



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0329

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication	Sustained
Imposed Discipline		
Terminated Prior to Proposed Discipline		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication	Sustained
Imposed Discipline		
Terminated Prior to Proposed Discipline		

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employees were dishonest during prior OPA interviews in 2021OPA-0013.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were two of the involved employees in a prior OPA investigation – 2021OPA-0013. That case concerned their activities in Washington, D.C. on January 6, 2021, and, specifically, their potential trespassing on United States Capitol grounds while the insurrection was ongoing. In that prior case, the Named Employees were each interviewed twice – both on March 26, 2021 and June 4, 2021. One of the most significant lines of questioning at the interviews surrounded where the Named Employees were situated during the events of January 6. This was relevant to the allegation that they may have trespassed while in the vicinity of the Capitol. As an overarching matter, both Named Employees confirmed that they were in the vicinity of the Capitol grounds for an extended period of time (NE#1 said one and a half hours and NE#2 said 30 minutes to one hour) and that they were together during that time.

On June 15, 2021, after the Named Employees’ interviews were completed, OPA obtained a still photograph from the FBI. The photograph was taken from a video recorded by an individual who was being criminally prosecuted for his involvement in the insurrection. The photograph showed the Named Employees in the immediate vicinity of the



Capitol Building. Specifically, the photograph showed the Named Employees directly next to the building with the scaffolding appearing to their right

A. Named Employee #1's Prior OPA Interviews

In the maps of the Capitol marked by NE#1 during his OPA interviews, he positioned himself on the other side of the reflecting pool in the grassy area of the National Mall, a significant distance away from the Capitol Building.

At his OPA first interview, NE#1 was asked whether he perceived people making access to the Capitol from where he was situated. He told OPA that he had no idea. The OPA investigator asked NE#1 the following question: "And how far did you go towards the Capitol?" NE#1 responded: "Approximately 30, 40, 50 yards away from it staying in the grass. I never touched the Capitol never set foot on it. Didn't touch— I was on the grass the entire time." The OPA investigator further explored this response by asking: "Did you see people climbing the building's stairs, facade or the surrounding scaffolding?" NE#1 replied: "I saw people standing on the stairs, and I saw people on scaffolding, but I wasn't near that. So I did see people there." Later during his first interview, NE#1 added the following: "People are scattered like all over, like I'm saying where I stood at, from approximately 30, 40, 50 yards away from the Capitol. There were people all over, and this is a huge amount of area, there was people all over the place, standing everywhere." He additionally told OPA that he saw no signs, fencing, barricades, or other indication that he and NE#2 were in a restricted area.

At his second interview, NE#1 was asked additional questions concerning where he was situated. When showed videos of the Capitol grounds and, specifically, the area directly northwest of the Capitol Building, NE#1 said that he did not recognize that location. He told OPA the following

You saw a sign you didn't take photographs of the entire surrounding area. Like I told you before in my previous statement, we walked on the grass, there was no signs, no indication of any form or fashion whatsoever that we're not allowed to be there. There were no police officers. I've worked riots and protests in the city. If there was a single police officer there saying you cannot be here. If there was any signage, any police fencing, any police tape, anything, any indication, you can fathom that stated, you cannot be here, we wouldn't have walked onto the grass. So you can show videos here. But unless you have every single vantage point that exists to show every angle of the Capitol, you can't sit there and state what I saw on here, or what you assume that I saw or what you believe occurred near me...

B. Named Employee #2's Prior OPA Interviews

In the maps of the Capitol area marked by NE#2 during her OPA interviews, she positioned herself near the East Capitol Circle, a distance away from the side of the Capitol Building.

When describing her activities during her first OPA interview, NE#2 stated the following: "And all that I saw was just peaceful people standing around the lawn, standing around the building. I saw no laws being broken. I myself, my husband, broke no laws. There was an emergency broadcast from the mayor. And we gathered up our friends as soon as we could. And we went back to the hotel." OPA asked NE#2 if she ever moved significantly from where she marked herself being on a map. She told OPA:



No, not significantly. And I'd like to note that we were in a very thick crowd, shoulder to shoulder. We couldn't see the steps at all. There were large trees blocking our view. There were people blocking our view. We had no idea that anyone had breached the Capitol. We had no idea property damage was occurring. We had no idea assaults were occurring. We saw no officers, we saw no police lines.

NE#2 further told OPA that she did not know that anyone was up inside of the Capitol Building or close to the building. While she said that she was bad at estimating distances, she described the building as being across the lawn from where they were situated. In response to OPA's question concerning whether she could see anyone on the scaffolding or building façade, she stated: "I saw people standing on a little area with railing but again, not ever having been at the Capitol not ever having been to DC, I didn't know that they weren't allowed to be there. And I didn't see how they had gotten up there."

At her second OPA interview, NE#2 was shown pictures and videos of the vicinity of the Capitol Building and, specifically, the northwest corner. She said that, while she did not recognize the area, she may have seen a covered scaffolding.

C. Request for Additional OPA Interviews

After OPA commenced this investigation into the Named Employees' potential dishonesty, OPA offered them the opportunity to be interviewed for a third time. The Named Employees declined OPA's initial request. OPA followed up again with another OPA investigator; however, the Named Employees continued to decline to participate.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires that Department employees be truthful and complete in all communications. This includes during OPA interviews. In evaluating the Named Employees' prior interviews given to OPA, it is clear that they intentionally and knowingly mischaracterized where they were situated on January 6 and that this constituted dishonesty.

First, both of the Named Employees used a map to establish where they were situated on January 6. NE#1 placed himself on the other side of the reflecting pool in the grassy area of the National Mall. NE#2 placed herself (and NE#1 from her testimony) by the East Capitol Circle. In both scenarios, the Named Employees placed themselves a significant distance away from the Capitol Building. However, these placements were ultimately proven to be inaccurate once OPA reviewed the photograph provided by the FBI, which showed both immediately next to the building.

Second, during their OPA interviews, both of the Named Employees minimized how close they were to the Capitol Building, again asserting that they were a significant distance away. Both affirmed that they were within a large, peaceful crowd and that they could not see any malfeasance, stating that they were not near where this was occurring. This was directly contradicted by the photograph.



Third, the photograph further disproves their repeated statements that they did not know and could not have known that they were in a restricted area at the time. Again, the photograph showed them directly next to the Capitol Building with individuals scaling the scaffolding in the background. Any reasonable person – especially one employed as a law enforcement officer – would have either known or should have known that it was an impermissible location to be in.

Ultimately, OPA finds that the accounts provided by the Named Employees were purposed to mislead OPA and to purposefully cover up the extent of their actions on January 6. This amounts to dishonesty under SPD policy and, as such, OPA recommends that this allegation be Sustained as against both Named Employees.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**