

REPORT OF INVESTIGATION

**GALLAUDET UNIVERSITY
EVENTS AT HALL MEMORIAL BUILDING
ON OCTOBER 6, 2006**

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INTRODUCTION

On Friday, October 13, 2006, Covington & Burling LLP (“Covington”) was retained by the Board of Trustees (the “Board”) of Gallaudet University (“Gallaudet” or the “University”) to conduct an independent investigation into allegations that Gallaudet “security officers acted with excessive force when responding to a bomb threat on campus during the takeover by students of Hall Memorial Building.”¹ In announcing the investigation, Gallaudet noted, “At the conclusion of the investigation, [Eric] Holder [of Covington] intends to release to the public the written findings of the investigation.” This report sets forth the findings of our investigation.

Our report contains four sections. Section I describes the scope of our investigation. In Section II, we briefly summarize our factual findings and our conclusions and recommendations. Section III contains a detailed description of the Hall Memorial Building (“HMB”) incident. Finally, Section IV of the report contains our conclusions on the issues raised by this incident and our recommendations for remedial steps the University and students should take going forward.

I. DESCRIPTION OF INVESTIGATION

Our investigation focused primarily on the decision by the University’s Department of Public Safety (“DPS”) to enter HMB on the morning of October 6, 2006, and the interactions between security officers and Gallaudet students once DPS was inside the building. To gain as complete an understanding as possible of these matters, our review also traced

¹ Gallaudet University Press Release, *Eric Holder to Lead Investigation into Alleged Use of Excessive Force by Gallaudet Officers*, Oct. 13, 2006, available at www.gallaudet.edu.

relevant events preceding the incident and the development of the student protests beginning in May 2006.

Our investigation involved interviews with more than 30 individuals and review of a substantial volume of documents and electronic records.

A. Interviews

We began our work in the midst of a campus-wide student protest. Consequently, in the first few weeks of our review, we had difficulty scheduling and conducting student interviews. Eventually, after the protest ended in late October, and students became more familiar with our role, we were able to speak with the majority of witnesses with whom we sought interviews. During the course of our investigation, we interviewed the following individuals (some on more than one occasion):

DPS Personnel Interviewed By Covington

Wendy Armstrong (Sergeant)	Siavosh Hedayati (Officer)	Bradley Smith (Captain)
Meloyde Batten-Mickens (Chief)	Ruth Ilabor (Officer)	Paul Starke (Captain)
Gilbert Best (Sergeant)	Tanga Payne (Officer)	Ronald Tate (Captain)
Leslie Brewer (Dispatcher)	Ronald Petrocchi (Sergeant)	Darrell Ware (Officer)
Fabienne Collson (Communications Coordinator)	Wendy Potts (Commander)	Teres White (Sergeant)
Timothy Errett (Officer)	Meghan Powers (Officer)	Andrew Wright (Sergeant)
Virginia Fedor (Lieutenant)	Patrick Rader (Captain)	Tereek Wynh (Officer)
Crystal Gray (Officer)	Anthony Slater (Officer)	

Gallaudet Students Interviewed By Covington

Noah Beckman	Thomas O'Grady
Ryan Commerson	Ashley Reuss
Bradley Gantt	Jesse Thomas
Tara Holcomb	Peter Thomas
Jonah Meehan	Kent Turner

We also met with counsel for the Faculty, Staff, Student, Alumni Coalition (“FSSA”), which played a leadership role in the recent campus protests. The lawyers with whom we met were Suzy Rosen Singleton, and Edward W. Correia and Teneille R. Brown of Latham & Watkins LLP.

In addition, we interviewed the following officers from the District of Columbia Metropolitan Police Department (“MPD”) who reported to Gallaudet on the morning of October 6: Officer Clarence Douglas, Officer Myra Jordan, and Officer Goldie Easterlin.

During our investigation, we learned of three additional students alleged to have been the victims of excessive force by DPS or to have been injured in the HMB incident. These three individuals are: Rose Grumball, Joseph Kelly, and Jory Pedersen-Dike. Despite our repeated requests to meet with these individuals, to date we have been unable to do so.²

B. Document Review

During our investigation, we reviewed a substantial volume of documents and electronic records relating to the HMB incident. In particular, we reviewed:

² We also have heard in interviews that an unidentified male student may have been injured in the confrontation between officers and students in HMB. However, without additional information about the identity of this student, we were unable to move forward with respect to this allegation.

- Student and other video recordings;
- Student incident reports filed with DPS;
- Officer incident reports filed with DPS;
- List of student complaints compiled by counsel for the FSSA;
- DPS and University policies and procedures;
- The Gallaudet University Student Handbook;
- Internal DPS audio recordings;
- Internal DPS video recordings;
- DPS dispatch logs;
- DPS phone records;
- Internal DPS electronic communications and memoranda;
- University press releases and daily Internet news briefings;
- Photographs and diagrams of HMB;
- Electronic correspondence received from Gallaudet students and University officials;
- Student Internet postings;
- Student newspaper articles;
- Protest-related campus literature; and
- Print and television news reports.

II. EXECUTIVE SUMMARY

This report focuses (as our investigation has focused) on one event in a campus protest affecting Gallaudet for much of the latter half of 2006. The HMB incident resulted from the confluence of two unusual circumstances: the improper occupation by student protestors of HMB -- the central academic building on campus -- late in the evening on October 5; and a telephone bomb threat received by DPS on the morning of October 6. These circumstances led to a confrontation between three DPS officers and a large group of students and other protestors inside HMB.

At the direction of the DPS Chief, these officers went to HMB to search for a suspicious package or other evidence of a bomb. Before sending its own officers into the building, DPS management conferred with MPD officials, who apparently told DPS to search key buildings on campus in response to the general bomb threat that was phoned in to DPS on October 6. Although DPS selected at least three key buildings to search, none received the same type of scrutiny as HMB.

As per their instructions from the DPS Chief, the officers' primary objective in entering HMB was to perform a bomb search. Students aggressively resisted the officers' entry, viewing the officers as intruders and fearing that they would seek to eject the protestors from the building. By forming human chains and shouting at the officers, the protestors prevented the officers from thoroughly searching the building or disrupting their protest.

The three officers were in the building for a total of approximately 30 minutes. During this time, two officers remained together and had their movements confined to a very limited area within the building. The third officer broke through the crowd of students (who stood in tight rows with locked arms) and was able to canvass two of the six floors in HMB. To do so, he had to make physical contact with students and other protestors repeatedly, pushing some and bumping or walking through others. As this officer moved through the building, students followed him, initiating physical contact on their own by pushing him, cutting in front of him suddenly and holding their ground, and also shouting at and otherwise provoking him. In one fast-paced set of interactions on the first floor, a group of students attempted to block this officer from moving down the hallway, creating a melee in which the officer forcefully pushed several students, including one student twice in quick succession.

Based on our review of the HMB incident, we have reached the following five central conclusions:

Conclusion #1: There was a bomb threat at Gallaudet on October 6 that required a law enforcement response. We have, among other things, listened to the audio recording of the call, interviewed the dispatcher who took the call, and reviewed University phone records from the morning of October 6. Based on this review, we have concluded unequivocally that there was in fact a bomb threat. Although some have alleged that there was no bomb threat, this is not true. Others have asserted that the University staged the bomb threat call to create a justification for entering HMB. We have found no evidence to support this claim.

Conclusion #2: DPS's primary purpose in entering HMB was to search for a bomb or other suspicious package. However, DPS management also took the opportunity presented by the bomb threat to attempt to gain a better understanding of the student occupation of HMB, with an eye toward putting an end to the occupation. While the bomb threat caller did not specify any particular location on campus, in its bomb sweep DPS management focused a disproportionate amount of attention on HMB. In addition, comments attributed to the DPS Chief before the bomb threat on the morning of October 6 suggest that DPS was looking for an opportunity to enter and perhaps take back control of the building.

Conclusion #3: DPS management did not adequately prepare and equip the officers for the HMB search. In our judgment, it was a mistake not to send a sign language interpreter with the three officers assigned to search HMB. It was reasonably foreseeable that sending three officers of modest signing capability into a building full of hundreds of hostile, deaf students opposed to the University administration would result in a heated confrontation.

Likewise, it was an oversight not to give the officers specific instructions about how to handle the unusually hostile and heated environment they were about to enter.

Conclusion #4: The three officers directed to search HMB, for the most part, performed well under very difficult circumstances. However, there were shortcomings in the officers' efforts and ability to communicate with students in HMB. In addition, on at least one occasion, one of the officers lost his composure momentarily in response to the protestors' resistance, resulting in a seemingly unnecessary, forceful push to the upper body of a student. While this push does not amount to "excessive force" under the law, it appears to have crossed the line of what is appropriate.

Conclusion #5: The student protestors' unconventional views of their rights and those of DPS officers created and aggravated the conflict in HMB. The animosity with which the student protestors greeted DPS officers in HMB on October 6 appears to have been fueled by the erroneous belief that they had a right to occupy the building and DPS had no right to enter. Viewing themselves as the lawful building occupants and DPS officers as intruders, the student protestors appear to have felt justified in bumping, pushing, yelling at, and otherwise provoking the officers. This conduct was inappropriate and invited confrontations with DPS officers.

* * * * *

We have a series of recommendations for the Gallaudet community based on the matters covered in our investigation and this report. These recommendations -- which relate to DPS's ability to communicate with the student body, DPS officers' training with respect to the use of force and handling protests, relations between DPS and the student body, and the division of responsibility between DPS and MPD -- are set forth in detail in the last section of this report.

III. FACTUAL FINDINGS

During the course of our investigation, we learned the following facts:

A. Events of May 2006

1. Selection of Dr. Jane K. Fernandes as President

On May 1, 2006, the Board of Trustees named Dr. Jane K. Fernandes, then the University's Provost, the ninth President of Gallaudet, effective January 2007. In announcing her appointment, Interim Board Chair Celia May Baldwin praised Dr. Fernandes as someone with "a deep understanding of how this university works, having served in senior leadership positions here for more than a decade."³ "It would be difficult, if not impossible, for the Board to find anyone with greater breadth or depth of experience" than Dr. Fernandes, the Interim Board Chair said.⁴

While praised by some, the selection of Dr. Fernandes prompted a backlash among segments of the Gallaudet student body, faculty, and staff. Those opposed to the decision complained that the Board's presidential search process was flawed and not sufficiently transparent and that Dr. Fernandes, for various reasons, lacked majority support in the Gallaudet community.

2. May 2006 Protests

Public protests of the decision began almost immediately after it was announced. A group of students erected tents on the lawn behind the University's main entrance on Florida Avenue and camped out there in a public display of their opposition to the selection of the President-designate. The initial group of protestors on the campus lawn were soon joined by

³ Gallaudet University Press Release, *Dr. Jane K. Fernandes Named Gallaudet's 9th President*, May 2, 2006, available at www.gallaudet.edu.

⁴ *Id.*

others, forming what became known as “Tent City,” a symbol of the protest movement. Other protest activities in May included a blockade of the University’s main entrance, public rallies on campus, and protest marches.

On May 8, 2006, the University faculty returned a vote of no confidence in the Board’s selection of Dr. Fernandes and voted to request Dr. Fernandes’s resignation.⁵ The next day, Ms. Baldwin resigned as Interim Board Chair, citing the “enormous strain and stress” of the presidential search process, and the “numerous aggressive threats” she received during the weeks preceding her resignation.⁶

On Friday, May 12, the day of the University’s graduation ceremonies, DPS received a telephone call relaying a general bomb threat. MPD was called and, in conjunction with DPS, decided to search the Field House (where graduation was to be held), the Kellogg Conference Center and Hotel (“Kellogg”) (where many out-of-town guests were staying), College Hall (which houses the offices of the University President and other administration officials), and possibly the Central Receiving area as well.⁷ No evidence of a bomb was found. Apart from the bomb threat, the graduation ceremony proceeded largely without incident.

After graduation, the “Tent City” protestors took down their tents and vacated the campus lawn. Before campus emptied out for the summer, several moving trucks were abandoned in the middle of various campus roadways with flattened tires and their keys locked

⁵ Susan Kinzie, *Gallaudet Faculty Dissents; Instructors Render No-Confidence Votes on Board’s Choice of Next President*, Wash. Post, May 9, 2006, at B1.

⁶ Susan Kinzie, *Citing Stress and “Aggressive Threats,” Gallaudet Board Chief Steps Down*, Wash. Post, May 10, 2006, at B9.

⁷ A map of the Gallaudet campus is attached to this report as Exhibit 1. HMB is shaded red; the other buildings referenced in this report appear in blue.

inside -- a prank or protest action apparently aimed at disrupting campus life. As students left campus for the summer, protestors left signs stating, "We'll be back."⁸

B. Fall 2006 Protests

1. Beginning of Protests

Shortly after classes for the Fall 2006 semester began on August 28, campus protest activities resumed as well. On September 6, dozens of students marched in opposition to what they believed was a flawed and unfair presidential selection process.⁹ There was a marked increase in protest activity on October 5 and 6, 2006, in connection with a Board of Trustees meeting and events being held in honor of outgoing President I. King Jordan and his wife.¹⁰

2. Events of October 5, 2006

a) Events Honoring President I. King Jordan and Linda Jordan

At noon on October 5, a public event was held to commemorate the unveiling of the Linda K. Jordan Gallery on campus, an honor bestowed on Mrs. Jordan for her "long-time support of the arts on campus."¹¹ Student protestors attended and sought to disrupt this event. According to a *Washington Post* report, "students waved cardboard coffins and signs" and "were yelling so loudly . . . that deaf people outside could feel the vibrations in the glass windows.

⁸ Anita Huslin, *At the Tent City, Time to Pull up Stakes; Gallaudet's Protesters Pack It In*, Wash. Post, May 14, 2006, at D1.

⁹ District Briefing, *Gallaudet University*, Wash. Post, Sept. 7, 2006, at B4.

¹⁰ In recognition of the growing unrest on campus, DPS Chief Meloyde Batten-Mickens issued a memorandum on October 2 to her staff outlining DPS's responsibilities in connection with the Board meeting. Among the points highlighted in the memo was the need to "[b]e mindful to Sign when communicating to promote inclusive interactions."

¹¹ Gallaudet University Press Release, *Naming Ceremony Recognizes the Contributions of President and Mrs. Jordan*, Sept. 25, 2006, available at www.gallaudet.edu.

Someone threw water or juice into the crowd.”¹² One faculty member, noting that President Jordan’s family was at the event, said that “[s]tudents [we]re there saying awful, horrible things to people, in front of [the Jordans’] grandchild. . . . It was unbelievably vile.”¹³

That evening, the Board of Trustees hosted a dinner at Kellogg honoring outgoing President Jordan and Mrs. Jordan for their “nineteen years of dedicated service” to the University. Students convened a loud protest outside this invitation-only event. According to one student whom we interviewed, protestors were upset that President Jordan was “enjoying himself” while the “campus was torn” over the selection of Dr. Fernandes. The protestors outside the dinner “got a little wild,” this student said. A DPS officer told us that protestors pounded aggressively on the windows outside Kellogg in an attempt to disrupt the dinner event. In an open letter to campus days later, President Jordan cited the protestors’ “assault on me and the disrespect shown to my family last Thursday at what should have been a celebration for the entire campus.”¹⁴

b) Student “Takeover” of HMB

After leaving the event at Kellogg, protest leaders visited campus dormitories seeking additional volunteers to participate in the next demonstration. A large group of students, who we were told numbered in the hundreds, proceeded to the marketplace area of the Student Union Building for an impromptu meeting. During the meeting, attendees talked about what they perceived as the Board’s unwillingness to consider protestors’ concerns regarding the

¹² Susan Kinzie, *Protests on Campus Increase*, Wash. Post, Oct. 6, 2006, at B3.

¹³ *Id.*

¹⁴ Gallaudet University Press Release, *Open Letter from I. King Jordan*, Oct. 9, 2006, available at www.gallaudet.edu.

presidential search process. A consensus developed in favor of entering and occupying a campus building in an effort to “make [the Board] understand” and “listen.”

Students whom we interviewed said that the two buildings given serious consideration were College Hall and HMB. College Hall was considered because of its symbolic importance as the location of the President’s office and because it houses many University administration offices. In the end, the student protestors decided to “take over” HMB. One student told us there was a belief that “taking over” HMB “would have the most impact” and cause the most “disruption,” because it was where a large percentage of Gallaudet classes were held. For this reason, another student said, “taking over” HMB was seen as “a good way to have our voices heard.”

The “takeover” of HMB began around 10:30 p.m. or shortly thereafter with an initial mission by approximately nine students. This group entered HMB through an open door. (HMB is locked each evening at 11:00 p.m.) Students involved in these activities told us that it took approximately one hour after entering to lock all the exterior doors to HMB.

The lock-down was “very organized,” one student said, because they had mapped out the building beforehand. The initial group of building occupants used garden hoses, ropes, chains, and bicycle locks, among other things, to secure the doors from the inside. Once this process was complete, the protestors in HMB passed the message to their colleagues in the Student Union Building to come join them.¹⁵ The building filled up quickly during the ensuing hours.

¹⁵ One student described the building “takeover” as “the thing to do,” and noted that the protestor group included committed activists as well as those who “didn’t understand the meaning of the protest.”

C. Events of October 6, 2006**1. DPS Learns of Student Occupation of HMB**

Electronic records obtained in our investigation indicate that DPS became aware of a disturbance at HMB shortly after midnight on October 6. DPS Officer Andrew Wright was the first to notice unusual activity in the building. He was joined by Captain Paul Starke, the commanding officer on duty at the time, and another officer. When Captain Starke arrived at the building, he saw Officer Wright surrounded by four or five individuals who he believed were burglarizing the building. Captain Starke soon realized the HMB doors were secured from the inside and that students were attempting to prevent access to the building.

2. Initial Interactions Between DPS and Students Inside HMB

Captain Starke and Officer Wright entered the building through a door that the protestors had not yet locked. Electronic records indicate that Captain Starke was in HMB from 12:16 a.m. to at least 12:30 a.m.¹⁶ Once inside the building, Captain Starke encountered a protestor and asked him for his identification. The protestor refused. Approximately 20 to 30 protestors then ran at the two officers from the first floor hallway. Officer Wright pulled out his extendable baton and Captain Starke brandished his pepper spray. When the protestors stopped approaching, Captain Starke said, the officers returned the weapons to their holsters.

At 12:18 a.m., the DPS dispatcher on duty (who monitors the video feed from cameras at various locations on campus) informed Captain Starke that there was “a lot of activity in the SAC building” and “it appears that all of them [the student protesters] are coming out.” Captain Starke told dispatch there were only three officers inside HMB “facing about 20

¹⁶ There is a discrepancy in time references in the DPS radio and video records obtained in our investigation. References to specific times in this report are therefore approximate.

people.” Apparently viewing the situation as serious, Captain Starke ordered the dispatcher to “pick up the phone and call [Commander Wendy] Potts at home.”¹⁷ Captain Starke informed Commander Potts that student protesters had taken over HMB.

Ten minutes later, at 12:28 a.m., the dispatcher informed DPS Chief Meloyde Batten-Mickens that student protesters were using “each other” to block HMB’s exterior doors and using bicycle chains and bicycle locks to secure the interior doors. Captain Starke told Chief Mickens that the protestors “don’t want any classes held tomorrow.” In our interview with her, Chief Mickens said she did not instruct Captain Starke to take any action because “there was nothing [DPS] could do” at that time.

During this timeframe, SBG President Noah Beckman arrived and began negotiating with Captain Starke about the students’ occupation of the building. At the request of the DPS officers, an interpreter from the Gallaudet Interpreting Service reported to the scene and helped facilitate the discussion between Captain Starke and Mr. Beckman. Captain Starke’s objective in these discussions was to ensure that students would leave a sufficient number of unobstructed doors to allow occupants to evacuate in the event of an emergency. Mr. Beckman recognized the validity of these concerns and was “reasonable,” Captain Starke said. According to Captain Starke, a compromise was reached whereby the building occupants agreed they would not secure any of the HMB doors with locks or chains, and Captain Starke agreed the students could remain in the building.

Student recollections of the agreement differed slightly from Captain Starke’s recollection. Mr. Beckman said the deal was that students could remain in the building with the

¹⁷ Commander Potts is the second-most senior DPS official. She reports to DPS Chief Meloyde Batten-Mickens.

doors locked if they agreed to stay in the SBG office and leave the exterior door to the SBG office unlocked. Gallaudet student Ryan Commerson told us that, initially, the students agreed to stay in the SBG office provided they could chain all the doors to HMB shut, with the exception of the SBG door. However, during the course of the night, several dozen more students came into HMB and it was impossible for them all to fit in the SBG office.

Mr. Commerson said that, to honor the agreement with Captain Starke, the students removed the chains and locks so that they could move freely around the building. Mr. Commerson also noted that, at some point during the night, at least one door was chained shut.

3. Early Morning Hours of October 6

Shortly after learning of the student “takeover” of HMB, Chief Mickens returned to campus. She said that she met with officers on duty at DPS headquarters in Carlin Hall after arriving on campus. Captain Starke recalls that, without articulating a plan or schedule for doing so, Chief Mickens said, “We’re going to take that building back.” Other officers also heard Chief Mickens make statements like this in the hours after the student “takeover” of HMB. Although Chief Mickens has no recollection of making this statement, she told us that “everyone” wanted “to take the building back.” The only questions were “how and when,” she said.

The overnight period was generally quiet at HMB. At some time between 4:00 a.m. and 5:00 a.m., Captain Starke said, he went to the HMB area for approximately 20 minutes and did not notice any activity around the outside of the building. Inside the building, some students slept while others guarded the doors. As the number of protestors inside the building increased, the students spread throughout the building.

4. Bomb Threat and Response

a) DPS Receives Bomb Threat

At 7:06 a.m. on October 6, a bomb threat was phoned into DPS headquarters.

DPS Dispatcher Leslie Brewer answered the call. An electronic recording that we obtained from DPS reflects the following exchange:

Brewer: Department of Public Safety, line is being recorded.
Caller: Bomb threat, bomb threat.
Brewer: I beg your par --
Caller: Bomb threat, bomb threat.
Brewer: I beg your pardon?

Dispatcher Brewer described the voice of the caller as that of a 25 to 30-year-old male with a “deep” voice.¹⁸ Ms. Brewer did not write down the number of the call because only a few digits were displayed on the caller identification screen¹⁹ and she said she has no recollection or record of the digits that were displayed. Following extensive efforts, and with the assistance of MPD and Gallaudet officials, we obtained the phone number from which the bomb threat call appears to have originated. Phone company records indicate that the call appears to have been placed from a Nextel cellular telephone at (202) 658-4965.²⁰

¹⁸ Brewer also said she believes that the caller sounded as if he may have been “hard of hearing.” However, because of the unreliability of an assessment of this type, we did not credit this statement.

¹⁹ During our investigation, we learned that calls received from campus phones, and calls from outside the University that come from blocked or unlisted numbers, are displayed on DPS’s caller identification system only as truncated numbers. It also appears that DPS’s caller identification system can be circumvented relatively easily through basic blocking techniques.

²⁰ Calls to this number are greeted with a recorded message saying, “The customer you have dialed is unavailable.” Due to our lack of subpoena power, we have been unable to determine with certainty the identity of the account holder at the phone number from which the bomb threat originated. We have turned over the information we obtained regarding this call to MPD.

After taking the call, Dispatcher Brewer notified her supervisor, DPS Communications Coordinator Fabienne Collson, about the bomb threat, and either Ms. Brewer or Ms. Collson called 911. Coordinator Collson then paged all DPS supervisors and told them to return to headquarters. At 7:21 a.m., Officer Clarence Douglas of MPD arrived at Gallaudet in response to the 911 call. Shortly thereafter, Commander Potts ordered the campus shut-down and the front gates closed.

b) Meeting Between DPS and MPD Regarding Bomb Threat

According to Chief Mickens and Commander Potts, Officer Douglas was the only MPD representative to report to Gallaudet immediately after to the 911 call. Chief Mickens and Commander Potts said that they met with Officer Douglas and informed him of the details regarding the bomb threat. During this discussion, Chief Mickens and Commander Potts said, they learned that MPD did not intend to send additional officers to Gallaudet at that time. Although in the past MPD had performed bomb searches at Gallaudet, DPS management told us, because only one officer was available on the morning of October 6, the MPD officer instructed DPS to identify “key buildings” on campus and “go in and check” them.

After our interviews with MPD officers, we were provided with a report prepared by Officer Douglas relating to the October 6 bomb threat at Gallaudet. Although he did not remember doing so, the report makes clear that Officer Douglas reported to Gallaudet on the morning of October 6. In addition, video footage of Carlin Hall appears to indicate that Officer Douglas arrived at DPS headquarters at 7:22 a.m. and left at 8:32 a.m. on that morning.

c) DPS Briefing in Carlin Hall Regarding Bomb Threat

Chief Mickens and Commander Potts convened a meeting of several officers on duty shortly before 8:00 a.m. in Carlin Hall for the purpose of coordinating the DPS response to the bomb threat. Chief Mickens and Commander Potts told us that they divided the officers into

teams and assigned each team to search one of four “key buildings.” We were told initially by DPS management that College Hall, Kellogg, the Student Activities Center (“SAC”), and HMB were the “key buildings” designated for search. However, during our investigation, we were unable to determine who, if anyone, searched College Hall. When we brought this to the attention of Commander Potts, she conceded that College Hall may not have been searched.

The following officers were directed to search HMB: Captain Brad Smith, Officer Anthony Slater, and Officer Tereek Wynh. Captain Smith told us that Chief Mickens gave him the assignment by saying, “Go get Slater and Wynh and get into that building.” Chief Mickens and Commander Potts said there was no particular reason why these officers as opposed to others were selected to search the HMB. However, Captain Smith said he believes that he and Officer Slater were selected because both had previously served in the military,²¹ and that Officer Wynh was chosen because he “don’t take no mess.”²²

5. DPS Officers’ Search of HMB

a) Officers’ Initial Entry Into Building

When they arrived outside HMB, Captain Smith and his colleagues surveyed the exterior of the building and saw that it was surrounded by tents. Captain Smith directed Officers Slater and Wynh to “attack” the west entrance of HMB because the door was blocked by only one tent and Captain Smith believed it provided the easiest point of entry. Before approaching

²¹ Captain Smith joined DPS in 1996 and is one of the most experienced and physically imposing DPS officers. He is six feet three inches tall and weighs 315 pounds. Officer Slater, who was hired by Gallaudet in 2004, also is one of the larger DPS Officers at six feet two and 230 pounds.

²² Officer Wynh joined DPS in 2004. He is slightly built at five feet four and 140 pounds.

the door, Officer Slater said, Captain Smith told him and Officer Wynh, “If you see anyone, just let them know what we’re doing.”

As the officers approached the west entrance of HMB, Officer Slater intentionally stepped on a rope connected to the tent, causing the tent to collapse, and allowing the officers to pass. At 8:09 a.m., the officers disengaged the Simplex security lock, pulled the door ajar, and cut the chain that had been placed on the door by protestors occupying the building. We have not identified or spoken with any protestors who came into contact with the officers during their entry into the building.²³

b) Officers’ Interactions with Students in HMB

Electronic records indicate that the officers entered HMB at 8:09 a.m. Gallaudet student Jonah Meehan told us that he was guarding a door on the first floor when he saw the three officers enter the building. Mr. Meehan said he ran to alert the other students in HMB about DPS’s presence in the building. The officers told us that they walked into the building and proceeded to unlock another exterior door that was to the left of where they had entered.

As they turned around after freeing this door, the officers said, they encountered a large group of protestors. Officers and students whom we interviewed told us that the protestors formed rows of “human chains” (people standing together with locked arms) in an attempt to prevent the officers from moving further into the building. A videotape of this portion of the incident shows dozens of students yelling at the officers, blocking the officers’ forward progress and, at times, moving toward the officers. Students whom we interviewed told us that they

²³ An Internet posting purportedly written by a student states that, in attempting to enter the building, the officers “just shoved the students away, just like that, so the officer with the lock buster could gain access to the door.” See <http://mishkazena.wordpress.com>. We could not corroborate this account.

believed they had a right to block the officers because their occupation of HMB was part of a peaceful protest and the officers consequently had no right to enter the building.

We received conflicting reports regarding the extent to which, and by what means, the officers attempted to communicate with students during this initial encounter. The officers told us that they signed “bomb threat” and that they needed to search the building for a bomb. Captain Smith said that once he was confronted by protestors on the first floor, he signed, “There’s a bomb threat in the building; security needs to get through.” Likewise, Officer Slater said he immediately signed to the protestors, “bomb threat,” but the students ignored him and signed back, “get out.” Mr. Meehan told us that he saw Officer Wynh signing, “please go away,” and “disperse,” but that he did not see the other officers signing and he did not see anyone sign “bomb threat.” Likewise, Thomas O’Grady, who was in the front row of the human chain, said he never saw the officers communicate anything about a bomb threat. Another student, Tara Holcomb, told us that she signed to Captain Smith, “Why is this happening?,” but that he did not sign back.

As the students pushed up against the officers, Captain Smith became separated from Officers Slater and Wynh. During the remainder of their time in the building, Captain Smith was unaccompanied by another officer and Officers Slater and Wynh stayed together.

(1) Captain Smith’s Movements Within HMB

As the three officers faced the “human chains” of protestors, Captain Smith was on the left side of the hallway. He said that he felt a student bump him on the shoulder. He decided that, in order to search the building for a bomb as he was instructed to do, he would have to get past the crowd of students. He quickly surveyed the first row of the “human chain” looking for what he described as the “weakest link” to break through. He said that he pushed this student aside and used his body mass and momentum to make his way down the first floor

hallway. Captain Smith said that he went down the hallway “like a wheelbarrow” and banged into “a bunch” of students as he tried to get through the crowd. He noted that some students “were attacking him” as he walked down the hall.

Mr. Meehan recalled that there was “a lot of confusion” around Captain Smith on the first floor of HMB. Ms. Holcomb told us she watched Captain Smith push students as he made his way through the human chain, and Mr. Meehan remarked that Captain Smith was able to break through the human chain because he was “too big” and “intimidating.” Others whom we interviewed reported seeing Captain Smith push students in an effort to get through the “human chains.” Student Ashley Reuss told us that, as she was guarding one of the doors on the first floor, Captain Smith came charging through the students that were blocking his path and pushed several of them out of his way. Ms. Reuss said that, during the ensuing altercation, a student (who had been pushed by Captain Smith) fell into her, causing her to careen against a railing and fall onto the floor. Ms. Reuss said her knee became swollen and bruised and that she was forced to walk with a limp for about three days.

After he passed through the initial crowd of protestors, Captain Smith walked up the stairs to the second floor of HMB where he was again surrounded. Mr. O’Grady said he followed Captain Smith up to the second floor of HMB and signed to him: “Why are you acting like this? Why are you hurting people?” According to Mr. O’Grady, Captain Smith did not respond. Captain Smith said that, after his initial signing on the first floor about the bomb threat was met with resistance and opposition, he signed less frequently thereafter. He felt under siege by the crowds of protestors and decided to focus on completing his bomb search.

After quickly surveying the second floor, Captain Smith said, he returned to the first floor. Protestors followed and yelled at him wherever he went, Captain Smith said. When

he returned to the first floor, the protestors began cutting in front of him to get his attention and impede his progress. One student, Jesse Thomas, told us that he did this at least three times, and that each time Captain Smith pushed him out of his way. Jesse Thomas likened Captain Smith to “a truck going through the woods,” and said that Smith once pushed him to the ground. Each time that he stepped in front of Captain Smith, Jesse Thomas said, he signed to Smith a message to the effect of, “Wait, wait, wait, please let’s talk.” Jesse Thomas recalled Smith responding only once by signing, “I’m here to do my job.” Jesse Thomas told us that he “had no idea about a bomb threat” until later in the day because no one communicated this information to him.

Ms. Holcomb said she stepped in Captain Smith’s path on the first floor of HMB and signed to him, “Why is this happening? This is a peaceful protest.” According to Ms. Holcomb, Captain Smith grabbed her, twisted her arm, and pushed her. Ms. Holcomb said her arm was sore for “a couple of days” after the incident. She indicated that Captain Smith did not sign to her about the bomb threat. She also said that she “would have moved” if Captain Smith had signed for her to get out of the way. In our interviews with him, Captain Smith denied twisting the arm of Ms. Holcomb or anyone else.

Protestors continued to bump into Captain Smith as he walked around the first floor of HMB. Ms. Holcomb said that some students were “probably pushing” the DPS officers. Another student -- Peter Thomas²⁴ -- cut in front of Captain Smith with his back to the officer, blocking Captain Smith’s forward progress. Captain Smith pushed Peter Thomas by the back of the neck, clearing his path. Peter Thomas told us that Captain Smith’s push “hurt,” but that he did not suffer any lasting injury.

²⁴ Peter Thomas is not related to Jesse Thomas.

A widely circulated videotape of the HMB incident shows an altercation between Captain Smith and another protestor immediately after the interactions with Peter Thomas. Based on our interviews, we believe that this protestor is Jory Pedersen-Dike, who was quoted by the press as saying, and alleged in a videotaped statement, that he was “choked” by a DPS officer.²⁵ The videotape shows this student following Captain Smith, pointing at him, yelling at him, and then stepping in front of him. Then, the video shows Captain Smith push Mr. Pedersen-Dike out of his way and, moments later, follow-up with a second forceful push. Mr. Pedersen-Dike has not responded to our multiple requests for an interview.

In our interview with him, Mr. Meehan said that he saw Captain Smith throw a punch at another student, Kent Turner, closely on the heels of the contacts with Mr. Pedersen-Dike. According to Mr. Meehan, Mr. Turner put his hands on Captain Smith’s shoulders to pull him away from Mr. Pedersen-Dike, and Captain Smith then swung his fist at Mr. Turner, grazing his head. However, Mr. Turner told us that he was not touched by DPS officers. After Captain Smith released Mr. Pedersen-Dike, Mr. Turner ducked and covered his head and did not see or feel anything, he said. Mr. Meehan noted that, although Mr. Turner may not have seen Captain Smith throw a punch, he saw it “with [his] own eyes.” For his part, Captain Smith vehemently denies ever throwing a punch in HMB. There is no evidence of a punch being thrown on any of the videotapes or photographs of the incident that we have reviewed.

At some point during the various interactions with students on the first floor, Captain Smith’s eyeglasses and hat were knocked off of his head. Captain Smith does not recall exactly how this occurred.

²⁵ Lubna Takruri, *Gallaudet Students Allege Campus Brutality*, The Associated Press, October 6, 2006.

(2) Officer Slater's and Officer Wynh's Movements Within HMB

When Captain Smith surged through the “human chains” shortly after the officers entered the building, Officers Slater and Wynh stayed where they were on the first floor for several minutes. As they stood there, the crowd of protestors got rowdier and began pushing the officers backward. Both officers told us that they felt threatened by the angry crowd. The officers communicated with one another and then both pulled pepper spray bottles from their belts and pointed them at protestors in the front of the crowd.

Mr. Meehan, who was in the first row of students, told us that Officer Slater pointed a pepper spray canister to within “six inches” of his face.²⁶ Nobody whom we interviewed stated that they saw a DPS officer discharge pepper spray. However, a number of students complained about officers brandishing the spray in a threatening manner. The officers were insistent that they did not discharge pepper spray, pointing out that, given its potency, “the whole world would [] know[]” about it had they done so. Officers Slater and Wynh holstered their pepper spray once the threat subsided, and then ascended the stairs behind them.

After leaving the first floor of HMB, Officers Slater and Wynh performed “quick, visual” bomb checks of the upper floors of the building. Officer Wynh said he and Officer Slater were “trying to keep things moving” during their search because a large group of students was following the officers, and a few students in particular were being “difficult.” Officer Wynh said that one student was up “in [his] face screaming and hollering.” On the fourth floor, students began to push, shove, and yell at the officers, they said. Officer Wynh alleges that a student pushed him so hard he nearly fell to the ground.

²⁶ There is a widely circulated photograph of Officer Slater pointing pepper spray at students in the Friday, October 6, 2006 Special Edition of the *Buff and Blue* student newspaper.

After this incident, Officers Slater and Wynh attempted to return to the first floor. However, the officers were quickly surrounded by students in the stairwell.²⁷ According to the officers, the students were yelling and signing, “Get out,” and “We’re your future.” Officer Slater said he signed back something along the lines of, “I have a family, I have children, I have a job.” He explained that he was trying to communicate to the students that he “didn’t really care” if the students stayed in HMB or not, but that he had a job to perform. Peter Thomas told us that Officers Slater and Wynh were communicating orally with one another in an effort to deliberately exclude the students from their conversation.

At 8:40 a.m., Officer Wynh radioed back to dispatch and received an instruction from Chief Mickens to “get the chains off the doors and go ahead and keep moving.” Around this time, Commander Potts and Officer Starke entered the building to provide assistance to the officers in HMB. They were promptly confronted by what Commander Potts described as a group of “angry” students. Shortly thereafter, Commander Potts ordered all officers to vacate the building. Several MPD officers -- including two from MPD’s Deaf and Hard of Hearing Unit who are fluent in ASL -- arrived in the building as the DPS officers were leaving and helped facilitate communications with the students. As Officers Slater and Wynh departed the building, the students applauded and one student signed, “We win.” Officer Slater said another student threw a plastic bottle at him, hitting him on the head.

c) Other Complaints Regarding DPS Conduct in HMB

We have heard from various sources that Gallaudet student Rose Grumball and another male student who allegedly hit his head after being pushed were each injured in the

²⁷ Two students told us that they saw an officer near the stairwell holding a “stun gun.” We found no evidence of this and believe the students may have mistaken the bolt cutting device that Officer Wynh was carrying for a “stun gun.”

HMB incident. Ms. Grumball has not responded to our requests for an interview. We have been unable to identify the other student who allegedly was pushed.

We also have reviewed a written complaint filed with DPS by Joseph Kelly and a video recording in which Mr. Kelly makes allegations regarding DPS's treatment of him in HMB. In the video, Mr. Kelly states, "DPS got physical and grabbed us, as you can see by my torn shirt and the scratch on my chin." Mr. Kelly did not respond to our numerous requests for an interview.

In addition, we have read in press reports that a student was treated in the school infirmary for injuries sustained during the HMB incident. Nobody whom we interviewed has provided information to corroborate this.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. There Was a Bomb Threat That Required a Law Enforcement Response.

Certain students whom we interviewed were skeptical that a bomb threat had in fact been received by DPS on October 6 and suggested that, if there was such a call, it may have been staged by University officials. These allegations have been expressed publicly by students. Based on our review, which included listening to an audio recording of a call received at 7:06 a.m. on October 6 and discussing that call with the dispatcher who answered it, we conclude unequivocally that DPS did receive a bomb threat telephone call on the morning of October 6.²⁸

The questions of who called in the bomb threat and why they did so are more complicated, and are questions that we have been unable to answer with certainty. After

²⁸ The dialogue on the brief call is quoted in its entirety earlier in this report.

extensive discussions with the University's telephone service provider, and with assistance from DPS and MPD, we have determined that the bomb threat call appears to have been placed from the following telephone number: (202) 658-4965. Multiple phone calls to this telephone number have been answered by an automated recording saying that the account holder is unavailable.

Although we do not know with certainty who placed the bomb threat call,²⁹ we have found no evidence to suggest that the call was staged by a University official. The officers whom we interviewed denied having any knowledge of who placed the call and were highly skeptical of the student allegation that someone was put up to it by University officials. In one of our discussions with him, President Jordan flatly dismissed this allegation. The student newspaper that reported this allegation described it as "a rumor that has not been confirmed."³⁰ Accordingly, we conclude that the allegation that University officials were behind the bomb threat is nothing more than biased speculation.

After receiving the bomb threat telephone call, DPS staff responded appropriately by informing their supervisors and calling MPD. Although students have discounted the credibility of the bomb threat, DPS had no choice but to initiate a search after receiving the bomb threat call. Failing to contact MPD and to perform a search of some kind in response to the bomb threat would have been reckless. DPS officers correctly decided to initiate a law enforcement response to the bomb threat.

²⁹ As noted, the information that we do have regarding this call, including possible subscriber information, has been provided to MPD.

³⁰ *The Buff and Blue*, Volume CXV, Special Edition, Oct. 6, 2006.

2. DPS Management's Intent in Entering HMB Was to Search for Suspicious Packages and Assess the Situation in Building.

The officers who entered HMB on October 6 have insisted in our interviews that their sole purpose in doing so was to search for a bomb. The students whom we have interviewed have been equally adamant that DPS entered the building in an effort to end the occupation of HMB. While we do not believe DPS intended to eject the student protestors from HMB in their sweep on the morning of October 6, we have concluded that DPS management used the bomb threat as an opportunity to learn what was going on in HMB and possibly disrupt the student protest in the building.

We base this conclusion on several pieces of information. The first is the fact that DPS appears to have attempted to subject HMB to a more thorough search than any other building, even though the bomb threat itself did not identify HMB or any other location on campus. If DPS's sole purpose in the wake of the bomb threat was to search the campus for a bomb, we believe the agency would have attempted to search Kellogg (where the Trustees and others were staying in connection with the then-ongoing Board meeting) and College Hall (home to the President's office, a potentially attractive target for anyone seeking to disrupt University life) as thoroughly as it attempted to search HMB.

Although DPS management initially told us that four buildings (including College Hall and Kellogg) were subject to thorough searches in response to the October 6 bomb threat, we have not identified any officer who said they searched College Hall -- one of the four buildings purportedly searched. In addition, the search of Kellogg -- a building that, like HMB, was full of people -- "wasn't anything thorough," according to Captain Starke, because the

officers did not view the bomb threat as credible. Indeed, Gallaudet Trustees who were in Kellogg at the time report being unaware that the building was being searched for a bomb.

Certain comments made by DPS management at the time also are consistent with a multi-purpose entry into HMB rather than a simple bomb sweep. As noted, when she returned to campus early on the morning of October 6, Chief Mickens said, “We’re going to take that building back.” Commander Potts said she heard this comment or comments like it from Chief Mickens and others in Carlin Hall on multiple occasions. Commander Potts also said she believes the three officers sent to HMB were directed to “see what the [students] have inside” the building and “see what the [students] are doing.”

We are not convinced that it was inappropriate for DPS to use the bomb threat as an opportunity to “gain intel[ligence],” as Commander Potts put it, on the student protest inside HMB. However, we are not sure why DPS has not been more up-front about its objectives.

3. DPS Management Did Not Adequately Prepare and Equip Officers for the HMB Search.

Although we do not believe the decision to send officers into HMB in response to the bomb threat was unreasonable, it is our opinion that, after making this decision, DPS management did not take sufficient steps to minimize the intensity of confrontations between officers and students inside HMB.

First, we believe it was a mistake not to have an interpreter accompany the officers who went into HMB. Given the ongoing protest on campus, it should have been apparent to DPS management that the officers’ entry into the building would be met with resistance and skepticism by protestors. DPS’s best chance for convincing the protestors to cooperate in the HMB bomb sweep would have been to explain that there was a bomb threat and that DPS did not intend to reclaim the building after the bomb sweep was completed. DPS

should reasonably have expected that, in light of the number of students in the building, explanations of this kind would be required on multiple occasions. The signing required to conduct these discussions would appear to be at least as sophisticated as that involved in Officer Starke's negotiations with students the night before regarding points of ingress and egress at HMB. As noted, an interpreter accompanied Officer Starke in those discussions and the discussions went relatively smoothly. We see no sound justification for not sending an interpreter along with Captain Smith and Officers Slater and Wynh when they entered HMB.³¹

Second, we believe that DPS management could have done more to prepare Captain Smith and Officers Slater and Wynh for the hostile and skeptical environment they were going to face in HMB. In particular, we think it would have been prudent for DPS management to have reminded the officers before they left for HMB to communicate with students exclusively by signing and to not respond to provocative conduct by protestors. Had these points been in the forefronts of the officers' minds when they entered HMB, there is a chance that some of the confrontations with students could have been minimized or avoided. In the absence of such instructions, the officers' focus was on "attacking" the building and sweeping it as thoroughly as possible, without regard to the students' views about the bomb search. This approach did not effectively minimize confrontations, which should have been a goal of the DPS sweep.

³¹ This is particularly true in light of the fact (discussed below) that these officers' signing capabilities were "below average" for DPS (in the words of the DPS officer responsible for training), which does not have formal ASL proficiency requirements.

4. Conduct of Officers

The primary focus of our investigation has been the conduct of Captain Smith and Officers Slater and Wynh once inside HMB. On this subject, we have concluded that the officers, for the most part, performed well under very difficult circumstances. Were it not for the professionalism and restraint of Captain Smith and Officers Slater and Wynh, the confrontations with students could have been more violent. As it was, the physical interactions between officers and students appear to have been limited to pushing and shoving; nobody suffered a lasting injury in the incident. Although their conduct is to be commended in certain respects, we believe there were shortcomings in the officers' efforts and ability to communicate with students in HMB and that, on at least one occasion, Captain Smith, in the heat of the moment, appears to have used a level of force greater than that necessary to accomplish legitimate DPS objectives.

a) Shortcomings in Officers' Efforts and Ability to Communicate With Student Protestors

Not a single student whom we interviewed said they were aware on the morning of October 6 that DPS's purpose in entering HMB was to search for a bomb. Some students said they learned this later on when MPD officers arrived. In our interviews with the DPS officers, we were told that they signed during their initial confrontation with a crowd of students on the first floor. However, in the officers' view, the students intentionally ignored their efforts to communicate and would not permit the officers to search the building regardless of their purpose. So, the officers conceded, they eventually stopped signing and focused on performing their assigned task of searching the building.

Although we believe the officers' statements that they signed upon initial entry into HMB, we do find fault with their apparent decision not to sign after a certain point. They

should have recognized that: (1) their message was likely to require repetition and clarification to crowds of excited protestors not inclined to cooperate with DPS; and (2) signing to one group of students upon entry into the building is not tantamount to communicating with all the protestors in the building. Just because the students to whom the officers signed upon entering the building were not cooperative does not mean that all students would have responded in the same manner had they been told -- in ASL -- what was going on.

In addition, the officers' effectiveness in communicating with the student protestors may have been limited by their own signing capabilities. During the course of our investigation, we learned that, while DPS encourages its officers to learn ASL, there are no specific requirements for ASL coursework or proficiency. None of the three officers assigned to enter HMB on October 6 received any ASL training beyond introductory courses. One of the officers has taken only the most basic ASL course (ASL I) and received a "D" grade. Moreover, the DPS Captain responsible for training other officers characterized the ASL proficiency of Captain Smith and Officers Slater and Wynn as "below average." It may be that the officers simply lacked the signing skills necessary to communicate with the crowds of boisterous protestors that they confronted in HMB.

b) Level of Force Used By Officers

(1) Whether Force Was "Excessive" as a Matter of Law

The University press release announcing our investigation stated that we would consider whether DPS "officers acted with excessive force" in HMB on October 6.³² In our

³² Gallaudet University Press Release, *Eric Holder to Lead Investigation into Alleged Use of Excessive Force by Gallaudet Officers*, Oct. 13, 2006, available at www.gallaudet.edu.

interviews, students also have used this phrase in describing the incident, claiming that they were victims of “excessive force.”

“Excessive force” is a legal term that describes police force that is so unreasonable as to violate the law. One situation in which courts apply the “excessive force” standard is in cases arising under 42 U.S.C. § 1983, involving alleged violations of constitutional rights by government actors. In such cases, “[d]etermining whether the force used . . . is ‘reasonable’ . . . requires a careful balancing of ‘the nature and quality of the intrusion’ . . . against the countervailing governmental interests at stake.”³³ An officer’s use of force “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”³⁴ In an explication that has special relevance here, the United States Supreme Court has stated that:

Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers . . . violates the [Constitution]. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain and rapidly evolving -- about the amount of force that is necessary in a particular situation.³⁵

Under these standards, we do not believe that any of the physical contacts between officers and students of which we are aware rise to the level of “excessive force.” Many, if not all, of the contacts at issue may have appeared necessary to a reasonable officer on the scene. Courts in

³³ *Graham v. O’Connor*, 490 U.S. 386, 396 (1989) (internal quotation marks omitted).

³⁴ *Id.*

³⁵ *Id.* at 396-97 (internal quotation marks and citation omitted). The University’s use of force policy for DPS officers refers to and incorporates the standard articulated by the Supreme Court in *Graham v. O’Connor*.

section 1983 cases have repeatedly held that pushing and shoving like that we have observed here does not amount to “excessive force.”³⁶

Common-law assault and battery cases present another forum for courts to resolve allegations of “excessive force” by police officers. “A police officer has a qualified privilege to use reasonable force [to achieve legitimate law enforcement objectives], provided that the means employed are not in excess of those which the actor reasonably believes to be necessary.”³⁷ Thus, assault-and-battery cases against police officers frequently turn on whether the force used was “reasonable” and, in the view of the officer, “necessary” to achieve a legitimate law enforcement objective. Viewing the incident with the benefit of 20/20 hindsight, we are not certain that every application of force by Captain Smith was necessary to achieve his purpose of proceeding through the building to look for a suspicious package. However, Captain Smith believed his actions were necessary at the time, and we conclude that this determination was reasonable under the circumstances.

(2) Whether Force Was Appropriate

Rather than using the “excessive force” legal standard as our sole touchstone, we also have considered whether the officers’ physical interactions with students in HMB were appropriate in light of the officers’ stated purpose for being in the building. We have not heard

³⁶ See, e.g., *Crumley v. City of St. Paul*, 324 F.3d 1003, 1008 (8th Cir. 2003) (“[N]o reasonable jury could have found the police officer used excessive force by pushing or shoving Crumley to effect the arrest[.]”); *Post v. City of Ft. Lauderdale*, 7 F.3d 1552, 1559 (11th Cir. 1993) (“[E]ven though pushing Lirio against the wall might have been unnecessary, this pushing was not plainly unlawful.”); *Hargrove v. City of Philadelphia*, No. 93-5760, 1995 U.S. Dist. LEXIS 14367, at *6 (E.D. Pa. Oct. 2, 1995) (“Plaintiff’s testimony of mere ‘rough’ treatment was insufficient evidence that the City Police Officers used excessive or unreasonable force.”).

³⁷ *Holder v. District of Columbia*, 700 A.2d 738, 741 (D.C. Ct. App. 1997) (internal quotation marks omitted).

from any student who says they were pushed or assaulted by either Officer Slater or Officer Wynh. All of the student allegations regarding physical contact involve Captain Smith.

Captain Smith's physical encounters with students began when he pushed his way through the "human chains" of protestors on the first floor. We do not believe that his doing so was itself inappropriate. After having been directed by his superiors to search HMB for a suspicious package, he was confronted by an angry crowd seeking to prevent his access to the building. Although we believe it may have been more prudent for Captain Smith and the others to leave the building and confer with their superiors at that time, we do not view it as unreasonable for Captain Smith to try to make his way through the crowd as he did.

Following the initial series of contacts with protestors, Captain Smith was involved in a number of other bumps, pushes, and shoves with students as he attempted to get through the building. These contacts occurred in a tense environment in which students were yelling at, bumping, and pushing Captain Smith and, often, intentionally blocking his path. We believe that many of these contacts were legitimate attempts by Captain Smith to clear his way so that he could continue his sweep of HMB. Although students were subjected to forceful pushes in these encounters, that is to be expected when one blocks the path of a law enforcement officer who is lawfully making his rounds.

We have given special consideration to the allegations by students Peter Thomas, Jesse Thomas, and Tara Holcomb. Captain's Smith's push of Peter Thomas is depicted on video. The videotape makes clear that students were yelling at and otherwise provoking Captain Smith as he moved through the building. After Captain Smith had reached an open area in the building, Peter Thomas intentionally cut in front of Captain Smith from the left side, impeding his forward progress. Under these circumstances, we do not believe that Captain Smith's forceful push of

Peter Thomas was more than an attempt to clear his path so that he could continue his sweep of the building. We have a similar view of Captain Smith's contacts with Jesse Thomas, who admitted in our interview that he repeatedly and intentionally got in Captain Smith's way and held his ground.

Ms. Holcomb's allegation that her arm was twisted is more troubling. If true, this would be an example of force beyond that which was necessary for Captain Smith to make his way through the building. In our interview with him, Captain Smith denied twisting anyone's arm. In the absence of a videotape of this encounter or third-party eyewitness accounts, we have been unable to reconcile the conflicting testimony of these two seemingly credible individuals.

The one area where we have concluded that Captain Smith appears to have crossed the line is in the altercation with Jory Pedersen-Dike. The videotape shows that Mr. Pedersen-Dike was an especially aggressive and confrontational student protestor. His shouting, bumping, and pushing of Captain Smith was rude, uncalled for, and inappropriate. When Mr. Pedersen-Dike chased down Captain Smith and put his chest in Captain Smith's chest, the officer quite reasonably pushed Mr. Pedersen-Dike to the side. Thereafter, with Mr. Pedersen-Dike reeling backward, Captain Smith leaned in for another forceful, two-handed push to Mr. Pedersen-Dike's upper body.³⁸ While perhaps understandable in light of the intensity of the situation and Mr. Pedersen-Dike's obstreperous and obstructionist behavior, it appears that this second push may not have been necessary or appropriate from a law enforcement perspective.

³⁸ In a videotaped statement and, according to press accounts, Mr. Pedersen-Dike claimed that he was "choked" while in HMB. This may be a reference to the push to his shoulder, neck, and/or head area that we have seen on the videotape or to another encounter with Captain Smith. Because Mr. Pedersen-Dike has not agreed to meet with us, we have been unable to hear his version of events. Needless to say, if in fact he were choked -- an allegation that we have not been able to confirm -- this would have been highly inappropriate.

Captain Smith largely kept his cool in the tense encounters in HMB. However, in this brief instant, he appears to have been caught up in the heat of the moment, resulting in a seemingly gratuitous, forceful blow to Mr. Pedersen-Dike.

(3) There is No Evidence That Pepper Spray Was Discharged.

During our investigation, we reviewed press accounts, including in the student newspaper, alleging that officers sprayed students with pepper spray in HMB. Various students repeated these allegations in our interviews, although they were quick to note that they did not see it themselves. We have found no evidence to corroborate these allegations. If pepper spray had been discharged, given its potency and its effect on targets, we believe we would have encountered such evidence.³⁹

5. Student Protestors' Attitudes Created and Aggravated the Conflict with DPS.

While it does not absolve DPS of responsibility in regard to the HMB incident, we believe it important to note that the student protestors' unconventional views of their rights and those of DPS officers created and aggravated the conflict in HMB.

Several students with whom we spoke believed the protestors had a "right" to be in HMB as part of their demonstrations. By contrast, the students said, DPS officers were not "authorized" to be in the building once it had been "taken over." These views are unfounded and incorrect. The student "takeover" and occupation of HMB directly contravened University policy⁴⁰ and also likely ran afoul of District of Columbia law.⁴¹ The DPS officers who entered

³⁹ Although students told us that Rose Grumball was pepper sprayed, she has refused to meet with us. Accordingly, we have been unable to explore this allegation further.

⁴⁰ See *Gallaudet University Student Handbook, 2006-2007*, at 15-18. Several pertinent provisions appear to be those entitled: "Unauthorized Entry into a University Building or (continued...)"

HMB on October 6, on the other hand, did so pursuant to a lawful order by the Chief of DPS, and thus the officers were well within the scope of their authority.

The animosity with which the student protestors greeted DPS officers in HMB on October 6 appears to have been fueled by the erroneous belief that they had a right to occupy the building and DPS had no right to enter.⁴² Viewing themselves as the lawful building occupants and DPS officers as intruders, the student protestors appear to have felt justified in bumping, pushing, yelling at, and otherwise provoking the officers. This conduct was inappropriate and invited confrontations with DPS officers.

B. Recommendations

Based on the factual findings and conclusions set forth above, we have a series of recommendations for Gallaudet. These recommendations relate to four areas: (1) DPS officers' communication with students; (2) DPS officer training with respect to the use of force and managing protests; (3) relations between DPS and students; and (4) the division of responsibility between DPS and MPD.

Facility”; “Disruption of University Academic and Non-Academic Activity”; “Unauthorized Use of Property”; and “Violation of Fire Safety Regulations.”

⁴¹ See D.C. Code § 22-3302 (2006).

⁴² Some student protestors whom we interviewed indicated that their views of DPS are colored by their knowledge of a 1990 incident in which a former student died after being restrained by DPS officers. See Gabriel Escobar, *Ex-Student, Guards Had Confrontation Before His Death; Incident at Gallaudet Sparks Probes By Police*, *University*, Wash. Post, Nov. 11, 1990, at C3.

1. Communication Between DPS and Students

- **Recommendation #1: Gallaudet Should Attempt to Hire More Deaf and Hard of Hearing Officers.**

Approximately ninety-five percent of Gallaudet students are deaf or hard of hearing. Out of a total force of 25 officers, four DPS officers are deaf or hard of hearing. Many students with whom we spoke complained that DPS does not understand them because the officers are not proficient enough at ASL and the officers are not sufficiently familiar with deaf culture.

It is important for the composition of any institution of authority to be as representative as possible of the community it serves. DPS is an institution with substantial authority on the Gallaudet campus. Accordingly, the University should strive to make DPS more representative of the Gallaudet student body by attempting to hire more deaf and hard of hearing officers.

We recommend that Gallaudet initiate a recruitment effort aimed at identifying and hiring such officers. This recruiting effort might include advertising in media outlets that cater to deaf audiences and outreach to deaf institutions of higher learning, including within Gallaudet itself.

- **Recommendation #2: Gallaudet Should Adopt Mandatory ASL Proficiency Requirements for DPS Officers.**

We were surprised to learn during our investigation that, although officers are encouraged to learn ASL, there is no DPS or University policy that requires officers to take sign language courses or develop a particular level of sign language proficiency. It is not reasonable to employ for long periods officers who are not conversant in the predominant language used by students.

We therefore recommend that the University, with input from DPS management and the American Sign Language and Deaf Studies Department, design an ASL training program for DPS officers. This program should include testing to determine whether each officer has sufficient knowledge of ASL to perform his or her job effectively.

- **Recommendation # 3: Until Officer Signing Ability Improves, DPS Should Increase Use of Interpreters.**

One of DPS's mistakes in connection with the HMB search on October 6 was not sending an interpreter into the building with the officers. Given the modest signing capabilities of the officers involved in the incident, it was not reasonable to send them into a building filled with hundreds of hostile, deaf protestors without an interpreter. We understand from DPS that an interpreter from the Gallaudet Interpreting Service is generally on call to assist officers. We recommend that DPS officers make use of available interpreters whenever communication beyond an officer's signing capability level is likely to occur. For example, any time an officer reports to a disturbance of any kind believed to involve a deaf individual, if the officer is not conversant in ASL, he or she should be, if time permits, accompanied by an interpreter. To enable DPS to follow-through on this recommendation, the University may have to hire more interpreters or allocate more interpreters to DPS.

2. Force Issues

- **Recommendation #4: DPS Officers Should Receive Increased Training Regarding Use of Force.**

As discussed above, we believe the DPS officers who entered HMB for the most part exhibited a high level of professionalism and restraint in dealing with a very difficult group of protestors. However, we did find at least one instance in which a DPS officer appears to have used more force than was necessary. The HMB incident serves as a reminder that DPS officers confront the full range of challenges that law enforcement officers anywhere face.

Consequently, rather than only training officers during the beginning of their tenures at Gallaudet, which is the current practice, we recommend that officers undergo regular training throughout their careers pertaining to the proper use of force.⁴³

- **Recommendation #5: DPS Officers Should Receive Increased Training in Responding to Protests.**

There were campus-wide protests at Gallaudet for a significant part of the last year. Public protests of this nature also have occurred on other college campuses around the country over the years. Law enforcement organizations that confront large public protests have developed best practices for such situations, including crowd control techniques, methods of responding to nonviolent resistance, and other topics. In light of the recent protests at Gallaudet, we recommend that DPS officers receive specialized training regarding appropriate techniques for responding to protests.

3. DPS-Student Relations

- **Recommendation #6: DPS Should Increase Outreach Efforts to Students.**

There is currently a rift between DPS and segments of the student body. This rift was exacerbated by the HMB incident, but existed for some time before that. We recommend that DPS consider how it might help mend this rift through efforts aimed at reaching out to students. One idea proposed by a student whom we interviewed -- which we believe is a good one -- would be to establish a mentoring or internship program within DPS for students interested in law enforcement careers. Such a program would facilitate communication between

⁴³ It is our recommendation that the two most senior DPS officials -- Chief Mickens and Commander Potts -- participate in these training sessions (and the training discussed in Recommendation #5) along with the line officers. We note that, although Chief Mickens has significant experience as a manager, she lacked law enforcement experience prior to assuming her current post.

officers and students and could help bridge the gap between the two groups. While we are not wedded to this particular idea, we do recommend that DPS proactively focus on, and develop a plan for, improving relations with students.

- **Recommendation #7: Students Should Show More Respect Toward DPS Officers.**

During our investigation, we observed an unjustifiable lack of respect for DPS officers on the part of some students. We recommend that students reconsider their assessment of DPS officers, especially in view of the changes likely to be instituted in the near future. Specifically, we recommend that student body leaders take the initiative and raise this issue at meetings of the organizations they head. In our interviews with DPS officers, we were struck by their professionalism, commitment, and good faith. We think the student body would be well-served to focus more on what they and the officers have in common than on their differences.

4. Division of Responsibility Between DPS and MPD

- **Recommendation #8: DPS Should Seek Clarification from MPD Regarding Plan for Responding to Bomb Threats And Similar Situations.**

At the time of the October 6 bomb threat, DPS management expected that MPD officers -- as they had after the bomb threat on graduation day -- would perform the campus search in response to the bomb threat. MPD was promptly notified of the bomb threat on the morning of October 6, and the officer who reported to the scene apparently informed DPS that Gallaudet officers should initiate a building search in response to the threat. Given their training and experience in handling these types of situations, it is preferable for MPD officers to lead any bomb search efforts, if possible. Had MPD conducted the bomb search on October 6, some of the issues discussed in this report may have been avoided.

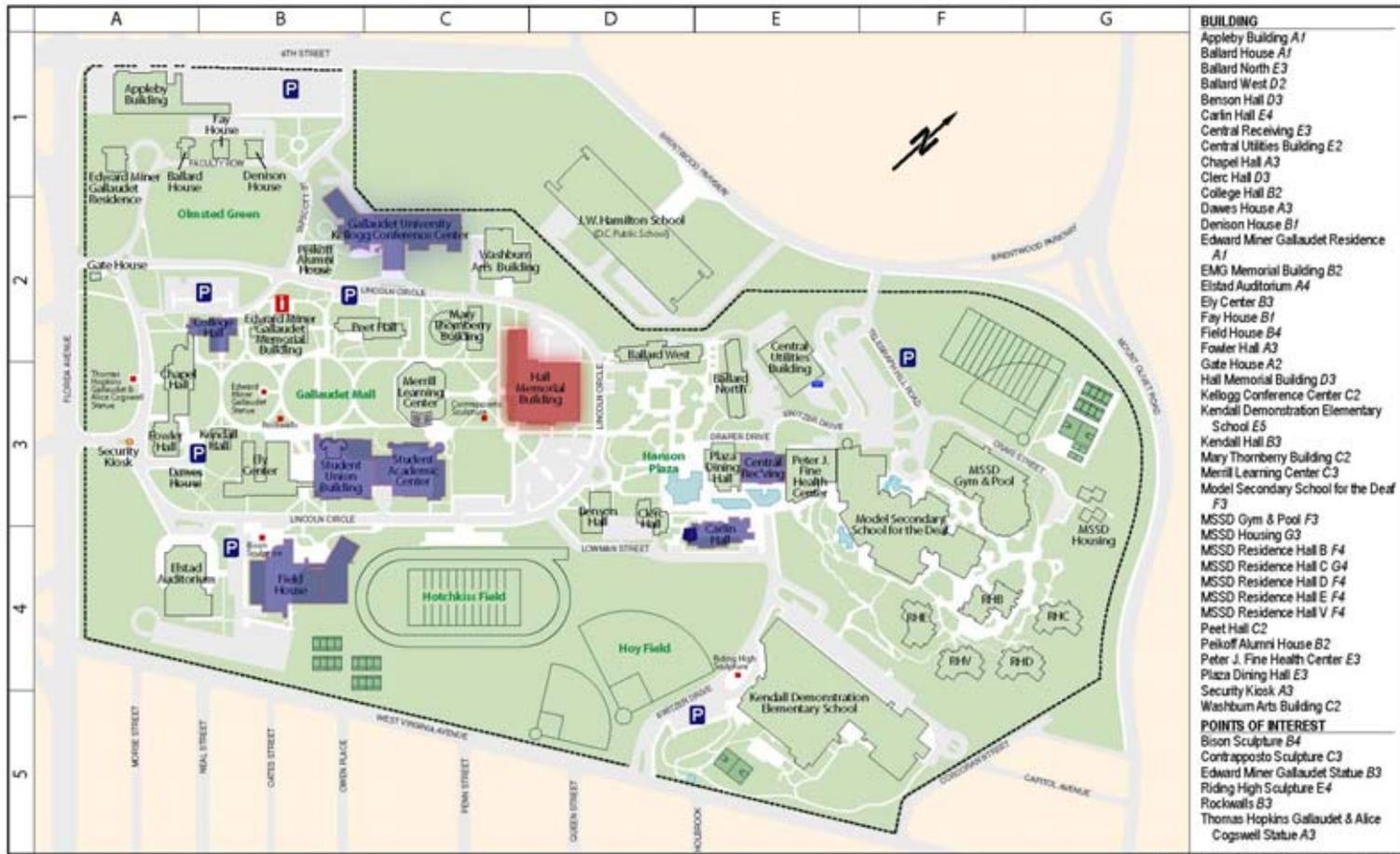
DPS and MPD should confer and develop an understanding as to how the agencies will divide responsibility in response to bomb threats or similar situations in the future.

If DPS is expected to have responsibility for bomb searches going forward, DPS should provide training to its officers in this area.

EXHIBIT 1

Gallaudet University Campus Map

800 Florida Avenue, NE, Washington, D.C. 20002-3695



- BUILDING**
- Appley Building A/
 - Ballard House A/
 - Ballard North E3
 - Ballard West D2
 - Benson Hall D3
 - Carlin Hall E4
 - Central Receiving E3
 - Central Utilities Building E2
 - Chapel Hall A3
 - Clerk Hall D3
 - College Hall B2
 - Dawes House A3
 - Denison House B/
 - Edward Miner Gallaudet Residence A/
 - EMG Memorial Building B2
 - Eltzad Auditorium A4
 - Ely Center B3
 - Fay House B/
 - Field House B4
 - Fowler Hall A3
 - Gate House A2
 - Hall Memorial Building D3
 - Kellogg Conference Center C2
 - Kendall Demonstration Elementary School E5
 - Kendall Hall B3
 - Mary Thornberry Building C2
 - Merrill Learning Center C3
 - Model Secondary School for the Deaf F3
 - MSSD Gym & Pool F3
 - MSSD Housing G3
 - MSSD Residence Hall B F4
 - MSSD Residence Hall C G4
 - MSSD Residence Hall D F4
 - MSSD Residence Hall E F4
 - MSSD Residence Hall V F4
 - Peet Hall C2
 - Peikoff Alumni House B2
 - Peter J. Fine Health Center E3
 - Plaza Dining Hall E3
 - Security Kiosk A3
 - Washburn Arts Building C2
- POINTS OF INTEREST**
- Bison Sculpture B4
 - Contrapposto Sculpture C3
 - Edward Miner Gallaudet Statue B3
 - Riding High Sculpture E4
 - Rockwalls B3
 - Thomas Hopkins Gallaudet & Alice Cogswell Statue A3

Bookstore B3
 Visitor Parking
 Post Office E3
 Safety & Security E4
 Visitors Center B2
 Library C3

Map designed by the Office of Public Relations - May 16, 2002
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ADDENDUM

COVINGTON & BURLING LLP

ABOUT THE FIRM

Covington & Burling LLP represents clients in cutting-edge technology, litigation, white-collar defense, transactional, governmental affairs, international, life sciences and other matters. In responding to the needs and challenges of our clients, our lawyers draw upon the firm's expertise and experience in a broad array of industries to provide solutions to difficult, complex, and novel problems and issues, whether in litigation, transactions, or regulatory proceedings.

Firm Overview

From our offices in New York, Washington, San Francisco, Brussels and London, we practice as one firm, holding closely to core values that start with a deep commitment to our clients and the quality of our work on their behalf, and that include an emphasis on teamwork among our lawyers and other professionals and a belief in the obligation of lawyers to make legal services available to all who need them.

Our lawyers are recognized nationally and internationally for their legal skills and the depth of their expertise. Many have served in senior government positions. Virtually all of them provide public service through pro bono representation. The diversity of our lawyers strengthens our ability to evaluate issues confronting our clients and to communicate effectively on their behalf in any setting. And because every client is a client of the firm, not of any specific lawyer, every client has the ability to call on any of our lawyers as needed.

Our national and international clients look to us for advice and judgment on a broad array of legal issues.

- Our litigators handle civil and criminal cases throughout the United States, and our lawyers appear regularly in courts of the European Union. We handle arbitrations, agency proceedings, and matters before international tribunals. At the trial level, Covington litigators in recent years have prevailed in jury trials involving claims as diverse as employment discrimination, complex insurance disputes, antitrust and international commercial disputes.
- In the corporate, tax and benefits area, we take a multi-disciplinary approach, resulting in an ability to deliver innovative and creative solutions. Clients benefit from the collaboration of teams of lawyers having expertise in mergers and acquisitions, securities, finance, corporate governance, tax and benefits, bankruptcy and real estate.
- Our regulatory lawyers are recognized as experts in their fields and regularly combine their talents on behalf of the world's top financial institutions, pharmaceutical and life sciences companies, telecommunications and technology companies, utilities, railroads, sports leagues and consumer goods companies, among others.
- In the trade, antitrust and consumer protection areas, we advise on international trade matters, including trade policy, foreign trade controls, national security and international boundary and investment disputes, and we handle complex civil and criminal antitrust and consumer law matters, including treble-damage actions, class actions, multi-district litigation and internal investigations.
- Lawyers across the firm's offices regularly confront emerging legal and policy issues in such technology fields as satellite, cable, wireless and digital communications, software, information infrastructure, privacy, and data security. Our media lawyers advise on constitutional questions as well as commercial matters, including program production, content review, program rights and much more.

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Education

Columbia Law School, J.D., 1976

Columbia College, 1973

Mr. Holder is a litigation partner who handles, among other matters, complex civil and criminal cases, domestic and international advisory matters and internal corporate investigations.

During his professional career, Mr. Holder has held a number of significant positions in government. Upon graduating from Columbia Law School, he moved to Washington, DC and joined the Department of Justice as part of the Attorney General's Honors Program. He was assigned to the newly formed Public Integrity Section in 1976 and was tasked to investigate and prosecute official corruption on the local, state and federal levels. While at the Public Integrity Section, Mr. Holder participated in a number of prosecutions and appeals involving such defendants as the Treasurer of the state of Florida, the Ambassador to the Dominican Republic, a local judge in Philadelphia, an Assistant United States Attorney in New York City, agents of the Federal Bureau of Investigation and a "capo" in an organized crime family in Pennsylvania.

In 1988, Mr. Holder was nominated by President Reagan to become an Associate Judge of the Superior Court of the District of Columbia. He was confirmed by the Senate and his investiture occurred in October of that year. Over the next five years, Judge Holder presided over hundreds of civil and criminal trials and matters. Many of the trials involved homicides and other crimes of violence.

In 1993, President Clinton nominated Mr. Holder to become the United States Attorney for the District of Columbia. He was confirmed later that year and served as the head of the largest United States Attorneys office in the nation for nearly four years. He was the first black person to serve in that position. As US Attorney, Mr. Holder created a Domestic Violence Unit to more effectively handle those types of tragic cases, implemented a community prosecution project to work hand in hand with residents and local government agencies in order to make neighborhoods safer, supported a renewed enforcement emphasis on hate crimes so that criminal acts of intolerance would be severely punished, developed a comprehensive strategy to improve the manner in which agencies handled cases involving the abuse of children, launched a community outreach program to reconnect the US Attorney's office with the citizens it serves, revitalized the Victim/Witness Assistance Program to better serve those individuals who were directly affected by crime and developed "Operation Ceasefire", an initiative designed to reduce violent crime by getting guns out of the hands of criminals.

In 1997, President Clinton appointed Mr. Holder to serve as Deputy Attorney General, the number

two position in the United States Department of Justice. He became the first African-American to serve as Deputy Attorney General. Mr. Holder briefly served under President Bush as Acting Attorney General pending the confirmation of Attorney General John Ashcroft.

As Deputy Attorney General, Mr. Holder supervised all of the Department's litigating, enforcement, and administrative components in both civil and criminal matters. Under his guidance, the Department developed and issued its guidelines on the criminal prosecution of corporations (the so called "Holder Memorandum") and issued guidelines on the use of the False Claims Act in civil health care matters. A task force he created also developed the existing regulation concerning the appointment of special counsels to investigate allegations involving high-level federal officials. He began the Department's Children Exposed to Violence Initiative and made Department priorities enforcement efforts in health care fraud, computer crimes and software piracy. Mr. Holder successfully worked to fund and expand nationwide the concept of community prosecution which seeks to connect more directly prosecutors with the citizens they serve. At the request of the President, Mr. Holder began and directed Lawyers for One America a multi-agency, public/private partnership designed to diversify the legal profession and to increase the amount of pro bono work done by the nation's attorneys. As Deputy Attorney General Mr. Holder was at that time the highest-ranking black person in law enforcement in the history of the United States.

Mr. Holder's community activities include service on a number of philanthropic boards including the Meyer Foundation, Save the Children, and his long time membership in the organization Concerned Black Men, a group that seeks to help the youth of the District of Columbia with problems ranging from teenage pregnancy to sub-par academic achievement. He has received numerous awards and honorary degrees and is featured in *The Best Lawyers in America 2007* for Bet-the-Company Litigation. He has also served on the board of MCI prior to and during its merger with Verizon. Mr. Holder was a member of the US Sentencing Commission Ad Hoc Advisory Group that examined, and made recommendations to revise, the organizational sentencing guidelines and was Chairman of Eastman Kodak's External Diversity Advisory Panel.

Mr. Holder was born in New York City. He attended public schools there, graduating from Stuyvesant High School where he earned a Regents Scholarship. While in law school, he clerked at the N.A.A.C.P. Legal Defense Fund and the Department of Justice's Criminal Division. Mr. Holder lives in Washington, DC with his wife, Dr. Sharon Malone, an obstetrician, and their three children.

Publications

- "Congressional Oversight and Investigations in the 110th Congress," *Covington E-Alert* (11/16/2006)
- "The Feds Increasing Focus on the Pharmaceutical Industry," *Update Magazine 2001, Issue 6* with permission from FDLI (11/30/2001)

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Judicial Clerkship

Hon. Roger J. Miner, U.S. Court of
Appeals, Second Circuit, 2000-2001

Bar Admissions

District of Columbia
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Ben Razi practices in the areas of white collar defense and complex civil litigation. He has substantial experience representing clients in government investigations, including grand jury, SEC, and congressional investigations, as well as experience conducting internal investigations on behalf of clients. In the civil litigation area, Mr. Razi has experience in False Claims Act, Federal Tort Claims Act, securities, insurance, and general commercial litigation matters.

Representative Matters

- Representation of a Wall Street broker-dealer in SEC and NASD investigations relating to client entertainment and gifts.
- Representation of defendants in *United States ex rel. Taylor v. Gabelli*, No. 03 Civ. 8762 (PAC) (GWG) (S.D.N.Y.), a high-profile, recent False Claims Act case involving wireless spectrum licenses purchased from the Federal Communications Commission.
- Representation of a major manufacturing company in comprehensive insurance coverage litigation relating to defense, settlement, and judgment costs incurred in connection with tens of thousands of underlying asbestos products liability lawsuits.
- Representation of the University of California in a series of congressional investigations into a variety of alleged problems at Los Alamos National Laboratory.
- Representation of a corporate executive in investigations by the Department of Justice and the New York Attorney General's Office stemming from AIG's earnings restatement in 2005.

Pro Bono

- Defended numerous clients facing criminal charges in Maryland State courts, including in a jury trial involving drug distribution charges.
- Representation of plaintiff in wrongful death action against United States stemming from death of plaintiff's husband while in a Veterans Administration hospital.

Publications

- "Disgorgement of Profits is Not Available as Damages Under the False Claims Act," *BNA's Federal Contracts Report* (7/11/2006)
- "Census Politics Revisited: What to Do When the Government Can't Count?," *48 Am. U.L. Rev.* 1101 (1999)