

INTRADEPARTMENTAL CORRESPONDENCE

June 17, 2013
1.3

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: REVIEW OF INVESTIGATIONS SURROUNDING THE TERMINATION OF CHRISTOPHER DORNER

RECOMMENDED ACTION

1. That the Board of Police Commissioners (Board) REVIEW and ACCEPT the attached report.

DISCUSSION

The purpose of the report is to address concerns raised by former Police Officer Christopher Dorner regarding the appropriateness of the termination process and to address specific allegations of unfair treatment in the disciplinary system.

If you have any questions, please have a member of your staff contact Mr. Gerald Chaleff, Special Assistant for Constitutional Policing, at (213) 486-8730.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Beck', with a stylized flourish at the end.

CHARLIE BECK
Chief of Police

Attachment

INTRADEPARTMENTAL CORRESPONDENCE

June 13, 2013
1.14

TO: Chief of Police

FROM: Special Assistant for Constitutional Policing

SUBJECT: REVIEW OF INVESTIGATIONS SURROUNDING THE TERMINATION OF
CHRISTOPHER DORNER

The attached report has been prepared to address concerns raised by former Police Officer Christopher Dorner regarding the appropriateness of the termination process and to address specific allegations of unfair treatment in the disciplinary system.

Should you have any questions, I can be reached at (213) 486-8730.

A handwritten signature in black ink, appearing to read "G. Chaleff". The signature is fluid and cursive, with the first name "Gerald" and last name "Chaleff" clearly distinguishable.

GERALD L. CHALEFF
Special Assistant for Constitutional Policing

Attachments

Los Angeles Police Department

**Review of the Investigation
Surrounding the Termination of
Christopher Dorner**

Conducted by the Special Assistant for Constitutional Policing
June 17, 2013

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EXECUTIVE SUMMARY

On February 3, 2013, a killing spree began in Southern California. It started with what initially appeared to be the random murders of two young adults; one being the daughter of a retired Los Angeles Police Department (LAPD or Department) Captain, the other the daughter's fiancé. The murders became national news as a "manifesto" written by a terminated LAPD officer, Christopher Dorner (Dorner), became public knowledge via Facebook. A six-day manhunt for Dorner ensued throughout Southern California, involving numerous law enforcement agencies, including the Federal Bureau of Investigations and United States Marshals. During the pursuit, Dorner engaged in a gun battle with LAPD officers, wounding one; killed one Riverside Police officer and wounded another; tied up two individuals in the San Bernardino mountains; and ultimately engaged in a shootout with San Bernardino Sheriff deputies, killing one and wounding another, before taking his own life. Dorner's justification for committing murder was to "reclaim his name" because he believed he had been wrongfully terminated for telling the truth.

The thought that any individual would cause such mayhem in the name of "clearing their name" was difficult for most to comprehend. However, some expressed their belief that Dorner was stating some truths, and that the LAPD was still a racist organization that punished anyone who tried to bring forth its faults. The Chief of Police, recognizing the belief exists that the LAPD has not changed, directed a complete review of Dorner's termination case to identify any potential problems or injustices, as well as a review of allegations Dorner made in his manifesto. Over the course of the review and in the preparation of this report, thousands of pages of testimony, reports and investigations were reviewed and analyzed.

Dorner was hired by the LAPD in February 2005. It took Dorner 13 months to finally graduate from the Academy, rather than the usual six months, due to a variety of interruptions involving injuries, including a hand injury resulting from a negligent discharge of his weapon. In January 2009, the LAPD terminated Dorner for filing a false complaint against his training officer, after Dorner alleged that the training officer kicked a suspect during an arrest on July 28, 2007, and for making false statements on two occasions regarding these alleged kicks. Dorner asserted these allegations 13 days after the arrest of the suspect, after Dorner was notified by his training officer that he was in jeopardy of receiving an unsatisfactory rating report; according to Dorner, something all probationers feared.

Dorner had multiple opportunities to report the alleged kicks before he finally did so on August 10, 2007:

1. Initially the day of the incident, to the uninvolved supervisor who arrived on the scene of the arrest to conduct the use of force investigation for actions that occurred during the arrest;
2. Later that same day, to the Watch Commander at the station where the arrestee was presented and booked;
3. Within a few hours of the arrest, to the medical staff at the jail who attended to the arrestee;

4. In the arrest report prepared by Dorner the same day of the incident; and,
5. Finally, on four different dates, to the sergeant Dorner claimed to have trusted at Harbor Area.

Dorner offered a variety of excuses for why he did not immediately report the alleged kicks to the uninvolved supervisor who arrived at the scene of the arrest to complete the use of force report:

- He was not sure if he was supposed to mention it;
- It would be documented in the arrest report so he did not have to mention it to the supervisor on scene (though Dorner failed to include the alleged kicks in the arrest report he later prepared);
- The uninvolved supervisor only asked about Dorner's actions, and not the training officer's actions;
- He was not sure if the kicks were wrong;
- The uninvolved supervisor who responded to the incident and training officer were good friends;
- He did not know if he consciously decided not to mention the kicks; and,
- Fear of retaliation

Further, there was no physical evidence that the kicks actually occurred. None of the three independent eyewitnesses to the use of force reported observing a kick, or anything inappropriate. The training officer denied kicking the arrestee. The only testimony provided in support of Dorner's testimony and allegations of these kicks was given by the arrestee and his father. The Board of Rights that heard Dorner's case, however, determined that neither man's testimony could be relied upon, as the arrestee was unable to provide coherent responses to basic questions due to his limited mental capacity, and the arrestee's father was not a witness to the use of force and his conflicting testimony lacked credibility.

Dorner requested an independent review of his termination by the Office of the Inspector General and appealed his case to the Los Angeles Superior Court and to the California Court of Appeals. All three entities upheld the decision to terminate Dorner.

Dorner cited a variety of reasons to discredit the validity of his termination, including numerous alleged personal relationships among his training officer, supervisors, investigators and Board of Rights members. However, a number of interviews conducted in the preparation of this report revealed these allegations to be false.

There were at least two other incidents in which Dorner attempted to use the discipline system to further his own agenda. The first occurred after Professional Standards Bureau investigators questioned Dorner in relation to the allegations he made against his training officer. When the investigators asked Dorner whether he had been retaliated against for filing the complaint against his training officer, he answered he had not. The following day, Dorner alleged that someone had urinated on his jacket; a complaint that was found to be false. The second incident occurred when Dorner received a computer generated automated "action item" from the Risk Management Information System. Action items are automatically generated by a

computer system, without the involvement of any Department personnel. This was explained to Dorner, but he still insisted on filing a complaint against the lieutenant who was reviewing the action item; the same lieutenant who happened to be the Watch Commander who interviewed the arrestee on July 28, 2007. Dorner alleged that the lieutenant was retaliating against him because she was friends with the training officer. The training officer and the lieutenant were not friends, and the lieutenant had no input into the generation of the action item. This complaint was found to be false as well.

The record is clear that Dorner fabricated allegations against his training officer, and later, against his peers and superiors. The decision to terminate Dorner was sound and just. Dorner's documented proclivity to concoct allegations and evidence to advance his personal agenda support the conclusion that Dorner was rightfully terminated from the LAPD. This report addresses Dorner's termination and issues related to his termination in his manifesto. A second report will be published in the months to come that will specifically address issues raised by Dorner and others regarding the Department's disciplinary system and the state of the Department as it relates to employee relations.

I. INTRODUCTION

As a result of concerns raised both externally and internally after the “manifesto” of Christopher Dorner (Dorner) was discovered, Chief of Police Charlie Beck ordered a review of the events pertaining to Dorner’s termination to determine if the Los Angeles Police Department (LAPD or Department) acted appropriately and equitably. This Report addresses the specifics of Dorner’s termination, including the allegations made against Dorner, and the allegations made by Dorner in regard to alleged unfair treatment, retaliation and conflicts of interest surrounding his termination. In preparing this report, the LAPD Special Assistant for Constitutional Policing (SACP) reviewed:

- The transcripts of all five days of the Board of Rights hearing and the exhibits presented at the Board of Rights;
- The arrest report for the arrest that resulted in the allegations of the kicks;
- The investigation files, including transcripts of interviews conducted during the investigation resulting from Dorner’s complaint against his training officer;
- The “manifesto” found on Facebook;
- The investigative files and evidence of other complaint investigations relating to Dorner and the training officer;
- The Training Evaluation and Management (TEAMS) report, personnel employment package and employment history of Dorner;
- The TEAMS report and personnel employment package of the training officer;
- Reports from the LAPD Deployment Planning System (DPS) of June 24, 2007 to September 8, 2007 of Harbor Area, which included deployment information regarding Dorner, his training officer, and the supervisor to whom Dorner ultimately reported the kicks;
- Correspondence sent to Dorner, placing him on inactive duty;
- Correspondence with the Office of the Inspector General;
- The documents filed in Superior Court of Los Angeles and the decision in the appeal of Dorner;
- The documents filed in the California Court of Appeals and the decision in the appeal of Dorner;
- Interviews conducted for this report;
- Numerous television, newspaper and blog articles concerning the murders, search for Dorner and articles expressing the belief that Dorner’s “manifesto” expressed the truth about the Department;
- History of the Board of Rights and procedures relating to the Board of Rights;
- Policies and Procedures regarding the Department’s discipline process;
- Charter of the City of Los Angeles;
- The Police Officer’s Bill of Rights (California Government Code Section 3300 et seq.); and
- Various miscellaneous documents and source material.

This report summarizes that review and expresses the findings of the SACP and the Chief of Police based on that review.

II. BACKGROUND

In January 2009, the Los Angeles Police Department terminated Dorner for filing a false complaint against his training officer, in which he alleged his training officer kicked a suspect, and for making false statements on two occasions regarding these alleged kicks. When Dorner reported to a supervisor that his training officer had kicked a suspect, the supervisor caused a complaint investigation to be initiated against the training officer. The investigation was conducted by the Professional Standards Bureau (PSB), whose investigators interviewed witnesses and obtained all available evidence.

The complaint against his training officer alleged that the training officer used unnecessary force, attempted to dissuade Dorner from reporting misconduct, and filed a false arrest report.

Dorner waited 13 days after the incident before reporting this alleged activity. Dorner also did not include the alleged kicks in the arrest report he prepared nor did he verbally report the alleged kicks to the watch commander or medical nurse, both of whom he had access to, independent of his training officer, the day of the alleged incident. Therefore, charges were made against him for failing to report misconduct and for filing a false arrest report. PSB investigated both charges against Dorner.

In the subsequent investigation, PSB investigators interviewed Dorner; his training officer; three independent percipient witnesses who worked at the location of the arrest; a Los Angeles Port Police officer who arrived on the scene as the arrest was occurring; the Sergeant who responded to the location shortly after the arrest in response to a radio transmission from the arresting officers reporting a use of force, and subsequently conducted the initial Use of Force Report; and a sergeant who was a friend of Dorner, whom Dorner called for advice before reporting the alleged kicks to a supervisor.

After completing all the interviews, and obtaining and reviewing all available evidence, PSB recommended a complaint be initiated against Dorner for making false statements to the supervisor and the PSB investigators, and that Dorner's complaint against his training officer alleging the kicks be deemed unfounded.

That investigation and complaint recommendation was reviewed by Dorner's chain of command, including the Commanding Officer of Harbor Area, the Chief of Operations South Bureau (then, Deputy Chief Charlie Beck), and the Chief of Police (Chief William Bratton). Members of the chain of command and the Chief of Police concurred that Dorner should be sent to a Board of Rights to determine the truth of the charges and, if true, the penalty. The Chief of Police also added a charge of making a false complaint. After an evidentiary hearing before two Captains and a citizen, who comprise the members of the Board of Rights (the Board), the Board ruled that Dorner was guilty of the charges against him, that his actions had destroyed his

credibility and that he should not remain as a law enforcement officer with the LAPD. The Board's decision was reviewed and affirmed by the Chief of Police.

Dorner appealed this decision to the Los Angeles Superior Court and to the California Court of Appeals. Both the Superior and Appellate courts upheld the termination decision. In addition to appealing through the court system, Dorner requested a review by the Office of the Inspector General of the LAPD Board of Police Commissioners. The Inspector General reviewed the matter and concluded, "Based on our review of the Department's investigation, and Board of Rights rationale and findings, we agree with the Board's decision to sustain allegations of misconduct in this case."

Three years later, Dorner murdered the daughter of the attorney who had represented him at the Board of Rights hearing and the daughter's fiancé. In connection with those murders, Dorner issued a so-called "manifesto" in which he purported to justify the killings as "... a necessary evil that I do not enjoy but must partake and complete for substantial change to occur within the LAPD and reclaim my name." Dorner stated in his manifesto that he would kill members of outside agencies if they attempted to intervene. Subsequently, he attacked two LAPD Officers who were en route to the city of Corona for a protection detail, injuring one in the head. Ten minutes later, Dorner attacked two unsuspecting City of Riverside Police Officers who were sitting in their Department marked patrol car, killing one officer and severely wounding the other. Days later, while attempting to evade capture, Dorner held a civilian couple hostage. Finally, he killed a San Bernardino Sheriff Deputy before ultimately taking his own life.

Dorner's manifesto, which he entitled "Last Resort," is 17 pages long, and contains a litany of general complaints about the LAPD and specific allegations about his termination in particular. Dorner accused the Department of continuing to discriminate on the basis of race, ethnicity, gender and sexual orientation, and claimed that people who attempted to complain about such matters were retaliated against.

In the wake of Dorner's allegations, numerous individuals from the community and law enforcement wrote letters to the editor in the local newspapers, posted blog comments, and gave interviews to both print and broadcast media, indicating that they believed Dorner's accusations accurately reflected the current state of the Department. This caused concern with the LAPD's leadership team.

The LAPD acknowledges that part of its past is a history of discrimination, retaliation and what has been described as a code of silence. However, over the past decade, the Department has instituted many changes and reforms to address these problems and is constantly striving to improve its performance by creating a working environment that is free of discrimination and treats all employees equitably.

The Chief of Police has stated that in some ways it is easier to implement changes within the Department than it is to change external (and sometimes internal) perceptions and beliefs that are based on a checkered history. He has also acknowledged that no organization is perfect and it is incumbent upon the organization to determine if mistakes might have been made in the

Dorner case. As a result of concerns raised both externally and internally, the Chief of Police ordered that the events relating to the termination of Christopher Dorner be reexamined to determine whether the Department acted appropriately in its decision to terminate, and to assess if there was any truth to Dorner's allegation of unfairness in his proceedings. The Chief of Police made a commitment to all that if any problems with the process were discovered, the Department would take immediate action to ensure that the same actions would not be repeated.

III. THE DISCIPLINE SYSTEM

Questions about the appropriateness of Dorner's termination cannot be fully addressed without understanding the process that ultimately resulted in that termination. Any person, including members of the Department, can make a complaint against any member of the LAPD. There is no required method for doing so. Complaints can be made in person, by telephone, by letter, or via the Internet. Complainants can identify themselves or make their complaints anonymously. In addition to complaints made by persons directly affected, members of the Department who occupy supervisory positions are required to initiate a complaint whenever they are notified of, or become aware of, potential misconduct. In this case, when Dorner notified a supervisor at Harbor Area that his training officer had kicked a suspect, the supervisor initiated a complaint against the training officer.

A. COMPLAINT INVESTIGATION PROCESS

A complaint investigation is initiated by a supervisor via the Department's Complaint Management System (CMS), and is submitted to the Commanding Officer of the involved/accused employee for review. Once the Commanding Officer completes the review of the initial complaint, it is then submitted to PSB. According to Department policy, the complaint must be submitted to PSB within ten days of being initiated, a requirement established by the Consent Decree.¹ This deadline was met in the case of Dorner's complaint against his training officer.

Another Department policy resulting from the Consent Decree requires that PSB investigate all allegations of unauthorized uses of force. Once that investigation is completed, PSB is required to submit the results of the investigation to the Commanding Officer of the Division or Area in which the subject of the investigation works. The respective Commanding Officer reviews all of the materials, determines whether the allegations are true, and recommends what penalty, if applicable, the employee should receive. The Commanding Officer then submits the investigation and recommendation for outcome up the chain of command to the Bureau Chief. The Bureau Chief either concurs or amends the outcome and penalty, and submits the investigation and recommendation to PSB for review. PSB reviews the investigation and the proposed adjudication, and then submits the completed investigation and recommendations to the Chief of Police for final adjudication.

¹ The Consent Decree was an agreement entered into by the United States Department of Justice and the City of Los Angeles in November, 2000. A federal district court judge approved and entered the Consent Decree as a formal court order in June 2001. The Consent Decree mandated that the Department implement a large number of procedures in nine general subject areas, and was intended to promote police integrity within the Department and prevent conduct that deprives individuals of their rights and privileges.

In accordance with Department policy, once Dorner's complaint against his training officer arrived at PSB, it was assigned to PSB investigators for investigation. The investigators separately interviewed all available witnesses, including the three employees of the hotel who witnessed the alleged use of force, Dorner, his Training Officer, the Sergeant who conducted the Use of Force investigation, The Los Angeles Port Police officer, and a Sergeant who is a friend of Dorner. The investigators also attempted to interview the arrestee who was allegedly kicked. However, the arrestee's family would not cooperate in allowing him to be interviewed due to his mental condition. The investigators also obtained photographs and other evidence related to the case.

All members of the Department are informed they are entitled to have counsel or a representative present at a complaint interview. Dorner was offered representation but declined, and appeared without any representation to be interviewed in regard to his allegations of his training officer kicking the arrestee.

After review of the investigative report and evidence in the investigation of Dorner's allegations, the Commanding Officer of Harbor Area believed the investigation proved that Dorner made false statements to his supervisor and PSB investigators, recommended that Dorner be directed to a Board of Rights hearing and, if found guilty, removed from the Department. This recommendation by the Harbor Area Commanding Officer was forwarded to South Bureau for review and recommendation. The Commander and Deputy Chief in command of Operations South Bureau concurred with sustaining the complaint against Dorner and the penalty recommendation.

The Operations South Bureau Deputy Chief then submitted the complaint to PSB for final review before it was submitted to the Chief of Police. PSB concurred that the recommendation was appropriate based on the facts identified in the investigation. The complaint was then presented to then Chief of Police William Bratton for final determination. Chief Bratton concurred with the recommendation to terminate Dorner and added an additional charge that Dorner made a Personnel Complaint that he knew or should have known was false. Chief Bratton directed that Dorner be sent to a Board of Rights.

Dorner was notified of the results of the investigation and the recommended penalty and advised that he could provide a response or information in response to the findings of the investigation and the recommended penalty. He was further notified that the Chief of Police had added an additional count of making a false complaint. Dorner did not submit a response or otherwise respond. This investigation and review process was conducted over a period of several months and Dorner was notified of the determination in June 2008. At that time, Dorner was also notified that because of the seriousness of the allegations against him, he was being placed on Inactive Duty Status. This meant that he could not perform the duties of a Police Officer and that he was ordered to remain home or at another approved location between regular working hours on assigned workdays, and to telephonically contact the watch commander at the beginning and end of watch.

B. BOARD OF RIGHTS

The Board of Rights is the tribunal established for the LAPD by the Los Angeles City Charter for trial and determination of guilt or innocence and penalty for sworn employees. Prior to the establishment of the Board of Rights, the Chief of Police had the power to terminate officers from the Department at his or her sole discretion. In 1929, the Los Angeles City Charter was amended to provide for an appeal to the Board of Police Commissioners. In the 1930's Chief William Parker, then a lieutenant, redesigned the disciplinary system to include the Board of Rights, based on the military court martial system. This was done to curb the potential for abusive actions by any chief of police.

In 1992, the Christopher Commission recommended amending the disciplinary process in Los Angeles through Proposition F, which the voters approved. One important change included in Proposition F was the addition of a civilian (non-department employee) to the Board of Rights. Prior to Proposition F, the membership of the Board was comprised of three members from the LAPD command staff. Post Proposition F, the Board is comprised of one civilian (who is trained by the Board of Police Commissioners' staff) and two command staff members. All of the changes after the establishment of the Board of Rights process have been primarily technical, relating to the range of punishment, the power to demote, modification of the limitations period to conform to Section 3304(d) of the Government Code, and clarification of evidentiary issues.

The Board of Rights is an administrative tribunal. The burden of proof required for a finding of guilt is the same as that for a civil trial - a preponderance of evidence. Preponderance of evidence means the weight of evidence on one side of a case is more convincing than the evidence presented by the other party. A Board of Rights hearing is not a criminal proceeding, which requires proof beyond a reasonable doubt.

In all discipline cases the burden of proof lies with the Department to prove the truth of the charge, not on the accused to disprove the charge. Therefore, if the Department does not present evidence that convinces a majority of the Board members of the truth of the charges, the officer must be acquitted. The accused officer has the right to legal representation. The attorney for the accused officer has the right to take pre-trial discovery, to present evidence and to cross examine witnesses at trial. As in a civil trial, the accused has the right to make evidentiary objections and to make an opening statement and provide a closing argument. The rules of evidence generally apply to a Board of Rights hearing with the exception that hearsay evidence may only be used for the purpose of supplementing or explaining any direct evidence. Hearsay evidence is not sufficient in and of itself to support a finding unless it would otherwise be admissible over objection in a civil action. Additionally, the Board may not rely on hearsay solely to make a finding of guilt.

Dorner was represented by an attorney at his Board of Rights hearing. Based on the hearing transcript, his attorney appears to have been well prepared and to have aggressively represented his client. The Department is represented by an advocate, who is a sworn member of the LAPD, at a Board of Rights hearing. At the Dorner hearing, the Department Advocate was a sergeant who was not an attorney, but who had been trained by the Department to present cases

at Board of Rights hearings. Based on the hearing transcript, both sides during the Dorner matter appear to have been well represented.

At a Board of Rights hearing, the three members of the Board act as judges, consider the evidence and arrive at a final decision in the case. Two are members of the Department command staff who carry the rank of Captain, Commander, or Deputy Chief. As mentioned above, the third member is a civilian. Prior to the Board of Rights, the accused officer, or his representative/attorney, randomly draws the names of four command staff members, selecting two to be on the Board. The accused officer has the right to challenge any of the names drawn for prejudice or conflict of interest. This could include anyone who had actual contact with the case. However, mere knowledge of those involved in the case is not grounds for disqualification, as officers are presumed to know or have knowledge of each other. If a member selected for the Board is later challenged, the matter is immediately appealed to the Department's Chief of Staff or, in his or her absence, to the first available Assistant Chief. That person must determine whether the hearing shall proceed with the person challenged or whether the person shall be replaced. The Department members of the Board that presided over Dorner's case were selected from the four names drawn randomly from a basket. Dorner did not ask that any panel member be disqualified, despite what he claimed in his manifesto.

The civilian member of a Board of Rights panel is selected from the names of three civilians, also drawn at random. The civilian members are drawn from a list of individuals from the Los Angeles Community who have applied, been reviewed for conflicts and qualifications, and trained by the Board of Police Commissioners' staff. Accused officers have the same right to challenge civilian members as they do for Departmental members. There was no challenge of the civilian member made by Dorner.

The Board of Rights proceedings historically were open to the public until 2006, when the California Supreme Court decided the case entitled Copley Press Inc. v. Superior Court. That case, as interpreted by the Los Angeles City Attorney, required the closing of the Board of Rights hearings. This decision was based upon the laws relating to the privacy of Police Officers' records. Therefore, due to the year that Dorner's case went to a Board of Rights, his case was not open to the public.

When the majority of the Board members find the officer guilty of any of the charges in the complaint, there is a second hearing to determine the appropriate penalty. At the penalty hearing, further evidence is presented, including the employment history of the officer in the Department and possibly character witnesses the accused officer may wish to present. The Board then considers all the evidence presented at both hearings, and determines by a majority vote the appropriate penalty. In the case of Dorner, the Board unanimously found him guilty and unanimously decided on the penalty of termination.

The results of a Board of Rights are presented to the Chief of Police, who reviews the findings and either approves or lowers the punishment. The Chief does not have the power to increase the punishment. The Chief of Police approved the termination of Dorner.

C. JUDICIAL REVIEW

After termination from the Department, the officer involved has the opportunity to appeal that decision to the Superior Court of the County of Los Angeles and then to the California Court of Appeal. Dorner appealed his termination to the Superior Court. That court reviewed the record and heard arguments. The Court recited that 14 witnesses had testified at the Board of Rights hearing, and that the uncontroverted testimony was that Dorner did not tell anyone his training officer had kicked the suspect until two weeks after the arrest incident. By that time Dorner had filed an arrest report jointly with his training officer, and had been interviewed by a sergeant in the use of force investigation in which kicking had never been mentioned by Dorner or anyone else.

The Court then independently reviewed the record and stated it was uncertain if kicks had occurred and that the burden was on the appellant (Dorner) to convince the Court that the findings of the Board of Rights were contrary to the weight of evidence. The Court further noted that witnesses who were present at the scene were called to and did testify at the Board of Rights hearing, that none of these witnesses corroborated Dorner's testimony, and that the training officer testified she did not kick the suspect. The Court stated that the issue came down to relative credibility of Dorner versus the training officer as witnesses, that the members of the Board were in position to judge credibility, and that it was not an abuse of discretion for Board members to believe the training officer and to disbelieve Dorner. The Court therefore, denied Dorner's petition² and upheld the termination.

Dorner then appealed to the Court of Appeal. The appellate court also upheld the termination and affirmed the decision of the Superior Court. The opinion of the Court of Appeal contains a detailed recitation of the evidence presented at the Board of Rights hearing and of the reasoning of the Superior Court. The appellate court explained that, on appeal, it reviews the Superior Court's independent review of an agency decision to determine if substantial evidence supports both the tribunal's and lower court's decisions, and that it is required to resolve all conflicts and indulge all reasonable inferences in favor of the party that prevailed in the trial court. The Court of Appeal concluded that the Superior Court had independently reviewed the evidence and that the Board of Rights decision was supported by substantial evidence.

D. REQUEST TO THE OFFICE OF THE INSPECTOR GENERAL

In the early 1990's the Board of Police Commissioners added an Office of the Inspector General (OIG) to assist as an independent civilian oversight entity to review procedures, policies, discipline, use of force and other actions of the Department. The OIG is also available for both Department employees and the public to voice concerns over disparate treatment by the Department. On January 9, 2009, after the Board of Rights found Dorner guilty of the charges against him and recommended termination, Dorner contacted the OIG and requested assistance. The OIG conducted an independent review of the investigation. Investigators from that office reviewed the investigation that had been conducted by PSB, a video of the arrestee being

² The procedural vehicle by which an officer can appeal the decision of the Board of Rights is called a Petition for Writ of Mandate.

interviewed by Dorner's attorney, and the Board of Rights findings. The OIG agreed with the Department's decision to sustain allegations of misconduct.

IV. THE ARREST

On July 28, 2007, Dorner and his training officer were called to the DoubleTree Hotel in San Pedro for a disturbing the peace 911 call with the suspect still on the premises. The training officer designated Dorner as the contact officer. Both officers approached the man who was sitting in front of the hotel. He appeared to be nonresponsive and Dorner took the man by the arm and attempted to walk him away from the hotel. The arrestee cooperated briefly, then swore at the officers, pulled away and tried to flee. The training officer called for "back up" while Dorner attempted to gain control of the arrestee. The arrestee again attempted to pull away and strike Dorner. Dorner physically forced the suspect to the ground. The arrestee weighed about 250 lbs and Dorner approximately 300 lbs. As Dorner was tackling the arrestee they fell together through some bushes into a planter box. The arrestee fell face first through the bushes with Dorner on top of him. The arrestee continued to resist and would not show his hands to the officers. In attempt to control the arrestee, the training officer obtained Dorner's Taser and activated the Taser twice. The arrestee would still not cooperate and the training officer went to an open spot in the bushes in attempt to free the suspect's hand. Ultimately, the suspect produced his hand and was handcuffed and placed in the patrol car. Dorner and the training officer then immediately called for a supervisor and reported the arrest and the force used to effectuate the arrest. That is, the forcing of the suspect to the ground and the use of the Taser.

Department regulations require that when force is used in an arrest, a supervisor is to be notified and an uninvolved supervisor is to go to the scene of the arrest and conduct an investigation concerning the force used. Dorner and his training officer requested a supervisor to the scene. As required, an uninvolved supervisor arrived on scene and conducted an investigation into the force used.

V. THE EVIDENCE DEMONSTRATING THE KICKS DID NOT OCCUR

In determining whether Dorner was treated fairly by the LAPD or whether his allegations of unjust treatment were true, all of the evidence surrounding the arrest and actions that followed have been re-examined and analyzed per the request of the Chief of Police.

A. INDEPENDENT WITNESSES

During the initial use of force investigation that led to the complaint by Dorner, there were three independent witnesses identified who were employees of the DoubleTree Hotel, the location of the arrest, who viewed all or part of the arrest and struggle that led to the arrest. All of these independent witness statements were consistent with the assertion that the training officer did not kick the arrestee. Those witnesses - like all witnesses who view a short violent action - have differing recollections on particular details of the event. Although there were some minor inconsistencies, all witnesses were consistent that no kicks occurred and they did not see anything they believed was inappropriate. Not one independent witness observed the entire arrest from start to finish. However, the violent nature of the kicks, as described by Dorner,

would certainly have been noticed or seen by at least one of the witnesses. One witness did not see the initial takedown of the arrestee but did observe the remainder of the incident and would have been in a position to observe kicks to the head if they had occurred. A second witness saw the initial takedown and portions of the entire incident up until the handcuffing, as she was attempting to get people out of the way. She observed the arrestee's head and should have been in a position to observe any kicks if they had occurred. A third witness observed the police arrive. She heard speaking and the TASER being activated, at which point she exited the hotel. She observed the arrestee lying face down in the bushes and resisting. His head was on the ground. She too was in a position to see the kicks if they had occurred. Two of these independent witnesses testified at the Board of Rights and were cross examined by Dorner's attorney, and the third witness' testimony was that of the statement made to the investigators, as the witness could not be located for in-person testimony for the Board of Rights. The Board had the opportunity to observe the witnesses who testified and determine their credibility, including their actual opportunity to observe the event.

B. PHYSICAL EVIDENCE

The physical evidence that resulted from the arrest and reviewed in the investigation and subsequent Board of Rights does not support Dorner's contention that the arrestee was kicked twice in the chest and once in the face. The kicks were alleged to have occurred while the arrestee was in the dirt of the planter box where the training officer was also standing. Therefore, there should have been a dirt transfer from a boot on the shirt of the arrestee if the kicks had occurred. In this case, Dorner's training officer was wearing standard police boots, and there was no evidence of any transfer of dirt from the training officer's boots onto the arrestee's shirt.

There was evidence of a scratch or cut to the face of the arrestee, described by Dorner in the Los Angeles County Unified Arrestee Medical Screening Form as a "minor scratch on face," which is inconsistent with his later description of a violent kick to the face. He described the kick to the face as the last of three kicks, the first two to the chest. Dorner further stated that the kicks became more violent as each occurred. He stated that the final kick caused the arrestee's head to jerk back. At the Board of Rights, Dorner described the kicking motion as if one was "walking down the street and kicking a can" and that the training officer "had to wind up to kick." This would have been physically impossible, as the training officer was in the planter box and backed up against the wall of the hotel, unable to "wind up" as Dorner described.

The evidence demonstrated that the injury to the suspect was a slight scratch or cut under the left eye. The planter box that Dorner and the arrestee fell into had several bushes with stiff branches. Dorner and the arrestee fell through the bushes and onto the ground, causing damage to the bushes. The arrestee fell face first through the bushes. The injury that the arrestee sustained was consistent with falling through the bushes and being scratched by one of the branches. The injury was noticed when the arrestee, assisted by the officers, stood up after falling through the bushes. The witnesses at the hotel recalled that the bushes were disturbed and broken after the event and had been in pristine condition before. This evidence is not consistent with being violently kicked by someone wearing boots.

C. DELAY IN REPORTING THE USE OF FORCE

An important issue to consider in determining if the kicks occurred was to determine why Dorner failed to immediately report the kicks by his training officer, but instead waited 13 days before coming forward and reporting the kicks to a supervisor, and why Dorner gave so many inconsistent explanations as to why he delayed reporting the kicks. Dorner did not provide a satisfactory explanation for his delay in reporting this alleged misconduct. In examining his testimony at the Board of Rights, his interview with PSB investigators and his manifesto, it is clear that Dorner gave multiple and inconsistent explanations as to why he did not report the kicks immediately.

i. The Uninvolved Supervisor

The first opportunity Dorner had to report the kicks was when he was interviewed by the sergeant who arrived at the location almost immediately after the arrest occurred and conducted the Use of Force Investigation. Department policy requires that when an officer uses force, such as the tackling, use of a Taser or other physical actions upon the arrestee, it must be immediately reported, and an uninvolved supervisor must respond to the scene of the use of force and conduct an investigation. This policy is trained in the recruit academy, including a specific eight-hour class on use of force and the reporting policy. In this instance, a use of force was immediately reported by the officers (Dorner and his training officer), and an uninvolved sergeant responded, interviewed witnesses, including the officers, obtained evidence and observed the scene. At this time both officers are required by policy to report the types of force that were used during the incident.

In summary, what was reported to the uninvolved sergeant was that the arrestee was uncooperative, was forced to the ground with Dorner on top of him, resisted the officers' attempts to handcuff him, and, therefore, was Tased twice and taken into custody. Dorner was interviewed by the uninvolved supervisor at the location of the arrest within a short period of time after the arrest occurred, and made no mention of the kicks by his training officer, while he was describing what occurred during the arrest.

During the PSB investigation and his Board of Rights testimony, Dorner gave multiple reasons for his failure to immediately inform the uninvolved supervisor of the kicks. One reason he cited was that he was not sure if he was supposed to mention it. However, Dorner later acknowledged that he was trained that he, as all officers are, was fully responsible to report the full details of any use of force; a conflict in his statement that was never resolved by Dorner. Dorner could not explain why he did not mention the kicks when the uninvolved sergeant asked him what had happened.

Dorner also claimed that he thought the kicks had to be fully reported in the arrest report, and that the report had not been written at the time he was speaking with the uninvolved sergeant, and therefore, it excused his failure to immediately report the kicks.

Dorner also offered that the uninvolved sergeant only asked him about what he (Dorner) did and not what his training officer did. This was yet another explanation offered by Dorner for

not reporting the kicks the day of the incident. However, this explanation was inconsistent as well, since Dorner had immediately informed the sergeant about the use of the Taser by his training officer. Dorner's explanation for this inconsistency was that the uninvolved sergeant asked him what happened, but only seemed concerned about the Taser.

Dorner also claimed at this point that he was not sure that the kicks were wrong. This statement was contrary to his statement and testimony that when the training officer kicked the arrestee she looked around and had a look on her face as if she had done something wrong or as if her hand was "caught in the cookie jar."

Additionally, according to Dorner, his training officer and the sergeant were "good friends," and he did not feel comfortable talking to the uninvolved sergeant. The sergeant testified at the Board of Rights under oath that he was not friends with the training officer and there was no reason for Dorner not to trust him. Again, this is inconsistent with Dorner's numerous explanations of not being sure if the kicks were wrong; that it would be documented in the arrest report; and that the uninvolved sergeant only asked about what Dorner did rather than what the training officer did.

Moreover, when the sergeant was walking away after interviewing him, Dorner claimed he was wondering if he should tell the sergeant about the kicks when he heard the sergeant say to the training officer "well, his story is congruent with yours." Dorner seemed to offer this as a reason for not telling the supervisor at that time.

Dorner said he did not know if he consciously decided not to tell the sergeant, then contradicted himself later and blamed his fear of retaliation as being the reason for not immediately informing the uninvolved sergeant. He related this incident to that of his experience in the Academy when he reported classmates for misconduct, and he claimed he was retaliated against at that time. However, after reporting the misconduct of his classmates in the Academy, Dorner never reported or complained about being retaliated against by anyone. When asked about this, he offered that half of his Academy class would not talk to him and blamed it on his making a complaint against his classmates, not his own actions toward his classmates. One of his classmates, when interviewed during the investigation of Dorner's complaint in the Academy, stated that Dorner was a hothead and would walk up to fellow recruits and get in their faces. While in the Academy, Dorner made no complaints against his classmates for retaliation.

Additionally, Dorner's experience in the Academy was one of the Department attempting to assist Dorner in achieving police officer status. He entered the Academy in February 2005, Class 2-05 and, due to injuries that occurred while he was in training, was recycled to Class 05-05. In August 2005, Dorner negligently discharged his weapon while cleaning it and suffered an injury to his hand, and was then recycled to Class 07-05. Dorner graduated with that class in March 2006. While in the Academy, shortly before graduation, he made the complaint against his classmates that he stated was the reason for his fear of retaliation. The complaint was investigated and one of the individuals who was the subject of the complaint was disciplined with a suspension. Dorner did not indicate to anyone in the Academy that he was the subject of retaliation. Yet he cited this experience as the reason he feared retaliation and therefore did not immediately report the kicks allegedly performed by his training officer.

As stated above, Dorner provided the following reasons for not immediately reporting the kicks to the uninvolved supervisor who arrived on the scene to investigate the force used during the arrest:

- He was not sure if he was supposed to mention it;
- It would be in the arrest report so did not have to mention it on scene;
- The uninvolved supervisor only asked about what Dorner did;
- He was not sure if the kicks were wrong;
- The uninvolved sergeant and training officer were good friends;
- The statement of uninvolved sergeant to training officer that stories were “congruent”;
- He did not know if he consciously decided not to mention the kicks; and
- Fear of retaliation.

ii. The Watch Commander

The Consent Decree mandated, and Department policy requires, that all persons be brought before a Watch Commander for inspection upon arrest and be asked three specific mandated questions : “1. Do you understand why you were detained/arrested? 2. Are you sick or injured? 3. Do have any questions or concerns?” If Dorner did not feel comfortable reporting misconduct to the uninvolved sergeant at the scene of the incident, this would have been the second opportunity that day that Dorner had to report the misconduct (kicks) to a supervisor, as he and his training officer presented the arrestee to the Watch Commander for inspection.

When asked during the investigation why he did not tell the Watch Commander about the alleged kicks, Dorner first stated he did not know. He then later offered that the Watch Commander and the training officer were friends. His explanation for this belief was that the training officer brought the Watch Commander coffee every day and they hung out together for hours during their working hours. However, when interviewed for this report, the relationship was denied by both the Watch Commander and the training officer. The Watch Commander stated everyone brought her coffee and that the training officer only did it on one occasion. The Watch Commander further noted that she and the training officer did not “hang out” together.

Also of note, the Adult Detention Log filled out at the time the arrestee was presented to the Watch Commander indicates that the arrestee answered “yes” to the question if they were sick or injured. At the time of inspection it was noted that the suspect had a scratch on under his left eye. There was no complaint by the suspect at that time that he was kicked and no comment from Dorner about the alleged kicks.

iii. The Medical Staff

After the inspection was completed by the Watch Commander, the arrestee was transported from Harbor Division to 77th Jail for medical attention for the scratch or cut under the left eye. Dorner noted on the Los Angeles County Unified Arrestee Medical Screening Form that there was “a minor scratch on face.” Again, Dorner had the opportunity but chose not to report the kicks to the jail nurse who examined the arrestee. He further stated that he did not

remember being with the nurse when treatment was administered, but thought that the arrestee was handcuffed to a chair. This is highly unlikely, as it is a significant violation of Department Jail policy and would not occur because of the concern for the safety of the medical staff, who are not trained to take custody of arrestees. If Dorner had left the nurse alone with the arrestee, it would have been immediately reported to a jail supervisor and corrected. That did not occur in this case.

iv. The Arrest Report

Dorner alleged that, while returning from 77th Jail to Harbor Area, his training officer asked him if he was comfortable writing the report. She allegedly told Dorner not to mention the kicks in the report because she was on the promotional list for sergeant. According to Dorner, he thought it was an in policy use of force until his training officer said not to mention it, but he did not reply to her and did not mention the kicks upon return to the station. This is yet another inconsistent explanation Dorner offered as to why he did not report the kicks.

When they returned to the station, Dorner stated he began to write the report, but when he reached the part about who the arrestee was trying to hit before Dorner tackled him, there was a disagreement with his training officer over whether it was her or him, so she took over and finished the report, including detailing the use of force. The training officer testified Dorner wrote the report with some style editing by her. The uninvolved sergeant who conducted the use of force investigation testified that he reviewed drafts of the arrest report and that the training officer made only style changes. The arrest report depicts Dorner as the officer who documented the incident in print and the training officer as the partner officer who did not write it. Further, when reading the report, it appears to have been written by one person in one voice. Therefore, the evidence supports the fact that Dorner wrote the report and did not include any mention of the kicks.

The evidence that he wrote the arrest report negates another one of Dorner's explanations; that he did not know the kicks were not in the report until the next working day when he retrieved it from the Area Records Section and for the first time saw the omission of the kicks. He offered no explanation as to why he did not review the report before it was submitted and why he did not immediately report the kicks at that time.

Additionally, Dorner signed the City Attorney Disclosure Statement indicating that the arrest report was complete and accurate. Again he had an opportunity to disclose the kicks at that time and did not, claiming that he had not reviewed the arrest report at that time. Therefore, his explanation was he signed the statement attesting to the accuracy of the report without reviewing it.

v. The Harbor Area Sergeant

Looking deeper into some of the explanations about the delay in reporting the kicks, Dorner stated that he trusted only one supervisor at Harbor Area and reported it to that supervisor on the first day they worked together and that was August 10, 2007. This was discovered not to be true, as they worked at the same time on July 31, 2007, August 2, 2007, August 4, 2007 and

August 9, 2007, multiple days before Dorner contacted the Harbor supervisor. When he was questioned about the date inconsistencies, Dorner changed his story again and stated that he approached the Harbor Area sergeant when he was leaving for the day, but did not take the opportunity to stop him and report his alleged concerns. Dorner could not explain why he did not approach the Harbor Area sergeant before or after roll call or at any other time, other than indicating that probationers leave roll call first to prepare the police vehicle for service, which did not give him an opportunity to speak with the Harbor Area sergeant. He also offered that he thinks that he was still contemplating who he should tell about the kicks.

vi. Dorner's Friend

Finally, Dorner stated that when he saw the arrest report did not contain a recitation of the kicks, he was confused as to whether it was misconduct and called a sergeant, who Dorner considered to be a friend and who had internal affairs experience, for advice. Dorner indicated that he made the call on August 9, 2007 and was told to immediately report the matter to a supervisor. On August 10, 2007 Dorner reported the kicks to a Harbor Division sergeant. When the sergeant who was Dorner's friend testified at the Board of Rights, he stated that he immediately told Dorner that it was misconduct. Dorner's own testimony changed numerous times as to whether he knew that the kicks were misconduct, even after he talked to his friend, and even after Dorner witnessed his friend testify that he had told Dorner it was misconduct.

VI. EVIDENCE OFFERED THAT THE KICKS OCCURRED

The direct evidence offered at the Board of Rights to demonstrate that the kicks occurred and to rebut the evidence presented by the Department were the attempted testimony of the arrestee and a video interview of the arrestee, and the testimony of the arrestee's father.

A. The Arrestee's Testimony

In addition to the testimony of Dorner, the Defense called the father of the arrestee as a witness, and attempted to introduce limited testimony of the arrestee via a brief (2 minutes and 14 seconds) video tape of the arrestee, which was made at the attorney's office two weeks before the Board of Rights. The Department requested an in-person appearance by the arrestee, in place of the video tape, but was advised by Dorner's attorney that the arrestee's father said it was one of the son's "bad days," and that he had medicated his son. The Defense attorney stated he had no control over the arrestee's mental state, but insisted the arrestee was lucid when the tape was made.

The Defense further argued that the Department previously had the opportunity to interview the arrestee, but did not. The Department responded that the investigator, who went to the family residence about six weeks (9/24/07) after the incident, was told by the arrestee's family that the arrestee was mentally ill and suffered from dementia. The investigator spoke with the father, who said his son was unable to be interviewed because he would not understand the questions asked or be able to provide coherent answers, due to his mental illness.

The Board decided it should hear from the arrestee himself, before making a final determination on whether to admit the video tape. The Board arranged transportation for the arrestee, and he was brought to the hearing.

The testimony of the arrestee demonstrated why the Defense desired to use the prepared video rather than have the arrestee testify. For example, when asked if he knew what being “sworn in” meant, the arrestee replied, “uh-huh,” but then when he was asked to tell the Board what it meant, he replied, “I can remember something. I never stayed home when I was little, but I thought I did and then.” When he was asked if he knew what “the truth” meant, he responded, “yeah.” However, when asked what “the truth” meant to him, he answered, “it means to tell whatever comes off your mind. I think.” The arrestee was then asked for an example, and he replied, “I don’t know anything that’s ever happened to me. Like something that’s true that’s happened to me. And then that hasn’t happened. I don’t know.”

After a few more simple questions the Board decided to allow the arrestee to testify in person. When he did testify, he was unable to relate how old he was, what day it was, what month it was and what year it was. His testimony concerning the incident at the DoubleTree was non responsive and at times incoherent. He was asked if he knew a hotel called the DoubleTree Hotel and responded “Yeah.” He was then asked how he knew the hotel and he responded “Because I remember having a discussion about it.” When asked with whom he discussed the incident, he stated, “It was somebody over – I guess it was my mom. And we talked about a lot of things, but we didn’t talk about anybody. We didn’t talk to that about my brother, about where we going and stuff.”

When asked if he remembered being arrested at the DoubleTree, the arrestee responded, “yeah, think so, yeah I remember.” In response to what do you remember, his answer was, “Everything happened so quickly or something.” Then when asked what happened so quickly he responded, “I got home or something, but I started lying about my age. I started tripping out on stuff.” When asked about being in the bushes with some police officers, he answered, “yeah” and then when asked if he could tell them anything that happened when he was in the bushes with the police officers he responded, “No. I don’t think so, no. Not that I can remember. I don’t remember. I don’t know.” When asked if he remembered anything from the incident, he responded he remembered “going down” and being arrested. When asked if he recalled what happened during the fight, he responded “No. Not really, no. Because I don’t know why I got in a fight, but it was about that thing with my brother.” He could not recall how he got cut and when asked if the officers struck him, he responded “yeah.” When asked to describe what happened he replied “I don’t know. It just happened quickly, but it’s hard to remember.” In his final statement he claimed was struck with a club.

Throughout his entire testimony, the arrestee did not state that he was kicked in the face or in fact kicked anywhere. This is consistent with the fact that when he was presented to the Watch Commander and asked if he was sick or injured, he did not claim to have been kicked, and when taken to the jail nurse for medical treatment, the arrestee made no claim of being kicked. In fact, the only time that a kick was mentioned by the arrestee was when he was in the controlled environment of Dorner’s attorney’s office during the taping of the short video, two weeks before the arrestee’s in-person testimony.

Due to the arrestee's inability to coherently testify, the Board allowed the video tape to be played and received into evidence. In the video statement, the initial questions by the Defense attorney were leading, and the arrestee responded with one-word answers or "uh-huh" or "yes." When he was asked directly if he was kicked in the face, he responds, "mmm hmmm," and then, "yes" and "once," pointing to the side of his face. He was then asked who kicked him and he answered "an officer" and then if male or female, he responded "female." When asked if they were black or white, the arrestee stated, "they were black, almost black, I think," and when asked if the officers had light colored hair or dark hair, the arrestee responded, "She had dark hair. Her hair was lighter." It should be noted that the training officer is Caucasian with blonde or reddish hair.

The attorney concluded the two minute, 14 second interview with the arrestee stating he was kicked, the number of times he was kicked, and where. It appeared that he had been coached regarding how to testify on the video, and even then could not recall all that he was supposed to convey, and thus his questioning had to be limited. The Board discounted the value of the video after viewing it, similarly to the live testimony, which was also incoherent.

B. The Arrestee's Father

It is important to review all of the testimony of the arrestee because it is the total basis of the father's testimony. The father had no independent information about the incident, but only what he stated his son had related to him. If the son was not able to accurately relate what happened either during his video statement or during the live testimony, there was no basis to believe his supposed recount of the incident to his father was any more coherent. Therefore, the father's testimony, which is hearsay, cannot be relied upon as the basis of the verdict. However, the question remains, if the son did not relate the information, where did the father obtain the information that was the basis of the father's testimony.

The testimony of the father had to be analyzed to determine if his claim that his son related detailed information to him is credible. If the son related this information earlier to his father, then why did the father not relate the same information to the PSB investigator who contacted him approximately six weeks after the incident? Additionally, when the defense investigator initially called to interview him, the father failed to mention this information.

The father testified that when his son was brought home four days after the incident, he noticed a slight puffiness and "a line" on his face. When he asked his son what had happened, the son told him that he was "kicked" and then related that it happened at "a hotel down by the water." The father further testified that he got in the car and his son led him to the DoubleTree Hotel. The son went on to point to an area left of the entrance and then a grassy area where something happened. His son told him he was kicked twice and pointed to his chest. The father testified that his son later said there were three kicks. The father also added at a later point in his testimony that the son walked in, after being dropped off by the police, and said "officers kicked me." He further testified that his son later on told him that he was kicked all over. When the Board inquired as to what other details the son conveyed, the father stated that the only thing the son really described in detail was the kicks.

The father testified to statements related to him by his son that were incomplete and incorrect. For example, he did not mention that anything happened in the bushes, but instead described a grassy area not shown in any of the exhibits or mentioned at any other time. Additionally, as some of the father's account cannot be attributed to his son, some of the father's testimony appears to be the product of supposition by the father after receiving information from the defense or various reports. An example of this is when the father testified he believed what his son believed was a kick was probably a Taser, and that the "female officer was in the front." When asked if he was aware of this information prior to being notified by an investigator, the father indicated that he was not.

As previously stated, the PSB investigator went to the residence of the arrestee, on September 24, 2007 in an attempt to interview him. The arrestee's grandmother was present and the investigator had a conversation with the grandmother who informed the investigator about the arrestee's background, his mental illness and limited mental capacity. The investigator, in attempt to receive more information, requested to speak to the arrestee's mother or father. The grandmother called the father and told him LAPD was there doing an investigation. The phone was handed to the investigator who spoke with the arrestee's father. She told the father that the investigation was regarding an arrest that occurred a couple of months prior and the father indicated he was aware of the arrest. The father did not indicate that his son had informed him about a use of force that had occurred at the DoubleTree Hotel. He did not indicate that his son had suffered any injuries at the hand of officers. In fact, he actually thanked the Department and was very appreciative that the Department would bring his son home when he would go missing.

The father indicated that the son suffered from mental issues and severe dementia. The father said that his son would not be able to answer simple questions and that he might answer yes to everything asked, if the Investigator were to interview him, because he could not understand what she would be asking him. When questioned about this at the Board of Rights, the father testified that he thought the PSB Investigator had been asking him about a 14-year-old arrest because the Investigator stated she was talking to him about an incident with his son concerning an assault, and he replied, "oh, yeah, I knew all about that." The father explained that the only assault he knew of was in 1994 with the Long Beach Police Department. He further testified he did not know there was an assault related to the DoubleTree event. He also stated that the conversation with the Investigator was short and that "she may have said a kick in the head," and that he probably replied with, "I don't know anything about the details and all that." He stated he was totally blowing her off and not even listening.

In addition to the father not telling the PSB Investigator about what happened to his son, he also failed to initially inform the Defense investigator of his knowledge of what allegedly happened to his son. The father testified that when he was initially contacted by the Defense investigator, he "blew him off" too and told the investigator he knew nothing about the arrest at DoubleTree. When the Defense investigator mentioned the arrestee being kicked in the face, the father testified that he told the investigator, "I don't know nothing, you know. That it rings a bell, but if something comes to me naturally, I will call you." The father indicated he may have called the investigator back the next day.

Finally, in his testimony the father expressed some anger at the Department because they just dropped him off and no one told him or left a note as to what had happened to his son.

After hearing the father's testimony and the arrestee's testimony, and viewing the video, the Board concluded that the father was not a witness to the use of force, and deemed his testimony lacking in credibility after hearing the direct testimony of the son. The Board ultimately determined that, based on their observation of the arrestee, he would not be able to provide an accurate account of the event. The Board further indicated that it appeared the arrestee could be easily swayed, and that the manner of questioning in the video was leading and therefore not able to be deemed credible. The Board further stated that, after hearing the testimony of the son, the testimony of the father, who was not a witness to the use of force, lacked credibility. The fact that the father did not inform the Department or the Defense initially about the facts that he learned from his son because of confusion over a 14-year-old incident, even though he admits he was told of the alleged kicks by both, also weakened the credibility of his testimony.

VII. MOTIVE FOR FALSE ALLEGATION

One of the most perplexing parts of this incident is why a probationary officer (Dorner) would report an excessive use of force against his training officer if it was not true. The evidence presented demonstrated that Dorner was concerned about receiving an unsatisfactory rating, and that on the last day his training officer and Dorner worked together, August 4, 2007, the training officer explained to him that if his performance did not improve she would have to give him an unsatisfactory rating. Dorner testified that an unsatisfactory rating was a "silver bullet" and all probationers are fearful of receiving one. After that conversation, Dorner worked on August 9 and 10, and reported the training officer's kicks on August 10. Interviews conducted for this report with two supervisors who were at Harbor Division at the time verified that his training officer was discussing with her supervisor the performance of Dorner and the issuance of an unsatisfactory rating.

On October 9, 2007, PSB investigators interviewed Dorner regarding his allegations and asked if there had been any retaliation against him for reporting the misconduct of his training officer. He answered during this interview that he had not been retaliated against, but that some people who used to talk to him did not anymore. At the end of his next working day, which was October 10 to October 11, 2007, Dorner initiated a complaint for retaliation, alleging that an unknown officer had urinated on his jacket. Dorner claimed he had left it outside the station near his equipment bag and when he retrieved it the next morning it had a discoloration on it. He further claimed that another officer viewed his jacket, smelled it and stated that someone had urinated on it, and advised Dorner to report it. When interviewed, that officer stated that he observed Dorner in the locker room, looking sad, that he asked Dorner if anything was wrong, and that Dorner told him to look at his jacket. The officer indicated he observed liquid on the jacket, that he asked Dorner if knew what it was, and that Dorner said it was urine or mud. The officer advised Dorner to report it. The officer did not smell urine and does not recall telling Dorner he smelled urine. Also, the officer recalled the weather as being overcast and dewy during the watch. He stated it was Dorner who initiated the whole issue about his jacket.

The Department sent the jacket to the Scientific Investigation Division for analysis, which revealed the stain on the jacket did not smell, look like or contain the constituents for urine. This is another example of Dorner using the complaint system to further his own agenda and later changing the alleged statements of others to support his recollection of events.

Another example of using the complaint system to further his personal agenda is a complaint Dorner filed in February of 2008, relating to a computer generated automated Action Item he received via the Department's Risk Management Information System (RMIS) regarding his uses of force. Dorner accused the lieutenant watch commander at Harbor Division of retaliation by inappropriately preparing a malicious Action Item, as a result of Dorner's involvement in a complaint investigation in which his training officer, a friend of the lieutenant's, was accused. The lieutenant was the same lieutenant who, on July 28, 2007, served as the Watch Commander to whom Dorner presented the arrestee (described earlier in this report) wherein Dorner did not disclose the use of force because, as he later alleged, the lieutenant and training officer "were friends and hung out together." Interviews for this report with both the training officer and the lieutenant clearly establish their only relationship was professional and that they were not friends outside of work.

One of the primary requirements of the Consent Decree was the creation of an early warning system, and the Department created such a system; RMIS. The system contains personnel information of all Department employees and determines a peer group for each employee based upon his or her work assignment within the Department. When an employee is involved in a use of force, complaint, collision, vehicle pursuit, claim or lawsuit, RMIS compares the employee's performance to that of his or her peer group. If the employee's numbers fall outside of the norm for that peer group (calculated via the peer group's mean), an automated Action Item is created and forwarded to the employee's supervisor. The supervisor then reviews the information for any potential pattern or practice of at-risk behavior, and determines what actions, if any, should be taken.

There is no human input into the creation of the automated Action Item; RMIS calculates and generates Action Items via a completely automated process. The appropriate manner for the employee to challenge the generation of an Action Item is to request a review of the underlying information, which can be found on the employee's TEAMS Report and can be run by the employee at any time. Further, the employee may submit a formal written response to an Action Item if the employee disagrees with the supervisor's review of the information or resulting action.

This was explained in detail to Dorner, and he indicated he understood. However, Dorner insisted on the filing of a complaint against the lieutenant, claiming retaliation. The complaint was investigated and it was determined that there was no misconduct because of the automated nature of the creation of the Action Item. Additionally, the investigator stated that while Dorner's motive was not clear, his unwillingness to follow Department rules was evident. It appears that Dorner was trying to deflect his actions by claiming retaliation, and to buttress his allegations against his training officer.

VIII. DECISION OF THE BOARD OF RIGHTS

After hearing all of the testimony, reviewing all the evidence and listening to the arguments of counsel, the Board deliberated and unanimously decided that Dorner was guilty of all charges. The rationale of the Board was that the evidence presented to the Board did not demonstrate that the kicks occurred. The lack of physical evidence of kicks; the lack of dirt on the white shirt of the arrestee; the recollections of the hotel employees; the inability of the arrestee to relate any kicks; the lack of credibility of the father's testimony; Dorner's delayed reporting of the kicks; and the lack of credibility in his explanations of why he delayed reporting the kicks supports the conclusion that there were no kicks. Additionally, the injury to the arrestee's face was consistent with falling into bushes and not a kick to the face. The Board further stated that Dorner had a motive to make a false complaint due to his concern over receiving an unsatisfactory rating. The Board also cited Dorner's use of the complaint system to further his own agenda. Finally, based on all of the evidence, the Board believed Dorner was not credible. Therefore, Dorner was found guilty of making a false complaint and making false statements to a supervisor and PSB investigators. The Board then heard testimony about Dorner's Department history and other evidence and concluded he should be terminated.

IX. ALLEGATIONS ASSERTED BY DORNER REGARDING HIS TERMINATION

Dorner asserted a variety of allegations in an attempt to discredit the validity of his termination from the Department.

A. ALLEGATIONS OF RELATIONSHIPS OF INDIVIDUALS INVOLVED IN BOARD OF RIGHTS HEARING

In his manifesto, Dorner accused the Chair of the Board of being personal friends with Dorner's training officer, and therefore Dorner claimed he should not have been one of those judging the truth of his allegations. Dorner claimed he made an argument for the Chair's removal and that it was denied. There is no record of such a claim or a motion at the Board of Rights, and if Dorner had made the argument, the matter would have been referred to the Chief of Police for determination. There is no record of it because it did not occur. Interviews with the Chair of the Board, the training officer and others, and a review of testimony at the Board of Rights established there was no personal relationship between them, and the Chair of the Board was not predisposed in any way toward the training officer.

Dorner also claimed in his manifesto that the Department Advocate and the training officer were friends and former partners and therefore the Advocate was prejudiced. Interviews for this report again established that these claims were untrue. They were never partners, had no personal relationship, and they did not know if they had ever worked the same shifts at Harbor Area. Dorner again stated he had made an argument for the Advocate's removal and, again, there was no record in the Board of Rights that this motion had ever been made.

B. ALLEGATION REGARDING THE TRAINING OFFICER'S ATTORNEY

In his manifesto, Dorner states that his training officer's attorney confessed that the training officer had kicked the suspect (excessive force) in a meeting of those involved. In an interview for this report, the training officer's attorney adamantly denied this ever occurred. There is no evidence to corroborate this allegation.

C. ALLEGATIONS ABOUT DORNER'S TRAINING OFFICER

In his Board of Rights testimony and his manifesto, Dorner made a number of allegations against his training officer, including an incident where she "ripped the flesh off the arm of a woman" they had arrested. This incident occurred 15 days before the use of force where Dorner alleged the kicks occurred. The incident was investigated, and it was determined that the woman had a preexisting injury to her arm and was wearing a bandage at the time, with blood seeping from the bandage before the arrest or contact with the police. This demonstrates, again, Dorner's use of a situation and tendency to twist the facts to suit his agenda.

X. CONCLUSION

After a review of all the evidence relating to the use of force and the allegations of Christopher Dorner, it has been determined that terminating him from the Department was not only appropriate, it was the only course the Department could have taken based on the facts and evidence.

The inconsistencies in Dorner's various explanations as to why there was a delay in his reporting the alleged kicks to a supervisor, and the fact that he offered no reasonable rationale for such delays, cast considerable doubt on the credibility of his allegations. Dorner's statements concerning the delay continued to change throughout his testimony and appeared to be self-serving and in several instances were blatant fabrications. Dorner asserted eight separate and conflicting reasons for not reporting the alleged kicks to one supervisor alone. There was no evidence, by eyewitness or via physical evidence, that kicks actually occurred. Further, the incoherent testimony of the arrestee and conflicting testimony of the arrestee's father could not be relied upon. Dorner alleged personal relationships, and therefore favoritism, among a variety of persons involved in the investigation and Board of Rights, yet no evidence could be found to support these assertions.

Dorner repeatedly displayed a tendency to utilize the Department's complaint process to further his own personal agenda. Based on the evidence at hand, it appears that the allegation of his training officer kicking an arrestee was just that; an allegation to further his personal agenda.

After careful examination of all the evidence, it is clear that Dorner could not be deemed credible. The OIG and two Courts of Law reviewed the Board of Rights decision to terminate Dorner, and all concurred with that decision. This reviewer also concurs. Dorner's propensity to fabricate allegations against his coworkers and his willingness to say that abuses occurred that clearly did not, all point to the very reason he could not be a part of this Department.