

REPORT OF INVESTIGATION

SUBJECT (b)(6); (b)(7)(C) Assistant U.S. Attorney (b)(6); (b)(7)(C)		CASE NUMBER 2021-003768	
OFFICE CONDUCTING INVESTIGATION Dallas Field Office		DOJ COMPONENT Executive Office for U.S. Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office DFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOUSA <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 U.S. Attorney's Office (USAO) (b)(6); (b)(7)(C) alleging that on (b)(6); (b)(7)(C) Assistant U.S. Attorney (AUSA) (b)(6); (b)(7)(C) indecently exposed himself and sexually assaulted civilian (b)(6); (b)(7)(C) during their second date. The OIG conducted this investigation jointly with the (b)(6); (b)(7)(C) Police Department (b)(6); (b)(7)(C).

The OIG investigation substantiated that (b)(6); (b)(7)(C) intentionally exposed his penis to (b)(6); (b)(7)(C) in public and sexually assaulted (b)(6); (b)(7)(C) by forcing her hand onto his penis, in violation of (b)(6); (b)(7)(C) criminal law, and that (b)(6); (b)(7)(C) off-duty misconduct also violated federal regulations and the Department's Memorandum, "Off-Duty Conduct," dated January 29, 2016. The OIG investigation also substantiated that (b)(6); (b)(7)(C) lacked candor with the OIG.

In a voluntary interview, (b)(6); (b)(7)(C) stated that during a second date with (b)(6); (b)(7)(C) in the (b)(6); (b)(7)(C) exposed his penis to her in public and subsequently grabbed and forced her hand onto his penis. The (b)(6); (b)(7)(C) reviewed available video surveillance recordings for (b)(6); (b)(7)(C) in the (b)(6); (b)(7)(C) where (b)(6); (b)(7)(C) indecent exposure and sexual assault of (b)(6); (b)(7)(C) allegedly occurred but was unable to locate footage that captured (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told the OIG there were other persons present in the (b)(6); (b)(7)(C) that evening, but none witnessed the alleged incident. A review of text messages from (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) personal cell phones,

DATE	August 8, 2022	SIGNATURE	(b)(6); (b)(7)(C)
PREPARED BY SENIOR SPECIAL AGENT	(b)(6); (b)(7)(C)		
DATE	August 8, 2022	SIGNATURE	Cloey Chaney Pierce Digitally signed by CLOEY PIERCE DN: c=US, o=U.S. Government, ou=Dept of Justice, ou=OIG, cn=CLOEY PIERCE, 0.9.2342.19200300.100.1.1=15001002964462 Date: 2022.08.08 13:07:51 -05'00'
APPROVED BY SPECIAL AGENT IN CHARGE	Cloey C. Pierce		

which the OIG reviewed with their consent, revealed one text message exchange dated (b)(6); (b)(7)(C), in which (b)(6); (b)(7)(C) confronted (b)(6); (b)(7)(C) regarding his exposure of his penis to her in public and (b)(6); (b)(7)(C) apologized, without admitting or denying the allegation. (b)(6); (b)(7)(C) sent (b)(6); (b)(7)(C) another text message on (b)(6); (b)(7)(C) in which he denied (b)(6); (b)(7)(C) allegations, in part, while acknowledging that (b)(6); (b)(7)(C) had touched his penis on the evening of (b)(6); (b)(7)(C)

In voluntary and compelled OIG interviews, (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) voluntarily placed her hand on his penis for approximately one to two seconds while they kissed on a public street. (b)(6); (b)(7)(C) initially stated that, for a variety of reasons, he could not conclusively recall whether his penis was exposed outside of his clothing or whether (b)(6); (b)(7)(C) touched his penis over or underneath his clothing. (b)(6); (b)(7)(C) stated reasons for why he was not sure were that he was unable to specifically recollect due to the passage of time, that he was not looking down during the incident, that his eyes were closed, and that the incident occurred in a fleeting moment. However (b)(6); (b)(7)(C) was able to recall various other specific details of the evening immediately before and after the incident. During a second OIG interview, which was compelled (b)(6); (b)(7)(C) acknowledged that it was possible that the tip of his penis was exposed in public while (b)(6); (b)(7)(C) touched it; however (b)(6); (b)(7)(C) denied that he intentionally exposed his penis to (b)(6); (b)(7)(C) or that he sexually assaulted (b)(6); (b)(7)(C) by forcing her hand to touch his penis during their date on (b)(6); (b)(7)(C)

The District Attorney's Office (b)(6); (b)(7)(C) declined criminal prosecution of (b)(6); (b)(7)(C)

The OIG has completed its investigation and is providing this report to EOUSA and DOJ's Office of Professional Responsibility for appropriate action.

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 U.S. Attorney's Office (USAO) [REDACTED] alleging that on [REDACTED] Assistant U.S. Attorney (AUSA) [REDACTED] indecently exposed himself and sexually assaulted civilian [REDACTED] during their second date. The OIG conducted this investigation jointly with the [REDACTED] Police Department [REDACTED]

Investigative Process

The OIG's investigative efforts consisted of the following:

Interview of the following EOUSA personnel:

- [REDACTED] Assistant U.S. Attorney

Interview of the following personnel:

- [REDACTED] civilian

Review of the following:

- Text messages for [REDACTED] personal cell phone
- Text messages for [REDACTED] personal cell phone
- [REDACTED] surveillance system video

(b)(6); (b)(7)(C) Indecent Exposure in Public, Subsequent Sexual Assault of (b)(6); (b)(7)(C) and Lack of Candor to the OIG

The information provided to the OIG alleged that on (b)(6); (b)(7)(C) indecently exposed his penis and sexually assaulted (b)(6); (b)(7)(C) in the (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Obscenity, states in pertinent part: "The crime of obscenity is the intentional: (1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive."

(b)(6); (b)(7)(C) Sexual battery, states in pertinent part: "A. Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when any of the following occur: (1) The offender acts without the consent of the victim."

5 C.F.R. § 735.203, Conduct prejudicial to the Government, states: "An employee shall not engage in criminal, infamous dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

Memorandum from the Assistant Attorney General for Administration and Designated Agency Ethics Official: "Off-Duty Conduct," dated January 29, 2016, provides in pertinent part: "Higher-level employees and those entrusted with sensitive responsibilities, including attorneys and law enforcement officers, are subject to closer scrutiny and greater potential discipline for off-duty misconduct reflecting on honesty and integrity than those employees with less responsibilities."

(b)(6); (b)(7)(C) told the OIG she met (b)(6); (b)(7)(C) through the online dating application "Tinder" and they met for their first date on (b)(6); (b)(7)(C). Their date concluded at (b)(6); (b)(7)(C) residence where (b)(6); (b)(7)(C) stated that they had consensual oral sex. (b)(6); (b)(7)(C) further stated that on their second date on (b)(6); (b)(7)(C) repeatedly steered the conversation toward public sex. She stated that while they were walking in the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) exposed his genitals in public and forced her hand to touch his penis on two occasions. According to (b)(6); (b)(7)(C) as she and (b)(6); (b)(7)(C) walked through the (b)(6); (b)(7)(C) they stopped and kissed and then continued walking. (b)(6); (b)(7)(C) said that at some point (b)(6); (b)(7)(C) dropped behind (b)(6); (b)(7)(C) huddled around her from behind, exposed his penis, and forced (b)(6); (b)(7)(C) to touch his penis with her hand. (b)(6); (b)(7)(C) stated she walked away and told (b)(6); (b)(7)(C) "no," that it was cold outside, and that she was not interested in having sex in public with him. (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) attempted a second time to force her hand on his penis, at which point she pulled on his exposed penis to hurt him and send him the message that she was not interested. (b)(6); (b)(7)(C) observed (b)(6); (b)(7)(C) putting his penis back into his pants. (b)(6); (b)(7)(C) stated there were no witnesses nearby when this occurred. (b)(6); (b)(7)(C) said they continued to walk together and (b)(6); (b)(7)(C) gave her a ride in his car back to where her car was parked. (b)(6); (b)(7)(C) stated she offered to go back to (b)(6); (b)(7)(C) residence that evening and he declined. (b)(6); (b)(7)(C) stated she gave (b)(6); (b)(7)(C) condoms she had purchased and brought with her on the date and told him maybe they could use those together on another occasion. (b)(6); (b)(7)(C) stated the date concluded with a kiss good night in the car. (b)(6); (b)(7)(C) claimed that it was not until she sat alone in her car that she realized what (b)(6); (b)(7)(C) had done to her was wrong. (b)(6); (b)(7)(C) stated that when she arrived at her residence, she confronted (b)(6); (b)(7)(C) via text message regarding the incident. According to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) apologized for how she felt but (b)(6); (b)(7)(C) did not apologize for his conduct. According to (b)(6); (b)(7)(C) her motivation to report (b)(6); (b)(7)(C) misconduct was to hold him accountable for his actions that night and not to cause any hardship in (b)(6); (b)(7)(C) personal or professional life.

A review of available video surveillance in the [REDACTED] [REDACTED] did not capture [REDACTED] and [REDACTED] based on the approximate time, location, and articles of clothing worn that were provided by [REDACTED]

In a voluntary OIG interview, [REDACTED] stated that on their second date, he and [REDACTED] stopped in the [REDACTED] on three occasions. On the first two stops they kissed and “made out.” According to [REDACTED] [REDACTED] had raised the idea of them having public sex together when she talked about the previous times she had done so with other partners. [REDACTED] stated that on the third stop, [REDACTED] voluntarily placed her hand on his penis for approximately one to two seconds; however, [REDACTED] stated that he could not conclusively recall whether [REDACTED] hand was inside or outside of his pants. When asked to recount the details of this incident, [REDACTED] claimed that he could not conclusively recall if his penis was exposed outside of his clothing, if his pants were buttoned or unbuttoned, or if [REDACTED] touched his penis over or underneath his clothing. [REDACTED] offered a variety of reasons for his inability to recall these details that included memory lapse due to the passage of time, that he was not looking down during the incident, that his eyes were closed, and that the incident occurred in a fleeting moment. However, [REDACTED] conclusively recalled that he never intentionally exposed his penis to [REDACTED]

In a later compelled OIG interview, [REDACTED] stated that it was possible that “the tip of my penis, at most, could have come up kind of while my pants were buttoned up there.” In contrast to his inability to recall whether his penis was inside or outside his clothing, [REDACTED] was able to recall numerous specific details of the evening prior to his alleged indecent exposure and assault of [REDACTED] [REDACTED] stated that before meeting [REDACTED] he recalled eating lamb pasta at a restaurant located on [REDACTED] with a friend. [REDACTED] recalled meeting [REDACTED] at [REDACTED] at [REDACTED] a restaurant and bar in the [REDACTED] and noted that [REDACTED] was sitting by a window and facing the restaurant. [REDACTED] recalled paying for two drinks at [REDACTED] [REDACTED] recalled that [REDACTED] told him about public sex involving a pastor’s son in a movie theater, and about her visiting hot tubs in Taos, New Mexico. Similarly, [REDACTED] was able to recall numerous specific details of the evening immediately following the incident. [REDACTED] stated that he and [REDACTED] walked to [REDACTED] where he showed [REDACTED] his friend’s studio and they discussed the size of the unit and location. [REDACTED] estimated that after the pair stopped to make out and [REDACTED] touched his penis, they spent another 25 minutes together, between walking around the [REDACTED] and sitting and talking in his car after he gave her a ride back to where she had parked her car. [REDACTED] stated he only had one drink that evening and was not intoxicated.

The OIG reviewed text message exchanges between [REDACTED] and [REDACTED] personal cell phones, which revealed identical text message exchanges between them. In a text message exchange, dated [REDACTED] [REDACTED] confronted [REDACTED] regarding his exposure of his penis to her in public. [REDACTED] immediately responded to [REDACTED] via text message and expressed his remorse for making her feel uncomfortable; however, [REDACTED] did not admit or deny having exposed his penis to [REDACTED]. The OIG also reviewed a text message from [REDACTED] to [REDACTED] dated [REDACTED] in which [REDACTED] denied [REDACTED] allegations in part, and stated, “Very shortly afterward, we started to kiss again and your hand was on my penis for no more than two seconds. We then stopped touching and walked back into [REDACTED]

[REDACTED] text messages to [REDACTED] on [REDACTED] [REDACTED] did not admit or deny that [REDACTED] exposed his penis in public or forced [REDACTED] hand onto his penis. During his compelled OIG interview, [REDACTED] stated that he did not deny [REDACTED] accusations when he responded to her text messages on [REDACTED] because he was “dealing with a woman who was in an emotional state” and he felt that any denial on his part at that time would inflame the situation. [REDACTED] stated that after consulting a family member who was a lawyer over the weekend, he responded to [REDACTED] again via text message on [REDACTED] denying her “outrageous” accusations.

As of [REDACTED] [REDACTED] had been serving as an AUSA for approximately [REDACTED]

The District Attorney's Office [REDACTED] declined criminal prosecution of [REDACTED]

OIG's Conclusion

The OIG investigation concluded that [REDACTED] intentionally exposed his penis in public with the intent of sexual arousal, in violation of [REDACTED] Obscenity, [REDACTED] forced [REDACTED] hand onto his penis, in violation of [REDACTED] Sexual battery, and [REDACTED] engaged in this off-duty misconduct, in violation of 5 C.F.R. § 735.203, Conduct prejudicial to the Government, and the Department's Memorandum, "Off-Duty Conduct," dated January 29, 2016. The OIG investigation also concluded that [REDACTED] lacked candor with the OIG when interviewed about these events.

Both [REDACTED] and [REDACTED] told the OIG that while walking in the [REDACTED] they discussed the topic of public sex. According to [REDACTED] [REDACTED] repeatedly asked her questions about her sex life and about having sex outdoors in public. [REDACTED] and [REDACTED] stopped and kissed and then continued walking. [REDACTED] said that at some point [REDACTED] dropped behind [REDACTED] huddled around her from behind, exposed his penis, and forced [REDACTED] to touch his penis with her hand. [REDACTED] stated she walked away and told [REDACTED] "no," that it was cold outside, and that she was not interested in having sex in public with him. [REDACTED] said [REDACTED] attempted a second time to force her hand on his penis, at which point she pulled on his exposed penis to hurt him and send him the message that she was not interested. However, [REDACTED] stated in his initial OIG interview that it was [REDACTED] who raised the issue of having public sex and he denied that his penis was ever exposed in public; however, during his compelled interview [REDACTED] acknowledged that it was possible that the tip of his penis was exposed in public, but that it would have been while [REDACTED] was voluntarily touching it.

The OIG concluded that [REDACTED] account was credible. [REDACTED] never wavered in her statements regarding the incident and was able to recall specific details throughout the evening of [REDACTED] She did not withhold information that might tend to cast her in an unfavorable light. Moreover, [REDACTED] did not appear to have any motive for making unfounded allegations against [REDACTED] [REDACTED] and [REDACTED] stated they are both acquainted with the same [REDACTED] and, according to [REDACTED] she and [REDACTED] have mutual friends and are both [REDACTED]

By contrast, the OIG concluded that [REDACTED] account, specifically his denial of intentionally exposing his penis in public and his denial of forcing [REDACTED] to touch his penis, was not credible. Although [REDACTED] was able to recall for the OIG specific details about his evening on [REDACTED] including where and what he ate before meeting [REDACTED] the number and location of stops he and [REDACTED] made in the [REDACTED] and details about where and how the date concluded, when the OIG asked [REDACTED] to recount the details surrounding his alleged indecent exposure and sexual assault of [REDACTED] [REDACTED] claimed that he could not conclusively recall if his penis was exposed outside of his clothing, if his pants were buttoned or unbuttoned, or if [REDACTED] touched his penis over or underneath his clothing. Despite these purported failures to remember critical details from an incident only about a year earlier, [REDACTED] nevertheless maintained that he did not intentionally expose his penis to [REDACTED] or force [REDACTED] hand onto this penis. Furthermore, when [REDACTED] confronted [REDACTED] about his conduct via text message shortly after their date, [REDACTED] did not deny the allegations; instead, he expressed remorse for how [REDACTED] felt. [REDACTED] stated he was not intoxicated or under the influence of any substance that would affect his ability to recall specific details.