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KQED and the California Reporting Project

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On Our Watch

You know the refrain. With each new scandal involving law enforcement, another horrific video of misconduct, evidence of assault, or act of fatal negligence, police officials tell the public: "We're investigating."

But what really happens inside those internal investigations that promise accountability?

For decades, the process for how police themselves has been inconsistent, if not opaque. In some states, like California, these proceedings were completely hidden behind a wall of official secrecy. After a new police transparency law unsealed scores of internal affairs files, NPR and KQED reporters set out to examine these cases and the shadow world of police discipline. Hosted by KQED Criminal Justice reporter Sukey Lewis, On Our Watch brings listeners into the rooms where officers are questioned and witnesses are interrogated to find out who this system is really protecting. Is it the officers, or the public they've sworn to serve?

Links to audio content for On Our Watch podcast:

Episode 1 "In Good Faith" <https://www.npr.org/2021/05/18/998011488/in-good-faith>

Episode 2 "Conduct Unbecoming" <https://www.npr.org/2021/05/25/1000175441/conduct-unbecoming>

Episode 3 "20-20 Hindsight" <https://www.npr.org/2021/06/02/1002436298/20-20-hindsight>

Episode 4 "Perceived Threat" <https://www.npr.org/2021/06/09/1004838206/perceived-threat>

Episode 5 "Neglect of Duty" <https://www.npr.org/2021/06/09/1004838533/neglect-of-duty>

Episode 6 "The Brady Rule" <https://www.npr.org/2021/06/23/1009488012/the-brady-rule>

Episode 7 "Under Color of Law"

<https://www.npr.org/2021/06/23/1009486885/on-our-watch-litigation-reveals-new-details-in-police-shooting-of-oscar-grant>

Bonus Episode "Update: Oscar Grant and the Attorney General"

<https://www.npr.org/2021/10/01/1042430689/update-oscar-grant-and-the-attorney-general>

Web copy for each episode:

In Good Faith



In the small Northern California town of Rio Vista, a woman named Katheryn Jenks calls 911 for help. But after the police arrive, she ends up injured and inside a jail cell, facing serious charges.

On Sept. 30, 2018, the same day Katheryn is arrested, California Governor Jerry Brown signs a new law. State Senate Bill 1421 opens up long hidden police misconduct and use of force records, including files that uncover what really happened on the night of Jenks' arrest and might change the outcome of her case.

For decades in California, when allegations of officer misconduct surfaced, police chiefs, city officials and agency leaders held press conferences or issued statements promising to investigate. But the findings of those investigations were confidential — and off limits to public scrutiny.

In response to the new law unsealing police misconduct and use of force files, a team of reporters from over 40 newsrooms, including NPR Member Station KQED, set out to request records from every law enforcement agency in the state to find out how the shadow system of police accountability really works.

Just days after the new law went into effect, the town of Rio Vista released an internal investigation into the arrest of Katheryn Jenks. An investigation Jenks herself knew nothing about.

In the first episode of *On Our Watch*, police body cam footage takes us back to the night of Jenks' arrest and an investigator's audio recordings place us in the interrogation room of the officers who arrested her.

These files are the first time the public could see and *hear* the police disciplinary process in California at work.

Through those tapes and interviews with witnesses, victims and experts, we find out about the protections police officers in California have even in those interrogation rooms - and even after they're fired. And we begin to learn how the internal affairs system that's promised the public accountability for so long, actually might have a different aim.

Patterns Of Sexual Abuse Show Gaps In Police Disciplinary System



By the end of her discussion with the California Highway Patrol sergeants, the woman was scared — worried the department would only protect the officer who had just propositioned her for sex during what should have been a routine vehicle inspection appointment.

She had walked directly into the CHP's West Valley office in Los Angeles after the 2016 encounter with officer Morgan McGrew and asked to meet with a Spanish-speaking officer. She wanted authorities to fully understand what she had to say — that McGrew had just asked her three times, in front of her young son, if she wanted to get a hotel room.

The sergeants turned on an audio recorder and started to interview the woman; her son can be heard playing in the background. Is it possible she had misunderstood, one of

them asked. "No, I understand everything," she said, according to transcripts and audio recordings of the conversation. Her claim was highly unusual, the other sergeant noted. "I don't lie," she told them.

McGrew would later admit to propositioning women on-duty during a CHP internal investigation into his conduct. In fact, her complaint led investigators to nearly two dozen other women who said McGrew sexually harassed them during vehicle inspections. McGrew, who was fired in 2017, did not respond to requests for comment.

Lifting the veil on internal police investigations

Internal police investigations in California, such as the one that involved McGrew, have long been hidden from public view behind laws protecting police officers' privacy, but that's beginning to change. NPR member station KQED obtained documents and audio recordings from the 2016 probe under [California's Right to Know Act](#). The law, which took effect in 2019, has lifted the veil of secrecy on a narrow segment of police misconduct records from law enforcement agencies across the Golden State.

In addition to shootings, other cases involving the serious use of force and official dishonesty, the law unsealed investigations into some cases of sexual misconduct by law enforcement officers. Some case files include body camera footage, audio tapes and other records that offer a window into what had been confidential internal affairs probes — essentially how the police police their own.

Despite the law, the California Highway Patrol, one of the largest law enforcement agencies in Calif., did not provide records from recent cases like McGrew's until KQED sued to get them in May 2020.

While many agencies continue to stall in providing full case files, KQED and NPR analyzed 103 sexual misconduct cases from different departments across the state. These records were obtained as part of [The California Reporting Project](#), a coalition of newsrooms in the state, founded by KQED.

Of 103 sexual misconduct investigations in California involving 103 officers ...

In 35 cases, other officers knew but did not act.



33 of those cases involved nonconsensual or coercive sexual misconduct.



85 officers were disciplined or resigned.



Of those, 24 were not fired (including 7 who resigned before the investigation was complete).



15 officers are still on the force.



Notes

On Our Watch examined police internal investigation records for a patchwork of police departments in California that responded to our request.

Credit: Data analysis by Huo Jingnan/NPR. Graphic by Alyson Hurt/NPR. Icon created by [Artdabana@Design](#) for The Noun Project.

The analyzed cases showed most of the victims of police sexual assault and harassment were women and girls. In many cases, victims were vulnerable to an officer's authority: They were arrestees, confidential informants, incarcerated people, sex workers and police Explorers — young people interested in a career in law enforcement. Most of the time, they did not or could not consent.

On Our Watch, a limited-run podcast from KQED and NPR, delves into several of these cases and examines the system of police accountability. The podcast's second episode focuses on the investigations of two CHP officers found to have committed sexual misconduct. CHP investigators concluded each officer harassed or propositioned multiple women they met at work. While both of the officers were fired, records show the agency did not refer potential crimes to prosecutors. And the files show some women who came forward were met with suspicion, discouragement and what one woman saw as intimidation.

"One day, she'll give in"

CHP Officer Frank Meranda met a lot of women at work. He helmed the front desk of a highway patrol office in Contra Costa County east of San Francisco.

He told investigators examining over 1,000 personal emails he exchanged with women on his work computer that all of the contacts were consensual. Many contained explicit photos that Meranda solicited from the women or took of himself.

"I'd go into the restroom and try to send them a quick picture if I didn't have one," he told investigators in 2017.

But at least one of the eight women Meranda contacted said his repeated, unwanted advances were anything but consensual. Meranda did not respond to a request for an interview.

The woman, who spoke with KQED on the condition of confidentiality because she fears retaliation from police, said Meranda stalked and harassed her after he obtained her contact information from a form she filled out about a towed vehicle in 2015.

She told KQED that she changed her phone number, but she said he found her new number in a police database. When she blocked his number, she said he called from another phone. He also sent her pictures of his penis, according to the woman and internal investigation files. CHP investigators also confirmed that Meranda searched a police database for her by name, approximate age and license plate number.

"I think he knew exactly what he was doing," the woman said in an interview. "I think he was just hoping [that] one day, she'll give in."

Disbelief and a pattern of abuse

California Highway Patrol Sgts. Jeremy Key and Fernando Martinez met with the woman in Los Angeles when she reported McGrew's behavior during her 2016 vehicle inspection appointment. At one point, Key, who was McGrew's supervisor, asked her if she'd been drinking.

The woman, whose name was redacted from the internal investigation files KQED obtained, said she didn't drink, do drugs, or smoke. "I'm a mother to four kids," she said. But Key said he smelled alcohol and asked her to follow his finger with her eyes.

When she apparently passed the sobriety check, Key apologized. Martinez then asked why she thought McGrew would ask her to go to a motel room. She said in Spanish it meant McGrew doesn't respect women, and that he was asking her for sex.

Her complaint led investigators to 20 more women who said McGrew sexually harassed them during routine Vehicle Identification Number inspections over the two and a half years he worked in that position — from early 2014 to mid 2016. McGrew told

investigators that he never intended to follow through with the propositions. He said repeatedly that he did it only to "see if they'll say yes."

However, the investigation found that he dated and had phone sex with at least one of the women he met on duty. He exchanged explicit texts with another. When investigators pressed him on why they had discovered two boxes of condoms in his work locker, McGrew said they were unrelated to his propositioning women he met during vehicle inspections.

The CHP didn't probe McGrew's entire nearly 14-year career, and the agency contacted only adult women who had a VIN appointment with him. Records indicate the agency didn't pursue potentially criminal misconduct by McGrew and never notified prosecutors.

On Our Watch's analysis of sexual misconduct by 103 officers from departments across California found 85 officers engaged in non-consensual or coercive sexual misconduct, and records indicate nearly half of them were never criminally investigated or referred to prosecutors.

McGrew and Meranda were both quietly fired, and details about their cases were initially kept secret under California state laws that have protected police disciplinary inquiries from the public. The CHP fired six other officers for on-duty sexual misconduct between 2014 and 2018 but did not pursue criminal charges in any of those cases.

Philip Stinson is a criminal justice professor at Bowling Green State University who studies police crime and misconduct. His research has found that sexual misconduct is one of the more common types of police misbehavior, and that the analysis of 103 cases represents "just the tip of the iceberg."

"Police sexual misconduct is fairly common in many police departments, many state and local law enforcement agencies across the country," Stinson said. "That is not to suggest that every police officer is engaging in sexual misconduct. But I can tell you that most every police officer could identify another officer who they are aware of or have been told or there are rumors about having committed acts of sexual misconduct while on duty."

"A blue wall of silence"

While the woman in Contra Costa County never directly told Meranda to stop texting her, she said she tried not to encourage him. Eventually his messages did taper off, she said, until she ran into him in a children's clothing store and he hugged her.

"It was really weird and uncomfortable and another creepy move," she said in an interview with KQED.

After that, the unwanted messages started up again, and the woman decided she would try another tactic. She said she responded to Meranda by email, pretending to be her own husband. It worked for about a month, until her boyfriend got a call from Sgt. Keerat Lal, Meranda's supervisor, who told him she was having an affair with a CHP officer.

That move made the woman distrust the Highway Patrol even more, she told KQED, and she said she would only provide a statement to investigators with her attorney present. Lal refused.

The internal records give no indication that investigators in either the Contra Costa or Los Angeles cases faced discipline for the way they treated women who filed harassment complaints. The CHP didn't answer specific questions about its handling of either of these cases.

"The CHP conducts a fair and impartial investigation of any employee or employees suspected of misconduct and, where warranted, takes appropriate corrective or disciplinary action up to and including termination," a spokeswoman wrote in a statement to KQED.

Criminal justice professor Stinson said the #MeToo movement that has shaken other industries in recent years has not hit law enforcement because of a heavily ingrained police subculture.

"The culture of policing overrides a lot of this, and it's going to be very, very difficult to make meaningful reform," Stinson said. "It's a closed-door society, it's an us-versus-them mentality. There's a blue wall of silence in many places."

"Sexual misconduct is such a normalized part of the police subculture in many places across the country," he added. "It's just business as usual."

20-20 Hindsight



On Sunday September 14, 2014 at about 4:20 a.m., Rick and Julie Perez got a knock at the door. A Richmond, Calif. detective and an inspector with the Contra Costa County District Attorney wanted to ask them questions about their 24-year old son Pedie Perez.

"I don't know how to say this," the inspector said almost 12 minutes into the conversation.

"You guys shot him?" Rick Perez said.

"Yes."

"And he's not alive?"

"Yes, he's not alive," the inspector answered.

After his son died, Perez met other families whose loved ones were killed by law enforcement. And so many of them told him they had the same issue: they couldn't get access to all the details surrounding their loved one's deaths. That information was sealed by state law protecting the privacy of police.

As part of this unofficial "club," Perez starts advocating for police transparency and accountability, pushing for the passage of California's "Right to Know Act," which

promised access to records on shootings by police officers. He then went to court to defend the law's access against a legal challenge brought by Richmond's police union.

Article continues after sponsor message

In episode three of *On Our Watch*, we examine the records that were unsealed by this transparency law to piece together what exactly happened on September 14, 2014 when Pedie Perez was shot and killed outside a liquor store by a police officer, Wallace Jensen.

Jensen is retired now, and he agreed to a rare interview about the shooting. He said he doesn't second guess his decision to shoot Pedie Perez that day.

"I made a decision and I stand by it," he said.

Jensen said it was Perez who made the choice to not comply with a police officer's commands, physically resisted and who he said went for his gun.

And we also probe what makes a police shooting legal in the U.S., and how it often comes down to what was in the officer's mind when they pulled the trigger.

It's a standard that family members like Rick Perez find incredibly frustrating.

"Nothing's going to bring my son back, but it's unreal that society keeps allowing these police officers to get away with the same thing over and over again," Perez says. "I don't want anyone else to feel this pain that I feel. Even the police officer, I don't wish this upon him."

Perceived Threat



"The badge that I wear — that all of my officers wear — carries a burden with it," Stockton, Calif., Police Chief Eric Jones says. "And it does go back to slave patrols."

For the past five years, Jones has overseen a pilot truth and reconciliation effort, through which he's seeking to acknowledge the racist history of policing in order to change the culture of the department.

"If I have a racist officer and I find out, I'm going to fire the officer," the chief says. "What we're talking about are these biases that are harder to put your finger on."

Experts say — and records read by *On Our Watch* reporters show — that the internal affairs system is poorly equipped to hold officers accountable for racist policing unless it is overt and extreme.

Episode four of *On Our Watch* investigates the case of a plainclothes Stockton police officer who grabbed a Black 16-year-old, took him to the ground and punched him, knocking the teen's two front teeth onto a convenience store floor.

"He could've killed me," Joseph Green told the department at the time.

Though the Police Department's internal investigation found that Officer Robert Johnson III used excessive force, he successfully appealed a five-day suspension with arguments that he confronted the 16-year-old in a "high drug, high gang neighborhood" that included "a crime ridden HUD housing development."

A jury in a civil case found the officer had falsely arrested Green and used excessive force in 2020. The jury awarded Green \$710,000. Johnson and the city denied any wrongdoing.

That civil outcome didn't affect Johnson's job. He's still on the force today, a recent recipient of an "officer of the year" award.

Neglect of Duty



In the agricultural town of Salinas, Calif., Police Officer William Yetter repeatedly makes mistakes. First there's a stolen bike he doesn't investigate. Then, his bosses discover he's not filing police reports on time.

Police get a call from a mother whose 14-year-old daughter hasn't returned home from school.

Meanwhile, Yetter comes across a car parked in a public area. The windows are fogged with steam. When the officer gets a look inside the vehicle, he finds a 23-year-old man without his shirt on and a girl with disheveled clothing.

It's the missing 14-year-old.

Yetter doesn't write a report, investigate or arrest the 23-year-old man. He is allowed to leave, and another officer brings the girl home.

Two years later, something similar happens to the girl's younger sister. She's in seventh grade when she's exploited by an older man. Police miss opportunities to intervene until she is taken across the border into Mexico.

In this episode, we look at the steps the department took to investigate Yetter's alleged misconduct and the investigative steps that were missed along the way.

The Brady Rule



Antioch police officials suspected one of their veteran detectives of leaking operational details as far back as 2010. But they didn't fire Santiago Castillo for another seven years. During that time, he investigated hundreds of cases including several homicides, and his testimony helped put dozens of people behind bars.

The detective had a "significant measure of influence over this organization," but "that trust has been waning in recent years," according to the internal investigation.

The local prosecutor's office knew about Castillo's 2017 firing, but it wasn't until his case became public under SB1421 that the District Attorney took a second look at those convictions.

District Attorneys have a direct legal obligation to know and to share that information about officer misconduct with defendants under a landmark 1963 Supreme Court decision: *Brady v. Maryland*.

In the sixth episode of *On Our Watch* we ask: in a secret system, what are the incentives for departments to investigate officers suspected of dishonesty or for District Attorneys to undermine their witnesses?

'On Our Watch' Litigation Reveals New Details In Police Shooting Of Oscar Grant



Rev. Wanda Johnson sits down on a folding chair in her driveway on a hot afternoon in June. There's no air conditioning inside, so she's fashioned an outside office, and pulls her chair up to a small table where a computer is perched. She's getting ready to listen to excerpts of nearly 60 hours of newly released tapes — recordings of a police investigation that have been secret for over a decade. On those tapes is a story that's never been fully heard before: the story of what happened after a transit cop shot her son on a Bay Area Rapid Transit platform on New Year's Day 2009.

One of the first police shootings to be captured on cell phone, millions saw BART police Officer Johannes Mehserle fire a single, fatal gunshot into Oscar Grant's back as the 22-year-old lay face down on the train station platform. The event would later be depicted in the movie "Fruitvale Station," in which Michael B. Jordan plays Grant on what would be the last day of his life.

But until now, no one outside the agency has actually heard what happened after the cell phone video ended. A lawsuit filed by NPR member station KQED earlier this year forced BART to comply with California's "The Right to Know Act," a 2019 police transparency law, and release the never-before-heard tapes. The subject of a new podcast by NPR and KQED, *On Our Watch*, the tapes allow listeners inside that investigation for the first time and may provide lessons for larger failings about the system that promises to hold police accountable.



Wanda Johnson speaks before family and community members during the mural and street name rededication in honor of Oscar Grant outside the Fruitvale BART station in Oakland, Calif. in 2019.
Ray Chavez/MediaNews Group via Getty Images

It has long been clear that BART made significant missteps in the investigation of Grant's shooting, and in the aftermath of the incident the Police Chief and two commanders retired. Mehserle would be convicted of involuntary manslaughter and serve 11 months in jail. But the long-secret files focus new attention on former BART police officer Anthony "Tony" Pirone, who was fired for his actions on the platform but never criminally charged.

Pirone was the first officer to respond to a call about a fight on the train crowded with people celebrating New Year's. When Pirone stopped a group of young men on the platform, Grant and his friend Michael Greer jumped back on the train. Pirone removed Greer from the train and threw him on the ground. After Grant tried to stand up to intervene, Pirone repeatedly hit Grant. The crowd began yelling at Pirone and his partner, objecting to their handling of the situation.

Five more BART officers, including Johannes Mehserle, responded to calls for backup. Mehserle attempted to handcuff Grant as Pirone held Grant down with his knee. When he could not get Grant's hands, Mehserle pulled out his gun.

Within seven minutes of Pirone arriving on the platform, Oscar Grant was fatally shot.

"Nothing happened to him and that's what's so disheartening and so upsetting to me. This man (started) an event that spiraled out of control, (and) caused my son to lose his life," Johnson says, as she listens to the tapes.

Neither Mehserle nor Pirone agreed to comment for this story.

'Close personal relationship'

The internal documents and tapes show that BART's criminal investigators and leaders repeatedly missed opportunities to question officers, limiting the scope and potentially the outcome of both the criminal and administrative investigations.

Just after the shot was fired, BART police officers put out a call for medical assistance and backup over the radio. What they didn't broadcast was that an officer was the shooter.

"I had to basically put two and two together and figure out it was an officer-involved shooting on my own," one Oakland police officer would later tell investigators.

The BART detective who responded to the initial call, Joel Enriquez, also had to wait for another officer to clarify that the incident was a police shooting. Enriquez can be heard in recordings from that night telling another officer that he wished he could review the policy manual so he could be better prepared to investigate the incident.

Enriquez was also close to two of the primary officers involved in the incident, Johannes Mehserle and Tony Pirone.

"I would like to put it on record that I have a close, personal and working relationship with you, Tony," Enriquez, addressing Pirone, said on the Jan. 1, 2009, tape, recorded less than an hour after Grant died in an Oakland hospital. "And I want to make sure that you're okay with me interviewing you."

"Yeah, I'm fine with that," Pirone replied.

In the initial interview with Pirone, Enriquez fails to ask key questions about the officer's repeated use of force, and does not challenge or ask Pirone to explain his assertion that he was himself on the verge of using deadly force and in fear for his life.

Enriquez did not respond to requests for comment.

Pirone's partner, Officer Marysol Domenici, told investigators that she felt the crowd on the platform was so threatening after Mehserle shot Grant that she was ready to open fire herself.

"That's when I knew, you know, it's us or them — the crowd," she said during a Jan. 7, 2009, interview. Because she only had two taser cartridges, she said, she thought she'd have to "start shooting people. ... I started thinking, Jesus, I'm going to have to do this."

The outside law firm BART hired to take over the internal affairs inquiry later concluded that both officers exaggerated or lied about their level of fear during the incident in an attempt to justify their actions. Both were fired, though Domenici won her job back after an appeal.

A strategic decision

Just a week into the shooting inquiry, BART investigators did start to raise questions about Pirone's violent behavior, police reports show.

In one report, BART Police Commander Maria White noted that eight days after the killing, one of the department's internal affairs investigators, Sgt. David Chlebowski, alerted her to a witness video on a local TV website.

Sgt. Chlebowski and several unnamed BART detectives, "voiced concern" over Pirone's actions depicted in the tape, White wrote.

But she "told the detective unit members that their primary focus was the homicide investigation," delaying a probe into Pirone's actions, police records show.

She waited a month — until several days after BART obtained a copy of the video from the Alameda County District Attorney's Office — before ordering BART Det. Alan Fueng to open a criminal investigation into Pirone's use of force.

In subsequent police reports, Fueng described interviewing Pirone and his partner, Domenici, the night of the shooting.

The result of his inquiry was a "brief summary report." On March 20, 2009, the report was submitted, "without recommendation," to the D.A.'s Office "for their review and disposition." Pirone was never charged.

Alameda County District Attorney Nancy O'Malley said in an interview with KQED and NPR that not charging Pirone was a strategic decision. Her office wanted to build the strongest possible case against Mehserhle, which meant using Pirone as a witness, she explained.

"He was a key witness in this because he started the whole thing," she said.

In February 2009, under intense public pressure, BART hired an outside law firm called Meyers Nave to do an internal affairs investigation of the incident.

BART's board decided to hire Meyers Nave "because it felt it was critical that the public would have confidence in an independent investigation conducted by a well-respected, experienced law firm," according to a statement from a spokeswoman.

The Meyers Nave report, which was unsealed by "The Right to Know" Act or Senate Bill 1421 in 2019, found that Pirone's aggressive behavior on the platform broke policy and

escalated the situation, rather than taking control of the situation in a way that ensured public safety.

The tapes show that Meyers Nave investigators asked Pirone to explain why he used racial epithets in an exchange with Grant.

"I specifically remember him telling me about his four-year-old daughter and how he respects the police. I said, 'Then why are you giving us a bad time?'," Pirone said to Meyers Nave investigators. "That's when he says, well, 'You're a bitch ass n*****.' And I said, 'You're calling me a bitch ass n*****, you know, that type of thing. And he said, 'yeah.' And then I said, 'Bitch ass, n***** huh?' I think that's when Mehserle comes over and pushes him down."

"Pirone was, in large part, responsible for setting the events in motion that created a chaotic and tense situation on the platform, setting the stage, even if inadvertent, for the shooting of Oscar Grant," the report found.

Meyers Nave also found that Pirone's statements about his grounds for detaining Grant, his own actions and uses of force shifted across multiple interviews and were contradicted by witness and video evidence.

Based on this report, Pirone was fired.

Pirone is currently serving the California Army National Guard. He's a Special Forces Communications Sergeant.

"Pirone is a highly decorated soldier with many awards and has been in the military since 1997," a spokesman for the National Guard wrote in an email. He declined to answer further questions.



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A photo of Grant's young daughter, Tatiana Grant, was found in his wallet after Grant was killed. It was among the personal effects collected by Bay Area Rapid Transit police in their investigation. The image was obtained as part of a California Public Records Act request.

Bay Area Rapid Transit

'I thought he had a gun'

The recordings also refocus attention on Mehserle's controversial explanation for the shooting and his ultimate defense at trial — that he meant to draw a taser, not his semiautomatic pistol, and that the shooting was unintentional. (Both Pirone and Carlos Reyes, one of the men detained on the platform, later said they heard Mehserle announce he was going to tase Grant.)

At Mehserle's criminal trial, the jury believed his explanation and convicted him of involuntary manslaughter.

But the Meyers Nave report, released in 2019 after the passage of Senate Bill 1421, came to a different conclusion.

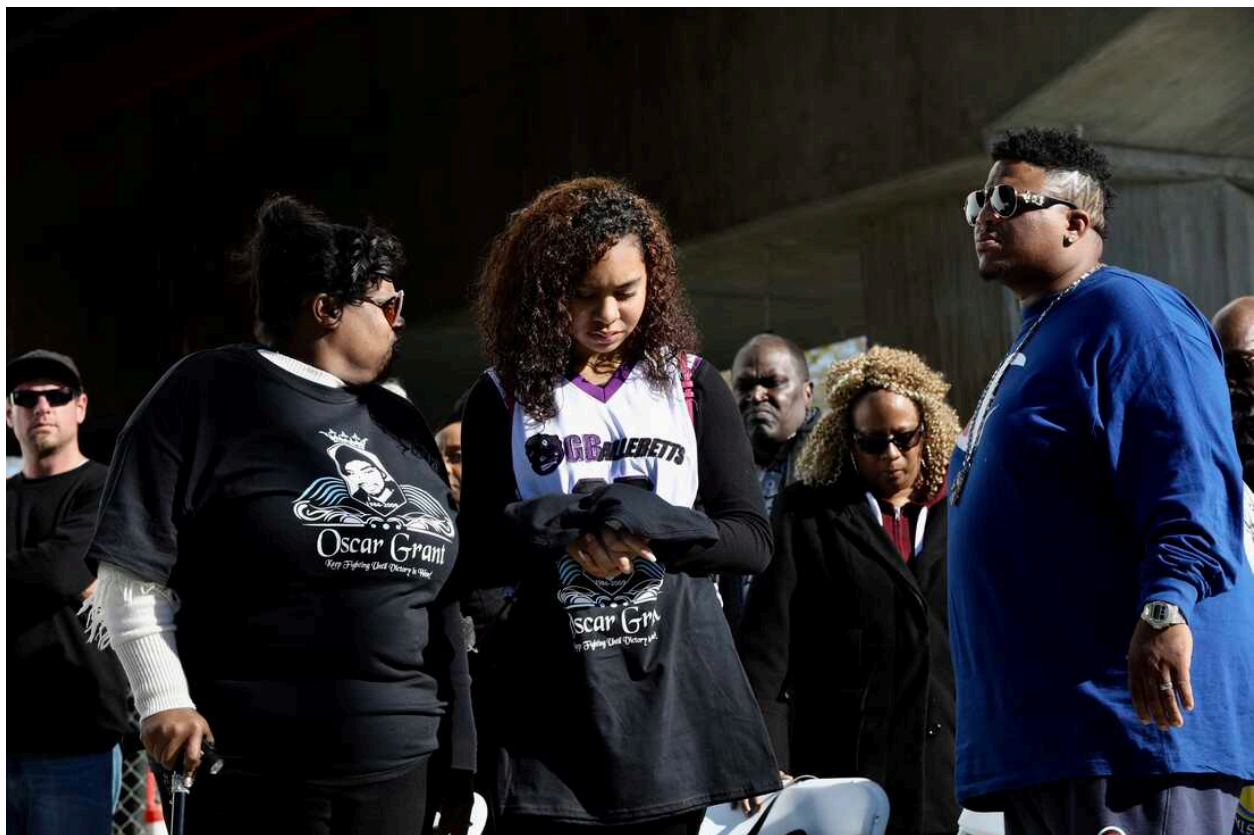
"He can be seen trying to draw (his gun) at least two times and on the final occasion can be seen looking back at his hand on the gun/holster to watch the gun come out," it

reads. When Mehserle fired, the report found, Oscar Grant had his hands behind his back.

Mehserle's lawyer Michael Rains disputed this finding in an interview with NPR and KQED, calling the Meyers Nave analysis "flawed" and based on a single frame of video.

"That's probably one one thousandth of a second," Rains said. "He doesn't process, 'I'm looking at my gun.' That's ridiculous."

But the newly-released records also include statements of BART officers whom Mehserle confided in after the shooting. They tell investigators Mehserle said he believed Grant was going for a gun and never mentioned his taser.



Tatiana Grant prays at the BART Fruitvale Station during a vigil on the 10 year anniversary of Grant's death in Oakland, Calif.

Yalonda M James/San Francisco Chronicle via Getty Images

Terry Foreman, a senior BART police officer who served as emotional support for Mehserle in the hours after the shooting, told investigators that he spoke to Mehserle every day in the week after he shot Grant. "Every so often he'll just say, 'I thought he had a gun, you know, I thought he had a gun,'" Foreman said during a Jan. 9, 2009 interview. He added that Mehserle frequently broke down weeping during these conversations.

"I don't have an answer for that," Rains said when asked why Mehserle didn't tell Foreman that he'd meant to use his taser. Rains said his client was in "horrible shape emotionally."

"It was both an embarrassing failure and a shameful failure on his part," Rains said. "And that's the way he felt for days, for weeks."

Foreman and three other officers testified at trial that in the days after the shooting Mehserle did not mention anything about the taser or that it was a mistake.

'I'd be in jail right now'

One of the reasons that Mehserle's defense remains in question could come down to decisions made by BART Command staff in those early hours after the shooting.

Mehserle's Legal Defense Fund lawyer David Mastagni asked to review the bystander video of the shooting before his client provided a statement to investigators on the morning of New Year's Day, unsealed police records show.

Commander White conferred with investigators from the D.A.'s Office and they made the decision to let Mehserle and his attorney see the video, according to a report written by White.

After watching the video and learning that Oscar Grant had died at the hospital, Mehserle invoked his Fifth Amendment rights and refused to give a statement.

White did discuss ordering Mehserle — an employee — to give a statement, according to her report. A compelled statement would not be usable in a criminal investigation, but it could be used administratively to determine why Mehserle shot Grant.

But BART command staff did not compel Mehserle to give an interview that morning. Mehserle said he was too tired to talk, according to White's report. They allowed him to go home, and he agreed he would make a statement the next day. He did not.

Six days later, Mehserle resigned from the police force rather than give that statement.

BART Command staff also did not require the other officers who were on the platform at the time of the shooting, Emery Knudtson, Jonathan Guerra, Noel Flores and Jon Woffinden, to give interviews. They were instead asked to type up a statement in Microsoft Word. (BART's regular case management system was visible to other departments.)

The officers were not questioned about the actions of Mehserle or Pirone. They were also not questioned about their own actions: Knudtson tackled Fernando Anicete, a friend of Oscar Grant's, who allegedly threw a phone toward Domenici. Flores pulled both his taser and baton. Woffinden was Mehserle's partner that night and also drew his baton.

The officers were eventually questioned more thoroughly by BART detectives and later by Meyers Nave investigators.

The group of Oscar Grant's friends who were with him on the platform, Fernando Anicete, Michael Greer, Jack Bryson, Nigel Bryson and Carlos Reyes were all taken to the BART police station that morning. Each was handcuffed and questioned by police.

They were read their Miranda Rights, according to the police records, but told they weren't under arrest.

"If I was to shoot somebody on BART in their chest while they're already down I'd be in jail right now," Jack Bryson can be heard telling investigators. "The cops just did the same thing. So why is it different? Because he's a cop?"

On the tape detectives tell Bryson that there is "no cover up" and that there is "no favoritism" in how police investigate police shootings.

In October 2009 Enriquez recommended that all the detainees be charged with resisting arrest, police records show. The other lead investigator, Fueng, agreed. But the records show they were overruled by command staff who did not want the recommendation forwarded to the D.A.'s Office.

The five detainees went on to sue BART. The agency eventually settled with them for \$175,000.

'A force with bad apples'

When another video of a police killing went viral last summer and protests against police violence once again gripped the country, Wanda Johnson felt the echoes of what had happened with her son. George Floyd was not shot, but the way he was pinned made her think of the way Pirone had held down Oscar Grant. Witnesses to Grant's shooting said he told officers, "I can't breathe."

In October of 2020, Johnson and her family held a press conference to ask that Grant's case be reopened and that the District Attorney reconsider charges against Tony Pirone. Johnson says they felt the new information released with Senate Bill 1421, combined with the groundswell of protests, made it the right moment to take another look.

D.A. Nancy O'Malley agreed.

Then, in January 2021 she announced that while Pirone's conduct was "aggressive, utterly unprofessional and disgraceful" her office could not charge him with anything.

"We looked at videos, we read every report," she said. "We did everything to see if there was any legal theory that could hold Pirone accountable other than a 149."

Penal Code 149 - assault under color of authority - is a misdemeanor. The statute of limitations on that charge ran out long ago. KQED's review of hundreds of internal police records unsealed by the "Right to Know Act" reveal that officers are rarely criminally charged for potentially criminal misbehavior from perjury to sexual misconduct to improper use of force.



Rev. Wanda Johnson listens during a press conference at the Rene C. Davidson Courthouse in Oakland, Calif., on Monday, Jan. 11, 2021, as Alameda County District Attorney Nancy O'Malley announced she would not file new charges against Anthony Pirone, an officer involved in Grant's death in 2009.
Jane Tyska/MediaNews Group via Getty Images

"Oscar Grant lost his life and we're sorry for that," said the current BART Police Chief Ed Alvarez.

Alvarez said that the agency learned a lot of hard lessons from the killing of Oscar Grant, and that it has improved significantly in the decade since the Grant shooting by implementing reforms including body cameras, better taser training and a civilian auditor.

Alvarez condemned Pirone's actions and said they remain against policy. But, he said he personally believes that Mehserle did confuse his gun and his taser. At the same time, Alvarez credits the Meyers Nave report for many of the reforms the department has adopted.

"People who came in after the fact had time to, I think, process a lot more information and they look at things through different lenses," Alvarez said of the outside investigation.

One thing has not changed: investigations into shootings or officer misconduct remain in house.

Alvarez said he doesn't see any issue with this common practice.

"Friendships are going to always be there," Alvarez said. "So you just have to deal with it on the professional level and understand that that is your job."

Grant's uncle Cephus Johnson, who fought for the passage of "The Right to Know Act," said it is painful to hear the missteps made by investigators in the early hours and days after his nephew's shooting.

"You know, everything that we knew is actually coming to light today through just listening to these conversations," Johnson said.

To him, it is proof that police cannot police themselves.

"We've always said accountability and transparency we gotta have, and this is the reason why," he added. "It's very obvious if all investigations start in this way, we can never fix this system."

Beyond this case, the files that have been released under the transparency law show that there is little standardization and less oversight of these internal investigations. Deadly force is overwhelmingly found to be justified and in compliance with policies, even in cases where investigators raised questions about the need for officers to shoot and kill. Investigations into sexual assault by officers do not address systemic issues that allowed those officers to abuse their power. And officers with a history of dishonesty have continued to testify in criminal cases.

"Oscar wasn't the first. Definitely will not be the last," says his mother Wanda Johnson.

"If you want to change the force, you would take action on those who commit the offenses. But because you don't take action on those who commit those offenses, you have exactly what you want — a force with bad apples on it."

NPR's Austin Fast contributed to this story.

Update: Oscar Grant and the Attorney General

Less than six weeks after *On Our Watch* published an episode examining the shooting and death of Oscar Grant, California's Attorney General Rob Bonta opened an external investigation into the 12-year-old case. In a wide-ranging interview with *On Our Watch*'s Sukey Lewis, Bonta talks about California's systemic issues in policing, his efforts at addressing them and says the Oscar Grant case remains unresolved.

We also look at new police reforms promising that cops who commit serious misconduct can be stripped of their badges.