

Sources of Information of Police Misconduct

Think BROADLY about how to conceptualize the utility and admissibility of this information in your cases-

This law review article- Jonathan Abel, Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team, 67 Stan. L. Rev. 743, 750 (2014) **gives some good examples of how to think about what impeachment and exculpatory material could appear in police personnel files:**

“impeachment evidence in the files-- performance evaluations, disciplinary write-ups, and internal affairs investigations that show an officer has lied. This information can be critical to a defendant in attacking the officer's credibility on the stand.

Examples include

- findings that officers falsified reports, provided false testimony, stole money, or otherwise lied on the job.
- Even when the initial misconduct does not implicate the officer's truthfulness, the internal affairs investigation that follows may do so if the officer is caught in a lie or a cover-up.
- In addition, the files may also contain exculpatory, as opposed to impeachment, evidence. In one case, for example, internal affairs findings showed that a forensic technician's ‘lab work was characterized by sloppiness and haste.’ The Ninth Circuit concluded that the findings “could have supported a defense theory that [the technician] inadvertently contaminated” the evidence.
- Exculpatory evidence may also appear in the files when a police department launches an internal affairs investigation in parallel to a criminal investigation and comes across witness statements that are favorable to the defense, or when an officer's history of excessive force allows a defendant to argue that the officer was the aggressor and, thus, that the defendant acted in self-defense.”

Sources:

- **OPC** (Office of Police Complaints- formerly Citizen Complaint Review Board- it is independent of MPD and handles public complaints against MPD and housing authority officers) complaints
 - Governing statutes: D.C. Code Ann. § 5-1101-1115
 - Details about the complaint to request:
 - Date of the complaint
 - Date of the conduct underlying the complaint
 - Date of the merits determination
 - Allegations against the officer
 - What the finding was against the officer
 - Source documents
 - Findings of Fact and Merits Determination
 - Example here-
<http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Merits%20Determination%20-%2012-0473.pdf>
 - Report of Investigation
 - Body Camera Video- OPC now has access to it
 - OPC complaints can be made for-
 - (1) Harassment;
 - (2) Use of unnecessary or excessive force;
 - (3) Use of language or conduct that is insulting, demeaning, or humiliating;
 - (4) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, matriculation, political affiliation, source of income, or place of residence or business;
 - (5) Retaliation against a person for filing a complaint pursuant to this chapter; or
 - (6) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public
 - Discipline for OPC Complaints:
 - https://go.mpdconline.com/GO/120_21re.pdf (possible penalties)
 - D.C. Code Ann. § 5-1112 for procedure.
 - Police Chief “shall cause” complaint file to be reviewed within 5 working days of receipt.
 - Review includes review of personnel file of officer, including “**prior misconduct by the subject police officer or officers**” (Can use this to argue motive to curry favor if have previous misconduct)
 - Within 15 working days reviewing officers shall make written recommendation of discipline from the MPD General Order.

- Within 5 working days of receiving staff recommendation, Police Chief “shall notify the complainant and the subject police officer” and give both opportunities to file written responses.
 - Within 15 working days of receiving written responses of complainant and the subject officer or officers, or within 15 working days of deadline set for receipt of responses, Police Chief shall issue decision of discipline. This is a final decision, except-
 - A police officer disciplined by the Police Chief, whether by termination or otherwise, shall be entitled to whatever administrative disciplinary proceeding is afforded under any applicable collective bargaining agreement.
 - The Police Chief can reopen closed matters “in the interests of fairness or justice”
 - If the Police Chief concludes that the merits determination is not supported by the record, the Police Chief shall return the determination for review by a final review panel. If the panel decides to reverse, the Executive Director of OPC shall dismiss the complaint and notify parties in writing. If panel sustains, the Police Chief shall issue a supplemental decision as to discipline of officer. This can still be reviewed under any collective bargaining agreement and/or “in the interests of fairness and justice”
 - **Just because discipline was not upheld or imposed, does not mean complaint wasn’t sustained.** Still can cross on sustained complaints, even though discipline not imposed.
- **Citizen complaints made against MPD to MPD** (<http://mpdc.dc.gov/page/mpd-complaint-investigation-process>)
 - If a citizen has a complaint in a category not covered by OPC, it would go here. It’s not totally clear if any complaint that could be handled by OPC would be handled by MPD, but it seems that MPD would simply refer to OPC.
 - Exceptions- citizen harrassment and use of force complaints **MUST** be handled by OPC
 - Types of documents to request:
 - Documents related to the investigation
 - Documents related to the decision
 - Note- these are the possible outcomes of citizen complaints investigated by MPD-
 - Sustained – where the person’s allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper.
 - Insufficient Facts – where there are insufficient facts to decide whether the alleged misconduct occurred.

- Exonerated – **where a preponderance of the evidence shows that the alleged conduct did occur but did not violate MPD policies, procedures, or training.** (Make sure that you’re aware of this definition if dealing with an MPD-handled complaint.)
 - Unfounded – where the investigation determined no facts to support that the incident complained of actually occurred.
- **Internal Affairs Bureau.** (<http://mpdc.dc.gov/page/internal-affairs-bureau>). Comprised of the following:
 - **IAD (Internal Affairs Division) Complaints**
 - From MPD’s website: “Internal Affairs Division is comprised of the Police Misconduct Section and the OPC Liaison Unit. The Police Misconduct Section investigates most complaints by citizens against police officers and other MPDC members. The OPC Liaison Unit coordinates the investigation of those citizens' complaints filed with the Office of Police Complaints. The Internal Affairs Division also investigates lethal and serious non-lethal uses of police force.”
 - **Court Liaison Division**
 - Court Liaison Division, which coordinates MPDC members' participation in court proceedings and other court-related activities.
 - **Diversity and EEO Compliance Unit**
 - Diversity and EEO Compliance Unit, which administers the Department's equal employment opportunity program, including investigating and adjudicating EEO-related complaints.
- **PPMS**
 - “Police Personnel Management System”
 - Maintained by MPD to track each officer. Only some USAO attorneys have access.
 - *Important to note- PPMS *should* contain all sustained OPC complaints- but we’ve seen instances where we found out through independent sources that PPMS failed to capture sustained OPC complaints and that PPMS entries were misleading summaries of the underlying conduct.
 - It is important to request **source documents** associated with the PPMS entries.
- **Lewis List**
 - Lindsey, OEA No. 1601-0081-09, slip op. at 7 (D.C. Office of Employee App. Oct. 28, 2011) (quoting testimony by Robert Hildum, Deputy Attorney General for Public Safety for the D.C. Office of the Attorney General (OAG), indicating that the **OAG reviews the officer's misconduct and decides whether or not to use the officer's testimony**). The list is actually called the “*Lewis List*,” in reference to *Lewis v. United States*, 408 A.2d 303, 307 (D.C. 1979).
 - *Barker*, OEA No. 1601-0143-10, slip op. at 8; *Lindsey*, OEA No. 1601-0081-09, slip op. at 4-5. **Brad Weinsheimer, chair of the District of Columbia's Brady committee**, testified to **three types of misconduct on the list**: (1) an arrest, (2) an ongoing investigation (because the officer may want to “curry favor” with the prosecution), and (3) “information that we determine goes to veracity,” such as “prior bad acts that relate to veracity, that relate to truth telling.” *Lindsey*, OEA No. 1601-0081-09, slip op. at 4 (quoting Weinsheimer's prior testimony)

- For testimony about the *Lewis* list, see here:
 - <http://oea.dc.gov/sites/default/files/dc/sites/oea/publication/attachments/N-Lindsey-Draft-ID.pdf>
 - <http://oea.dc.gov/sites/default/files/dc/sites/oea/publication/attachments/Barker-MPD-reinstate%20with%20new%20caption--11-28-12-final.pdf>
- **Giglio forms**
 - Generated by USAO & OAG
 - They each have different ones
 - Push to get them in your cases! If you discover that officer answered untruthfully, could be bias cross
- **PACER- Civil Suits**
 - Relevant documents to gather:
 - Complaint (and any amended complaints)
 - Any documents indicating judgment of the court.
 - Pleadings can be useful sources of information.
 - A lot of information will be under seal, especially if a settlement.
- **Google** (news stories of officers' arrests)
 - A lot of officers live in MD. Here's how to search their court system-
<http://www.courts.state.md.us/courts/courtrecords.html>
- **Social media**
 - Facebook- many officers' pages are *not* private!
 - Instagram, twitter, whatever else the kids are using these days.
- **Public oversight hearing information**
 - <http://mpdc.dc.gov/release/public-oversight-hearing-performance-metropolitan-police-department-mar2015>
 - http://dccouncil.us/SUBMITTED_Pre-Hearing_Questions_2016_MPD_%28%2Battachments%29_02_19_16_1630_hours.pdf
 - A new one issued every year!
 - Includes “duty status” of officers.
 - And pending civil suits against MPD.