

U.S. Department of Justice
 Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT [REDACTED] Assistant Director (Former) [REDACTED]		CASE NUMBER [REDACTED]	
OFFICE CONDUCTING INVESTIGATION Washington Field Office		DOJ COMPONENT Federal Bureau of Investigation	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office WFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component FBI <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI), Inspection Division (INSD), on [REDACTED], alleging that then FBI Assistant Director [REDACTED], inappropriately touched [REDACTED], following an after-work happy hour [REDACTED], at a local bar attended by staff members [REDACTED].

During the course of the investigation, the OIG found indications that [REDACTED] may also have improperly stored his firearm in an unsecure manner inside his vehicle, [REDACTED].

The OIG investigation substantiated the allegation that [REDACTED] sought an improper intimate relationship with [REDACTED] who was his subordinate, sexually harassed [REDACTED] and failed to properly secure his firearm, in violation of FBI policy Offense Codes: 5.10 – Improper Relationship With a Subordinate; 5.20 – Sexual Harassment; 5.21 – Unprofessional Conduct Off-Duty; FBI Firearms Policy Directive and Policy Guide paragraph 4.1.2.4 – Security of Firearms in Vehicles; and DOJ’s zero tolerance policy on harassment [REDACTED].

[REDACTED] told the OIG that [REDACTED] she attended a happy hour arranged by [REDACTED] at a bar [REDACTED]. After approximately two hours at the bar, she accepted [REDACTED] offer to drive her to her apartment, [REDACTED]. According to [REDACTED].

DATE	April 13, 2020	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT	[REDACTED]		
DATE	April 13, 2020	SIGNATURE	 Digitally signed by RUSSELL CUNNINGHAM Date: 2020.04.13 14:49:15 -04'00'
APPROVED BY SPECIAL AGENT IN CHARGE	Russell W. Cunningham		

[REDACTED], upon arriving at her apartment building, [REDACTED] asked to use her bathroom. [REDACTED] said she agreed to let him do so [REDACTED] and that, upon entering a closed stairwell leading to [REDACTED] apartment, [REDACTED] put his arm around [REDACTED] waist and as they walked up the stairs, [REDACTED] pulled her close to him and moved his hand down onto her "bottom." [REDACTED] said she was unable to pull away from [REDACTED] because of the narrowness of the stairwell, but tried to "hustle up the stairs." [REDACTED] told the OIG that [REDACTED] went into the bathroom in her apartment but that she did not hear him actually use it or flush the toilet, and afterwards she escorted him down to the lobby and he departed.

[REDACTED], was also interviewed by the OIG. [REDACTED] told the OIG that she was in [REDACTED] living room working on her computer when [REDACTED] and [REDACTED] arrived. [REDACTED] said she saw [REDACTED] s arm around [REDACTED] waist as they entered the apartment. [REDACTED] told the OIG that after [REDACTED] used [REDACTED] bathroom, he left the apartment. [REDACTED] subsequently called [REDACTED] FBI issued cell phone numerous times because he could not find where he had parked his vehicle. [REDACTED] told [REDACTED] where [REDACTED] had parked, so [REDACTED] went downstairs and located [REDACTED] vehicle. [REDACTED] subsequently saw [REDACTED] walking toward her and directed him to his vehicle [REDACTED] said that during this encounter [REDACTED] spoke to her in a rude and aggressive manner.

[REDACTED] was questioned by the OIG and acknowledged he arranged the happy hour event for his staff and that afterwards he offered [REDACTED] a ride home, which she accepted. [REDACTED] told the OIG that upon arriving at her [REDACTED] apartment building, he requested to use the bathroom in her apartment. [REDACTED] told the OIG that he placed his arm around [REDACTED] shoulder while walking up the stairs because of its narrowness. [REDACTED] denied pulling [REDACTED] close to him when his arm was around her and also denied placing his hand on [REDACTED] buttocks. [REDACTED] eventually conceded that it was possible that he had his arm around [REDACTED] waist based upon [REDACTED] observation.

[REDACTED] retired from his position at the FBI [REDACTED]

[REDACTED] the U.S Attorney's Office [REDACTED] declined criminal prosecution of [REDACTED].

The OIG has completed its investigation and all criminal and administrative actions are complete. The OIG is providing this report to the FBI for its information.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

DETAILS OF INVESTIGATION

Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI), Inspection Division (INSD), on [REDACTED], alleging that then FBI Assistant Director [REDACTED], inappropriately touched [REDACTED], following an after-work happy hour at a local bar attended by staff members [REDACTED].

During the course of the investigation, the OIG found indications that [REDACTED] may also have improperly stored his firearm in an unsecure manner inside his vehicle, [REDACTED].

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following FBI personnel:

- [REDACTED], Assistant Director;

- [REDACTED]
- [REDACTED]

Interview of:

- [REDACTED]

Review of the following:

- [REDACTED] incoming cellphone calls and text messages;
- [REDACTED] Apartments [REDACTED] (apartment complex) surveillance video.

[REDACTED] Sought an Improper Intimate Relationship with and Sexually Harassed [REDACTED]

The information provided to the OIG alleged that [REDACTED], in the stairwell of [REDACTED] apartment building, [REDACTED] inappropriately touched [REDACTED] on the buttocks.

The applicable FBI Offense Codes and Penalty Guidelines Governing FBI - Internal Disciplinary Process are as follows:

Offense Code 5.10 – Improper Relationship With a Subordinate: Engaging in or seeking a romantic or intimate relationship with a subordinate.

Offense Code 5.20 – Sexual Harassment: Making unwelcomed or unwanted sexual advances or engaging in physical conduct of a sexual nature.

Offense Code 5.21 – Unprofessional Conduct Off-Duty: Engaging in conduct, while off duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgment or character of the employee; or compromises the standing of the employee among his peers or community.

The Department of Justice has a zero tolerance policy with respect to harassment, including sexual harassment. Unwelcome sexual advances and verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. See Deputy Attorney General Rod J. Rosenstein Memorandum for Heads of Department Components, *Sexual Harassment and Sexual Misconduct*, April 30, 2018, citing DOJ Order 1200.2 and <https://www.justice.gov/jmd/eeos/sexual-harassment>. But the Department does not wait for a pattern of offensive conduct to emerge before addressing claims of harassment. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act, 29 C.F.R. § 1604.11.

[REDACTED], the OIG interviewed [REDACTED] who said that [REDACTED], she attended a group/networking happy hour [REDACTED]. [REDACTED] said the event was arranged and attended by [REDACTED] the Assistant Director under whom she served, as well as other [REDACTED] staff. [REDACTED] told the OIG that [REDACTED] had personally encouraged her to attend. [REDACTED] said that after spending approximately two hours [REDACTED], where [REDACTED] said she two to three glasses of wine, she accepted [REDACTED] offer to give her a ride home to her apartment. [REDACTED] explained that consuming such an amount of alcohol was not unusual for her. [REDACTED] told the OIG that she saw [REDACTED] drinking with everyone else at the bar, but that he "seemed normal" and [REDACTED] was not concerned about him driving her home. Upon getting into his vehicle, [REDACTED] said [REDACTED] took his gun off his person and put it in the backseat.

During the drive to her house, [REDACTED] said that she did not feel like [REDACTED] was unable to drive and that he seemed fine. [REDACTED] said that, upon arriving at her apartment, [REDACTED] asked to use her bathroom. [REDACTED] agreed [REDACTED] she thought it was strange that [REDACTED] would request to use her restroom. [REDACTED] said that [REDACTED] attempted to parallel park once, but since the spot was too small, he found another spot in which he parallel parked without any issues. Again, [REDACTED] said that he was acting normal and she had "no concern that he's inebriated."

After [REDACTED] parked his vehicle, [REDACTED] and [REDACTED] proceeded into [REDACTED] apartment building. According to [REDACTED], as they were walking through the lobby, [REDACTED] asked [REDACTED] if [REDACTED] would mind him "coming over." [REDACTED] said she gave him a look as if to say he was only using the bathroom and said at this point she realized [REDACTED] did not want to just use the restroom and became nervous he had further sexual intentions. Due to her not wanting to be alone with [REDACTED] in the elevator, [REDACTED] said she chose to take the stairs where she would not be confined with him. [REDACTED] said that upon entering the stairwell [REDACTED] put his arm around her waist and, as they walked up the stairs, [REDACTED] pulled her close to him and moved his hand down onto her "bottom." [REDACTED] said she was unable to pull away from [REDACTED] because of the narrowness of the stairwell, but tried to "hustle up the stairs." [REDACTED] told the OIG that she didn't consider what [REDACTED] did as "groping," but rather just physical contact. However, [REDACTED] told the OIG that she believed she had been sexually assaulted with the unwanted touching by [REDACTED].

A review of [REDACTED] Apartment building's surveillance video showed [REDACTED] and [REDACTED] walking into the apartment lobby together, and that [REDACTED] appeared to be stable on his feet. [REDACTED] also appeared stable on her feet. The video did not show any physical contact between them in the entryway. There was no video coverage of the stairwell.

[REDACTED] said that [REDACTED], was present in the apartment when she and [REDACTED] entered the apartment. [REDACTED] told us that she allowed [REDACTED] to use the bathroom in her apartment and

immediately afterwards she escorted him down to the lobby via the stairwell, and he departed the building without any issue. [REDACTED] added that since she did not hear [REDACTED] using the bathroom or the flushing of the toilet, she surmised that [REDACTED] never actually used it.

[REDACTED] said she then returned to the apartment and that she began receiving repeated phone calls to her FBI issued cell phone from a number she assumed was [REDACTED]. [REDACTED] explained that she had a brand new work phone so she did not have any numbers programmed and no one else knew her phone number but [REDACTED]. [REDACTED] said she did not answer the initial calls, but on the fifteenth call, [REDACTED] answered [REDACTED] phone and spoke with [REDACTED]. [REDACTED] told [REDACTED] that [REDACTED] had said that he was unable to locate his car. [REDACTED] said that at this point [REDACTED] concluded [REDACTED] was drunk. [REDACTED] told [REDACTED] where they had parked and suggested to [REDACTED] that [REDACTED] offer to call an Uber for [REDACTED], so [REDACTED] left the apartment to help [REDACTED] find his car. According to [REDACTED], she was told by [REDACTED], when [REDACTED] returned to the apartment, that [REDACTED] had gone outside, located [REDACTED] car and subsequently encountered [REDACTED], who was allegedly aggressive and rude with her before leaving in his car.

The OIG's review of [REDACTED] cell phone determined that on [REDACTED] there were 15 incoming calls from the phone number associated with [REDACTED] cell phone. Additionally, [REDACTED] received a garbled text message from the number associated with [REDACTED]. The OIG reviewed the message, which read: "I am at corner of [REDACTED] I took the left left and left drim the apt complex and no clue where car is." [REDACTED] told the OIG that she did not realize she had received the text message at the time and only noticed it later.

According to [REDACTED], the following day at the office, [REDACTED] told her something to the effect that he had "too many" drinks and that he was sorry he called so many times last night. [REDACTED] also told [REDACTED] that he had issues trying to find his car because all the streets looked the same. [REDACTED] told her that it took him two hours to get home because of traffic. [REDACTED] said that she did not believe that it would take him two hours to get home since he lived in [REDACTED].

[REDACTED] added that she attended a training session a few days later and spoke with [REDACTED] from her office, who had attended the happy hour [REDACTED]. According to [REDACTED], [REDACTED] casually mentioned to [REDACTED] something to the effect that she had never seen [REDACTED] have so many drinks as he had at the [REDACTED] event.

[REDACTED], the OIG interviewed [REDACTED]. [REDACTED] told the OIG that she was in the apartment when [REDACTED] and [REDACTED] arrived the evening of [REDACTED]. [REDACTED] was in the living room working on her computer when [REDACTED] and [REDACTED] arrived. [REDACTED] said she observed [REDACTED] arm around [REDACTED] waist as they came into the apartment. [REDACTED] then directed [REDACTED] to the bathroom and looked at [REDACTED] in a manner that [REDACTED] felt indicated [REDACTED] was uncomfortable with something. [REDACTED] said that immediately after [REDACTED] returned from the bathroom, [REDACTED] escorted [REDACTED] downstairs.

[REDACTED] said that, when [REDACTED] returned to the apartment, [REDACTED] was visibly upset. [REDACTED] told the OIG that she was attempting to console [REDACTED] and find out what happened, when [REDACTED] FBI cell phone began ringing repeatedly from numerous calls. [REDACTED] said that she eventually answered [REDACTED] phone and spoke with [REDACTED], who told her he was unable to locate his car. [REDACTED] told [REDACTED] where [REDACTED] had parked the car, so [REDACTED] went down to the street to assist [REDACTED]. According to [REDACTED], [REDACTED] sent a text message to [REDACTED] FBI phone, which [REDACTED] showed her and which indicated that [REDACTED] was approximately four blocks from where his car was parked. [REDACTED] said she located [REDACTED] car about one block from their apartment building. [REDACTED] told us that as [REDACTED] eventually approached her, [REDACTED] indicated to [REDACTED] where his car was parked and asked him if he wanted her to call an Uber for a ride home [REDACTED] said

█████ responded in a demeaning and rude manner to her saying he did not need a ride home. █████ described █████ as making “himself larger” as he approached her in what she felt was an attempt to intimidate her.

The OIG interviewed █████ who confirmed that she attended the happy hour █████, was there for approximately an hour, and only briefly spoke with █████. █████ confirmed that █████ was drinking alcohol, but could not recall what type of alcoholic drink or how many drinks he consumed. █████ denied that she witnessed any signs of impairment and denied that she made the comments to █████ about █████ having so many drinks.

█████, the OIG attempted to conduct a voluntary sworn interview of █████. █████ told the OIG that he did not wish to be placed under oath or recorded until he had more information about potential charges. Nonetheless, █████ continued speaking with the OIG and voluntarily answered the OIG’s questions. During his unsworn interview, █████ acknowledged he organized a happy hour social event at a local bar with FBI staff members. Unsolicited, █████ told the OIG that it was not a good idea. █████ also confirmed that he gave █████ a ride home after the happy hour event. █████ told the OIG that upon arriving at her residence, an apartment building █████ he requested to use her bathroom. █████ said he parked his vehicle and they quickly went into the building, taking the stairs to her apartment. █████ told the OIG that they went into █████ apartment █████ used the bathroom, and left afterwards. After █████ reviewed a draft of this report, he denied to the OIG ever using the words “coming over” as described by █████ (see page 4).

When asked specifically about the events inside the stairwell of █████ apartment building, █████ described his actions and how narrow the stairwell was and simultaneously motioned with his arms as if he were reaching around something. When asked if he was putting his arms around someone and if he placed his arm around █████ as they went up the stairs, █████ acknowledged that he placed his arm around her. █████ stated that he placed his arm around her shoulders because of the narrowness of the stairwell. When the OIG asked █████ if he could have placed his arm around her waist, █████ replied that he did not recall doing it. █████ denied pulling █████ close to him as they went up the stairs and denied putting his hand on █████ buttocks. █████ told the OIG that if he had placed his arm around her as they went up the stairs he did so without “intent,” because he did not intend to do anything. █████ also said that he did not think he had his arm around █████ waist upon entering the apartment. When █████ was told █████ saw his arm around her waist, █████ conceded that his arm might have been around █████ waist. After █████ reviewed a draft of this report, he provided a new account of where he placed his hands on █████ body and his reason for doing so. █████ told the OIG that he “placed [his] hand in the small of █████ back near her waist” because she “was wobbling” due to her alcohol consumption and he was trying to prevent her “from falling down the stairs.” OIG’s review of the apartment building’s lobby surveillance video showed that both █████ and █████ were stable on their feet in the lobby.

█████ also described for the OIG the difficulty that he had locating his vehicle upon exiting █████ apartment building, but contended that he was unable to locate the vehicle because he had quickly parked it when they arrived and then entered the building promptly due to the cold weather and his need to use the bathroom. █████ said that because he had quickly gone into the building, and due to both the construction in the area and all the buildings looking similar, he was unable to recall where he parked. █████ explained how he called numerous times to the apartment for assistance in locating his vehicle and sent a text message to █████ with his location and told her he was lost. █████ said he subsequently came upon █████ who directed him to his vehicle. █████ told the OIG █████ offered to call an Uber and suggested that he get a room at a nearby hotel. █████ told her he did not need an Uber or the use of a hotel, got into his vehicle, and went home. █████ denied there was any confrontation, or hostile or otherwise uncomfortable exchange with █████ upon locating his vehicle.

██████ denied to the OIG that he was inebriated. The OIG asked ██████ if he believed that he was able to drive and he said he was, adding that it took him nearly two hours to return home because of traffic.

██████ acknowledged that he was very embarrassed by this event and that Assistant Directors should not be putting themselves in these situations. When asked by the OIG how he might have avoided this situation, ██████ replied that he could have avoided the situation by using the bathroom in the lobby of the apartment building.

██████ retired from his position at the FBI ██████.

██████, the U.S Attorney's Office for the ██████ declined criminal prosecution of ██████.

OIG's Conclusion

The OIG investigation concluded that ██████ actions constituted administrative misconduct in violation of FBI policy (FBI Offense Codes 5.10 – Improper Relationship With a Subordinate; 5.20 – Sexual Harassment; and 5.21 – Unprofessional Conduct Off-Duty) and DOJ's zero tolerance policy on harassment. The OIG substantiated the allegation of seeking an improper relationship with a subordinate and sexual harassment based upon ██████ encouraging his subordinate to attend a happy hour involving alcohol, offering her a ride home after they consumed the alcohol, creating a reason to go to her apartment unnecessarily, asking if ██████ would mind him "coming over," and then, once they entered her apartment building, putting his arm around her waist without her consent. Whether or not ██████ also placed his hand on ██████ buttocks, ██████ violated FBI policy, because FBI policy prohibits an FBI supervisor from seeking an intimate relationship with a subordinate. Further, both FBI and DOJ policy prohibit an FBI employee from making unwelcomed or unwanted sexual advances, as the OIG found occurred here. The fact that ██████ told the OIG that he was embarrassed about the events of the evening further demonstrates that his actions were in violation of FBI policy related to Improper Relationship with a Subordinate, Sexual Harassment, and Unprofessional Conduct Off-Duty. It also violated the DOJ's zero tolerance policy on harassment.

Stored His Firearm Inside His Vehicle Unsecured, ██████

During the course of the investigation, the OIG found indications that ██████ may also have improperly stored his firearm in an unsecure manner inside his vehicle. ██████

The FBI Firearms Policy Directive and Policy Guide paragraph 4.1.2.4 Security of Firearms in Vehicles states:

outside of emergency or exigent circumstances, a firearm must never be left unsecured or unattended in the passenger compartment of a car, a truck, or a sport utility vehicle (SUV) [The entire interior compartment of a vehicle is considered the passenger compartment.] unless (1) the firearm is affixed to the vehicle via a locked firearms mount or within a locked security container (preferably constructed of metal); (2) the firearms mount or container is secured to the vehicle itself; and (3) the vehicle is equipped with an alarm, a manufacturer's theft-deterrent system, or a similar anti-theft

device.

The FBI Alcohol Policy Guide paragraph 1.1.1 prohibits FBI employees from operating any motor vehicle, while under the influence of alcohol; or from carrying a firearm when impaired by the consumption of alcohol. The FBI Guide defines “under the influence” as “when, as a result of drinking any amount of alcohol, [individuals’] mental or physical faculties are so impacted as to reduce their ability to think and act with ordinary care.” The FBI Guide defines “impaired” as “when an individual’s faculties are diminished so that their ability to see, hear, walk, talk and judge distances is below the normal levels as set by local, state and federal law.”

During the OIG’s interview of [REDACTED] she said that after spending approximately two hours at [REDACTED], she accepted [REDACTED] offer to give her a ride to her apartment. [REDACTED] told the OIG that she saw [REDACTED] drinking with everyone else at the bar, but that he “seemed normal” and was not concerned about him driving her home. Upon getting into his vehicle, [REDACTED] said [REDACTED] took his gun off and put it in the backseat. During the drive to her residence and after two efforts to parallel park, [REDACTED] said that she did not feel like [REDACTED] was unable to drive and said that he was acting normal and she had “no concern that he’s inebriated.”

A review of the video surveillance at [REDACTED] apartment building of [REDACTED] and [REDACTED] walking into the apartment lobby together did not indicate that [REDACTED] was unstable on his feet.

After [REDACTED] escorted [REDACTED] from her apartment, [REDACTED] received fifteen phone calls to her FBI issued cell phone from [REDACTED]. On the fifteenth call, [REDACTED] answered [REDACTED] phone and spoke with [REDACTED], who told her that he was unable to locate his car. [REDACTED] said that at this point she concluded [REDACTED] was drunk. [REDACTED] told [REDACTED] where [REDACTED] parked and told her to offer to call an Uber for [REDACTED]. [REDACTED] told [REDACTED] that she, located his car and subsequently encountered [REDACTED] who was allegedly aggressive and rude with her before leaving in his car.

[REDACTED] confirmed she answered [REDACTED] phone and spoke with [REDACTED], who told her he was unable to locate his car. [REDACTED] told [REDACTED] where [REDACTED] parked the car, so [REDACTED] went down to the street to assist [REDACTED]. As [REDACTED] eventually approached [REDACTED], she indicated to [REDACTED] where his car was parked and asked him if he wanted her to call an Uber for a ride home. [REDACTED] said [REDACTED] responded in a demeaning and rude manner to her saying he did not need a ride home. [REDACTED] described [REDACTED] as making “himself larger” as he approached her in what she felt was an attempt to intimidate her.

According to [REDACTED], the following day at the office, [REDACTED] told her something to the effect that he had “too many” drinks and that he was sorry he called so many times last night. [REDACTED] also told [REDACTED] that he had issues trying to find his car because all the streets looked the same. [REDACTED] told her that it took him two hours to get home because of traffic. [REDACTED] said that she did not believe that it would take him two hours to get home since he lived in [REDACTED]. After [REDACTED] reviewed a draft of this report, he told the OIG that the day after the event he told [REDACTED] that he “was ‘sorry,’ and nothing more.” Though his recollection of what he said to [REDACTED] conflicts with her uncertain recollection about what he said, his statement does corroborate her statement that he apologized to her the next day.

[REDACTED] added that she attended a training session a few days later and spoke with [REDACTED] from her office, who had attended the happy hour [REDACTED]. According to [REDACTED], [REDACTED] casually mentioned to [REDACTED] something to the effect that she had never seen [REDACTED] have so many drinks as he had at the [REDACTED] event.

The OIG’s review of [REDACTED] cell phone determined that on [REDACTED]

█ began at a bar where █ consumed alcohol. █ was unable to locate his car after leaving █ apartment; and █ told the OIG that it took him two hours to drive approximately 15 miles from her apartment to his home.