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INVESTIGATIVE REPORT

PA19-0012 – Ruqaiyah (Kiah) Morris o/b/o J.L.

PA19-0013 – Ruqaiyah (Kiah) Morris

PA19-0014 – James Lawton

COMPLAINANTS: Ruqaiyah (Kiah) Morris, James Lawton, and Kiah Morris o/b/o “J.L.”

RESPONDENT: Town of Bennington

SUMMARY OF COMPLAINT: Complaints allege that the Bennington Police Department denied them services and privileges as set forth in the Vermont Fair Housing and Public Accommodations Act and that it failed to effectively respond to calls for assistance or act in a manner that reflected care or concern about their well-being because of their race and color and engaged in profiling Complainant Kiah Morris when she traveled by car in Bennington.

SUMMARY OF RESPONSE: Respondent denies that it provided services to the Complainants in a discriminatory manner. It asserted that at all times it acted quickly, efficiently and with empathy, to meet the Complainants calls for assistance and denied that it treated the Complainants differently based on their race and color.

RECOMMENDATION: This investigation recommends that the Commission find **reasonable grounds** to believe that the Respondent discriminated against Ruqaiyah (Kiah) Morris, Ruqaiyah (Kiah) o/b/o J.L., and James Lawton, on the basis of race and color, in violation of the 9 V.S.A. §4502(a).

DOCUMENTS/FILES

- Complaints of discrimination
- Responses to Complaints of Discrimination & Motions to Dismiss – 4/1/19
- Responses to Requests for Information – 10/19/18
- Social Media accounts where available – Facebook (Hoyt, Harrington, Kulkin, Charbonneau, gun rights groups and various), and Instagram (Morris and Misch)
- Press Coverage from the *Bennington Banner*, *VT Digger*, *Vermont Public Radio*, *Seven Days*, *Huff Post*, *BBC US& Canada*,
- Vermont Attorney General's Office's Findings Regarding the investigation of Reported Crimes Against Former Vermont State Representative. Kiah Morris and Her Family (January 14, 2019)
- State v. Misch, Brief for Appellant State of Vermont, APPEAL FROM SUPERIOR COURT, CRIMINAL DIVISION (BENNINGTON) Docket No. 172-2-19 Bncr
- Emails Received Opposed to S.55 - Vermont Legislature” – pdf document, no date.
- Release of Public Record from the Attorney General’s Office:
 - Gray 2019-03-15-Gray-response-to-Davis-and-Keays-w-docs
 - Doyle 2019-04-25-Doyle-response-to-Rathke-w-docs
- Transcript of Hearing for Protective Order, Bennington Superior Court, *Morris v. Misch* - 12/1/16
- Emails between Chief Paul Doucette and Marthage
- Emails between Chief Paul Doucette and Joey Kulkin
- Emails between Chief Paul Doucette and Kevin Hoyt
- Press Release from the Attorney General’s Office and the Bennington Police Department
- Recorded Interview of Lisa Misch/Shapiro with Incident Report – 10/16/18-10/17/18
- Bennington Policies and Procedures, Training Records & Staff Histories
- International Association of Chiefs of Police (IACP) – report April 2020
- Report of the Attorney General’s Office – January 2019
- Report of Det. Sgt. Henry Alberico - Undated
- Report of Det. Eric Jollymore – Undated, Investigative Actions Narrative
- Affidavit of Trp. James Voorhis – July 27, 2018
- Recordings of Interviews of Morris/Lawton by the VSP – 10.3.18
- BPD Incident reports related to Morris/Lawton between 2016-2019
- VSP Investigation into Max Misch – 2019, including application for search warrant and supporting affidavit, exhibits, associated incident reports, Investigative Action Reports,
- Kevin Hoyt Complaint against Kiah Morris to Attorney General – February of 2019
- Seguino, Brooks & Autilio, Trends in Racial Disparities in Traffic Stops: Bennington, Vermont 2014-19, August 2020.
- Media coverage of the Steven Davis case

INTERVIEWS

- Aaron Sawyer – former Chairman, Vermont Democratic Party – 7/24/19
- Kim Clark – Childcare provider for J.L. – 7/29/19
- Michael Thompson – Bennington College Student – 7/10/19

- Morgan Oldham – Childcare provider – 10/15/19
- James Lawton – Complainant – 12/18/19
- Kiah Morris – Complainant – 1/15/21
- Chief Paul Doucette – Chief of the Bennington Police Department – 12/14/20
- Office Michael Sharshon – Bennington Police Department – 12/10/20
- Officer Keith Diotte – Bennington Police Department – 12/14/20
- Corporal Ross Harrington – Bennington Police Department – 12/10/20
- Det. Larry Cole – Bennington Police Department – 12/14/20
- Officer Cam Grande – Bennington Police Department – 12/14/20
- Officer Amanda Knox – Bennington Police Department – 12/10/20
- Cassandra Considine – Friend of Morris/Lawton – 8/22/19
- Erica Benoit – Neighbor of Morris/Lawton – 7/27/19
- Officer Christopher Lauzon – Bennington Police Department – 12/14/20
- Michael Bucci – Manager of the Bennington Trading Post - unsworn phone call – 3/2/21

AFFIDAVITS

- Commander Matthew Raymond – 2/2/21
- Det. Trp. Eric Jollymore – 1/27/21

I. BACKGROUND AND TIMELINE

Former Bennington Representative Kiah Morris, who is African American, her husband James Lawton, who is white, and their biological son, J.L., now approximately nine (9) years old, alleged in three separate complaints that the Bennington Police Department, specifically under the leadership of Chief Paul Doucette, violated the VFHPAA, by failing to provide them with “services, facilities, goods, privileges, advantages, benefits, or accommodations [that] are offered to the general public.” In Ms. Morris’s complaint, the allegation of discrimination is due to her race and color. In J.L.’s complaint, the allegation is because he is bi-racial and the son of a parent who is African American, and in the case of James Lawton, because he is married to Ms. Morris and they have a child together. The HRC is given jurisdiction to investigate complaints of discrimination in public accommodations in 9 V.S.A. §4506.

Morris was first elected to the Vermont House in 2014, representing the Bennington-2-2 District.¹ Relevant to this complaint, she was a supporter of S.55, a gun control law relating to “the disposition of unlawful and abandoned firearms,” which was ultimately signed into law, Act 94, by Governor Phil Scott in April of 2018.² Prior to the completion of this report, Act 94 was upheld by the Vermont Supreme Court in an opinion which dealt a blow to white supremacist Max Misch, a central figure in this report, who had sought to have it declared unconstitutional on state grounds after he was charged with illegally possessing high capacity magazines in February

¹ https://ballotpedia.org/Kiah_Morris

² Governor Phil Scott signed the bill into law on Wednesday, April 11, 2018, to go into effect on October 1, 2018.

of 2019.³ There was fervent opposition to the bill,⁴ and Morris began to experience animosity in Bennington from “gun rights” advocates based on her support of the legislation. While many legislators and the Governor were targeted with angry mail over the law, the animosity towards Morris was overlaid with horrific, frightening, and racist invectives, particularly from Misch. Misch, along with others, began posting internet memes on Twitter and elsewhere, referencing Morris’s support for S.55.

On August 16, 2016, at 5:57 p.m. Morris forwarded some of these to Bennington Police Chief, Paul Doucette, writing “I would tell someone else to send it along so just a heads up that I got this.”⁵ The postings showed that Misch tagged Ms. Morris on Twitter in multiple messages with Green Mountain Goys. These messages were extremely racist in nature. One tweet said, ‘Sheeit, I be representin dem white muhfugghuz of Bennington, gnome sayin?’⁶ Another targeted Eva McKend, an African American reporter for the Vermont television news station, WCAX. It asked, ‘Eva, if you're so proud to be black, why get a weave to look like a white woman?’⁷ Around this time, someone using the screenname Marcus Cicero2 sent Morris a picture of an African American at a laptop with the message ‘Kiah Morris hard at work destroying White Vermont.’⁸ Marcus Cicero 2 sent her a picture of Africa with the caption ‘This is what a safe space looks like,,,’ and the message ‘Why are you still in my country Sheboon?’ (“Sheboon”-is a derogatory term for an African American woman).⁹ Ms. Morris reportedly received a similar message from Infostormer, which stated, ‘Go back to Africa, it’s the only place you’ll ever be safe.’¹⁰

Also in 2016, then Attorney General William Sorrell was in the process of conducting meetings around the state to discuss how to approach the issue of bias within the police force. On October 3, 2016, at 2:48 pm, Morris emailed Doucette and others about her intent to hold a separate meeting on “bias and policing in the state” that would be in addition to the statewide meetings on the same topic. Morris wrote: “It is my suggestion that we seek to host a separate community meeting PRIOR to the hearing to inform the public about what is underway. For fairness, I think it is important to get your story out before our community goes to press with its responses.” Doucette replied to Morris the same day, at 3:46 p.m. “who is our community? Isn’t Bennington our community. Are we not a single community with a desire to be fair to all? This is very concerning to me as the police chief and as a resident of Vermont.”

³ Kirsten Williams, *Vermont Supreme Court upholds state’s first major gun-control law*, Jurist.com, (February 22, 2021).

⁴ See “Emails Received Opposed to S.55 - Vermont Legislature” – pdf document, no date.

⁵ Email from Morris to Doucette, 8/16/16.

⁶ Vermont Attorney General's Office's Findings Regarding the investigation of Reported Crimes Against Former Vermont State Representative. Kiah Morris and Her Family, Factual Investigation.

⁷ Id.

⁸ Id. Misch is a transplant from Queens, NY.

⁹ Id.

¹⁰ Vermont Attorney General's Office's Findings Regarding the investigation of Reported Crimes Against Former Vermont State Representative. Kiah Morris and Her Family, Factual Investigation. Also, on August 16, 2016 - 8:16 p.m., Morris to Doucette: “Good Evening, My husband has been in conversation with this persons [sic] ex-wife be she would like to speak with you.” This refers to Lisa Shapiro, Max Misch’s ex-wife. Doucette did not follow up with Shapiro at the time and only met her first on October 17, 2018.

A week later, on October 10, 2016, Morris's husband, James Lawton, called the police at about 4:30 a.m., to report a home invasion. He reported that someone had entered the house through an unlocked door and taken about 100 neckties, some of which had been scattered, and found in the cemetery across the street. According to the report, there was no sign of forced entry, nothing else was missing and there was no visible prints or blood. Officer Knight searched the basement at the request of Morris and friend Cassandra Considine,¹¹ who lived with them from approximately August to November of 2016. Neither reported hearing anything. Lawton reported seeing two men outside, one of whom asked him whether "Corey" was home. He saw another man running in the cemetery.¹² Because of the nature of the burglary and the recent racist posts, Complainants rightfully saw the home invasion as a threat upon their safety. It's not clear that the BPD saw this beyond a typical burglary and economic loss. According to the Attorney General's report, "The basement was not dusted for fingerprints or swabbed for DNA, nor was the neighborhood canvassed to see if anyone else had seen anything suspicious. According to Chief Doucette, this was not unusual for that sort of case."¹³ The case remains unsolved.¹⁴

On the same day of the burglary, October 10, 2016, racist flyers were slid under the door at the Democratic Headquarters in Bennington. While they did not reference Morris, her campaign sign was front and center at the headquarters.¹⁵ "There were four images in total: one depicting Republican presidential candidate Donald Trump in front of a U.S. flag with the caption "Trump 2016;" one displaying a version of the cartoon frog Pepe, as a caricature of a Jewish man with a Star of David yarmulke, smiling while standing in front of the burning World Trade Center; one with Pepe, this time depicted as Trump, standing on one side of a fence, with characters depicting Mexican and Muslim stereotypes on the other side, while Russian President Vladimir Putin looks on approvingly with the caption, "This Trump guy, I like him;" and finally, a cartoon version of Trump speaking with a Mexican woman, who tells him that he cannot separate her from her baby, who is attached to an anchor chained to her body. Trump responds, "No problem," and hurls the woman and her baby over what is labeled the "Great Wall of

¹¹ Ms. Considine was interviewed by BPD at the time. She stated she thought she had gotten a call a year later but nothing came of it. She was not interviewed by the Attorney General's Office.

¹² October 10, 2016 – Incident # 16BN06981 (Officer Knight). Morris also reported the incident to others on October 12, 2016, including Sarah Copeland Hanzas, Kate Webb, Brian Campion, Richard Sears, Paul Doucette, Thomas Jacobs, Stu Hurd.

¹³ Vermont Attorney General's Office's Findings Regarding the investigation of Reported Crimes Against Former Vermont State Representative. Kiah Morris and Her Family, Factual Investigation, released January 2019, at 1.

¹⁴ The Complaints were critical of the BPD for not dusting for prints when their home was broken into in 2016. However, the BPD rarely gathered forensic evidence in other burglaries, thefts, or vandalisms for victims outside the protected categories. In the 287 similar types of cases examined by this investigation, blood samples were gathered and/or prints dusted for and lifted only when they were obvious at the scene. There was no such evidence in any of the reports made by the Complaints, except for the footprints in the snow which were melted by the time Officer Knight saw them, according to his report. None of cases reviewed that involved the collection of forensic evidence were solved because of the forensic evidence, and some were never solved despite it being gathered. Out of the 287 cases, approximately 209 or 72% remained active at the time this investigation examined them.

¹⁵ Jess Alore and April McCollum, *Kiah Morris: The Vermont incidents that led to a black lawmaker's resignation*, Burlington Free-Press (January 2, 2019).

Trump." The story was covered on October 12, 2016 in VT Digger and October 11, 2016 in the Bennington Banner.¹⁶

On October 11, 2016, Morris called the BPD to report a suspicious vehicle in the public cemetery near her residence sitting with the lights off. Police responded but were unable to locate the vehicle.¹⁷ On October 12, 2016 at 5:47 p.m., Morris noticed vandalism to her car and to a Minter campaign sign in her yard and reported it to Doucette and Officer Amanda Thomson via email, "Good Evening, I do not know if this reached you but here are the photos. In addition, a Sue Minter campaign sign from my lawn was found just off my property twisted up and discarded. Thank you for all you do." On October 18, 2016, Lawton called BPD to report a suspicious vehicle that had dropped off people near the house. The BPD responded and located two people on a trail near the residence. These individuals told the responding officer that they intended to camp in the area.¹⁸

On October 25, 2016, Doucette delivered comments to the Bennington community and a panel that included Morris, former Human Rights Commission Executive Director Karen Richards, Jay Diaz from the ACLU, Curtiss Reed from the Vermont Partnership for Fairness and Diversity, and Tim Ashe, former Senator. His comments defended the police and identified law enforcement officers as being victims of bias.¹⁹ To Complainants and some other attendees, Doucette's comments demonstrated a lack of understanding about the issue of bias within the police force and were incongruent with the efforts of Sorrell's office. They were also particularly difficult for Complainants to hear given that the home invasion and incident with racist flyers had occurred only fifteen days before the speech. Complainants felt they had been subjected to racist attacks because of Morris' race and color, and that instead of using Sorrell's forum to address the issue of racism, Doucette had used the opportunity to portray the police as victims

On November 3, 2016, Officer Knight from the BPD went back to follow-up with Morris and Lawton to ask if they had thoughts on who might be responsible.²⁰ Officer Knight noted that Lawton told him that he believed the break-in was a "political statement and not a random burglary,"²¹ once again making it clear to the BPD that Complainants believed they were under attack because of Morris's race and color. In his report, Officer Knight wrote "[I] explained to him if he needed anything from me or had further information to reach out to me." According to

¹⁶"Racist Images Left at Bennington Democratic Headquarters," <https://vtdigger.org/2016/10/12/racist-images-left-democratic-headquarters-bennington/> (October 12 publishing the *Banner* story). On October 12, 2016, Incident # 16BN07031 (Officer Thomson)- Report filed for racist flyers left at Democratic Headquarters in Bennington. They were given to Officer Thomson at the BPD and entered into "temporary evidence" on 10/14/16.

¹⁷ Incident Report # 16BN07022, Officer K. Diotte, 10/11/16.

¹⁸ Incident # 16BN07179, 10/18/16, Sgt. Burnham.

¹⁹ The video can be found at: <https://www.youtube.com/watch?v=xMSNBgegFul>. For instance, Doucette said, "There is...there is definite bias against law enforcement in the United States and police officers are criticized nowadays for making split second decisions...We need to hold people accountable. When I started my career if you assaulted a law enforcement officer you automatically served 30 days in jail, absolutely no doubt about it, that's what you did, you served 30 days in jail. Today you assault a law enforcement officer you get a deferred sentence and you get land (?) on probation. Is there bias against the police? Is there...is there judgements out there that aren't fair to the police or are the judges concerned about who they're sending to jail? I don't know what the answer is." ...are there biases against military veterans because they wore a uniform like police."

²⁰ November 3, 2016: 7:00 a.m.-Follow-up on 16BN06981 (Break-in) – (Officer Knight).

²¹ Incident # 16BN06981 – original date 10/10/16, follow-up 11/3/16, Supplemental Narrative.

his report, Knight told them that he had “conducted multiple patrol [sic] in the area since the burglary.”²²

On November 8, 2016, Morris came to the police station and reported that while she was at the polling station, that Max Misch was 20-30 feet from her and that he “stared at her for about 2 minutes” then went inside for “15-20 minutes,” then came out and “stared at her for less than one minute and left.”²³ Cpl. Lauzon took a report, and wrote, “I advised Morris I was not thoroughly familiar with her prior report, however would contact the State’s Attorney’s Office to determine if this and other incidents would assist Morris in petitioning for the court for a Stalking Order.”²⁴ On November 8, 2016, Morris emailed Doucette a picture of Misch at the polls: “Hi Paul, Chris Lauzon asked me to send this along. A picture of Misch at the polls from a distance is attached.”²⁵ Doucette responded the next day, writing: “Kiah, I printed the photo and provided it to Sergeant Grande, Corporal Lauzon's supervisor. I have also contacted Richard Gauthier, via email, and requested he complete a witness statement. Once the statements are collected and the report is completed, the case will go to the State's Attorney for review.”²⁶

On November 17, 2016, Misch was served with a protective order by the BPD, with Morris as the complainant.²⁷ On November 24, 2016, Lauzon told Morris he needed witness statements.²⁸ In an email the next day, Lauzon noted he would need a statement from her as well.²⁹ On November 29, 2016, Morris came to the station and provided a sworn written statement, as did witness Mary Lee Clark, who attested to Morris’s distress.³⁰ A second witness came in on November 30. Eugenie Raynor provided a statement saying she was at the poll and saw Misch walking away and that he turned and looked in their direction “about three times” as he walked away. Lauzon’s report states that Ms. Raynor described Morris as “upset and tense.”³¹

On December 1, 2016, there was a hearing for Protective Order before Judge William Cohen. Before witnesses were sworn in, Misch stated he was on probation. He turned down an offer by the court to consent to stay away from and not contact Morris and forego testimony to better protect himself from a potential violation.³² Misch was on probation for strangling his

²² Id.

²³ November 8, 2016: 16BN07657 - 3:20 pm- (Cpl. Lauzon).

²⁴ Id.

²⁵ Email November 8, 2016 at 7:35 pm – Morris to Doucette.

²⁶ Email November 9, 2016 at 8:38 pm – Doucette to Morris.

²⁷ Email November 17, 2016 –16BN07871 – 5:06 p.m. – (Sgt. Burnham).

²⁸ Email November 24, 2016 –8:44 am - Lauzon to Morris.

²⁹ Email from Lauzon to Morris, Nov. 25, 2016, 10:35 am.

³⁰ November 29, 2016 –16BN07657 (Supplementals, Morris and witness) (Cpl. Lauzon).

³¹ November 30, 2016 –16BN07657 (Supplemental witness statement) (Cpl. Lauzon).

³² Id. at p.p. 5-6. THE DEFENDANT: I'm on probation now, so if -- if you find that she -- if she should have this -- what is it called, the --THE COURT: I call it consent order but it's still a final order, it's just by agreement of the parties. -- huh? THE DEFENDANT: Would this affect -- I mean THE COURT: I can't give you any legal advice. THE DEFENDANT: -- if I lose this, would it affect my THE COURT: I can't give you any legal advice as to whether or not it would have any effect on your probation or not. THE DEFENDANT: I see. THE COURT: It's not a criminal conviction. THE DEFENDANT: Right, right. THE COURT: But it could be -- and I'm not sure what your terms of probation are. THE DEFENDANT: It wasn't involving the -- it wasn't involving her, it was it was -- it was -- it was a case with another person, so this and I -- I don't think there will be any violations of my -- of my probation here. But I don't -- I don't have it in front of me so I -- I'm not exactly sure, you know. And I don't have counsel, so there's that too. I

former wife, who this investigation will refer to as Lisa Shapiro.³³

Shapiro later described the incident to Det. Larry Cole and Chief Doucette on October 17, 2018:

...when he strangled me we were literally looking for a new apartment we were just driving on I think a Sunday looking for an apartment he was on the phone with his friend and I was like Max ...we look around for rent for rent - I'm like Max either help me you've been on the phone this whole time [INAUDIBLE] I get along with everybody this guy's like impossible were like oil and water [INAUDIBLE] He wasn't helping me look at all so we got back [INAUDIBLE] was not nice but now I can't believe like really [INAUDIBLE] and then he just snapped you know I didn't see it coming I was upstairs he just [INAUDIBLE] was standing right there and I was yelling at him I was [INAUDIBLE] he's a big guy he just took his hand out of the blue and took me by the neck pushed me down the bathroom door I ended up falling to the floor and then he, he took both hands and I was looking up at him and I'm like I have three daughters ...not with him I was like I can't believe it's going to end like this and I saw his face and he had no - he had that blank stare and he was just like like ... he wasn't he was slowly like tighter and tighter and he's like and you know what he said afterwards like and I called the police right away I just thought that was it.. it was over I figured I was going to die [there] and when we ever revisit that he's like wait If I wanted to kill you, you know I would've, so like I knew I wasn't I said Max you were going to kill me he said I would've don't you think I would've like not even not even any remorse it's like [is there really no remorse] yeah well you know we were fighting and he blames it on me I'm like Max you dragged [he was like] you called the police and I got arrested and I said Max you strangled me he doesn't see the wrong just doesn't see it....³⁴

Morris was granted a protective order in Bennington Superior Court by Judge William Cohen against Max Misch based on racist tweets in which she was tagged by him. According to the transcript of the hearing, Morris testified in response to a question from the court as follows:

Q. Okay. How do you feel about the defendant, as you're sitting here today?

A. I'm -- I can't even look at him right now. I can't even look at him right now.

Q. Can you tell us, are you afraid of the defendant?

A. Yes. I'm afraid of him, yes.

Q: How has his conduct impacted your daily life?

don't -- yeah, I'm going to go forward with this because I believe she made false statements under, you know, this is, a it is going to be a criminal charge against her really, you know. It says on the paperwork that false statements on a affidavit is a criminal charge and she can you know, she can be imprisoned or either fined. So and I believe this whole thing is baseless and absurd, and I will go forward with this, yes. Yes, Your Honor. THE COURT: Okay. Sheriff, please swear in the parties, please. Transcript of Hearing for Protective Order, Bennington Superior Court, Morris v. Misch - 12/1/16.

³³ Keith Whitcomb Jr., *Bennington Criminal Court Roundup/ Man accused of strangling woman*, (March 16, 2016), https://www.benningtonbanner.com/archives/bennington-criminal-court-roundup/article_47cb14c2-1b81-56d8-bef9-dbe21d88f2ea.html

³⁴ Interview of Lisa Shapiro by Det. Larry Cole and Chief Paul Doucette, October 17, 2018.

A. It's changed it significantly. We've had to change all of our home security, we I've had to change our normal patterns of where we go, there's stores that I don't go to by 12 myself because he's there. There's places in my community I don't walk my dog because he lives near there. He's very he's very highly visible and it's very intimidating and I don't know - - I just can't trust that he is there. I've even had to take self-defense and power training classes to prepare myself to have self-defense.

Q. How has the defendant's conduct towards you impacted your family?

A. It's affected my family greatly, not only the level of distress and fear and concern that we've all had, I have a young son who has definitely picked up on the anxiety, it's carried through to even in the school, which has had to take completely different security protocols, which he is aware of, just to make sure that he's safe."

THE COURT: How old is your son? THE WITNESS: Five and a half."³⁵

During the hearing, Misch made several racist comments about Morris specifically, and about immigrants. For instance, he stated, with respect to Morris being elected: "No, no this is not anything to do with merit, you know -- you know -- because I would be willing to take an IQ test and I -- I -- I -- I believe, with the utmost conviction, that I have forty to fifty points on her. I can say that with certainty, Your Honor."³⁶ Other comments from Misch to the court in the hearing, included statements like "how they behave in their natural habitat."³⁷ Misch also made anti-Semitic comments about Jews with reference to the image of a swastika tweeted to Morris³⁸ and a reference to "die Judenfrage" during the hearing,³⁹ which resulted in Judge Cohen disclosing to Misch that he was Jewish.⁴⁰ Misch also disclosed he was a veteran of the Iraq war and "did not like the way things are going in my country."⁴¹

The court's finding and order specifically stated, "that on more than one occasion the defendant purposely made threats that would be considered stalking under the statute. And that this would make someone fear of their safety and suffer substantial emotional distress."⁴² The order required Misch "to not talk to, telephone, text, mail, email, or use any other electronic communication to make contact, and do not post to them, about them on social media and do not and do not ask other people to give them messages." Misch was ordered to "remain 300 feet away from Ms. Morris, Ms. Morris's son, Ms. Morris's home, [and] her child's school."⁴³

On December 12, 2016, at 12:08 pm, an email from a person whose name was redacted from documents submitted to this investigation sent an email to Chief Doucette, stating "Good morning, I wanted to forward this graffiti that was found on the trails in the woods near my home. Neighbors have reported there is also an illegal encampment near these markings and

³⁵ Id.

³⁶ Transcript of Hearing, pp. 35-36.

³⁷ Transcript of Hearing, at 36.

³⁸ Transcript of Hearing, pp. 13, 18, 42, 43.

³⁹ Transcript of Hearing, pp. 13, 18, 38, 39

⁴⁰ Transcript of Hearing, at 40.

⁴¹ Transcript of Hearing, at 45.

⁴² Transcript of Hearing pp. 52-53.

⁴³ Id. at 53.

have reported it using the town crime tip line.”⁴⁴ This email referred to images of swastikas on trees approximately 100 feet from Complainants’ home.

On December 16, 2016, Lawton contacted the police because he was afraid his home was being watched from the cemetery, which is directly across the street from Complainants home.⁴⁵ Officer Knight responded and noted that Lawton reported that he found a tipped over milk crate on the stone wall of the cemetery across from the house. Lawton also mentioned that “a neighbor had told him about some “Nazi” symbols spray painted on some trees on the Morgan St. Trail.” Lawton also mentioned an encampment at the end of Belvedere. In his report, Officer Knight wrote, “I explained to Lawton that I would go and look around the cemetery to see if I could find anything” with respect to the crate. With respect to the encampment and trees, Officer Knight wrote, “I told Lawton that while I was looking for the graffiti trees I would try to find the encampment.” Officer Knight was later advised by “Chief Doucette that he had received pictures via email about the trees. I also received an email from the town that that they have located the trees and will take care of them. The town also wrote they were attempting to locate the encampment.” The report noted that Officer Knight looked for the crate but could not find it, nor could he find an encampment. He noted that the “Morgan St. cemetery is a heavy foot traffic area.” Knight also notified Doucette via email that he had been unable to locate the crate.⁴⁶

On December 28, 2016, Officer Knight and Lawton met in the cemetery. Lawton stated there were footprints that could be seen in the snow that led to his home and he took photos. He was concerned that Misch was trying to stake out his house and discover where he and Morris lived. By the time the two met, Officer Knight noted that the snow had melted. He told Lawton he “would conduct [sic] more patrol in the evening hours” in that area. The report noted that “Lawton suspects Misch of possibly staking out his house and trying to find where Lawton and his wife live. Lawton said he had not seen Misch in the area.”⁴⁷

Around December 30 or 31, 2016, Lawton had another exchange with Officer Knight about Max Misch and again expressed concerns about his trying to get their address. Lawton wrote “He is an Iraqi combat Veteran which is a little discerning [sic] and adds to our concerns for our safety if he was surveying the house. I would appreciate hearing any thoughts you might have this.”⁴⁸ Officer Knight responded on the 31st: “I looked into the protection order and see that Max is required to stay 300 feet away from the residence. I will attempt to locate him and do a check up and see what he’s thinking these days. Thanks, Clay.”⁴⁹ Lawton wrote back, thanking him and telling Knight that Misch and his ex-wife, Lisa Shapiro, were back together.⁵⁰ There are no supplemental reports indicating whether Knight followed up with Misch.

⁴⁴ Since it was redacted and was provided as part of the Respondent’s response, this investigation assumes it is from someone else in the community.

⁴⁵ December 16, 2016 –16BN08418 – 7:51 a.m. (Officer Knight).

⁴⁶ Email from Knight to Doucette, December 16, 2016 at 7:36 am. “I have completed my “investigation” and report of 16BN08418. I did not find the milk crate Lawton mention [sic] nor did I find any encampments at the end of Belvedere Street. I did not walk the trail since the trees in question have already been found And it was -8.”

⁴⁷ December 28, 2016 -16BN08765 at 7:13 a.m. (Officer Knight) – Related to Incident # 16BN08418.

⁴⁸ Email from Lawton to Knight, no time stamp available. There is no supplemental incident report on file indicating that Knight followed up with Misch directly.

⁴⁹ Email from Knight to Lawton, December 31, 2016 at 6:01 AM.

⁵⁰ Email from Lawton to Knight, Dec 31, 2016 at 8:32 AM.

On January 10, 2017, at about 3:45 p.m., Kimberly Clark, a care provider who watched Morris and Lawton’s child, J.L., along with her daughter, Morgan Oldham, reported to police that a man in a white or silver sedan stopped in front of her house and that the person held up what she believed was a phone or a camera, and that she saw a flash. She asked the driver, who she described as a white male with a beard and glasses and a hat with ear flaps, if she could help him. He asked if she was a psychologist. Clark told this investigation she might have responded to say she was not, and then the person “sped” away.⁵¹ Clark was suspicious because the car was not familiar to her and because the person in the car was taking photos from the car which she found it “weird” and “strange.”⁵² Clark described the neighborhood as one that was small enough that the car and the actions of the occupant stood out.⁵³ At the time, Ms. Clark was not personally friendly with the Complainants outside of their business relationship, but knew they had been harassed by Misch. Lawton had asked Clark to “keep an eye out” for anything suspicious.⁵⁴ Thus, two hours later, after J.L. left the daycare, Clark started to think about how odd the encounter had been and decided to mention it to Lawton. Lawton sent Clark a photo of Misch, but Clark could not say for certain it was Misch because of the size of the head-covering the driver was wearing. According to Clark, Lawton later obtained a photo of the car driven by Misch’s ex-wife, Lisa Shapiro from a friend, a white, late model white Toyota Camry - and sent Clark a photo of the car. Clark told this investigation that the description of Shapiro’s car matched the description of the car Clark had seen.⁵⁵ At the time, the police responded and wrote a report, but Officer Ferrara indicated he did not investigate further to determine who was in the car and outside of being told by Respondent’s Counsel that the case related to Complainants, was not aware separately of a connection between Complainants and the call.⁵⁶

On January 12, 2017, Morris sent an email to David Miner, District Manager of Bennington Parole and Probation, and requested a photo of Misch for the Capitol Police, stating: “I currently have an active stalking order against Max Misch who is monitored out of the Bennington Office. Various offices have requested an updated photo for identification purposes and have not received any response. This is important for security updates and collaboration amongst agencies. In addition, as he is reported to be seen driving his wife's vehicle, they seek vehicle identification information as well. The entities that have requested are:

- Sergeant at Arms - Vermont State House
- Capitol Police
- Montpelier Police
- Bennington Police
- Vermont State Police

⁵¹ Interview with Kim Clark.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ January 11, 2017- 17BN00247 – 10:43 a.m. (Ferrara). In an email to AAG Doyle on October 26, 2018, Chief Doucette wrote: “Please be advised Misch does not have a car and does not drive” based on Shapiro’s representation in the interview Doucette and Det. Cole conducted on October 17, 2018. Beyond what Shapiro represented about Misch not driving, Doucette appears to have had no further basis for making this statement.

- Rutland FBI⁵⁷

On January 12, 2017 at 2:48, Mr. Miner responded: “Ms. Morris, Thank you very much for bringing this to my attention. This is the first I am hearing that these agencies have requested photos of Max Misch. We have been in touch with the Montpelier Police Chief and we will be sending him the photo. He has offered to forward the photo to Sargent at Arms and Capital Police. Bennington PD and VSP will also receive this photo. We are currently in the process of identifying someone at the Rutland FBI to send the photo. Law enforcement should be able to find out the description of the vehicle. Do you wish to have a copy of Misch’s photo? Please feel free to contact Misch’s Probation officer, Heather Hannan [redacted] in the event you need more assistance. I can also be reached at [redacted].”

Despite the fact that the district manager of the Bennington Parole and Probation was informed that Misch’s photo was wanted by several police agencies, and perhaps also knew (or should have known) that Misch had been ordered by the court to stay away from Morris after threatening her, Misch went on to receive a deferred sentence. As a result, the charge for strangling his former wife was expunged, which prevented this investigation from obtaining further information about him, such as whether there were any other BPD contacts with him.

The rest of 2017 was relatively quiet. However as time for Morris’s re-election drew near, in the summer of 2018, Misch began to harass Morris again. On June 9, 2018, there were a rash of car break-ins unrelated to Misch, but it was unnerving since her car had been broken into in 2016. Morris reported that her car was broken into on June 10, but nothing was taken.⁵⁸ On June 25, 2018, Misch posted an Instagram story that the Supreme Court had ruled Donald Trump’s travel ban constitutional: “Yes! You won’t be able to bring any more Somalians into Vermont! Womp womp!” “You” referred to Morris. In a further comment, he wrote: “I like gloating to my subversive local ‘representative’ Rep. Kiah Morris, whose been trying to bring as many people from Somalia (one of the countries in Trump’s travel ban), some who also tested positive for active tuberculosis into my town, and the state as a whole. I put ‘representative’ in quotes because she certainly doesn’t represent her constituency over here. This are is [sic]– 96% white and – 1% black, though the vast majority of the issues that she champions are related to Black Lives Matter, illegal immigrants, non-white refugees, etc.” He then added hashtags, including “#winning #americafirst #maga.”

On June 28, 2018, in response to Morris’s praise for Senator Bernie Sanders efforts to secure assistance for international refugees, Misch wrote: “Trump put an end to your nefarious goal of filling my beautiful state with shitty people from the shithole of Somalia, womp womp!” On July 5, 2018, in response to Morris’s Instagram post that “Families belong together,” Misch responded: “I agree, families belong together in detention facilities because they’re committing crimes. Nobody wants to separate families. We all want them all to go back to their shitholes together.” He also posted, “I just barely missed trolling you, our local Vermont ‘representative’,

⁵⁷ Email from Morris to Miner, Jan. 12, 2017, at 1:26 p.m. Ferrara stated he had not followed up beyond taking the information. Interview with Ferrara, 12/10/21. Morris’s email was also copied to Mitzi Johnson, Dick Sears and Brian Campion.

⁵⁸ June 9-11, 2018, related Incident Report 18BN04312.

and the other shitty people over there at the Four Corners a few days ago. Oh well. Next time.”
#gobacktoyourshithole”

On July 6, 2018, Morris emailed Luke Martland at the office of Legislative Counsel asking for guidance: “Hi Luke, Morris here. I am still looking for clarity on the 1A question. The neonazi [sic] that I have been dealing with for the last few years has found my instagram [sic] and posted what you can see in the attached screen shot. Does this count as 1A political or is it hate speech?”⁵⁹ She followed up, adding: “Also, I previously had an RFA against this person. If it was still enforced or renewed would that change what actions I can take online regarding this posting?”⁶⁰

On July 17, 2018, Morris posted on Instagram that she was giving a speech called “Ending the Exodus: On Being a Black Woman in one of the Whitest States.” Misch wrote: “If you feel different and like you don’t belong, why are you still here? Please leave. Thanks.” Morris responded, writing, “You first.” Misch then responded as follows, “It’s incredible that you’ll complaint [sic] about VT being too white after moving here precisely because it’s one of the whitest and therefore has the lowest crime rates per capita in the country, basically the opposite of the multicultural hellscape of Chicago, where you’re from, which has one of the highest amounts of homicides in the nation.” Misch then posted “Ooga booga! Bix nood!” This investigation notes that, “Bix Nood” refers to a meme that originated from a racist cartoon that depicted a black person speaking gibberish, represented as faux-English words. “Bix nood” came to mean anyone of African American persuasion.”⁶¹

On July 21, 2018, Misch posted a response to an undated assertion by Morris on Instagram that while Misch was “welcome to espouse, white nationalist, neo-nazi views and opinions in public forums – that right is guaranteed by the Constitution. And I have the right to take whatever steps are necessary to protect me and my family from your use of hate speech. Misch responded: “Bullshit. Instead of just having thicker skin and shrugging off the tweet, you tried to have me arrested and put in prison for having the audacity to mock you online. What “impacts” of my “hate speech” would you need protection from? You’re full of shit and I will do my best to inform everyone of your agenda to imprison anyone who makes fun of you or disagrees with you, like the left in general. I already know at least one well-respected member of the community who is making plans to stop you winning by default because you run unopposed each time.”

On July 24, 2018, Misch posted a meme that said “Kill your local drug dealer” #killyourlocalheroindealer #rodrigoduterte #duterte #thepunisher #paulkersey. The references to “Rodrigo Duterte” refers to the president of the Philippines and his “Double Barrel” campaign, which, as of January 31, 2020, had resulted in the governmentally sanctioned murder of “possibly more than 25,000” people by police and vigilante operations which were launched in

⁵⁹ Email from Morris to Luke Martland, Legislative Counsel, – July 8, 2018, 8:48:26 am- Morris to Luke Martland, Legislative Counsel.

⁶⁰ Morris to Martland, July

⁶¹ <https://definithing.com/bix-nood/>

July 2016.⁶² The “Punisher” is another symbol associated with racism.⁶³ “Paul Kersey” refers to a “barely underground member of the white nationalist movement” and a fixture on the roster of racist media outlets and campaign groups.”⁶⁴

On July 27, 2018 Lawton turned on his laptop computer and instead of seeing his name, he saw the words “dead dead” on the screen. He immediately contacted Morris, who reported it to the State Police. Trooper James Voorhis took the complaint from Morris and wrote an affidavit, stating, “I advised Morris that she should contact Bennington PD to file a report and that they would contact the State Police if they needed assistance analyzing any computers.”⁶⁵ Lawton spoke with Officer Sharshon at the BPD who took the information by phone. Sharshon, knowing that BPD was not capable of doing the analysis, called VSP Det. Eric Jollymore, the VSP computer crimes contact. After that conversation, Sharshon wrote “it was determined the computers would not be forensically analyzed.”⁶⁶ Sharshon also wrote in his report that he told Lawton not to bring the computers to the BPD. However due to the conflicting advice and based on their fear over the message, Complainants brought the computers into the station at the BPD the next day, July 28, 2018 (Saturday). They turned them over to Cpl. Chris Lauzon, who placed them in “temporary evidence” and gave them a receipt.⁶⁷ It was the Complainants’ understanding that the BPD would transport the computers to the VSP for analysis since the BPD lacked the capability to do the examination.⁶⁸ Passwords were not requested at that time. Sharshon filled out a “Case Reaction Form” for “Disorderly Conduct by Electronic Means” and sent it Erica

⁶² Human Watch, *Bachelet renews call for accountability in Philippines war on illegal drugs*, (June 30, 2020) <https://news.un.org/en/story/2020/06/1067462>

⁶³ The creator of the “Punisher” has stated, “When cops put Punisher skulls on their cars or members of the military wear Punisher skull patches, they’re basically sides with an enemy of the system,” Conway told SyFyWire in January. “Whether you think the Punisher is justified or not, whether you admire his code of ethics, he is an outlaw—he is a criminal. Police should not be embracing a criminal as their symbol.” Conway stated that a cop cars with the Punisher logo is like putting out “a Confederate flag on a government building.” The “Punisher’s” creator, Gerry Conway, in an interview with Newsweek, harshly criticized the use of the image by military and police: “Marvel’s the Punisher Lays the Beatdown on Cops Who Use His Skull Symbol for ‘Blue Lives Matter’ Movement,” 7/15/19 <https://www.newsweek.com/punisher-police-blue-lives-matter-skull-logo-1449272>.

⁶⁴ Jason Wilson, *White nationalist has long worked at conservative outlets under real name*, The Guardian (February 3, 2020) <https://www.theguardian.com/world/2020/feb/03/paul-kersey-michael-j-thompson-white-nationalist-report>

⁶⁵ Supplemental Report and Affidavit of Case# 18B302836 by Trooper James Vooris, undated.

⁶⁶ Incident Report # 18BN05584 (July 27, 2018) Sharshon. Det. Eric Jollymore documented the call with Sharshon in his “Investigative Action Narrative:” “On July 30, 2018, I received a phone call from Det. Sharshon at the Bennington Police Department. Det. Michael Sharshon contacted the Computer Crimes Lab and informed me about an incident that took in the Town of Bennington, Vermont. Det. Sharshon stated that a Ms. Ruqaiyah Morris (dob 3.14.1976) and a Mr. James Lawton (dob 9.4.1954) believed that they had a computer intruded upon and a death threat was placed within it. Det. Sharshon stated that the username was now a “dead dead”. Based upon these statements, I informed Det. Sharshon that intruding upon a computer was possible and that changing the username was also possible. I continued to state that the technical ability required in order to successfully accomplish this task without damaging the computer would require advanced technical knowledge. I informed Det. Sharshon that this unit would not be able to takeover this investigation and perform all work necessary. We would be willing to partner with his agency and examine the devices, but the investigation and any subsequent legal processes needed would need to be performed by that agency.”

⁶⁷ Evidence Receipt on file.

⁶⁸ An evidence receipt was provided to Morris and Lawton showing the computers had been placed into evidence. Chief Doucette, and others confirmed that the BPD did not have the ability to do the examination.

Marthage's office, with Max Misch as the accused.⁶⁹ Marthage's office ended up taking no action against Misch.

On August 3, 2018, Commander Matthew Raymond from "ICAC" – Internet Crimes Against Children – in the Attorney General's Office, called Chief Doucette and left him a voicemail, to correct what Jollymore had told Sharshon and to tell Doucette that the computers could in fact be analyzed. Raymond also sent Doucette an email the same day.⁷⁰ Det. Jollymore wrote in his Investigative Action Narrative: "On or around August 3, 2018, I was contacted by Det. Matthew Raymond the Vermont Internet Crimes Against Children Task Force (ICAC) Commander. Det. Raymond is employed by the Vermont Attorney General Office. Det. Raymond was asked by his office to contact me and inquire about this incident. I informed Det. Raymond that we would be willing to examine devices seized or submitted during this investigation, but the field investigation would have to remain with the Bennington Police Department."⁷¹

On August 4, 2018, Kevin Hoyt, a Bennington "gun rights" advocate, targeted Morris and Lawton on Facebook. He suggested that Morris was a racist and a hypocrite and began to spin false narratives about the couple: "I heard that Kiah Morris bought her AR-15 from the same gun shop as me before she tried to push this useless gun control bill."⁷² Hoyt posted this on several Facebook groups, including "Gun Owners of Vermont," "Vermont Gun March," "Vermont Citizens Defense League," "Hunting, Fishing and Gun Rights," and the "Bennington Bulletin" sites.⁷³ Morris and Lawton have stated that they do not and have never owned an AR-15. According to Lawton, he owns a .22 rifle, a .270 hunting rifle, and two handguns.⁷⁴

On August 7, 2018, still having not heard from Doucette, Commander Raymond wrote a "Supplemental Narrative" about the status of the computers:

There was an impression that VT-ICAC recommended that no computer exam be conducted. I am writing this report to correct that impression. Trooper Jollymore advised Officer Sharshon that VT-ICAC would conduct a computer exam if requested and that it was possible to obtain evidence from such a computer exam to advance the investigation. VT-ICAC is ready to accept the computer for examination should one be requested. On Friday 8/3/2018 I left a voice mail message regarding this case with Chief Doucette. On Friday 8/3/2018 I also sent an email to the Chief requesting a call regarding this case. My intention was to clarify this issue however no call back was received. On Tuesday 8/7/2018 I left a voice mail message regarding this with Bennington County State's Attorney Erica Marthage to clarify this issue with her office as I am aware this case was sent to her office for review. She will be provided with copy of this report.⁷⁵

⁶⁹ Case Reaction Form on file.

⁷⁰ Law Supplemental Narrative, Raymond, Matt 09:51:11 08/07/18.

⁷¹ Det. Trp. Eric Jollymore, Investigative Action Narrative, undated.

⁷² Hoyt's Facebook page is public and searchable by specific date or term.

⁷³ Hoyt continues to publish negative posts about Complainants. As recently as September 27, 2020, he posted a YouTube video accusing Morris of being in on a "scam" – including "Molly Grey [sic]," and "Patrick Lahey [sic]."

⁷⁴ Email from Lawton to Campbell, Feb. 17, 2021.

⁷⁵ Law Supplemental Narrative, Raymond, Matt 09:51:11 08/07/18.

On August 12, 2018 – Kevin Hoyt attacked Morris and Lawton again on Facebook, questioning whether the 2016 home invasion of their home had occurred, complained about being called a white supremacist, again claimed that Morris was a hypocrite and alleged she was racist because he was an “honest, law abiding gun owner” and that the “harm her policies will bring to all Vermonters much more offensive than some bad taste cartoon.”⁷⁶

On August 13 or 14, 2018, sixteen (16) days after the computers were submitted to the BPD, Morris ran into Doucette and discovered that the BPD had not yet transported the computers and was upset at the discovery.⁷⁷ On August 15, 2018, Morris signed a “permission to search form” for the BPD – the form was filled in with Officer Sharshon’s name and the two computers were identified.⁷⁸ An “Analyses Request Form” for the VSP Crimes Unit was filled out by Det. Larry Cole. However, the passwords were not provided at that juncture and it is not clear whether they were requested.

On August 20, 2018, Officer Ferrara received a call at 1:10 a.m. from Kevin Hoyt claiming that James Lawton had threatened him: “I was advised by dispatch that Kevin Hoyt reported a threatening note found on his vehicle. I called Hoyt who stated he woke up to what sounded like tapping on his bedroom window. Hoyt walked his property and discovered a note left under the wiper of his vehicle that stated he does not deserve to live. Hoyt stated he suspects "James Lawton" to be the person who left this note due to problems he has had with Lawton since running for a political position. Hoyt further stated that he owns firearms and if someone breaks into his home they will end up with a hole in their head.”⁷⁹

⁷⁶ Hoyt’s Facebook page is public and searchable by specific date or term.

⁷⁷ The only account of this exchange between Morris and Doucette and the passwords’ issue comes from an email Morris sent to Attorney General T.J. Donovan, Criminal Division Chief Bram Kranichfeld, AAG David Scherr and Tabitha Pohl-Moore of the NAACP on December 20, 2018: “On August 13, 2018, I had a private conversation with Chief Doucette at the Bennington Town Offices requesting more information about the location of the laptops and to share with him additional information I had learned about Max Misch. It was at that time, I learned that the laptops had not yet been delivered to the AG’s office. The next day, a BPD officer called my cell phone to request passwords for the machines. I did not give them to the officer as I did not have my husband’s passwords available from memory. It seemed odd to me that the AG’s team would need the passwords to get into the machines and that they would not contact us directly to get the information. I then reached out to Bram directly to inquire whether or not the AG’s office had requested the passwords. Bram confirmed that his office made no such request. The next day, BPD came to my home to request the passwords. I gave the officer my best guess at my husband’s passwords at the time as he was sleeping and I did not want to wake him.”

⁷⁸ Copy of form on file.

⁷⁹ Incident # 188N06238, 8/20/18 1:10 a.m. Officer Ferrara. Lawton has claimed that Morris’s stance on gun control and support of S.55 brought on a lot of abuse from people like Mr. Hoyt – a supporter of limited gun control and his partner, Colleen Harrington. Lawton detailed these claims in a February 2019 email: “The Bennington Trading Post has been an instigator driving much of the hate toward Kiah. They have supported Kevin Hoyt throughout his campaign of hate toward her by first giving Kevin Hoyt, Colleen Harrington, AND Max Misch the lie that Kiah and I purchased AR15’s from their store, which we did not and we don’t own AR15’s. They did this to infuriate the Far Right Wing Second Amendment crowd like the Manager, of the Bennington Trading Post, himself Mike Bucci, and the Hoyt’s and the Harrington of Bennington and to make Kiah the face of the S.55 legislation in the entire State of Vermont. Their actions have directly contributed to the danger to our family without regard to our peace and safety.” Email from Lawton to Tabitha Pohl-Moore president@naacprutland.org, <[Bor.Yang@vermont.gov](mailto:bor.yang@vermont.gov)>, Kristin Mack <kristinmack79@gmail.com>, <Kvrancken@gmail.com>, Food For Thought

Later that day, Hoyt came to the station.⁸⁰ Hoyt showed Officer Diotte a note which he alleged had been written by Lawton and a Facebook post which did not have a time stamp on it from Lawton, and which read: “Kevin Hoyt has a bizarre obsession for my wife, Kiah Morris, and his level of obsession is equal to that of her Neo-Nazi Stalker Max Mish! They both are sad pathetic little men!” Diotte noted “Regarding the Facebook post there is comments posted by Lawton advising he will protect Morris. These comments are as follows: ‘Your BOY brought out the ugly in me when he brought my wife name into this! Not a very bright move! You have no clue "yet" how viscosly [sic] I defend my wife! oh and PS: a warning! you can tell Kevin to leave my wife's name out of his lie filled campaign. He's not running against her. I have been quite [sic] on him until now but you mess with my wife you are poking this bear and This bear will bite trust me!’”⁸¹ Hoyt was told to apply for a stalking order and a Case Reaction Form was sent to the Bennington County State Attorney's office for case review. Hoyt sought an emergency stalking order which was denied in court due to lack of evidence and he appealed. His appeal was rejected by the court after a full hearing on September 6. Marthage elected not to file charges in the case.

At some point that same day, August 20, Officer Sharshon obtained passwords for the computers. Sometime later that afternoon or evening, Lawton came to the station to ask for the return of the computers because the process was taking so long. In an email to Lt. Camilo Grande and Chief Doucette some time later that night, Officer Pierce wrote “James Lawton stopped in tonight and asked to speak with a supervisor, regarding the computers he submitted to the PD several weeks back. Mr. Lawson told me that the process is taking too long and asked that the computers be returned, specifically his wife's, as she requires it for work purposes. I advised Lawton that I had very little knowledge on this subject and a told him that I would be in touch with someone who could better address his concerns.”⁸²

On August 22, 2018, the computers were finally transported by BPD and turned over to the VSP.⁸³ According to Det. Jollymore, he began to examine the computers that same day: “On August 22, 2018, I met with Officer Sharshon at the Computer Crimes Lab. Officer Sharshon submitted two laptop computers and copies of two signed consent to search forms. The laptops were entered into the lab evidence system per the normal procedure and placed within the temporary evidence room. On this same date I began a digital forensic examination of these devices. The devices were photographed, researched and imaged. A digital forensic analysis report was completed documenting my interactions with these devices. While these devices

Daily Inspiration mia-schultz@outlook.com, February 16, 2019. Lawton provided a screenshot from Colleen Harrington's Facebook page which was supplied with a February 12, 2019 date which supports this assertion in part. The original post has been removed. In the post, Ms. Harrington writes: “They are coming for our guns. Kiah Morris was a huge voice in the gun legislation that was already passed and she wanted more and that's where this all began. That is her husband attacked me and Kevin Hoyt. We were buying an AR 10 and were told by the gun store manager that Kiah Morris and her husband James Lawton bought an AR-15 and 30 round clip right before she banned it for everyone else! I called them hypocrites that why and when the attack on us began.”

⁸⁰ August 20, 2018- 18BN06248 at 12:19 p.m.

⁸¹ Id.

⁸² Email from Pierce to Lt. Camilo Grande and Chief Doucette, August 20, 2018 at 11:57:49 PM.

⁸³ According to materials released from the Attorney General, AAG Ultan Doyle confirmed this with Det. Eric Jollymore on January 7, 2019 by email. Email from Jollymore to Doyle, 9:48 am.

were being examined at the lab, I was informed that the Vermont State Police had assumed jurisdiction and that Det. Sgt. Henry Alberico was the case officer.⁸⁴

Also, on August 22, 2018 – Misch posted an image on Instagram celebrating the murder of Mollie Tibbetts by an undocumented person in the community. Her murder was used by anti-immigration supporters as grounds for supporting more restrictive immigration policies. The politicization of her murder was against her family’s wishes.⁸⁵ Misch posted a fake photo of Ms. Tibbetts wearing a t-shirt that said “Say No to White Boys” holding up a sign that said the same thing. Misch wrote: “Such exquisite irony.” Another user wrote, “You reap what you sow. And she got what she deserved.” Misch responded, “I wholeheartedly agree with your sentiment.”

Two days later, on August 24, 2018, Morris ended her campaign for re-election. Later that day, Vermont Public Radio (VPR) and other media outlets announced Morris’s decision.⁸⁶ In a VT Digger story, reporter Jim Therrien included comments from Lawton, blaming white supremacist groups in Vermont and elsewhere for recent harassment and threats. Therrien noted “Bennington Police have not commented on the status of possible ongoing investigations concerning threats to Morris.”⁸⁷ Morris’ and Lawton’s statements and implicit criticism of the BPD began to antagonize Chief Doucette and eventually led to his decision to issue a press release a week later.

Misch celebrated Morris’s announcement on Instagram and took credit for being the impetus behind her decision. On August 24, 2018, he posted “That local politician who called the FBI, the chief of police, and the State Attorney, trying to have me arrested for “hate speech” two years ago, she just resigned! Hail victory!”⁸⁸ On August 25, 2018, Hoyt again went after Morris and Lawton, but attempted to portray himself as non-racist and tolerant. His comments referred to his report to the police on August 20, 2018 about Lawton.⁸⁹

On August 27, 2018, Attorney General T.J. Donovan issued a press release, stating he had “opened an active, ongoing investigation into complaints of online threats made against state [Morris]” and that his office would work with the Vermont State Police and computer forensic experts “to ensure a thorough and complete investigation of this matter.”⁹⁰

⁸⁴ Investigative Actions Narrative - Investigative actions taken on 7.30.18- 10.11.18 by Det. Trp. Eric Jollymore – No date.

⁸⁵ Phil Helsel, *Mollie Tibbetts' father asks people to stop using her death in immigration debate*, NBC News, (September 1, 2018) <https://www.nbcnews.com/news/us-news/mollie-tibbetts-father-tells-politicians-stop-politicizing-daughter-s-murder-n905761>

⁸⁶ VPR News, *Bennington Rep. Kiah Morris Drops Re-Election Bid*, Vermont Public Radio, (August 24, 2018). <https://www.vpr.org/post/bennington-rep-kiah-morris-drops-re-election-bid>

⁸⁷ Jim Therrien, *UPDATED: After threats, Kiah Morris withdraws from House race*, Vt Digger (August 24, 2018). <https://vtdigger.org/2018/08/24/kiah-morris-withdraws-candidacy-bennington-house-race/>

⁸⁸ Screenshot on file.

⁸⁹ Hoyt’s Facebook page is public and searchable by specific date or term.

⁹⁰ Statement of Attorney General T.J. Donovan, August 27, 2018, “The Attorney General today opened an active, ongoing investigation into complaints of online threats made against State Representative Kiah Morris. The Attorney General’s Office will work with the Vermont State Police and appropriate computer forensic experts to ensure a thorough and complete investigation of this matter.”

On August 29, 2018 – Misch posted a Huffington Post article titled “Vermont’s Only Black Woman Lawmaker Pulls Out of Race in Wake of Online Threats,” writing: “The VT attorney general and the state police are investigating this. Just like two years ago, they won’t find anything that threatened her from me unless racist humor, disagreeing with her about political issues, and calling her son an “ugly mongrel” is somehow considered a threat of physical violence without stating or implying that you intend to harm her and/or her family. #winning” He then reposted the original tweet and image from 2016, writing, “started all the controversy (and lulz) #wompwomp #sadtrombone #bixnood.

On August 30, 2018, Morris gave an interview to Jane Lindholm on VPR about her decision to withdraw from office and detailing her fears for her family’s safety. *Lindholm*: “Did you fear for your safety in a different way suddenly?” – *Morris*: “Yes, yes, there, was just some particular things that had happened that we went to law enforcement to gain counsel on, and try to seek support with, and what was just happening was that - nothing, to be quite frank. So I do need to commend the Attorney General for picking up this and choosing to take on this investigation. It was weeks without an answer, it was weeks without a response, it was a shoulder shrug and a good luck, um, after so many years of all of this and the toll that it takes to serve, in and of itself, right now I really need to focus on my family.”⁹¹

Also, on August 30, 2018, the two computers were removed from the custody of Det. Jollymore without explanation. Jollymore noted in his log: “I met with Captain Dan Trudeau about this investigation. Captain Trudeau requested that he take possession of these devices and that he was going to return these devices back to the owners. I entered these devices into the FileOnQ evidence database system and checked them out of the Tracker lab evidence system. The devices were transferred to Captain Trudeau for further handling.”⁹² The computers were not returned to Complainants and this investigation has no information about why Trudeau picked them up or indicated they were to be returned to Morris and Lawton, or their whereabouts during that time.

The next day, on August 31, 2018, Joey Kulkin a Bennington local who frequently emailed Doucette seeking an inside “scoop” on police investigations and who ran a Facebook site called “Vermont Legislative News,” took up Kevin Hoyt’s cause against Lawton and Morris and attacked Morris for portraying Bennington as racist, writing that she made Bennington look like “rural Alabama.”⁹³

⁹¹ Jane Lindholm and Sam Gale Rosen, *Rep. Kiah Morris Details 'Pervasive' Threats, Decision To Withdraw From Election*, Vermont Public Radio, (August 30, 2018).

⁹² Investigative Actions Narrative - Investigative actions taken on 7.30.18- 10.11.18 by Det. Trp. Eric Jollymore – No date.

⁹³ The Facebook page for Vermont Legislative News is open and searchable by date and term. Mr. Kulkin’s emails show him alternatively antagonizing Doucette while also presenting himself as a sympathetic ally and trying to persuade Doucette to provide him with inside information. Mr. Kulkin was formerly a managing editor at a New Jersey paper called “The Trentonian.” Kulkin was fired on June 22, 2012: “I broke company policy. I also am adamant that I did it for the greater good of the paper. But the powers that be didn't see it that way. That's life. I take full responsibility for my actions. I loved every second of my 5 years with The Trentonian.” Kulkin was also the target of a Change.org campaign while he worked at The Trentonian.” <https://www.change.org/p/trentonian->

On September 1, 2018, Chief Doucette issued a press release about his department's handling of the computers which defended the BPD. It also simplified several historical facts about Complainants' past contacts with the BPD and represented Lawton's actions in a somewhat prejudicial manner. For instance, Doucette wrote: "Within a few hours of the passcodes being provided by Representative Morris, James Lawton presented himself at the Bennington Police Department requesting the immediate return of the computers. The computers were not returned to him." This is different than the account provided by Officer Pierce, who, as noted above, wrote: "James Lawton stopped in tonight and asked to speak with a supervisor, regarding the computers he submitted to the PD several weeks back. Mr. Lawson told me that the process is taking too long and asked that the computers be returned, specifically his wife's, as she requires it for work purposes." Doucette's choice of phrasing gave some credence to Hoyt's attacks on Lawton. The following day, September 2, Hoyt, as if on cue, posted another bizarre rant on Facebook, again attacking Morris and Lawton.⁹⁴

In September 2018, criticism of Bennington forced Doucette and others to field questions involving Complainants, and his responses to questions about Complainants were sometimes defensive and hostile. For instance, on September 5, 2018, *Banner* reporter Jim Therrien asked Erica Marthage for information about the 2016 home invasion. Marthage forwarded the email to Doucette and asked if the case had been sent to her office and who the accused was.⁹⁵ Doucette responded: "Lawton, again, is the sole witness. This was a through [sic] investigation with follow-up. This claim is ridiculous."⁹⁶

On September 6, 2018, Det. Jollymore made his first entry into his log since the computers' removal on August 30 by Trudeau. His log indicated he was again working on the Complainants' computers but did not account for the gap between the day Trudeau picked them up, when they were returned to him, (Jollymore), or where they had been in the interim.⁹⁷ September 6, 2018 was also the date that Jollymore found the email address belonging to the former owner of the computer: "On September 6, 2018, I was still examining these devices.

[newspaper-editor-we-hate-black-women](#) The group's petition sought to ouster him for the following: "A Managing City Editor's JOEY KULKIN for the DIGITAL FIRST MEDIA dba TRENTONIAN Newspaper & Trentonian.com gave the following answer to a 12 Year-old African American's girls question concerning a modeling spread in their paper. (Her Question) Why is there only 1 black model compared to the 22 white models, Is it that you don't [sic] think black women are beautiful? And Mr. Kulkin's answer was "WE HATE BLACK WOMEN". And to add insult to injury JOEY KULKIN (Managing City Editor) of DIGITAL FIRST MEDIA dba Trentonian Newspaper & Trentonian.com states his answer was an "innocuous remark". There is no date on the Change.org petition and no information as to whether his termination was connected to the petition.

⁹⁴ Hoyt's Facebook page is public and searchable by specific date or term.

⁹⁵ September 5, 2018 at 3:51:33 PM, Marthage to Doucette, forwarded Therrien email: "Did this get sent to my office? Who was the accused?"

⁹⁶ September 5, 2018 at 3:46 PM, Doucette to Marthage. In documents and statements to this investigation, Lawton said he encountered Chief Doucette on the street in Bennington near the gun shop at some point after the event and asked how the investigation on the "home invasion" was going. Lawton represented that the Chief grew angry at him and "yelled at me for calling it a home invasion." Lawton did not know the date. Chief Doucette denied that this happened.

⁹⁷ Investigative Actions Narrative - Investigative actions taken on 7.30.18- 10.11.18 by Det. Trp. Eric Jollymore – No date.

While examining Item 2, the laptop containing the "dead dead" username, I observed that a Microsoft Outlook email address [REDACTED]⁹⁸ was associated with this user account.”⁹⁹

On September 14, 2018, VPR ran a story with a quote from Attorney General Donovan: “For whatever reason, there was a breakdown in Bennington. I think that’s clear. I think that’s what we can agree with right now,” Donovan said. “As to the reasons why, let us conduct our investigation. I think there’s larger issues here at play.”¹⁰⁰ That evening, Kulkin wrote to Doucette: “Hi, Paul, What do you suppose Donovan means by "breakdown in Bennington" as it relates to your PD? Joey. *Feel free to use backchannels to chat. You know where to find me.*”¹⁰¹ (emphasis added).

On September 19, 2018, Lawton reported two individuals sitting on a rock wall across from the house which would enable them to see into his house. Police reported they were unable to find anyone.¹⁰² On September 20, 2018, Morris called BPD to report that people had been knocking on the door, then running away. Officer Sharshon responded, located two juveniles whom he believed to be responsible and told them leave the area and stop the behavior. Lawton told Officer Sharshon that this had happened before and that they were at their “wit’s end” and that they would likely stay in a motel that night. Officer Sharshon told Lawton that he did not think this was necessary and that it appeared to be just a juvenile prank. Officer Sharshon forwarded the case to the Bennington State's Attorney's Office.¹⁰³ The next day, Doucette informed Sharshon that Erica Marthage’s office would not file charges.¹⁰⁴

On September 21, 2018, Erica Benoit, Complainants’ next-door neighbor, reported that juveniles were knocking on the door and yelling obscenities. Some were apprehended and confessed to that night and the September 20 event. The juveniles claimed not to know who lived in either house.¹⁰⁵ On September 22, 2018, at 12:12 am, Lawton reported suspicious persons in the cemetery. According to police, they responded and hid until 2 a.m. but saw no one.¹⁰⁶ Complainants were out of town.¹⁰⁷ On September 24, 2018, some of the juveniles were issued “No Trespass” orders.¹⁰⁸

⁹⁸ The redaction was not in the original, but this investigation does not include it in this report.

⁹⁹ Investigative Actions Narrative - Investigative actions taken on 7.30.18- 10.11.18 by Det. Trp. Eric Jollymore – No date.

¹⁰⁰ Peter Hirschfeld, *Citing 'Breakdown In Bennington,' AG Takes Over Investigation Into Racial Harassment Allegations*, Vermont Public Radio (September 14, 2018) <https://www.vpr.org/post/citing-breakdown-bennington-ag-takes-over-investigation-racial-harassment-allegations#stream/0>

¹⁰¹ September 14, 2018 - 6:13 pm - Kulkin To Doucette. In his interview, Doucette downplayed the relationship with Kulkin, but the fact remains that Kulkin’s emails prompted Doucette to send negative information about the Complainants to the Attorney General during its investigation, and Kulkin benefitted from a significant leak of the Attorney General’s findings prior to the January 2019 press conference.

¹⁰² September 19, 2018 – 18BN07137 at 19:34 hrs. – (Sleasman).

¹⁰³ September 20, 2018 - 18BN07168 at 21:25 hrs., Harrington and Sharshon.

¹⁰⁴ Id.

¹⁰⁵ September 21, 2018 - 18BN07200 at 22:28 hrs., (Knox, Sharshon and Grande, D. Doucette).

¹⁰⁶ September 22, 2018- at 12:12 am - 18BN07203 (Faden/Osgood).

¹⁰⁷ September 22, 2018 – Attorney Appel email to Officer Knox: Request that BPD serve the juveniles with No Trespass orders rather than waiting for his clients to sign and states they are out of town for a while due to the harassment from the “ding, dong, ditch” by juveniles. Copy to Doucette and Marthage.

¹⁰⁸ 18BN07200 – Knox.

The next day, September 25, 2018, Morris resigned from the legislature effective immediately. On September 26, 2018, Doucette, Marthage and Town Manager St Hurd all emailed Attorney General Donovan to complain that they were receiving negative media attention due to Morris's resignation.¹⁰⁹ The Town Manager, Stu Hurd, requested that Donovan make a statement that "in your opinion formed during the investigation, it appears that the BPD and the States Attorney's Office acted properly in the investigation at the local level. If you think we screwed up, please let us know now."¹¹⁰ They complained that facts were being misrepresented and Hurd complained of "potentially fraudulent activity."¹¹¹

Also on the same day, Max Misch purchased "two AK-47 Round Mags" and a 9mm Ruger, spending \$288.29, from the Bennington Trading Post.¹¹² Misch also posted a picture of the cover of *The Turner Diaries*¹¹³ on his Instagram page. He wrote, "Recently finished this exciting novel by the late Dr. William Luther Pierce, writing under a pseudonym." In response to another poster who commented, "Great book a must read and see what's starting to happen now hmmm" Misch responded: "*We're getting closer.*" (emphasis added). "Misch then added the hashtag #dayoftherope. According to the Anti-Defamation League, the "Day of the Rope" is a white supremacist concept taken from *The Turner Diaries*: "In the novel, white supremacist rebels, having taken control of California, engage in mass lynchings of purported "race traitors" such as journalists, politicians, and women in relationships with non-white men. These murders, which take place on the same day, are referred to in the novel as the "Day of the Rope."¹¹⁴

On September 27, 2018, VT Digger published a story about the "ding, dong, ditch" harassment that quoted Doucette: "I don't see criminal intent," he said. "This was kids fooling around." The story added that, "Significantly, Doucette added, the teens did not know who resided at the residences. "I'm confident in saying that no one was singled out in this matter," he said. But he added, "I think this was a prank and people chose to do it in the wrong neighborhood."¹¹⁵ This investigation has a Facebook "screen shot" of one of the juveniles asking Kevin Hoyt to text him after Hoyt joined in a group "rant" on Facebook about Morris, Lawton and the BPD's decision to reissue the orders in February of 2020.¹¹⁶ The BPD did not investigate the "ding, dong, ditch" incidents as bias related incidents, but given the connection of the juveniles and/or their parents to Hoyt in 2020, it is not inconceivable that they could have been connected in September and October of 2018, but the issue was not investigated. Furthermore, as it turned out, later in October – October 17, 2018 – Doucette and Det. Larry Cole were told by Misch's ex-wife Lisa Shapiro, that Hoyt and Misch had become friendly and/or acquaintances, were spending time together, and that she was suspicious of Hoyt's motives in spending time with Misch. Doucette did not disclose this information to the Attorney General.

¹⁰⁹ Copy of email on file.

¹¹⁰ Copy of email on file.

¹¹¹ Copy of email on file.

¹¹² Copy of receipt on File from Respondent and also noted in the VSP's investigation.

¹¹³ *The Turner Diaries* a fictionalized blueprint for a white supremacist revolution written in 1978 by neo-Nazi leader William Pierce (under the pseudonym "Andrew Macdonald").

¹¹⁴ <https://www.adl.org/education/references/hate-symbols/day-of-the-rope>

¹¹⁵ Jim Therrien, *Pranking teens hit Kiah Morris residence, prompting move to inn*, Bennington Banner, September 27, 2018.

¹¹⁶ Hoyt wrote: "Stay strong [NAME OF JUVENILE] stand TALL!"

On October 1, 2018, two important pieces of legislation relevant to this complaint became law. The first, 3 V.S.A. §4021, prohibits the purchase of high-capacity magazines like the ones purchased by Misch on September 26, 2018, though those magazines were purchased prior to the law taking effect and were not, therefore, illegal. The second, 13 V.S.A. § 4053 (Petition for Extreme Risk Order), allows the Attorney General or State's Attorney to "file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control."¹¹⁷ The law's genesis was due in part to an incident in Bennington involving a former teacher at Mt. Anthony High-School. *Seven Days* covered the story, which included quotes from Doucette about the Davis case:

In late December 2012, Steven Davis, a Bennington math and science teacher, was seen putting a Bushmaster AR-15 semiautomatic rifle into his car. Concerned neighbors called the police, and officers went to Davis' home. Finding no evidence of a crime, they left without taking the rifle. By the next day, according to the Bennington Banner, Davis had posted videos online criticizing the local teachers' union and making statements that led people to worry he might become violent. Davis' wife filed for a restraining order against him. "I've studied military tactics, and this is the way to go," he [Davis] said in one video. "It's all going to hit so hard, so fast and shut that school system down 'til they get things straight." According to Bennington Police Chief Paul Doucette, members of the Mount Anthony Union High School community reported the videos soon after they were posted. "We were getting inundated with telephone calls from schoolteachers because he was sending out emails," the chief told the Banner at the time. "It became disturbing to some people." In response, police asked Davis to hand over his rifle. He surrendered the weapon voluntarily and allowed the cops to take him to a hospital for a mental health evaluation.¹¹⁸

On October 5, 2018, Misch picked up a newly purchased Anderson AM-15 rifle 7.62x39 from the Bennington Armory that he had ordered online.¹¹⁹ An AM-15 is the same gun as an AR-15: "The AM-15 is Anderson's model name because Colt has a trademark on AR-15. Colt acquired the AR-15 name from Armalite as its 15th firearm design, but after HR3355 banned them by name from 1994–2004 used other designations like 'Match Target.' Most people call them all AR-15s or AR15s without the hyphen."¹²⁰ The magazines purchased on September 26 were for an AK-47, and therefore did not fit the AR-15 purchased by Misch.

¹¹⁷ 13 V.S.A. § 4053(a).

¹¹⁸ Taylor Dobbs, *Zeroing In? A New Senate Proposal Aims for Common Ground on Gun Safety*, *Seven Days*, (January 24, 2018), <https://www.sevendaysvt.com/vermont/zeroing-in-a-new-senate-proposal-aims-for-common-ground-on-gun-safety/Content?oid=12093182>."

¹¹⁹ Det. Patrick Slaney. Affidavit in Support of Search Warrant: "In speaking with Jewett and Laplante it was learned that Max Misch picked up a rifle that was purchased through an online firearms dealer and was transferred to the Bennington Armory. On October 05, 2018, Misch completed the transaction by completing an ATF Firearms Transaction Record which noted in-part the following details: Anderson AM-15 Serial Number 1812844 7 rifle 7.62 x 39 on 10/04/18 picked up on 10/05/18 by Max Misch NCIS 10052K1DH. Incident # 19B300267, February 6, 2019.

¹²⁰ <https://www.quora.com/What-is-the-difference-between-AM15-and-AR15>

On October 10, 2018: Det. Sgt. Alberico concluded his investigation into the computer threat “dead dead.”¹²¹ Complainants’ counsel was informed of Alberico’s findings sometime soon thereafter, as was the BPD, and there was eagerness on the part of the BPD for the Attorney General to release the information.¹²² Also on October 10, Kevin Hoyt posted an “article” on Facebook from *True North*¹²³ which suggested that Lawton’s request for the return of his computers was an effort to hide evidence of criminal activity. That same evening, Lawton called police to report people drinking in cemetery with children and informed the police he had seen someone in the cemetery the night before;¹²⁴ A neighbor also reported seeing a suspicious person in the cemetery and said she had heard something on her porch the night before.¹²⁵

On October 13, 2018, a little past midnight, Lawton reported a person knocking on his door and running to neighbor and knocking on that door. The same night, about 20 headstones in the graveyard were vandalized as well.¹²⁶ The Complainants had installed cameras and sent shots of a young, white male to police, but the person was not identified.¹²⁷

On October 15, 2018 at 5:07 p.m. Doucette received notice by email from Assistant Attorney General Ultan Doyle that the AG’s investigation was continuing: “Could you please forward all reports you have in your possession regarding any criminal complaints made to Bennington Pd by either James Lawton or Kiah Morris in the past 2 years. Our office will be reviewing all of these complaints.” The investigation by Doyle continued through January of 2019, and involved a fair amount of correspondence with Doucette, seeking clarifications and further information regarding alleged threats to the Complainants. For instance, on October 29, 2018, at 3:01 p.m., Doyle wrote Doucette and said: “Sorry to keep bugging you about all of this. I just want to make sure I’m not missing anything.”¹²⁸

¹²¹ INVESTIGATIVE REPORT, VERMONT STATE POLICE, CASE NUMBER: 18B302863, OFFICER: Detective Sergeant Alberico, 7 pp., undated.

¹²² Emails from public records release pertaining to Assistant Attorney General Ultan Doyle’s investigation. Interview with Chief Paul Doucette, 12/14/20.

¹²³ Michael Bielawski, *Local residents accuse Kiah Morris and husband of hypocrisy regarding alleged threats*, True North Reports, (October 10, 2018). <http://www.truenorthreports.com/local-residents-accuse-kiah-morris-and-husband-of-hypocrisy-regarding-alleged-threats>.

¹²⁴ October 10, 2018 - 18BN07703 – (Cassavaugh, Harrington, Legacy).

¹²⁵ October 10, 2018 - 18BN07704 (Harrington).

¹²⁶ October 13, 2018 – 18BN07765 (Stemp and Ferrara)—around 12:15 am.

¹²⁷ October 13, 2018 at 12:58 am – Morris to Officer Stemp: Morris emailed Officer Stemp shots captured by their video camera of a young white male. 9October 13, 2018 at 7:47 AM – Officer Ferrara to Morris: “Mrs. Morris, After further looking at the pictures you supplied from your camera, it has been determined that they are not clear enough to be able to take action. Both Sgt. Stemp and I recommend that your camera position be adjusted to either be closer and lower towards your door facing outward, or turn it to actually view your door. This could make things better for the time being, especially if you are going to upgrade to a home surveillance system. If you have any questions, or would like further help with guidance on a surveillance, please do not hesitate to contact me.”

¹²⁸ Doyle sought clarification throughout his investigation. On November 13, 2018, at 11:22 a.m., Doyle wrote: “Hi Chief Doucette, In the attached report, Ms. Morris says she “received threatening social attacks, cyber stalking as well as comments made to local media [from Misch].” Would you mind seeing if you can have someone obtain from her the online posts that she is referencing, assuming she still has them. Ms. Morris also references “threatening mail and calls to Democratic headquarters.” Can you please have someone see if they can get copies of those threats? And finally, could someone clarify what property belonging to Ms Morris was vandalized and when that occurred.”

The same day, October 15, 2018, Misch posted a picture of his new AR-15 on Instagram. He noted he had also bought front and rear sites, plus a scope and a sling. He wrote: “Not your average AR-15. It’s chambered in 7.62x39 (same as AK-47), instead of the traditional 5.56mm. I added the @tacticonarmament red/green dot scope, @tacticonarmament front & rear backup sites and a sling. The scope and sites co-witness together. Excited to go target shooting with this one.”¹²⁹ A frequent commenter wrote: “Excellent, it’s all coming together!”¹³⁰

The next day, on the evening of October 16, at 8:19 p.m., Joan Fish, a local therapist who was treating Lisa Shapiro, Misch’s former wife, and the woman he had strangled, called the station to report what Shapiro had told her about Misch and firearms. Cpl. Roscoe Harrington took the call and described the basis of Fish’s call in his report: “I was advised that Lisa's ex-husband Max Misch was in possession of an AK-47 rifle and several 30 round magazines. It was explained that Max is a white supremacist and has issues with Ruquiyah (Kia) [sic] Morse[sic] and James Lawton. Max claims he posted several racists [sic] things on Morse's [sic] twitter [sic] page and that is why she resigned as VT State Representative.”¹³¹

Harrington then called Lisa Shapiro (who was still going by Misch), and took the following information:

I contacted Lisa by phone and she told me she was concerned due to Max being a white supremacist/narcissist. Lisa told me that Max feels he is the reason Morse [sic] resigned and was proud of it. Lisa told me that Max around October 1, 2018 purchased an AK-47 online and the purchasing paperwork was done through the Bennington Armory, located on Main Street, Bennington, VT. Lisa told me that since he purchased the AK-47 he had gone to New Hampshire where he purchased several 30 magazines for the rifle. Lisa told me that Max has several hundred rounds of ammunition for the rifle as well as a 357 Magnum hand gun. Lisa told me that Max saw a picture online of the firearms James Lawton owns and that he purchased the rifle because he has to be "one up on Lawton". I asked Lisa if Max has made any threats to harm anyone with the firearm, which she advised he has not. Lisa told me that Max's guns are all loaded and not secured. Lisa agreed to come to the Bennington Police Department on 10-17-18 in the morning to speak with Del Sgt. Cole.¹³²

Harrington’s report was entered into the Computer Assisted Dispatch (CAD) system. The next morning, on October 17, 2018, Lisa Shapiro came to the station and was interviewed by Det. Larry Cole and Chief Doucette for about an hour and thirteen minutes. The interview was recorded. Later that afternoon Cole and Doucette went to Max Misch’s home where they spent “a few minutes,” with him but they did not record that interaction and did not ask him about his gun magazines.

¹²⁹ Screenshot on file. Affidavit in Support of Search Warrant: “On October 05, 2018, Misch completed the transaction by completing an ATF Firearms Transaction Record which noted in-part the following details: Anderson AM-15 Serial Number 1812844 7 rifle 7.62 x 39 on 10/04/18 picked up on 10/05/18 by Max Misch NCIS 10052K1DH.” Incident # 19B300267, February 6, 2019, Det. Patrick Slaney.

¹³⁰ Screenshot on file.

¹³¹ Incident #18BN07847, 10-16-18 @ 2019 hours (Cpl. R. Harrington).

¹³² Id.

Det. Cole authored a report about the interview with Shapiro and Misch on February 22, 2019, several months after the interviews, and the completion of AAG Doyle's investigation on behalf of the AGO. Cole's written report did not capture the entirety of the interview with Shapiro and the information she provided to him and to Doucette. Even without all the details provided in the taped interview, the report itself contained a great deal of alarming information, which is italicized and bolded. Some of the content is summarized and some includes direct quotes drawn from the report. Information excluded from Cole's report, but heard on the tape follows, and concludes with Cole's account of the subsequent visit with Misch.

- 1) Misch had strangled Shapiro 2.5 years prior and been placed on probation and had his record expunged. Her description of that event was provided above and his record was ultimately expunged.
- 2) Shapiro had continued to have contact with him but was afraid of him. She helped him purchase some of his firearms and related materials.
- 3) Misch had recently bought what Shapiro believed to be an AK-47 and magazines for the gun as well as a scope and sling.
- 4) Shapiro noted two different times during the interview that Misch was frustrated because the magazines he had bought did not fit the gun:¹³³
 - i. "So he does have 4 magazines. He did tell me, though, that they're not fitting in the rifle, ***but what really creeps me out...the last time I was even with him, near him or at his apartment, he was loading – fully loading – the magazines, and I'm like, "What are you doing?" And he INAUDIBLE. I saw him fully load 3 magazines, so he has 30 and 30 ready to go. Why? You tell me – I don't know.***"
 - ii. "So he had polymer and steel, so Max bought two steel and ***then he told me they're not fitting, like the magazine's not fitting. He's all upset about it. He also ordered two online and, um, yeah, he did get everything before October 1st and he's a little upset because now he can't get INAUDIBLE these magazines don't fit into the rifle.***"
- 5) Misch was taking steroids for performance but refused to take psychiatric medications.

What follows are direct excerpts from the report:

- 6) Det. Cole: Lisa told us that Max tells her "everything". She says Max does not drive so she takes him "everywhere". I asked her why he does not drive and she responded "I think because of his disabilities, he has personality disorders, he has I believe, I'm a nurse, I've been a nurse for 32 years, I know him REALLY well, better then probably knows himself. So, we were very close to getting him diagnosed, he is a veteran, was in Iraq for 6 months and in the Army too. He has underlying PTSD, but what's interesting was that he was awarded disability but not for PTSD, he is an antisocial narcissist, it's a personality disorder. We were going to the VA in White River Jct. to get him diagnosed as a follow-up from a neuropsychologist". She told us she and Max got into a fight, he strangled her, the police responded and they ended up missing this appointment. This was "two years ago". Lisa then told us, so he doesn't have an official diagnosis but she has self-diagnosed him as having

¹³³ The fact that the magazines did not fit ultimately led to Misch's illegal purchase of magazines in New Hampshire on December 1, 2018 and his arrest and prosecution for violating the new statute that had gone into law on October 1, 2018, and that was declared constitutional under state law.

"Anti-Social Personality Disorder, Narcistic Malignant, he's a Trump 100%, underlying Asperger's and PTSD."

- 7) Det. Cole: "I asked Lisa why she thought there was a concern for Morris as it relates to Max. She responded 'because she's black, you kidding'."
- 8) Det Cole: "I asked her to elaborate and Lisa responded, 'he's a neo Nazi, [sic] a white supremacist [sic], 100%'."
- 9) Det. Cole: "I asked her if Max has "always been" and she said 'no, he's always been a racist, always, he doesn't even like women, he just uses them, he exploits people, he just doesn't like people. But blacks, he is superior to blacks, Puerto Ricans and Mexicans. He doesn't even think they are human. He calls them sub-human scum'."
- 10) Det. Cole: "I asked Lisa if Max has "Made threats of any type to anybody that your aware of?" Lisa answered by saying 'I think Max is smart and he knows not to'."
- 11) Det. Cole: "She also mentioned a conversation where Max told Lisa 'I never threatened her (Morris), it wasn't me'. "Max knows not to'."
- 12) Det. Cole: "Lisa then said 'That doesn't mean he wouldn't do something to me, I see a therapist, *I told my therapist he is a shooter, he will shoot, he will do that*'."
- 13) Det. Cole: "I asked Lisa to explain this statement. She responded, '*The reason I believe that is that he doesn't have a conscience*'. She then discussed the domestic assault that occurred between her and Max about 2 years ago. She also mentioned that she was mad that Max was arrested but now she realizes that was something that needed to have happened."
- 14) Det. Cole: "She then continued '*So this is why he's a shooter. Columbine, Boston Marathon, he always takes the side of the shooter. He'll always say it's a conspiracy, the government set it up to scare the public, he doesn't have a conscience.*'"
- 15) Det. Cole: "Chief Doucette than asked Lisa if at any time, in front of her, has Max ever said he wants to kill Kiah Morris? Lisa responded 'No, absolutely not'. The Chief then asked 'or her husband James Lawton?'"
- 16) Det. Cole: "Lisa answered that question by saying "If he has to defend himself, he would, I believe he would, 100%, like if they came on his property, but he never said he would'."
- 17) Det. Cole: "Chief Doucette spoke to Lisa about a picture James Lawton posted of a gun laid out on a bed with a statement 'this is how we defend ourselves'. Lisa said 'Max knows about that, what about it?'"
- 18) Det. Cole: "The Chief asked how Max felt about that. Lisa said Max told her Lawton sent that picture to a woman to try to intimate or scare her."
- 19) Det. Cole: "Lisa then spoke about Max possessing an AK-47. She said [sic] Turns out the impedes [sic] for him to get that was to get a bigger and better rifle than Lawton. *Lisa said she asked him why he got it because he already owns two other guns. Lisa said to him 'You got that to outdo Lawton?' and she said Max responded 'Yeah, got to be one up'. She then said, 'he won't threaten them, he's smart'.*"
- 20) Det. Cole: "Lisa than says '*The creepy thing is, the 30-bullet ammo magazine on October 1 are illegal. He made sure he purchased them before they went illegal. So, he does have four magazines. He did tell me that they are not fitting in his rifle*'. Lisa also said she had seen Max loading some of these magazines. I confirmed with Lisa that as far as she knows, Max owned two handguns and the rifle."
- 21) Det. Cole: "The conversation then turned back to the domestic issues she and Max had in the past. Lisa said '*My therapist says he dangerous, but I don't see that*'"

- 22) Det. Cole: “Lisa told us that Max sees therapist Nora Parsons at the Bennington VA Clinic and that he does not take any type of medication.”
- 23) Det. Cole: “The Chief then told Lisa he wanted to be clear that Max had never threatened Morris or Lawton or anyone else as far as she knew.”
- 24) Det. Cole: “***Lisa said if there is a confrontation between Max and Lawton, ‘Someone is going to leave in an ambulance’. She then added, ‘Max carries a gun’. She also said that at one-point Max said he would like to see Lawton ‘Die on the table’ referring to James Lawton heart surgery. She also said she believes Max would kill in self-defense.***”
- 25) Det. Cole: “Chief Doucette told Lisa that we wanted to make sure that everyone is safe, including Max. He also explained that we were trying to learn if any laws were broken. We also asked Lisa what she thought about us going to visit with Max. She told us she thought. that was a good idea and said she believed we would find him not to be the bad guy like he's made out to be in the paper.”
- 26) Det. Cole: “I told Lisa if I had heard that Max was a ‘**ticking time bomb**’, what would she think about that statement?”
- 27) Det. Cole: “***Lisa said ‘I would say that's true’. I then asked her ‘What happens when the clock strikes 12?’. Her answer was ‘He shoots people’.***”
- 28) Det. Cole: “***She then said ‘Is he a ticking time bomb, I think he's almost preparing for that.’***”
- 29) Det. Cole: I then asked ‘how do we help him? Lisa said ‘***He needs intensive therapy; Nora Parson is not equipped to help him. He needs intervention’.***”
- 30) Det. Cole: “Lisa then added Max is Jewish and he hates Jews’.”
- 31) Det. Cole: “Lisa told us ‘I think the bottom line is that Max is not going to go search anyone out to kill because he hates them’.”
- 32) Det. Cole: “***Lisa was asked [by Chief Doucette] what she thought about getting Max and Morris together in a room to try to work things out. Lisa said she felt Max would do that but for the purpose of hurting her, intimidate her, mock her. I don't think it would be so that could have some peace between them. Lisa said Max is proud he had part a of Morris resigning.***”
- 33) Det. Cole: “Lisa told us ‘the thing with Max Misch, he will be honest, he doesn't have the ability to lie to you’. She also ‘said he will be up front and honest with you’. She also said Max is very approachable and that going to speak with him could be a good idea and that it "might quiet things down’.”
- 34) Det. Cole: “The topic then turned to the high capacity magazines and Chief Doucette explained that these magazines could be legally purchased if they were obtained prior to October 1st. Lisa responded ‘I know he did (purchase prior to October 1st. He went to the one by Pizza Hut, Michael is his name and he had them for sale, polymer, plastic and Max bought two steel ones. ***He had a problem with them fitting and he also ordered two online and he got them before October 1st***’.”
- 35) Det. Cole: “I then said to Lisa ‘As time goes forward, if you see or hear something that you think we should know, would you call here?’. Her response was ‘No, I would come in here personally, I don’t like the phone’.
- 36) Det. Cole: “She was also told if she hears or sees something that leads her to believe that someone is in danger, to please contact us. Lisa responded ‘I will always do that, I would never withhold’. Soon after this conversation, our meeting ended.”

Det. Cole's supplemental narrative *left out* the following, primarily that Misch was spending time with Kevin Hoyt and Colleen Harrington and that she believed they were manipulating him:

- 1) "He's [Misch] local. He lives in Bennington....he, he's, um, he's associated with [Chris Hoyt] and Colleen, the girlfriend. Do you know them?"
- 2) **LISA MISCH:** I'm like, "What are you doing?" And he INAUDIBLE. I saw him fully load 3 magazines, so he has 30 and 30 ready to go. Why? You tell me – I don't know.
- 3) **CHIEF DOUCETTE:** I mean, you're asking me a question that I don't know the answer to. Um, we load magazines... I mean for police business...we have loaded magazines.
- 4) **LISA MISCH:** Well, yeah, of course.
- 5) **CHIEF DOUCETTE:** But, um, you know, I don't know, I do know many people that are firearms enthusiasts that have magazines loaded.
- 6) **LISA MISCH:** INAUDIBLE enthusiast now. *He doesn't hunt – that's what bothers me.*
- 7) **LISA MISCH:** "So INAUDIBLE Max talk and Max tells them everything. Max told them about his AK-47 and his new magazines, and that's what I'm saying – he thinks those are his friends, and I feel like they're not his friends and I feel like someone's going to hurt him if he doesn't hurt someone first. He needs help, but I think he may be beyond it, honestly. I tried for, like, nine years and I'm the extreme opposite, can you tell INAUDIBLE the extreme opposite from him and I did rub off. He was, like, nice for a period of time."
- 8) **LISA MISCH:** "He has to get that last meal in, so then he's in bed by 2:30-3:00, gets up at about 10:00 a.m., will futz around the house INAUDIBLE listen to his podcast, read articles, catch up on Kiah, post things on Facebook, post things to aggravate Kiah. Probably...he, although his father told him to really lay low – you need to lay low – and so did Kevin Hoyt. *For some reason Kevin Hoyt is giving him advice, but I don't think it's in Max's best interest. Kevin will ultimately try to use Max as some kind of a pawn in the game. I don't know. That's what I think. I don't know Kevin, but for some reason...do you know INAUDIBLE who Colleen is? It's Kevin's girlfriend. Max...at least the latest thing that Max told me was Colleen and Max, they get together and they talk about their, their things and sometimes Kevin joins them, and Colleen, for some reason, I think is instigating Max and Lawton because I'm pretty sure that Lawton is kind of not doing anything to provoke. Oh, he's still doing it?"*
- 9) **LISA MISCH:** "So, anyway, this Colleen – Kevin Hoyt's girlfriend – sent the picture to...no, told Max, "I just want you to know, Lawton sent a picture of you to my daughter saying stay away from this guy. I know you talk to him. He's dangerous," and I'm thinking about that INAUDIBLE, and Max said, "Can I have that picture? Because, like, you know, he's saying these things about me. Can I have the picture?" And Colleen's like, "My daughter doesn't want to get involved." *To me it sounds like Colleen and Kevin are trying to rile Max up to have another issue with Lawton. Don't you think? It's hard to say.*"

Det. Cole's report also does not capture the following:

- 1) The fact that Doucette divulged to Shapiro that the Complainants' computers had been returned to them. This was not public information, and this investigation assumes it was not information to which Shapiro was entitled.

- 2) He portrayed Lawton as having a “cache” of weapons twice.¹³⁴
- 3) Doucette suggested he was concerned for Misch’s safety because of a picture Lawton’s posted of his weapons. This photo appeared in the pro-Hoyt *True North* article.

After the interview ended, “sometime later” that day, according to Cole’s report, Doucette and Det. Cole went to Misch’s home. Det. Cole noted that visit was short, “a few minutes.” It was *not* recorded, and Cole wrote that neither he nor Doucette asked Misch about the magazines, because, according to Det. Cole, Shapiro had vouched that he had bought them before October 1, 2018:

Later the same afternoon (October 17th), Chief Doucette and I drove to the apartment of Max Misch. We did not call or alert him that we were coming to see him. We knocked and Max came to the door. We introduced ourselves and asked if we could come in and chat with him. Max invited us in. Once in his house, we told him he was not in trouble and that we were there because we wanted to meet him and see if he was doing ok. We also told him in addition to wanting to know if he was ok, we wanted to ask if we should have any reason to be concerned about other people's safety. ***We did not mention any names.*** Max was very cordial and seemed at ease once we told him he was not in trouble with us. We did ask him what he had for firearms and he told us that he had two handguns and a rifle. ***We did not ask him about high capacity magazines as our understanding was that he had purchased them prior to October 1st.*** During the time we were with Max, ***we did not get a sense he was mentally unstable and he was able to keep direct eye contact with us and he answered any questions we asked of him.*** He did tell us that he sees a therapist when he feels a need for that type of interaction. He also told us that there was no reason for us to be concerned that others were in any type of danger relating to his own actions. After a few minutes we did not see the need to prolong our visit and we left Max' s apartment. This ends my involvement with Lisa and Max Misch.¹³⁵

Respondent represented that after this interview, the BPD checked with the Bennington Trading Post to see if Misch had purchased the magazines legally – before October 1, 2018. However, Doucette did not disclose the interview with Shapiro or his and Cole’s visit to Misch’s home to the Attorney General’s Office despite the fact this interview was relevant to the second phase of its investigation, which Doucette had been informed of only two days earlier, on October 15, 2018.

To confirm that the BPD had followed up and checked on the date the magazines were purchased, this investigation asked Det. Cole if he had followed up with the Trading Post to ensure that the magazines were purchased legally. He stated, “I don’t recall doing that.”¹³⁶ The investigation asked Chief Doucette the same question in his interview. He stated he had “contacted Michael Bucci at the Bennington Trading Post” to verify the purchase of the magazines and “learned that the purchase was actually made by Lisa and Max and that the

¹³⁴ Portraying four firearms as a “cache” of weapons is not entirely accurate according to the definition and images associated with caches of weapons.

¹³⁵ Incident # 18BN07847 – 2/22/19 – Supplemental Narrative (Det. Cole).

¹³⁶ Interview Det. Larry Cole.

purchase was made prior to October 1, 2018.” Chief Doucette said he had driven to the store and personally picked up a copy of the receipt.¹³⁷ This investigation has no reason to doubt the authenticity of the receipt. However, the date that Doucette actually confirmed that Misch had purchased the magazines legally remains a question, and an important one since BPD has relied on the argument that because Doucette determined there was no illegal activity, there was no reason to provide this information to the Attorney General’s Office.

During the interview with Doucette, the investigation asked Doucette more than once what date he followed up with Bucci to make sure the magazines had been purchased legally. Doucette stated he would have to check into it after the interview and made a note that the investigation was asking the question.¹³⁸ On January 5, 2021 and January 7, 2021, the investigation emailed Respondent’s Counsel requesting confirmation of what date Chief Doucette actually obtained the receipt. Counsel never provided a specific date to this investigation. He only reiterated that Doucette had gotten the receipt.¹³⁹ In an effort to clarify the issue, this investigation telephoned Mr. Bucci, the manager of the Trading Post. Bucci stated that he recalled providing a record to the BPD about the purchase some months prior to the VSP’s investigation and interview of him on January 31, 2019 but could not recall specifically when he provided the record.¹⁴⁰ When asked if he recalled who he had provided the records to, he stated it would have been either Det. Cole or Chief Doucette.¹⁴¹

Typically, such an important ancillary piece of information would be entered into the CAD system as a supplemental narrative to demonstrate that Misch’s purchase was in fact legal. A CAD entry would confirm dates and times of Doucette’s follow-up visit, witnesses interviewed, along with a narrative. The entry, if needed, would serve as verification that the investigation occurred. However Doucette did not enter anything about the visit with Bucci into the CAD system, and the VSP’s investigative materials also did not fully resolve the question of any follow-up by Doucette. In addition, Det. Cole’s February 22, 2019 report which summarized his and Chief Doucette’s interviews with Shapiro and Misch, did not mention any check into the legality of the magazines or of a visit by Doucette to the Bennington Trading Post or when the receipt was obtained.

There is also no evidence that either Doucette and Cole checked Misch’s social media before or after the interview with Shapiro. The apparent failure to check his social media after the interview with both Shapiro and Misch is somewhat puzzling given that Shapiro referred to the fact that Misch enjoyed using it to harass Morris during the interview with Doucette and Cole. Had they checked, they would have realized that Misch had not purchased an AK-47, which is what Shapiro kept referring to, but an AR-15. Doucette is a long-time firearms instructor and “educated” Shapiro on other gun issues during the interview, and it is difficult to imagine that he would have continued to refer to the gun as an AK-47 had he examined Misch’s social media and realized that the gun was an AR-15.¹⁴² Doucette continued to refer to the gun in

¹³⁷ Interview with Chief Paul Doucette, December 14, 2020.

¹³⁸ Id. Doucette and other members of the BPD came down with COVID-19 after the interview.

¹³⁹ Campbell email to Leddy, January 5, 2021, January 7, 2021.

¹⁴⁰ Unsworn call to Bucci, 3/2/21.

¹⁴¹

¹⁴² For instance, Doucette told Shapiro that “Well, the AK-47...I don’t want to educate you too much but...The AK-47 magazines have to be inserted in a special way, um, just like a Ruger Mini-14. You have to put it in at an angle

his interview with this investigation as an “AK-47.” The VSP’s inventory of weapons seized from Misch’s home pursuant to the VSP’s warrant show the gun was an AM-15 (again, also called an AR-15).¹⁴³

II. OTHER INVESTIGATIONS INVOLVING THE BENNINGTON POLICE DEPARTMENT & COMPLAINANTS

There have been four other investigations involving or related to Morris and her family’s interaction with the Bennington Police Department and its response to threats/crimes against her and her family and/or their property made by Max Misch and others. It is important to distinguish the focus of this investigation from those investigations, as well as the contributions of those investigations to this one. These other investigations were undertaken by three separate entities with a different jurisdiction and focus than that of the HRC, which has jurisdiction only over the question of whether the BPD violated the VFHPAA.

1. First Investigation: Morris/Lawton Computers – Vermont State Police/Attorney General

As noted in the timeline, the first investigation began in July of 2018, starting with the investigation of Morris and Lawton’s computers. On July 27, 2018, Lawton logged onto his computer and instead of his username “James Lawton” coming up on the screen, the words “dead dead” appeared. Lawton and Morris were frightened and viewed the sudden appearance of “dead dead” as a potentially targeted and racist threat. The fear that this might somehow be related to Misch was reasonable given the fact that the white supremacist had viciously harassed and “trolled” Morris online in 2016 and been subject to a court order to stay away from her on December 1, 2016. As of June and July of 2018, shortly before “dead dead” appeared, Misch had resumed his online harassment as Morris’s bid for re-election began.

The first investigation essentially ended on October 10, 2018, when Det. Sgt. Henry Alberico interviewed the prior owner of the computer, who had sold it to Lawton earlier that year. Alberico determined there had been no intent to target Morris or Lawton and that the “dead dead” message had been generated by a 10-year-old child, whose mother had sold the computer to Lawton earlier that year.¹⁴⁴ According to the report, the child’s screenname when he played online videos on his Xbox was “dead dead.” Because the laptop and Xbox were still synched, this caused the screen name “dead dead” to appear on Mr. Lawton’s laptop.

and then clip it in, whereas an AR just slams into place.” Shapiro suggested that Doucette needed to give Misch advice on how to operate the firearm. Doucette responded: No, no, no, I would never do that, but the AK-47 is not a simple rifle to operate” and then stated he was not a “fan” of the gun.

¹⁴³ On 2/7/19, officers seized the following as part of the conditions of release following Misch’s arraignment: - Smith and Wesson 357 Magnum (SN:DKD2824) w/ brown leather holster, 2 speed loaders w/ brown leather holder. Ruger American .45 ACP semiauto pistol (SN:86132592) w/ two silver magazines. Gewehr 98 8MM bolt action rifle (SN: 1122) w/ leather sling. Anderson Manufacturing AM-15 7.62MM rifle (SN:18128447) w/ black sling. Japanese style katana sword with black handle. Investigative Actions Narrative, C. Shepley, Case#: 198300267, Feb. 6, 2019.

¹⁴⁴ INVESTIGATIVE REPORT, VERMONT STATE POLICE, CASE NUMBER: 18B302863, OFFICER: Detective Sergeant Alberico, 7 pp., undated.

This investigation highlights some questions about that investigation. Det. Alberico identified three witnesses in his report: the mother of the child, the child, and the mother's "fiancé." In his report, Alberico stated that the fiancé "powered up" the Xbox for him. However it was not clear whether Alberico interviewed the fiancé in depth to determine whether he also regularly used the Xbox, if he knew Complainants, or knew *of* them, and if he did, whether he had any opinion about them, or if he had any connection to anyone who might bear ill will towards the Complainants. In fact, this investigation discovered through open Facebook and Google searches that the fiancé has several Facebook accounts in which he acknowledges a history of arrests, incarceration, and drug use (which he claimed was the reason his relationship with the mother ended). Through a relative on Facebook, he is connected to the father of one of the juveniles involved in harassing Morris, Lawton, and J.L. in the "ding, dong, ditch" incidents and that father is connected to Hoyt.¹⁴⁵ This issue, along with the disappearance of the computers from August 30, 2018 until around September 6, 2018, would certainly make it reasonable for Complainants to feel dissatisfied with the VSP's investigation.¹⁴⁶

2. Second Investigation –Attorney General's Office

The second investigation "officially" began ten (10) days after Det. Alberico's "investigation" ended. On October 15, 2018, Assistant Attorney General Ultan Doyle emailed Chief Doucette requesting all police reports related to Morris and Lawton: "Could you please forward all reports you have in your possession regarding any criminal complaints made to Bennington PD by either James Lawton or Kiah Morris in the past 2 years. Our office will be reviewing all of these complaints."¹⁴⁷

AAG Doyle and Doucette corresponded throughout October, November, December of 2018, and into January 2019. Their email correspondence included all older calls to the police by Morris and Lawton, and covered the ding, dong, ditch harassment by juveniles that occurred *during* Doyle's investigation during those months.¹⁴⁸ The purpose of this investigation, according to the Attorney General's Office, was to determine whether anyone could be charged for harassing Morris and Lawton. That investigation concluded with the Attorney General's press conference in Bennington on January 14, 2019, along with the release of a 10-page report

¹⁴⁵ Screenshots of those connections are on file. The Facebook accounts of these people were open and searchable.

¹⁴⁶ This investigation does not suggest that the fiancé was involved in wrongdoing, only that finding connections between him and others in Bennington involved in harassing complainants leaves unanswered questions.

¹⁴⁷ Email from AAG Ultan Doyle to Chief Paul Doucette, 10/15/18.

¹⁴⁸ For instance, to illustrate that Chief Doucette was aware that any and all harassment was on the table, on January 3, 2019, Assistant Attorney General Doyle sent Chief Doucette an email asking the following: "Hi Chief Doucette, The report in this case indicates it was sent to the SA's office for review. Do you know if any charges were ever filed against any of the juveniles? Email from Doyle to Doucette, 1/3/19 at 10:16:02 a.m. Chief Doucette confirmed they had been issued no trespass orders. Email from Doucette to Doyle, 1/3/19 at 12:40 p.m.

and a determination that although Morris “was a victim of racial harassment,” no one would be charged with a crime,¹⁴⁹ which is, of course, distinct from there being threats of crime.¹⁵⁰

The Attorney General’s report did not discuss the fact that Morris and Lawton were also being harassed online by Kevin Hoyt - as well as Misch. The Attorney General’s report also did not mention that Chief Doucette sent Doyle information from Kevin Hoyt and Kulkin that was meant to undermine Morris and Lawton. Had Doucette informed the Attorney General’s Office of Lisa Shapiro’s interview and his and Cole’s visit with Misch, the Attorney General would have been on notice that Hoyt and Misch were spending time together - according to Shapiro - and at least explored the possibility of a connection between Misch, Hoyt and the juveniles in the “ding, dong, ditch” incidents, or conducted further investigation into the matter to determine if they were bias-related incidents.

3. Third and Fourth Investigations: Investigation of the Bennington Police Department by the International Association of Chiefs of Police (IACP) and the Vermont State Police Investigation of Max Misch’s Acquisition of Illegal Magazines

The third and fourth investigations stemmed from the Attorney General’s discovery that Doucette had failed to disclose information from the Shapiro/ Misch interviews that Misch was in possession of guns and high-capacity magazines. Again, Doucette and Cole interviewed Shapiro and visited Misch on October 17, 2018, only two days after Assistant Attorney General Doyle contacted Doucette and requested all reports involving Morris and Lawton. Once discovered, it led to the third investigation of Misch by the VSP. On February 6, 2019, Vermont State Police (VSP) executed a search at Misch’s home and located “two 30 round AK style magazines” which turned out to be “metal Pro Mag magazines for 7 .62x39.”¹⁵¹ Both magazines were fully loaded with “live” rounds.¹⁵² Misch was subsequently charged with two counts of possessing a large-capacity ammunition feeding device in violation of 13 V.S.A. § 4021(b).¹⁵³

At his arraignment in Vermont Superior Court, Bennington Criminal Division, the court imposed conditions of release (COR), which included that Misch must “NOT buy, have or use any firearms or dangerous/deadly weapons” and the weapons were subsequently seized from his home.¹⁵⁴ Other conditions included that he stay away from Morris and her husband, James Lawton, as

¹⁴⁹ <https://vtdigger.org/2019/01/14/donovan-says-no-evidence-prosecutions-kiah-morris-case/>; See also Press Release: Attorney General Releases Findings of Investigation of Reported Crimes Committed Against Former Vermont State Representative Kiah Morris and Her Family, January 14, 2019.

¹⁵⁰ Lawton submitted screenshots from Facebook showing Hoyt’s girlfriend, Colleen Harrington, discussing the Attorney General’s findings with another Bennington resident. The exchange ended with a comment from a third person, also a Bennington resident and friend of Kevin Hoyt: “He [Lawton] better not pretend to [sic] much or he will get a visit and not from any kid or any of us, if he stir,s [sic] that pot he won’t like it.” Ms. Harrington replied: [NAME REDACTED] you’re right there!” These screenshots are on file.

¹⁵¹ VERMONT STATE POLICE, Bureau of Criminal Investigation, Investigative Actions Narrative, February 06, 2019 by Detective SGT James Wright, Case # 19B300267.

¹⁵² Id.

¹⁵³ *State v. Misch*, Brief for Appellant State of Vermont, APPEAL FROM SUPERIOR COURT, CRIMINAL DIVISION (BENNINGTON) Docket No. 172-2-19 Bncr at 11.

¹⁵⁴ See footnote above with list of weapons seized.

well as Lisa Shapiro, Misch's ex-wife.¹⁵⁵ The warrant was executed only twenty-three (23) days after the Attorney General T.J. Donovan's press conference in Bennington.

The fourth investigation resulted from Attorney General Donovan's call for the Bennington Police Department to be externally reviewed, after it was discovered that Chief Doucette and Detective Cole had failed to disclose the interviews with Shapiro and Misch. The outside review of the Bennington Police Department was conducted by the International Association of Chiefs of Police (IACP) and a report was issued in April of 2020.¹⁵⁶

4. The VHRC's Investigation

On May 5, 2019, not quite four months after the Attorney General's press conference, Kiah Morris, her husband James Lawton, and Morris on behalf of their son J.L., now 9 years of age, filed complaints with the Vermont Human Rights Commission alleging discrimination by the Bennington Police Department by and through the Town of Bennington for violation the VFHPAA. While the complaints alleged various deficiencies by the Bennington Police Department in its failure to fully investigate, this investigation found that those deficiencies also existed in other matters, some of which were supported by the conclusions of the IACP Report, in part. Apart from the allegations about failures to investigate and disclose information, Morris also alleged she was targeted and stopped by the BPD while in her car because of her race. Respondent admitted that Ms. Morris was stopped twice, once given a citation and the other time, a warning.¹⁵⁷

The legal analysis below does not separately address all of the allegations because it finds that they provide support for the most critical allegation: "The Bennington Police Department intentionally withheld important evidence and information from the Attorney General's Office during their investigation and this was confirmed by the Attorney General of Vermont."¹⁵⁸ In doing so, Complainants alleged, the Bennington Police Department had violated the Vermont

¹⁵⁵ Alan J. Keays, *Guns seized from white supremacist Misch after he denies illegally possessing magazines*, Vt Digger (February 7, 2019).

¹⁵⁶ Alan J. Keays, *Guns seized from white supremacist Misch after he denies illegally possessing magazines*, Vt Digger (February 7, 2019), <https://vtdigger.org/2019/02/07/guns-seized-white-supremacist-denies-illegal-magazines/> "I would note and the affidavit notes that this information previously was disclosed, some of this information was previously disclosed, to the Bennington Police in October and we did not receive this information," the attorney general said. "We received this new information the week of Jan. 22." Asked if Bennington Police Department should have provided that information to his office earlier, Donovan responded, "Yes." Jess Aloe, *Attorney general calls for outside review of Bennington police after white nationalist arrest*, Burlington Free Press, (February 12, 2019), <https://www.burlingtonfreepress.com/story/news/2019/02/12/external-policing-expert-needed-bennington-ag-white-nationalist-arrest-tj-donovan-max-misch/2845313002/>; The article noted that the Attorney General had called for Bennington to "bring in an outside law enforcement expert to review the police department," "following revelations they failed to pass on reports that a white nationalist was hoarding guns and high-capacity magazines."

¹⁵⁷ Racial profiling incidents have long been corroborated not just through other Black and Brown drivers in the Town of Bennington but by research data and analysis from Seguino, Brooks and Deutilio.

¹⁵⁸ Id.

Fair Housing and Public Accommodation Act¹⁵⁹ by failing to provide them the “same services and privileges afforded to others” due to their race and color.¹⁶⁰

III. LEGAL ANALYSIS

The Vermont Fair Housing and Public Accommodations Act at 9 V.S.A. §4502(a) states:

- (a) An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation.

A “public accommodation” is defined as “an individual, organization, governmental, or other entity that owns, leases, leases to, or operates a place of public accommodation.”¹⁶¹ A *place of public accommodation* “means any school, restaurant, store, establishment, or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public.”¹⁶² Thus, as a “governmental or other entity that owns, leases, leases to or operates a place of public accommodation” the Bennington Police Department (BPD) is a place of public accommodation” and subject to the statute because it offer “services, facilities, goods, privileges, advantages, benefits, or accommodations” to the general public.” The Vermont Human Rights Commission is given jurisdiction to investigate complaints of public accommodations discrimination.¹⁶³ As a “remedial statute, the Act must be liberally construed in order to ‘suppress the evil and advance the remedy’ intended by the Legislature.”¹⁶⁴

1) Elements of the Prima Facie Case

The complainants must prove that they were deprived of services while similarly situated persons outside the protected class received same or similar services. A public accommodations analysis often borrows from employment discrimination lawsuits brought under Title VII of the Civil Rights Act which frequently looks to a “comparator” of a complainant. Comparators are usually easier to find in employment discrimination cases due to “a paper trail of evidence which to a greater or lesser extent will be available during discovery or otherwise to a discrimination victim.”¹⁶⁵ A comparator is a “similarly situated” person not in the same protected class. Any differential treatment by the Respondent of the person who alleges discrimination, and the comparator, helps a factfinder assess “the strength of the inference of a discriminatory motive which is essential to proof of the claim.”¹⁶⁶

¹⁵⁹ 9 V.S.A. §4502(a).

¹⁶⁰ VHRC Complaint of Kiah Morris, May 10, 2019.

¹⁶¹⁹ V.S.A. §4501(8).

¹⁶² 9 V.S.A. §4501(1).

¹⁶³ 9 V.S.A. §4506(a) and 9 V.S.A. §4552(b).

¹⁶⁴ *Department of Corrections v. Human Rights Com'n*, 181 Vt. 225, 228 (2006).

¹⁶⁵ *Callwood v. Dave & Buster's, Inc.*, 98 F.Supp.2d 694, 706 (D. Md. 2000).

¹⁶⁶ *Id.*

Public accommodations cases often arise in a commercial context and thus do not fit neatly within an employment framework. Unlike an employment situation, persons in commercial types of public accommodation may be “highly mobile” and sometimes “transient” and documentation may be lacking in “any meaningful sense.”¹⁶⁷ This has resulted in the adoption of a more flexible prima facie case which allows a complainant to identify “markedly hostile” behaviors and treatment by the place of public accommodation towards them, on their own or in addition to the identification of a comparator. Without this more flexible standard, complainants would find it difficult to prove discrimination and it would be even “wholly unrealistic to require a member of the protected class who suffers through what she perceives to be a shockingly discourteous and hostile experience, to identify victims of such outlandishly horrendous service who are not members of the protected class”¹⁶⁸ It has also broadly recognized that the VFHPAA is a remedial statute and its passage reflected the intent of the Legislature to expose, prevent, and penalize acts of discrimination.. Furthermore, the plain language of the VFHPAA is clear – government actors are subject to all sections of the VFHPAA.¹⁶⁹

Law enforcement agencies serve both an established community and a transient one as people move within and outside of their jurisdictional reach. They provide a range of services depending on what is required. Like employers, law enforcement agencies are required to document many of the services they provide. Thus, the Complainants must be entitled to show that they experienced either disparate treatment through use of a comparator *and/or* that they received services from the BPD in a “markedly hostile manner.”¹⁷⁰

Direct evidence of discrimination is rare; thus, Complainants must establish disparate treatment and/or marked hostility in the delivery of services through use of circumstantial evidence. In cases where there is little or no evidence of direct discrimination, courts consider the weight of the available circumstantial evidence through use of the *McDonnell-Douglas*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *See supra* note 152.

¹⁷⁰ *Callwood v. Dave & Buster's, Inc.*, 98 F.Supp.2d 694 (D. Md. 2000). *Callwood* derived from Section 1981 complaint. Section 1981 provides in relevant part that “[a]ll persons [. . .] shall have the same right [. . .] to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.” Title II of the Civil Rights Act, 42 U.S.C. § 2000a(a), and Vermont’s public accommodations act, 9 V.S.A. §4502(a), address the obligation of places of public accommodation to deliver “services, facilities, goods, privileges, advantages, benefits or accommodations [. . .][that are] offered to the general public” in a manner that is free from discrimination. Therefore, Section 1981, Title II, and Vermont’s Public Accommodation Act represent public accommodations statutes which are meant to facilitate and enforce fair contractual relationships with the public, regardless of race. These statutes ensure that all members of the public have the same ability to access goods and services of equal quality and convenience as that of other citizens. *See also Robin v. Durkin*, 2004 WL 6240719 (2004) (Vt.Super.) (Trial Order), Windham County. *See e.g., Makhzumi v. Southwest Airlines Co.*, 419 F.Supp.3d 1136 (N.D. Ca. 2019) (§1981 case discussing application of the Christian prima facie case outside the employment context in a case involving the alleged wrongful removal of a Middle Eastern man from a flight); (*Fall v. LA Fitness*, 161 F.Supp.3d 601, 607 (S.D. Ohio 2016)(applying §1981 elements of the prima facie case in *Christian* to an analysis of plaintiff’s Title II claim).

¹⁷⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) The “markedly hostile” standard has also been used in employment cases, *see, e.g., Hayes v. Cablevision Systems New York City Corp.*, 2012 WL 1106850, at *10 (E.D.N.Y. 2012) (considering the markedly hostile standard due to supervisor’s use of the word “thug” to describe the complainant’s work-dress style).

balancing test.¹⁷¹ The *McDonnell-Douglas* framework is intended “to frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext.”¹⁷²

Pursuant to this framework, the Complainants must first establish a prima facie case of discrimination by proving each element:¹⁷³

- (1) Complainants are members of a protected class;
- (2) Respondent is a place of public accommodations;
- (3) Complainants were deprived of services while similarly situated persons outside the protected class were not and/or Complainants received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory.¹⁷⁴

The burden on the Complainants at the prima facie stage is “not an onerous one.”¹⁷⁵ If the Complainants establish a prima facie case, the BPD must offer one or more “legitimate non-discriminatory reasons” to rebut the prima facie case.¹⁷⁶ The burden on the BPD at this stage is a relatively light one.¹⁷⁷ The burden then shifts back to the Complainants to prove that the BPD’s reasons are illegitimate, that is, that they are a “pretext” for discrimination. Facts discussed in the body will not be re-cited since they appear in the timeline.

A. First Element of the Prima Facie Case: Membership in a Protected Category

Kiah Morris is African American. At the time of events covered in the complaint, she was married to James Lawton, who is white. They have one biological child, J.L., now approximately 9 years old. At the time of the complaint, they lived in Bennington, in the house that Mr. Lawton grew up in. Prior to his marriage to Morris, Lawton had not been subject to harassment of the type he alleged in his complaint. Couples in interracial relationships and their children have faced a documented history of discrimination in this country. In 1967, in *Loving v. Virginia*,¹⁷⁸ the U.S. Supreme Court recognized that state laws banning interracial marriage violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution. The case changed the legal landscape if not the daily realities of discrimination for

¹⁷¹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

¹⁷² *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 255-56 (1981).

¹⁷³ *McDonnell Douglas Corp.*, 411 U.S. at 801.

¹⁷⁴ See, e.g. *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir. 2001)(setting forth a prima facie case which allowed more flexibility for a plaintiff to prove discrimination “when similarly situated persons are not available for comparison...”); Indicators of objectively unreasonable conduct have been held to include: (1)[conduct that is][] profoundly contrary to the manifest financial interests of the merchant and/or her employees; (2)so far outside of widely-accepted business norms; and (3) so arbitrary on its face, t]hat the conduct supports a rational inference of discrimination.” *Christian* at 871.

¹⁷⁵ *Robertson v. Mylan Laboratories, Inc.*, 176 Vt. 356, 367 (2004).

¹⁷⁶ *McDonnell Douglas Corp.*, 411 U.S. at 802.

¹⁷⁷ *Id.*

¹⁷⁸ 388 U.S. 1 (1967).

couples in interracial relationships. Misch's reference to J.L., as a "mongrel" on Instagram as noted above, demonstrates continued and insidious discrimination.¹⁷⁹

While the VFHPAA's statutory language is silent as to associational protections in the context of race and color, Title VII of the Civil Rights Act, numerous circuits and the Equal Employment Opportunity Commission, which is tasked with interpreting the anti-discrimination laws in the employment context, have long recognized that "race and color discrimination also can involve treating someone unfavorably because the person is associated with a person with a person of a certain race and color."¹⁸⁰ The Complainants filed their complaints individually and jointly, claiming the same overall harm from the Respondent, i.e., that its failure to deliver services in a non-discriminatory manner caused them to live in a fear and a state of distress.

FINDING: All Complainants are members of a protected class.

B. Second Element of the Prima Facie Case: Respondent is a place of public accommodation.

As residents of Bennington, Vermont, Complainants were entitled to services from the Respondent and expected that those services would be provided in the way they are provided to all residents. There were some 23 BPD incident reports generated from calls placed by the Morris and/or Lawton between October 2016 through November 2018.¹⁸¹ Those reports are evidence that Respondent provided some of the ordinary services it provides when people call the police. Respondents also noted that they increased patrols in 2016 and 2018 and that with respect to the "ding, dong, ditch" incidents, Respondent issued No Trespass orders and extended them into 2020.

In addition to these services, it was reasonable for the Complainants to expect the Respondents to provide them with information about any actual or perceived threats to their physical safety so that Complainants could take appropriate action, either legally, by requesting that a court issue a protective order, or practically, by removing themselves from proximity to that threat, as they did at one point with the ding, dong, ditch incidents. This trust in law enforcement is central to a positive relationship between law enforcement and the community it serves. According to the IACP report:

¹⁷⁹ See *Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, and GMC Trucks, Inc.*, 173 F.3d 988 (6th Cir. 1999). The court found that the white father of a bi-racial child was protected from unlawful discrimination at his job based on his own race, despite "the root of the animus for the discrimination is a prejudice against the biracial child." *Id.* at 995. The court also recognized that "This approach is bolstered by the fact that the Equal Employment Opportunity Commission ("EEOC"), "which Congress charged with interpreting, administering, and enforcing Title VII, has consistently held that an employer who takes adverse action against an employee or a potential employee because of an interracial association violates Title VII." *Id.* at 994.

¹⁸⁰See EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (E.E.O.C.), COMPLIANCE MANUAL SECTION 2: THRESHOLD ISSUES Current through August 2009, 2009 WL 2966754. See also *Zarda v. Altitude Express, Inc.* 883 F.3d 100,124 (2d Cir.2018) citing to *Holcomb v. Iona College*, 521 F.3d 130 (2d Cir. 2008). As stated in *Holcomb*, "where an employee is subjected to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee's own race." [emphases in original]. 521 F.3d 130, 139 (2d Cir. 2008).

Building trust between law enforcement agencies and the communities they serve is an essential component in community-police relations. When people view those charged with enforcing the law as legitimate, they are more likely to obey the law. Legitimacy does not simply stem from statutory authority; instead, it is conferred upon those who are viewed as acting in procedurally just ways. For law enforcement, part of that is carrying out their responsibilities according to established policies and procedures that not only reflect their community values—but are also free from bias, implicit or otherwise.¹⁸²

The Complainants had the right to expect and trust that services would be delivered professionally and free of bias, and that the BPD would provide reasonable protection and support if needed. Respondent was aware that Complainants felt threatened by Max Misch. Morris sent several emails to Doucette between August 16-20, 2016, forwarding him the first Misch postings, and sought and obtained a protective order against Misch on December 1, 2016. On July 28, 2018, Complainants took their computers to the BPD after Lawton discovered what he believed to be a death threat. Complainants entrusted their computers to the BPD to see to it that they were quickly and thoroughly taken to an entity capable of such analysis. They called the BPD on multiple occasions during the ding, dong, ditch incidents, and expected that the BPD would respond, investigate, and stop the harassment.

Another one of the central services that law enforcement delivers to benefit the general public is providing information to prosecuting authorities and cooperating at all stages of the criminal procedural process. Police are obligated and expected to investigate and provide evidence to prosecutors and even serve as witnesses in the prosecution's case, so prosecutors such as the State's Attorneys and the Attorney General's Office may effectively prosecute criminal activity in the community.

FINDING: Respondent is a place of public accommodation and the Complainants sought services from the Respondent.

C. Third Element: Complainants were denied the benefits, privileges, services of the Bennington Police Department while similarly situated persons outside the protected class were not and/or, complainants received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory.

This third element can be proven by showing conduct that is either markedly hostile and/or by showing that there is a comparator – that is, that in a similar situation, a Respondent acted differently to protect the persons' interests than in the current situation. The comparator's circumstances need not be identical, but the comparator should be similarly situated in most respects.¹⁸³

¹⁸² IACP Report p. i. (April 2020).

¹⁸³ In the Second Circuit in employment cases there must be a "reasonably close resemblance." See Graham v. Long Island R.R., 230 F.3d 34, 39 (2d Cir.2000)("[T]here should be an 'objectively identifiable basis for comparability' " shown by "a reasonably close resemblance of the facts and circumstances of plaintiff's and comparator's cases"); see also Shumway v. United Parcel Serv., Inc., 118 F.3d 60, 64 (2d Cir. 1997)(similar in all material respects).

Upon receiving the complaint, the investigation began doing background research into Bennington and drafting requests for information. The first request was sent on August 9, 2019, and a supplemental request was sent on September 6, 2019. Having become aware that an interview with Shapiro and Misch had occurred, this investigation requested associated police reports and an actual copy of the recorded interview with Lisa Shapiro, which it received. In addition, the investigation had discovered old news stories from 2013 about a former Mt. Anthony High School teacher named Steven Davis, who had been reported by a neighbor as having been seen carrying a gun case to his car and as having made threats to others in the community. According to media reports, Davis had turned out to have a Bushmaster AR-15 with two fully loaded 30 round magazines, very much like Misch.¹⁸⁴ News reports suggested police had confiscated the gun, which had not happened in Misch's case. This investigation requested all records related to Steven Davis and was informed by Counsel for Respondent that they had been expunged.¹⁸⁵

Chief Doucette was also quoted extensively in the *Banner* story about the Davis case, including Doucette's own concerns about the content of Davis's social media postings and public safety concerns. The basic facts of the Davis case are as follows. On December 30, 2013, at 4:23 p.m., police responded to the neighbor of Steven Davis, a former teacher at Mt. Anthony High

¹⁸⁴ Dawson Raspuzzi And Neal P. Goswami, *Teacher surrenders weapon*, Bennington Banner (January 3, 2013).

¹⁸⁵ This investigation became aware of Mr. Davis's case soon after the complaint was assigned for investigation and requested records about Davis from the BPD in early 2019. Counsel for Respondent represented that all such records had been expunged in October of 2019. This investigation accepted this representation at face value. It was difficult not to do so given the lack of access to Respondent's records, and this investigation trusted that Respondent would make a good faith effort to determine whether there were any issues with the scope of the investigation's request. It was ultimately agreed that the expungement statute would prevent any questions of the BPD about the case and so it was decided after asking one officer questions about Davis, that it would ask no further questions about Davis in its interviews with the BPD. In February, after discovering new media reports that suggested that Davis had not been charged with crimes related to the school threat, the investigation renewed its request to Counsel to determine whether reports were in fact actually available and requested that if so, that they be forwarded to the HRC "immediately." Counsel did not respond for 10 days, other than to remark that the investigation's email was "interesting." Thus, a second email was sent out on February 19, 2021, and copied to Complainants' counsel asking Counsel what the status of the request was as the time for submission of the report was drawing close. Later that day, Counsel for Respondents forwarded 32 pages of police reports about the incident with no explanation of why his client had represented for nearly a year and a half, that the records were expunged, though Counsel suggested the Davis case had been a sensitive matter and that he forwarded them "with caution." Since part of the basis for its cause recommendation centers on the Respondent's failure to disclose information to the AG's Office about the interviews with Shapiro and Misch, it is difficult to see Respondent's excuse as oversight. Access to the records confirmed for this investigation, that the BPD and Doucette's handling of the Davis case was an appropriate comparator to Doucette's handling of the Shapiro and Misch interviews. Counsel stated that "the understanding at the BPD was that his records from the incident had been expunged. When the order of expungement came to the BPD, the records clerk informed Chief Doucette that it was received and that the Davis records would be expunged. His assumption was that included all records. So when your RFI came through with one of the requests being for Steven Davis records (#11), it was simply noted that the records were expunged. (In the outline of the materials I received from BPD in preparing to respond to the RFI, at #11 it states "records expunged."). When you brought to my attention this month that because Davis was not charged with a crime for the initial incident, those records should still exist, the BPD records clerk ran a search and found the records related to the incident. I then sent them to you. Obviously if we had initially done a records search to confirm the expungement, we would have discovered these records weren't expunged. That was a shortfall on our part, and I take responsibility for not being thorough in ensuring an actual search for the records was performed."

School. Both Davis and the neighbor are white. The neighbor told police that: he “had concerns about his next-door neighbor. He advised that Steven Davis has been acting odd....” He also advised he thought he “saw Davis put a black gun case in the car today while he was packing.”¹⁸⁶ Police spoke to Davis’s wife and children. She advised they were going through a hard time. While there, police observed Davis “go from a happy state to a crying state. He would say he was very upset with the school union and how much drug are effecting [sic] the children in town. He advised he was going to change this and that he did not work for Mount Anthony Union, but for the children.”¹⁸⁷

At 10:05 p.m., the same day, police were called back. Ms. Davis advised she was afraid of her husband. Steven Davis disclosed he had an AR-15 rifle in the trunk of his car: “Off. Faden advised Johanna about obtaining a APO and advised her family that Steven had made reference to having a AR-15 Bushmaster in the trunk of his car. Steven had made reference [sic] to this rifle in our first visit with him and advised that his wife does not know he has it. When asked why he has the rifle, Steven jokingly stated he tells people it is for the "zombie apocalypse" and that he has not fired it yet.”¹⁸⁸ Davis’s emotions were highly labile.¹⁸⁹ Ms. Davis left the home with the children and shortly afterwards, took out a protective order. On December 31, 2012, at 3:30 a.m., far less than 24 hours after the first call by the neighbor, police served the order on Davis and confiscated a Bushmaster AR-15 .223 rifle in a hard case with two fully loaded 30 round magazines.

At this point, more information about wider threats to the community emerged. Officer Harrington (the same Officer Harrington who spoke to Shapiro by phone on October 16, 2018), wrote: “During my conversation with Mr. Davis he expressed his discontent for the Bennington School, Supervisory Central Office and specifically named Richard Pembroke. Davis advised he was working on having the Central Officer investigated and it would please him to see the office closed down due to an investigation and hoped to see Pembroke lose his job or go to jail.”¹⁹⁰

At 8:16 a.m., on December 31, 2012, still less than 24 hours after the initial report, Davis’s neighbor came to the station and showed then Officer Cole (now Det. Cole, the same Det. Cole who interviewed Shapiro and Misch on October 17, 2018), a video posted by Davis, which Cole described as follows: “Having read the three reports written by officers about their interactions with Davis, what I heard and saw on this video was concerning. Depending on an individual's interpretation of the words spoken by Davis, one could find the video threatening.”¹⁹¹ Later, Davis posted another video on YouTube, which Cole described as follows: “The first video's basic theme addressed his neighbors and acknowledging that they had called police. Of the next two videos, the theme was his anger at the School District, specifically Richard Pembroke, for what he believed was their mishandling of Davis being overpaid. In the video, Davis indicates that he intended on going to the Supervisory office on this date to address

¹⁸⁶ Incident Report # 12BN09136, December 30, 2012, 16:23 hrs. Officer Bull/Officer Burnham.

¹⁸⁷ Id.

¹⁸⁸ Incident # 12BN09145, December 30, 2012, 22:05 hrs. Officer Burnham/Officer Faden.

¹⁸⁹ Id.

¹⁹⁰ Incident # 12BN09149, December 31, 2012, 03:20 hrs. (Officer Harrington).

¹⁹¹ Incident # 12BN09151, December 31, 2012, 08:16 hrs. (Officer Cole).

his concerns. Again, his words, tone of voice and his facial expression, were concerning.”¹⁹² Thereafter, Cole wrote:

Word quickly spread through the community about Davis's postings on You Tube. The police department received numerous calls from the public expressing Concern. The first of Davis's video's [sic] mentioned his attorney,...and another neighbor.... It was decided that police should notify [them].... I went to [the attorney's office].. I then contacted [the neighbor]. She told me she had a conversation with Davis, who is not a patient of hers. She expressed that she felt Davis was experiencing some type of instability, but as of the time of my conversation with her, she had not taken any steps to pass this information along to Davis care provider. I suggested...that they take measures to secure her medical practice office. [She] asked me to call her husband, who works out of their home on Elm Street, and advise him of our concerns. I did so. In conversation with Chief Doucette, we determined that it would be prudent to try to convince Davis to go to the emergency room for a mental health evaluation. **Chief Doucette called Davis and invited him to come to the police station to meet with him to discuss a previous conversation the Chief and Davis had,. Davis agreed to do this. After a short time, Davis did arrive as he promised. Davis and Chief Doucette met privately in the Chief's office, while I stood outside, out of view, monitoring the conversation. After an extended conversation, Davis agreed to go with me to the emergency room for an evaluation. Davis rode in the front passenger seat of my cruiser to the emergency room. In our brief conversation, Davis mentioned the AR-15 rifle he owned. He told me he had owned the weapon for several years and had never fired it. He told me his wife was unaware he owned such a weapon and he said he had kept it hidden in their basement. I asked him what prompted him to take the rifle out of the hiding spot and put it in his car. He told me "It was time to put it in play". I did not ask Davis to explain those words.** Once at the emergency room, Davis entered the exam room willingly. Davis was evaluated by UCS who ultimately determined that he needed to be sent to a metal [sic] health facility for further evaluation.¹⁹³

Following these events, the BPD made sure that Davis had no access to a phone.¹⁹⁴ Police also went back to the home after he told them he had a pellet gun and additional ammunition for the AR-15. Davis was transferred to an inpatient bed after staying in the emergency room for two days.¹⁹⁵ On January 2, 2013, at 7:10 a.m. Lt. Dean did a directed Patrol at the Southwest Supervisory Union office even though Davis was still being held in the emergency room.¹⁹⁶ On January 3, 2013, officers served an Extended Temporary Restraining Order on Davis.¹⁹⁷ The same day, Sgt. Plusch met Superintendent Susan McClure at the station who brought several items, among them a No Trespass order, which the BPD served on Davis at the emergency room. Plusch noted that “An original and a copy of the signature was given to the

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ Incident# 13BN00027, January 2, 2013 at 07:10 hours (Lt. Dean).

¹⁹⁷ Incident #13BN00054, January 3, 2013 at 13:04 hrs.

Chief of Police to return to McClure.”¹⁹⁸ A final order against stalking was served on January 24, 2013.¹⁹⁹ “Numerous documented and undocumented checks of the home” were made on January 27, 2013.²⁰⁰

Both men, Max Misch and Steven Davis, were brought to the attention of the BPD and specifically, Chief Doucette, by persons concerned about their mental health and their possible connections to a firearm that could unload 30 rounds of ammunition at a time without having to reload. In Davis’s case, it was his neighbor, who also happened to be a physician. In Misch’s case, police were alerted by a call from Lisa Shapiro’s therapist. Davis’s wife was advised by the BPD that she could get a protective order due to his behavior not quite six (6) hours after the first visit by the police. The service of the protective order in Davis’s case resulted in the seizure of Davis’s AR-15 and two fully loaded, 30 round magazines.

Doucette’s *failure* to immediately disclose the interview with Shapiro and Misch to Morris and Lawton deprived them of the right to seek a protective order which almost certainly would have led to a court order that Misch surrender his weapons or perhaps even led to an effort by the Attorney General to petition for an extreme risk order under the statute whose genesis was partially due to Davis’s case. Both Misch and Davis had AR-15s and more than one fully loaded 30 round magazine. The level of threat in Misch’s case was potentially even greater because Shapiro told Doucette and Cole more than once that Misch was upset and frustrated that the magazines were not fitting the gun. Misch of course was also driven by extreme racism and hatred of Complainants.

Furthermore, the BPD examined Davis’s social media quickly. They reviewed his videos and realized they were possibly disturbing to his family and neighbors, as well as a wider (most white, demographically) community. There is no evidence that Doucette and Det. Cole checked Misch’s social media, either before the interview, or after. Again, had Doucette checked Misch’s social media before the interview with Shapiro, he would have realized Misch had an AR-15, like Davis, not an AK-47 and corrected Shapiro, who kept calling referring to the gun an AK-47, a gun Doucette stated in his interview that he did not like.²⁰¹

As concern about Davis’s possible intentions flooded in, the BPD made themselves available to reassure the community – an Officer reassured a baker who had been planning to work on a project with Davis. Another officer reassured the daycare provider who came to the station in tears. A directed patrol of the school grounds and Davis’s home were performed, all of which is laudatory. In contrast, Doucette and Cole told no one about the Shapiro interview, not even the Attorney General’s Office, which Doucette knew was in the process of investigating threats to the Complainants.

Doucette also invited Davis to the station and spent an extended amount of time with him alone in his office. He listened to him and then encouraged him to seek mental health treatment. Davis then rode in the front seat of Cole’s car to the emergency room. Misch was not referred for

¹⁹⁸ Incident #13BN00060, January 3, 2013, at 17:15 hrs. (Sgt. M. Plusch).

¹⁹⁹ Incident #13BN00532 January 24, 2013 at 15:52 (Lt. Dean).

²⁰⁰ Incident #13BN00604, January 27, 2013 at 20:00 hrs. (Lt. Dean).

²⁰¹ Interview with Doucette, 12/14/20.

any mental health assessment or treatment, despite Shapiro's representation he was mentally ill, possibly with a number of alarming diagnoses and not on any psychiatric medications. When Doucette and Cole met Misch, they decided that because he answered all their questions, (which seem to have been few and omitted any question about the magazines' purchase date), and maintained eye-contact with them while there, that he was mentally stable, despite the amount of information Shapiro provided that suggested otherwise. Doucette reassured Davis but made sure Cole transported him to the emergency room. Doucette took no further action to at least consult with someone other than Cole about whether he should take other steps. Given that the contact with Shapiro and Misch had been precipitated by a call from an alarmed therapist, this seems incongruent.

Doucette's statements to the media about the Davis situation show an emphasis on his value of safety, for both those in Davis's close circle, i.e., wife, children, neighbors, and the wider community, that he failed to display towards Complainants:

1. "We were getting inundated with telephone calls from schoolteachers because he was sending out emails. He was posting stuff on Facebook and it became disturbing to some people," Doucette said. **There is no evidence that Doucette and Cole checked Misch's social media, although Shapiro mentioned it in the interview. If they checked it, they did not incorporate it into their investigation or deem it worthy of alarm, in contrast to their alarm over Davis's social media. In sum, they played an active role in reviewing and assessing Davis's social media, in contrast to Misch's social media.**

2. "He indicated to me that he was very unhappy with some staff at the supervisory union here and he was unhappy with the education that some of the children and students are receiving here at the Mount Anthony Union High School. He indicated that there were some teachers that needed to be gone from the school," Doucette said. **Doucette and Cole did not discuss any of the issues that Shapiro raised during the interview with any outside authority or mental health care professional. Furthermore, Doucette and Cole did not bother to specifically ask Misch about anything that Shapiro brought up – they made no mention of the magazines, they asked generic and non-specific questions not designed to gather pointed information, such as Misch's association with Hoyt and Harrington.**

3. "He never came out and threatened the teachers in any way, he just said it was time for change." **Although there is no evidence that Doucette checked Misch's social media, he was in possession of other historic information about Misch, including the fact that he had strangled his wife, been subject to a stalking order, and had made racist statements toward Complainants.**

4. "But, when he started going on about reading CIA manuals and he talked about looking into military training and things like that, I became alarmed." **Doucette knew that Misch was an Iraq War veteran and listened to Shapiro talk extensively about his lack of meaningful mental health treatment and that he was a "ticking time bomb."**

5. "My staff became even more alarmed and we became concerned about the safety of the teachers at the school and the safety of the community."

6. "It just didn't seem right. With my position, I'm concerned about public safety and the safety of this community. It just didn't seem right. I just felt something was wrong with him," Doucette said. "He was on this crusade where he wanted to see improvements and it was now time for improvements."

7. "The police department's role in this going forward is to continue to ensure the safety of the community, to continue to ensure the safety of our schools and to hopefully work with Mr. Davis and his family to hopefully get things back on track and to help them through this. Mr. Davis is very well respected, is an excellent teacher..."

These expressions of concern for public safety did not apply to Morris and Lawton and J.L. Doucette was in possession of information that suggested that Misch, Hoyt and Harrington – all of whom verbally attacked Morris, Lawton, and J.L., were allegedly now spending time together discussing their collective hatred, all while Misch was purchasing firearms, magazines, and posting sinister excerpts from *The Turner Diaries*. Furthermore, Doucette's demeanor and comments during the interview with Shapiro signaled a dislike and suspicion of Lawton, which conversely risked signaling his support for Misch and Hoyt. There was also a risk that Shapiro would carry Doucette's words and his responses, and the information he provided, to Misch, and a chance Misch would repeat them to Hoyt and Harrington.

Misch was/is perhaps even more dangerous than Davis. Davis had no history of violence and was apparently well-liked prior to his breakdown. Misch on the other hand, was described as a "ticking time bomb;" he strangled his ex-wife, posted memes advocating and celebrating murder and murderers (Molly Tibbets, Kill Your Local Drug Dealer, Duterte). Misch posted about the "Day of the Rope" coming "soon" on the same day he purchased 30-round magazines intending to use them in the AR-15 he had ordered. Misch harassed and threatened Morris for years, had been subject to a protective order, had called her son a "mongrel," and was said by Shapiro to hate Lawton so much that he allegedly wished for his death on the operating table. Doucette learned from Shapiro that Misch had begun to spend time with two people who hated Morris and Lawton as much as he did.

In sum, in Davis's case, the BPD and Doucette acted swiftly to manage, disclose and dissipate the threat. They advised Davis's wife to seek a protective order, which she obtained, that disarmed Davis in just a matter of hours. In Complainants' case, Doucette shared nothing about the interview with Shapiro or interaction with Misch, not even to the Attorney General's Office, which only two days earlier had begun the process of assessing threats to the Complainants.²⁰² It does not matter that "nothing" happened to Complainants – "nothing" happened in the Davis case either. The fundamental difference for purposes of a disparate

²⁰² Doucette mentioned to Erica Marthage and Stu Hurd that he had spoken to Misch, but only to make the point that Misch, like Hoyt, had complained of Lawton: "Kevin Hoyt and I spoke on the telephone today. He is upset because he tried to share information with the State Police as well as the AG's Office and no one returned his calls. I also communicated with Rick Gauthier and he hasn't been interviewed. Larry Cole and I had a visit with Max Misch last week. It seemed to go well. His frustration seems to be with Lawton. Hoyt also has frustration with Lawton. No direct threats have been made by [sic] I assume this will not end well." October 22, 2018, at 4:24 PM, Doucette to Marthage and Hurd.

treatment analysis between Complainants and the persons that could have been harmed by Steven Davis is Complainants' race and color.

In addition to the production of a comparator, Complainants can also show that they received services in a markedly hostile manner by the BPD. Doucette's failure to disclose the interviews with Misch and Shapiro to the Attorney General's office or Complainants themselves, placed lives at risk. Misch was a known racist who had possession of dangerous weapons, had previously strangled his wife, was on probation, and was previously ordered to stay away from Morris. It is worth a reminder that a no stalking order was issued against Misch in 2016 simply because of the hostility he telegraphed towards Morris at a polling station. That threat paled in comparison to what Cole and Doucette learned in their interview with Shapiro. This investigation suspects that had Doucette divulged the information he obtained in the interview with Shapiro to Morris and Lawton, both Morris and Lawton, individually, and on behalf of J.L., could have obtained protective orders. Those orders would have then likely resulted in the confiscation of all of Misch's firearms, ammunition, and magazines, as happened in the Davis case. Purposefully withholding information and failing to fully cooperate with a prosecutorial office is profoundly contrary to one of the central roles of law enforcement and so far outside widely accepted norms that an objective person could find a rational inference of discrimination. That inference becomes irrefutable discrimination if it cannot be rebutted by a legitimate non-discriminatory reason.

This investigation finds that Chief Doucette's failure to disclose the information gained in the interview with Lisa Shapiro: 1) endangered the Complainants' safety, 2) deprived the Complainants of information they could have used to seek a protective order, 3) deprived the Attorney General's Office of information it could have used to conduct further investigation of Misch or to act in some manner, such as to petition for an extreme risk order.²⁰³ It might well have changed the outcome of the January 14, 2019 press conference. Doucette's concealment is, at the very least, a violation of the VFHPAA and an extreme example of a failure to provide "services," "privileges," "advantages, [or] benefits," to the Complainants.

FINDING: The Complainants can establish a prima facie case of discrimination.

D. RESPONDENT'S "LEGITIMATE NON-DISCRIMINATORY REASONS FOR ITS ACTIONS"

The overall thrust of Counsel's responses to Complainant's claims of discrimination are that:

Complainant's allegation that the Bennington Police Department has "endangered [her] family by failing to provide [them] the same services and privileges afforded to others because of [her] race" is completely unfounded, inappropriate, and outrageous. Such an allegation is frankly offensive and irresponsible." Furthermore, Counsel opined that "Respondent has responded to every report by Complainant regarding this online harassment, and other complaints, with diligence and empathy." Respondent's Response, April 1, 2019. As an example of Doucette's empathy, Counsel cited "When Mr. Misch appeared at the Beth El Synagogue during the Attorney General's January 14, 2019 press

²⁰³ This investigation does not assert a petition for extreme risk would have been a foregone conclusion.

conference announcing that after an independent investigation he would not seek prosecution, Doucette took Complainant by the hand and led her out of the room and to a safe area away from a potential volatile situation. Complainant then hugged the Chief and thanked him. Doucette's response to this tense situation is indicative of how Respondent has and would respond to incident calls by Complainant or any other member of the community.²⁰⁴

More particularly, in its written response, Counsel argued that since the magazines Shapiro referred to turned out not to be illegal, there was essentially no further action to be taken: “On October 16-17, 2018, the BPD investigated the report of a purchase of high-capacity magazines and through the investigation determined that the magazines were purchased legally prior to October 1, 2018. According to recently enacted 13 V.S.A. § 4021, the September 26, 2018 purchase was not prohibited. In a subsequent investigation following the Attorney General's press conference on January 14, 2019, the Vermont State Police confirmed that Lisa Shapiro, with Max Misch, legally purchased the AK4 7 30 round magazines in Bennington on September 26, 2018.”²⁰⁵

As previously mentioned in this report, it is unknown when exactly Chief Doucette confirmed that the magazines were purchased legally, though he was very clear to this investigation that he had personally taken care of it and that he drove to pick up the receipt himself. However the fact remains that as of the date of this report, there is no record of a date, or of a communication, or meeting between Doucette and Bucci, and Bucci was unable to provide a date and was unsure if he had been contacted by Det. Cole or Doucette. Chief Doucette's inability to clarify the record and Counsel's lack of responsiveness to repeated questions by this investigation on the issue, call BPD's defense into question. However, even if Doucette had immediately confirmed that Misch purchased the magazines legally, BPD is still not excused from providing evidence of the interviews to the Attorney General's Office and the Complainants immediately after the interviews occurred.

This investigation questioned Doucette extensively about why he had not informed the Attorney General's Office of the interview and received no satisfactory response. He suggested that he was not hiding anything, and that information would have been available to the Attorney General in the computer assisted dispatch system (CAD); however, the best evidence – the actual recording of the interview and the report – would not have been available on CAD. The CAD system would have only shown Cpl. Harrington's report about the therapists' concerns and would not have had a copy of Cole's report since it was not written until February 22, 2019. The actual recording was in the possession of the BPD and therefore the Attorney General would not have had access to it or known about it. Doucette's excuse obviates one of his central duties as a law enforcement officer, which is to provide information to investigating authorities. He was unable to offer any persuasive reason for not divulging the information only two days after being put on notice that an investigation into possible threats to Complainants had begun.

²⁰⁴ Respondent's Response, 10/14/19.

²⁰⁵ Id.

E. PRETEXT

Evidence of pretext may take “a variety of forms”²⁰⁶ and the burden of proof lies with the complaining party.²⁰⁷ As with the prima facie case, proof of pretext may be accomplished by showing that a similarly situated comparator was treated more favorably.²⁰⁸ Pretext may also be established by showing that the reasons offered by a Respondent lack credibility or that a discriminatory motive was a more likely reason for the action.²⁰⁹

In this case, there is evidence that a comparator was treated more favorably, evidence of marked hostility, and a lack of credibility on the part of the Respondent in providing reasons for its actions. Doucette has a long history of denying the existence of bias in his force. The IACP investigation found a deficit of trust in the BPD by some members of the community. It also pointed to community “concerns about whether these relationships could be improved under current leadership.”²¹⁰ This would be a devastating statement to read for the person in charge, but after this investigation, the concern seems a valid one. It is difficult to trust a police department led by someone who sees no wrong in his department’s approach to policing, despite a rebuke from the Vermont Supreme Court,²¹¹ a federal judge,²¹² and a University of Vermont statistical study that revealed that biased policing was occurring and that there was a non-

²⁰⁶ Patterson v. McLean Credit Union, 491 U.S. 164, 188 (1989).

²⁰⁷ Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. at 253.

²⁰⁸ McDonnell Douglas, 411 U.S. at 804.

²⁰⁹ *Burdine* at 256.

²¹⁰ IACP Report at 29.

²¹¹ In reference to an interview given by Doucette to WCAX reporter Eva McKend that he could not see his department making any changes after the Vermont Supreme Court found that the BPD had violated the constitutional rights of Shamel Alexander and essentially engaged in racial profiling. See https://www.youtube.com/watch?v=XoQ4ICQTd_I.

²¹² Alexander sued the BPD in federal court and was represented by the ACLU. Counsel here represented BPD. Bennington twice asked Judge Geoffrey Crawford to dismiss Alexander’s lawsuit and was twice rejected. In part, Doucette’s reaction to the Vermont Supreme Court ruling formed the basis for Judge Crawford’s ruling. In denying one of Bennington’s motion to dismiss, Judge Crawford wrote: “After the Vermont Supreme Court’s decision, Paul Doucette, the Chief of Police for the BPD, stated in a television interview that he believed ‘the stop and everything that occurred during the stop were lawful.’ In response to a question from a reporter about whether the BPD ‘could learn anything from the decision,’ Chief Doucette responded, ‘I don’t see us making any changes here.’” *Alexander v. Hunt, et al*, Case No. 5:16-cv-192, OPINION AND ORDER ON DEFENDANTS’ MOTIONS TO DISMISS, BENNINGTON POLICE DEPARTMENT’S MOTION TO AMEND CAPTION, AND PLAINTIFF’S MOTION TO AMEND COMPLAINT, 2017 at 6-7. Judge Crawford considered whether, “the complaint [by Alexander] adequately alleges that the alleged unconstitutional extension of the traffic stop is attributable to a custom or policy of the Town of Bennington.” He ruled that “The single allegation of Chief Doucette’s comments after the Vermont Supreme Court’s decision is enough to nudge the claim of municipal liability from the conceivable to the plausible....This statement [given after the Vermont Supreme Court opinion] supports a possible inference that the Town of Bennington maintained a policy or custom of unlawfully prolonging traffic stops without probable cause.” He then denied that part of the motion to dismiss the Fourth Amendment claim. The Alexander case eventually settled for \$30,000. Though the Vermont Supreme Court did not mention racial profiling, nor did the terms of the settlement to this investigation’s understanding, the opinion was widely hailed as a recognition that the BPD was engaging in racial profiling. ACLU Press Release, Bennington Agrees to Settle Racial Profiling Case, June 24, 2020; Ellie French, Man settles with Bennington police for \$30,000 in racial bias case, VT Digger, June 24, 2020; Riley Board, Bennington Police Department, town settle for \$30,000 in racial profiling case, Bennington Free Press (June 24, 2020); Derek Brouwer, Bennington Settles Police Racial Profiling Case for \$30K. Seven Days (June 24, 2020).

compliance with the gathering of statistics, which is of course relevant to one of Morris's claims.²¹³

Police services require more than just responding, taking statements, and writing reports. They require more than providing extra patrols or extending "No Trespass" orders. Not only did the decision not to disclose critical information during an on-going investigation into threats against Complainants provoke the ire of the Attorney General and result in his call for Bennington to be investigated by an outside entity, but it clearly demonstrated a devaluation of the risk when it came to Complainants' safety. Doucette and his officers clearly saw risk to white family members (and the larger mostly white community) in the Davis case but saw no risk to Morris, Lawton and J.L. in the case of Misch.

Aside from the central failure to disclose in this case, Doucette certainly engaged in other hostile actions towards Complainants, such as the September 1st press release, the emails to Donovan complaining of bad press and fraudulent activity by the Complainants, as well as his efforts to undermine the Complainants to the Assistant Attorney General undertaking the investigation. He forwarded the *True North* article forwarded by Lt. Dean.²¹⁴ He forwarded an

²¹³Seguino, Brooks & Autilio, *Trends in Racial Disparities in Traffic Stops: Bennington, Vermont 2014-19*, August 2020. The report found that during this period of time in Bennington: • Black and Hispanic shares of drivers stopped exceed their shares of the estimated driving population. The data indicate Black drivers were overstopped by between 55% to 236%, depending on the measure of the driving population used. Hispanics were overstopped by 93% relative to their estimated share of the driving population. • The arrest rate of Black drivers was 26% higher than the white arrest rate, and the Hispanic arrest rate was more than double the white rate. • Black drivers were almost 4 times more likely to be searched subsequent to a stop than white drivers. Hispanic drivers were 60% more likely to be searched and the Asian search rate was less than half the white search rate. • The likelihood of finding contraband of any kind was similar for Black and white drivers, but white drivers were much more likely to be found with contraband that led to an arrest. In terms of trends: • From 2015 to 2019, the number of traffic stops has risen about 65% in Bennington. Overall, Bennington has a high volume of stops relative to its population size. Black drivers are stopped at a rate that is more than double their estimated resident population. • Over time, the Black-white and Hispanic white arrest rate disparities have worsened. Search rates of Black drivers have decreased and the Black-white search rate disparity has narrowed but it is still almost 3 times greater than the rate white drivers are searched. Regarding data quality, we find: • Race of the driver was omitted in 3.3% of stops—or 806 stops. To put that magnitude in perspective, during the entire period studied, there were only 613 recorded stops of Black drivers. Moreover, in more than 98% of the stops with no race recorded, all other fields (except age) were complete. In virtually all of the stops, age data is missing even though it is a legally required field. There has been no reduction in missing data over time. In fact, the proportion of stops missing the race of the driver has risen over time so that by 2019, 4.9% of traffic reports fail to record race of driver. This is concerning, since the goal of the legislation to require traffic stop data collection was precisely to identify racial disparities. Bennington Police Department could benefit from additional attention to this problem so as to improve the quality and reliability of its data.

²¹⁴ On October 16, 2018, at 9:49 a.m., Lt. Lloyd Dean from the Bennington County Sheriff's Department, sent Doucette an email titled "worth reading." The body of the email contained a link from the *True North* article posted by Hoyt, five days earlier. The "article" cast suspicion on Lawton and took a sympathetic stance towards Kevin Hoyt and Colleen Harrington and suggested that Lawton's request for the return of his computers was sue to his hiding some criminal activity. It included an undated screenshot of a photo that Lawton posted of his four guns and a statement "This is what we protect our home with." At 11:39 a.m., Doucette emailed Doyle the *True North* article from Dean. At 1:35 p.m., still on October 16, 2018, Doucette emailed Doyle again: "Mr. Doyle, In an effort to save time, I have scanned all of the reports we have on file involving Kiah Morris and James Lawton. This will

email sent to him by Kulkin which suggested a “Black Militia” would move into town and set up camp to defend Morris.²¹⁵ He told Doyle that it could not have been Misch in front of the home of J.L.’s childcare provider in January of 2017, because Misch did not drive, something Doucette had no way of knowing for certain as he did not ask Misch that question when he met him on October 17, 2018, according to Det. Cole’s report, and Doucette claimed to have never met Misch before that date.²¹⁶

The International Association of Chiefs of Police investigation found deficits in the Department which echo some of the Complainants’ other claims of discrimination. The IACP Report found there was a “warrior mentality” within the Department, rather than a “guardian mentality.”²¹⁷ Significantly, the report noted that the BPD did not acknowledge the role of bias in its ranks, and in fact “claimed it was being targeted”²¹⁸ which is in keeping with the speech given by Doucette at the Sorrell meeting on October 25, 2016. The IACP report noted that the focus of the BPD had been traffic enforcement, in large part, “as a strategy to locate criminal

prevent any questions about the incident reports we have on file involving Kiah Morris and James Lawton. Please let me know if you need anything further. I would also like to bring your attention to the emails and calls we continue to receive. To date, I have followed Attorney General Donovan's advice and have not responded to the media calls. Town Manager Stuart Hurd is receiving calls as well. I have not returned any of the calls and now people are leaving messages with my administrative assistant. Kiah Morris continues with her media interviews and seems to be profiting from her "story." A local resident contacted me today and advised her GOFUNDME account has received over \$7,700.00. Please advise the status of this investigation.”

²¹⁵ October 29, 2018 email from Kulkin to Doucette at 12:25 PM: “Paul, it doesn't take a rocket scientist to read between the lines. You've got Bennington kids – innocent troublemakers at best -- who are being mentioned in the same breath as Medgar Evers, and if you don't know who that is you should Google him. Can you imagine if the Banner had mentioned the kids' names in the story regarding Ding Dong Ditch? Not saying one thing always leads to another but it seems like these words are going too far even if they're from a keyboard cowboy. Hope the BPD is prepared just in case.” Kulkin included the following excerpt from a Facebook post: “We should be ORGANIZED ENOUGH to either have a Black Militia set up in Vermont or send some TERMINALLY ILL brothers there to wait on the people coming to her house and FOLLOW them to their house and Medgar Evers they Ass.”

²¹⁶ Email from Doyle to Doucette at 3:30 pm: Doyle asked about two incidents, including the incident from January of 2017: “I had a couple further requests. I understand that in Jan. of 2017- (who provided care to Ms. Morris's son) contacted BPD to report that someone, who resembled Mr. Misch, took photos outside of her home. Could you please send me a copy of that report?” Doucette responded “[Redacted] Please be advised Misch does not have a car and does not drive.”

²¹⁷ IACP REPORT at 38. “The IACP found: “a heavy emphasis on warrior thinking, which is important to keep the officers and the community safe but recommends a more balanced approach. *The team found few instances where BPD leadership and officers embraced the principles of community policing, which include building mechanisms, policies, and operational procedures that are founded in the principles of leveraging trust relationships with the community to help the organization achieve goals, prevent crime, and promote a shared sense of public safety.* An example of the warrior mentality that is pervasive throughout the organization can be found on the BPD website that emphasizes a warrior appearance, rather than that of a community partner responsible for safety that embraces guardianship and community engagement for all residents, visitors, businesses, and diverse populations within the town.”

²¹⁸ IACP REPORT at 18. “When concerns of racial bias had been raised, community members reported that BPD leadership denied any racial bias and instead claimed the department is the one being targeted. Denials of racial bias are sources of frustration and doubt for diverse community members and were viewed as open demonstrations of a lack of desire by the police department to engage with the diverse members of community in good faith.”

activity and reduce crashes.”²¹⁹ The IACP found that the BPD needed to improve in several areas, many of which were mentioned as problematic by the Complainants in their HRC complaints.

These issues of trust and accountability throw shade on the question of the BPD’s handling of the Complainants’ computers and why they sat at the BPD for 22 days with a potential death threat on them. The BPD’s inaction again demonstrated a lack of urgency and concern for the safety and well-being – physical and mental - of the Complainants. In his press release, Doucette blamed Complainants for not turning over the passwords. However the BPD should have organized the transfer, clarified the issue of password submission as soon after they were dropped off as possible, and certainly no later than Doucette was notified by Raymond that they could be examined, which was on August 3, 2018. Failure to act expediently is indicative of a Chief of Police who was not concerned about Complainant’s safety, in comparison to the speed with which he and his officers moved in response to calls about Steven Davis.

Lawton also raised the issue of the BPD leaking information to Joey Kulkin ahead of the January 2019 press conference. Indeed, the Friday before the press conference, Kulkin essentially leaked the results of the investigation on his Facebook site in an effort to draw negative commentary about the Complainants and undermine them due to the VSP’s finding in the “dead dead” investigation.²²⁰ This investigation cannot ignore that Kulkin suggested to Doucette that Doucette use “back channels” to communicate with him, though it has no information of the where the leak came from.²²¹

Issues of trust call into question the thoroughness of the investigation into whether the “ding, dong, ditch” incidents might have been orchestrated by Kevin Hoyt or others. This investigation has discovered evidence that one of the juveniles involved was directly

²¹⁹ IACP REPORT at 8-10. “Further, employees perceive that their value to the department is largely connected to ticket writing, which may lead to a negative effect on trust within the department as well as with interactions with the community. An apparent focus on traffic stops by BPD is a source of fear for many community members who feel and understand that routine traffic stops have historically been used as methods of intimidation toward racial minorities. A common theme among the project team’s interactions with community groups is that certain groups within the community are more likely to feel profiled by police based on race or socio-economic demographics. This is an area that requires clear strategy that should be guided by data and not simply by measuring the number of stops and tickets issued.”

²²⁰ On January 11, 2019, the Friday prior to the Attorney General’s press conference on the Morris investigation, Kulkin posted the following: KIAH MORRIS UPDATE Vermont Attorney General T.J. Donovan will hold a press conference Monday morning to reveal facts and findings in the case of former state representative Kiah Morris. From what I understand the truth won't be pretty for Kiah and her husband James. State computer forensics experts investigated one of the family's laptops -- to the chagrin of James -- and the word will be that Kiah did not receive death threats as she has claimed in one media outlet after another ... telling the world that she quit her gig as 2-term state rep because of the repeated death threats. From what I understand, Kiah was told in October that the death threats were not real ... so why did she spend months perpetuating the falsehood which in turn gave Bennington and the state a bad name? The press conference starts at 11 o'clock in front of Temple Beth El on North Street. Bennington County state's attorney Erica Marthage will be there too.” Screenshot on file. This Facebook page was open and searchable.

²²¹ September 14, 2018 - 6:13 pm - Kulkin To Doucette: “Hi, Paul, What do you suppose Donovan means by “breakdown in Bennington” as it relates to your PD? Joey **Feel free to use backchannels to chat. You know where to find me.**”

communicating with Kevin Hoyt in February of 2020 about the ding, dong, ditch incident, requesting that Hoyt text him.²²² In addition, some of the parents of those juveniles were also connected to Hoyt, in one case reposting his posts in 2020.²²³ It is certainly not unreasonable to wonder whether, if they were connected in 2020, might they have been connected in 2018 and how, and why. It is also possible there was no connection and no conspiracy and that outcome would be one to be glad about, but it is difficult to have confidence in the BPD once it is discovered that Doucette failed to divulge the possibility that Misch, Hoyt and Harrington were spending time together.

Few persons reading this report have or will ever have any idea what it would be like to live through the events that the Complainants experienced. Fear creates vigilance and vigilance does not relieve that fear – it compounds and amplifies it. Knocking on one’s door and running is not “just” “kids being kids” when it occurs over and over within a community where the persons experiencing it are under public attack. Cassandra Cosidine, a long-time friend of Lawton, was living with Complainants when their home was broken into in October of 2016. Ms. Cosidine noted the impact of this and other events on Lawton’s mental health and Morris/Lawton’s emotional state at the time of the break-in. She described Rep. Morris and Mr. Lawton as always being “anxious all the time, they were - just scared, on high alert.”²²⁴ “Jim had already, you know, had his struggles with depression, um, and I think he really, really, really just got into a pretty sad place.”²²⁵ “He was constantly worried. Worried about his wife, worried about his child.”²²⁶ “I don’t think they slept much or slept well.”²²⁷ She added, “I tried to talk to Jim multiple times to help with stress management...but I think this whole thing has pretty much consumed his mental and emotional well-being.”²²⁸

During her interview, Morris described Lawton’s state of vigilance and routines that he went through to keep the house safe and his performance of safety checks each night. Lawton’s sense of threat to his family resulted in the purchase of firearms and at one point, posting a picture of them as a warning to those he believed would harm the family.²²⁹ Lawton has been open about the effects on his health: “Lawton said the anxiety and stress that followed the youths pounding on his door Thursday resulted in him being transported later to Southwestern Vermont Medical Center with spiking blood-pressure and other symptoms likely related to triple bypass heart surgery. He underwent the operation on Sept. 11 and was released from the hospital just prior to the incidents. “That could have killed me,” Lawton said.²³⁰ Morris represented that J.L. had had problems at school. The issues complained of affected them ultimately, as a closely associated, family unit.

²²² Screenshot on file. This Facebook page was open and searchable.

²²³ Screenshot on file. This Facebook page was open and searchable.

²²⁴ Interview with Cassandra Cosidine.

²²⁵ Interview with Cassandra Cosidine.

²²⁶ Interview with Cassandra Cosidine.

²²⁷ Interview with Cassandra Cosidine.

²²⁸ Interview with Cassandra Cosidine.

²²⁹ Interview with Cassandra Cosidine.

²³⁰ Jim Therrien, *Pranking teens hit Kiah Morris residence, prompting move to inn*, Bennington Banner, September 27, 2018, <https://vtdigger.org/2018/09/27/pranking-teens-hit-kiah-morris-residence-prompting-move-inn/>

In a March 2020 story about these events, Senator Dick Sears was quoted as saying of Morris: “I don’t know that we understood enough about what she was going through.”²³¹ This investigation agrees with that assessment, after a review of all the facts, and finds that Lawton and J.L., by virtue of their association, were going through that also. Respondent violated Vermont’s Fair Housing and Public Accommodations Act.

RECOMMENDATION: This investigation recommends that the Commission find **reasonable grounds** to believe that the Respondent discriminated against Ruqaiyah (Kiah) Morris, Ruqaiyah (Kiah) o/b/o J.L., and James Lawton, on the basis of race and color, in violation of the 9 V.S.A. §4502(a).

/s/ Nelson Campbell 3/3/2021

Nelson M. Campbell Date

APPROVED:

 3/3/2021

Bor Yang Date
Executive Director
& Legal Counsel

²³¹ Alan J. Keays, *How the Kiah Morris case gripped Vermont, but hasn’t changed anything*, VT Digger (March 8, 2020) <https://vtdigger.org/2020/03/08/kiah-morris-max-misch-bennington-case-gripped-vermont/>