No. _____

In The
Supreme Court of the United States

SERGE ANTONIN,

Petitioner,

V.

BALTIMORE POLICE DEPARTMENT,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

Clarke F. Ahlers
Attorney at Law
10450 Shaker Drive
Suite 111
Columbia, MD 21046
410-740-1444
cahlers@aol.com

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

Whether *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) is constitutional law binding upon the State of Maryland?

Where a state agency does not follow its own regulation, what quantity and quality of evidence is sufficient to prove prejudice under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) to warrant vacating the administrative action?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

I. INCIDENT – Serge Antonin, a Baltimore Police Officer with an unblemished record of dedicated service, used non-lethal force to apprehend, arrest and accomplish the search of a juvenile offender engaged in dangerous criminal conduct. The incident was captured on news video footage. 3

a. Antonin was accused of assault on a minor and prosecuted for misdemeanor common law misconduct in office. He entered an *Alford* plea. 7

b. Serge Antonin was then administratively prosecuted for conduct unbecoming an officer and

excessive force. He was terminated from employment. 9

II. POST-HEARING BOARD PROCEDURAL HISTORY OF THE CASE 15

a. Antonin appealed to the Baltimore City Circuit Court; the Baltimore Police Department's Law Enforcement Officers' Bill of Rights Hearing was overturned. 15

b. The Baltimore Police Department appealed to Maryland's intermediate appellate court, the Maryland Court of Special Appeals, which reversed the Baltimore City Circuit Court... 16

c. Antonin appealed to the Maryland Court of Appeals, which denied certiorari. 17

REASONS FOR GRANTING THIS PETITION 17

III. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) is an application of constitutional due process of law applicable to Maryland. 17

IV. A standard assessment of the measurement of prejudice is necessary for the fair application of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). 28

V. Certiorari should be granted to prevent law enforcement officers under administrative investigation to be subjected to unfair, disparate treatment according to the political whim of a police command staff. 34

CONCLUSION 38

APPENDIX:

Antonin v. Baltimore Police Dept., Pet. Docket No. 226, September Term, 2018. .....A1

Baltimore Police Dept. v. Antonin, No. 443, September Term, 2017. This case is now published at 185 A.3d 811, 823 (Md App. 2018).....A2

In the Matter of the Petition of Serge Antonin, Circuit Court for Baltimore City, Case No.: 24-C-16-006333 (memorandum opinion) A33

In the Matter of Serge Antonin, Baltimore City Police, Administrative Hearing and Order, IID No.: 2013-0431. (Juvenile's name redacted). A49

TABLE OF AUTHORITIES

CASES

Alexander and Alexander, Inc. v. State, 470 So. 2d 976 (La. App. 1 Cir. 1985) 21

Alexander & Alexander, Inc. v. State ex rel. Div. of Admin, 486 So. 2d 95 (La. 1986) 21

Amluxen v. Regents of University of California, 53 Cal. App. 3d 27 (1975) 19

Balt. City Det. Ctr. v. Foy, 2018 Md. LEXIS 618 29

Baltimore Police Dep't v. Etting, 604 A.2d 59 (Md. 1992) 9

Board of Curators, Univ. of Missouri v Horowitz, 435 U.S. 78 (1978) 18

Board of Educ. of AA Cty. v. Barbano, 411 A.2d 124 (Md. Ct. Spec. App. 1980) 25

Board of Educ. of Baltimore Cty. v. Ballard, 507 A.2d 192 (Md. Ct. Spec. App. 1986) 25

Board of School Comm'rs v. James, 625 A.2d 361 (Md. Ct. Spec. App. 1993) 24

Durso v. Rowe, 579 F.2d 1365 (7th Cir. 1978) 21

Graham v. Connor, 490 U.S. 386 (1989) 10

Greenfield Const. Co. v. Hwy Dept., 261 NW2d 718 (Mich. 1978) 21

Hopkins v. Maryland Inmate Griev. Comm'n, 391 A.2d 1213 (Md. Ct. Spec. App. 1978) 25

INS v. St. Cyr, 533 U.S. 289 (2001) 16

Mabey v. Reagan, 376 F. Supp. 216 (N.D. Cal. 1974) 20

Mabey v. Reagan, 537 F. 2d 1036 (9th Cir. 1976) 20

Maryland Nat'l Cap. Park & Planning Comm'n v. Friendship Heights, 468 A.2d 1353 (Md. Ct. Spec. App. 1984) 25

Maryland Transp. Auth. v. King, 799 A.2d 1246 (Md. 2002) 25

Morton v. Ruiz, 415 U.S. 199 (1974) 18

Motor Vehicle Administration v. Shrader, 597 A.2d 939 (Md. 1991) 28

North Carolina v. Alford, 400 U.S. 25 (1970) 9

Nzomo v. Vermont State Colleges, 385 A.2d 1099 (Vt. 1978) 23, 25

Pollock v. Patuxent Inst. Bd. of Review, 823 A.2d 626 (Md. 2003) 26, 28

Resetar v. State Bd. of Educ., 399 A.2d 225 (Md. 1979) 25

Rutz v. Essex Junction Prudential Committee, 457 A.2d 1368 (Vt. 1983) 23

Service v. Dulles, 354 U.S. 363 (1957) 8, 19

Sewell v. Norris, 811 A.2d 349 (Md. Ct. Spec. App. 2002) 10, 16

State v. Garcia, 965 P.2d 508 (Utah Ct. App. 1998) 22

Taylor v. Franzen, 417 NE2d 242 (Ill. App. Ct. 1981) 20

United States of America v. Police Department of Baltimore City, et al., 1:17-cv-00099-JKB (D. Md.) 14

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954) ..... passim

United States v. Caceres, 440 U.S. 741 (1979) 18, 23, 25

United States v. Heffner, 420 F.2d 809 (4th Cir. 1969) 22

United States v. Nixon, 418 U.S. 683 (1974) 18

Vitarelli v. Seaton, 359 U.S. 535 (1959) ..... passim

Ware v. Police Officer Todd Riley, No. 14-1857 (3d Cir. 2014) 13

Williams v. McHugh, 444 A.2d 475 (Md. Ct. Spec. App. 1982) 25

Yellin v. United States, 374 U.S. 109 (1963) 18, 20

CONSTITUTION AND STATUTE

United States Const., Amend V 1

United States Const., Amend XIV 2, 14

Md. Code Ann., Crim. Law § 3-202(a)(2) 2, 8

Md. Code Ann., Public Safety, § 3-106 ..... 3, 9

OTHER AUTHORITIES

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, *et al*, NATIONAL CONSENSUS POLICY ON USE OF FORCE, January 2017 12

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, POLICE USE OF FORCE IN AMERICA, Alexandria, Virginia, 2001 11

NATIONAL INSTITUTE OF JUSTICE, USE-OF-FORCE CONTINUUM POLICE EXECUTIVE RESEARCH FORUM, GUIDE TO CRITICAL ISSUES IN POLICING 14

POLICE EXECUTIVE RESEARCH FORUM, GUIDE TO CRITICAL ISSUES IN POLICING 14

US DOJ, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT. 4, 7

US DOJ, COMMUNITY RELATIONS SERVICES TOOLKIT FOR POLICING 13, 14

OPINION BELOW

The Maryland Court of Appeals denial of certiorari is included herein at Appendix A1. The published opinion of the Maryland Court of Special Appeals reversing the Circuit Court for Baltimore City is included herein at Appendix A2. The memorandum opinion of the Circuit Court for Baltimore City (on appeal from a Law Enforcement Officers' Bill of Rights Hearing Board) reversing the Hearing Board decision is included herein at Appendix A33. The Administrative Hearing and Order of the Baltimore Police Department is included herein at Appendix A49.

JURISDICTION

This Court has jurisdiction of this petition to review the judgment of the Maryland Court of Appeals pursuant to 28 USC § 1257(a).

The Maryland Court of Appeals denied Antonin's Petition for Certiorari on September 28, 2018. The Maryland Court of Special Appeals filed its opinion on June 1, 2018.

CONSTITUTIONAL, STATUTORY AND ADMINISTRATIVE PROVISIONS INVOLVED.

Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor

> shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

> Section 1.
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Md. Code Ann., Crim. § 3-202. Assault in the first degree

> (a) Prohibited. --
> (1) A person may not intentionally cause or attempt to cause serious physical injury to another.
> (2) A person may not commit an assault with a firearm, including:
> (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-

barreled rifle, as those terms are defined in § 4-201 of this article;
(ii) an assault pistol, as defined in § 4-301 of this article;
(iii) a machine gun, as defined in § 4-401 of this article; and
(iv) a regulated firearm, as defined in § 5-101 of the Public Safety Article.
(b) Penalty. -- A person who violates this section is guilty of the felony of assault in the first degree and on conviction is subject to imprisonment not exceeding 25 years.

Md. Code Ann., Pub. Safety § 3-106. Limitation on administrative charges

(a) In general. -- Subject to subsection (b) of this section, a law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.
(b) Exception. -- The 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

STATEMENT OF THE CASE

I. Incident: Serge Antonin, a Baltimore Police Officer with an unblemished record of dedicated service, used non-lethal force to apprehend, arrest and accomplish the

> search of a juvenile offender engaged in dangerous criminal conduct. The incident was captured on news video footage.

Prelude: On August 10, 2016, the United States Department of Justice Civil Rights Division published the INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT.[1] The report found that systemic deficiencies in the Baltimore Police Department (hereinafter "BPD") contributed to a pattern or practice of unconstitutional conduct by members of the Department. The report was particularly critical of the manner in which the BPD investigates complaints and imposes discipline. The Department of Justice observed that "[t]hroughout our interviews and ride-alongs with officers, we heard officers express that discipline is only imposed if an incident *makes it into the press* or *if you were on the wrong side of a supervisor*, not because of the magnitude of the misconduct." *Id.* p. 147 (emphasis added).

Serge Antonin. This controversy began on July 29, 2013. Sgt. Freddy Bland observed a stolen car being driven through Baltimore. Marked police units attempted to stop the car thief. The car thief led police on a car chase. Predictably, the thief crashed the stolen car and was arrested. The young criminal – herein identified as DW – was 14 years and 7 months of age.[2]

---

[1] https://www.justice.gov/opa/file/883366/download.

[2] Sadly, but predictably, DW is now an adult and a convicted felon for possession with intent to distribute narcotics. He is

During the pursuit, a WBAL television-news-helicopter monitored and videotaped the pursuit. The car thief put the general public at great risk. The video depicted the apprehension and arrest of the criminal.

The arrestee did not submit to handcuffing. Some officers pointed firearms at the suspect. One officer displayed a Taser. The Petitioner, Antonin, used quick, effective, and limited force to encourage submission to handcuffing and discourage other assaultive conduct. Antonin's conduct was to use open-hand slaps to the suspect's face. The Baltimore Police Department Use of Force policy permitted an open-hand slap to the face.

It is important to note that the open hand slap has a denotation, and a connotation. Antonin's open-handed slap(s) were expressly authorized non-lethal force less likely to injure the suspect than a closed-handed fist, or kick. While the connotation of a slap is punitive in nature, there was simply no punitive aspect to this use of force.

DW had prior juvenile arrests for first-degree burglary, assault, and assaulting a police officer. DW was awaiting trial for auto theft at the time he was stealing the car in this case.

DW was young, but not small. DW was 6 feet 2 inches tall and weighed 160 pounds.

The force used by Antonin was deliberate, measured, balanced, and inflicted moderate, temporary pain. The first slap was to accomplish compliance to handcuffing while not injuring the suspect. Antonin slapped DW one time before DW was handcuffed. After being handcuffed, DW

---

currently being held in Baltimore City without bail on the charge of being a felon in possession of a firearm.

threatened to spit upon the officers and began the physical process of spitting. Antonin then pushed DW's face away from his direction. DW quickly turned his head back towards Antonin as if he intended to act on his obvious effort to spit on Antonin. Antonin slapped DW to discourage the assault by spitting.

DW wasn't injured; DW never complained. Later, when DW was invited to make a statement to internal investigators about Antonin's conduct, DW declined to participate.

What followed is vintage BPD. First, no officer present during Antonin's use of force, including multiple supervisors on the scene, interrupted Antonin, dissuaded Antonin, criticized Antonin, reported Antonin for misconduct or completed a Use of Force report. However, WBAL played the video of the pursuit and Antonin's application of force on news programming. So, BPD Deputy Commissioner Rodriguez immediately reacted.

In short order, ABC news reported that Baltimore Police officials told reporters that Antonin had used excessive force. Rodriguez stated: "The commissioner, Commissioner Batts and myself, are very disappointed and troubled by what we saw on the video." Before expressing their collective disappointment and disapproval, no one in the BPD from the first permanent rank supervisor on the scene to the Police Commissioner himself asked Antonin a single question about what he did, or why he did it. No reporter criticized other officers for pointing firearms at the juvenile suspect; no command staff critiqued the conduct of the other officers.

In any event, the command staff of the BPD busied itself for the next 95 days. The entire command staff, from the first permanent rank supervisor on the scene of Antonin's conduct to the Police Commissioner, ignored the BPD rules and regulations which required an immediate "Use of Force Investigation." This is consistent with the systemic deficiencies noted by the Department of Justice. US DOJ, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT, pp. 140-49.

The failure of the BPD to follow its own regulations grossly prejudiced Antonin, as described later in this brief. First however, the false narrative of this case reached prosecutors.

a. Antonin was accused and prosecuted for misdemeanor common law misconduct in office. He entered an *Alford* plea.

On July 28, 2014 (the day before the expiration of limitations), the Office of the State's Attorney for Baltimore City filed a Criminal Information in the Circuit Court for Baltimore City charging Antonin with one count of misdemeanor assault and two counts of misdemeanor misconduct in office. The case was sensationalized (and then criminally charged) because of video images of a slap, while the far more dangerous and potentially deadly display of force – the pointing of loaded firearms – was completely ignored, and tacitly justified.[3]

[3] Antonin's point isn't that other officers should be charged. His point is that if the pointing of a loaded weapon at a person is an appropriate use of force, non-lethal force must also be appropriate.

There is a frightening absurdity to the idea that the Police Commissioner was neither disappointed nor troubled by the idea of officers poised to shoot and kill the young car thief, but a non-deadly use of force to capture him alive both disappointed and troubled the Commissioner as well as his Deputy. The State's Attorney did not charge any of the officers who were pointing loaded guns with any crime.[4]

So much of life is timing. On the day he was charged, Antonin had every intention of trying the case to a jury. Antonin was a thirteen-year veteran of the BPD at the time of the pursuit with a perfect record (except for a minor property damage collision). Both he and DW identify as African-American males and so the case was free of the stigma of implied racism.

Unfortunately, twelve days after Antonin was charged with three misdemeanors, on August 9, 2014, a young man named Michael Brown, Jr. was shot to death by a police officer in Ferguson, Missouri. Ferguson erupted in rioting. Then, prior to Antonin's criminal trial, on April 19, 2015, a young Baltimore resident named Freddie Gray died as a result of injuries sustained during Gray's arrest by members of the BPD. Gray's sorrowful death was followed by substantial and significant riots in Baltimore. Six Baltimore officers were indicted for

---

[4] Under Maryland law, the unlawful threat of an immediate battery is a misdemeanor, second degree assault. If a firearm is used to make the threat, the crime is a felony, first degree assault. If the other officers were not committing a felony by pointing guns, it is difficult to understand how Antonin was committing a misdemeanor using non-lethal force. Md. Code Ann., Crim. Law § 3-202(a)(2).

crimes up to and including the murder of Freddie Gray. The gods of fate had put Antonin's relatively petty criminal case in the glare of national news media and in the middle of an emerging Black Lives Matter political movement.

On October 5, 2015, on the advice of his attorney William H. Murphy, Jr., Antonin entered an *Alford*[5] plea to one count of common law misconduct in office. *State of Maryland v. Serge Antonin*, Circuit Court for Baltimore City, Case No.: 614209027.[6] The Honorable Alfred Nance, Chief Judge of the Circuit Court, convicted the Defendant of the misdemeanor, then immediately struck the guilty verdict and entered a Probation Before Judgment. Judge Nance commented that he hoped that Antonin could continue his career as a Baltimore Police Officer and further commented that he believed that it would be an honorable career.

b. Serge Antonin was administratively prosecuted for conduct unbecoming an officer and excessive force. He was terminated from employment

The October 5, 2015 *Alford* plea began the one-year limitation's clock for the filing of administrative charges pursuant to Maryland Code, Public Safety, § 3-106; *Baltimore Police Dep't v. Etting*, 604 A.2d 59 (Md. 1992). On April 22, 2016, the BPD administratively charged Antonin with conduct unbecoming an officer and using excessive

---

[5] *North Carolina v. Alford*, 400 U.S. 25 (1970).

[6] Mr. Murphy also represented the family of Freddie Gray. The criminal case is not found on the Maryland Judiciary Case website because it has since been expunged.

force. Prior to the administrative hearing board, Antonin's new lawyer asked the Police Commissioner to appoint a neutral board of outside officers pursuant to *Sewell v. Norris*, 811 A.2d 349 (Md. Ct. Spec. App. 2002). The BPD Commissioner declined the request.

On October 26-27, 2016, Antonin was tried before an administrative hearing, commonly referred to in Maryland as a Law Enforcement Officers' Bill of Rights hearing (or "LEOBOR Hearing"). Sgt. Cupid, a prosecution witness, identified the BPD Use of Force Policy in effect on July 29, 2013. He further testified that the policy, K-15, allowed BPD officers to strike someone with an open hand to accomplish handcuffing. Sgt. Cupid testified that a slap was authorized by the express language of self-defense to prevent a suspect from spitting on officers.

On his part, Antonin, by counsel, repeatedly played the WBAL video footage of the apprehension and arrest to prove that the suspect was not handcuffed when first slapped by Antonin. At the end of the case, the defense was clear: Antonin's use of force was within policy.

There are two important sub-parts to an administrative (or civil) police use-of-force case. The first is the legal issue of whether the officer's use-of-force is justified. The second is whether the officer's use-of-force was timely investigated so that a third-party assessing justification has the factual evidence necessary to make an informed evaluation.

Regarding the first sub-part of legal justification, this Court, in *Graham v. Connor*, 490 U.S. 386 (1989) held that a law enforcement officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the

time of the application of force. Force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id*. at 396.

In this case, Antonin was participating in the apprehension, arrest and handcuffing of a fleeing felon in a stolen car. The site of the case was Baltimore, Maryland, which was then (and is now) among the most violent of the 50 largest cities in America. The young criminal refused to submit to arrest and handcuffing. He was larger than the officers attempting to handcuff him (with the exception of Antonin) and was seemingly undeterred by a show of deadly force. Most important to Antonin's assessment, this young criminal had not been searched for a firearm which is the weapon of choice in the Baltimore criminal underworld.

The International Association of the Chiefs of Police has described the use of force as the "amount of effort required by police to compel compliance by an unwilling subject." IACP, POLICE USE OF FORCE IN AMERICA, Alexandria, Virginia, 2001. The United States Department of Justice, National Institute of Justice, advises that "[l]aw enforcement officers should use only the amount of force necessary to mitigate an incident, make an arrest, or protect themselves or others from harm. The levels, or continuum, of force police use include basic verbal and physical restraint, less-lethal force, and lethal force.[7]

---

[7] https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/welcome.aspx#noteReferrer1.

The NIJ publishes a USE-OF-FORCE CONTINUUM on its website that recognizes five levels of force progression:

> (1) "Officer Presence – No force is used"; (2) "Verbalization – Force is not-physical"; (3) Empty-Hand Control – Officers use bodily force to gain control of a situation; (4) "Less-Lethal Methods – Officers use less-lethal technologies to gain control of a situation; and (5) Lethal Force – Officers use lethal weapons to gain control of a situation."

Id. at link.

The NIJ continuum under Empty-Hand Control lists the soft technique ("[o]fficers use grabs, holds and joint locks to restrain an individual) and hard technique ("[o]fficers use punches and kicks to restrain an individual.") Antonin's use of force against DW would fall under an Empty-Hand Control technique between soft and hard, as he used an open hand slap to compel the unwilling felon to comply with the order of apprehension and arrest.

In October 2017, eleven of the most significant law enforcement leadership and labor organizations in the United States published the NATIONAL CONSENSUS POLICY AND DISCUSSION PAPER ON USE OF FORCE. International Association of Chiefs of Police, ET AL, NATIONAL CONSENSUS POLICY ON USE OF FORCE, January 2017.[8] What is most significant is this: Antonin's force would pass muster under the October 2017 consensus policy.

---

[8] https://www.policechiefmagazine.org/national-consensus-policy-use-force.

In short, Antonin's force was objectively reasonable, within the BPD Use of Force Policy in effect on July 29, 2013 and it also complies with the more modern, persuasive authority of the NATIONAL CONSENSUS POLICY. The risk of bodily harm to DW was slight in light of the threat to the public that DW represented *until* he was apprehended, arrested and searched. *See Scott v. Harris*, 550 U.S. 372, 383 (2007) (evaluating use-of-force in a fourth amendment context using a risk/benefit standard).

The second sub-part to the evaluation of an officer's use-of-force is a timely investigation. Without facts, the ability to make an informed, sensible, and honest evaluation may well be overshadowed by the political expediency of a scapegoat.

A use-of-force investigation is "standard procedure." *See Ware v. Police Officer Todd Riley*, No. 14-1857 (3d Cir. 2014 (not precedential; per curiam) (quoting District Court conclusions of law that include that use-of-force investigation is standard procedure when force is used by police officers). The United States Department of Justice, COMMUNITY RELATIONS SERVICES TOOLKIT FOR POLICING, adapted a guide concerning "Police Use of Force and Accountability" from the work of the Police Executive Research Forum (or PERF).[9] PERF, an independent research organization that focuses on critical issues in policing, considers internal investigations a critical component of accountability

[9] https://www.justice.gov/crs/file/836416/download.

mechanisms for law enforcement agencies. *See* PERF, GUIDE TO CRITICAL ISSUES IN POLICING.[10]

Perhaps the most telling proof of the need for a Use-of-Force Investigation to accompany and document an officer's use of force is the Consent Decree in *United States of America v. Police Department of Baltimore City*, *et al.*, 1:17-cv-00099-JKB (D. Md.).[11] Part XIV of the Consent Decree addresses investigations for 38 pages. It begins at paragraph 329 with the principle reason for Misconduct Investigations and Discipline:

> A robust and well-functioning accountability system in which officers are held to the highest standards of integrity is critical to BPD's legitimacy, and a priority of the Department. A well-functioning accountability system is one in which BPD: openly and readily receives complaints reported by civilians and officers and *fully, fairly, and efficiently investigates them; supports all investigative findings by the appropriate standard of proof and documents them in writing;* holds accountable all officers who commit misconduct pursuant to a disciplinary system that is fair, consistent, and provides due process; and treats all individuals who participate in BPD's internal disciplinary process – including

---

[10] The Justice Department lists a number of PERF publications in the Resource Guide as the source of the authority relied upon for the "Toolkit."

[11] https://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf

> complainants, officers, and witnesses – with respect and dignity. To achieve these outcomes, the City and BPD will implement the requirements set out below within their respective spheres of control.
>
> *Id.* at 112 (emphasis added).

Investigations must begin "timely, [within 72 hours]" and must be completed within 90 days. *Id.* at 116, 117, & 122.

The critical interviews with fact witnesses in Antonin's case did not even begin until 95 days *after* the incident. The opportunity for a full, fair, and efficient investigation was thwarted by inaction. As you can imagine, Antonin was convicted at the administrative hearing board.

On November 7, 2016, the Board forwarded its Administrative Hearing and Order to Police Commissioner Kevin Davis. The Board recommended termination. On November 8, 2016, Commissioner Davis fired Antonin. A timely appeal was filed to the Circuit Court for Baltimore City.

II. Post-Hearing Board Procedural History of the Case

a. Antonin appealed to the Baltimore City Circuit Court and the Baltimore Police Department's Law Enforcement Officers' Bill of Rights Hearing was overturned.

Antonin appealed his administrative conviction to the Circuit Court for Baltimore City. The Honorable Jeannie J. Hong, Judge of the Circuit

Court, reversed the hearing board's guilty findings on two grounds. The first reason for reversing the hearing board was that the comments made by Deputy Commissioner Rodriguez demonstrated that the BPD itself had prejudged Antonin, that this prejudgment would have infected any hearing board comprised of BPD members, and therefore, pursuant to *Sewell v. Norris*, 811 A.2d 349 (Md. Ct. Spec. App. 2002), Antonin was entitled to a hearing board comprised of members of other police departments. The second reason that Judge Hong reversed the hearing board is that the BPD violated *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)[12]. Specifically, the circuit court held that BPD's investigation (or lack thereof) violated its own policy concerning the reporting and documentation of uses of force, and that Antonin suffered prejudice. For both reasons, the Circuit Court vacated the decision of the LEOBOR Hearing Board. Judge Hong's Memorandum Opinion is appended hereto at Appendix A33.

b. The Baltimore Police Department appealed to Maryland's intermediate appellate court, the Maryland Court of Special Appeals, which reversed the Baltimore City Circuit Court.

The BPD appealed the issue to the Maryland Court of Special Appeals. Both parties briefed the

---

[12] The rights of putative deportees to habeas corpus, recognized by *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), was superseded by statute. *See INS v. St. Cyr*, 533 U.S. 289 (2001). Deportees right to habeas corpus is irrelevant to this Petition.

issues for the Court of Special Appeals, and the Court also heard argument. On May 8, 2018, the Court of Special Appeals issued an unreported opinion reversing the circuit court. Among other things, the Court of Special Appeals specifically found that Antonin suffered no prejudice by the BPD's violation of its administrative rules. The Baltimore City Solicitor, the Honorable Andre M. Davis, filed a Request for Designation of Opinion for Reporting on May 10, 2018. The Court of Special Appeals designated the case as a reported opinion and published the Opinion on June 1, 2018. The Opinion is appended hereto at Appendix A2.

c. Antonin appealed to the Maryland Court of Appeals, which denied certiorari.

Antonin filed a Petition for Writ of Certiorari to the Maryland Court of Appeals. That Petition was denied by the Maryland Court of Appeals on September 28, 2018. The denial of certiorari is appended hereto as Appendix A1.

REASONS FOR GRANTING THIS PETITION

III. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) is an application of constitutional due process of law applicable to Maryland.

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954), was a 5 to 4 decision of the United States Supreme Court standing for the proposition that regulations validly prescribed by government administrators are binding upon the

government and the citizen. Though the majority opinion did not explicitly cite to the United States Constitution, the majority opinion referred to the "due process required by the regulations in such proceedings." *Id.* at 268.

The dissenters in *United States ex rel. Accardi v. Shaughnessy* were specific in their evaluation that the Constitution did not provide the relief requested by Accardi. "[N]o legal right exists in petitioner by virtue of constitution, statute or common law to have a lawful order of deportation suspended." *Id.* at 269.

In the 64 years since the decision, the Supreme Court has not firmly decided whether *Accardi* is constitutional law binding upon the states. In *Board of Curators, Univ. of Missouri v Horowitz*, 435 U.S. 78 (1978), Chief Justice Rehnquist, writing for the majority, commented that *Accardi* was an enunciated principle of federal administrative law and was not constitutional law binding upon the states. *Id.* at n. 8.

In *United States v. Caceres*, 440 U.S. 741 (1979), Justice Marshall in dissent observed:

> [O]ne under investigation [like Antonin] … is legally entitled to insist upon observance of rules promulgated by an executive or legislative body for his protection. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Yellin v. United States*, 374 U.S. 109 (1963); *Vitarelli v. Seaton*, 359 U.S 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Underlying these decisions is a judgment central to our concept of due

> process, that government officials no less than private citizens are bound by rules of law. Where individual interests are implicated, the Due Process Clause requires that an executive agency adhere to the standards by which it professes its action to be judged. *See Vitarelli v. Seaton, supra,* at 547 (Frankfurter, J., concurring in part and dissenting in part.) (footnote omitted).

In the first footnote to Justice Marshall's opinion, *supra*, Justice Marshall carefully delineates how these decisions cannot be dismissed as federal administrative law.

> Although not always expressly predicated on the Due Process Clause, these decisions are explicable in no other terms. The complaints in only two of the cases, *Vitarelli v. Seaton*, 359 U.S. 535 (1959), and *Service v. Dulles*, 354 U.S. 363 (1957), invoked the Administrative Procedure Act, *see ante,* at 754 n. 19. In neither of these cases was the act even in the Court's opinions. . .. To the contrary, these decisions have been uniformly, and I believe properly, interpreted as resting on due process foundations. (extensive citations omitted).

At least 25 states make no mention of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) in their reported opinions. However, at least six states evaluate *Accardi* in the context of constitutional due process of law.

In *Amluxen v. Regents of University of California*, 53 Cal. App. 3d 27 (1975), the Court of

Appeals of California, First District, Division One, considered an Appellant's argument largely lifted from *Mabey v. Reagan*, 376 F. Supp. 216 (N.D. Cal. 1974)[13].

> In its discussion of this latter issue the court stated: 'It has been recently established that an untenured, probationary college teacher is not constitutionally entitled to a hearing. However, if the government agency has established discharge regulations the agency must comply with those regulations as a matter of constitutional due process even if the agency could have discharged the employee summarily without a due process review. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Yellin v. United States*, 374 U.S. 109 (1963).'

The California Court of Appeals distinguished the Appellant's case on a factual basis, and on that basis determined that the argument had not been preserved. The California Court of Appeals did nothing to challenge the federal District Court's assertion that *Accardi* is a principal of constitutional due process.

In *Taylor v. Franzen*, 417 NE2d 242 (Ill. App. Ct. 1981), the court stated:

> While disregard of an administrative regulation by an agency may constitute a due process violation (*United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260

---

[13] This case was reversed on other grounds by the Ninth Circuit. *Mabey v. Reagan*, 537 F.2d 1036 (9th Cir. 1976).

> (1954)), the process that is due under a State agency's administrative rules and the minimum constitutional safeguards required by the fourteenth amendment's due process clause are not always identical. (*Durso v. Rowe*, 579 F.2d 1365 (7th Cir. 1978).)

In *Alexander and Alexander, Inc. v. State*, 470 So.2d 976 (La. App. 1 Cir. 1985), *rev'd on other* grounds, 486 So.2d 95, the court stated:

> In this case, plaintiffs never received from the Chief Procurement Officer the *initial* rejection of their protest, with substantive reasons and appeal rights discussed. Commissioner Henry's December 9, 1982, letter cannot be substituted for that required of the Chief Procurement Officer or his designee as mandated by minimal statutory due process procedures. Due process procedures are violated when the official who must decide appeals based on the Chief Procurement's Officer's substantive decision omits that important administrative step. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

In *Greenfield Const. Co. v. Hwy Dept.*, 261 NW2d 718 (Mich. 1978), the court stated:

> A 'long line of Supreme Court decisions * * * hold *[sic]* that an agency may not violate rules which protect the interests of the protesting party * * *'. This is true of both procedural and substantive rules.

> Federal courts have held that an agency is bound by its policy declarations and practices not formally adopted under the Federal APA. The Court of Appeals for the Fourth Circuit reversed a conviction of violation of a tax law because an IRS agent failed to give the defendant warnings and advice required by IRS 'instructions', not published in the Federal Register, circulated in a news release and reprinted in the CCH reporting service. *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).
>
> In *Heffner* the Fourth Circuit concluded on the authority of decisions of the United States Supreme Court that it was 'of no significance that the procedures or instructions which the IRS has established are more generous than the Constitution requires". The court continued:
>
> 'Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' or adopted with strict regard to the Administrative Procedure Act; the *[United States ex rel.] Accardi [v Shaughnessy*, 347 U.S. 260 (1954)] doctrine has a broader sweep.'

In *State v. Garcia*, 965 P.2d 508 (Utah Ct. App. 1998) the court stated:

> The second form of protection provided under the Due Process Clause requires that states follow certain procedural rules where failure to do so implicates a constitutional, statutory, or regulatory right of the defendant. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (stating 'crucial question is whether the alleged conduct … deprived petitioner of any of the rights guaranteed him by the statute or by the regulations issued pursuant thereto.') *cf. United States v. Caceres*, 440 U.S. 741, 749 (1979).
>
> In this case, we can identify two possible rights which this form of due process protects. The first would be Garcia's right to exculpatory evidence. As our discussion above indicates, that right has not been violated.
>
> The second right protected would be any right created by section 41-6-44.3 and the Rule promulgated thereunder.

In *Rutz v. Essex Junction Prudential Committee*, 457 A.2d 1368 (Vt. 1983) the court stated:

> In *Nzomo v. Vermont State Colleges*, 385 A.2d 1099 (Vt. 1978), a case dealing with a grievance before the State Labor Relations Board, we stated that '[i]t is a firmly established principle of administrative law that defined dismissal procedures, although

> generous beyond the due process requirements that bind the agency, are binding and must be scrupulously observed.' *Id.* at 1101 (citing *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring in part and dissenting in part)). Although *Nzomo* was not a case specifically addressing student suspensions or expulsions, it is nonetheless instructive, since it illustrates the principle that '[a] governmental agency violates a person's due process rights when it renders a decision or takes an action without complying with its own regulations.' *Moss v. Ward*, 450 F. Supp. 591, 598 n. 8 (W.D.N.Y. 1978) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). This principle is totally consistent with the above discussion of due process, for a '[f]ailure to follow such guidelines tends to cause unjust discrimination and deny adequate notice contrary to fundamental concepts of fair play and due process.' (citations omitted).

In *Board of School Comm'rs v. James*, 625 A.2d 361 (Md. Ct. Spec. App. 1993), the Honorable Diana Gribbon Motz carefully documented the Court's opinion that *Accardi* is not rooted in constitutional due process.

> The *Accardi* doctrine may not even be relevant here. Although its source was once thought to be the constitutional right to due process, the modern view seems to be that it is simply a principle of federal

> administrative law, *see, e.g. United States v. Caceres*, 440 U.S. 741, 752-53 (Frankfurter, J. concurring in part and dissenting in part) (*Accardi* is a 'judicially evolved rule of administrative law') and so state courts are free to adopt the doctrine, or not, as they choose. As indicated above, this Court has on several occasions embraced the *Accardi* doctrine. *See* [*Board of Educ. of Baltimore Cty. v.*] *Ballard*, 507 A.2d 192; *Maryland Nat'l Cap. Park & Planning Comm'n v. Friendship Heights*, 468 A.2d 1353 (Md. Ct. Spec. App. 1984); *Williams v. McHugh*, 444 A.2d 475 (Md. Ct. Spec. App. 1982); [*Board of Educ. of AA Cty. v.*] *Barbano*, 411 A.2d 124; *Hopkins v. Maryland Inmate Griev. Comm'n*, 391 A.2d 1213 (Md. Ct. Spec. App.1978). *But see Resetar v. State Bd. of Educ.*, 399 A.2d 225 (Md.), *cert. Denied,* 444 U.S. 838 (1979) (teacher urged Court to follow *Vitarelli* – one of the *Accardi* cases – to hold a local board was 'bound by its own regulations," *see* Reply Brief at 19; Court of Appeals did not discuss *Accardi* or *Vitelli* but declined to follow them in view of the fact that, as here, the teacher 'suffered no prejudice' and 'no penalty' was provided for violation of regulation).
>
> *Id.* at n. 5.

The Maryland Court of Appeals first considered *Accardi* in *Maryland Transp. Auth. v. King*, 799 A.2d 1246 (Md. 2002). In that case, the Maryland Court of Appeals decided that it did not need to decide the applicability of *Accardi* because

the Maryland Transportation Authority did not violate any of its own regulations. *Id.* at 1253. However, in *Pollock v. Patuxent Inst. Bd. of Review*, 823 A.2d 626, 650-51 (2003), Maryland adopted "its own variation of the *Accardi* doctrine. *Baltimore Police Dep't. v. Antonin*, 185 A.3d 811, 823 (Md App. 2018). The Court of Special Appeals quoted the relevant portion of *Pollock*'s recital of *Accardi*:

> [A]n agency of the government generally must observe rules, regulations or procedures which it has established and under certain circumstances when it fails to do so, its action will be vacated and the matter remanded. This adoption is consistent with Maryland's body of administrative law, which generally holds that an agency should not violate its own rules and regulations.
>
> In so holding we nonetheless note that not every violation of internal procedural policy adopted by an agency will invoke the *Accardi* doctrine. Whether the *Accardi* doctrine applies in a given case is a question of law that . . . requires the courts to scrutinize the agency rule or regulation at issue to determine if it implicates *Accardi* because it affects individual rights and obligations or whether it confers important procedural benefits or, conversely, whether *Accardi* is not implicated because the rule or regulation falls within the ambit of the exception which does not require strict agency compliance with internal procedural rules adopted for the orderly transaction of

> agency business, i.e., not triggering the *Accardi* doctrine.
>
> *Id.* at 830-31. (quotations omitted).

Antonin's Hearing Board ignored the fact that the BPD did not conduct a Use of Force Investigation. The Hearing Board did not require even the production of a key component of the policy: The Use of Force Matrix. The Hearing Board accepted patently absurd testimony by the Internal Affairs investigator to conclude that Antonin was guilty of administrative wrongdoing. Antonin was convicted.

In practice, Antonin, and other law enforcement officers just like him, are relegated to a second-class status of due process of law. This means at least two things to the men and women who serve Baltimore as police officers and to the citizens of Baltimore: (1) the officers know that the rules are applied by the Mayor's appointee in a haphazard fashion, sacrificing due process of law for the political expediency of show trials, administrative convictions, and public terminations; and (2) the citizens of Baltimore can have no faith that the outcome of the hearing process reflects fair judgment of neutral persons. In application, BPD members are now inactive officers, not proactive officers. The citizens of Baltimore are increasingly victimized by criminals taking advantage of the vacuum of law enforcement and authority. Is is a present disaster promising to get worse. Everyone in Baltimore, from the members of the BPD to the citizens it serves, would be well-served by a clear pronunciation that

rules promulgated by the BPD must be followed by the Department as well as by its members.

IV. A standard assessment of the measurement of prejudice is necessary for the fair application of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

In *Pollock v. Patuxent Inst. Bd. of* Review, 823 A.2d 626, 650-51 (2003), the Maryland Court of Appeals held that prejudice to the complainant is required before the courts will vacate an agency action.

> Where the *Accardi* doctrine is applicable, we are in accord with the lines of cases arising from the Supreme Court and other jurisdictions which have held that prejudice to the complainant is necessary before the courts vacate agency action. In the instances where an agency violates a rule or regulation subject to the *Accardi* doctrine, *i.e.,* even a rule or regulation that affects individual rights or obligations or affords important procedural benefits upon individuals, the complainant nevertheless must still show that prejudice to him or her (or it) resulted from the violation in order for the agency decision to be struck down.

In *Motor Vehicle Administration v. Shrader*, 597 A.2d 939 (Md. 1991), the Maryland Court of Appeals defined prejudice as "anything [that] places the person affected in a more unfavorable or

disadvantageous position than he would otherwise have occupied. *Accord*, *Balt. City Det. Ctr. V. Foy*, 2018 Md. LEXIS 618. This would seem to fit Antonin perfectly.

In the instant case, not a single report of the incident was prepared by anyone at or near the time of the incident. No one interviewed witnesses. No one walked about a crime scene to determine if security cameras captured the police action. No one segregated witnesses and asked them to write down or recite into tape recorders who did what. No one determined a sequence of events. No one did anything for the next three months except to interview the Sergeant who first spotted the stolen car. Instead, the critical witnesses were first interviewed 95 days after the incident, on November 1, 2013.

At the administrative hearing board, defense counsel proved prejudice during the cross-examination of prosecution witnesses. Defense counsel attempted to determine whether anybody ever made a complaint about Antonin's conduct. Det. Jeffrey Thomas, the IAD case investigator, testified that "Col. DeSousa did make a complaint."[14] Thomas testified that the "IA Pro form is the actual complaint form." Counsel asked Thomas to show him where DeSousa is listed as the complainant. Thomas stated: "I never said that DeSousa was the complainant…I said Col DeSousa made the complaint." Counsel sought clarification. Thomas

---

[14] Colonel DeSousa resigned from the BPD after being (1) appointed Police Commissioner and (2) almost immediately thereafter being charged with federal crimes. DeSousa has pled guilty in the United States District Court for the District of Maryland and is awaiting sentencing.

testified:

> A complaint is just – I mean, I know, I understand the context in which you're using it, complain as in complaining, did someone complain, did they – were they upset about something. But a complaint in the nomenclature of the Internal Affairs Division is essentially synonymous with an allegation or reason for an investigation to be initiated, which would be the suspension.

Thomas testified that nobody provided any context or information suggesting that anything Police Officer Antonin did was inappropriate.

Defense counsel focused part of the defense on the critical issue of whether the arrestee was handcuffed and searched prior to the force by Antonin, or actively resisting arrest. Only two persons, Police Officer Theodore Galfey and Sergeant Gersham Cupid,[15] told investigators that DW was handcuffed when Antonin came up and slapped him. Galfey wrote no report. Galfey was interviewed for the first time 95 days after the incident. Sergeant Cupid wrote no report. Cupid was interviewed for the first time 95 days after the incident.

While it is unreasonable that critical fact witnesses (who had not even written a report) were not interviewed for three months, the theoretical "victim" of the "excessive force" was not interviewed at all. Counsel questioned why DW, an obvious

---

[15] Sgt. Cupid has since been promoted to Lieutenant. He is currently barred from entering police property and is the subject of an ongoing internal investigation.

"witness," was not interviewed.[16] Thomas testified that "…ultimately, his statement was not entirely necessary for this case. The reason for the sustained finding on Officer Antonin was not based off of the actions of DW. It was based off of a greater context, or the totality of circumstances as we like to say a lot in this Department." Then the witness, Thomas, equivocated on whether "not entirely necessary" is the same as "unnecessary." Thomas expounded: "Well I guess in the – since we're talking about connotation and denotation, in the denotation of the word necessary and unnecessary, it was not necessary." Defense counsel posited an obvious question to bring the witness back into the world of reality.

> BY MR. AHLERS:
>
> Q. Suppose he [DW] had said I was trying to spit on him [Antonin], would that have made a difference? Would it have made a difference if the guy [DW] said I was trying to spit on the officer? Please, yes or no, would that have made a difference?
>
> A. No, it would not have made a difference.[17]

---

[16] DW, a juvenile, appeared at the BPD with his custodian but left without being questioned. He was never re-contacted.

[17] When faced with a fleeing felon who has endangered many persons and crashed a stolen car, then actively resisted arrest, an arresting Baltimore City Police Officer who is spat upon is – according to IAD – "to create space and to create distance." (Abandon all hope, ye who enter here. *Inferno*, Dante.)

The most grievous example of the problem of not conducting a timely investigation involves the most basic aspect of this case: was the force that Antonin used to facilitate handcuffing and defend against spitting "excessive force" within the meaning of the Use of Force Policy? Who better to answer this question than the prosecution case agent: IAD Detective Thomas? However, when asked whether under the Use of Force policy in effect at the time of this incident, Antonin was permitted to use force to overcome active resistance, the case investigator could not answer the question. The reason was simple: the case investigator would have to look at the "use of force matrix from back then" and nobody – not Internal Affairs, not the prosecutors, nor the Hearing Board had – or had access to – the document needed to determine whether Antonin was allowed to do what he did.

Until the cross-examination of the IAD detective during the trial, defense counsel had never heard of, read, or observed in discovery anything called a "use of force matrix from back then." However, if this document determined whether or not Antonin's conduct was within policy, it was patent to defense counsel that it (1) would have been reviewed during a timely investigation of the incident and (2) would be available for consideration by a neutral third-party hearing board determining the mixed question of fact and law that constituted the administrative charges. For this reason, defense counsel moved for production of the use of force matrix. No one had it, or even had access to it. But, in order to make clear the Kafkaesque absurdity of defense counsel requesting the production of the document that would answer the most pressing

fact/law question in the case, one of the two prosecutors offered this helpful observation: "You could have done that before the hearing."[18] Detective Thomas did concede that common sense told him a police officer must be permitted, in 2013, in Baltimore, Maryland to use force to overcome active resistance to arrest.

To summarize, this case proves that the Baltimore City Police Department had a policy that, on its face, permitted the force used by Antonin. The facts of the incident, however, are not easily determined at a later date because the BPD did not conduct a contemporaneous investigation of the use of force, as required by its own policy. Then, at a due process administrative hearing, the Internal Affairs detective who is the case agent admitted that a "use of force matrix from back then" exists, but is not available to the hearing board, or defense counsel, to evaluate whether the use of force was within policy.

Against this factual backdrop, the Maryland Court of Special Appeals found:

> "the record evidence before the hearing board was legally insufficient to prove that Antonin suffered prejudice due to BPD's failure to follow General Order K-15 [Use-of-Force (policy requiring an immediate investigation)]. The Court of Special Appeals opined: "Antonin likewise has provided no

[18] By counsel's way of thinking, the Baltimore Police Department "could have" and *should have* reviewed the Use of Force Policy and "use of force matrix from back then" before concluding that Police Officer Serge Antonin violated the policy.

> concrete examples of how the lack of a Use of Force Summary Report and investigation prejudiced him. . . . . Neither one [Galfy or Cupid] had trouble remembering the pertinent facts…"
>
> *Balt. Police Dep't v. Antonin*, 185 A.3d at 835.

On Antonin's part, he provided the Circuit Court of Baltimore City with a rebuttal to the myriad erroneous submissions made by the BPD to the Circuit Court. Antonin proved that Galfey equivocated on whether the suspect DW was in cuffs. Cupid admitted that DW was not in cuffs the first time Antonin slapped him. Antonin used the video to prove that DW was not handcuffed when Antonin first slapped him.

Obviously, the force used by Galfey *and* Cupid (and others pointing guns and a Taser) was insufficient to accomplish handcuffing DW. No one testified that Antonin's conduct violated the Use of Force policy of the BPD.

Should this Court determine that *Accardi* is applicable to the State of Maryland as a matter of constitutional law, this Court should also construct a policy that explicates the quality and quantity of prejudice that must be shown in order to have a court vacate an administrative decision by an agency that fails to follow its own rules.

V. Certiorari should be granted to prevent law enforcement officers under administrative investigation to be subjected to unfair, disparate treatment

> according to the political whim of a police command staff.

Due process of law is the constitutional guarantee that checks the abuse of government power upon an individual. It traces its origin to Chapter 39 of King John's Magna Carta, which provided that no freeman will be seized or dispossessed of his property or harmed except "by the law of the land." The precise phrase – due process of law – first appeared in a 1354 statute of King Edward III that restated the Magna Carta's guarantee of liberty of the subject.

The Fifth and Fourteenth Amendments to the Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law. Under this model, strict adherence to regulated procedure is the most important safeguard against tyranny.

We the people of these United States acknowledge that we are born free and we ordain a government by grant of our collective authority for the most fundamental purpose of guaranteeing that freedom. The sustaining principle of due process is that the law applies to our government and the people. Without our collective respect for the rule of law, the awesome power of the government is unchecked. Our forefathers knew from their personal histories that unchecked power corrupts man's nature and they pledged their lives and sacred honor to the greatest social experiment in the history of mankind. We either respect that decision, and nourish it, or we are doomed to suffer the byproducts of cynicism, including contempt for the rule of law.

The least educated citizen in our country knows that the defining difference between law enforcement officers and every other professional problem-solver in the government bureaucracy is the right and authority of law enforcement officers to use force. It is our practical concession to the imperfection of man. We attempt to strike a balance between the ideals of a perfect civilization and the need for order maintenance in a world of diseased brains, addicted bodies, and flawed character.

If you are not from Baltimore, Maryland, you learn about the city by its television and HBO depictions: HOMICIDE, LIFE ON THE STREETS, THE CORNER, and THE WIRE. You learn that it is a broken city of unemployment, multi-generational poverty, heroin, firearms, and incredibly corrupt government. If you live and work in Baltimore, the experience is far more nuanced. You see everyday heroes, particularly the uniformed police officers and first-responders, who form a human citadel between the sociopathy of criminality and law-abiding citizens trying to teach school, run a hospital, or own a business.

There is an organized pretense to the command staff of the BPD – and the corruption that it occasioned -- that is finally the subject of zealous federal prosecution and federal oversight. It has been the longtime practice of BPD command staffs and police commissioners to very publicly condemn, and then terminate, any low-ranking officer whose use-of-force draws public criticism. The beat cops are the low hanging fruit of political expediency. Falling between the cracks of its bloody Baltimore sidewalks are the men and women who have quietly and with

great dignity, done their best to protect others. One of them is Serge Antonin.

This college-educated, African-American veteran police officer had an unblemished record of integrity and hard work. He is a second-generation police officer. He is married to a police officer. He dedicated himself to the protection of others, as a matter of personal principle and professional career choice. He *never* displayed his weapon as a show of deadly force in apprehending DW. Someone should put Antonin's picture on a billboard in Baltimore and show young males that there are choices other than slinging drugs on corners of abandoned property. A man can stand for something bigger than himself; Antonin did.

In Baltimore, no police officer knows the meets and bounds of authority if the written rules and directives of the Department are not stable, bona fide, and enforceable against the officer and the Department as a matter of standard procedure. A Department who terminates an experienced police officer for using non-lethal force in the apprehension of a dangerous, non-compliant felon is practicing the soft racism of appeasement. It condemns its citizens to political happy talk and crime.

Antonin, the arrestee DW and the rest of us deserve no less than due process of law. Without it, we can *never* trust our local government. In the case at bar, that means that Antonin's Petition for a Writ of Certiorari ought to be granted.

CONCLUSION

For these reasons, the Petitioner respectfully prays this Court grant the Petition for a Writ of Certiorari to the Maryland Court of Appeals.

Respectfully submitted,

Clarke F. Ahlers
10450 Shaker Drive
Suite 111
Columbia, MD 21046
410-740-1444
cahlers@aol.com
Counsel for Petitioner