command. According to Chief Baty, he felt that given these violations, a formal reprimand was appropriate in each instance. But with all due respect to Chief Baty, this seems to be overkill to some extent. The trial started in early September, 2019,⁷¹ at which point Mr. Silva's involvement had to have been obvious. Chief Baty could have talked to Mr. Silva at that point, made it clear that Mr. Silva was required to have let him know ahead of time, and given him a strong but informal warning that he needed to follow the OPM. That conversation would also have addressed the fact that Mr. Silva would be entitled to overtime for his time spent at the trial, as well as clarifying the status of Mr. Silva's military leave. But there is no indication that Chief Baty did so, or even discussed the matter prior to issuing the reprimand. Nor is it clear why Chief Baty

⁷¹ The exact dates of Mr. Silva's attendance at the trial are not clear. The September 16 Notice of Reprimand identifies the relevant dates as August 20-September 3, but the September 26, 2019 reprimand states that Mr. Silva attended the trial during the first week of September 3.

waited an additional 10 days to issue the second reprimand, when the email to the Assembly was dated prior to the first reprimand. And it is important to note that Mr. Silva's constitutional rights of free speech and petition to the Assembly are implicated here to some extent. As such, by taking the route he did, Chief Baty created the impression that he was retaliating against Mr. Silva for the litigation and his history with the department prior to Chief Baty's arrival.

The second concerning action taken by Chief Baty against Mr. Silva was a criminal investigation for domestic violence that he opened against Mr. Silva in January 2020. I will go into some detail on this investigation because those details are key to understanding why Chief Baty's actions are of concern.

Mr. Silva is divorced, and he was involved in a contentious custody battle with his ex-wife during the time in question here. On January 5, 2020, the SPD received complaints from Ms. Silva and the local magistrate that they had seen concerning footprints around their residence from the night before. Ms. Silva stated during this call that the footprints might have been made by Mr. Silva, that she was in a custody fight with him, and that she had reported prior domestic violence incidents.⁷² Officers went to the scene and saw male footprints - one spoke to Ms. Silva who said

⁷² Police Report by Officer Steele, dated 2/6/20, at p. 1.

"she was in a custody battle with her ex-husband and it is possible he could be the cause of the suspicious activity."⁷³

Ms. Silva came to the police station the next day. She told the sergeant that she was involved in a custody battle with Mr. Silva, that the custody paperwork had made an allegation of domestic violence, and that her daughter had told her that Mr. Silva had been gone from his house from 1:00 am to 2:30 on the night in question. But she also stated both that she wanted the incident "'on record'" and that she "'took Ryan out of the equation because [the footprints] were also at [the magistrate's] house as well.'"⁷⁴

No officer spoke to the magistrate, who I was told did not want any follow-up on the matter. But Chief Baty ordered an officer to contact Ms. Silva on January 8, 2020 to follow up on the allegation of domestic violence. She told that officer that Mr. Silva had struck her in the face about two and one half years earlier in the presence of their children after they had been separated, that she had not reported the incident since Mr. Silva was a police officer, that her daughter did tell someone about the incident who in turn notified the Office of Children's Services, and that she lied to OCS about the incident because she wanted to protect Mr. Silva for fear that he would lose his job. She also

⁷³ Police Report by Officer Steele, dated 1/5/20.

⁷⁴ Police Report by Officer Christner, dated 1/20/20, at p. 1.

told the officer that she asked Mr. Silva whether he had been by her house and was told no, that she had told her attorney about the footprints, that she did not want to file a criminal complaint, and that she did not want SPD to talk to Mr. Silva. Finally, she stated that she felt that the domestic violence incident was an isolated, one-time incident, and that she was not "currently concerned for her welfare."⁷⁵

That officer contacted OCS on January 9, 2020 and requested the OCS report on the incident. On March 18, 2020, he was asked to conduct a follow up report about the request to OCS. In that report, the officer stated that after he had not heard from OCS for about a week after his request for the OCS report, he asked Lt. Achee if he should meet with OCS after his shift and was told that Lt. Achee would have a sergeant contact the OCS supervisor. That sergeant informed the officer on March 18 that he spoke with the supervisor toward the end of January or the beginning of February and was told that she had to talk to her supervisors and attorneys before she could turn over the report; but he never heard back from the supervisor. The officer then spoke with Sgt. Ewers "and discussed my concerns and any other options he may have." Sgt. Ewers said he would contact a person "who is over the domestic violence of Alaska"; that person gave Sgt. Ewers contact

⁷⁵ Police Report by Officer Steele, dated 2/6/20, at p. 1.

information for the OCS director and told Sgt. Ewers that the director would assist in getting the reports. The officer accordingly emailed the director on March 18 requesting the report.⁷⁶ Curiously, the email mentions the person to whom Ms. Silva's daughter made the allegation of domestic violence,⁷⁷ even though there is no mention of that person's name in the earlier police report.

Lt. Achee had followed up on the OCS matter after he spoke with the officer who had conducted the initial investigation. According to his report, dated April 2, 2020 and reviewed by Sgt. Ewers, he contacted the local OCS supervisor on March 5, 2020 and was told that the OCS attorneys were reviewing the request. On March 25, 2020, he received two Protective Services Reports from OCS. The first was dated March 29, 2017 and contained an allegation that Mr. Silva had struck his wife after she had taken his cell phone and threw it. The second was dated March 17, 2020, and contained an allegation from Mr. Silva's daughter that he was physically and emotionally abusive toward her. OCS did not send the report on the results of its investigation of the first incident.⁷⁸ Lt. Achee concluded that a further investigation was required regarding all of these assaults; but he also decided that

⁷⁶ Id. at p. 1.

⁷⁷ Id. at p. 2,

⁷⁸ Police Report by Lt. Achee, dated 4/4/20, at p. 1.

in view of the "recent" litigation with Mr. Silva, it would be appropriate to ask the state troopers to conduct that investigation.⁷⁹

Chief Baty accepted this recommendation and sent a letter to Captain Gorn of the troopers on April 7, 2020. The letter noted that Ms. Silva had mentioned the domestic violence incident in January 2020, that he had assigned an officer "to follow up on the allegation and determine the veracity of the complaint", and that he had had considerable difficulties getting any cooperation from OCS. He further stated that they asked the local DA for help, who confirmed that reports of harm had been made "addressing the assault and concerns for safety of the children and spouse", that the department had never been told about these incidents, and that OCS "has not or will not" provide any information as to any investigation it had completed.⁸⁰ Noting that Mr. Silva had recently settled the lawsuit against the City, that he was still formally an SPD officer until October 1, 2020 so he could continue to work for the Coast Guard, and that Mr. Silva planned to apply for a full time job with the Coast Guard Investigative Service, Chief Baty asked that the troopers take over the case both "due to the litigious history and claims of retaliation which may result if Sitka Police Department continued the investigation" and

⁷⁹ Id. at 2.

⁸⁰ Letter from Chief Baty to Captain Andy Gorn, April 7, 2020, at 1.

because Chief Baty hoped that OCS would be more cooperative with the troopers.⁸¹

After not hearing back from Captain Gord for several weeks, Chief Baty contacted the Colonel of the Troopers on May 27, 2020, asking him to have the troopers take the case.⁸² The colonel informed Chief Baty the next day that a trooper investigator had been assigned to the case and would look into the allegations during the following week while he was in Juneau on another matter.⁸³ The investigator met with Chief Baty and Sgt. Ewers on June 16, 2020, who "updated" him about the case, provided CD's of the interviews with Ms. Silva and the PSR's from OCS, and told him that OCS had not been willing to cooperate.⁸⁴ The investigator went to the OCS office and was able to obtain "the OCS reports concerning the case" from the local OCS office supervisor, who told him that both children stated that they saw Mr. Silva slap their mother. He then interviewed Ms. Silva, who stated that she did not want to report the incident or participate in the investigation, even though she "'hates Ryan'". The investigator took no further action on the matter - he simply referred the case

⁸¹ Id. at 2.

⁸² Email from Chief Baty to Bryan Barlow, May 27, 2020.

⁸³ Email from Bryan Barlow to Chief Baty, May 28, 2020.

⁸⁴ Alaska Department of Safety Incident Report AK20033840 at p. 3.

to the state's Office of Special Prosecutions and Appeals.⁸⁵ It is my understanding from the City Attorney that OSPA declined to prosecute the case, after which SPD closed the case.

It is not clear why OCS did not send its closing report regarding the 2017 incident to SPD.⁸⁶ I assume the investigator got that report. The report indicates that OCS conducted and completed an investigation of the allegation that Mr. Silva slapped Ms. Silva. OCS interviewed Mr. Silva, Ms. Silva and the children - both adults denied that he hit her, but the older child maintained that he had done so.⁸⁷ While the tenor of the report could be read to suggest that the alleged assault might have happened, OCS concluded that what it termed "the incident" was an "isolated" one, that the parents were separated, and that the children, while stressed, were receiving support. OCS accordingly closed the case.⁸⁸

Mr. Silva was adamant that Chief Baty opened this investigation as a retaliatory move designed to damage his custody case and ensure that he could never work as a police officer again. When asked why he pursued the matter, Chief Baty stated that any

⁸⁵ Id. at 4. The referral seems only to have pertained to the alleged assault on Ms. Silva. I found nothing further in the records regarding any action by any agency regarding the 2020 PSR.

⁸⁶ I was provided a copy of OCS's closing report, entitled an "Initial Assessment" regarding the 2017 incident. I have no information as to what, if anything, OCS did with respect to the 2020 allegations.

⁸⁷ OCS Initial Assessment Summary at 2.

⁸⁸ Id. at 1.

allegation of domestic violence, particularly by a police officer, needs to be investigated, even if the alleged incident is old and the alleged victim does not want to pursue the matter. He claimed that he always intended to refer the case to the troopers, and only took the steps he did to make sure that there was merit to the complaint.

Chief Baty certainly is correct that domestic violence is an extremely serious offense and that victims often will refuse to cooperate precisely because they are so victimized. He also properly recognized that the SPD was not an appropriate agency to conduct an investigation of Mr. Silva that might lead to a prosecution, given the litigation between Mr. Silva and the City. But there are several elements to this investigation that frankly are troubling.

First, there is no reason why Chief Baty could not have immediately have referred the case to the troopers once he heard about the allegations - the troopers certainly could readily have talked to the alleged victim and obtained the necessary information from OCS just as the Sitka officers did. Indeed, one would expect that this would have been his very first step, given his very appropriate recognition of a conflict of interest and possible charges of retaliation that would have accompanied an SPD investigation of Mr. Silva.

Second, even though there was no apparent threat to Ms. Silva's safety, Chief Baty pushed this investigation pretty hard. Ms. Silva did mention that there was an allegation of domestic violence in her custody case when she came to the station on January 6, 2020, but she provided no details regarding this allegation, and she told the sergeant that she did not believe that Mr. Silva was the person who had come to the house the night before. But even though Ms. Silva no longer believed that Mr. Silva was involved, Chief Baty ordered an officer to follow up with Ms. Silva two days later, at which time she did mention the alleged assault and said that she lied to OCS about it; but she told the officer that it occurred two and a half years earlier, that she was not concerned for her safety, and that she did not want to pursue the matter - a further indication of no immediate safety threat. Yet Chief Baty pushed on, bringing Lt. Achee into the investigation in a very hands-on focused manner. In addition, the investigating officer was told two months after the alleged incident to push OCS for the necessary information; Sgt. Ewers was brought in to assist in that endeavor; and the department went all the way to the OCS director in an effort to get the reports. And after Chief Baty did not receive an answer to his request that the troopers take over the case, Chief Baty directly contacted the colonel in charge of the troopers to ask him to step in. It is somewhat difficult to understand this level of intensity over a

case that grew out of a suspicious set of footprints that the alleged victim herself did not believe were made by her ex-husband and that involved a relatively old alleged incident the parties to which had been separated for years without any indication of danger either at the time of the incident or when the report regarding the footprints was filed. It bears repeating in this context that even if there was a reason to be concerned once Ms. Silva stated that she had lied to OCS, this was the precise time when Chief Baty could readily and properly asked the troopers to step in.

Third, Sgt. Ewers played an important role in the investigation. He reviewed and approved the report written by Lt. Achee. He contacted a high-level OCS supervisor on the department's behalf. And he met with the trooper investigator to explain what the department had done on the case. Given Sgt. Ewers' extensive involvement in the many issues that underlay the litigation filed by Mr. Silva against the City, it is extremely difficult to understand why he was so involved in this investigation, as that involvement so strongly suggested a substantial conflict of interest and could readily be read as a way for Sgt. Ewers to get back at Mr. Silva for the many allegations he had made against Sgt. Ewers over the years.

Taken together, these concerns suggest that even though Chief Baty did recognize the possible conflict of interest involved in the investigation and strongly denies that he was motivated by a

desire to retaliate against Mr. Silva, he undertook that investigation in a manner that created a strong appearance of retaliation against Mr. Silva. Having spoken with Chief Baty at length about this matter, I believe it would be unfair to conclude that Chief Baty undertook the investigation in order to hurt Mr. Silva. I also recognize that Chief Baty was in a very difficult position once he heard about the allegation, as any steps he took would be fodder for a claim of retaliation. But I find that Chief Baty's animus toward Mr. Silva did to some extent underlie the way in which he conducted the investigation and that Chief Baty does not fully appreciate that he created the impression of retaliation by the manner in which he did so. I note in this context that reasonable minds could well differ as to whether there was any reason to pursue the matter at all given Ms. Silva's strong desire not to be involved and the lack of any real safety concerns - indeed, OSPA itself decided to take no action after it received the referral from the troopers. This suggests that Chief Baty should perhaps have more carefully considered whether an investigation really was required once Ms. Silva stated that she did not think her ex-husband had come to her house. And in any event, he clearly would have been far better served simply to have asked the troopers to step in once he heard about the allegation and decided that an investigation was needed.

To summarize, Chief Baty certainly understands that there is nothing inherently wrong about whistleblowing - his top priority is that it occur only through the chain of command. But when pushed, he does give the appearance of reacting overly strongly and allowing his personal feelings to play a role in his response. He thereby can create an appearance of not supporting the right of a subordinate to raise concerns about how a supervisor or the department are handling a particular situation, much as Chief Ankerfelt and then Lt. Ewers did in prior years. I find that it accordingly is very important that Chief Baty both be more sensitive to this issue and take more steps to show that sensitivity. One important such step would be to institute regular trainings on the rights of whistleblowers.

Allison Kirby

Ms. Kirby worked as a dispatcher for the department from August 2017 through October 2018 and then went to work for the district attorney's office - she left that office in July 2020. On July 1, 2020, she sent an open letter making a number of allegations of improprieties in both agencies. As relevant to this investigation, she alleged that there was significant racism in the SPD and that an officer had made several requests for access to a federal database "to run individuals and obtain information

about them illegally.”⁸⁹ I have addressed the racism issue above, and will address the other matter here.

Ms. Kirby repeated this allegation when we spoke and told me which officer had made the request. (Given that this request could constitute a violation of state and federal law, I will not mention that name, as I have no independent information that did or did not corroborate her allegation.⁹⁰) According to Ms. Kirby, this officer on two separate occasions made a total of three requests to access the APSIN data base - essentially a highly confidential data base setting out the criminal history of individuals named in the data base - on two separate occasions for what she believed to be his private purposes. She refused each time, and he acted in a retaliatory manner towards her after she refused.

In my first conversation with him, I asked Chief Baty about Ms. Kirby's allegation. He took this matter very seriously and said he had every intention of following up on it, since it involved a possible illegal act by one of its officers. He also said that he had attempted to contact Ms. Kirby but had been unable to arrange a meeting. Ms. Kirby confirmed that there had been an

⁸⁹ Open letter from Alisson Kirby to Sitka Assembly, et al, July 1, 2020 at 2.

⁹⁰ Ms. Kirby alleged in her letter that she informed a supervisor about the requests. Her immediate supervisor did not remember being told about it, although she did note that the fact that she did not remember did not mean that it did not happen. She added that she would not have pursued it if Ms. Kirby had taken care of it herself, but if it had happened before or again, she would have gone to the sergeant or lieutenant.

exchange of emails to try to set up a time to meet, but they had not been able to find a mutually convenient time.

Toward the end of the time that I was making my calls, I tried to reach Ms. Kirby to see if she had been able to meet with Chief Baty. I did not hear back from her. I asked Chief Baty about this during our second conversation and he said that he had not heard from Ms. Kirby. He checked with Lt. Achee, who subsequently sent me an email stating that he had spoken to Ms. Kirby twice, asking for the information on which officer had made the request, but had not heard from her since the second conversation. He said that he had checked with the state and learned that there was no indication of any APSIN violations associated with SPD and that in light of the fact that he had not heard any information from Ms. Kirby other than what she put in her letter, he had decided to close the investigation.⁹¹

I find that Chief Baty and Lt. Achee have acted properly and responsibly with regard to Ms. Kirby's very serious allegation. It frankly is disappointing that Ms. Kirby has not responded to their requests for information. Nonetheless, given the seriousness of the matter, I encourage them to make another effort. I am hopeful that this report may provide an added impetus for Ms. Kirby to

⁹¹ Email to me from Jean Achee, November 25, 2020.

come forward and provide the necessary information to Chief Baty and Lt. Achee.

Recommendations

My recommendations are set forth in the discussion of my findings, but in the interests of clarity I will repeat them here by topic, with a brief explanation of the rationale for each recommendation.

Management

1. Chief Baty should convene regular all-staff meetings so that all of the staff feel fully involved in department operations and can raise any concerns they may have.

While everyone with whom I spoke believes that Chief Baty and Lt. Achee are very good administrators, there is some feeling in the department that Chief Baty pays less attention to the non-sworn employees. All staff meetings would ameliorate any such perception.

2. While the sergeants' meetings have been important and helpful, the sergeants should go to a professionally facilitated retreat to assist in ironing out any issues. The facilitator should be consulted as to whether it would be helpful to include Chief Baty and Lt. Achee in that retreat.

There is some ongoing concern over different expectations from the sergeants and a perception among some employees that Sgt. Ewers dominates the meetings. A retreat would be an excellent way to

address these issues with regard to both the substantive concerns and the perceptions of the interpersonal dynamics.

3. Sgt. Ewers should continue to undergo training and careful supervision to provide ways in which to improve the manner in which he interacts with others in the department.

For better or worse, Sgt. Ewers remains a polarizing figure in the department, and while there is a perception that he has improved in how he treats other employees, it is clear that ongoing attention and training is required.

Sexual Harassment, Gender Discrimination, Racism

1. The Department should place a high priority on formal training in the areas of sexual harassment and gender discrimination.

While there does not appear to be any issue in these areas at present, training is always important. As discussed below, whistleblower training also is very important.

Whistleblowers

1. Chief Baty should be more sensitive to the possibility that he can seem retaliatory against those who disagree with him, given some of the troubling actions he took with respect to Ms. Ferguson and Mr. Silva.

Chief Baty does not seem fully to recognize that some of his actions appear to be retaliatory, even if he does not intend them to be so.

2. The Department should place a high priority on formal training in the rights of whistleblowers.

Such training is always important and would also ameliorate any perception that SPD supervisors might not be open to complaints about department operations.

Allison Kirby

1. A concerted effort should be made to investigate and evaluate Ms. Kirby's allegation of misconduct regarding requests by an SPD employee to use the APSIN network for personal purposes. Her allegations are sufficiently serious that a further effort should be made to investigate them.

Conclusion

It was clear to me as I conducted this investigation that the people whom I interviewed continue to feel very strongly about what has transpired at the Sitka Police Department, especially during the time that Chief Ankerfelt ran the department, and that feelings to some extent remain raw, even with respect to events that now are several years old. Many people told me directly that they did not want to reopen old wounds, and I am sure that most of those who did not return my calls simply did not want to revisit those times or get drawn into any further controversy.

It nonetheless was necessary for me to learn about prior history so I could determine whether any of the issues that arose then still remain a problem at the department. My focus therefore was forward-looking, even though I had to delve into the past. I am hopeful that anyone who reads this report will accordingly understand that my evaluation of what I learned is not intended to judge what has happened or to re-litigate prior events, but to draw out lessons and concerns that can enable an already-effective department to be even more effective in the future.

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List of Documents Reviewed

Court-related documents

Complaint for Declaratory and Injunctive Relief and Damages, Ryan Silva v. City of Sitka and Jeff Ankerfelt, 1SI-18-136 CI

Second Amended Complaint for Declaratory and Injunctive Relief and Damages, Mary Ferguson v. City of Alaska and Jeff Ankerfelt, 1SI-18-176 CI

Complaint for Damages, Noah Shepherd v. Lance Ewers and the City of Sitka, 1SI-19-35 CI

Deposition of Lance Ewers, Noah Shepherd v. Lance Ewers and the City of Sitka, 1SI-19-35 CI, January 7, 2020

Deposition of Jeff Ankerfelt, Ryan Silva v. City of Sitka and Jeff Ankerfelt, 1SI-18-136 CI, May 21, 2019

Deposition of Jeff Ankerfelt, Mary Ferguson v. City of Alaska and Jeff Ankerfelt, 1SI-18-176 CI, July 8, 2020

Deposition of Keith Brady, Ryan Silva v. City of Sitka and Jeff Ankerfelt, 1SU-18-136 CI, May 22, 2019

Deposition of Robert Baty, Ferguson v. City of Sitka and Jeff Ankerfelt, 1SI-18-176 CI, February 25, 2020

Mary Ferguson's answers sent to her attorney in response to the City's interrogatories and requests for admission in Ferguson v. City of Sitka

Jeff Ankerfelt's responses, sent to his attorney, to the complaint filed in Silva v. City

Letters, memoranda and reports

Letter from Union Members of the Sitka Police Department to Chief Sheldon Schmitt, June 22, 2016, with 18-page attachment and "vote of no confidence"

Memorandum from Rachel Jones, Chair, SPD Investigatory Committee, to Mark Gorman, City Administrator, dated August 16, 2016

Memorandum from Chief Ankerfelt to Mr. Silva, August 6, 2018, titled "Written Reprimand"

Memorandum from [Redacted] to Chief Ankerfelt, Lt. Ewers, Lt. Smith, "Meetings with Detective Ferguson", dated June 26, 2018

Letter from Kimberly Geariety to Brian Hanson, September 24, 2018

Memorandum from Chief Baty to Mr. Silva, September 16, 2019, titled "Written Reprimand"

Memorandum from Chief Baty to Mr. Silva, September 26, 2019, titled "Written Reprimand"

Letter from Chief Baty to Captain Andy Gorn, April 7, 2020

Open letter from Alisson Kirby to Sitka Assembly, et al, July 1, 2020

Letter from Jack Ford entitled "To the Sitka Assembly", undated

Letter from Jack Ford entitled "To Whom It May Concern", undated

Police reports

Police Report by Officer Steele, dated 1/5/20

Police Report by Officer Christner, dated 1/20/20

Police Report by Officer Steele, dated 2/6/20

Police Report by Lt. Achee, dated 4/4/20

Alaska Department of Safety Incident Report AK20033840

Emails

Email from Chief Baty to Bryan Barlow, May 27, 2020

Email from Byran Barlow to Chief Baty, May 28, 2020

Chain of Emails between Chief Baty and Ryan Silva, September 9 and 10, 2020, regarding an operation in Sitka

Email to me from Jean Achee, November 25, 2020

Email to me from Serena Wild, December 8, 2020

Other

Written statements from Mr. Silva to me regarding his allegations

Notes taken in conjunction with the City's investigation of the vote of no confidence

Charge of Discrimination, July 27, 2018, with attached Declaration of Charging Party (EEOC complaint)

Transcript of Recorded Meeting Between Mary Ferguson and Lance Ewers and Isaiah Clark, June 26, 2018

OCS Initial Assessment Summary (re report of harm involving an alleged assault by Mr. Silva on Ms. Silva)