

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

**SUMMARY OF INCIDENT:**

This investigation involves the Complainants, Subject 1 and Subject 2, alleging they were physically attacked by off-duty Chicago Police Officer A on 25 June 2010. The incident occurred on the residential grounds of a multi-unit residential high rise building. Security Guards of the building, Security Guards 1 and 2, witnessed the incident. Chicago Police Officer B responded to the 911 call for help. However, the Complainants stated Officer B allowed Officer A to leave the scene of the incident after Officer A identified himself as a Chicago Police Officer. The Complainants further alleged that assigned Detective A conspired with Officer B to cover-up the incident.

**ALLEGATIONS:**

On 20 SEP 2010 at 1244 hours, the **Complainants, Subject 1 and Subject 2** registered a complaint (LOG# 1039969), with Intake Aide A.

**Officer A**

Subject 1 and Subject 2 allege that on 25 JUNE 2010 at 0230 hours at 5441 N. East River Road,<sup>1</sup> **Officer A, Unit 007:**

- 1) Without justification, displayed and pointed his handgun at the Complainants, in violation of Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”
- 2) Pushed Subject 2, in violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”
- 3) Choked Subject 2, in violation of Rule 9, “Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.”
- 4) Placed the barrel of his handgun inside Subject 2’s mouth, in violation of Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”
- 5) Struck Subject 1 about his head, face, and body with his handgun, in violation of Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”
- 6) Violated the Complainants’ Fourth Amendment rights, in violation of Rule 1, “Violation of any law or ordinance.”
- 7) Conspired with Officer B to cover up his attack on the Complainants, in violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”

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<sup>1</sup> Per the CPD Original Case Incident Report (HS279355), 5421 is the address of the incident, and 5441 is the business address of the multi-unit residential high rise building. (Att. 37)

8) Directed profanity toward the Complainants, in violation of Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”

9) Failed to document his encounter with the Complainants, in violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” and Rule 10, which prohibits “[i]nattention to duty,” in contravention of Special Order S09-05-01, which mandates that Department members accurately document their actions and include necessary information in reports.

**Officer B**

Subject 1 and Subject 2 allege on 25 JUNE 2010 at 0230 hours at 5441 N. East River Road, that **Officer B, Unit 016:**

1) Violated Subject 1’s and Subject 2’s Fourteenth Amendment rights by failing to provide them with police service.

2) Conspired with Officer A to cover up the criminal attack on Subject 1 and Subject 2 by Officer A, in violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”

3) Failed to document his encounter with Officer A, in violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” and Rule 10, which prohibits “[i]nattention to duty,” in contravention of Special Order S09-05-01, which mandates that Department members accurately document their actions and include necessary information in reports.

Additionally, the R/I further alleges that:

4) On 06 MAY 2011 at 0635 hours at the Independent Police Review Authority (IPRA), Officer B gave a false statement to Investigator A regarding his contact with Officer A, in violation of Rule 14, which prohibits “making a false report, written or oral.”<sup>2</sup>

**Detective A, Unit 630:**

In their civil lawsuit, Subject 1 and Subject 2 alleged that **Detective A, Unit 630:**

1) Violated Subject 1’s and Subject 2’s Fourteenth Amendment rights by failing to provide them with police service.

2) Conspired to cover up the criminal attack against Subject 1 and Subject 2.

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<sup>2</sup> In that interview, Officer B falsely stated that he had neither seen nor spoken with Officer A at the scene, and that the Officer A had left the scene before Officer B arrived. (Att. 63 at pp. 13-14)

3) Failed to properly document his encounter with Officer A at the scene of the incident.

### **APPLICABLE RULES**

**Rule 1:** Prohibits violation of any law or ordinance.

**Rule 2:** Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

**Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.

**Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.

**Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

**Rule 10:** Inattention to duty.

**Rule 14:** Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

General Order 03-02 Use of Force Guidelines

Special Order S09-05-01 Department Reports and Letters of Clearance

### **INVESTIGATION:**

In an **Initiation Report** dated 26 JUNE 2010, Sergeant A documented that he interviewed Subject 1, Subject 2, and Witness Security Guard 1. All parties related essentially the same account of the incident to Sergeant A. Security Guard 1 stated that an unknown officer (now known to be Officer A)<sup>3</sup> approached him in the parking lot of the Pavilion Condominium complex. Officer A displayed a silver-colored badge, and identified himself as a police officer to Security Guard 1. Officer A requested Security Guard 1 give him a ride to his vehicle. Security Guard 1 agreed to do this. Along the way, Security Guard 1 made a stop on the complex grounds to inform Subject 1 and Subject 2 to leave the area.

Officer A suddenly exited the security vehicle and engaged in a verbal altercation with Subject 1 and Subject 2. Officer A displayed his badge to Subject 1 and Subject 2, and stated that he was an "Englewood copper." Officer A then drew his gun, and physically attacked Subject 1 and Subject 2. Officer A struck Subject 1 several times about the body with his gun as he chased after him. Officer A also struck Subject 2 on

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<sup>3</sup> The City of Chicago Department of Law informed IPRA that the Complainants positively identified Officer A during a photo viewing relative to the Complainants' civil matter.

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

her hand with his gun. Officer A pointed his gun directly toward Subject 2's face and then fled the scene.

Subject 1 was transported to Resurrection Hospital by Chicago Fire Department Ambulance #2. Evidence Technician A responded to the hospital to photograph Subject 1 and Subject 2. Subject 1 sustained cuts and swelling to his fingers on his left hand, bruising to his right shoulder, cuts to his back, contusions to the top, back and side of his head, and he also complained of pain to his left calf. Subject 2 sustained bruising and swelling to her middle finger on her left hand, but she refused medical treatment. (Att. #4).

The **Original Case Incident Report (RD# HS-379355) dated 26 JUNE 2010**, was completed by Officer B. Officer B documented that he responded to a disturbance call at 5421 N. East River Road. He observed the victim, Subject 1, lying on the ground, and Subject 2 screaming for help. Officer B immediately requested medical assistance to the scene. Security Guard 1 informed Officer B that Subject 1, Subject 2 and an unknown officer (now identified as Officer A) were engaged in a verbal altercation and then Officer A struck Subject 1 and Subject 2 with his gun. Officer A then entered the security vehicle, and stated that he was a police officer who needed assistance. According to Officer B's report, Security Guard 1 stated that Officer A had exited the security vehicle and fled toward the parking lot prior to Officer B's arrival. Subject 2 also informed Officer B that Officer A had flashed a badge, and stated that he was an officer. Subject 2 refused medical attention. Subject 1 was listed in good condition per Dr. Jordan. An Evidence Technician was requested to photograph Subject 1 and Subject 2. (Att. #5).

The **Chicago Fire Department Incident Detail Report dated 26 JUNE 2010** documents that paramedics responded to a call of a Battery Victim at 5421 N. East River Road, Chicago, IL. Subject 1 complained of shoulder pain, head pain, hand pain, and swelling to his hand. Paramedics found Subject 1 on the ground, complaining of being pistol-whipped. Subject 1 admitted to having a few drinks and had an odor of alcohol on his breath. Subject 1 was assessed with multiple/blunt trauma. (Att. #10).

**Evidence Technician Photographs dated 26 JUNE 2010** of Subject 1 show what appears to be abrasions to the back of his head, abrasions to his back, bruising and swelling to his left hand and fingers. (Att. #15).

**Evidence Technician Photographs dated 26 JUNE 2010** of Subject 2 show what appears to be abrasions on the left side of her neck, and left hand. (Att. #15).

Subject 1's **Medical Records** from Resurrection Hospital state that Subject 1 was diagnosed with head trauma, shoulder pain, and abrasions/contusions. (Att. #16).

The **Case Supplementary Report** documents that Detective A, Unit 650, was assigned this investigation. The report relates essentially the same information as the

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

Case Incident Report. In addition, the report documents that Detective A's attempt to contact Subject 1 and Subject 2 via mail was unsuccessful. (Att. #6).

In a **statement** to IPRA on 24 SEP 2010, **Subject 1** stated that, on June 25, 2010 at approximately 2:30 a.m., he was walking with his girlfriend Subject 2 at the Pavilion Condominium Complex and that they were there to meet a friend. Subject 1 and Subject 2 had stopped at a rest area on the grounds. Security Guard 1 approached Subject 1 and Subject 2 and informed them that the rest area was closed. Subject 1 and Subject 2 prepared themselves to leave the area. Suddenly, Officer A exited the passenger side of the security vehicle screaming profanity at them. Officer A was holding a beer bottle in his hand. Subject 1 told Officer A to calm down, that they were leaving.

Officer A pulled out a police badge, stated that he was an "Englewood police officer" then drew his gun. Subject 1 raised his hands above his head. Officer A approached Subject 1 and struck him on the back of his head with the gun. Subject 2 screamed, "Stop!" Officer A grabbed Subject 2 by her neck, and slapped a bottle she was holding from her hand. Officer A then placed the barrel of his gun in Subject 2's mouth, and stated, "Just shut your mouth or I'm gonna blow your fuckin brains out."

Subject 1 attempted to distract Officer A by calling him names and cursing at him. Officer A pushed Subject 2 away and ran toward Subject 1. Officer A struck Subject 1 about his hands and back with his gun, as Subject 1 attempted to defend himself. Officer A cocked his gun and pointed it toward Subject 1's head. Subject 1 leaped over the security vehicle to get away from Officer A. While Subject 1 was on the ground, Officer A grabbed him by the back of his shirt, lifted his shirt up, and struck him about his upper body with his gun. Subject 2 screamed for Security Guard 1 to call the police. Officer A then kicked Subject 1 on the shoulder, dislocating it. Subject 1 stated that Security Guard 1 appeared to be in shock. An unknown female screamed from the complex, "Hey what's going on?" At that point Security Guard 1 and Officer A entered the security vehicle and drove away.

Subject 1 and Subject 2 went to the security office where they called the police. Chicago Police Officer B responded to the scene alone. Subject 1 was lying on the ground and bleeding. Subject 1 stated that he could not move and that he was "out of it." Subject 2 carried Subject 1 to an area just outside of the main office of the complex. Security Guard 1 and Officer A approached Subject 2 and Subject 1. Immediately, Subject 2 told Officer B that Officer A was the one that beat them, and that he had a gun. Officer A approached Subject 1 and started yelling at him. Officer B approached Officer A and asked, "What's going on?" Officer A showed Officer B his badge, gun, and stated that he was a cop.

Officer B allowed Officer A to walk away from the scene without making a report or taking any information. An ambulance arrived at the scene and transported Subject 1 and Subject 2 to the hospital. Sergeant A reported to the hospital to interview Subject 1 and Subject 2, and to have them photographed. Subject 1 sustained abrasions to his head and back, lacerations to his hands, and a dislocated shoulder. Subject 1 described Officer

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

A as white male, casually dressed, 6'0", 200 lbs., bald-headed, and mid-thirties. (Att. #24).

In a **statement** to IPRA on 24 SEP 2010, **Subject 2** provided essentially the same account of the incident as Subject 1. In addition, Subject 2 stated that she used Subject 1's cellular telephone to call 911. Subject 2 sustained scratches to her neck and a laceration and swelling to her left hand. Subject 2 related that after Officer A identified himself as an officer to Officer B, Officer B stated, "Oh, just get out of here." (Att. #30).

In 2010, **Subject 1 and Subject 2** also filed a **federal civil rights lawsuit (Case No. 10-C-4193)** in the United States District Court for the Northern District of Illinois against Defendants Officer A, Officer B and the City of Chicago.

On July 31, 2012, Plaintiffs/Complainants accepted Defendants' offer of judgment made pursuant to Fed. R. Civ. P. 68.<sup>4</sup> Judgment was entered in favor of Plaintiffs/Complainants and against Defendants Officer A, Officer B and the City of Chicago in the amount of \$160,000. The judgment amount was allocated as follows: \$75,000 to Subject 1; \$20,000 to Subject 2; and \$65,000 to Plaintiffs'/Complainants' attorneys for fees and costs incurred to litigate the case. See Case Docket #379.

In a **statement** to IPRA on 12 MAY 2011, **Sergeant A** essentially related the information in his Initiation Report. In addition, he related that he responded to a battery in progress call involving an off-duty officer. Upon arriving at the scene Sergeant A spoke to Officer B, Subject 1, Subject 2, the paramedics, and the security guards of the complex. Officer B informed Sergeant A that Subject 1 and Subject 2 had been attacked by an unknown individual with a weapon, who identified himself as a police officer. Sergeant A stated that Officer B never mentioned that he had contact with the unknown individual (now known as Officer A). (Att. #62).

**Security Guard 1**, a private security guard at the Pavilion Apartment complex, witnessed the incident and documented his observations in an **Incident Report dated 26 JUNE 2010**. According to his Incident Report, Security Guard 1 was patrolling in a security vehicle when he first encountered Officer A. Officer A displayed his badge, stated that he was a "cop" and that he could not find his vehicle, entered the security vehicle over Security Guard 1's protestations, and told Security Guard 1 to drive. Officer A was holding a bottle of Bud Light beer in his hand, and "appeared to be intoxicated."

As Security Guard 1 was driving, he received a radio call from his supervisor dispatching him to a noise complaint. As Security Guard 1 approached a picnic area, he noticed a Hispanic male and a Hispanic female (now known to be Subject 1 and Subject 2) therein. Security Guard 1 told Subject 1 and Subject 2 that the picnic area was closed; they said "Ok," and stood up to leave.

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<sup>4</sup> The offer of judgment was made prior to trial, and because it was accepted there was no trial. Offers of judgment are not accompanied by any type of explanatory or analytical order.

INDEPENDENT POLICE REVIEW AUTHORITY  
LOG# 1037527

Officer A then exited the security vehicle, fell to the ground, got up, and stated, "You heard him, get the fuck outta of here." A verbal dispute ensued between Subject 1, Subject 2 and Officer A. Security Guard 1 attempted to intervene, telling Officer A "it was ok, and that they were leaving." Subject 1 and Subject 2 asked Security Guard 1 what was wrong with his partner (Officer A). Officer A displayed his badge and stated that he was a cop. Subject 1 stated, "I'm a cop killer." Officer A drew his gun and pointed it towards Subject 1 and Subject 2. Security Guard 1 told Officer A to stop and to put his gun away; when that failed, Security Guard 1 notified his supervisor, Security Guard 2, and asked him to call 911.

Officer A pushed Subject 1 around and struck him with the gun. Officer A then pushed Subject 2 and struck her hand, causing her to drop the Red Bull can she was holding. He then continued hitting Subject 1. After telling Officer A many times to stop, Security Guard 1 finally convinced him to get back into the security vehicle. Security Guard 1 informed Subject 1 and Subject 2 that 911 had been called, and then drove Officer A to the security office. Security Guard 1 indicated that he drove Officer A around "making time for CPD to arrive." During that drive, Officer A stated, "Yeah, that's how we do it in Englewood."

When Officer A spotted a CPD vehicle outside the security office, he told Security Guard 1 to keep driving and not to stop. Security Guard 1 refused. Subject 1, Subject 2 and Security Guard 1's supervisor Security Guard 2 were already at the security office. Upon spotting Officer B, Subject 2 immediately pointed to Officer A and told Officer B "he has a gun!" Officer B approached Officer A "for a few seconds [and] talked something [Security Guard 1] could not understand." Officer B then asked Subject 1 and Subject 2 what had happened; Officer A walked away and left the scene while that discussion was occurring. Officer B summoned an ambulance to the scene, which transported Subject 1 and Subject 2 to the hospital. (Att. #46).

In his **report dated 26 JUNE 2010, Security Guard 2** related that he received a radio call from Security Guard 1 informing him that Subject 1 had been assaulted. Security Guard 2 called 911. Subject 1 and Subject 2 arrived at the security office, and moments later Officer B arrived. Security Guard 2 told Officer B what he knew about the incident. A few minutes later, Security Guard 1 and Officer A arrived at the security office. Officer A approached Officer B and they briefly spoke. Immediately after speaking to Officer B, Officer A "briskly" walked away from the scene toward the parking lot. Subject 1 and Subject 2 approached Officer B and spoke to him. Subject 1 informed Officer B that he had been physically assaulted by Officer A and requested medical assistance. Subject 1 and Subject 2 informed Security Guard 2 that Officer A had identified himself as a police officer; and that they did not know why he attacked them with a pistol. Thereafter, Subject 1 and Subject 2 were transported to the hospital. (Att. #46).

In a **statement** to IPRA on 06 MAY 2011, **Officer B** was interviewed as a **Witness**. Officer B related that he was working alone on the date of incident, and that he responded to a disturbance call at 5421 N. East River Road. Upon arriving at the scene he

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

observed Subject 1 lying on the ground, and Subject 2 standing over him. Officer B stated that Subject 1 was intoxicated, had slurred speech, and related that the police had beaten him up. Subject 1 directed profanity toward Officer B as he spoke to him. Officer B observed a wound to Subject 1's face, and requested an ambulance. Officer B stated that Subject 2 informed him about the incident with Officer A, but she did not know where Officer A had gone. Officer B assumed that Officer A "just disappeared."

Officer B sent out a flash message description of Officer A. Officer B spoke to Security Guard 1 who briefed him on the incident. Officer B stated that he "guessed" that Security Guard 1 told him that when Officer A observed him, he exited the security vehicle and fled. Officer B stated that he never observed or had any interaction with Officer A. Sergeant A along with another officer responded to the scene. An ambulance arrived at the scene and transported Subject 1 and Subject 2 to the hospital. (Att. #63).

At this point in the investigation, Officer B was served with notice of an allegation that he had violated Rule 14 by making a false statement to Investigator A on 06 MAY 2011 by denying that he had contact with Officer A after arriving on the scene of the disturbance call.

Detective A gave a **deposition** on 20 JANUARY 2012 as a defendant in Complainants' civil lawsuit. At that deposition, Detective A testified that he was not present or even on duty during the events of 25 JUNE 2010; it was his day off. Detective A was assigned to conduct a follow-up investigation. He tried to contact Complainants but was unable to reach either of them.

Officer B gave a **deposition** on 25 APRIL 2012 as a defendant in Complainants' civil lawsuit. At that deposition, Officer B testified that on 25 JUNE 2010, he was dispatched to an in-progress call of a person injured. When he arrived he saw Subject 1 lying on the ground outside near the Cabana Club, and Subject 2 nearby talking on the telephone. Officer B immediately called for an ambulance. Subject 1 screamed profanities at Officer B and refused to answer any questions about what had happened. Subject 2, however, explained what had happened, stating that she and Subject 1 had gotten into a confrontation with a man who struck both Subject 1 and Subject 2 with a handgun, inflicting a small cut on her hand. Subject 2 described the assailant as a bald, white man in his 40s.

After approximately four minutes, Security Guards 1 and 2 arrived. Security Guard 1 told Officer B that Subject 1's assailant (Officer A) earlier jumped into Security Guard 1's security vehicle, and told Security Guard 1 he was "police" without further specification. Security Guard 1 also said Officer A had just been riding in Security Guard 1's security vehicle, but jumped out when he saw Officer B's police vehicle. Officer B claimed he did not see Officer A, neither as Officer A exited Security Guard 1's vehicle nor at any other time.

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

Officer B's supervisor, Sergeant A, arrived while paramedics were attending to Subject 1 on the scene. Detective A never responded to the scene; he was assigned to handle the case after the initial case reports were filed.

In a **statement** to IPRA on 14 MAY 2012 regarding the Rule 14 allegation, **Officer B** denied that he gave a false report to Investigator A, and stated that he stood by his previous statement to IPRA on 06 MAY 2011. (Att. #75).

In a **statement** to IPRA on 06 FEB 2014, **Officer A** stated that he has not been deposed or provided a written or oral statement regarding this investigation prior to his interview with IPRA. Officer A stated that he was informed by the Department of Law in JUNE 2012 that the Complainants had identified him as an accused in this investigation after they viewed a photo line-up at Police Headquarters. Officer A could not recall the name of the female lawyer who informed him that he had been identified as an accused. Officer A was aware of the Complainants' Civil Suit, and stated that the suit was settled in the summer of 2012.

On the date and time of the incident, Officer A related that he was leaving the Pavilion Condominiums Complex. Officer A could not find his vehicle. Officer A enlisted the assistance of a security guard at the complex to help him find his vehicle. Officer A entered the security guard's "small truck" and they proceeded to drive around the grounds of the complex to locate Officer A's vehicle. Officer A told the security guard that he was a police officer. The security guard observed two individuals arguing (now known to be the Complainants, Subject 1 and Subject 2). The security guard stopped and exited his vehicle to speak to the complainants. The security guard and Subject 1 began arguing with each other.

Officer A stated that the security guard looked toward him, and Officer A interpreted the expression on the security guard's face to say, "He's in over his head with this guy." Officer A exited the truck and asked Subject 1 to leave the premises, and to stop cursing at him. Officer A stated that he did not identify himself as an officer to Subject 1. Officer A stated that Subject 1 was belligerent and pacing back and forth in an aggressive manner. Subject 1 had his hands near his waist, which made Officer A nervous. Officer A identified himself as an officer to Subject 1 and instructed him to leave the premises, but Subject 1 refused to do so. Subject 1 stated to Officer A, "Fuck you, I'll fuck you up, I'm a cop killer." Officer A indicated that he had his off-duty weapon on his side and stated to Subject 1, "Get the [fuck] out of here, let me see your hands." Subject 1 approached Officer A in an aggressive manner. When Subject 1 got close to Officer A, Officer A struck Subject 1 once about his upper body with the butt of his gun. When asked why he struck Subject 1 with his weapon because, Officer A indicated, "I had my weapon 'cuz I wasn't able to put it away before he came at me." Subject 1 fell to the ground.

Officer A continued to scream for Subject 1 to show his hands, but Subject 1 did not do so. As Subject 1 attempted to get to his feet, Officer A struck Subject 1 on the back with the butt of his gun, and screamed at him, "Let me see your hands." Subject 1

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

fell back to the ground. Officer A feared that Subject 1 had a weapon in his possession. Officer A heard someone running behind him and when he turned around it was Subject 2. Officer A stated to Subject 2, "Get the [fuck] back."

Subject 2 stated to Officer A, "You're gonna regret this [motherfucker]," and then made a call on her cellular telephone. Officer A believed that Subject 2 was calling for other people to respond to the scene to possibly attack him. Officer A stated that he was in fear of his life after Subject 1 had stated that he was a "cop killer" and Subject 2 made a telephone call. Officer A walked back to the security vehicle and holstered his gun. The security guard stated to Officer A, "We have to go." The security guard and Officer A drove away from the scene. After locating his vehicle, Officer A entered his vehicle and drove away from the complex without further incident.

Officer A related that Subject 1 did not strike him in any manner during this incident. Other than striking Subject 1 twice with the butt of his gun, Officer A stated that he did not have any further physical contact with Subject 1. Officer A stated that he did not have any physical contact with Subject 2 during this incident.

Prior to this incident, Officer A stated that he had consumed approximately two light beers at the Cabana Club (a restaurant/bar on the grounds of the Pavilion Apartments Complex). Officer A stated that he was at the Cabana Club waiting on a friend who lives in the complex, but that his friend never showed. Officer A stated that he was at the Cabana Club for approximately an hour and a half before leaving.

Officer A stated that he did not report this incident to the Chicago Police Department (CPD) or anyone else. Officer A stated that he should have reported the incident, and that it was dumb on his behalf not to do so. When asked why he did not arrest Subject 1, Officer A stated, "I had to get out of there, I didn't want to wait around." Officer A further related that he did not have handcuffs with him during the incident. Officer A stated that he did not observe any CPD officer respond to this incident, and that he did not speak to any CPD officer during this incident. Officer A stated that he did not sustain any injury during this incident. Officer A did not observe any injury to Subject 1 nor Subject 2. When Officer A was informed that Subject 1 and Subject 2 sustained injuries, he stated that Subject 1 sustained injuries because he struck him with the butt of his gun, but that he had no knowledge as to how Subject 2 sustained injury. Officer A related that he does not know Officer B, and that he has never had any contact with Officer B.

Officer A denied that he was under the influence of alcohol or any other substance during this incident. Officer A stated that he was justified in displaying and pointing his gun at Subject 1 because Subject 1 had threatened to kill him, and approached him. When asked, Officer A stated that he did not observe Subject 1 to have a weapon or anything of the nature in his hand during this incident that could cause physical harm to him. Officer A stated that he was justified in displaying and pointing his gun at Subject 2 because his gun was already out and he heard someone approaching him from behind. Officer A stated that Subject 2 was approximately six feet away from him when he

## INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

pointed the gun at her. Officer A denied pushing, choking, and placing the barrel of his gun inside Subject 2's mouth. Officer A denied that he struck Subject 1 about his head and face with his gun, but admitted to striking Subject 1 about his body with the butt of his gun. Officer A denied that he violated Subject 1's and Subject 2's 4<sup>th</sup> Amendment rights, or that he conspired with Officer B to cover up his attack against Subject 1 and Subject 2. Officer A admitted to directing profanity toward Subject 1 and Subject 2, and failing to document his encounter with Subject 1 and Subject 2.

When Officer A was asked why the security guard would corroborate Subject 1's and Subject 2's account of the incident, Officer A stated because the security guard is trying to remove himself from any liability. Officer A stated that he was assigned to the 7<sup>th</sup> District Station in the Englewood neighborhood at the time of this incident. When Officer A was asked how Subject 1 and Subject 2 knew he was from the 7<sup>th</sup> District Station in Englewood, he related that the security guard or their lawyer probably informed them of such. (Att. 95).

### **CONCLUSION & FINDINGS:**

#### **Officer A**<sup>5</sup>

Based on the aforementioned evidence, the following findings are recommended for the allegations against Officer A:

**Allegation #1:** That Officer A without justification displayed and pointed his handgun at the Complainants, in violation of Rule 8, "Disrespect to or maltreatment of any person, while on or off duty."

**Finding: SUSTAINED.** Officer A admitted that he unholstered his weapon, pointed it at Subject 1, and struck Subject 1 twice with the butt of the gun. Officer A claimed that he was justified in pointing the gun at Subject 1 because "he threatened to kill me, he came at me, he said he was a cop killer and came at me."

In his statement given to IPRA investigators on 06 FEB 2014 (*see* pp. 9-11 and 18), Officer A recounted the following sequence of events:

- Officer A identified himself as a police officer and told Subject 1 to leave.
- Subject 1 said, "Fuck you, I'll fuck you up, I'm a cop killer."
- Officer A displayed his off-duty weapon and said to Subject 1, "Get the [fuck] out of here, let me see your hands."
- Subject 1 came toward Officer A "in an aggressive manner."

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<sup>5</sup> Officer A was not presented with an allegation addressing false statements to IPRA investigators prior his resignation on May 16, 2016. Were he still employed, IPRA would have alleged that Officer A violated Rule 14, which prohibits "making a false report, written or oral," by falsely stating that he had neither seen nor spoken with Officer B at the scene.

## INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

- Officer A used the butt of the weapon in his hand to strike Subject 1, and then screamed at Subject 1 to show his hands.
- Officer A struck Subject 1 a second time with the butt of the gun, and “screamed at him, ‘Let me see your hands,’” after which Subject 1 “finally...went down.”
- Officer A heard someone running up behind him. He turned toward the sound and saw that it was Subject 2 approaching him. Officer A admittedly displayed and pointed his gun at Subject 2 and told her to “get the [fuck] back.”

Officer A also admitted that he never saw a “weapon or anything of that nature” in Subject 1’s hand.

Even accepting Officer A’s version and sequence of events as true, Officer A was not justified in displaying or pointing his weapon at either Subject 1 or Subject 2. The contemplated or actual discharge of a firearm constitutes lethal force. General Order G03-02-03 states in pertinent part that “a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary to prevent death or great bodily harm to the sworn member or to another person.” Furthermore, although not presented as an allegation in this case, CPD’s Rules and Regulations specifically prohibit the unnecessary use of a weapon (*see* Rule 38, which prohibits, “Unlawful or unnecessary use or display of a weapon”).

While Subject 1’s purported statement (according to Officer A’s account) of “Fuck you, I’ll fuck you up, I’m a cop killer,” could be construed as a threat of some sort of violence toward Officer A, it is not reasonable to interpret such a statement as constituting a credible and imminent threat of death or great bodily harm, especially given Officer A’s admission that he had no particularized reason to believe Subject 1 was armed with any sort of weapon.

Officer A’s claim that Subject 1 came at him in an aggressive manner is not credible because (1) Officer A was noticeably intoxicated, which may have impaired his recollection; (2) he has a strong self-interest in denying the allegation; and (3) his account is contradicted by Security Guard 1, an apparently neutral third-party witness. Security Guard 1’s detailed report contains no mention of any physically-aggressive acts by either Subject 1 or Subject 2, and portrays Officer A as the sole aggressor. Rather than supporting or even remaining neutral about Officer A’s actions, Security Guard 1 actively intervened on behalf of Complainants by repeatedly telling Officer A to stop and calling 911.

Furthermore, even if Subject 1 had approached Officer A in an aggressive manner, that could not provide justification for displaying the weapon. According to the sequence of events Officer A provided, Officer A’s statement (“I had my weapon ‘cuz I wasn’t able to put it away before he came at me”) to IPRA suggests that he displayed his gun *before* Subject 1 purportedly came toward him. Displaying and pointing his gun at Subject 2 was also unjustified, as her purported conduct (even as described by Officer A) could not reasonably lead an officer to believe that she posed a threat of imminent death or great bodily harm. Furthermore, had Officer A truly felt threatened and justified in his

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

use of force, it seems at odds that he would holster his weapon and leave the scene without making an arrest.

**Allegation #2:** That Officer A pushed Subject 2, in violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”

**Findings: SUSTAINED.** Officer A denied pushing Subject 2. However, his credibility is diminished (1) because he was noticeably intoxicated, which may have impaired his recollection; (2) by his own self-interest in denying the allegation; and (3) by contradictory evidence from Security Guard 1. In his Incident Report, Security Guard 1 stated that he saw Officer A push Subject 2 and strike her hand.

Pushing Subject 2 was an unreasonable use of force under the circumstances, and thus a violation of Section III(B) of General Order 03-02 (Use of Force Guidelines: “Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury”).

Furthermore, this allegation should be sustained because Officer A should never have interacted with Complainants at all. Throughout the incident Officer A abused his authority as a police officer in many ways, including but not limited to when he

- displayed his badge and invoking his status as a police officer while visibly intoxicated in public;
- demanded a ride in the security vehicle despite Security Guard 1’s protests;
- unnecessarily inserted himself into a situation that did not concern him or require law enforcement involvement, and then needlessly escalating the situation both verbally and physically;
- verbally and physically abused two citizens; and
- attempted to use his status as a Chicago Police officer to conceal his misconduct and evade the resulting consequences.

Officer A’s misconduct thus violated Rule 2 by “bring[ing] discredit upon the Department” and “imped[ing] the Department’s efforts to achieve its policy and goals,” which include earning and maintaining the trust, respect and goodwill of the people of the City of Chicago.

**Allegation #3:** That Officer A choked Subject 2, in violation of Rule 9, “Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.”

**Findings: UNFOUNDED.** Sergeant A interviewed Subject 2, Subject 1 and Security Guard 1 immediately after the incident; none of them claimed at that time that Officer A had choked Subject 2. No such conduct or any injury to Subject 2’s neck was noted in Security Guard 1’s Incident Report; in contrast, the Incident Report does note that Officer

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1037527

A injured Subject 2's hand. Similarly, Security Guard 2's Incident Report does not indicate that any such allegation was made by Subject 2, Subject 1 or Security Guard 1 at the security office immediately after the incident.

**Allegation #4:** That Officer A placed the barrel of his handgun inside Subject 2's mouth, in violation of Rule 8, "Disrespect to or maltreatment of any person, while on or off duty."

**Findings: UNFOUNDED.** Sergeant A interviewed Subject 2, Subject 1 and Security Guard 1 immediately after the incident; none of them claimed at that time that Officer A had placed the barrel of his handgun inside Subject 2's mouth. No such conduct or any injury to Subject 2's mouth was noted in Security Guard 1's Incident Report; in contrast, the Incident Report does note that Officer A injured Subject 2's hand. Similarly, Security Guard 2's Incident Report does not indicate that any such allegation was made by Subject 2, Subject 1 or Security Guard 1 at the security office immediately after the incident.

**Allegation #5:** That Officer A struck Subject 1 about his head, face, and body with his handgun, in violation of Rule 8, "Disrespect to or maltreatment of any person, while on or off duty."

**Findings: SUSTAINED.** Officer A admitted that he struck Subject 1 with his gun multiple times. As discussed above with regard to Allegation #1, Officer A had no justification for striking Subject 1. Striking a citizen without justification certainly constitutes disrespect and maltreatment, which violates Rule 8. Additionally, striking Subject 1 was an unreasonable use of force under the circumstances in violation of Section III(B) of General Order 03-02 (Use of Force Guidelines: "Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury").

**Allegation #6:** That Officer A violated Complainants' Fourth Amendment rights, which violated of Rule 1's prohibition against "violation of any law or ordinance."

**Findings: SUSTAINED.** Complainants' right to be free from unreasonable seizures is guaranteed by the Fourth Amendment of the United States Constitution. A police officer's use of force against a citizen is a "seizure" for purposes of the Fourth Amendment. Therefore, to be lawful, a police officer's use of force must be reasonable under the circumstances in which it occurred. As discussed above, Officer A acted unreasonably when he chose to confront Complainants and to use force against them. This conclusion is consistent with the outcome of the federal civil rights lawsuit brought by Complainants pursuant to 42 U.S.C. § 1983, in which they sought to enforce their Fourth Amendment rights. Judgment was entered in their favor and against Officers A and B and the City of Chicago.

**Allegation #7:** That Officer A conspired with Officer B to cover up his attack on the Complainants, in violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”

**Findings: NOT SUSTAINED.** Subject 1, Subject 2, and Security Guards 1 and 2, all provided consistent and credible accounts of the incident. Each of the involved parties related that Officer B and Officer A interacted with one another. Subject 1 and Subject 2 related that Officer B stated words to Officer A to the effect of, “Oh, just get out of here.” Thereafter, Officer A fled from the scene on foot. During his 06 FEB 2014 interview with IPRA investigators, Officer A stated that he did not observe any CPD officer respond to this incident, and that he did not speak to any CPD officer during this incident. Officer A furthermore acknowledged fleeing the scene of the incident, as well as failing to document his involvement in the incident in a formal report. Although Officer A denies this allegation, the consistent and credible statements of Subject 1, Subject 2, and Security Guards 1 and 2 show that Officer B allowed Officer A to leave the scene of the incident, and that neither officer reflected their interaction in reports. At a minimum, Officer B and Officer A’s actions are not commensurate with CPD’s efforts to earn and maintain the trust, respect and goodwill of the people of the City of Chicago.

However, the 7<sup>th</sup> Circuit’s Pattern Jury Instructions, 5.09, define conspiracy as “an express or implied agreement between two or more persons to commit a crime.” Although it may be that Officer A was allowed to leave the scene by Officer B based upon an express or implied agreement, IPRA was unable to gather sufficient evidence to during the course of the investigation to prove an express or implied agreement by a preponderance. It could just as easily be argued that Officer B alone decided that Officer A should be allowed to leave the scene.

**Allegation #8:** That Officer A directed profanity toward the Complainants, in violation of Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”

**Findings: SUSTAINED.** Officer A admitted that he directed profanity to both Subject 1 and Subject 2 in violation of Rule 8.

**Allegation #9:** That Officer A failed to document his encounter with the Complainants in violation of in violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” and Rule 10, which prohibits “[i]nattention to duty,” in contravention of Special Order S09-05-01, which mandates that Department members accurately document their actions and include necessary information in reports.

**Findings: SUSTAINED.** Officer A admitted that he failed to document or report in any manner the incident or his use of force therein.

**Officer B**

Based on the aforementioned evidence, the following findings are recommended for the allegations against Officer B:

**Allegation #1:** That Officer B violated Subject 1's and Subject 2's Fourteenth Amendment Rights by failing to provide them with police service.

**Findings: UNFOUNDED.** Citizens do not have a constitutional right to any specific police service.

**Allegation #2:** That Officer B conspired with Officer A to cover up the criminal attack on Subject 1 and Subject 2 by Officer A, in violation of Rule 2, "Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department."

**Findings: NOT SUSTAINED.** Subject 1, Subject 2, and Security Guards, 1 and 2, all provided consistent and credible accounts of the incident. Each of the involved parties related that Officer B and Officer A interacted with one another. Subject 1 and Subject 2 related that Officer B stated words to Officer A to the effect of, "Oh, just get out of here." Thereafter, Officer A fled from the scene on foot. Officer B omitted his interaction with Officer A in the Case Incident Report. Although Officer B denies this allegation, the consistent and credible statements of Subject 1, Subject 2, and Security Guards 1 and 2 show that Officer B allowed Officer A to leave the scene of the incident and then attempted to obscure the truth about his interactions with Officer A by omitting them from his report. At a minimum, Officer B's actions are not commensurate with CPD's efforts to earn and maintain the trust, respect and goodwill of the people of the City of Chicago.

However, the 7<sup>th</sup> Circuit's Pattern Jury Instructions, 5.09, define conspiracy as "an express or implied agreement between two or more persons to commit a crime." Although it may be that Officer A was allowed to leave the scene by Officer B based upon an express or implied agreement, IPRA was unable to gather sufficient evidence to during the course of the investigation to prove an express or implied agreement by a preponderance. It could just as easily be argued that Officer B alone decided that Officer A should be allowed to leave the scene.

**Allegation #3:** That Officer B failed to document his encounter with Officer A, in violation of Rule 6, "Disobedience of an order or directive, whether written or oral," and Rule 10, which prohibits "[i]nattention to duty," in contravention of Special Order S09-05-01, which mandates that Department members accurately document their actions and include necessary information in reports.

**Findings: SUSTAINED.** As discussed above with regard to Allegation #2, each of the involved parties provided consistent and credible statements indicating that Officer B and Officer A interacted with one another at the security office, but Officer B failed to reflect these interactions in his Case Incident Report.

**Allegation #4:** That on 06 MAY 2011 at 0635 hours, Officer B gave a false statement to IPRA Investigator A regarding his contact with Officer A, in violation of Rule 14, which prohibits “making a false report, written or oral.”

**Findings: SUSTAINED.** As discussed above with regard to Allegation #2, Officer B’s statement to IPRA that he neither saw nor interacted with Officer A is flatly contradicted by both Complainants and both security guards, all of whom provided consistent and credible statements indicating that Officer B interacted with Officer A at the security office. Each of the involved parties related that Officer B and Officer A interacted with one another. Subject 1 and Subject 2 related that Officer B stated words to Officer A to the effect of, “Oh, just get out of here,” allowing Officer A to leave the scene and escape consequences for his actions. Although Officer B denies this allegation, the consistent and credible statements of Subject 1, Subject 2, and Security Guards 1 and 2 prove by a preponderance of the evidence that Officer B allowed Officer A the leave the scene of the incident and then attempted to obscure the truth about his interactions with Officer A by omitting them from his report. There is no plausible way that Officer B could have been mistaken about Officer A’s presence on the scene on the night of the incident.

### **Detective A**

Based on the aforementioned evidence, the following findings are recommended for the allegations against Detective A:

**Allegation #1:** That Detective A violated Subject 1’s and Subject 2’s Fourteenth Amendment rights by failing to provide them with police service.

**Finding: UNFOUNDED.** Citizens do not have a constitutional right to any specific police service. Furthermore, there is no evidence that Detective A denied Complainants police service.

**Allegation #2:** That Detective A conspired to cover up the criminal attack against Subject 1 and Subject 2.

**Finding: UNFOUNDED.** There is no evidence that Detective A covered up or conspired with anyone to cover up Officer A’s or Officer B’s misconduct. Indeed, there is no evidence that Detective A knew of Officer B’s misconduct, or that Detective A knew that Officer A was the offender who battered Complainants.

INDEPENDENT POLICE REVIEW AUTHORITY  
LOG# 1037527

**Allegation #3:** That Detective A failed to properly document his encounter with Officer A at the scene of the incident.

**Finding: UNFOUNDED.** Detective A was never at the scene and IPRA did not gather any evidence suggesting deficiencies in Detective A's documentation of his involvement with the incident.