

1 RATIONALE ON FINDINGS

2 NICHOLAS OWENS #39659

3 B.F. 29715

4 C.F. 18-001835

5 JANUARY 8, 2020

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7
8 MR. TAN: THANK YOU. ALL RIGHT. WE'RE
9 READY TO PROCEED. OKAY. THE BOARD HAS COMPLETED ITS
10 DELIBERATION AND REACHED A UNANIMOUS DECISION ON THE
11 COUNT BEFORE US. IN SO DOING WE REVIEWED THREE
12 DEPARTMENT EXHIBITS THAT INCLUDED VIDEO POSTED ON DANK
13 TRUMP MEME OF MIKE TYSON BEING INTERVIEWED BY AN
14 AFRICAN-AMERICAN REPORTER, ONE DEFENSE EXHIBIT A1
15 THROUGH 3, AND CONSIDERED THE TESTIMONY OF TWO
16 DEPARTMENT WITNESSES, SERGEANT GIL SANCHEZ, THE
17 INTERNAL AFFAIRS INVESTIGATOR ASSIGNED TO THIS MATTER,
18 AND THE ACCUSED, POLICE OFFICER III, NICHOLAS OWENS,
19 AND ONE DEFENSE WITNESS TOM LANG, A RETIRED L.A.P.D.
20 DETECTIVE AND OFFICER OWENS' FATHER-IN-LAW. THE
21 FOLLOWING ARE THE BOARD'S FINDINGS AS WELL AS THE
22 RATIONALE FOR THOSE FINDINGS:

23 THIS BOARD RISES FROM A JULY 10TH, 2018,
24 INCIDENT WHERE OFFICER OWENS, WHILE OFF DUTY, POSTED A
25 SPEAK NO EVIL MONKEY EMOJI ON HIS FACEBOOK PAGE IN

1 CONNECTION WITH A VIDEO INTERVIEW OF MIKE TYSON. WE
2 RECEIVED THE TESTIMONY OF SERGEANT GIL SANCHEZ, WHO
3 TESTIFIED THAT HE IS AN L.A.P.D. INTERNAL AFFAIRS
4 INVESTIGATOR ASSIGNED TO THIS MATTER WHO HAS
5 THREE-AND-A-HALF YEARS EXPERIENCE WITH I.A. SERGEANT
6 SANCHEZ TESTIFIED THAT ON OCTOBER 16TH, 2018, HE
7 INTERVIEWED OFFICER OWENS CONCERNING A CITIZEN
8 COMPLAINT FILED ON JULY 10TH, 2018, ON THE L.A.P.D.
9 C.M.S. LINE FROM A PERSON WHO IDENTIFIED HIMSELF AS
10 ALLEN SYCAMORE. NO CONTACT INFORMATION FOR THE
11 COMPLAINANT WAS PROVIDED OTHER THAN AN E-MAIL ADDRESS.
12 MR. SYCAMORE'S COMPLAINT STATED, "ONE OF YOUR
13 EMPLOYEES IS POSTING RACIST EMOJIS ON SOCIAL MEDIA,"
14 PARENTHESIS, "FACEBOOK," CLOSE PARENTHESIS. NICK
15 OWENS POSTED A VIDEO OF MIKE TYSON AND USED A MONKEY
16 EMOJI IN HIS DESCRIPTION OF HIM. "I'M GOING TO THE
17 NEWS OUTLETS WITH THIS."

18 SERGEANT SANCHEZ FURTHER TESTIFIED THAT HE
19 MADE THREE ATTEMPTS TO CONTACT ALLEN SYCAMORE THROUGH
20 THE E-MAIL ADDRESS AND RECEIVED NO RESPONSE. HIS
21 ATTEMPTS TO LOCATE THE COMPLAINANT WERE UNSUCCESSFUL.
22 SERGEANT SANCHEZ ALSO TESTIFIED THAT HE HAD NO IDEA
23 WHO ALLEN SYCAMORE WAS OR WHAT HIS MOTIVATION WAS IN
24 LODGING THE COMPLAINT ON THE L.A.P.D. COMPLAINT LINE.
25 AFTER SERGEANT SANCHEZ' UNSUCCESSFUL EFFORTS TO LOCATE

1 OR IDENTIFY THE COMPLAINT, HE PREPARED A SUPPLEMENTAL
2 REPORT TO HIS INVESTIGATION, WHICH STATED THE
3 COMPLAINANT WAS DEEMED ANONYMOUS. FROM SERGEANT
4 SANCHEZ' 10/16/2018 I.A. INTERVIEW OF OFFICER OWENS,
5 SERGEANT SANCHEZ DETERMINED THAT OFFICER OWENS'
6 FACEBOOK ACCOUNT WAS PRIVATE AND NOT ACCESSIBLE TO
7 ANYONE BUT OFFICER OWENS' FRIENDS. HE ALSO DETERMINED
8 THAT OFFICER OWENS DID NOT KNOW WHO THE COMPLAINANT
9 WAS. THE ACCUSED OFFICER OWENS TESTIFIED THAT HE HAD
10 BEEN WITH L.A.P.D. FOR 11-AND-A-HALF YEARS. OFFICER
11 OWENS FURTHER TESTIFIED THAT HE HAS RECEIVED NUMEROUS
12 TRAININGS ABOUT INTERACTIONS WITH THE PUBLIC AND
13 ISSUES OF RACE AND GENDER. OFFICER OWENS TESTIFIED
14 THAT HIS FACEBOOK ACCOUNT IS PRIVATE AND ONLY HIS
15 FRIENDS AND FAMILY CAN SEE THE CONTENT ON THE ACCOUNT.
16 HE ALSO EXPLAINED THAT THE FRIEND OF FRIENDS CAN
17 CONNECT WITH FACEBOOK INITIAL PAGE BUT NONE OF THE
18 CONTENT. HE COULD NOT EXPLAIN HOW THE COMPLAINANT HAD
19 ACCESSED HIS FACEBOOK ACCOUNT. OFFICER OWENS
20 EXPLAINED THAT HE RECEIVED THE TYSON VIDEO AFTER ONE
21 OF HIS FACEBOOK FRIENDS POSTED THE VIDEO TO HIS
22 FACEBOOK TIMELINE FEED. OFFICER OWENS REPOSTED THE
23 VIDEO ON HIS FACEBOOK FEED USING HIS SAMSUNG SMART
24 PHONE. IN THE COMMENT SECTION BELOW THE VIDEO OWENS
25 POSTED THREE EMOJIS. THE EMOJIS WERE STOCK EMOJIS

1 FOUND ON HIS CELL PHONE. TWO EMOJIS WERE THE LAUGHING
2 OUT LOUD EMOJIS COMPRISED OF A FACE LAUGHING WITH
3 TEARS. THE THIRD EMOJI WAS A SPEAK NO EVIL EMOJI OF A
4 MONKEY FACE WITH THE MONKEY'S RIGHT HAND COVERING THE
5 MONKEY'S MOUTH. OWENS STATED THAT HE USED THE SPEAK
6 NO EVIL EMOJI TO EXPRESS THE SHOCK AT THE
7 AFRICAN-AMERICAN INTERVIEWER'S QUESTION ABOUT TYSON'S
8 CRIMINAL RAPE CONVICTION AND TYSON'S EXPLETIVE LADEN
9 RESPONSE. OFFICER OWENS TESTIFIED THAT HE USED THE
10 EMOJIS ONLY FOR THAT PURPOSE. WE ALSO RECEIVED
11 TESTIMONY OF A TOM LANG, WHO TESTIFIED THAT HE HAS
12 KNOWN OFFICER OWENS FOR 10 YEARS. OWENS IS HIS
13 SON-IN-LAW AND IS MARRIED TO HIS DAUGHTER. HE FURTHER
14 STATED THAT HE IS A RETIRED L.A.P.D. DETECTIVE, AND HE
15 HAS SPENT CONSIDERABLE TIME WITH OFFICER OWENS AND HAS
16 NEVER HEARD A RACIST JOKE OR ACT -- OR HAS HE ACTED IN
17 A DEROGATORY MANNER.

18 I WILL NOW PROCEED WITH OUR FINDINGS AND
19 RATIONALE FOR COUNT 1. COUNT 1, ON OR ABOUT JULY
20 10TH, 2018, WHILE OFF DUTY, YOU MADE AN IMPROPER
21 ETHNIC REFERENCE WHEN YOU POSTED A MONKEY EMOJI ON
22 FACEBOOK IN CONNECTION WITH A VIDEO OF MIKE TYSON. WE
23 FIND YOU NOT GUILTY. THE DEFENSE EXHIBIT A1-3 THAT
24 EXPLAINS THE MEANING OF THE SPEAK NO EVIL EMOJI, AND
25 THE TESTIMONY OF OFFICER OWENS ESTABLISHED THAT

1 OFFICER OWENS POSTING OF THE MONKEY EMOJI WAS AN
2 EXPRESSION OF SHOCK AT THE CONTENT OF THE TYSON VIDEO.
3 WE RECEIVED NO EVIDENCE THAT THE MONKEY EMOJI WAS A
4 REFERENCE TO TYSON'S RACE OR ETHNICITY. UNDER THE
5 BOARD RULES 363.4 COMPLAINT E-MAIL DEPARTMENT 1
6 HEARSAY IN STANDING ALONE CANNOT SERVE AS A BASIS FOR
7 A FINDING OF GUILT UNLESS SUPPORTED BY DIRECT EVIDENCE
8 OR AN EXCEPTION TO THE HEARSAY RULE. IN THIS CASE WE
9 HAVE NEITHER. UNDER THE BOARD RULES -- BOARD OF
10 RIGHTS MANUAL 363.70 WE CANNOT BASE OUR DECISION ON
11 INFERENCE OR SUSPICION OR CONJECTURE. THE DEPARTMENT
12 ASKS US TO INFER THAT OWENS' USE OF THE SPEAK NO EVIL
13 EMOJI WAS AN IMPROPER ETHNIC REFERENCE TO THE TYSON
14 VIDEO. DEPARTMENT ARGUES THAT THIS EMOJI IS THE SAME
15 AS OTHER INSTANCES NOT BEFORE THIS BOARD WHERE THE USE
16 OF THE MONKEY IMAGE WAS USED IN A MANNER INTENDED TO
17 DISPARAGE AFRICAN-AMERICANS.

18 WHILE WE ARE PAINFULLY AWARE OF THE CRUEL
19 LINK OF AFRICAN-AMERICANS TO SIMIANS AND THAT SUCH
20 SLURS CAN APPEAR ON SOCIAL MEDIA WE FIND THE
21 DEPARTMENT'S -- STRIKE THAT. OKAY. LET ME READ THAT
22 AGAIN. WHILE WE ARE PAINFULLY AWARE OF THE CRUCIAL
23 LINK OF AFRICAN-AMERICANS TO SIMIANS, AND THAT THE
24 SLURS CAN APPEAR ON SOCIAL MEDIA -- CAN OFTEN SHOW ON
25 SOCIAL MEDIA, PERIOD. WE FIND THE DEPARTMENT'S

1 VIGILANCE AGAINST RACIST AND IMPROPER ETHNIC
2 REFERENCES TO BE A SOUND POLICY. HERE THE BOARD FINDS
3 NO EVIDENCE THAT OWENS USED SPEAK NO EVIL EMOJI AS A
4 PEJORATIVE LINKAGE TO AFRICAN-AMERICANS. DEFENSE
5 EXHIBIT A1-3 SHOWS THAT THE CONVENTIONAL MEANING OF
6 SPEAK NO EVIL MONKEY IS CONSISTENT WITH OWENS'
7 TESTIMONY THAT HE USED THE EMOJI TO SHOW HIS SHOCK AND
8 AWE. THE SPEAK NO EVIL EMOJI IMAGE ALONE WITHOUT
9 SOMETHING MORE WOULD REQUIRE US TO ESTABLISH A NEXUS
10 TO THE PERSON OR PERSONS IN THE VIDEO BY REFERENCE OR
11 SPECULATION UNDER THE RULES GOVERNING THE BOARD AND
12 FAIRNESS WE CANNOT MAKE. HOWEVER -- LET'S SEE. IN
13 THIS INSTANCE WE DO NOT FIND THE EMOJI RISES TO A
14 LEVEL OF ETHNIC REFERENCE. BASED ON THE EVIDENCE IN
15 THE RECORD DEPARTMENT HAS NOT PROVIDED SUFFICIENT
16 EVIDENCE TO PROVE COUNT 1. WE HAVE A CONCURRING
17 OPINION.

18 MS. JOHNSON: I WOULD RESPECTFULLY LIKE TO
19 AMPLIFY THE BOARD'S RATIONALE BY MAKING THIS
20 CONCURRENT STATEMENT. TIMES HAVE CHANGED. OFFICER
21 OWENS USED THE EMOJI OF A MONKEY FACE COVERING ITS
22 MOUTH, AND THE EMOJI OF TWO LAUGHING FACES ROLLING
23 AROUND TO REPRESENT HIS REACTION TO A MIKE TYSON
24 INTERVIEW ON A VIDEO. THE DEPARTMENT DEMONSTRATED AS
25 OF THE HEARING DATE IN 2020 THERE IS ALSO A FACE EMOJI

1 AVAILABLE THAT SHOWED A FACE WITH HANDS COVERING ITS
2 MOUTH. BACK IN 2018 OWENS CHOSE THE MONKEY FACE AND
3 HIS COUNSEL ABLY RESEARCHED AND DEMONSTRATED THAT THE
4 SEE NO EVIL, HEAR NO EVIL, SPEAK NO EVIL WITH MONKEYS
5 COVERING THEIR EYES, EARS AND MOUTHS IS A TRADITIONAL
6 PROVERB FROM 17TH CENTURY JAPAN USING MONKEY FACES.
7 IT IS NOT CLEAR THAT THE OTHER NON-MONKEY FACE EMOJI
8 WAS AVAILABLE TO OWENS TO USE ON HIS PHONE IN 2018.
9 THE MONKEY FACE REPRESENTATION ALONG WITH DEPICTIONS
10 OF AUNT JEMIMA AND COOLIE HATS WITH LONG BRAIDS AND
11 NUMEROUS OTHER REPRESENTATIONS OF OUR PAST SAD HISTORY
12 HAS CONNOTATIONS WHICH WE NO LONGER ACCEPT AS
13 APPROPRIATE.

14 THE BOARD BELIEVES THAT OFFICER OWENS
15 INTENDED NO OFFENSE IN USING THAT ARCHAIC
16 REPRESENTATION IN DESCRIBING HIS REACTION TO A MIKE
17 TYSON VIDEO. OFFICER OWENS HAS ACKNOWLEDGED THAT NOT
18 WITHSTANDING HIS LACK OF RACIAL BIAS SUCH AN EMOJI
19 COULD GIVE OFFENSE. WE ARE SATISFIED THAT THIS
20 CONDUCT WILL NOT BE REPEATED BY HIM. IN THIS CASE NO
21 EVIDENCE WAS SUBMITTED TO THE BOARD THAT OFFICER OWENS
22 HAD RECEIVED SPECIFIC SENSITIVITY TRAINING IN THE USE
23 OF EMOJIS OR OTHER DEPICTIONS. GIVEN THE
24 PERVASIVENESS OF SOCIAL MEDIA, I URGE THAT SUCH
25 TRAINING BE DEVELOPED. THE DEPARTMENT IS TO BE

1 COMMENDED FOR SIGNALLING A CLEAR DETERMINATION TO
2 SANCTION THIS CONDUCT AND TO HOLD ITS FORCE TO A
3 HIGHER STANDARD.

4 THE MESSAGE IS CLEAR. DEPICTION OF A MONKEY
5 IN ANY CONTEXT, WHICH INCLUDES A REFERENCE TO AN
6 AFRICAN-AMERICAN PERSON IS OFFENSIVE. FULL STOP.
7 BOTH THE DEPARTMENT ADVOCATE AND THE DEFENSE COUNSEL
8 ARE TO BE COMMENDED FOR THEIR THOROUGH PREPARATION,
9 AND THE SENSITIVE PRESENTATION OF THIS MANNER RANGING
10 FROM THE DEPICTION OF A 17TH CENTURY PROVERB TO THE
11 CURRENT STATE OF RACIAL SENSITIVITY WE ASPIRE TO IN
12 THE YEAR 2020. THANK YOU.

13 MR. TAN: THANK YOU. THAT CONCLUDES THIS
14 MATTER.

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