
From: Michael Slater

Sent: Wednesday, January 25, 2023 1:48 PM

To: 'jwilson@cityofberkeley.info' <jwilson@cityofberkeley.info>

Cc: 'cmaldonado@cityofberkeley.info' <cmaldonado@cityofberkeley.info>; 'kfutch@cityofberkeley.info' <kfutch@cityofberkeley.info>

Subject: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Sgt. Wilson,

My law firm has been retained by Victim (copied) to represent him in connection with a February 4, 2022 battery incident that occurred between Mr. Victim and three YMCA employees, including Lance Goree, at the Downtown Berkeley YMCA Residence ("YMCA Residence")—located at [2001 Allston Way](#) in Berkeley, California 94704—where Mr. Victim lives. I am writing to respectfully request that the Berkeley Police Department conduct an investigation into criminal charges against Mr. Goree, including for PC 242 felony assault / battery. The facts and reasoning for this request are set forth below.

In summary, Mr. Goree (who is much larger than Mr. Victim) confined Mr. Victim to a corner of the cafeteria in the YMCA Residence to confront Mr. Victim about changes Mr. Victim had allegedly made to the front door lock of his apartment at the YMCA Residence. ("Door Lock Issue.") Mr. Victim indicated dozens of times that he did not want to talk to Mr. Goree about the Door Lock Issue at that time; that Mr. Goree was making him and his girlfriend, Veronica (who was also in the cafeteria filming the incident), feel unsafe; and that he wanted to leave. But Mr. Goree would not allow Mr. Victim to leave, and **for more than fifteen (15) minutes** berated Mr. Victim with questions about the Door Lock Issue and thinly veiled threats of violence. When Mr. Goree threatened Mr. Victim' and Veronica's safety directly, Mr. Victim attempted to push through Mr. Goree to escape from the cafeteria with Veronica.

But Mr. Goree did not fall down; was hardly even knocked off balance; immediately recovered; took a fighting stance; stalked closer to Mr. Victim—crouching and creeping forward much like a boxer or a martial artist (likely because Mr. Goree has martial arts training); taunted Mr. Victim and invited further confrontation as follows: "You want some? You want some? Hu? You want that? Hu? Hu? Hu? Hu? You really want it? You really want it? Hu? You do, hu? You really want this? Hu?" At that point, Mr. Victim retreated back to the corner of the cafeteria where he had previously been confined. Instead of walking away, Mr. Goree continued to close the gap between himself and Mr. Victim. From his posture, tone and demeanor, it was clear Mr. Goree was dead-set on physically attacking Mr. Victim. When Mr. Goree got within arms-length of Mr. Victim, and with a closed left fist, Mr. Goree threw a powerful, devastating jab punch directly into Mr. Victim' face—causing Mr. Victim to nearly lose consciousness and to nearly fall to the floor.

Next, Mr. Goree grabbed Mr. Victim around his shoulders and mid-section and threw Mr. Victim to the floor of the cafeteria. The force of Mr. Goree's takedown maneuver caused Mr. Victim to land on his back, immediately after which time Mr. Goree landed violently with the full weight of his body directly on top of Mr. Victim. Mr. Goree quickly got Mr. Victim into a chokehold. **For no less than fourteen (14) minutes**, Mr. Goree employed a **carotid chokehold** (periodically, together with an airway choke) against Mr. Victim, who showed little resistance other than futile efforts to try to breathe. At one point, Mr. Victim managed to free his throat enough to plead "I can't breathe," to which Mr. Goree responded: "I know. That's the point!" At another, Mr. Goree told Mr. Victim: "You are not getting out of this. And if you do get out of this, I will pummel you until you can't move." When Mr. Victim pleaded "I need

air!," Mr. Goree responded: "No. Don't tell me what you need. It's too late, Mr. Victim. It's too late." When Mr. Victim questioned why additional YMCA employees were stepping and putting furniture on his feet, Mr. Goree told Mr. Victim: "I'd be more worried about this guy around my neck." When Mr. Victim pleaded "I need help," Mr. Goree agreed, stating: "Yes you do."

Ultimately, Mr. Victim was arrested by officers of the Berkeley Police Department ("BPD") –I believe by BPD Officers Futch and Maldonado (both of whom are copied here). Mr. Victim was cited for PC 242 misdemeanor battery and taken to the Santa Rita Jail where he remained in custody for the better part of the next day. (BPD Report No. 22-5533.)

Mr. Victim has suffered myriad, life-changing injuries as a proximate result of the 2/4/22 incident. Mr. Victim' physical injuries include, but are not limited to: disfigurement (including deformation of his breastbone), suspected traumatic brain injury, post-concussion syndrome, migraine and fatigue. Mr. Victim' emotional physical injuries include, but are not limited to: severe emotional distress, humiliation, depression and Post Traumatic Stress Disorder —as diagnosed by his doctors following the incident.

In light of the foregoing, I am writing to respectfully request that the BPD investigate the Subject Incident, including to determine whether criminal charges should be brought against Mr. Goree for PC 242 felony assault / battery and any other criminal charges. In connection with Mr. Victim' civil claims against the YMCA, Mr. Goree and others, Mr. Victim has retained a use-of-force expert to evaluate the use-of-force issues in this case. Our expert was not only a law enforcement officer for fifteen years, he now trains law enforcement personnel around the state regarding use of force – including the safe and legal use of chokehold restraints. According to our expert, the force employed by Mr. Goree against Mr. Victim was grossly excessive and, even if it at one point in time amounted to self-defense, exceeding what is permissible self-defense by using deadly force against Mr. Victim off-and-on for fourteen minutes. Indeed, in his experience serving as an expert witness in criminal cases, our expert indicated that Mr. Goree's conduct could even support a PC 664 / 187 attempted murder charge.

To inform the BPD's determination, I am attaching Mr. Victim' (operative) first amended complaint for damages against the YMCA, Lance Goree and the other YMCA employees involved in the 2/4/22 incident—which contains a

more detailed description of the subject incident. (Alameda Superior Court, Case No. 22CV01990.) To inform the BPD's investigation and decision, I am also writing to provide the following evidence: (1) [cell phone video footage](#) captured by Mr. Victim' girlfriend, Veronica; (2) [cell phone audio](#) also captured by Veronica (including the minutes preceding the video footage); and (3) [surveillance footage](#) from a YMCA camera inside the cafeteria. These are secure DropBox links created through my firm's DropBox account. The evidence was too large to send via email.

Thank you for your time and consideration. Please do not hesitate to contact me to discuss.

Very respectfully,

Michael Slater



MICHAEL SLATER

Founding Partner

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FW: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Michael Slater <m Slater@theslaterlawfirmapc.com>

Mon, Feb 6, 2023 at 3:28 PM

To: "jwilson@cityofberkeley.info" <jwilson@cityofberkeley.info>

Cc: "cmaldonado@cityofberkeley.info" <cmaldonado@cityofberkeley.info>, "kfutch@cityofberkeley.info" <kfutch@cityofberkeley.info>, "police@cityofberkeley.info" <police@cityofberkeley.info>, Victim <victim@gmail.com>

Sgt. Wilson,

I am writing to follow up on my 1/25/23 voicemail, my 1/25/23 email (below) and my 1/6/23 voicemail—to which I have received no response. It is my understanding that Mr. Victim called your office today and spoke with you. He informed me of your conversation, and of some the key takeaways, which I address in turn below:

1. **BPD's Investigation into 2/4/22 Incident (BPD Report No. 22-5522).** Mr. Victim reported to me that you told him BPD has already investigated the 2/4/22 incident (described in detail below) and that BPD is not going to conduct any additional investigation. Did BPD investigate the conduct of Lance Goree, Victim or both? What evidence did BPD consider? It is my impression that Mr. Victim was investigated for PC 242 misdemeanor assault—the charges of which were later dropped. However, it is also my impression that Lance Goree was never investigated, including for PC 242 felony assault or for any other criminal charge. Please advise.

And to be sure, we are not asking BPD to investigate Mr. Goree for PC 664 / 187 attempted murder. I merely indicated that our use-of-force expert in Mr. Victim's civil lawsuit said that Mr. Goree's conduct was so egregious that it might even support such a charge. To the extent there is any confusion, we are requesting that Mr. Goree be investigated for PC 242 felony or misdemeanor assault. If, based on the BPD's investigation, it determines that different criminal charges should be considered, then I assume BPD will do so at its discretion.

2. **BPD is not going to get involved in Mr. Victim's civil lawsuit.** Mr. Victim reported to me that you told him BPD was not going to get involved in his civil lawsuit. Nor are we making such a request. To the extent my email below was unclear, we wrote to request that BPD conduct a criminal investigation into the conduct of Lance Goree. We are not asking the BPD to get involved in any way whatsoever in Mr. Victim's civil suit.
3. **The District Attorney determined that Mr. Goree's conduct did not amount to attempted murder.** Mr. Victim reported to me that you told him the Alameda County District Attorney's Office determined Mr. Goree's conduct amounted to attempted murder. I am given pause at how that could be, given the District Attorney's Office has not investigated the criminality of Mr. Goree conduct on 2/4/22 – it has only investigated Mr. Victim, and determined not to pursue charges against him. Please advise.
4. **The agency responsible for investigating the criminality of Mr. Goree's conduct.** On 12/9/22, I emailed the Alameda County District Attorney's Office to request that it investigate the criminality of Mr. Goree's conduct during the 2/4/22 Incident. On 1/3/23, Erin Kingsbury of the District Attorney's Office provided the following response: "The District Attorney's Office does not conduct investigations as you have requested. Any statements or evidence concerning this incident should be provided directly to the Berkeley Police Department

for follow-up investigation, if appropriate. Upon completion of their investigation, they may present all information to the District Attorney's Office for review and charging consideration. Thank you." To the extent the BPD is not the appropriate agency to be directing our requests, please advise.

5. **Evidence of the 2/4/22 Incident.** Whether BPD has conducted an investigation into the potential criminality of Lance Goree's conduct on 2/4/22 or not, any such investigation without considering the video and audio evidence of the 2/4/22 incident would be incomplete. Here is the media evidence again: (1) [cell phone video footage](#) captured by Mr. Victim's girlfriend, Veronica; (2) [cell phone audio](#) also captured by Veronica (including the minutes preceding the video footage); and (3) [surveillance footage](#) from a YMCA camera inside the cafeteria. All of these links are secure DropBox links to my firm's DropBox account.

Please advise at your earliest opportunity.

Michael Slater



MICHAEL SLATER

Founding Partner

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From: Wilson, Jennifer <JWilson@berkeleyca.gov>
Sent: Tuesday, February 7, 2023 12:22 PM
To: Michael Slater <mslater@theslaterlawfirmapc.com>
Cc: Maldonado, Carlos <CMaldonado@cityofberkeley.info>; Futch, Kajahna <KFutch@cityofberkeley.info>
Subject: RE: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Mr. Slater,

I understand you are representing Mr. Victim in a civil lawsuit stemming from an incident in which he was arrested for misdemeanor battery a year ago.

I also understand your recent request for the Homicide Unit to conduct an investigation into that incident "to determine whether criminal charges should be brought against Mr. Goree for PC 242 felony assault / battery and any other criminal charges."

I reviewed your email, the investigation conducted by Officer Futch and the surveillance and other associated video of the incident. I agree there was sufficient probable cause to arrest your client for assaulting Mr. Goree. In my assessment, your client was the primary aggressor of this incident and escalated a verbal dispute into a physical altercation.

I am also aware there have been several reports of restraining order violations filed against your client since the February 2022 incident.

Further, I reviewed the body camera footage of your client when he contacted police in May 2022 to request an additional investigation and provide video evidence of the February 2022 incident. Your client told Officer Maldonado that he had video of the incident, yet declined to show him the video in entirety. Your client showed Officer Maldonado the portion of the video *after* he assaulted Mr. Goree, despite the officer's requests to see the entire video. Officer Maldonado gave your client a link to upload the full video, which he has not. I have emailed you the same link so that you can do so.

I know this is not the action/result you were looking for on behalf of your client. I recommend you obtain copies of all records and evidence related to these incidents for further detail.

Regards,

Sergeant Wilson

FW: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Michael Slater <mslater@theslaterlawfirmapc.com>

Fri, Feb 10, 2023 at 12:26 PM

To: "Wilson, Jennifer" <JWilson@berkeleyca.gov>

Cc: "Maldonado, Carlos" <CMaldonado@cityofberkeley.info>, "Futch, Kajahna" <KFutch@cityofberkeley.info>, Victim <victim@gmail.com>

Sgt. Wilson,

It remains unclear to me if your office has reviewed all /complete videos of the subject incident. Though I see that you provided me with a link (via Axon) for upload of video evidence. Thank you for the opportunity to do so. I have uploaded those materials for your office's review.

I believe the evidence and governing law support a charge against Mr. Goree for felony assault / battery, misdemeanor assault / battery, aggravated assault / battery (PC 245), or any other criminal charges the BPD determines are appropriate. While we do not disagree that Mr. Victim was the **first** to make physical contact with Mr. Goree, Mr. Goree does not have a self-defense right to use whatever force he wanted to against Mr. Victim in response. For Mr. Goree to have taken Mr. Victim to the ground and/or restrained his movement would have been one thing. That Mr. Goree took Mr. Victim to the ground and used carotid and airway chokeholds—**force that even the BPD would not have been permitted to employ against Mr. Victim**, and for nearly fifteen minutes—is something else entirely and exceeds permissible self defense.

The right to use force against another has long been limited by the condition that the force be no more than “ ‘that which reasonably appears necessary, in view of all the circumstances of the case, to prevent the impending injury.’ ” Vaughn v. Jonas (1948) 31 Cal.2d 586, 600; Boyer v. Waples (1962) 206 Cal.App.2d 725, 727. Mr. Goree's use of force was not reasonably necessary to prevent impending injury. Mr. Goree could have employed different means of restraining Mr. Victim, including arm restraints and other body-control methods, and not including the potentially lethal neck restraints Mr. Goree employed. Mr. Goree was much larger than Mr. Victim. Mr. Victim is much smaller than Mr. Goree and had not weapons on him. Once on the grounds, Mr. Victim was non-violent; his movements were to try to create enough space between his neck and Mr. Goree's stronghold so that he could breathe and stay alive. Mr. Goree was also completely surrounded by other YMCA employees—none of whom were acting with much urgency as the physical nature of the altercation abated just as quickly as it started.

One of the ways a person can commit aggravated assault is by using “force likely to produce great bodily injury.” (Pc,

§ 245, subd. (a)(4).) Great bodily injury is that “which is significant or substantial, not insignificant, trivial or moderate.” People v. Armstrong (1992) 8 Cal.App.4th 1060, 1066. **The use of hands or fists alone may constitute force likely to produce great bodily injury.** People v. Aguilar (1997) 16 Cal.4th 1023, 1028.

California law is replete with examples of cases in which people were criminally charged / convicted for employing a carotid chokehold without sufficient justification, including criminal charges for aggravated assault in violation of Penal Code section 245, subdivision (a)(4). See, e.g., People v. Gomes, 2023 WL 1193032, at *17 (Cal. Ct. 2023), review filed (Jan. 31, 2023); and People v. Becerra, 2020 WL 6110985, at *2 (Cal. Ct. App. Oct. 16, 2020).

In light of the foregoing, I am writing to request your office conduct an investigation into Mr. Goree's conduct in light of

all the facts, evidence and governing law. Thank you very much, and please advise at your earliest opportunity.

Respectfully,

Michael Slater, Esq.



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FW: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Michael Slater <mslater@theslaterlawfirmapc.com>

Mon, Mar 6, 2023 at 4:53 PM

To: "Wilson, Jennifer" <JWilson@berkeleyca.gov>

Cc: "Maldonado, Carlos" <CMaldonado@cityofberkeley.info>, "Futch, Kajahna" <KFutch@cityofberkeley.info>, Victim <victim@gmail.com>

Sgt. Wilson,

Good afternoon. I am writing to follow up on my 2-10-23 email below and evidence submission (videos and audio of incident) on or about the same date. Please advise. Thank you.

Michael Slater

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From: Wilson, Jennifer <JWilson@berkeleyca.gov>

Sent: Friday, March 10, 2023 3:02 PM

To: Michael Slater <mslater@theslaterlawfirmapc.com>

Subject: RE: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Mr. Slater,

I can confirm the items you submitted were received.

I apologize if I was not specific in my email dated 02-07-23. Yes, I reviewed the case file. No, the Homicide Division will not be doing any investigation into this incident.

Sergeant Wilson

FW: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533

Michael Slater <m Slater@theslaterlawfirmapc.com>

Tue, Mar 14, 2023 at 5:41 PM

To: "Wilson, Jennifer" <JWilson@berkeleyca.gov>

Cc: "CMaldonado@cityofberkeley.info" <CMaldonado@cityofberkeley.info>, "KFutch@cityofberkeley.info"

<KFutch@cityofberkeley.info>, "police@cityofberkeley.info" <police@cityofberkeley.info>,

"attorney@cityofberkeley.info"

<attorney@cityofberkeley.info>, "dpa@cityofberkeley.info" <dpa@cityofberkeley.info>, Victim

<victim@gmail.com>, "erin.kingsbury@acgov.org" <erin.kingsbury@acgov.org>

Sgt. Wilson,

I am concerned with how my request—that the Berkeley Police Department (“BPD”) criminally investigate Lance Goree in connection with a physical altercation Goree had with my client, Victim, on 2/4/22—has been handled. For transparency, and in an effort to facilitate resolution, I am copying the Police Accountability Board, the City Attorney’s Office and the District Attorney’s Office to this email. I have also copied other members of the BPD, who I have copied on my previous correspondence to you but, for reasons unknown to me, you have excluded from your email correspondence to me.

To recap our communications to date (most of which are in this email thread):

1. On 1/25/23, I emailed you to introduce myself as Victim’s attorney and to request that BPD investigate a 2/24/22 incident involving Victim and then-YMCA employee, Lance Goree, at the Downtown Berkeley YMCA Residence (2001 Allston Way, Berkeley, CA 94704)—during which time Goree tackled Victim to the ground and strangled Victim for no less than 14 minutes (the “subject incident”). To inform what I anticipated would be BPD’s investigation into the conduct of Goree during the subject incident, I provided you with a copy of Victim’s civil complaint; as well as links to cell phone video footage, video surveillance footage and cell phone audio of the subject incident. I also explained why we believe Goree’s force against Victim was deadly (use of carotid / vascular neck restraint chokehold) and supported criminal charges against Goree – or, at a minimum, a meaningful investigation into the criminality of Goree’s use of force. Additionally, I explained why we believed Goree’s force exceeded the limits of self-defense force. I described Victim’s myriad, life-changing injuries, including: chronic PTSD, depression, anxiety, chronic migraine headaches, post-concussion syndrome, severe chest pain, back pain, neck pain, blurry vision, difficulty breathing and a suspected traumatic brain injury.
2. On 1/25/23, I also called your office and left you a voicemail conveying the information identified in Paragraph 1 (above) and to reiterate my request that BPD investigate the criminality of Goree’s use of force during subject incident.
3. Having received no response from you or anyone at BPD, on 2/6/22, I called your office and left you a voicemail to follow up on my 1/25/22 email and my 1/25/22 voicemail and to reiterate my request that BPD investigate the criminality of Goree’s use of force during subject incident.
4. On 2/6/23, Victim called BPD and was able to speak with you on the phone. Victim conveyed to me that you represented the following to him:

- a. **BPD's Investigation.** You represented that BPD had already investigated the subject incident and, therefore, BPD was not going to conduct additional investigation.
 - b. **District Attorney's Office's Investigation.** You also represented that the District Attorney's Office ("DA's Office") had already determined Goree's conduct was not criminal.
5. On 2/7/23, I emailed you to, among other things, respond to the points you made to Victim during your 2/6/23 phone conversation (Paragraph 4a and 4b), as follows:
 - a. **BPD's Investigation.** I requested clarification with respect to your 2/6/23 representation to Victim that BPD had already investigated the subject incident. I asked you whether BPD investigated the conduct of Victim, Goree, and asked you to please identify the evidence BPD considered.
 - b. **District Attorney's Office's Investigation.** I also asked you how it could possible be, as you represented, that the DA's Office had already determined Goree's conduct was not criminal, when the DA's Office had only investigated Victim in connection with the 2/4/22 incident (and not pursued charges) **and not Goree's use of force.**
 - i. The DA's Office evaluated BPD recommendation that Victim be charged criminally in connection with the subject incident, and declined to pursue charges. The DA's Office has not investigated the criminality of Gore's use of force during the subject incident. When I asked the DA's Office to investigate the potential criminality of Goree's use of force during the subject incident, on 1/3/23, Erin Kingsbury of the DA's Office (copied here for visibility) responded as follows: "The District Attorney's Office does not conduct investigations as you have requested. **Any statements or evidence concerning this incident should be provided directly to the Berkeley Police Department for follow-up investigation, if appropriate.** Upon completion of their investigation, they may present all information to the District Attorney's Office for review and charging consideration. Thank you." (Emphasis added.)
6. On 2/7/23 at 12:22 p.m., you emailed me representing that you reviewed "the surveillance and other associated video of the incident" and, based thereon, that you "agree[d] there was sufficient probable cause to arrest [Victim] for assaulting Mr. Goree." Furthermore, that "[i]n [your] assessment, [Victim] was the primary aggressor of this incident and escalated a verbal dispute into a physical altercation." Your response raises significant concerns, primarily for three reasons:
 - a. First, you had not even reviewed the cell phone video footage, video surveillance footage or cell phone audio of the subject incident. This is made plain by your other statements in your 2/7/22 (12:22 p.m.) email to me: "Your client told Officer Maldonado that he had video of the incident, yet declined to show him the video in entirety. Your client showed Officer Maldonado the portion of the video *after* he assaulted Mr. Goree, despite the officer's requests to see the entire video. Officer Maldonado gave your client a link to upload the full video, which he has not. **I have emailed you the same link so that you can do so.**" (Emphasis added.) (Thereafter, on 2/7/23 at 12:24 p.m., you emailed me an Axon "Evidence Share Request" (No. 2022-00005533), soon after which time I uploaded the cell phone video footage, video surveillance footage and cell phone audio of the subject incident.)

b. Second, even if you had reasonably determined, based on reviewing all the relevant evidence (which

did not occur), that Victim “was the primary aggressor” and “escalated a verbal dispute into a physical altercation[,]” it does not follow therefrom, logically or legally, that Goree did not commit felony assault / battery, misdemeanor assault / battery, aggravated assault / battery (PC 245), or any other criminal act(s). Indeed, in your 2/7/22 12:22 p.m. email, you gave no mention and offered no analysis whatsoever with respect to Goree’s use of force against Victim – which, as explained below, amounted to deadly force. At a minimum, the DA’s Office should have the opportunity to determine if Goree’s fourteen-minute chokehold against Victim was criminal. That the BPD seems bent on standing in the way of that determination is confounding to me.

c. Third, even if you had reasonably determined, based on reviewing all the relevant evidence (which did not occur), that Victim “was the primary aggressor” and “escalated a verbal dispute into a physical altercation[,]” your analysis / reasoning did not even mention the force Goree used against Victim whatsoever – not even in passing. I would have respectfully disagreed with you if you had identified and analyzed Goree’s use of force against Victim and determined it amounted to self-defense (see below), but you did not even attempt to do so. Based on the information available to me and your correspondence, you have appeared to have excused Goree’s force altogether simply based on your conclusion, without watching all relevant evidence, that Victim “was the primary aggressor of this incident and escalated a verbal dispute into a physical altercation.” If I follow that logic, there was no limit to the amount of force Goree could have legally used against Victim in self-defense, because Victim “was the primary aggressor of this incident and escalated a verbal dispute into a physical altercation.” A self-defense defense is more nuanced than that.

7. On 2/10/23, I emailed you to respond to your points made in your 2/7/23 email to me. Specifically:

a. **Deadly Force.** While I do not disagree with your observation that Victim was the **first** to make physical contact with Goree, Goree does not have a self-defense right to use whatever force he wanted to against Victim in response. For Goree to have taken Victim to the ground and/or restrained his movement would have been one thing. That Goree took Victim to the ground and used carotid and airway chokeholds—**deadly force that even the BPD would not have been permitted to employ against Victim**, and for nearly fifteen minutes—is something else entirely and exceeds permissible self-defense.

One of the ways a person can commit aggravated assault is by using “force likely to produce great bodily injury.” (Pc, § 245, subd. (a)(4).) Great bodily injury is that “which is significant or substantial, not insignificant, trivial or moderate.” People v. Armstrong (1992) 8 Cal.App.4th 1060, 1066. The use of hands or fists alone may constitute force likely to produce great bodily injury. People v. Aguilar (1997) 16 Cal.4th 1023, 1028. California law is replete with examples of cases in which people were criminally charged / convicted for employing a carotid chokehold without sufficient justification, including criminal charges for aggravated assault in violation of Penal Code section 245, subdivision (a)(4). See, e.g., People v. Gomes, 2023 WL 1193032, at *17 (Cal. Ct. 2023), review filed (Jan. 31, 2023); and People v. Becerra, 2020 WL 6110985, at *2 (Cal. Ct. App. Oct. 16, 2020).

b. **Self-Defense.** The right to use force against another has long been limited by the condition that the force be no more than “that which reasonably appears necessary, in view of all the circumstances of the case, to prevent the impending injury.” Vaughn v. Jonas (1948) 31 Cal.2d 586, 600; Boyer v. Waples (1962) 206 Cal.App.2d 725, 727. Goree’s use of force was not reasonably necessary to prevent impending injury. Goree could have employed different means of restraining Victim, including

arm restraints and other body-control methods, and not including the potentially-lethal neck restraints Goree employed. Goree was much larger than Victim. Victim is much smaller than Goree and had not weapons on him. Once on the grounds, Victim was non-violent; his movements were to try to create enough space between his neck and Goree's stronghold so that he could breathe and stay alive. Goree was also completely surrounded by other YMCA employees—none of whom were acting with much urgency as the physical nature of the altercation abated just as quickly as it started.

8. On 3/6/23—having received no response from you or anyone at BPD to my 2/10/23 email—I emailed you to request an update regarding BPD's criminal investigation into the criminality of Goree's use of force during the subject incident and BPD's review of the evidence I uploaded through the AXON link you provided to me.
9. On 3/10/23, you emailed me to confirm that you had received the evidenced I uploaded through the AXON link (to be sure, you did not confirm you reviewed it), and to apologize if you were not specific in your 2/7/23 email (pre-dating my upload of evidence), that you "reviewed the case file" and to report: "No, the Homicide Division will not be doing any investigation into this incident." (Emphasis added.)

Based on the foregoing, I am concerned that my request that BPD investigate the criminality of Goree's use of force against Victim during the subject incident is, at best, not being taken seriously—or, worse yet, being disregarded entirely. I remain at a loss how BPD has concluded Victim's conduct during the subject incident gave the officers (who did not even see the altercation but only saw Victim being choked by Goree fourteen minutes after it had started) probable cause to arrest Victim for PC 242 (a criminal charge never even pursued by the DA's Office). At the same time, BPD has concluded, without reviewing the most telling evidence of the subject incident (and not just its aftermath) that Goree is absolved of all criminality. I believe BPD's response to date amounts to a dereliction of its duty to Victim.

***Request for Investigation**

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This email represents my final attempt to request to the BPD that the BPD investigate the criminality of Goree's use of force during the subject incident before seeking judicial intervention through writ petition or otherwise to compel same ("Contemplated Litigation")—though I trust that the latter will not be necessary. This request will expire on 3/28/23, after which time I intend to seek judicial intervention without delay. Please be advised that if judicial intervention is sought through Contemplated Litigation, Victim intends to seek reimbursement of his attorney's fees. Please advise at your earliest opportunity.

***Evidence Preservation**

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This email will also serve as Victim's formal demand that the City of Berkeley and BPD preserve all evidence relating to the Contemplated Litigation. This evidence includes, but is not limited to:

1. Videos the subject incident (including body-worn camera videos);
2. Communications sent to or from the BPD / City (including internal communications) discussing or describing the subject incident;
3. Documents discussing or describing the subject incident;

4. Communications sent to or from the BPD / City (including internal communications) discussing or describing my office's requests that BPD investigate the subject incident;
5. Documents discussing or describing my office's requests for BPD's investigation into the subject incident; and
6. All evidence (including metadata) which indicates precisely when (time-stamped) the cell phone video footage, video surveillance footage and cell phone audio of the subject incident was accessed / viewed by BPD.

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It is imperative that the City of Berkeley and BPD take affirmative steps to preserve all evidence related to the Contemplated Litigation. Failure to preserve evidence, even before litigation is initiated, amounts to spoliation of evidence. See Leon v. IDX Sys. Corp., 464 F.3d 951, 959 (9th Cir. 2006) (quoting United States v. Kitsap Physicians Serv., 314 F.3d 995, 1001 (9th Cir. 2002) ["A party's destruction of evidence qualifies as willful spoliation if the party has 'some notice that the documents were potentially relevant to the litigation before they were destroyed.'"]); Williams

v. Russ, 167 Cal. App. 4th 1215, 1223 (2008) ["Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation."].

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***Notice of Forthcoming California Public Records Act Request**

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This email is also to provide BPD with notice that my office, on Victim's behalf, intends shortly to make a California Public Records Act request for the foregoing six categories of evidence plus evidence directly related to the subject incident (police report, etc.). To be sure, this email **does not constitute said Public Records Act request**, which will instead be made through the City of Berkeley's online NextRequest function.

Thank you for your attention to these matters,

Michael Slater

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