# FRIENDLY FIRE?

The Good, The Bad And The Corrupt

By

Stephen K. Peach

This book is a work of non-fiction. Names and places have been changed to protect the privacy of all individuals. The events and situations are true.

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# Dedication

I wish to dedicate this book to My wife, Reyna For without her support this book would not be possible.

and

For all the men and women in Law Enforcement who have also been a victim of Police Department corruption.

The names of these officers are to easily forgotten, perhaps because those who remain are only too glad because it wasn't them, this time.

# A lie gets halfway around the world before the truth has a chance to get it's pants on.

Sir Winston Churchill 1874-1965



#### Introduction

This is a book about corruption in City government, this is a true story about the City of San Bernardino in California, but it could be about any City in America. San Bernardino is a small City just outside the super-metropolis that is Los Angeles. This kind of corruption is everywhere, it exists because good people do nothing out of fear and allow corruption to flourish. It exists because the people that move up in an organization such as a Police Department are the same people who do not want to be reminded of their past failures, crimes and cover-ups and maintain their loyalties to their bosses who have looked the other way in the past. It exists when people are appointed or elected to their positions any embarrassment that could reflect on them and the City they represent needs to be quashed. It exists everywhere and the only way to address it is to expose it.

During my career as a San Bernardino police officer I had only one wish, to help people, that's it. I have always believed in helping those less fortunate than myself and have endeavored to lead an exemplary life both at work and off duty as an example to others. I have suffered the last few years in silence because the same people you will read about have held my life and desires in their hands. I could not speak out in the past because I had to weigh how much good I was doing for society while I was working against exposing a few rotten apples, because I knew that once I decided to expose the corruption my career would be over. Events turned themselves around and I became the focus of the corrupt Department because I had blown the whistle on a serial rapist officer amongst the men and women of the San Bernardino Police Department. I needed to be proven not credible and not trustworthy so the administration of the Police Department could avoid any embarrassment and the City would save millions in liability payments to the victims. They did not want anyone to know that their City had ignored a serial rapist for almost a year before they acted. This is my story and at times I may sound a little bitter, but as you read my story you will understand

why. I am not one who believes in conspiracy theories and have been criticized for saying that I have been the victim of one, but I can't think of another name for what I have been through. My book will show that the Police Department of the City of San Bernardino committed illegal acts against me and then different facets of City government banded together to bring about a common cause: destroy my reputation and credibility and try to cover up those illegal acts. The purpose of my book is to hold those that have committed illegal acts and perjured themselves responsible to the people they are sworn to serve. I realize that most people in modern society do not want to believe in City government corruption because the implications are frightening. The thought of not being able to trust the people that have the power over our lives is one that society does not want to believe in because it means all our values, our entire frame of reference gets turned upside down.

As you read my book consider that some of the individual acts against me if viewed by themselves are not overwhelming, but when viewed as a whole and together they paint a very different picture. I did not want to write this book, however the City has chosen to refute, deny and ignore my accusations. They, ultimately and ironically are to blame for this book coming into fruition. Because the Police Department is in control of their own records and reports I have changed some of the names of some of the officers and command staff. I have done this because even though the stories that I have presented are true, official Department records regarding these events would have disappeared or been destroyed long ago. When I am sure about the factual accuracy of a set of circumstances because I experienced them personally I have left the names unchanged. To defend themselves against this exposure one of their tactics is to strike out against anyone who works to expose them for who they are by filing law suits to prevent you, the public they serve, from reading this book.

As the time that it took me to write my book passed, a strange thing happened. I began to read in the local newspapers additional stories of corruption where other officers and even a chaplain had tried to expose the administration for being corrupt and soon after they were retaliated against and fired. I realized that it would never end under the current regime, and until a regime change occurred the corruption would continue, hopefully my book will start the process of holding those responsible accountable.

One thing to bear in mind as you read my story, it is true.



#### PART 1

#### The End

So there I sat, my attorney at my side with the City Attorney Stephanie Easland and assistant Chief Michael Billdt smiling from their table. I didn't understand the look of triumph on their faces, the Civil Service Board had not announced their decision yet. The Commissioners who had been very friendly throughout the week long hearing were looking down, avoiding my gaze. I picked up on their body language which showed embarrassment and indifference. They were putting up a wall, a wall that had just been built, I sensed they did not individually like the decision but the Chairwoman was going to announce it anyway. We had put on the best appeal I have ever heard in any court, we had countered and beaten the Department in all their arguments, making most if not all of the charges totally unproven. I was hopeful that the Civil Service Board would see through the Police Departments crimes and subsequent cover up and exonerate me of all charges and I would be back to patrolling the streets as soon as possible. Chairwoman Juanita Scott opened the hearing, called everyone to order and then announced that the Commission had sustained all the charges against me with a majority of five to nothing. They ordered my termination and I was no longer a police officer. I couldn't believe it, after all I had done, the blood I had spilled, it was over. I looked at the Commissioners and they avoided my gaze again, I just wanted to see if they were honest in their conviction of me and instead they looked away. It was obvious they didn't feel comfortable with their decision. I thought back over the last several years and took stock of my police work and I still knew I had done the right thing. I had been on a crusade to expose a rapist from amongst the rank and file of the Police Department and today it had cost me my career.

I remembered reading the life story of Frank Serpico and couldn't believe that my life was so similar to his and that he had tried to

expose corruption in the 1970's and had become an icon for truth throughout the New York Police Department and the Country.

Serpico had once been seen in a bathroom with another officer and had been questioned about it by an Inspector who had made the accusation of sexual conduct between the two. It was a preposterous accusation and nothing was written down officially but it had been brought up again at a trial five years later to discredit him and his testimony. Just the same as my case, I was being discredited so that my testimony would be questionable if and when it became necessary for me to testify against the Department and the City. I had proven throughout the years that I was incorruptible and would say and testify to the truth no matter who looked bad and believed in holding those responsible accountable. I especially believed in holding those above me as accountable for their actions as any officer or citizen would be in similar circumstances. The administration knew that I wouldn't "tow the line" and cover for them no matter what they had or had not done and because of that I had to go.

Like Serpico I had never fit into the general mold of a police officer, I wasn't one of the boys, my thoughts did not fall into an "us against them" mentality and I thought of myself as part of the community instead of being isolated and insulated as most cops do. I had also become an informer and had informed on a criminal police officer's actions much to my own destruction, I was considered a "rat" and had to be proven as one by the Department, they realized that I could not be trusted to turn a blind eye to their corruption.

# The Beginning

My police career begun in 1991 when I graduated the San Bernardino County Sheriffs Academy and entered the ranks of the San Bernardino Police Department.

I took an oath that I lived by every day and it was an oath to uphold the law, it wasn't an oath that allowed any immunity for cops to break the law and get away with it and should have meant that an officer exposing police corruption should be seen as a highly dedicated employee and not as a problem.

I was a new officer, "a rookie" and I looked the part, I came to work early every day and was always raring to go, I hated staying in the Station for any reason and loved to get out on the streets. My uniform was always pressed and clean and I was very proud to represent the City as one of their finest. San Bernardino has always been a very violent city, a tough place to grow up if you were young but from a police officers perspective it was one heck of a place to work. After going through the Field Training Officer (FTO) program I became a solo officer. The city has traditionally used one man patrol vehicles because they believe it gives the impression to the public that there are a lot more cops working than there actually are. I remember my first day by myself as if it were yesterday, I don't think I have ever been so proud to drive down the street as I was on that day. I had the world at my feet and I was the hero, the savior and the victims answer to right their wrongs. I took my job very seriously and began to assert myself with the criminals I encountered daily.

San Bernardino did not give you any time to catch your breath, as soon as I was by myself I was chasing homicide and robbery suspects all over the city and learning how to handle all of societies problems. In my first few years I handled every type of call imaginable and I found that I had a natural talent for getting to the root of the problem and I had an affinity for people. I never judged them, I have taken people for who they are and found that very often people would open up to me and tell me things. In the beginning I didn't realize how I could use this to my advantage but over time I developed such a vast network of contacts that it was rare when I went on a call and didn't know someone or someone's relative. That perception increased my presence with society and made people feel accountable to me even when I didn't see them. I tried to imagine an analogy of being omnipresent but not oppressive and I could only compare it with "big brother" watching your every move but it wasn't like that at all. I would hold people responsible for their actions and they knew if I caught them up to no good I would arrest them. It wasn't personal, it was business. Criminals view cops and

being arrested as part of the cost of doing business and they do not want to go to jail but if they are arrested then maybe some good can come from it, if they give the cop that arrested them some information maybe they can get their sentence reduced or get cite released instead of going to jail.

I developed my skills to the extent that if someone was arrested when I wasn't working when I saw them next they would feel embarrassed and apologize to me. I know it sounds incredible but they almost felt ashamed to have involved themselves in criminal activity after I had talked with them over a period of months or years and tried to steer them down the right path.

I arrested more than my fair share of the people I would contact for various crimes and would use the time to actually talk to them. I would talk to them about their wife who they had just hit or I would talk to them about trying to steal some meat from a grocery store or why they had just burglarized a particular house. I truly empathized with them and their circumstances and would try to find out why they had ended up in their current situation. It didn't matter what the situation was, it could be anything but what they found was that I didn't judge them, I didn't condemn them for their actions and I didn't talk down to them or degrade them. They felt equal with me, they didn't like being arrested but they realized I was just doing my job. I would contact drug dealers on the street and ask them if they knew what I did for a living, they of course replied "yes." I then told them that I knew what they did for a living and that both cannot coexist and if I had a reason to arrest them they would find themselves going to jail. If they chose to not sell drugs I would leave them alone, they would not be harassed or abused by me and I would respect their choice to lead a moral and law abiding life. The ground rules were in place, there was no gray area, I had explained the way I was going to conduct business and it was not personal.

I don't think there are many cops that actually talk to anyone they arrest, they do not see the point. They figure they're not going to see the same people again so why talk to them. I believed in building bridges, I remember several cases where it was like the criminals were playing a crazy game of charades. One day they were being

# Friendly Fire?

shot at, the next they were shooting and then they were witnessing one of their friends being shot. Of course they knew who all the other involved people were but would they tell? Sometimes they would and sometimes they wouldn't. I can guarantee they would never tell the investigating cop or detective "who did it" if it was the first time the cop had ever talked to them.

Only a foolish General ignores Intelligence from the trenches.

Julius Caesar

# **Chapter 1-Early Days**

Developing and using informants is perhaps the most underutilized area of solving crime that law enforcement has. I'm not talking about large scale drug informers or crime family informers that are utilized by the F.B.I. or the D.E.A. I'm talking about the average person who just happens to be on the fringes of criminal activity or just happens to live in a high crime area. These are the people that most cops ignore and can be used to make great cases against criminals. Crimes are solved by the use of eyewitnesses, physical evidence or confessions primarily but what happens when none of these things are present?

Ted Kaczynski the Unabomber was hunted for 18 years by the F.B.I., it was the longest, most costliest manhunt for a serial killer in U.S. history. In a manhunt that used investigators from the F.B.I., U.S. Postal Inspectors and agents from the Alcohol, Tobacco and Firearms (A.T.F.) who spent countless thousands of man-hours trying to track him down. He was uncovered by an informant, his brother, David Kaczynski who offered up his identity to Law Enforcement. Do you think his brother would have come forward if he didn't like or trust the F.B.I. or Law Enforcement in general? David Kaczynski was a respected member of society that felt a duty to inform (and he wasn't sure if his brother was the Unabomber at the time) on his brother based on a similarity of some very old letters that he had found in the attic that somewhat matched the letters that had been published in the newspapers. If David Kaczynski had similar extreme leftist views as his brother and did not trust society or had been a victim of any type of violence by the Police the Unabomber might still be sending out his deadly bombs today.

The problem that officers come into when cultivating and developing street level informants is that they have to treat **everyone** with respect and treat **everyone** fairly. That means treating the shoplifter that has stolen a pack of gum and caused three hours of paperwork the same as they would treat an old lady that had been the victim of a crime. This goes against the grain of 99% of the cops

on the beat but the reason everyone gets treated the same is because the cops do not know who is going to witness what in the future or what someone may have witnessed in the past. Let me repeat that because it is very important: Officers do not know who is going to see something that would be to their (and therefore societies) advantage if they informed an officer whom they trusted.

These informant relationships do not happen overnight, they develop over time. If the beat officer treated all people with respect and compassion they would confide in him. It has to be complete and utter respect for everyone whom they contact. People naturally talk to relatives and friends, people who they trust, if an officer gets a little too rough with an arrestee, word will get back one way or another to a relative or girlfriend who may have been thinking about informing and the trust is broken. Most career criminals know that they control the amount of force that gets used on them, they know what is appropriate and what crosses the line. I truly believe that there isn't an act that goes unseen in any ghetto including how the police react to a given situation. There are many eyes silently witnessing every act and injustice. They don't report bad cops not because they like cops, but because they simply don't report anything they see, there is no trust established and people have already figured out that they would be ignored if they complained on a police officers behavior. Let me give you an example of reciprocal neighborly aid:

Several years ago, early in my career, I was sent on a call in a fairly decent area on some tenants next door to the complainant that had their music too loud. I contacted the house that was complaining and found that the noise was not that bothersome however it was during the day and she worked at night and it was keeping her awake. She had never spoken to her neighbors and actually was a little scared of retaliation because they were from different cultures.

I went over to the house where the noise was coming from and found several male subjects repairing a car. They were only too happy to lower the radio and had seen me walk up to the neighbors house and asked if she had called. I said yes and explained that she worked varying hours and sometimes needed to sleep during the day. They already knew that she was gone a lot at night and said they often look after her house if the hear anything when she isn't home. They believed that she would look after their residence when they were working during the day so they believed in the reciprocal nature of the relationship even though they had not formally established any ties. I realized I could use this innocent contact for my advantage and said that I was proud of the way the two neighbors were effectively looking after each other and believed that was how a community should function. I asked for their names and gave them my business card. This served a dual purpose, they knew that I knew who they were, they also had my card so they knew who I was. They also knew that if anything happened next door I would call on them first, whether to see if they saw anything or to see if they were involved. A level of trust was entered into between us that seemingly innocent, would establish a common frame of reference for any contacts in the future.

I returned to the lady and found that she was very grateful to me for alleviating her problem and I told her that they were aware she was not home some nights. I suggested that when she sees anyone from her neighbors house she might try waving and eventually talking with them, she was very suspicious but took my card as well and said she would try. I asked her to call me if I could help with anything in the future and to call me and leave me a message in a week's time to let me know that the noise issue had stopped.

She called me at work about two weeks later and said things had been going well until last night when someone had removed the wheels and tires from one of her cars in the driveway. She had waved at her neighbors but had not spoken to them yet and felt that they may have been responsible for the theft. I went over to the scene and talked with her and then went next door to contact the same people I had met before. They remembered me and were very open and hospitable towards me, not acting as though they had anything to hide at all. They had been home when the tires were stolen and had seen two local juveniles take the tires to their own house which was directly behind theirs. They had asked the juveniles where they had got the tires from and were told that they had just bought them

from a friend around the corner, they felt suspicious and as they did not know of anyone missing any tires they didn't call the police. I eventually managed to arrest the two juveniles for grand theft and discovered they had been running a little operation out of their garage, stealing and reselling all different kinds of car parts that they had stolen from the area. They were positively identified by the neighbors and they hadn't had a chance to sell the tires yet so I was able to return them to the victim. She was very appreciative of my diligence to her problem and told me so at the time.

Several years passed by and I was sent to one of the ghetto areas in the City for a burglary report. It was just before Christmas and when I got to the apartment someone had broken in and taken almost everything from inside including all of the gifts she had bought for her children. The victim was the same lady who had complained about the music and had recently been down on her luck and had to sell her house and rent an apartment. I felt empathy for her situation as she explained that she had just bought a new T.V. for her children which had been taken by the thieves. I took the burglary report and she asked me if I knew of what went on in the alley behind her apartment? I said I knew the alley was bad but when I pulled into the area in my black and white patrol car the lookouts would whistle their warnings and everyone who was selling drugs would disappear. I told her that I would surprise her kids on Christmas day and left (I had to work on Christmas day anyway). I had an old T.V. in my garage that worked and I wasn't using it and planned on getting rid of it sooner or later when I thought that maybe she could use the T.V. until she was able to buy another one. I loaded up the T.V. into my personal car on my way to work and then put the T.V. in the back seat of my patrol unit. I immediately went to her apartment and was going to drop off the T.V. however there were several undesirables outside so I waited until it got dark and took the T.V. up to her apartment. She and her kids were very thankful as now they had something to watch during Christmastime.

Her apartment was on the second floor and had a good view of one of the more notorious alleyways for narcotic sales in the area, gang members would congregate openly in the alleyway and sell drugs to people who would drive through. She asked for my number again and she called me over the next several months. It was amazing, she would sit in her living room and tell me who was selling drugs, who had a gun, where the drugs were hidden and where the sellers lived. She began to enjoy it so much she began to write down license plate numbers of cars and began to give the characters her own nick-names. I never asked her to do anything but because we had built up an understanding she trusted me to not reveal where I was getting my information. Over the next few months my arrests and accidental discoveries of stashed narcotics soared and they never did work out how I was doing it. When I would arrest them and talk to them, they just considered me lucky because I had got to know them too well. They assumed that their associates were turning them in so that the associate would have a larger share of the drug marketplace.

You can imagine how effective cops could be if they put in the effort to truly empathize with the people they are serving. The cops also need to establish that they themselves are beyond reproach and will turn in bad officers for the harm that they do to Law Enforcement efforts in general. It does no good for a truly empathetic officer to work in a certain area building ties to the community and establishing trust to be replaced with a brutal racist officer when his shift ends. They see the brutal racist officer as being representative in part of all officers.

There is a glaring dichotomy that exists in Law Enforcement and Police Departments throughout the Country, officers try to establish ties to the citizens that they serve but do not report malfeasance or crimes when committed by other officers. For example, If an arrest is made in the ghetto and adrenaline is running high, the arrestee may receive more strikes than is necessary to take him into custody. If this event is witnessed by the public, they might file an official complaint with the Department along with the arrestee's complaints.

Officers are trained observers, they watch everything for the telltale signs of criminal activity. They become very good at seeing such innocuous signs as someone walking with one shoulder slightly lower than the other alluding to the possibility of the subject having a

concealed weapon. Officers are able to distinguish patterns of behavior that normal members of society aren't even aware are occurring in their presence. This skill is so finely honed that a nationally recognized University once tested members of the public against police officers in their powers of observation. The instructor sent out the entire class to walk a predetermined route just to see what was occurring and not to become involved in anything so that the experiment maintained it's objectivity. They didn't know that their observations were being tested while they were walking and upon returning to the classroom they had to write down what they had observed. The officers had observed possible drug-deals, suspicious characters watching a bank and most disturbingly there was a boyfriend and girlfriend arguing on a bridge, with the male threatening to kill himself by jumping off the bridge, all within fifteen feet of where the group passed by. The citizens did not observe anything noteworthy, primarily because they didn't know what to focus their attention on and because they had become accustomed to not becoming involved in anyone else's business. This experiment was conducted in New York where the residents are notoriously renowned for ignoring other people and not getting involved with any strangers so the results might be slightly flawed but the point remains constant. The trained observers were able to distinguish potential criminal activity and the general public was not.

Yet when an investigation is initiated into an officer being brutal to an arrestee those same trained observers fail to see anything. They were all looking the other way, or they dropped something on the ground or they tripped and looked down or they were getting something from their car. The myriad of excuses is endless, of course if a video-tape was made it would show the same officers watching the event and not doing anything to stop it. It is incredulous that when someone is arrested under those circumstances the target of the officers during the chase was the arrestee and as soon as he is stopped but before he is handcuffed all the officer's except the arresting officer tripped, or went to their car or dropped something.

The dichotomy is that the officers might want to tell the truth but cannot be seen as violating their own unwritten code of ethics and betraying another officer and they do not want to lie about what they saw. So they see nothing.

The citizen complaint or arrestee complaint ends up as their word against the arresting officers word and nothing is done. The other officer's that were there didn't see anything. The Police Department washes it's hands of the whole incident and believes it has fulfilled their obligation to investigate complaints as required by State Law. The officer isn't disciplined in any way because the investigation could not point out conclusively that anything untoward had occurred. This has a negative effect on the arresting officer as he now would realize that all the surrounding officers can be counted on to turn the other cheek and which propagates his feelings that they will always "not see anything" when the same officers are at a different scene. They have been tried and proven trustworthy to the code of blue. The victim arrestee and the citizens lose further faith in the Police Department and it is seen as the officers covering up for one another, so why bother filing a complaint next time, apathy takes over and everyone loses.

I feel certain that to stop this activity and make all officers accountable, video cameras should be freely distributed in areas of high crime which by definition become areas where there is a lot of police activity for use by the citizens. I realize that some police officers would disagree with my hypothesis but this type of drastic measure is needed to make the officers accountable to the citizens they serve. I fully support video cameras in the police cars but they can also be manipulated. We have all seen the in-dash camera of the state trooper that wound up a motorist into such a rage and then turned on the camera to capture the verbal berating that he was subjected to. Incidentally why would upstanding legitimate concerned officers appose such a scheme, they wouldn't. Only the officers who have anything to hide would be against it, because they prefer to conduct their business with no permanent witnesses.

The Rodney King beating video emphasizes the point, all those officers stood around and let the beating continue when they should have been acting. Rightly or wrongly, the power the police enjoy and the conduct the police engage in has to be acceptable to the society

they police, after all the very power that the police have is at the discretion of the public.

I also believe in a citizen review board that should sit in judgment and review of police activities. Police Chief's try to resist the insertion of another level of review above them however it is needed, the investigations that the police conduct against themselves have to be impartial. As you read my book, you will see why the need for an independent review board is necessary in all jurisdictions especially in San Bernardino, a board that is not open to the political pressure and is impartial to the favors that can be called in, particularly between the Police Department, the City and the District Attorney.

# **Chapter 2 - Establishing Credibility**

During the next several years I began to establish myself in the East end of San Bernardino, this area traditionally had attracted the cops that wanted to hide from work as it was not one of the entrenched criminal areas like the West side or downtown San Bernardino which were harder to work and penetrate. In these high density areas the criminal culture went back several generations, cops twenty to thirty years ago were chasing and arresting the fathers of the people we were chasing and arresting nowadays. The East end had some truly bad apartment complexes that attracted all kinds of gang members but the residents were transitory in nature and were hard to keep track of. In fact one of the areas was so bad when I was in training I was cautioned not to go in there alone because of the possibility of being surrounded and ambushed. It was in these apartment areas that I chose to work and get to know everyone. I made contacts with all the resident gang members and started to keep track of who they were and who they hung out with. I then found out who associated with their friends and so on. I soon discovered that the resident gang members often had friends who drove in from other areas where they lived just so they could sell drugs.

Drug buyers know the areas that drugs are sold, they do not look in the nice residential areas, they go to the ghetto's. Every month, particularly on the 1st and 15th (public assistance pay-out days) it was like Grand Central Station, the cars would be lining up to buy drugs. I made many cases and got a lot of guns and drugs off the street and established a reputation amongst the residents. They knew that I treated them fairly, if I caught them dirty they were going to jail but I wouldn't abuse or degrade them and I was empathetic when they were the victims of rivals in the area. Sometimes they would tell me information and sometimes they wouldn't, some still stuck to the unwritten code of never talking to the police even when they were dying. I was on a lot of shooting scene's where the victim thought they were dying and I would try to get a dying declaration, but their

last words, the last time they were ever going to say anything to anyone was "Fuck you".

It was during this time that I established that a loose knit group of gang members were committing take over robberies through out the greater San Bernardino and Riverside area. These gang members were from different Los Angeles based gangs that had united for a common cause. It was so bad that going out to eat in a San Bernardino restaurant in the evening had become a dangerous activity. When they targeted a restaurant they sent three to four armed members inside and had another as a lookout and someone else drove the get-away vehicle. I talked with the robbery detectives almost daily as they were working several fresh robberies every day and told them of what I suspected. At the time there was only three robbery detective's and they were swamped with work. It wasn't until the robbers slipped up that I was able to catch them.

One rainy evening the local Sizzler restaurant was robbed and while they were inside they pistol whipped the manager and robbed the customers. As the robbers were leaving the restaurant several customers heard a single gunshot from the parking lot. The police that arrived on scene a few minutes later checked the parking lot for a victim without finding anyone. About an hour later I got sent to one of the gang houses for an injured subject, when I arrived there was one of the gang members inside a bedroom who was bleeding from the outside of his leg. It didn't look like a gunshot wound at first but he was very uncooperative and wouldn't tell us how he had been injured. I asked the resident if I could look for his pants and in the closet next to the subject was a nylon pair of running pants that had a hole in the front pocket and had ripped on the inner thigh. In the other pocket was a zip-lock bag full of rock cocaine. As it was possible to connect him with the pants we had him transported to the hospital and he was subsequently arrested for possession of cocaine base. I thought that the gunshot outside the restaurant had been when he had attempted to put the gun into his pants pocket and it had discharged. I also knew who he associated with and was able to put together several photographs of his associates who were identified in the robbery.

Another robbery that occurred a couple of weeks after the Sizzler robbery that made big headlines here was when the Tony Roma's restaurant was taken over by five robbers. They fanned out inside the restaurant and took the manageress into her office so that she could open the safe. Once she had done that the robbers made her take her clothes off and leave the restaurant naked with them. Their plan was to get picked up on the freeway by the getaway driver so they made her climb over a fence but the getaway driver had already left. The suspects inside the business started to rob the customers one by one and was looking through the wallets and purses as they were being handed to them. There was an off-duty police officer from out of the area in the restaurant who was being trained at the local Sheriff's Academy, he had gone into the restaurant to eat after his classes with his badge and identity card but without any weapon. When it came time for him to give the suspect his wallet he realized that they might execute him there and then, believing him to be armed so he placed his wallet in the bag burying it under several other wallets to hopefully delay his identity. Luckily in this case, patrol officers were close by and were able to respond to the restaurant as soon as the robbery alarm was broadcast. I got there just as one of the criminals was running out of the front door and he had nowhere to go so he laid down on the ground and put his gun and wallets on the ground. I was not surprised to see that I had contacted him numerous times in the past and we knew each other. The other suspects were caught as they fled across the freeway and the manageress was found shaken but unharmed. Their mistake was that they had taken way to long with the robbery, they had made the manageress take her clothes off and had forced her to go to a different location, effectively ensuring a kidnapping charge as well.

The only person who got away was the getaway driver who was described as being very large. I knew who he was and was given a week to find him without having to respond to calls for service. I looked all week and was running out of locations and had just met with sergeant Harp and we discussed that he had probably left the city. I drove away from the meeting disappointed because I had not been able to find him, I turned a corner and there he was walking

towards me with a few friends. I stopped and arrested him and took him to the station. The robbery detective interviewed him and he admitted the whole robbery including naming everyone else. When it came to the trial none of them took any of the plea bargains that were offered and subsequently the ringleader was sentenced to 430 years. The one I had caught later was sentenced to 25 years in prison for his first offense.

There was a liquor store called Palm Liquor located at the far east end of San Bernardino that was so far away from the City center that patrol officers usually couldn't patrol in that area due to the time that it took to get there. Every time I would drive up there I would have to turn around to back another officer downtown. Of course as soon as I got close to downtown I would get cancelled from the call and would try to get back to the liquor store area again. The only area that got patrolled with any certainty was the main road between the two beats. The ultimate result of the poor planning by the Department was that if you lived in one of the extremities of the City you were lucky to see the police officers who were assigned to your area once a week.

The owner of Palm Liquor used to keep his store open until 11:00 p.m. every day and was a very friendly guy. When I finally used to go up there he would always wave and sometimes would come out and talk to me. In his situation as well as all the other self owned businesses he would do all the work, getting up early to buy supplies and staying open until late just to make a living. One day at about 10:00 p.m. he was robbed, during the robbery he was beaten up so badly that the first patrol officer who arrived took one look at the amount of blood coming from his head area that he thought that he had been shot in the head. When he got to the hospital it was found that he didn't have a gunshot wound and that he had been battered repeatedly with an unknown type object almost casing his death. He was so badly beaten that his recovery was very slow and he suffered brain and nerve damage and would never fully recover from his injuries. This was one of the most brutal savage acts of violence that I had ever witnessed, my guess was that the suspects were local and wanted to kill him so that he couldn't identify them. They achieved their result as the robbery was a total blank to him and he couldn't remember anything about the suspects at all. The robbery went unsolved for several months, we didn't know what the weapon was nor did we have any leads. I didn't have any informants in the area so it seemed as though the robbers were going to get away with it. Luckily for us and unknown at the time was the fact that the robbers had taken a number of serialized travelers checks.

Several months went by and the owners son soon began to run the business while his father started his long recovery. He decided to protect the business and bought an Uzi type semi-automatic pistol, he kept it under the counter and had made the decision that if he was robbed he would use the gun. He had seen what his father had been through and did not want to become a victim himself.

It is very important for store owners to have a plan of action in their mind prior to the robbery occurring. I have seen hundreds of videos from businesses where the owner has bought in a gun to protect himself but has not made the conscious decision to use the weapon. In the videos the robber initiates the robbery and the owner grabs his gun but fails to shoot it, somehow they think that by waving the gun at them the robber will go away. The owner has lost the advantage of "surprise of action" and often runs away as the robber is shooting at him. Just having the gun may offer some consolation but the decision to use it must be made prior to a robbery occurring.

At about 10:00 p.m. two subjects came into the business wearing hooded sweatshirts which were hiding both of their faces. The son could see that one of the subjects was black and the other white, this alone raised his suspicions, the black subject was also carrying a sports bag which looked empty. They both rushed up to the counter and displayed two handguns shouting for him to put his hands up. The clerk put his hands up and looked a little closer at one of the guns and realized that it was a fake gun, a toy. He couldn't clearly see the other gun but took his chance and reached under the counter for the Uzi look alike. In this incident just the displaying of that large machine style pistol was enough of a deterrent because they had come into the store with toys which couldn't shoot. The black suspect

dropped his bag and began to run out of the store, the white suspect followed suit and ran out behind his accomplice. The store clerk, more out of frustration than anything else ran out of the door as well and began to shoot at both suspects as they ran around the corner of the business and down the street. He fired about fifteen times in their general direction however they continued to run. He then returned back to the store and called 911. The residents that had been in the area also called 911 to report shots being fired. I arrived on-scene and calmed down the clerk and began to cordon off the area. Several other officers arrived on scene and I had them search the area for the suspects however they had gone to ground. I escorted the victim out of his business and had him show me exactly where the suspects had ran to however it had been raining and I could not see any blood on the ground. I thought that the clerk had missed with all his shots.

I decided to look in the bag that the black suspect had dropped and found three items, a garage door remote, an ignition key to an Audi vehicle and a section of two inch telephone cable about eighteen inches long. I realized that the cable was probably the weapon that had been used in the prior robbery as it left distinctive injuries. A hard bat would break bones but the owners injuries had been deep splitting type wounds that the cable may have caused. I realized that with the items the suspect had left behind I would be able to solve this crime and hopefully the other robbery.

I spent the next few hours driving around the multitude of apartment complexes in the area in increasing circles. The liquor store was located in the City of San Bernardino but the surrounding area had lots of unincorporated areas that I had not patrolled. I stopped outside hundreds of garages and pressed the button on the remote, I began to get concerned that the battery would run down or that the suspect might unplug his remote opener when he realized what he had left behind. I drove down a street that had three large apartment complexes consisting of hundreds of garages and began to get discouraged at the thought of stopping outside every single garage. I checked the first complex and found nothing, it was about 02:00 a.m. when I pulled up to the second complex, I pressed the button and the gate slid open. I had found out which complex the

suspect was associated with, now I just needed to find out which apartment was involved.

Apartment managers can be great sources of information, I woke them up and asked them if they knew of a black guy and a white guy who hung out together. I had talked with them on several previous occasions and they realized that I was genuinely concerned for them and their welfare and would not reveal their names if I developed any useful intelligence from their information. They racked their brains for several minutes and eventually came up with apartment 220, the apartment was rented to a black female and her son who sometimes used to let her boyfriend stay over, he had a white friend who didn't live on the complex. They thought that the friendship was unusual because there was such a large difference in age between the two males. The black subject was in his late twenties or early thirties and his white friend was eighteen at the oldest. I thanked them for their invaluable information and made contact at the apartment.

When I knocked on the door I immediately heard movement from inside the apartment, there was no other way out of the apartment but it was a good sign because they were still awake at almost 3:00 a.m., I would imagine it would be hard to sleep after attempting to commit a robbery and being shot at.

The door was opened by the black male who initially would not let me inside, when his girlfriend woke up and came to the door she was very cooperative and invited me and another officer inside. The black male told us his name and I took the female into another room and told her that I was investigating a serious crime and that I would like to have her consent to search, especially in the areas that her boyfriend had any property. She immediately complied and gave us permission to look anywhere we wanted and explained that she had known her boyfriend for about a year and he stayed with her about once a month for a few days before moving on. She had given him a drawer to use to put some of his things in while he was gone and as far as she knew it just contained underwear and socks. I found out that the name he had given me was false and also asked his permission to search inside the apartment, he didn't know that I

knew about his drawer and upon getting his permission that was the first place I looked. When I opened the drawer I found several books of serialized travelers checks along with several identity cards that identified him. The girlfriend realized that he had been lying to her for over a year about his name, age and where he was from so she became even more cooperative.

I asked her if she had a garage associated with her apartment and she said that she did however there was just an old car in there that didn't run. She gave me consent to look in the garage and accompanied me downstairs. I opened the garage door and was very happy to see a pale yellow Audi under a thick sheet of dust and cardboard boxes. I took the key that I found in the bag and inserted it into the ignition of the car, it fitted and turned.

I now had very good evidence that he at least had been at the scene of the crime and placed him under arrest and took the girlfriend into her son's bedroom to ask her if she knew who and where his white friend may live. She replied she didn't know however her son, who had been listening, spoke up and told us that he had been to the friends apartment and described the location for us. I knew roughly where he was located too, this was getting better and better.

I let the other officer transport the black suspect and then went looking for the white suspects apartment. I knocked on several doors until I found another apartment where the occupants were still awake. An middle aged white lady opened the door and invited us inside. I again went through the formalities and found her seventeen year old son in his bedroom, wide awake. His mother gave me permission to look around inside the apartment and her son gave me permission to look in his bedroom. He was very smug and confident and kept inviting me to look anywhere I wanted in his room. This made me believe that if there was any evidence it would not be found in his room.

When I looked into the trash can in the kitchen I saw a white tshirt that had blood and two holes on the sleeve. Immediately the juvenile disowned it but his mother was confused, she said it was her son's shirt as she had just washed it but didn't understand why it was in the trash or why it would be covered in blood. I asked him if he had any new injuries on his body and he said he had cut his arm on a fence. I looked at his right upper arm and saw that he had a wound covered with a large gauze bandage. He removed the bandage and I was so happy to see an obvious grazing wound from a bullet. Those types of wounds are very distinctive because they look like a elongated oval shape with bruising and discoloration of the skin around the wound caused by the speed of the bullet.

He was very lucky to have only have been grazed by one of the clerks bullets which I thought had all missed their intended targets. It would be very hard for either of the suspects to refute the evidence against them which was very compelling. It is on nights like this night that I would feel so fortunate and honored to be able to serve the public. The reward of satisfaction is the best reward and a paycheck cannot come close. I had solved two robberies at the same business by being persistent and dogged in my resolve to help those that were less fortunate than I.

# **Chapter 3-Community Oriented Policing**

The philosophy and culture at the Department began to change once Lee Dean began his term as Chief of Police in the mid nineties. He believed in Community Oriented Policing (C.O.P.) and introduced us to Problem Oriented Policing (P.O.P.). We as an organization had to attend a week long training seminar produced by the San Diego Police Department who had developed P.O.P. and had shifted their whole department philosophy into P.O.P.

The rank and file officers never did buy into the P.O.P. philosophy as it was orchestrated at the Department, let me explain why, P.O.P. was a method that identified any problem and looked for a solution to resolve that problem. It could be any problem that effected anything, there was no limits placed to define the problem or to define the solution so that it made sense. For example, lets assume that at a certain residence the tenant consisted of a mom who had allowed her son's to become gang members and to sell narcotics from the house to make money and support the family. The P.O.P. response might be to find out who owned the house and start a public nuisance suit against the owner so that he evicted the tenant. On paper the project would look like an outstanding success, the problem was resolved and officer's were not responding to the residence any more because the problem had moved away and now the house was vacant.

In reality though what happened was the evicted tenant just moved to a different residence and the problems shifted to that location. The City would hope that the tenants moved out of the City, but in reality they usually moved locally to their old residence so that there was less upset to the kids schooling etc. Really the only solution was to arrest them for selling drugs and then the problem would go away permanently. P.O.P. did not work but we as an agency continued to flog that dead horse for years. P.O.P. was abandoned by its creators (the San Diego Police Department) because they realized it was ineffective and were flexible enough as an organization to drop it as their philosophy.

As an organization Lee Dean continued to hammer home the P.O.P. philosophy and created a two officer detail from every area, (ten officers) whose only responsibility was to conduct P.O.P. projects. I imagined all the problem tenants moving around the city from one area to the next just to keep the P.O.P. officers busy.

Community Oriented Policing (C.O.P.) on the other hand was encouraged but not overly recommended, the Department wanted you to know the business people in your area but they didn't trust you to know who the criminals were. The administration of every Department has always not trusted their officers to conduct police business, they apply their own standards which allow for duplicity and dishonor and think that everyone is their equal or worse, after all they have risen to the command level using these tactics.

Let's consider the current Police service under the current Police model that exists in effect in 90% of all American Cities today. For example we will deal with a simple burglary report. The scenario is that the victim Joe came home from work at 7:00 p.m. and discovered that he has been burgled. His T.V. and D.V.D. player were missing along with several items of jewelry. He called 911 and Dispatch realized that as he has been in his home already and checked around the suspects were gone and the call does not need an officer to respond immediately. They assign it a low priority type response as a report only type call and Joe waits several hours for a patrol unit to respond and take the report. If there was absolutely no suspect information then the call would be assigned to a non-sworn civilian employee to take the report guaranteeing there will never be any investigation into the crime. If there was any type of suspect information or a fingerprint then the call would be assigned to one of the two or three officers that were responsible for that area and Joe would have to wait. In San Bernardino on a busy night Joe might have to wait until 03:00 am for the officer to arrive. Once the overworked officer gets to Joe's house he is already thinking to himself: "Not more paperwork, I've got three reports already and now I've got another one, why am I the only one who's getting reports tonight, why aren't my beat partners helping me?" He probably started patrolling five to ten hours earlier and has not had a

fifteen minute break to eat or relax for a moment since then. While he has been running all over the City he has seen numerous other officers at restaurants and generally not working as hard as he has been. Those officers do not work Patrol but belong to one of the many specialty units the Department consists of such as graffiti or POP. He resents a Department that does not provide a close back-up officer for him when he needs one, and yet will allow several other officers to sit leisurely eating.

The officer will take a report. He doesn't want to look for evidence or interview anyone else because every time he talks to someone and they actually say something that is important he has to get their name and address and write a statement, the witnesses do not know the officer and do not trust him so they give false names and addresses so they cannot be contacted later. The more investigating he does the more he has to write. At 04:00 a.m. the officer leaves and Joe is left the case number for his insurance company. As the officer didn't want to look for physical evidence he did not find any and as their were no leads or solvability factors the report is marked for no further action. No detective will see the report and it will get filed in records and just become a statistic.

I Live in San Bernardino and I had to file a violation of a restraining order report with the Department when my kids were kept by my ex-wife for an extended period into my custody time, I knew the officer who responded to my house and explained the circumstances of the violation. The suspect was gone but as she was my ex-wife, I knew who she was, the violation was so cut and dried that I didn't foresee any problems with the report. Several weeks went by and I contacted the District Attorneys office to see if they were going to press charges against her or refer the case to family court. They called me back and said there was a problem with the report that the officer had taken at my house, they faxed the report to me and I found that the officer had written two lines of information. I was astounded he had written just two lines of information for a fellow officer and it had been approved by his sergeant. I remember thinking if this is the level of service I get then what about the other victims that this officer responds to, they should feel lucky if he shows up. This problem is very pervasive however, patrol officers are routinely worked so hard they burn out and become jaded. In reality they are miss-managed as I will discuss later.

When the police do not bond with the community they serve they will never become effective. I have watched hundreds of police officers take thousands of reports over the years and I am always astounded when they do a shoddy job because the victim this time is a lower class person or even a criminal. They use expressions like "no victim present" meaning that the person who was victimized is not worth their time to take the report as they will never prosecute anyone and will be out committing their own crimes as soon as possible and creating more paperwork for them.

This mindset transcends the whole Department as this type of officer is the only type that gets promoted to command positions. In the police culture it is radical thinking to actually care about the victim if the victim is of one of the lower classes yet they are the people that police deal with 90% of the time.

Officers need to build bridges between themselves and the hard-core criminal as well. I often considered that if you were a criminal in my area and I didn't know you then I wasn't doing my job. I often used to stop to talk with some of the killer's and hard-core criminals in my area, it is no good only talking to these people after you have arrested them and read them their Miranda rights. You need to be able to talk to them when you see them on the street to build that relationship in a non custodial environment.

#### **Ideal Police Officers and Service**

All police officers from the lowliest rookie to the Chief of Police should be held to the same standard. They should not be different standards of allowable behavior between officers who work the streets and those who manage them. The golden rule in Law Enforcement should be to treat people as they themselves would like and should be treated. I would even go further and say that treatment should be lawful as well, when the police break the law to enforce the law, how can they be trusted? If officers would only

abide by this one rule their effectiveness would triple. Officers should live in the community they serve. That is the exception and not the rule. Even the Chief of Police of my Department (Garrett Zimmon) does not live in the City, he comes in just like all the others to spend some time in the City they were sworn to protect only to clock out of it when it's time to go home. The officers who live out of the City always cite loads of reasons why they prefer to work in one place and live in another. Usually it is to do with meeting criminals they had arrested or meeting people who's relatives they have had to arrest. None of these reasons are valid, if the officers truly treated people the right way, they would have nothing to fear. Do you think the officers in Irvine or Laguna Niguel (two very high class California Cities with very good Police Departments) prefer to live outside the City? No, of course not, they would probably prefer to live where they work.

I have never had a problem with meeting subjects who I have arrested on the street when I am not working as I have treated them how they would have expect to be treated given all the circumstances at the time. When the Department as a whole treats the citizens badly they do have to fear repercussions from an angry public and loss of confidence from the lower classes.

The law abiding citizen will usually have a high respect for their local police agency and will always praise them openly. The law abiding citizen rarely comes into contact in a negative way with their local Police Department and therefore is not in a justifiable position to judge. It's societies underclass, the people who routinely come into contact with the Police who should be the citizens judging the Police. I can remember chasing people who have ran into their apartment and seen the rest of the family watching television barely paying me or the person I was chasing any attention at all. They are so used to the constant Police presence that they accept it without question. Praise from this level of society is praise indeed and should be an ultimate goal for any Department.

#### **Division of Labor**

When officers work the same area all the time a building relationship occurs between the residents and the officer (if he or she works to build the trust). Whereas the lower class citizens will probably not trust the police as a whole they will trust the officer if they see him every day and the officer builds bridges in the relationship. This is an important point, people can form adverse opinions about an entire group of people but view an individual from that group as being OK. For example, some people have had racist views on a whole race but know individuals that do not conform to their preconceived ideas. They trust the individual but not the group. This concept is never acknowledged by police administrators who if they were working in the unprotected corporate America would have been terminated long ago for squandering their resources. A Police Departments most valuable resource is it's patrol officers. The administration of most Police Departments view the patrol officer as the lowest form of life, they see them as a their own pool of people to select for their own special details. But why does this happen?

Every sergeant has to accomplish something to get promoted to lieutenant, something that can be put down on paper as a miniorganization that they steered and lead within the Department. So in San Bernardino Police Department we had a graffiti detail (three officers and one sergeant), a probation detail (five officers), a distressed neighborhood group (eight officers and a sergeant), a P.O.P. detail (ten officers), and a bicycle detail (ten officers). The bicycle and P.O.P. officers were supervised by the area sergeants which numbered five in total. This total of thirty three officers and seven sergeants does not include the Gang / SWAT unit (seven officers, one detective and one sergeant), Traffic enforcement (motorcycles), (six officers, one detective and one sergeant) and narcotics (twelve officers and two sergeants).

As you can see there are a lot of specialty units that have been created from within the Department that deplete patrol. This is all from a Department with less than two hundred and fifty sworn

positions. Sworn positions include everyone from the Chief of Police to the newest rookie, I will just use one example to illustrate how ineffective these groups are even though on paper everything looked rosy and how a City can defraud the Federal Government.

## **Grant Programs**

The City of San Bernardino has always utilized federal grant programs to supplement the funds to run the City services. This is not and has never been legal, grant monies should only be spent on the programs that they were originally applied for.

In 1996 the Chief's office wrote a federal grant that asked for two million, five hundred thousand dollars to hire and train twenty five additional officers. It was approved because of the high crime rate at the time and the addition of twenty five extra officers would be able to attack the rising crime wave that the City was experiencing. The money was transferred to the City, now all that needed to be done was to find twenty five officers to fill the positions. However, lieutenant Normal, who was running personnel and training at the time and was told, "do not find any qualified candidates" by the Chief's office.

The positions were not filled and the money was spent on other police services that had nothing to do with hiring and training officers. The F.B.I. became suspicious of the activities of the Department because all the other agencies in the area were not having such a difficult time in finding qualified candidates and if it was found that the Department intentionally did not hire the twenty five officers then the administration had conspired to defraud the Federal Government. The F.B.I. conducted their investigation and talked with the lieutenants, captains and Chief's who authored the grant and then did not hire the officers. The administration realized that they all were involved in some part in the conspiracy and as long as they all gave the same story the F.B.I. would have to conclude that there had not been any qualified applicants and that the Department had done nothing wrong. This was exactly what did happen, there was a few sleepless nights for the administrators

because they were hoping that one of their own would not inform on them and tell the truth.

In another example, In 1999 there was a sergeant that needed to establish a program for promotional purposes, he chose to initiate a Federal grant that paid for officers to do patrol work. In this grant program he not only managed to defraud the City (or did it with the Cities knowledge) but he even managed to rip off the Federal Government too. In the last fourteen years he has not had to suffer the indignity of working the streets, he has held many non-confrontational positions to avoid the dangerous work, not bad when you consider that he has been at the Police Department in excess of eighteen years.

The Federal Grant which provided the money to fund the program had some very rigid requirements. The grant allowed funding for eight officers and one sergeant, five vehicles, nine radios including their wages and benefits for a number of years. The group of officers the grant created was called the "Distressed Neighborhood Group" and the aim of the grant was to saturate an area with officers so that crime in that area would decrease. The flip side of putting eight officers in the grant program is that now patrol is running eight officers short. Remember the source for officers for specialty units comes at the expense of the patrol division.

The grant was written so that it appeared as though eight new officers would be hired and added to the Department and the additional officers positions would be continued by the City when the grant expired. This was a very good smoke and mirror trick because there was no intent of hiring the required replacements. At the time of the grants inception the Department had twenty five officer vacancies, on paper they wrote down that the next eight officers hired were part of the grant program but due to attrition and retirements the Department still maintained it's vacancy rate of twenty five officers. The Police administration and the City both realized that this type of grant is in reality another way that the City can get Federal money to pay for it's Police services without digging into to City funds for a couple of years.

Incidentally, isn't having extra officers in high crime areas what we would expect a Police Department to do without a grant? Surely to allow the Federal government to pay the City to do what the Department should do in it's ordinary practices is a great con. The Police Department should be in those high crime areas, in force.

There is an important loophole in the law that states that the City and Police Department is not liable if there is no-one to send to your emergency call. That means if you are in the middle of being murdered and you are unlucky enough because it occurs in the evening or nighttime, and you manage to dial 911. The Police Department that has squandered their resources by creating and staffing special units so there is no-one to respond from patrol to your plea for help, cannot be sued by your relatives.

The Department did not backfill those positions in patrol, they didn't want to because that would mean money from the Cities general fund would have had to pay for them. The only risk was to the citizens safety, as fewer call takers now have to spread out the load and cannot respond adequately to the publics' call volume. Now remember that the grant was written to buy vehicles and radios too. Well they didn't buy any cars or radios. They just used existing patrol cars and radios. The officers on the program worked the non-busy times, they were patrolling during the daytime with weekends off.

Incidentally, when is crime at its most prevalent and violent? In the evening, Thursday through Sunday. When do Departments have the most cops working and on the street? During the day with weekends off. The Departments do not even have their existing resources working during the times they were needed. What days are traditionally very busy days for Law Enforcement? The Holidays, Fourth of July, New Years etc. What did the San Bernardino Police Department do on the days that they knew would tax their resources. Nothing, no one else was called in, not one thing. This level of arrogance transcends just mismanagement and it is also a gross miscarriage of their duties to the public. I used to laugh when a week before New Years Eve the Department would begin their plan to address the problem, It was almost like they were surprised by the

holiday occurring and had to react to it instead of developing resource and contingency plans months or even years in advance.

Getting back to the grant, lets talk about the effectiveness of the team that was assembled. They used all new officers who were naive enough to volunteer for a flawed detail without realizing it. When this kind of detail comes around all the new officers that have been stuck on graveyard with weekdays off now get a chance to switch to a day shift and can get to spend time with their families on the weekends. It takes a number of years to fully round out a police officer if they have the desire to exceed. It takes at least five years to get your "street knowledge," even more if the officers hide from calls and do not push themselves by volunteering for calls they have not experienced yet. There was two more senior officers that were also chosen, the most senior was put in the detail more out of friendship and pity, he was friends with the sergeant and had not been promoted in more than twenty years. The other more senior member was such a sycophant that he would do anything to look good to the administration (for promotional purposes, entirely selfish in nature).

The officers worked in the assigned area but because the majority of the officers did not know how to do police work yet, they weren't effective. There are a lot of officers that feel intimidated by criminals and gang-members so much so that they don't want to try to get to know them. They would just drive-by and pretend that they hadn't seen them. Sure, these officers would be all over a fourteen year old on a bicycle but the big drug dealers would drive by smiling because they knew they intimidated the officers. I remember solving homicides and shootings in the heart of their area while they were working, they must have been embarrassed and I know they resented my successes because I still knew more people who would give me information than all of them put together.

At first the area they worked was very limited, just about four city blocks square. They should have been able to get to know everyone in that area. They could have known all of the dynamics of that small area so that when someone stepped out of line they would hear about it from the residents or any criminals that they had managed to convert into informants. The first few months were very

discouraging for the team as the calls for service continued to maintain the high levels as they had prior to their inception.

There are only a few methods for gauging an area for crime. The most common two used by police agencies are calls for service and crimes reported. Of course, the team considered themselves above responding to routine calls for service (reports, or calls that involve some kind of report writing) in their area. This was a huge pivotal mistake, when patrol officers respond to calls for service it is usually for some type of crime or even a cold report call. This contact builds rapport with the community and gathers intelligence that can be used at a later date. When victims of crime see that you are concerned about them and their environment they bond with you. This kind of close involvement is essential if the police are to be effective. As the patrol officer is taking the burglary report he is able to walk around inside the residence and see who lives there. For example, if one of the bedrooms is covered in graffiti it can lead to valuable intelligence that can be used to solve other crimes.

To combat the amount of calls for service the grant officers then tried a new tactic, then began to give out their business cards and encouraged the residents in their area to call them instead of the regular police. By not establishing the groundwork first, they didn't receive the calls that they had hoped for and the citizens soon realized that when they called the team the officers tried their hardest to talk them out of taking a report. I would respond to residents that I had previously built up relationships with and would hear from them how some of the grant officers had tried to talk them or their friends out of a report. This just didn't work.

The next command tactic was to increase the area that they were responsible for and to try to shut down as many apartment buildings as possible by utilizing code compliance officers against the apartment building owners. The philosophy behind that tactic was to increase the area so that they might get lucky if in some reporting districts a sudden downtrend in reported crimes could be included in their area and to close down as many apartment buildings as possible so that the density of residents per reporting districts would not be so high.

This also failed. If you look at it logically if the plan was flawed in a small area why would it then work in a larger area where the opportunity for crime was about the same as before the grant officers began their patrolling. Reducing the density of residents would be a great tactic however they failed to consider that if a problem tenant is evicted from an apartment they usually move just down the street and continue to be a problem. They also failed to consider that as fast as they were closing down one group of apartments the City government was giving another slum-lord money to open up the adjacent building.

At the conclusion of the grant the sergeant had to prove that crime went down in the target areas. He started with Part 1 crimes (generally all the serious crimes) and found that they had increased during the two years. He then decided to look at all the crimes in the area and found that as a total all crimes had increased. He then looked at crimes individually and found that malicious mischief (vandalism) had decreased significantly. He then included some of the part one crimes and some of the less serious crimes so that he could show that in the area the crimes listed decreased by 1/2 of 1% in two years and the program was a success. I remember the crime analysis personnel pulling their hair out because the sergeant kept coming in requesting different figures that they had to find to justify his position. The area now is as bad as it ever was but the sergeant got his promotion to lieutenant.

In May 2003 I was reading the local paper when I saw an interesting story. When I was shot and recovering from my injuries I had the good fortune to meet one of the most caring, honest and conscientious people it has ever been my pleasure to know. I am not a religious person however Chaplain Tom Gronewald and his wife soon became friends of my family. The Department has always had a chaplain program for the use of the officers and victims that is largely successful because of the enormous amount of time each of the ministers donate to the program.

Tom Gronewald didn't realize that everyone at the Department is expected to turn a blind eye to any corruption they witness. I'll paraphrase the entire article that was in the newspaper and include it

in the appendix to illustrate that the Department and the City has established a pattern of obtaining and misusing Grant money which they should be held accountable for.

The San Bernardino County Sun. Tuesday, May  $6^{th}$  2003. By Teresa Rochester, staff writer.

"SAN BERNARDINO - The Police Department's former chaplain alleged Monday before the City Council that the Department inappropriately used a non-profit group he headed to secure federal grant money.

# The allegations were denied by the City Attorney- James Penman.

Tom Gronewald said he was fired last week from the volunteer chaplain job he held for five years after writing a letter of complaint to the Department of Justice.

Gronewald told the council that he was the president and chief executive officer of the non-profit Inland Empire Chaplains Corporation. At the suggestion of the Departments previous Chief [Lee Dean], Gronewald applied for a grant from the Department of Justice and received a partnership grant of \$125,000.00.

Gronewald alleged that the grant application was rewritten without the group's input and the money was not used for what was outlined in the original proposal. His attempts to view the revised application were blocked and his complaints fell on deaf ears.

"I was told to go open a bank account with my personal name on it, under the non-profit and with the Police Departments liaison's as well. I was in total disagreement with how this money was spent. Disclosure of grant fund expenditures were being asked for at our board meetings. It was evident we were supposedly partnering in something we were not allowed to know much about."

City Attorney James F. Penman said the organization was not Gronewald's but the Police Department's. "The truth of the matter is, to form this organization the Police Department drew up the paperwork," Penman said. "This non-profit was always to be part of the Police Department. I do know there has been no impropriety."

Gronewald alleged that another grant proposal had been submitted under the group's name without his knowledge and an officer had his name removed from the organizations bank account. Shortly thereafter he sent the letter to the Department of Justice and last Tuesday he was voted off the organizations board."

Again the Department, even up to and including the City Attorney realized that Gronewald was making waves and alleging that the City had done something wrong so he needed to be terminated from his position to discredit him and any of his accusations. The non-profit group was started when Lee Dean was Chief but Zimmon had been the Chief for the last eighteen months when the issues of where the grant money was spent came up. For example, the Department can't say that their intention is to spend the Grant money on combating crime and then spend it to outfit the Chiefs office with new furniture.

I talked with Tom and found out that in 2002 lieutenant Mark Garcia had authored another grant asking for \$105,000.00 from the Federal Government purportedly for the Police Department Chaplains Corporation. Tom Gronewald was the president of the Chaplains Corporation and didn't even know that another grant had been applied for and the funds had been received, he accused Lieutenant Garcia of being a thief and a liar at a board meeting because he had applied for and received grant money under the pretext of the Chaplains program when in fact it had been for something else entirely, probably something that would not qualify for federal money on it's own.

A few weeks went by and unbeknownst to Chaplain Gronewald he was fired from his position as a volunteer Chaplain and President of the Corporation at a meeting where he was not present. Later that same day he went down to the City of San Bernardino Credit Union in the normal course of his business to check up on the Corporate accounts to see how much money was missing, so far \$25,000.00 was unaccounted for in the account and no-one from the administration of the Department would tell him what had happened to the funds. When he walked into the bank he was greeted by an embarrassed employee who told him that Lieutenant Garcia had been in the bank earlier and had told them to remove Tom's name from the Corporate account. Tom was taken into a back room and asked the manager to

explain what had happened, she explained that Lieutenant Garcia had come into the bank in uniform, displaying his gun and badge and had told them to remove Tom's name. They knew that legally they could not do such a thing because Lieutenant Garcia was not on the account but they felt scared and intimidated by him so they did it anyway. They immediately reinstated his name back onto the account and offered him their deepest apologies. He wrote his letter to the Department of Justice not to point any fingers at the guilty parties but just to say he didn't think that he wanted to associate himself or the Chaplains Corporation any more with any further grant applications. Of course the Department knew of their previous transgressions and investigations into misappropriation of grant funds and did not want to be back under the spotlight, after all this time they might get caught and the potential of a Federal Prison sentence is enough of a incentive to get rid of and discredit Tom Gronewald, the whistle-blower.

But it is exactly this misuse of funds that upset Gronewald because of his honesty. He was too honest for the Department and couldn't be trusted not to say anything. Isn't it ironic that a chaplain could be considered too honest and not trustworthy enough to even continue as a volunteer at a Police Department?

Again, time will tell if there is any investigation of Gronewald's claims. Based on my experience I know the City itself will not want to uncover anything that might expose them to further liability. The Mayor - Judith Valles and the City Attorney - James Penman are fully aware of the accusations however Penman has already stated that he **knows** there was no impropriety.

I believe there is a need for specialized units within a Police Department no matter how they are funded, however they need to be highly specialized with clearly defined roles. It does no good to keep creating units that drain from the patrol staff to police specific problems that wouldn't be a problem if patrol was staffed properly. For example, one of the sure deterrents against crime is police presence. No one is going to break the law if they knew as they were doing their crime they would get arrested. There are other deterrents but for the moment we'll focus on this one. When the criminals do

not see a police vehicle for hours at a time they realize that they are not being watched.

When I was assigned to the SWAT team we were tasked to watch an apartment in one of the worst areas of the City for some robbery suspects that were expected to return to their home at any time for the Los Angeles Police Department. I chose a vantage point that gave a good view of the busiest intersection next to their apartment because I thought that I would see them return from Los Angeles and we could detain them. I sat there all night and didn't see a single patrol vehicle pass by, I was amazed, what was graveyard doing? The message that this sends out to criminals is that the opportunity to commit crime exists because the Department is not going to be close when they commit their crimes.

Conversely a well staffed patrol division sends out a very strong deterrent message to the criminal community, so much so that there isn't a need for a graffiti detail for example, because patrol officers are so proactive and available they catch the taggers as they commit their vandalism. It also costs the City (and by definition, the taxpayer) at least twice as much to pay an officer to do follow up work to develop the information into an arrestable situation than it would if the patrol officer made the arrest at the time the crime was committed. Surely resources are finite and should not be squandered in this manner.

In 1994 the city of San Bernardino spent over \$150,000.00 on a survey to address the problem of where to put their resources to effectively combat crime. They hired an outside company that came in and as part of their study they surveyed most if not all of the officers in the Department to find out what in their opinion was wrong with the way the Department was using it's resources. We all said that we needed a strong patrol force to serve as a deterrent and we were sick and tired of always not being available and not being in our assigned areas when a major call occurred as we felt responsible to the citizens we were serving poorly. Of course such a change would mean a philosophical change at the highest levels in the administration which would mean that the administration would have to admit that their current philosophy wasn't working. The

Department ignored the recommendations of the survey and continued as though the study never even occurred. Several copies of the study were made available to any officers who wanted to look at them, the last time I saw the binders they were being used to keep a door open in the Watch Commanders office. What an expensive doorstop.

Unfortunately the San Bernardino Police Department does not put any priority on patrol and is always playing catch-up by creating these specialty units and is unwittingly in the middle of a vicious circle. Nothing changed once Chief Zimmon began his term as Chief and in fact it has become potentially worse as even more specialized units and grants to fund them are currently being considered.

#### **Statistics**

I mentioned statistics in the above grant program and traditionally they are used to gauge the success or failure of a Department in it's fight against crime. They are comprised of Part 1 and Part 2 crimes, Part 1 consists of Murder, Rape, Assault and Robbery which are crimes against people. The part 2 crimes are Theft, Auto Theft, Burglary and Arson which are crimes against property. The list of part 1 crimes has largely remained unchanged for over fifty years. No-one knows why crime goes up or down or even if it fluctuates at all when you consider that over 50 % of street crime goes unreported. The two crimes that are usually reported are Murder in the part 1 crimes and Auto-theft in the part 2 crimes, most people report their car stolen and can do so over the phone therefore making it convenient. The rest are unreported, underreported or reclassified by the agency to paint a more rosy picture of the success that an agency may wish to portray. For example, if someone breaks into a garden shed and steals a rake it is a burglary under California law but most of us wouldn't bother to report it and if it was reported it probably would get re-classified as a petty theft. The statistics game is played by all agencies to one degree or another. The one thing that statistics do tell us is that it allows us to gauge crime in one jurisdiction from year to year, so comparables can be made as long as the same jurisdiction is compared with itself.

These figures are also called into question when you consider that a City or community will report less crimes if they have no confidence in the Police Department. They wonder what the point is, they have already been victimized and to now suffer the indignity of being ignored for several hours and then having to deal with an overworked indifferent officer who does not want to take a report only adds to the insult.

Conversely in Cities where the confidence in the Police Department is very high it is more likely that all crimes will be reported however trivial because the citizens feel as though they are included in the fight against crime.

It's ironic that when crime trends go down and there is less crime in a City the police administration is quick to claim responsibility for the downward trend and cites their policies and programs (P.O.P. for example) as being responsible. The irony comes into play when conversely crime rates go up now the administration blames demographics and a booming juvenile population. It always amazed me that year after year Chief Dean would claim that P.O.P. had reduced the crime rate again (if it was on a downward trend) while ignoring the fact that crime had also decreased in adjacent Cities that had abandoned or not adopted P.O.P. at all.

I have seen several murder's reclassified as suicides and accidents over the years, If a Department can reclassify one of the most heinous crimes to play the statistics game then I'm sure a few property crimes would be an easy fix.

For example, a few years ago there was a large rave concert in town that brought in thousands of people from all over Southern California. We were there in force trying to keep the peace when two subjects got into a fight with each other as they were leaving the arena area and it continued into the parking lot. One of the halves of the fight got into his pick-up truck and tried to mow down the other half, he missed several times and made at least two "donuts" in the dirt lot in an attempt to hit him with his vehicle. He eventually ran him over, fatally injuring him and drove away. There was a lot of

officers on the scene very fast including a supervisor however we could do nothing to save the victim but the officers tried to preserve the scene and gather the witnesses together. There was at least twenty to thirty witnesses that saw the victim and the suspect fight with each other prior to the murder and then saw the suspect mow down the victim. The supervisor on the scene did not want the skidmarks preserved, nor did he want to many witnesses so many were let go and the evidence was lost under the feet of the crowd. The suspect was arrested by the C.H.P. in a neighboring city as he fled the scene and it was deemed to have been a traffic accident. I really feel for the victims family as the police report is the only record of the event and when a police report says it was accidental it is very hard for the incident to be re-classified into anything else. The suspect also got away with murder, or at least 2<sup>nd</sup> degree murder by using a vehicle, if he had hit him with anything else other than the vehicle he would have been arrested for homicide and the crime would have had to have been classified as such.

The worst scene that could ever occur for the victim and the victims family would be a body dumped by the side of the road. The homicide investigators and the traffic investigators would both get called out to the scene because the Watch Commander would want to cover both possibilities. However when they would arrive they would both try to pass the investigation to the other side, the homicide investigators would hope that it was a traffic accident and would look for paint chips and broken glass from a vehicle and the traffic investigators would walk around looking for bullet casings from a shooting so that it would be a handled as a homicide.

San Bernardino was once called the murder capital of California because in the early nineties we had more homicides per capita than any other City. We didn't have all that many (about one hundred) but at the time there was only 150,000 residents. That's one murder for every 1500 residents, a huge number. Back then (and even now) if you were a gang member and you were killed there was no time spent investigating the murder. Remember the term "no victim present" well that applies to murders too. If you were a wealthy victim or if it was a media grabbing crime then you got the level of

investigation that you warranted, but if you were just found dumped with no witnesses, good luck. Several of the detectives had t-shirts printed that depicted all the bad things about San Bernardino, glorifying it's status as the homicide capital of the U.S. much to the chagrin of the administration and the City. In reality they were trying to send a message of squandered resources and an uncaring City government that refused to get it's collective head out of the proverbial sand and look around.

#### **Real Community Policing**

Lets revisit our long suffering citizen victim Joe and assume that all the available resources at the Department have been put back into patrol (where they should be) and it is now at more than double the strength it was previously, P.O.P. and all the other specialty details no longer exist. Ideally two thirds of a Department should be devoted to patrol work in some form or another. The Department administration always claims to have more officers working patrol than there actually are by calling different special manpower details "patrol functions" even when they do not help patrol at all. The correct way to ask administrators how many officers are working patrol is to ask how many officers are actually taking calls. This number should not include supervisors who do not take reports.

Because of the glut of patrol man-power availability the areas have evolved into much smaller beats and some areas of high density housing has one officer assigned to it at all times. Earlier in the day the local beat officer saw a local juvenile walking up to his house carrying a D.V.D. player. The juvenile did not run from the officer or fear him because the officer has made ties to the community and they knew each other from several contacts in the prior months and even years. The juvenile was interviewed in front of his mother. This unusual step was also made possible because the officer had contacted the juveniles mother every time he talked with him and his mother had expressed he seemed to be hanging out with the wrong crowd. In his statement he said he had got the D.V.D. player from a friend who lived down the block. The officer knew the location that

the juvenile was talking about because he had responded a few times in the past and remembered the house had unsupervised teenagers inside.

The officer went to the other location and once there saw that the juveniles who live there are again unsupervised. He recovered the T.V. and jewelry along with several other items that obviously did not belong to anyone present (possible fruits of other burglaries). At this point the officer did not have a reported crime to link the items to but as they were not claimed by anyone at the other residence they were taken for safekeeping. The friend was subsequently arrested once Joe came home and called 911. Now when Joe places the call into dispatch the local officer can greet Joe with the news that he has already solved the crime. The officer has been working the case for several hours but it has actually reduced the total manpower drain as the case doesn't need to be assigned to the detectives. The juveniles mother will also believe in the police service along with Joe. This is what should happen. The officer taking the report and the arrest is seen as part of their community not an outsider that comes only when called, even the most stubborn parents realize that there has to be consequences to illegal acts. When the residents of an area are treated with respect and they accept that the officer they see today will help them no matter what socio-economic background they are from will they will respond to him. The lower classes and the criminal classes have never had a reason to trust or respect the police because the groundwork of a relationship had never been established prior to their arrest.

I touched briefly on manpower levels and beats. San Bernardino has tried to establish several beat area and had put these areas under the control of a area lieutenant. These areas are traditionally geographical and are created by the amount of calls for service in a certain area. This is all well and good, until you begin to examine the amount of officers that are actually patrolling the beats. Most of the time there was only a few officers assigned to a beat, if one or two people were sick or taking their vacation that number dropped to one or two at any one time. If a labor intensive call occurred (a homicide or officer involved shooting) there might be three or four

Friendly Fire?

officers to patrol the whole city, this is not the level of service that the public thinks is occurring where they live but it is mirrored at numerous police agencies everywhere.

# **Chapter 4-Corruption**

Does organized corruption exist within Police Departments? All of the corruption I saw consisted of sergeants, lieutenants and captains breaking the law and the administration rallying behind them so that they could protect their name, career and the reputation of the Police Department and the City. Anyone who did the same things as a detective or an officer would simply be gotten rid of aggressively. On face value it appeared as though the Department was doing it's job to seek out bad or corrupt officers while in fact they were doing their best to protect themselves.

Corruption should be aggressively routed out at what ever level it exists. Starting with the Chief and the administrative staff who routinely allow their peers to violate the law without any consequences at all.

I am reminded of a very radical Chief in a true story that I once read. The City government had experimented with it's police patrol vehicles and had purchased a Volvo 240DL in the early 1970's to compete with the Ford's and Chevrolets that seem to be standard equipment at nearly all Departments. The vehicle was used and abused for ten years of patrol duty but managed to soldier on despite being in two crashes. After the ten years the City didn't know what to do with the vehicle and the Chief had a suggestion. He would use the car until was no longer financially feasible to repair the vehicle any more. He effectively drove the vehicle into the ground and the Volvo lasted another fifteen years service as the wear and tear on the vehicle was reduced by removing it from patrol. This vehicle was in service for over twenty five years and became an icon throughout the City. It wasn't pretty to look at but it served it's purpose very well and had an unexpected benefit.

The officers that made up the rest of the Police Department saw that the Chief put his own perks of a new car after the patrolmen had their vehicles. This reduced the perception of administrative corruption to the line officers who could plainly see the Chief wasn't seen as his getting perks first.

In San Bernardino the Chief and administrative staff would receive a new high end car every year automatically and sometimes more often than that. I used to find it incredulous that the administration would never drive a car older that one year and had no scruples about accepting another replacement. We often used to joke with each other about the administration never driving a car once the DMV issued license plates arrived. (It usually would take about three months for this to happen). There were a lot of detectives that couldn't borrow a car from anyone to conduct their investigations. Can you imagine detectives going around to their peers begging and pleading to borrow a car so they could go out and try to contact someone, this was a daily occurrence. Some patrol shifts had to wait until the relieving shift came into the station so that they could go in service as there wasn't enough patrol vehicles to accommodate everyone. The message that is transmitted to the officers and detectives is one of an uncaring administration that while guarding their own perks is not respondent to the needs of the Department. There is a lot that can be read from what type of vehicle the City administrators and the Chief of Police drive around in, they are viewed as getting their kick-back from the City first.

In 1999 the Chief and administrative staff went around the city to discourage the practice of half-priced meals and free coffee that was being offered to the officers by restaurants. Most of the business owners told them to "pound sand" and that they would charge who they liked as much as they liked. (It should be noted that while the administration openly tried to stop the compensated meals they still frequented the restaurants at lunchtime and received their discount). Of course they had to go in uniform and be presented with a bill just to see if the business was offering food at a lower price.

I personally did not like receiving a discount and would leave enough money to cover the bill and a large tip to compensate for the cut-price although I understood why the owners liked to have police officers in their business.

The businesses owners thought that the place would not be robbed while a cop car was in the parking lot. In reality, robberies are usually not planned meticulously by the criminals and are more than

likely spur of the moment crimes that do not take into account cars in the parking lot etc. They are over so quickly that even if there was an officer eating inside by the time the officer in the restaurant is alerted by an employee the criminal is already out of the building and into his car.

Once someone had risen to the rank of sergeant or above any one below them was expendable. Investigations would not be investigated, the concerned supervisor or manager would go on extended leave or they would go to an out of state school for the duration or retire. Some of the examples of corruption you are going to read about have never come to light. Anyone inside the Police Department would never talk about them as it would be the end of their career in the minimum.

I know my life and families safety may come into jeopardy based on my revelations but I also know I will receive a cheer of support from all the officer's and detectives that have seen abuses of power over and over again and seen the administration get away with it.

This also brings to light the very reason most officers do not bother themselves with getting to know all the residents of their area's. The officers know that the administration will second guess their every move and the people that sit in judgment are the sergeants, lieutenants, captains and Chiefs who did not conduct this type of police work when they were patrolling the streets because they had a fear of being corrupted. The administration feels that any officer who forges bonds with criminals and resident alike cannot be trusted. This is a very important point because while the administration of the Department is waving the Community based Policing banner in one hand they are holding back the officers with the other. If the officers feel that they will not be trusted in their judgment to relate to people in the neighborhoods that they patrol by the administration then they won't risk their livelihoods and reputation to solve crime. Police officers respond to calls as call takers and do not want to become involved in your problems. The old saying of "no good deed goes unpunished" is very true in police work.

Officers that go beyond their calls and become pro-active in their style of enforcing the law usually are the ones that end up being second guessed on everything they do. The paradox is this, the best cops, the kind of cops that will tirelessly track down criminals and go out of their way to get to know all of the people in their beats are the cops that the administration actively goes after because they are involved in more arrests which increases the likelihood of accusations of violence or officer involved shootings. The lazy cop that just responds to calls and isn't interested in going beyond their minimum responsibilities is the kind of cop that makes it through a career and climbs the Department ladder. Think of it this way, if an aggressive officer arrests four hundred people in a year and in that amount of arrests he has to resort to deadly force twice and has had to fight people twenty times, that is twenty two potential lawsuits that the administration will need to defend against in one year. The lazy officer who avoids making arrests might make four hundred arrests over their entire career and still have the same probability of getting into shootings or having to overcome resistance.

If a rumor or allegation surfaces from a reliable source that it behooves the Department to investigate the allegation. The investigation should be meticulous in every detail, it is just as important to build as solid a case as possible as it is to completely exonerate the officer if the allegation is found to be untrue. It would not be very difficult for Internal Affairs detectives to observe officers during their shifts from a distance to see what they are doing. An officer that is not doing anything wrong would have nothing to fear from such observation as they are not hiding anything but officers that are engaging in criminal activity would be discovered. This would also serve to bolster the case against the officer with eyewitnesses and physical evidence. Any corrupt officer needs to be weeded from the ranks as soon as possible for a variety of reasons including further ostracizing the department from the community. There were several lieutenants that had engaged in activity that was at very least questionable and could be viewed as being criminal. Nothing happened to them, they are still wearing the same uniform and continue to be protected by the administration.

#### **The Bad Lieutenant**

There are lots of different styles of officers in the Department but we all used to joke about a lieutenant we called the Bad Lieutenant after the actor Harvey Kietel who portrayed a rogue cop in the movie of the same name. He was an area commander from the West side of the City which was made up of well established Hispanic and Black neighborhoods. He rained terror on them.

The criminals were residents of that area also and what he never seemed to realize was that when you deal with an extremely well established neighborhood the criminal that is abused either verbally or physically by the police is always someone's cousin or nephew. These people have lived in their homes for generations and families all live within the same few blocks. The residents know who the criminals and gang members are, they are usually very vigilant and know what is occurring on their street as it occurs. As most of them are deeply entrenched they feel that the gang protects them and their neighborhood at least as well if not better than the police do. An out of the area criminal would be fully aware of what area they are in and what will happen to them if they are caught by the resident gang. When you have generations of families that are entrenched into a criminal lifestyle including drug abuse and gang membership they are not going to turn in one of their own even if he victimizes them. In their culture the rat or informant is the lowest form of life and noone wants to be labeled as a informer or snitch.

The bad lieutenant never understood the above concept, he did not have the best manner in addressing people, he would jump out of his car and start yelling, "DO YOU KNOW WHO I AM?" as he threw them over the hood of his car. He was so arrogant that he believed that everyone in his area should know him on sight even though he treated them so badly. He drove a plain white car and when he wasn't in uniform he used to wear jeans and an old baseball hat. He never had any type of identification displayed and used to stuff his gun in his back pocket. We were often amazed at the times he would show up and it looked as though he had just woken up and

couldn't sleep so he thought he would come out and terrorize a few people. He would drive through an area and abuse a few resident's then call for officers to arrest this person or cite this one, then he used to leave. I often equated him to a tornado, as there was always a lot of cleaning up to do when he left.

He never used to worry about probable cause and he would stop anyone he felt like at any time. I have lost count of the number of people that I had to apologize to after he had driven through an area. We used to pretend we didn't know him and that we had just stopped by to see what the commotion was and had accidentally let him drive away before finding out who he was and what had happened. The people were confused and used to tell us "a guy in a white car with wild hair just threw me against the wall then drove away". We would tell them we would look into it but because he was a lieutenant we knew we couldn't even bring it up without ending our own careers. We used to talk to a sergeant friend of his and ask him to try to rein him in before something bad happened but this didn't have any effect. He became the gang and narcotic lieutenant so his attention turned to search warrant entries and any gang members he would see or anyone who he thought were gang members. As a court qualified gang expert I knew that the style of dress for all youth has changed so much that it is not possible to identify someone as a gang member solely based on their clothing as you are driving past them. This did not deter the bad lieutenant at all who based most if not all of his probable cause to stop someone by what they were wearing.

One night my partner and I were on routine patrol when we heard the bad lieutenant call out on the radio that he was checking a subject in one of the well established Hispanic neighborhoods. He was not wearing any kind of a uniform and it was very late at night, not the usual hours for a lieutenant to patrol the streets. Most officers call out their intentions and then they act, this is so that if something goes wrong at least the responding officers will know where to go. In this case the subject saw the bad lieutenant get out of his plain car and took off running. He ran down an overgrown alleyway and the foot chase was on. My partner, who was senior to me just looked at

me and said we're not going. I didn't understand at the time why we weren't going to assist a fellow officer who was obviously chasing someone on foot but several other units who were a lot closer than us volunteered for the chase and we just stayed away and listened to our radio. The bad lieutenant was asked by dispatch why he was chasing the subject and he replied "I think he's on parole."

Now, to legally detain someone you must have probable cause for the contact. Cops cannot just walk up to anyone on the street and detain them without an articulable reason. We must be able to show that the person we are attempting to detain either was involved in some kind of criminal activity or matched an All Points Bulletin (A.P.B.) description. Walking down the street even if you are on parole is not a crime. If I was walking around some of those gang infested neighborhood's and someone jumped out of a car on me I might have run in fear too.

The bad lieutenant eventually caught up with the subject and with the assistance of several other officers he was severely beaten for running. Standard bad cop protocol is that if someone runs they go to the Hospital. The cops understand it and so do the criminals. That's why most of them don't run, they understand the code. Every time they get arrested they get told "good job you didn't run, you know you would be going to the Hospital if you did". When the criminals are told that as many times as they are read their Miranda right's they get the picture. The subject was found to not be on parole and to not have any outstanding warrants. Oh-oh, now what is the lieutenant going to do, he had initiated a bad stop with no probable cause and had let it go to far. Recently the case law pendulum has swung back the other way and now the police can use the fact that someone ran upon seeing the police as probable cause to stop them, but that was not the case in the mid 1990's. The bad lieutenant came up with the catchall arrest of Penal Code 148, Resisting, delaying or interfering with a police officer in the performance of his duty. The sergeants on scene could see that this was an illegal arrest and the arrestee had been beaten for running but they could not do or say anything without jeopardizing their own careers so they stayed quiet.

The arrested person needed lots of flashlight induced stitches in his head among other injuries including a black eye and a broken nose. He was treated at county hospital and lodged into jail. Photographs of his injuries were taken very quickly at the hospital so that the injuries did not have time to bruise and darken. The sergeants carry very poor 35mm cameras around with them for this very purpose. Injuries are so much harder to distinguish if you can hardly even make out what the photograph is off. Blurry pictures hide injuries very well and at the same time the sergeant was telling him. "Don't worry we will look into this very deeply and I'll even take some photographs of your injuries so I can show everyone what a terrible ordeal this must have been for you."

He sued the Department under a Federal statute of Assault under the Color of Authority and the Department was found liable in Federal Court. Several officers who were there had to go to Federal Court for a few weeks except the bad lieutenant. He initiated the whole incident and did not write any type of report and eventually withdrew himself from the whole investigation. He knew it had turned out very bad in the end and wanted to divorce himself from the entire incident. The suspect said that someone had jumped out of a car and he had ran from them not knowing who he was running from. The bad lieutenant managed to send himself to the FBI academy in Virginia during the trial to further separate himself from any fallout. He was never even looked at in the investigation and all the officer's that were present were not disciplined in any way. The department tries to weather out these type incidents without attracting any attention instead of doing what's right and holding those responsible accountable. The sad part is that any trust that had developed between the community and the good police officers was washed away and once gone it is very hard to win back.

In 2001 the bad lieutenant struck again, this time against one of the officers that worked in his area. Officer Lavon Dwyer was a fairly new officer who had established a reputation as an officer that liked to work the streets. He loved his job and often went out of his way to build cases against criminals. Exactly the kind of proactive officer

that the citizens would want to work for them, but not the kind that the administration liked.

In November 2000 officer Dwyer was working the West side of San Bernardino when he came across an individual named Josephine Flores, he had arrested her in her home for possession of a small quantity of methamphetamine. Officer Dwyer in talking with her brought up the subject of what she could do to avoid being arrested for the methamphetamine and she volunteered to disclose the source of her narcotics in exchange for not going to jail. She offered to set up her supplier, Jose Lopez by pretending to him that she wanted to buy an ounce of methamphetamine. She called him and set up the deal, in the arrangement Lopez was going to deliver the narcotics to Flores at her residence. As Lopez drove over to Flores' house officer Dwyer and another officer stopped him and ultimately recovered eight grams of methamphetamine from within his car. Lopez was arrested for possession for sale of methamphetamine and Flores was let go. Dwyer had turned a misdemeanor drug possession arrest into an informant / officer relationship to the benefit of society.

Officer Dwyer then made his mistake, instead of separating the methamphetamine he seized from Lopez and the smaller quantity he seized from Flores he commingled them under the impression that as they had all came from the same source they should be viewed as a whole. This was a small error in that as officer Dwyer had not had any narcotic specific training and due to his inexperience he had mixed up the two. This kind of mistake is expected in newer officers based purely on the learning curve that anyone evaluating the mistake should take into consideration.

Flores then filed a official complaint with the Department that officer Dwyer had taken her and her roommate's methamphetamine for personal use. (In all likelihood she filed the complaint for her own safety so that she would not look like an informant to her drug dealer and to avoid the appearance that she had set him up).

An internal affairs investigation ensued and on December 6<sup>th</sup> 2000 officer Dwyer was informed that he would be interviewed by Internal Affairs detectives on December 7<sup>th</sup> 2000 at 8:00 a.m. Officer Dwyer contacted his attorney Robert Krause and because Robert

Krause could not attend at 8:00 a.m. due to a prior commitment the interview was rescheduled to 9:00 a.m.

Later on in the evening of December 6<sup>th</sup> officer Dwyer was contacted by telephone by the bad lieutenant. He wanted an "informal" meeting with officer Dwyer on December 7<sup>th</sup> at 8:00 a.m., an hour before his interview with the Internal Affairs detectives and an hour before he would have had legal representation. Dwyer stated that this meeting was highly irregular to the bad lieutenant and asked him how informal was this meeting going to be. The bad lieutenant became highly enraged over the phone and ordered him to attend the meeting or face charges of insubordination (a terminable offense) according to officer Dwyer.

In the moving papers that were submitted to Superior Court following the incident the bad lieutenant said that officer Dwyer was thankful that he had called him and wanted to talk with him about the incident on a purely voluntary basis.

Whether officer Dwyer consented to the meeting was sharply disputed between both sides and it seems that no one side can be believed above the other until consideration is given to the fact that after the conversation with the bad lieutenant, officer Dwyer immediately called his attorney Robert Krause for his advice. They discussed that if Dwyer was ordered to attend the meeting he should go to avoid charges of insubordination. If the meeting was so informal why did the bad lieutenant purposefully schedule the meeting at 8:00 a.m., a time that he knew that Robert Krause could not possibly attend. If the meeting was more casual in nature then surely it could be rescheduled to a time or day that attorney Krause could attend and they would not have had a need to discuss the possibility of Dwyer being insubordinate if he didn't attend.

There was more credence to Dwyer's contention that he was ordered to attend the meeting and the bad lieutenant purposefully arranged the meeting with the full knowledge that Dwyer would not have legal representation.

They met as scheduled at 8:00 a.m. and the bad lieutenant told Dwyer about the nature of the complaint that had been filed by Flores. He also told him that based on the outcome of their meeting

there could be "some type of discipline imposed." He then demanded answers to what had happened with Flores and Lopez. He did not advise Dwyer of his constitutional rights per Miranda v. Arizona and also did not advise him of his rights under Lybarger. (Lybarger v. City of Los Angeles was a case where police officer suspected of activity that could subject them to disciplinary or criminal charges must be advised of the qualified right to remain silent. i.e. although he has the right to remain silent in the face of potential criminal charges, invocation of that right during an investigation of misconduct that could result in disciplinary action could be deemed as insubordination leading to administrative discipline. further, if the officer agrees to talk in order to avoid charges of insubordination, his statements cannot be used in any subsequent criminal proceeding). The bad lieutenant was entirely familiar of the Internal Affairs investigation and interrogation that was pending against Dwyer and should have deferred his questions to that forum but instead chose to violate Dwyer's rights by interviewing him illegally.

Dwyer admitted to commingling the evidence and not mentioning Flores in his report (probably to protect her from being discovered as an informant) and realized that what he did was not proper and that he had made a mistake. The bad lieutenant was not satisfied with Dwyer's answers and accused him of destroying the evidence or of keeping the drugs for his own personal use. Later on that day Dwyer submitted to a drug test to determine whether he had any narcotics in his blood. Again, there was a strong disagreement whether Dwyer volunteered to take the test as the bad lieutenant contended or whether he was forced to do so under the penalty of insubordination, as Dwyer claims. In any event the results were negative.

In the Superior Court hearing the bad lieutenant offered the contention that his interview with Dwyer did not fall under the Peace Officer Bill of Rights (P.O.B.O.R.) because he had talked with Dwyer under a routine counseling session in the normal course of business. However he was not truthful on two counts: He knew that Dwyer was scheduled for an Internal Affairs interview and therefore

Internal Affairs were involved already in an investigation and he also stated that there could be "some type of discipline imposed". Either of these conditions would require Dwyer to be protected by the P.O.B.O.R.

On he same day the bad lieutenant contacted the District Attorney's office fearing that the prosecution of Lopez may have been compromised by the commingling of the evidence. Chief deputy District Attorney James Hackleman, later called back to indicate that the matter had been resolved to the District Attorney and Lopez's satisfaction.

On December 15th 2000 officer Dwyer was officially interviewed by Internal Affairs detectives. Dwyer was represented in the hearing by attorney Robert Krause and was advised of his Constitutional and Lybarger rights. Immediately Robert Krause raised the objection that the meeting that Dwyer had attended with the bad lieutenant violated Dwyer's rights as guaranteed by the P.O.B.O.R. The meeting continued and the possible discipline against Dwyer would need to be established by a Disciplinary Review Board Hearing that would convene at a later date. Eventually the Review Board recommended a 40 hour suspension without pay for failing to follow Department policy and procedures for the handling of evidence.

In the meantime Chief Dean was notified by *someone* that deputy District Attorney Hackleman had expressed concern over the possibility that Dwyer may have falsified his report. (My guess would be that the bad lieutenant precipitated the phone call in retaliation for the accusation that he had violated Dwyer's rights at their meeting). If indeed it was the case, Dwyer's credibility could be called into question concerning not only the Lopez case but future cases as well. As a result a second Internal Affairs investigation was commenced to determine whether Dwyer intentionally falsified his report. This interview occurred on February 14th, 2001. Again, Dwyer was represented by Robert Krause and received the proper admonitions. Ultimately, this investigation went before a second Disciplinary Review Board who recommended Dwyer's termination.

At this point it seems as though the bad lieutenant had got what he wanted. He had bought about the termination of officer Dwyer.

He would want this to occur because he conducted an illegal interview that violated the P.O.B.O.R. and forced Dwyer to take a drug test that violated the City Standards and Operating Procedure (S.O.P.) that existed between the Police employees and the City. Officer Dwyer was the officer that would have to be discredited to save the bad lieutenants career and reputation (and would be the only officer that could sue him for violating those rights).

The next step in the process was an interview with the Chief of Police commonly called a "Skelly" hearing. The Skelly hearing was scheduled and Chief Dean made Dwyer an offer, if he passed a lie detector test regarding his intent in lying in his report he would reduce the punishment to only eighty hours suspension for the evidence violation only. (By trying to keep his informant safe and not revealing her name in his report he had unwittingly made another mistake. Obviously his intentions were good in that he did not want to see his informant identified and killed, but he lacked the knowledge to write his report so that he accomplished both. Surely training in this issue would have been a more applicable form of punishment). Dwyer passed the lie detector test.

In the Superior Court hearing that eventually followed Judge Edwards found that the bad lieutenant violated the P.O.B.O.R. by conducting an illegal meeting while he was fully aware of Internal Affairs involvement and also violated the Cities S.O.P. in ordering Dwyer to take a drug test because there was no foundation that existed (no symptoms of drug use), as there already was an agreement between Chief Dean and Dwyer the Judge did not order any consequences against the Department for those actions.

The bad lieutenant was not disciplined or cautioned in any manner for his conduct in violating Dwyer's P.O.B.O.R. rights and violating the Cities own Standard Operating Procedure even though a Superior Court Judge had agreed that the violations had occurred.

Lavon Dwyer also asked the Court to evaluate whether he had been the victim of a retaliation by the bad lieutenant, often these kinds of allegations are hard to prove because of the network that someone such as a lieutenant would already have in place. It seems more likely that there was an attempt to retaliate against Dwyer by the introduction of the second investigation that only came to light after he had accused him of violating his police officer rights.

In 2002 Officer Dwyer was once again the center of another investigation. He was still working patrol when he kept seeing the same vehicle driving around the downtown area. It kept stopping at locations where drugs were being sold however he never did get to see who was driving it. He filed the car away in the back of his mind however he kept seeing it over the next few weeks so he wrote down the license plate number and ran it to see where it was registered to. The next time he saw it is was being driven by a young Hispanic male and it did the usual circuit of the drug houses, when he got a chance later in the day he went to the house that it was registered to see if they knew who was driving it and why it frequented the downtown area so much. Dwyer thought that the car was being used to deliver drugs downtown so he didn't want to let the owners of the car know what he suspected because they would just switch cars to avoid his detection. He thought that if he told them that the car had been seen in a certain area and he was just following up with the owners to make sure that it wasn't stolen it wouldn't raise any suspicion with them.

He made contact at the house and was immediately confronted with a highly suspicious and defensive family. They apparently knew that the car was being used to supply drugs and needed to throw up a smoke screen to divert the attention away from their activities. One of the relatives in the family was a Hispanic woman in her twenties who subsequently filed an official police complaint against officer Dwyer stating that he had been following her around when she had been driving the car and had shown up at her house to ask her out on a date.

The Department remembered how Dwyer had embarrassed them the previous year and this time they were going to make sure that the charges stuck. The Department did not believe Dwyer in the least and sided with the complainant. They even went so far as to get two criminal charges filed in Court charging Dwyer with accessing and using a DMV database for personal use. They contended that as Dwyer had ran the vehicle and had shown up at the residence he had

accessed the information for personal reasons only because he wanted to ask out the woman.

The Department checked into who else had ran the license plate of the car and found out that several other officers had frequently ran the vehicle in the downtown area which added a little bit more credence to Dwyer's rendering of the events. Of course, to then ask those officers who they had seen in the car would have been exculpatory (tending to prove his innocence) for Dwyer so if they did ask them, the Internal Affairs detectives didn't put it in their report.

Dwyer was taken off the City payroll in December 2002 as a result of the internal investigation, he is still awaiting his hearing with the Civil Service Board however he was successful in Superior Court in defending his actions. The District Attorney wanted and pressured him to take a deal or plea bargain, plead guilty to one charge and they would dismiss the other. Officer Dwyer stood resolute and didn't take the offered deal and asked the District Attorney if they would dismiss all the charges, the D.A. checked with his office and told Lavon that his bosses boss wanted a conviction no matter what. On March 12th 2003, he was found not guilty of both counts in Superior Court, much to the chagrin of the Police Department, yet again they have allowed their own agenda to get in the way of what is right. He is not expecting any kind of fair treatment at the Civil Service Board as they act on the whims of the City Government and are not objective. It just goes to show you, if you are a lowly officer and you embarrassed the Department or someone in the administration knows that all you have to do is file a complaint form and their career is over, nothing and I mean nothing will stop them from fashioning an investigation so that you are terminated and discredited.

The Department in this case also had a back-up plan, if the Superior Court went against them then they had a back-up insubordination charge. As soon as officer Dwyer was found "not guilty" he was told to attend another Disciplinary Review Board on a charge of insubordination, as of the writing of my book Dwyer is awaiting the decision of the Board but I'll bet dollars to donuts it's for termination. If the Department doesn't want you, they will go to

extraordinary lengths to get you, it doesn't matter if it's unfair, unjust or illegal, it's their only way.

I wish to digress a little to inform you of the various dispositions of Internal Affairs investigations and their meanings:

**Exonerated:** That the alleged action occurred but was found to be justified and lawful.

**Not sustained:** Means the investigation did not result in findings that proved that the alleged action occurred or it did not occur.

**Unfounded:** Means that the action alleged in the complaint has no merit.

**Sustained:** That the allegation was found to have occurred.

It is important to note that for a complaint to be sustained the Department must prove that the allegation occurred. I realize that this seems obvious however it has not been past practice. Police Departments deal in facts, not feelings and no complaint should be sustained against anyone based entirely of how it appears. It should only be sustained purely on fact, the San Bernardino Police sustained several allegations in my case based entirely on how the Chief and the investigators felt without concrete facts that would prove the allegation had occurred.

For example, during an interview of a female resident of the City that I had contacted several times in 2001 on calls where she was having a domestic problem, she was asked if I had ever asked her out or tried to initiate any kind of a personal relationship with her. She truthfully replied that I had not asked her out and that I had not shown any desire to begin an off duty, personal relationship with her but was very happy with the high level of service that I had shown while I was attending to her situation. (The incident is included later on in the book). She told them that she was so appreciative of my attention to her situation and the level of service that I had shown her

that she had considered asking me to go out for lunch so that she could thank me for my services. The detectives then asked her what she thought my reply would be to her invitation. She of course said that I would accept her invitation as now her ego became part of the equation. This information was included in the investigation. It is amazing to me that this kind of biased questioning would become part of the case against me, I was not being persecuted for my actions I was being condemned for what others perceived would be my reaction to a hypothetical situation. This type of reasoning should have no place in any investigation and just goes to show how biased an organization can be when they clearly have their objectives in sight and begin to fashion their investigation to bring about their conclusion irregardless of the truth and what is and what is not a fact.

The Department sustained the allegations made against officer Dwyer by the family of the drug dealer because it was in the Department's best interest to do so as he had embarrassed them in their prior action against him. The allegation should have been not sustained at best when you consider that they knew other officers ran the license plate quite frequently. Of course to take the next logical step of actually asking those officers why they had shown an interest in the car would have undermined the accusation, something they did not want to do. It would have shown that their witness / victim against officer Dwyer was not credible. Interestingly enough this was exactly the same set of circumstances that I would become a victim of, the Department knew the main witness against me was not credible but chose to believe her in this case alone because of their hidden agenda.

### **Lieutenant Jones**

This story was told to me by my partner and almost victim in this corruption, Jim Beach. In the early nineties the law was somewhat less restricted than it is now and it was legal for citizens to own and make assault rifles. Some officers and sergeants including lieutenant Jones used to make their own rifles from kits that were easily

purchased through mail order catalogues. A lot of the officers used to pool their resources and make the large purchases in bulk to get a discount so everyone knew who was making what type of rifle. My future partner Jim Beach had ordered and assembled his M16 semi-automatic rifle but it would not work because the bolt assembly he had ordered was the wrong type for his particular rifle. He happened to mention it to lieutenant Jones who told him not to worry about it because he would get one for him.

The Police Department at the time had approximately twenty M16's that were used by the patrol supervisors and were kept in a locked area next to the report writing room and watch commanders office. Lieutenant Jones was the watch commander during the day and had free access to the M16's.

A couple of days later Jim was walking into work when lieutenant Jones met him in the parking lot and gave him a rag containing an M16 bolt assembly. He told Jim, "here you go, just don't tell anyone where you got it." Jim took the bolt assembly and assumed that lieutenant Jones had given him a bolt assembly from his own personal inventory. Jim took the bolt assembly home and installed it in his rifle and it worked like a charm.

Several weeks passed by and Jim forgot all about lieutenant Jones and the bolt assembly until he arrived at work one day and heard there was an investigation going on into a missing bolt assembly from one of the patrol supervisors rifles. No one had voluntarily returned the bolt assembly during the previous weeks amnesty period, so it was reported as stolen property and entered into the Statewide data-base computer system as a stolen firearm part. Jim didn't say anything at first until he went home and checked the serial numbers on the bolt assembly and found out they were the same as the now reported stolen one. He realized that lieutenant Jones had stolen the bolt assembly and had given it to him. He further realized that the Department had given the thief an amnesty period of one week and no-one had come forward so lieutenant Jones wasn't going to come forward of his own accord. Jim realized that being in possession of the bolt assembly was also a crime and that he had to

take it back to work and return it and say where he had got it from so as not to implicate himself in the theft.

When Jim brought back the bolt assembly he went to Internal Affairs and told them that he had been given the bolt by lieutenant Jones and that when he received it he had assumed that the lieutenant had given him one of his own personal inventory and he had no idea at the time that lieutenant Jones had stolen it. During the Internal Affairs interview Jim was asked if he had fully considered that if lieutenant Jones said that he had not taken the bolt then Jim would have to take the fall. They were letting Jim know prior to even asking the lieutenant what had transpired that they would believe him because he was a lieutenant irregardless of what the truth was.

Jim realized that it did not look good for him. The Department would never believe an officer over a lieutenant and that he was on some very thin ice. He remembered that on the day he had been given the bolt another officer had witnessed the transaction but he still had to be careful. He realized that if lieutenant Jones did not tell the truth during his interview it would now reflect on both Jim and the witness. Jim also knew that the witness may not wish to remember the truth and might suddenly develop amnesia of the transaction if the witnesses' career was in jeopardy. Jim thought carefully about his best plan of action and approached lieutenant Jones and asked him what he was going to say about the bolt and reminded him that another officer (without naming the officer) had seen the transaction. Lieutenant Jones said he would not place Jim in any kind of jeopardy and that he would be able to weather the storm without it effecting him because he was a lieutenant. He did not seem to care that the Department would then know that he had stolen from them but did say to Jim that he should consider himself lucky that he had decided to come clean with the truth or Jim would have been culpable.

Lieutenant Jones stole from the workplace and he was allowed to continue his employment.

Several years later lieutenant Jones was serving as one of the watch commanders during the day shift and in that role he is charged with the day to day running of Police services for the City. This is a very important position as he would have to organize the mobilization of SWAT or the homicide detectives if they were needed. During this time he had also managed to branch out on his own and started a personal business related to police work. Unfortunately his business was located in Orange County which required his presence during the day. Most people would see a conflict of interest as someone cannot be in two places at the same time. This was not a problem for lieutenant Jones, he decided to use a City vehicle and shoot up and down the freeway in the toll lanes when he was supposed to be the watch commander. He got away with it until the California Highway Patrol contacted the Police Department to find out why they had videotaped a city vehicle without a fastrack pass going up and down the toll lanes on a daily basis. Lieutenant Jones is still with the Department.

#### **Lieutenant Heston**

When lieutenant Heston was a sergeant he worked the West side of the city almost his whole career. He was of the same racial background as half of the citizens that lived in the area so he thought he had some credibility with them on the basis of skin color alone.

We had a very good officer that was very aggressive in his patrol techniques (a pro-active officer) that also worked the West side that sergeant Heston directly supervised. At the same time there was a gang war going on between the Blacks and Hispanics in the city. They were shooting each other on sight, for no other apparent reason than the color of their skin. During this time when you stopped a gang member from either ethnic group you could count on a gun being in the car, it was unbelievable, not only were they shooting each other but they were transporting guns back and forth all over the city.

Officer Reynolds was patrolling the heart of the gang area with his reserve officer partner, officer Bussen when he saw a vehicle pass by the other way occupied by four hard core gang members. The car they were in was not in tip-top condition so it invariably always had some kind of probable cause for us to stop it. In California almost

any vehicle code violation (and there are over 40,000) is probable cause to stop a vehicle. Most officers don't usually care to enforce the vehicle code violation and merely use it as probable cause to stop and search the car looking for guns and drugs.

Officer Reynolds had seen the driver of the car and knew he didn't have a drivers license, his name was Clarence Harris or as the gang called him Cee-Cee. Just knowing that the driver is unlicensed is not reason enough to stop a car according to California Law so officer Reynolds decided to follow him to see where he was going and look for any further reason to stop the car. As soon as Reynolds completed his U-turn Harris sped off as fast as he could and pulled into the driveway of a gang house. Officer Reynolds thought that Harris was going to flee from him and operated his overhead lights and siren and pulled up into the driveway behind Harris' car.

Over the previous years several guns had been removed from this particular house by different law enforcement agencies as they also sold drugs out of the front window and often posted sentries in case a rival gang or drug crew decided to rip off their drugs or their drug money. They used to keep the guns hidden in a low hedgerow in the front yard and there usually was someone who was close to the firearm.

When the vehicle stopped in the driveway all the occupants decided to try to get out of the car including Harris who happened to have a shotgun with him. The car only had two doors and one of the occupants in the back of the car couldn't get out quickly enough so he dived back into the car out of Reynolds view. Harris got out of the drivers doorway and turned to officer Reynolds and his partner who were just exiting their vehicle. He pointed the shotgun towards them and to defend themselves, both Reynolds and Bussen began to shoot at Harris.

A gunfight is very different than what you see on the television. It is very loud and over very quickly. Most gunfights last as long as it took you to read this sentence and take place in the dark. When you consider the combination of the speed of your reaction, the loud explosions from your gun as well as your partners gun, the siren and flashing lights and knowing that someone could also be shooting at

you from on the porch area of the house and from inside the car there is a lot of information that your brain has to compute in order for you to save your life and decide a course of action. Aiming your pistol and controlling the massive adrenaline surge while squeezing off several rounds are high priorities that might ensure your survival.

They both shot at Harris and he fell back after being hit twice, he did not fire his shotgun but as he fell back he threw the shotgun over a fence into the neighbors backyard. Both officers had seen Harris go down and went to the back of their car to seek some kind of cover from anyone else in the car, the other occupants that had got out, and from the house itself. I have been shot twice and because the injury is inflicted on you at such a high speed there is no pain, it is more of a feeling of disbelief that you have been shot than anything else. Both officer's checked themselves and found that they were both without any injuries and they were very happy about that. So happy in fact that they swung their non gun hands in the air and connected in the classic American tradition of a "high five."

Several residents from across the street had heard the initial sirens and gunshots and were looking out their windows when they caught the tail end of the incident and saw the two officers high five. Sergeant Heston arrived on scene and instead of checking on the status of the two officers he immediately went over to the crowd and heard from the citizens that they had seen the officers high five. He then treated the officers like criminals and had them sit in the back of two separate patrol units to appease the crowd. The two officers were asked for their side-arms by sergeant Heston and they were transported to the Station. Because the shotgun wasn't immediately visible sergeant Heston thought that the two officers had shot and killed an unarmed man and treated them as though they were criminal suspects at the scene of a homicide. The crowd cheered when he took control of their firearms.

A shooting is a traumatic event. Nobody in their right mind likes to shoot someone and take their life. When you are an officer and you have had to take someone's life to defend your own you know that the entire incident will be dissected every which way until someone decides that you acted properly and that there was no other

way for you to react. Most reputable psychiatrists that study officer involved shootings agree that how an officer is treated in the first few hours after the event can have a lasting effect on him. Sergeant Heston immediately assumed that officer Reynolds and his partner had been involved in a bad shooting and wanted to give the crowd the impression that they were being arrested irregardless of how many times officer Reynolds told sergeant Heston that Harris had a shotgun. He let the crowd dictate to him a course of action that he should never have taken and traumatized two officers who had just been through a gunfight to appease the crowd and to protect his credibility with them.

As events unfolded over the remainder of the week sergeant Heston tried to discipline both officers for the high five and wished to see an investigation to that end. Officer Reynolds was honest in the interview and said that he knew Harris didn't have a drivers license and that he was about to look for more probable cause when the car pulled into the driveway. Sergeant Heston also tried to discipline him for breaking the law by attempting to stop Harris for merely not having a license.

Sergeant Heston met with community leaders and told them he was doing his best to rid the Department of rouge racist officers like officer Reynolds and his partner who were shooting innocent black citizens because they felt like it and then celebrating the shooting afterwards. The community leaders realized that Harris was not a good person and that he did in fact have a shot-gun but here was a City representative, a sergeant telling them that the officers were fully to blame for Harris' death because they were racist officers. He didn't get his chance at punishing the two officers with this incident however and officer Reynolds was transferred to the east end of the City. I talked with officer Reynolds several times over the following years and he felt as though he did everything right in this incident even though it had not sat right with sergeant Heston and he couldn't understand why. I warned him that even though this particular incident was resolved the administration of the Police Department had far reaching powers and favors would be called in to fire him now that he was blackballed.

Sergeant Heston didn't have too long to wait. A few months later a juvenile neighbor had been clearing out officer Reynolds' barn when he had come across some illegal fireworks. The juvenile asked him if he could have anything in the barn that he might be able to use as payment for the work. Reynold's obliged him as he didn't even realize the fireworks were there. The juvenile later lit one of the fireworks and unfortunately blew up his hand. The San Bernardino Sheriff's Department investigated the incident and found out that Reynold's had unknowingly given the fireworks to the juvenile. The District Attorney realized there was several mitigating circumstances to the case and they probably would not get a conviction if it went to trial so a plea bargain was offered. The details of the plea bargain were as follows, Reynold's was to plead guilty to the felony charge of possession of illegal fireworks and in one year the case would be judicially reviewed and the charge was to be dropped to a misdemeanor. One year later the Judge reviewed the case and decided to uphold the felony conviction thus officer Reynold's could not continue his career as a police officer and was terminated. Several favors were called in so that officer Reynolds could not continue at the Police Department. Sergeant Heston kept his promise to the community at the sacrifice of a good officer even though on paper it looked as though Sergeant Heston had nothing to do with the Court decision.

Incidentally, officer Bussen was also terminated soon after this incident, neither officer works in Law Enforcement anymore.

#### **Lieutenant Normal**

Lieutenant Normal has had one of the unbelievable careers I've ever seen at the Police Department. He ancestry is of a very underrepresented group that he has sued the department for every promotion claiming racial discrimination. He has had some interesting incidents that have occurred during his tenure at the Police Department and I'm amazed that he is still there.

In the early 1990's he was sleeping in his house in the City after having a few drinks during the evening when his neighbors car

alarm went off due to someone trying to steal the car or from someone breaking into the car. He came outside with his gun in his hand and saw a dark shadow next to a car. The subject saw the lieutenant and started to run away. The lieutenant saw the shadow running away and realizing that the subject was probably the thief he began to shoot at him. He fired several rounds but as the subject did not stop and the neighbor who owned the car didn't come outside he went back inside and went back to bed.

This didn't occur in a rural area but in a densely populated residential area and soon dispatch was flooded with calls of shots being fired. Several officers responded and as it was close to the lieutenants house a supervisor was also dispatched. The officers checked the area for any victims without locating anyone but did notice the glass in the roadway from the window of the car. When they got out to look at the car they noticed the spent casings in the street and called over the sergeant as they had found the source of the shots fired. The sergeant thought that maybe the lieutenant may have heard some of the commotion so they knocked on the door of his house. When he opened the door he did not want to talk in front of the patrol officers and invited the sergeant inside. Once inside, the sergeant asked him if he had heard the shots outside his house. He initially said that he hadn't but then reconsidered his answer and said that he had gone outside and had shot at the thief as he had confronted him next to the car. He then asked the sergeant if there was any way this could be resolved as he didn't think he had hit anyone and he had been drinking alcohol during the evening. The sergeant (obviously thinking about his career ) said that he would take care of it.

The sergeant then went back outside and directed the patrol officers to collect up the expended casings and hold onto them until the end of the shift. If no-one showed up dead before the end of the shift then the officer was told to throw them away. Luckily the lieutenant was a bad shot and missed the thief and all the other residents asleep in their beds. He only managed to kill a parked car and a house down the street.

In another incident one of our officers was in a May / December marriage where his wife was much older than he was and consequently he had a twenty three year old step-daughter that was gorgeous. She would listen to the stories that he would tell about the exciting calls he had been on and she began to think about Law Enforcement as a career. She figured her step-dad had an inside angle so she applied to the Police Department while lieutenant Normal was in charge of recruiting. After she passed the initial battery of tests she had an interview with lieutenant Normal. She showed up for her interview in a very conservative business suit but it didn't hide her figure. He showed her into his office and then offered to help her become a police officer if she would do sexual favors for him. She refused and walked out of his office. She sued the Department but it was her word against his so she did not win. The Department could have used a reverse sting on the lieutenant to see if he was compromising his position but I'm sure that would have revealed that he was and they would have had another scandal to cover up. I'm sure the administration decided not to try slipping in an attractive applicant that was wearing a wire because they didn't want to know if he was abusing his position.

We had a storage room next to the Watch Commanders office that stored the M16's, the police radios and other miscellaneous equipment including the tasers. One day lieutenant Normal was working as the Watch Commander and must have got bored, he wandered into the room and started to examine one of the tasers. He had never been trained on their use and should never have removed it from the storage bag that it was kept in, but he did remove it and proceeded to aim the taser at the police radios.

The taser was a hand held device that had a safety and a trigger that once depressed fired two darts that were connected to the taser with small wires. As the trigger is operated it sends 20,000-25,000 volts down the wires which is enough voltage to put the average man on the floor.

At the time, when an officer needed equipment it was common practice to go into the room and retrieve a radio, however because the batteries were not always charged up it took a while to find a

radio that was serviceable. That day one of the officers happened to go in there to get a radio when lieutenant Normal was aiming the taser and BANG the taser went off imbedding the darts in the wall on either side of the officer. Lieutenant Normal had removed the safety and fired the taser, the officer turned around and said "what the fuck do you think your doing?" I'm sure out of surprise to have been a target more than anything else. Lieutenant Normal apologized and pulled the wires and darts back out of the wall and left the room extremely embarrassed.

A few hours went by and the officer was telling everyone what had happened to him when he was called into the station to meet with lieutenant Normal. He felt sure that he was going to be officially apologized to and happily drove to the station. When he arrived lieutenant Normal had a form for him to sign, he was writing him up for insubordination for swearing at a lieutenant, to not sign the form would be grounds for dismissal so he signed it in disgust. Lieutenant Normal was never spoke to or cautioned by anyone about his endangering the officer and used his position to pre-emptively administratively strike first at the officer to discredit any official version that he would or could have told about what had actually happened with the taser.

#### The Suicidal Sergeant

During 1995 we had a sergeant that was experiencing severe depression. He was going through a painful separation with his wife that was effecting his work ethic, I'll call him sergeant Suicidal.

Sergeant Suicidal was a very good street cop. He knew where to look for criminals and had a knack for finding them in stolen cars etc. however his personal problems began to effect his supervision. As he was a supervisor he didn't have to respond to calls and could just drive around and do what he wanted. For some reason that will become apparent later he didn't like officer Jim Beach and used to follow him around on every call to check up on him and give his opinion after the call to Jim. Most calls for service can be resolved in many different ways and two officers on the same call may have

differing opinions as to how to resolve the situation if an arrest is not warranted. Therefore sergeant Suicidal disagreed on every call with Jim.

His mind was not thinking logically due to his depression and his opinions were completely off the wall but as he was a supervisor Jim couldn't disagree without being seen to be insubordinate, which would be a terminable offense. When sergeant Suicidal would talk with Jim he would often bring up his own situation at home and make comparisons. Obviously the constant criticism soon began to irritate Jim to such an extent that he sought redress with his lieutenant. As soon as Jim broached the subject with lieutenant Jones, the lieutenant put his hands over his ears and began to talk over Jim saying "I don't want to hear this, I don't want to hear this" because sergeant Suicidal's behavior was so irrational everyone had seen it but no-one at the department wanted to address it. Jim became more and more irate at sergeant Suicidal because once he found out that Jim had been to see the lieutenant and informed on him he hounded him even more and began to write up Jim for minor issues such as taking an extra minute on a meal break. Jim again went to lieutenant Jones and told him if he didn't take care of the situation, Jim would kill sergeant Suicidal. Jim didn't realize it at the time but that was exactly the reason that sergeant Suicidal was creating the problem and he was trying to push Jim to do it for him.

At the end of shift sergeant Suicidal would often come into the station and boast about how he had chased this crook into a house and consequently had to fight his whole family. On the West side of the City the citizens are so used to the police presence they seem to accept and understand the unwritten rules that they've heard for decades, they accept if they run from the police and the police catch them then they deserve a good beating. Most of the criminal acts that the police engage in goes unreported as they know they won't be believed.

Anyway, one day sergeant Suicidal had come into the station at the end of his shift with his shirt and pants ripped. He had the beginnings of a black eye and he was limping. He told several officers who were in the report writing room that he had chased a

crook who had ran from a stolen vehicle into his house and a fight had started. At first it was between sergeant Suicidal and his quarry and had culminated into a fight between sergeant Suicidal and three relatives who had been watching television in the living room. The fight flowed through the house and ended up with sergeant Suicidal having his gun taken away from him. He had picked up a baseball bat that had been laying in the garage and had systematically reentered the house from the garage and beat all the occupants inside until he recovered his gun. Once he had got his gun back he left the house and came to the station. No-one was arrested and he never even put out the information on the police radio. No-one would have known about it if he hadn't come into the station all pleased with himself. He was throwing himself into the most dangerous situations with the hope that it would result in his death, he wanted to die preferably at the hands of someone else.

One time a call went out of a burglary in progress at a garage in the north end of the city. Sergeant Suicidal was close by and saw a teenager running across the street near the location of the break-in. The teenager made it onto the sidewalk so sergeant Suicidal drove up the side walk and ran him down in his patrol car as he figured that he was the burglary suspect. He knocked him several feet into the air and actually said on the radio that the suspect in the burglary had just ran into his car and he would have him detained. Several other officers arrived on scene and it was found that the suspect that sergeant Suicidal had mowed down was just someone running across the street and had nothing whatsoever to do with the burglary. He was picked up and dusted off and sent on his way with a warning not to jaywalk. His injuries were fairly severe as he was bleeding from his head and one of the patrol officers had called for an ambulance which was immediately canceled by sergeant Suicidal when he realized they weren't going to arrest him. The injured subject was sent on his way with a warning that he would be arrested if he didn't leave immediately.

Several weeks later sergeant Suicidal was at home when his depression got the best of him and he tried to kill himself. He had called his separated wife several times in desperation as he was going through his turmoil and as he hung up the phone, she heard a gunshot. Fearing the worst she had called the Police Department, told us of what she had heard and wanted us to check on his welfare. When the officers arrived they found that he had used his duty weapon and at first tried to shoot himself under his chin and missed. It is not unusual for suicidal subjects to make several attempts before trying to kill themselves. They are wrestling with their conscience which causes them to move the gun at the last minute or just scratch their wrist a few times before making the big cut if they are using some type of blade, hesitation marks are very common.

Sergeant Suicidal's first shot went up and into the ceiling so he adjusted his aim and tried to shoot himself in the chest. This time he hit his chest above his heart but didn't hit anything vital. We arrived on scene and the officers present could plainly see that he had tried to kill himself. Because a police officer was involved another sergeant was automatically sent to the scene to ensure that the investigation was conducted "properly." The Department also had his wife's statement on the taped phone-line that she feared he was or had tried to kill himself. He was initially interviewed and he said he just couldn't take it any more and he had tried to end it all by shooting himself. He even said he couldn't even kill himself right and that he was as useless as anyone could be. He was taken to a hospital for treatment of his injuries but wasn't referred for a mental evaluation as the sergeant on scene knew that once committed as a danger to himself under Welfare and Institution Code 5150, he would not be allowed to possess any firearms and therefore could not be a police officer anymore.

The officer who took the report, officer Schneider wrote his report up as an attempt suicide report listing sergeant Suicidal as the victim of himself. When officer Schneider went to the station and handed in his report the sergeant that had been on scene saw that it was an attempt suicide report which would reflect badly on the Department and sergeant Suicidal, (also it would officially put on paper the sergeant that was on scene had not had him committed for a mental evaluation). He told officer Schneider to change the report and make it an "incident" report. Incident reports are used when

something happened but it cannot be categorized into a crime or any other set of circumstances. Officer Schneider refused to do so and started the demise of his own career. He was then ordered to change the report which he did under penalty of insubordination, which as you known could be an terminable offense.

Sergeant Suicidal had terrorized the City for over a year with his death wish but as he was a sergeant and could not do any wrong, noone would listen. Several lieutenants had been told by line officers
that he was unstable and seemed to have a death wish with no
regard for the citizens he came into contact with or for the officers
that had to see and suffer his downfall. It was a great shame to see
someone go through the mental anguish that he must have felt and
the Department not wanting to acknowledge it out of fear of having
to show that one of their own was weak.

Sergeant Suicidal eventually retired on a medical injury on his back with no mention of his attempt suicide. Several month's after sergeant Suicides departure from the Police Department officer Schneider tried to retrieve his report but it had been removed from the records division. The records division is not accessible to any one in the Department below the rank of sergeant. So we at least know the rank of the person who destroyed the report.

Officer Schneider became a target of a vendetta in that supervision throughout the Department would constantly observe him and he could not even exceed his fifteen minute break or code seven (lunch) by a few minutes without a supervisor writing him up for disobedience to policies. He applied to several different specialty details within the Department but really had no hope of ever getting picked as he was black-balled for not trying to cover up for a supervisor. He eventually retired on an knee injury. It was a shame as he was one of the hardest working diligent patrolmen that I have ever worked with.

#### Officer Silvestri

In 2000 the Department chose not to act or even initiate an investigation against an officer that indirectly caused the death of

one of his partners because of the liability and scandal that it would have caused.

Officer Johnson was once a technician that used to process crime scenes for the Department, he would watch the officers on the calls and would voice his envy at their position and their paycheck. To remedy this situation he became a reserve officer with the City and was ultimately hired and was sworn in as a full time officer, as with most new officers he ended up on graveyard shift where the officers were tightly knit together. They knew that after 2:00 a.m. they could only depend on other graveyard officers so they became particularly close, much more closer than the other shifts. When this reliance on each occurs, the officers usually get to know the personalities of their partners very well and adjust their behavior accordingly. Supervision on graveyard varied between scant and none at all which became evident in the VanRossum rapist investigation later. The graveyard supervisors used to hide, study for school or sleep during the shift allowing the officers the full rein of the City with no one looking over their shoulders.

Some officers never called for help until they were actually fighting with someone and others called for help when they were in a situation that may be potentially hazardous. So a 11-11 call (officer needs assistance NOW) from one officer that never calls out 11-11 would require a different response than the same call from another officer that seems to need help every night. Officer Johnson had a reputation for crying wolf on his calls and sensationalizing them over the radio, so in hearing him call out stressfully would not necessarily mean that he was in any danger. Different officers and supervisors had tried to talk with him to stop him from sensationalizing his calls over the radio to no avail. When this issue was brought up to supervision they realized that it was a sensitive subject, Johnson was very keen but just needed to be reigned in, I don't think they had the supervisory skills to achieve the correct result and therefore didn't try.

For example, some officers are very good at calming people and others can escalate a situation just by showing up on a call. Most officers learn who they like to work with and who the do not, I can

remember when the officers who would tend to escalate a call would volunteer to back me I would try to resolve it before they showed up. I didn't want the officer to get everyone all wound up again after I had got them calmed down.

Incidentally, Departments hire female officers because they think that they are more sensitive to people especially in highly volatile situations. Now there are some excellent female officers out there and I worked with several but the majority need to realize that they do not need to be so macho. They are physically no match for a man, in particular a parolee that has just spent the last few years building muscle and taking steroids. The good ones realized this and would talk to de-escalate the situation, the others seem to believe they needed to give out waves of machismo to prevent an attack. Some of the female officers would show up on a call and immediately start asserting themselves, now they have to arrest someone just to save face. Most of the women I worked with were among the most challenging and assertive officers on the Department and were not in the least more sensitive to the needs of the citizens. Someone only had to say something under their breath or look the wrong way and they would see it as a personal challenge to them and their authority. I would try to resolve whatever situation I was in before this type of female officer could arrive, I was trying to build bridges, not fight everyone and I didn't have anything to prove.

One night I was working with my partner Danny Gomez when we heard officer Johnson get sent to a stolen vehicle call, I accessed his call on my terminal in the police car so I could see what kind of call it was and get a license plate on the vehicle in case we happened to see it. I read the call and found that it was probably more of a civil problem than an actual stolen vehicle.

This situation was all to common, the typical scenario was that a boyfriend and girlfriend would share their car and everything was fine until they got in an argument and the boyfriend would drive away in their car. The girlfriend would call the police and say that the boyfriend had never driven the car in the past and that he had stolen it. In reality it was a civil problem and the girlfriend was so mad she would try to lie to the police to get the boyfriend in trouble

and hopefully recover the car. This would happen very frequently, I would go on calls similar to this every week and I would tell them that there was nothing we could do, as it was a civil problem between them and they usually made up together when everyone had calmed down.

After about thirty minutes officer Johnson said over the radio that he was going to look for the stolen vehicle, I bought up his call again to see if anything had changed from my original assessment and found that it hadn't, it was still a civil problem. He had not drawn a case number that would indicate that he had taken a report so we continued to look for gang members.

Officer Johnson then called out in an excited and loud voice over his radio that he had found the stolen vehicle in an apartment complex and it was being driven towards him. I said to my partner, "how could he find his own GTA (stolen car)? If he found it then it must be a civil problem and not a stolen vehicle because the only way he could find the car would have been if the girlfriend told him where to look." We started to drive to his location to assist just in case we were wrong when another officer called out that there had been a traffic accident and an officer was involved.

Officer Gerald Silvestri was a fairly new officer to our Department having spent his first few years in another smaller and quieter Department and probably had not yet learnt which officers sensationalized their calls and called wolf and those that did not. Apparently he had heard officer Johnson's radio traffic about finding the stolen car and was rushing to assist him when he had lost control of his patrol car and crashed into a tree. We arrived to assist him and found that the crash had been so severe he really did not have much of a chance. Several concerned citizens had heard the crash and had come outside to assist as much as they could by dragging him away from his patrol car in case it caught fire but he did not survive. It was a tragic heart rendering event that was witnessed by several of his friends from graveyard shift who had also arrived to assist.

Officer Johnson was shook up, he resolved the call by telling the boyfriend to take the car back and left the apartment complex. He had made a civil problem into a felony crime and had inadvertently

caused another officer to lose his life. I realize that officer Johnson wasn't in control of Silvestri's police car but Silvestri was rushing to assist him in a situation that Johnson had misrepresented and sensationalized over the radio. I particularly blamed the supervision that knew of Johnson's tendency to over dramatize his calls and had failed to address it.

This is the first time the truth surrounding this event has ever been made public, the Department swept it under the proverbial rug just as they had in the past and just as they would in the future to avoid embarrassment and liability.

#### Sergeant Lamb

Sergeant Lamb used to be one of the on-call homicide sergeants. When a homicide occurred one of the two teams would get paged by the watch commander and they would respond to the scene. His job was to supervise the detectives and generally make sure that everything that needed to get done was done by someone. Unfortunately sergeant Lamb had a problem, he liked to sexually harass the female employees. He would touch them inappropriately and make sexual comments to them while they were working. Remember, he was a sergeant so he was untouchable in regards to any investigation so no matter what had happened or who complained the complaints were not looked into. He had sexually harassed the female employees for years until one of the forensic technicians was grabbed by him from behind and he pressed his crotch into her buttocks. She was deeply disturbed about it and as victims of this type do, she had blamed herself.

Shortly after this incident I was getting an arrestee fingerprinted by the same forensic technician and the conversation of sexual harassment came up. She was petite and very friendly and had been propositioned for years by different officers from all levels of the Department and had deflected their interest however sergeant Lamb's latest advance had disturbed her. She said over the years she had carefully avoided being alone with him anywhere because he took those opportunities to make his move but on this occasion she was at a shooting scene when he had taken her by surprise as she was in a hallway. She was busy taking pictures and had not seen or heard him walk up behind her. As soon as he got close he grabbed her around her waist and pulled her towards him pressing himself into her buttocks. She pulled away sharply and made light of it but she clearly had been shook up and blamed herself because she felt that she should have been more vigilant. I asked her if she had told anyone at the Department, she laughed because she said she had complained before however nothing was done and he was allowed to continue. I asked her if she had heard of the Federal Governmental office called the Fair Employment and Housing Association (FEHA) and she said she was thinking about telling them as she felt sure that she couldn't be the only victim. I encouraged her to complain to them out of respect to the other victims, even if she could handle the affront to her dignity there might be others that were not as strong. It would also need to be proven before any action was taken just how widespread the problem was which the FEHA would be able to gauge.

The FEHA were very fair in the way they conducted their investigations, they would come into a work environment and confidentially interview everyone there. So if their was any form of broad harassment ongoing they would find out about it. In this case they interviewed all the female employees and found that sergeant Lamb had been sexually harassing most if not all of the female employees. Equally as disturbing was the fact that the female employees had complained to the Police Department and the Department had ignored the problem. The majority of the female employees were civilian employees and not sworn officers and therefore felt as though they were beneath the sworn officers and sergeants and the Department had used this as a means to dismiss their claims.

Sergeant Lamb was allowed to put in for his retirement and retired from the Department instead of going through the investigation. He should have been prosecuted for his conduct as he had fostered such a hostile environment to the female employees for such a long time but as he was a sergeant he was protected and

allowed to retire with honors. He still is very close to the administration of the Department and has not suffered any slight on his reputation, and in fact continued his career when he became head of security for San Bernardino International Airport. What a double standard.

#### **Lieutenant Poyzer**

During 2001 detective Lenny was going through a painful divorce, at the same time he was in a vehicle accident and had twisted his neck so that it placed undue pressure on his occipital nerve which caused blinding headaches. He came into work and told his supervisor, sergeant Holders that he was taking painkillers and was still subject to an enormous amount of residual pain which sometimes incapacitated him. He was asking for a little leeway with his workload just for the immediate future but this did not bode well with the administration.

In 2002 he was working at his desk when he was approached by lieutenant Poyzer and asked to go to the administrative area of the Department. Once he was over there they told him that they had reason to suspect he was under the influence of narcotics and demanded an immediate urine test. He urinated into a cup and was placed on administrative leave and sent home.

The urine test came back negative except for the drugs that Lenny had told them he had ingested for the pain, but they refused to allow him to come back to work and now asked him to go through a fit for duty evaluation both physically and psychologically. He completed both tests satisfactorily so now the Department and specifically lieutenant Poyzer had a problem because he had passed all the tests. Lieutenant Poyzer had made the judgment call of accusing Lenny of using illegal drugs, he was wrong and the Department knew it. They did not want detective Lenny to return to the Department and he needed to be discredited so that any accusation that he could level at the Department would be questionable however they did not have any grounds documented to terminate him.

Due to his medical problems he had to call down to the San Bernardino Police Officers Association (S.B.P.O.A.) to change and update his benefit information. In January 2003 he spoke with the secretary at the S.B.P.O.A who happened to be the wife of sergeant Kilbride. He changed his benefit information and concluded his phone call.

I should briefly tell you that the S.B.P.O.A was an organization that primarily was set up to protect officers from abuses and discretions of power against the officers, detectives and sergeants. Lieutenants and above were not allowed to be members of the organization due to the conflict of interest that would occur as it was usually these ranks that routinely abused their position at the expense of those below them. There was no love lost between the S.B.P.O.A. and the administration of the Police Department and the two organizational bodies usually only communicated through the President of the association at the Chief's level.

Approximately two hours passed by when he received a knock at his front door. Lieutenant Poyzer was standing there and began to question Lenny along the lines of being mentally unstable. Police officers have certain powers which include the evaluation of a person to see if they were either a potential threat to themselves or to any one else, commonly called a Welfare and Institution code 5150 evaluation. Lieutenant Poyzer had learned about the call to the S.B.P.O.A. office and had seen his opportunity. If he could commit Lenny for being a danger to himself he would no longer be able to work as a police officer. Lenny opened his door drinking a soft drink and was very surprised to see the lieutenant. He listened to the lieutenants questions and realized that his confidential conversation had been betrayed. The only other possibility that Lenny could think of was that the Department had somehow tapped his phone line. He answered the questions so that he was seen that he was not a danger to himself or others and the lieutenant left.

Lenny felt very lucky that someone in his residence had witnessed the incident because if they had not been present he felt that he would have been taken into custody and committed for being a danger to himself no matter how he had answered the questions.

An interesting point that is particularly important is how the incident occurred. To play devils advocate lets assume that sergeant Kilbride's wife felt that Lenny was a danger to himself based on their conversation and alerted the S.B.P.O.A. President who relayed this information to the Department administration. This alone would be seen as an admirable quality, reaching out to a fellow human being in their hour of need, but why would lieutenant Poyzer take it upon himself to conduct the evaluation. Lenny Lived in Redlands, an adjacent City, not in San Bernardino. Redlands P.D. have a capable Police Department that would have been entirely objective in their evaluation. It was very curious that lieutenant Poyzer chose to go himself and conduct a W & I 5150 evaluation, something he probably hasn't had to do in the field in over a decade. Luckily for Lenny someone else was home. This was the exact opposite situation that sergeant Suicidal had been in, this time instead of not using the 5150 evaluation to save someone's life it was being used to hopefully commit detective Lenny so that he could not continue his career as a police officer.

#### Rouge Narcotic Unit

The San Bernardino Police Department has always had an aggressive narcotic unit. From 1996 to the present day they have been very active in the securing and service of search warrants. Drug search warrants are by nature very violent affairs, they have to be to get into the house and to stop the residents from destroying the narcotics. Usually this is accomplished by the criminals flushing whatever they can down the toilet before the officers can stop them. As the warrant is served on some very paranoid people everyone is running everywhere and it is confusing. There is a lot of shouting from all the officers to the criminals who may or may not understand English and who also have their own agendas of destruction or escape.

When I was on the SWAT team I assisted in dozens of search warrants with the narcotic unit, we would devise a plan that the SWAT team would make entry and then the narcotic team would

come in and search the residence. As soon as the plan was put into operation the narcotic team would rush past the SWAT team and make entry themselves. We had been trained differently and we had different objectives. Usually a SWAT team would try to gather intelligence first on the layout of the residence, be as quiet and stealthy as possible and would slowly, methodically go through the residence assuring that every angle and every potential threat was covered. The narcotic team tried to make as much noise as possible and would rush through a residence as fast as possible to get to the bathroom. The narcotic team would get frustrated with how slow the SWAT team worked as it was possible in the delay that evidence was being destroyed. As you can see this situation was unsafe for everyone there. After 1998 the conflict between the two groups got so bad that the narcotic teams stopped asking us for our assistance and attempted all the warrants themselves. The SWAT team was also relieved as we had seen how unsafe their warrant services had been and believed it was only a matter of time before someone got injured.

Another reason I was personally relieved was because I had seen how violent the narcotic teams were with anyone at the house. It seemed as though at every warrant they served someone needed hospital treatment after being beaten up by the narcotic officers. In some of the warrants we as a SWAT team couldn't leave fast enough so we didn't have to witness anything and all the consequences that just seeing something like that would entail.

While I was in the SWAT team I would mention the excessive violence constantly to the narcotic manager, lieutenant Farmer however nothing was done. When I returned back to patrol duties in January 2001 I was amazed how pervasive the problem had become.

The San Bernardino narcotic unit did not transport their own arrests. That means they would serve a warrant, make one or several arrests and call for a patrol unit to transport the arrested persons. I along with several other patrol officers were tasked with these duties every week. Throughout my career I have always arrested, transported and lodged my own prisoners. I believed that increased the accountability that I had to the arrested person (and gave me time to establish rapport, in case they were informant material)

because I realized that if any force was used on them I would have to sit at the hospital for hours and hours in absolute boredom. Therefore I would try not to use force, even on difficult subjects, even when legally justified because I didn't want to spend the next eight hours staring at the same concrete walls. I had seen how the narcotic unit never transported their arrests and therefore their propensity to use excessive force became routine for them.

During 1999 lieutenant Farmer was promoted to captain and soon became the captain in charge of the whole patrol division. When I was again sitting in patrol briefings captain Farmer would come down from the administrative area and ask us if there was anything that would help us patrol officers do our job better. Most of the time all the officers in briefings do not say anything because to raise an issue was like signing your own death warrant. Whoever raised something as an issue was personally attacked and seen as a trouble maker by the administration. Whatever the officers had to say was usually ignored however I had sat at the hospital so many times on narcotic officer beatings that I decided to bring it up as an issue. Several times all my beat partners in the downtown area were also at the hospital on other narcotic arrests that the service we, as patrol officers were giving to the citizens in our area was non existent. I felt frustrated because I couldn't work in my area and I couldn't respond to my informants if they had information for me. To be an effective officer I needed to be available and in my area, I was spending twenty of my forty hours a week sitting in the hospital on arrests that I hadn't created which had been prejudiced so badly there was no way to establish any rapport. No one welcomed an officer talking to them to establish rapport if they have just been beaten by several other officers.

I started to talk to other patrol officers and found out that the problem was becoming epidemic. Starting in February 2001 every week that captain Farmer would attend one of our briefings I would bring it up. I would recount the previous arrests where I had sat at the hospital and asked him to address the problem. I didn't believe in airing a problem without offering a reasonable solution, so I would suggest that narcotic officers should transport their own arrests. I

believed this would create the accountability that was obviously missing as they would not want to sit at the hospital for endless hours and they might then not be so violent to their arrestee's. I continued to bring it up every week and nothing happened. Captain Farmer did take my concerns to the narcotic unit which only served to alienate me from those officers. Soon they were asking for me in particular to transport their arrests, if they arrested anyone and I was available, I got to take them to the hospital. Now I really began to see how bad the problem was , first hand. I tried to start a dialogue with the injured arrestee's and found that the narcotic officers seemed to have to use more force on the suspects who didn't have any narcotics (or who were very good at hiding their supply). They seemed to be the subjects who "fell over" more often and "resisted arrest" much more frequently.

A lot of the officers I formerly worked with knew that I was authoring a book about corruption in the Police Department while I was writing it. They would occasionally stop by and ask how it was going, this was the one issue that they all wanted raised. They knew that they could not raise it themselves without becoming a target of retribution, so they knew that the San Bernardino Police Department had an out of control narcotic unit and it needed bringing to light. If anyone wanted to find the truth all they need do is view the statistics on injuries the narcotic unit caused during their arrests. I'm sure it would be such a large aberration, completely out of the scale of injuries with comparable units that it could only indicate their propensity to use excessive force was a huge problem. Of course the same study would also show the Department, including Internal Affairs was also aware of the problem (as they had investigated numerous complaints) without finding or wanting to find the root cause. Hopefully one day someone will investigate them before somebody dies.

So does corruption exist? It depends on the definition of corruption, if you define corruption as an officer receiving a free or discounted meal then yes, it does happen. If you define it as the San Bernardino Police Department officers getting or receiving money to look the other way or to selectively enforce the law then no, I never

saw anyone get money for anything they did or didn't do. But if you want to know why the police are not effective then you only need to look at my examples above. They do not fall into the common frame of reference for corrupt activities but they are allowed to occur because the Department administration is corrupt and only concerned with how things are perceived, and to limit their liability. They do not want to wash their dirty laundry in public especially at the higher levels. From their point of view if they show that a lieutenant or sergeant is corrupt then what will he in turn expose? Where will it end? Who else will they take down with them.

As I said earlier, sergeants, lieutenants, captains and above can really do whatever they want and will not suffer any consequences for their actions. Anyone below those ranks would be vigorously prosecuted and terminated for conduct just so they would be seen as being not credible.

# Part 2

# Friendly Fire?

What does not destroy me makes me stronger.

Friedrich Wilhelm Nietzsche 1844-1900

### **Friendly Fire**

During September 1998 I was shot twice by other officers within the Department on two separate occasions. I do not know all the entire facts surrounding both of these incidents as I have never been made aware of whether the department investigated internally either shooting. Certainly I have never been interviewed by the Department so that I could give my perspective. I will write about them from my viewpoint only and leave it up to you to decide how accidental both shootings were.

# **Chapter 5-Friendly Fire Number One**

In the early part of September 1998, I was on the SWAT team of the Department, I had transferred into the SWAT and Gang Detail in 1996 and had established myself as a competent officer in both of these fields. We would work our regular forty hours on gang enforcement and would respond to SWAT calls when they occurred. On this particular night there was a SWAT call out regarding a domestic situation that had been overheard, a neighbor had called the police and told dispatch that there had been fighting in the apartment and believed that there was a man abusing a woman.

The call was prioritized and wasn't dispatched for a few hours and it's priority was downgraded from it's original call of "possible domestic violence" to a "check the welfare" type call. Patrol officers arrived on scene and tried to make contact at the apartment and had got no response from their knocks at the door. They then contacted the reporting party who was still awake, who said they believed that the male inside the apartment had been drinking and had hit his live in girlfriend and probably wasn't answering the door because he didn't want to be arrested. The patrol sergeant realized that a felony crime may have occurred and the suspect could have barricaded himself inside so he had called in the SWAT team.

It was the middle of the night so the team was paged by the Watch Commander and we drove into the Station from our homes. Upon arrival at the Police Station we all had to get dressed into our call out uniform and had to make sure we had all of our equipment. I usually carried an AR-15 .223 semi automatic rifle as my weapon of choice on most missions but we had the choice of an MP-5, 9mm submachine gun as our primary weapon. I believed in the .223 rifle over the 9 mm sub-machine gun because of the chance of encountering someone wearing body armor. The SWAT van was loaded up by all of us that got to the Station early with gear and weapons and driven to the scene to function as the Command Post.

There are several key positions that need to be assigned as soon as SWAT personnel start arriving on scene. Until SWAT gets there the location is usually surrounded by patrol personnel who pick out a location that has good observation of the doors and windows but is not easily seen by anyone looking out. It is important that the patrol officers are relieved from their positions as soon as possible as well as the scouting mission assignment be made rapidly for intelligence gathering purposes.

I was assigned to scout the apartment with officer Shank, he was an extremely capable SWAT officer and took great pride in being on the SWAT team.

The SWAT supervisor, sergeant Lemos made the assignments, they range from the arrest / containment team, the entry team and perimeter position's.

The scout mission is a very important part of the SWAT call-out because every contingency depends on the information that the scout would supply. For example: It might be very important to know where the bathrooms were located and the layout of the apartment in case the entry team needed to make entry to save a victims life.

While sergeant Lemos was making the rest of the assignments for the team we talked and agreed that the call out was basically a waste of time as it was probable that everyone inside the apartment had probably just gone to sleep after a heavy day of alcohol abuse but we always used these calls as valuable training exercises so we treated it as though armed suspects were inside the apartment and watching our movements outside.

As we completed the scout we had to negotiate several chain link fences at the location and across the street. This was extremely tiring because of the amount of equipment we all carried, which could weigh in excess of 60 -70 lbs. It wasn't just the weight but the way that much equipment impeded your freedom of movement. One of us would cover the apartment while the other climbed over the fence trying to make the least amount of noise as possible, of course using any kind of light was also not allowed as it would give away our position.

We had completed the scout and I had drawn several pictures of the apartment detailing the doors, windows, probable bathrooms etc., the types of security on the doors and windows and anything

else that I considered pertinent. We had one more fence to climb which was a five foot chain-link type fence with a metal rail at the top. I knelt down and covered the house with my rifle while officer Shank climbed over the fence first, as he was lowering himself down the other side of the fence I caught sight of his MP5 sub-machine gun out of the corner of my eye, which had begun to raise up and point directly at my head. We carried the rifles and sub-machine guns on a sling that allowed them to be quickly accessible and able to be used on either side of our body but also allowed them to hang excessively. I quickly stood up and attempted to move to my left out of the direct line of the barrel as his MP5 fired a three round burst directly at me and into the ground where I had been kneeling just moments before. I didn't know if his MP-5 had got hung up on the fence and Shank had accidentally operated the trigger when he moved his gun to free it or if the fence had pulled the trigger back. One thing I did know was that his weapon was not on safe as he had climbed the fence because the discharge would never have happened if it was. He swore that he had had an accidental discharge and that the mission was compromised as anyone inside the apartment would have heard and possibly seen the gunfire. I replied not only did he have an accidental discharge but he had also shot me in my hand. I could not see the extent of the injury at that time but I felt pain in my right middle finger primarily and I could feel that I was bleeding from my hand. I held my injured hand with my other hand to try to stem the flow of blood.

Shank got on the radio and advised everyone that he had an accidental discharge and had shot me and that he had not engaged anyone at the apartment. What we feared was that other officers on the perimeter upon hearing gunshots might think that they either originated from the apartment or that an officer might have seen a threat at the apartment and had engaged that threat. The last thing we wanted was for someone to try to give us covering fire to a threat that wasn't there. Cops are trained to fire only at the threat but gunfire can be contagious too. I walked from the front yard to a squad car that was parked approximately fifty yards south of our location, once I got there I had a chance to look at my injuries in the

light at the trunk area of the car that was raised up to shield my flashlight from the apartment. They were not that serious, I had lost the nail of my middle finger but my finger and thumb were intact. I felt myself sweating profusely and I started shaking and I realized I was going into shock. I had read books about police officers getting a small gunshot wound and dying from shock so I tried to regulate my breathing and made myself calm down. About ten minutes later I was taken to the hospital in an ambulance where I found out the bullet had grazed the pad of my thumb and struck the side of my middle finger fracturing the last section of bone beneath my nail.

I was lucky because I had seen the barrel of the MP5 rise up towards me and had managed to move out from the direct line of fire. If I hadn't moved I'm sure the rounds would have struck me in a downward angle and probably would have entered my body around my neck area in a downward trajectory probably killing me. At that time we were not equipped with the heavy duty SWAT type bullet resistant vests and wore our regular patrol duty vests under our clothing. These vests offered no protection around our neck and upper chest areas.

Officer Shank was a very well qualified SWAT officer and had completed at least 50 -70 military and police schools, most pertaining to firearms. He was one of the departments firearm trainers and range masters (there were only a few range masters throughout the department). He was not investigated by the department at all, not even administratively. Most incidents similar to this result in the officer being placed on paid administrative leave until the internal investigation is completed and it is determined that there was no criminal intent behind the shooting. Officer Shank was not disciplined in any manner at all, he was not counseled or had to attend any type of specialized training. Most firearm safety courses teach that you should not climb or cross a fence with a loaded firearm. In Law Enforcement it would be unreasonable to apply that standard to our actions but I assumed that we all put our firearms on safe when we climbed fences. I find it hard to believe that officer Shank with all his experience and all the schools he had attended, not

one of them had said "put your weapon on safe when climbing fences".

After I was treated at the hospital I was treated to a breakfast with the captain and the rest of the team, officer Shank wasn't saying to much and I could see he felt bad about what had happened.

I was off for two weeks while my finger healed because the Doctors wanted to make sure I wasn't going to need physical therapy. I was not one to enjoy sitting at home because I felt that I had a duty to perform and I could still function with a broken finger so at the end of the two weeks I begged the Doctor to let me go back to work early even though my finger had not completely healed.

In 1999 the Department managed to secure a Federal Grant to replace all the side arms in the Department with H&K weapons. Until then the Department issued handgun was the .38 caliber Smith and Wesson revolver. No-one carried them and we all used our own personal weapons so the department wanted to standardize the handguns to one family of guns. We all put in letters for the much coveted positions and despite being a U.S. Army small arms repairman I was not selected for either of the positions of trainer or armorer. Officer Shank on the other hand was chosen to be the department head trainer and range master, a much prized position. One of the benefits was almost unlimited overtime during 1999 where the trainers worked 40 hours a week training and 40 hours a week on patrol. Not a bad paycheck really.

# **Chapter 6-Friendly Fire Number Two**

I returned to work two weeks later and discovered that one of our ex-detectives Douglas Domino was being investigated as a suspect in an assault with a deadly weapon case. Allegedly he had been involved in a hit and run type car accident and had left the area with the other party following him. They had ended up in a deserted area and a shot had been fired by Domino. He had fled the scene in his vehicle but the other party had managed to write down his license plate number. Several detectives had his residence under surveillance and had seen his wife leave in the morning to go to work and had not seen Domino. He had access to several vehicles which were in the driveway and he was believed to be inside.

Domino had left the Department in 1992 or 1993 after being a homicide detective for over ten years when he passed the bar exam and he became a lawyer. His area of practice was family law, I had retained him to represent me in a divorce action that I was going through in 1994. The SWAT team and all the detectives involved in the case all knew him and they made no secret of their dislike for him. The detectives considered him to be a corrupt cop as he had been involved in some questionable shootings and the kind of person that did not deserve to be a part of the law enforcement community even though he was no longer associated with the police department. Lieutenant Poyzer said Domino had been using narcotics, probably methamphetamine and that his behavior had become more erratic lately. He had let his Law practice fold and was stuck in a downward spiral of drug abuse.

It was very apparent that members of the administration and the detectives knew a lot about Domino and his social world than could be gained from the official police contacts and had obviously been keeping tabs on his life over the last few years. Lieutenant Poyzer took great delight in the fact that Domino was the suspect in this crime and it seemed that his feelings were personally motivated and not professionally related at all.

The SWAT team and sergeant Lemos left the SWAT team office and went up to the detective bureau conference room to brief prior to the execution of the search and arrest warrant of Domino In Devore, California. (not in SBPD Jurisdiction). As we went upstairs sergeant Lemos was pulled aside by lieutenant Poyzer and lieutenant Kinsman and was taken to the administrative area of the police station away from the detective bureau. The administrative area and the detective bureau were at opposite ends of the police station. The three of them did not make it back to the detective bureau until midway through the briefing. The rest of the SWAT team took our seats and listened to sergeant Blum as he gave the briefing. When the two lieutenants and sergeant Lemos arrived back in the briefing sergeant Lemos seemed very distracted and pre-occupied, not at all like he had been prior to the briefing.

The briefing detailed the events that had transpired that lead up to Domino being identified as the suspect in this crime and that a search warrant and arrest warrant had been secured. Initially the victim had not identified Domino as being the suspect who had shot the gun until the detectives returned with a more recent picture. There was always a lot of jokes made at the department of six packs or photographic line-up identification reliability. For example: one of the detectives had sifted through thousands of "mug-shots" of booking photographs until he found five pictures where their eyes were looking in a certain direction and when he put it all together the other five "suspects" were all looking at the real suspect. This was never used in any real line-ups but the message was clear, it was not that hard to get your suspect selected if the detectives wanted it to happen.

Several members of the team informed sergeant Blum and lieutenant Poyzer that they did not feel comfortable executing a search warrant against someone they knew personally. One of the SWAT team snipers, Carl Currie had been very close with Domino and in fact Domino had been the best man at his wedding and I explained that he had been my lawyer during a divorce action several years ago. This information was ignored by lieutenant Poyzer for reasons that will become obvious later on.

The SWAT team lieutenant, lieutenant Farmer was not available for the call out. It was not explained to us why he wasn't available, he just wasn't.

We all agreed in the briefing that this was not just an ordinary type of warrant that we had served numerous times before but that it was potentially one of the most dangerous warrants we had served in the last few years. Normal protocol on these types of warrant is meticulous planning with every eventuality covered and addressed so that the entire SWAT team knows what their expected role is no matter what happens. We would ordinarily talk about hospital's and extradition routes in case of injury to one of us at different times during the service of the warrant and we would try to cover every contingency. We tried to go over the different scenarios however we weren't allowed to because lieutenant Poyzer was in a hurry to get up to the scene before the Sheriff's department found out what we were doing and would try to take over the call. Sergeant Lemos did not try to cover the eventualities and actually stopped talking in mid sentence when lieutenant Poyzer glared at him.

All of the California Peace Officer Standards and Training (P.O.S.T.) SWAT schools agree that a SWAT team should not conduct operations against people that they know personally as the danger is increased for the team because they might assume or predict a certain behavior from the suspect, based on their prior knowledge of him. When we were concluding the briefing several SWAT team members said we should defer the call to another agency because of the increased danger in conducting the warrant against someone we all knew. Lieutenant Poyzer asked us in a demeaning way if we were all scared because it was Doug Domino and that he would know our tactics because he had been on the SWAT team during his tenure at the police department. Several comments were made like "let's go up there and kill the bastard" by the detectives and lieutenant Poyzer with the intention of offering up a false sense of bravado.

Police Departments are extremely macho environments and the SWAT team is perhaps the pinnacle of machismo in the Department. The SWAT team definitely had an overload of testosterone flowing through it, so much so that no-one would even mention the word

coward, let alone accuse anyone of being one. It was this desire to do our duty and show the rest of the Department including the administration that the SWAT team was not made up of cowards even with the compelling reasons that flew in the face of reason and common sense that allowed us to proceed even though our gut feeling was that this could only end up badly. The last SWAT call had ended on an embarrassing note for the team because I had been shot so the team wanted to prove that we could conduct ourselves professionally under the most diverse circumstances. It is amazing what the human psyche will endure when faced with such danger, we as a team were more concerned with doing a good job and getting it over than we were with our own safety. How true our prophecy was about to become and we had no idea we were being used as an arm of personal vendetta for the administration.

The plan that was hatched in the conference room was the SWAT team would surround the residence and that once the team was in position phone calls would be made into the house by the detectives with the intent on asking Domino to come outside. It was discussed that as Devore was not in our jurisdiction the San Bernardino Sheriff's Department would be notified and would probably want to conduct the operation. We had a written mutual agreement between the Sheriff's Department and our own agency that if a SWAT call occurred in their jurisdiction they would have the first refusal to conduct the operation and vise versa. This is a standard protocol that most Departments have with each other because it allows the Department who's jurisdiction the call is occurring in to control and supervise the manpower and equipment etc. We, when out of our jurisdiction would not have communications and resources in place that the other agency would have just because they are used to operating in their area and already have the infrastructure in place. There are other reasons such as knowing the area and possibly some of the residents as well.

We drove our vehicles to the 215 Freeway and Devore road where we were met by several Sheriff's deputies and a female field sergeant. As a matter of protocol and courtesy our agency had notified the Sheriff's Department of our intent to serve the warrant in their jurisdiction while we were en-route to the area. We were about a half mile from Domino's residence and the surveillance team indicated that there had been no change and no-one had left.

Lieutenant Poyzer and lieutenant Kinsman met with the Sheriff's Department and they argued for half an hour over who should conduct the operation. Lieutenant Poyzer insisted that as our SWAT team was present and had prior knowledge of Domino and what he looked like we should conduct the operation. They argued that as the call was in their jurisdiction and their SWAT team wasn't doing anything they should handle the call as that is what the written agreement would dictate. They were convincing as they had a much larger team (in excess of fifty members as opposed to our sixteen) and would have been able to cover the area much more easily than us. If it developed into a tactical situation we would only have to relinquish control over to them anyway. Lieutenant Poyzer agreed that he would relinquish control over to the Sheriff's Department if indeed the service of the warrant descended into a tactical situation but that our Police Department would handle the service and arrest of Domino. I didn't realize at the time why lieutenant Poyzer was so adamant on having us serve the warrant as it made perfect sense for us to stand by and wait for the Sheriff's SWAT team because they were not, and had not been personally involved with Domino or any part of the investigation. They would have known what Domino looked like from one of the pictures that our detectives had of him and reportedly there wasn't anyone else in the house anyway. We could have maintained our positions of surveillance and stopped Domino if he decided to leave his house.

Present at the staging area were the detectives including lieutenant Poyzer, the SWAT team and the Sheriff's Department. Not present, were the Command Post including our tactical communications, hostage negotiators and dispatchers. They are important as we were out of our central dispatch's radio range so our communications could not be monitored and recorded. This is normal procedure as everything is recorded for accuracy's sake. Paramedics were also not present. We had not initiated our tactical paramedic program yet which placed city paramedics at the scene

with us however at that time it was usual to have a fire engine or ambulance stand by in case of injury to anyone including the suspect.

It was unusual that the SWAT Lieutenant (Lieutenant Farmer) could not make it to the service of the warrant as this case had been building for over a month and he was aware of the intention to serve the warrant on this day. We also had a protocol that whenever the SWAT team was deployed anywhere we didn't go piecemeal. We would need to have the Three "C"s with us to effectively run the three "C"s are operation. The Command, Communication. The only way to effectively command, control and communicate was to have a command post where the SWAT lieutenant in charge can listen to the tactical traffic (communication), place his resources where they were needed (control) and make the needed decisions as the circumstances dictate (**command**).

The plan was formulated by non-SWAT trained personnel, lieutenant Poyzer, lieutenant Kinsman and sergeant Blum were not trained in current SWAT techniques but these were the command staff in charge of the whole operation. Even the International Association of Chiefs of Police publish pointers for managing critical incident liability reduction which list as one of their main exposures a lack of SWAT training for command staff. Lieutenant Poyzer could have asked sergeant Lemos for guidance if he was unsure of how to proceed in the SWAT aspect of the operation, at least he was trained, but he didn't ask.

The SWAT team was re-briefed by sergeant Lemos and we were instructed that the Sheriff's Department would assume responsibility of the warrant if it went "tactical". The warrant would have been deemed to be a tactical situation once contact had been made with Domino and he refused to come outside or by his refusal to acknowledge our presence when we were sure that he would have heard us. The reason for the tactical determination was that at this point we would have a barricaded subject refusing by action or inaction to submit to our authority and do what we commanded.

Snipers were placed in position and the residence was surrounded by the SWAT team. The residence was a large single story house on an acre of land surrounded by a chain link fence.

Sergeant Lemos, officers' Koerner, Shank, Beach and I went into the front yard. There were two dogs barking at us as we entered the property and we took up a position behind a vehicle in the driveway, because we were the last officers to deploy to our position our cover was limited. Officer Koerner and officer Shank had sought cover behind another vehicle and were about thirty feet away from the rest of us. Two more officers were sent to the rear yard primarily for observation but also to function as containment if Domino ran out of the back door. Sergeant Lemos informed lieutenant Poyzer that we and all the other officer' were in our respective positions by his hand held radio.

The telephone call was placed into the residence by the detectives who were with lieutenant Poyzer and there was no response to the call. We were not close enough to the house to hear if a phone was ringing or not and so sergeant Lemos directed officer Hamrick or officer Granado who were in the rear yard behind the house to deploy a diversionary device or flash bang to wake up Domino in case he had been asleep and had not heard his phone ringing. A diversionary device or flash bang is a very loud, very bright explosion contained in a metal cylinder. They deployed the flash bang which set off a car alarm somewhere in the area. Sergeant Lemos directed lieutenant Poyzer to try a second call into the residence which was answered by an answering machine.

Another reason that everything is tape recorded including the phone calls is because it provides a permanent record of the chain of events that cannot be disputed. Luckily the answer machine picked up the second call into the residence because at least we then had some kind of recording of the call and what was said.

We waited a few minutes to see if there was going to be any response from inside the residence which there was not. Officer Beach and I turned to sergeant Lemos and told him, "that's it, call the Sheriff's department, get them out here" and expected him to relay the message via our untaped frequency to the command staff. He said, "there's no response at the residence" and placed the responsibility to notify and therefore deploy the Sheriff's Department back on the command staff. It was a very strange exchange, sergeant

Lemos should have taken command as he was the only SWAT trained supervisor on scene but he seemed to be wrestling within himself and had almost seen a way out of the whole mess that could not reflect back on him. If the Sheriff's Department SWAT team took over the call at this point any further events would be out of our hands and therefore not our responsibility.

The next order that came over the frequency was "SERVE THE WARRANT". Whoever said it did not give their call sign as they had previously and I could hear the annoyance in the voice and it was said so fast and so loud it was as though they were just replying to sergeant Lemos. Even though they did not give their call sign it was lieutenant Poyzer's voice. I turned to sergeant Lemos and he did not seem surprised to get the order to serve the warrant, I said to him, "that's not in the plan" he was very upset and shouted seemingly out of frustration, "we're a SWAT team, we're here and we have a search warrant". I looked at officer Beach and we both told sergeant Lemos again that we were not following the plan. He didn't care about what we had to say and motioned for us to move up the driveway. When we arrived next to the front door sergeant Lemos gave us the order in which we were to enter the residence. We had not previously discussed our order of entry because we had not planned to go inside. Officer Shank was to go first, I was to follow him, next was sergeant Lemos and Jim Beach and officer Koerner was the last one in. This was usual for us, the breacher (Koerner) usually made entry then moved quickly out of the way as the team rushed past him.

Officer Koerner and Shank took up a position to the left of the door and we went to the right side. I was in front, sergeant Lemos was behind me and officer Beach was behind him. I was kneeling on my right knee only facing the door, my right shoulder was positioned at 90 degrees to the front wall and I was as close as I could get to the wall without actually touching it. My area of responsibility was primarily the front door and anything to the left of the front door once it was opened. Officer Koerner was the breacher and the "knock notice" announcer, officer Shank was responsible for the breachers safety by providing cover for him as well as covering the front door and anything to the right of the doorway once it was open.

Sergeant Lemos and officer Beach were responsible for a window that overlooked us and partly towards the front door. The sniper, Carl Currie who was positioned across the street and perpendicular to the front door was responsible for covering the whole team if he saw any threats. The breacher was a very precarious position, when entry is made the door ram requires two hands to swing it therefore the breacher does not have a means to defend themselves if someone began shooting at that moment. The act of breaching is also one of the most dangerous activities for the entire team during a warrant service because it is at that time that the first overt action is made by the officers. The person inside knows that someone is breaking into their home and is aware of their exact location.

Officer Koerner gave knock notice shouting "This is the San Bernardino Police Department, we have a warrant and demand entry", there was no response from inside the residence so he made another announcement and waited a few seconds, he then swung the ram and hit the middle of the doors. The door was a double wooden door which opened inwards and was locked in the middle, Koerner swung the ram several times before the doors gave in and swung open.

I looked into the residence through the open door and saw Domino ran from the right into my view, look at us then he went back towards the right into a living room area out of my view.

I knew that this was a search warrant and we trained at different entry speeds depending on the type of incident we were responding to. The fastest is Hostage Rescue Technique or HRT speed where the suspect is executing hostages and we would need to get into the residence and to where they were to save lives. The next speed down was warrant speed, it was a little bit slower than HRT but it was still fast enough to catch the suspect by surprise. The two factors that were considered crucial during any warrant entry were Speed and Violence of Action, we wanted to be in the residence and standing in their cornflakes before they even had a chance to put their spoon down.

So as this was warrant speed, as soon as the door swung open I was expecting to see Shank run into my field of view and I would

follow his lead, but nothing happened, he didn't move. I even stopped looking at the potential threat from inside the residence to look at Shank to see why he wasn't running into the doorway and as I looked towards him I was shot in my upper right leg, I did not know where the bullet came from and assumed that Domino had fired from inside the residence and the bullet had gone through the stucco wall prior to entering my leg. The gunshot did not seem loud at all and there wasn't a great deal of pain but I could see that the wound was very serious. I remember thinking "dammit, not again" as I looked down as this was my first day back to work after being shot by Shank. The bullet entered my outer right thigh on the outer seam of my pants approximately five inches below my belt and exited on the inner seam approximately four inches down from the crease of my leg. I was positioned in a kneeling position with my right knee on the ground and my left leg flexed. I was facing the doorway and had my right outer thigh parallel with the side of the residence. As I was looking down I saw that I was bleeding very heavily from my upper inside thigh area and believed the round had struck my femoral artery as I could see my bright red blood spurting from the wound. I realized that this was a mortal injury if I was not lucky enough to get immediate first aid and no-one on the team was trained to deal with this type of injury. During my tenure on the streets of San Bernardino I had seen quite a few people die from an injury just like mine. I remembered a butcher in my home town had died from a slice to his femoral artery when he was chopping meat with a cleaver and had missed the counter and had sliced into his inner upper thigh and severed the artery. He had fallen down behind the counter and had not even been able to summon help and was discovered dead by a customer who saw him laying behind the counter in a pool of blood.

I ran from the entrance and got down behind some concrete steps about twenty feet from the doorway to gain some cover from the front of the house. As I ran across and laid there I could hear several more shots being fired and I believed the team was in a gunfight with Domino. I also fired several rounds into the open doorway to hopefully keep Domino down as I was in a vulnerable position and

didn't want to get shot again. I tried to put pressure on the wound with my hands but couldn't because they kept slipping in the blood. I noticed that the bullet had exited through one of the inner leg straps for my drop holster and I had made a large pool of blood on the ground. As I looked down my leg things started to slow down for me. Officer Beach and sergeant Lemos then came to my aid and I learned from sergeant Lemos that he had shot me. I still felt that this was a fatal wound and told officer Beach to tell my kids and my fiancée Reyna that I loved them. I felt myself begin to lose consciousness and believe I blacked out. I remember being dragged out from the front yard and being dropped on the ground striking the back of my head on the concrete which revived me a little bit.

It wasn't a bad feeling to slip away from consciousness. I didn't feel cold or any pain and actually felt very peaceful with the entire situation. I can only liken it to the feeling that occurs just at the precise moment that you fall asleep. I have watched enough movies and believed that you felt uncontrollably cold but there wasn't any sensation of pain or discomfort at all. I think I realized that my life was in the hands of everyone around me and if I was to survive I needed to try to stop myself from going into shock as I needed to keep my blood pressure as low as possible. I remembered how I had felt two weeks before and tried to stop myself from reacting in the same way.

I was dragged out of the front yard and put in the rear of lieutenant Poyzer's unmarked vehicle. He was driving and detective Lowes was in the front passenger seat. Sergeant Lemos had got into the back seat with me and was trying to keep hand pressure on my leg. I remember laying in the back of the car looking out the window at some leaves on a tree. They were silhouetted against the sky and as I looked they began to lose their distinctiveness as the areas of sky started to become as black as the leaves.

I could hear a loud argument between lieutenant Poyzer and sergeant Lemos on what they should do with me. Lieutenant Poyzer wanted to drive me to County Hospital, a twenty to twenty five minute journey and sergeant Lemos wanted to find some paramedics. Detective Lowes attempted to keep me conscious my

encouraging me to count to ten out loud. I was so weak that I could barely talk above a whisper and I could not move my limbs at all. I felt my vision start to fade again as we were moving and I began to realize that I was dying and if I didn't get professional help soon I would not make it. I was powerless to influence lieutenant Poyzer or sergeant Lemos as I could not talk above a whisper and my throat was very dry. The urge to give in and not fight the unconsciousness was almost overwhelming however detective Lowes continued to try to keep me conscious. I lost consciousness again and awoke on a gurney at the Devore California Department of Forestry (CDF) fire station.

Luckily the most direct route to the 215 freeway passed the CDF fire station so I believe lieutenant Poyzer had no choice but to pull over. If the CDF fire station was in a different location I'm sure lieutenant Poyzer would have tried to drive me to the hospital and I would have expired en-route. The CDF paramedics started to get some intravenous fluids into me and prepared a pressure bandage to my leg. My luck continued to hold out as the Sheriff's department Paramedic air-ambulance had been on a training exercise in the area and they were able to land next to the CDF fire station. I was airlifted to the San Bernardino County Hospital for treatment and emergency surgery. The rest of the team that remained at the residence managed to take Domino into custody without any further incident and no one else was injured.

While I was at the hospital the press found out about the incident and began to arrive at the hospital for any news. My fiancée was contacted by two detectives and bought to the hospital and was allowed to wait in a room they called the quiet room. (It's the room that family members are allowed to wait when they find out a loved one has or has not survived their injuries). While she was in the room she tried to leave but was stopped by lieutenant Farmer who would not let her leave the room for any purpose. He held her hostage in the room for six hours as he was afraid of what she might say to the press. She could not even find out what my status was or whether I was alive or dead and lieutenant Farmer wasn't saying anything, including who had shot me. My parents, who were my next of kin at

that time excluding my children, found out that I had been shot when they watched the 4 o'clock news. The Department could not even give them a courtesy call to inform them of my situation. When they did find out and called they spoke with lieutenant Farmer who told them that my injuries were superficial and that they shouldn't bother themselves with driving the seventy or so miles to the hospital until the next day. Lieutenant Farmer also cautioned them not to speak with any members of the press as they weren't sure what had happened at the scene.

I arrived at the hospital and was taken to the emergency room, they immediately evaluated that I needed emergency surgery and I was rushed to the operating room where the head of vascular surgery, Dr. Ganadev was available to conduct the operation. My femoral artery had been struck by the bullet and it had not severed it but had hit the artery and pierced it opening the artery up. This was worse than if it had just severed it because the artery then would have pulled up into my upper thigh and the muscles would have restricted the blood flow. I needed several units of whole blood to save my life during the surgery. Dr. Ganadev repaired my artery but explained that I might develop compartment syndrome in my lower leg and I shouldn't be surprised if when I awoke from surgery my lower leg has had a lot of necessary slices in order to save my leg.

Compartment syndrome occurs when the blood flow is interrupted to a muscle and it is re-established. When it is re-established the blood is able to flow into the muscle but cannot flow out, pressure builds up in the muscle against the muscle's sheath and it kills the muscle. Over the next two days I was in excruciating pain and my vital sign's started to go down, they needed to give me another blood transfusion to keep me alive until Dr. Ganadev did his round's the next day. He walked into my room and took one look at my leg and I was whisked off to the operating room again. I had developed compartment syndrome in my anterior compartment and was rushed to surgery for an operation called a faciotomy, this is where the facia of the muscle is opened up and the pressure on the muscle is relieved. So not only did I have a large scar on my inner thigh I was now open also from my knee to my ankle. This wound

was left open for about a week until the doctor's decided that if I was to have any muscle action left then they needed to remove the dead tissue and sew my leg back together. When they evaluated the viability of my muscle in the next surgery they found that most of it had died and subsequently removed it. My lower leg had swollen up to such a degree that they could not close the wound and had to use a skin-graft patch from my outer thigh. That was my last operation and I was released two weeks later.

When I was in hospital I was visited by most of the officers and detectives during that time. They were very supportive and brought in as many movies as I could watch, officer Sansone also hooked up a play-station for me so I could play video games. When the police administration visited me the visits were very strained as the shooting was being looked at under a very different light, I never really had anything in common with them and didn't have much to say however the incident had changed from an "accidental discharge" to "how could you get in the way of sergeant Lemos' accidental discharge and ruin his career." It was obvious that they had a plan prior to the search warrant that had horribly gone wrong when I had ended up in the hospital. I believe that during the plan sergeant Lemos was supposed to fire off a round but it was not meant to hit anyone. There was a very palpable feeling that the plan did not work out because Domino was not hit and was still alive and that I was going to recover. The event was ignored by the City government, the Mayor, Judith Valles or any of her representatives never visited me in the hospital or even sent a card.

The average person has no idea of how the Police administration musters itself to deal with any fallout that comes from an incident like this. The administration meets with the City attorneys office and they talk civil liability. Their only concern is to stop or limit the amount of damages that they would be liable for in a law suit with no regard for people or careers, it's a very cold calculating group that can meet and with no concern for anyone who may be affected, and try to limit how much money the City could pay out. They met in this case and a few year's later when I exposed officer VanRossum as a rapist.

Douglas Domino filed a Federal Lawsuit (appendix) claiming that the SBPD conspired to kill him, he was represented by Attorney Gary Smith in his action against the City and all of the officers that had been there. When anyone sues the Department Federally, the Department is very smart. They say they will indemnify you (pay any fines or penalties in court) if you sign paperwork to say that you did nothing wrong. All the officers sign it because then the high dollar attorney is retained by the City to represent all of them collectively. If you don't sign it they remind you of officers that have had to sell their house to pay their attorney fees. So the City gets all the officers saying they did nothing wrong and the high priced attorney prepares the documents for each officer to sign saying they never did any of the actions that they are accused of. I signed mine without reservation because I knew I hadn't done anything wrong. I don't know how the others signed their forms knowing that they had done exactly that which they were accused of and could still look at themselves in the mirror.

I was hoping that Domino's attorney would start to take depositions from the officers because I wanted to tell the truth about the whole event but it didn't happen. No one was deposed and the truth never came out, at least until now.

I believe the City eventually settled the suit in 2002 for an undisclosed amount, I heard rumors that it was a six figure sum, certainly more than they would have paid to defend themselves.

At the time I believed that the whole incident was an accident but the aberrations that occurred that day and subsequent events now lead me to believe that Domino's accusation in his suit were right. I have listed the aberrations below and will let you make up your own mind about what happened:

> Why was sergeant Lemos briefed separately from the rest of us? What was said to him by the administration prior to the search warrant briefing by lieutenant Kinsman and lieutenant Poyzer? Comments were made by detective Dillon and lieutenant Poyzer that we need to go up there and kill the bastard, why say something as inflammatory

as that and why would lieutenant Poyzer say that we were cowards because we didn't want to go against our training? We as a SWAT team were very respectful of any potential adversaries in any of the warrants we had conducted previously, we had always conducted ourselves very professionally and I have never heard anyone try to incite us to act before.

Why was lieutenant Farmer not able to respond to the incident? A warrant takes time to secure and surely a week or two notice of a planned event is enough of a warning. He was the only currently trained SWAT Commander in the Department and we should not have been used without him or an adequately trained replacement being present. Someone who is not trained such as lieutenant Poyzer or lieutenant Kinsman would have no idea of our capabilities or our deployment strategies and it would be like trying to direct a SWAT team in the dark. They did not attend any of our training and had no real idea about how we conducted business. Was lieutenant Farmer absent from the call because he would not allow the conspiracy to take place or because he knew what was going to occur and chose not to be a part of it. This aberration becomes all the more serious when you consider the Para-military organizational structure of a Police Department. A sergeant would not be able to dis-regard an order if it was given by a superior lieutenant without facing insubordination charges. So sergeant Lemos had to obey all the orders of the lieutenants no matter what.

For example, consider the usual rules of engagement for police officers, generally there has to be a threat to life of the officer or someone else. A sniper can be in a position to observe a hostage taker through his rifle scope but may not know all the intelligence that is being gathered. When he is given the "green light" by the command

post he may have to shoot someone that as far as he can see at that moment is not a threat to him or any of the hostages but he has to rely on the command post having gathered enough intelligence to realize the threat. The sniper can only hope that he is not being used by the command staff as an implement of murder. In the Domino incident we were all relying on the command of lieutenant Poyzer, someone who was not currently SWAT trained.

- Why was the incident not tape recorded at all? Every call that is dispatched and every radio channel can be recorded at the Police Station but lieutenant Poyzer and lieutenant Kinsman chose not to have any physical recording made of the event. The recording could have been as rudimentary as having a portable tape recorder put next to a walkie-talkie. They chose not to have the command post established anywhere and dispatch was not advised to record the channel we were using. Even the phone calls into Domino's residence were not recorded. Why?
- Why was the incident not deferred to the S.B.S.O.? That is part of the mutual agreement all agencies enter into with each other. Our command staff argued to take the call with S.B.S.O. on scene, they wanted to take the call and when all things were considered we should have deferred everything to them from the beginning. For some reason one of our Department's forensic technicians was in Devore prior to the service of the warrant and he was taking pictures of the team and our surroundings. The pictures clearly show the San Bernardino County Sheriffs Department deputies and supervisors in Devore prior to the execution of the warrant.
- The plan was to surround and call out, this was a reasonable tactic considering the circumstances. This tactic is used when the surrounding team is reasonably

sure that a suspect is inside a residence and is refusing to come out. The SWAT team can sit out there all day and wait, in fact many SWAT teams do not do anything else, their motto is that they "wait them to death" meaning that through boredom and frustration the suspect gives up, it might be much later but that is often the safest way.

- The decision was made to not adhere to the plan and serve the warrant by the administration, sergeant Lemos was not surprised at this development and even seemed to be expecting it. Why go up to the front door? That would have to be the most dangerous position for all of us considering we were told that Domino was using methamphetamine, was irrational and armed. After all we knew that he had at least a handgun at the original incident. The diversionary device had already been deployed and no-one could have slept through that bang so Domino with his prior experience with the SWAT team would have known what it was and who would have set it off. He would have known that the SWAT team was close to his residence and had possibly surrounded it.
- In SWAT operations the team needs to make entry at the least expected location. Every location is usually identified by a primary breach point and any number of secondary breach points that would hopefully fool a suspect into expecting the team to come in through the most obvious when we would like to come in through the most unexpected area. Diversionary devices are usually deployed at a location on the opposite side of where the team would make entry into the residence with the hope of distracting the suspects attention to that area. With Domino's training he would have known this to such an extent it couldn't have been any clearer to him if we had announced our intention on a bull-horn that we were coming through the front door.

- Why was the order given to "SERVE THE WARRANT"? With sergeant Lemos' training he had a number of options open to him at this juncture. Why did he decide that go up to the front door was his only choice? This was not part of the plan that was discussed with the team prior to us assuming our positions. Obviously if we had stopped at that point we would not be in a position to confront Domino. Maybe that was the plan after all. The fact that Lemos made entry assignments at the front door indicated that we as a team had not envisaged that we were going to serve the warrant and actually have to go inside his residence.
- Who gave the order to serve the warrant? Whoever said it did not identify themselves and sergeant Lemos reacted as though he expected the order. During the investigation no-one claimed to have said it even though all of us heard it and said so during our interviews. No-one was held accountable.
- Sergeant Lemos fired the first round, was it intentional or accidental? He was not disciplined in any way for shooting and almost killing me. The path of the bullet was not examined in any manner to establish a pathway. The bullet entered in a slightly downward trajectory and at approximately 90° from my front. I was facing the door and was parallel to the wall of the residence so sergeant Lemos would have had to maneuver his weapon between me and the wall and point it at me and pull the trigger. This is not a normal position but it would be the only position that would fool anyone on scene that the round had come from inside the house.
- The Sheriffs Department handled the investigation into the shooting and basically compiled the facts without

asking probing questions. Lieutenant Poyzer, lieutenant Kinsman and sergeant Blum were not interviewed so they were not asked if they had heard or said "serve the warrant" and it was not volunteered. Several of the officers that were on scene heard the command and a few remembered it in their interview with the Sheriff's Department detectives. Curiously and ironically sergeant Lemos did not say he heard the command even though I was kneeling next to him and we discussed it at the time.

happened the San Bernardino Police What to Departments own investigation of the event? In all shootings the Department usually conducts their own "Shoot Review Board." The Boards responsibility is to investigate all aspects of the shooting and look into tactical alternatives that could have been utilized to stop or to bring about a different result. You would think that there would have been numerous questions raised at all the variations from standard procedures, but there wasn't. The incident was not investigated internally and if any probing questions were asked the results were not made public and limited to the administration and the City Attorney's office to prevent the potential law suits.

I now believe that the SWAT team was used by the administration to try to kill Domino and it was designed to look like a set of unfortunate accidents that came together. As I was the only other victim in this case I believe I was supposed to have died. I didn't and the Department was not sure of how I felt about the incident. As the law suit progressed and time passed I could see the administration became more and more concerned about what I would say in my deposition. I did not make my true beliefs a secret around the Department and gave my opinion to anyone who would listen. Interestingly my rendering of the event did not raise any questions at the Department and they seemed to accept that they was

a lot more to this incident that I didn't know, which was fine by them. They just wanted to let sleeping dogs alone.

In December 1998 I was invited to the San Bernardino Police Officers Association awards dinner which was an annual event where officers were formally recognized by the Police Officers Association for heroic or memorable acts that had occurred in the previous year. I was invited over the phone as a special guest because I was recovering at home and was still in a lot of pain in my right leg, during my conversation with the Association President Sergeant Jeff Breiten he hinted that I would be formally recognized for being shot twice in the line of duty and surviving. My fiancée and I got ready with the high expectations of receiving some kind of recognition by the department for what I had been through. We arrived and as we walked in there was two posters with pictures of the honorees and their awards that they would be receiving along with programs depicting the evenings events. My picture wasn't on the poster and my name wasn't on the program. My fiancée at the time, Reyna (soon to be my wife) commented to me that my picture wasn't among the honorees, I replied that I think my award was a special award that will probably be mentioned later. We sat and ate our meals and almost everyone in the room came up to me and shook my hand and offered words of encouragement. Everyone except Chief Lee Dean, he was sitting about two tables away and when he arrived someone pointed me out to him as I remember seeing him look at me without acknowledging that I was there.

After the meal Reyna and I went to get our picture taken in an adjacent room and on the way back Chief Dean was walking towards us in the hallway. He saw me hobbling towards him and he actually stopped as though he was going to turn around but must have reconsidered his movement. He continued walking towards us but looked straight past us and had almost passed us when I called out to him. He shook my hand and said hello to Reyna and continued on his way. I Looked at Reyna to see if she thought that his behavior was strange and before I could say anything she said "what was all that about, he did not want to acknowledge you at all".

The awards started and went on for about forty five minutes with description's of heroic acts that were noteworthy and different medals were given out. Then the President of the Association said that there was a special award that needed to be mentioned for one particular brave officer, I started to sit a little straighter in my chair. He said the events would best be described by someone who had been there and they called up an officer to the stage. I saw who they called up and thought to myself, wait a minute he wasn't at either scene where I had been shot. The officer got up on the stage and described a different incident where another officer had got stuck on a fence and needed to be recognized for not calling out when he had been stuck. Then the awards ceremony was over and the comedian came on to entertain us. I had to fight back the tears of disappointment and I needed to get out of the hall, how could they do this to me, lead me to believe that I was going to be formally recognized by the department that I loved and they had not even mention my name. Reyna was very angry and I had to stop her from going over to the Chief's table because she wanted to give him a piece of her mind. We left the dinner early without saying our goodbyes.

The next few months I worked very hard to regain my fitness even though I had what is commonly known as "foot drop" on my right side which was irreversible damage. Technically the surgeons had removed my dorsa-flexors so I was not able to raise my foot. When I wore high boots or an ankle brace I was able to walk and perform normally however I did not know if the Department would let me return to full duty. I had to have a skin graft over my lower leg which had bound the skin to my bone. It was very painful. I also had a lot of residual pain in my knee and ankle. My Doctor explained that some of the pain could be attributed to nerve damage or to the fact that knee and ankle cartilage has a very minor blood supply. When the blood was lost to my leg both cartilages started to die. Since that day I have not been without pain in my leg.

I returned to work in March, 1999 with a 37% disability rating. I was not recognized formally by the Department and never received any type of award or commendation for being shot twice and

surviving my injuries. Lieutenant Farmer said he had read the awards policy and had determined that the only award that may have been applicable was the purple heart but upon further reading of the medal policy the injury would have had to have come from an adversaries weapon. I replied that the officers' who had shot me felt like adversaries to me, I didn't realize that I was shot in a friendly manner and that as far as I could tell friendly guy bullets hurt just the same as bad guy bullets. He had nothing to say to me. All I wanted was to be formally recognized, maybe with some kind of lower award or even a mention of the incidents in my personnel file, just something that said what had happened and my dedication to the Police Department. The Department was more concerned with forgetting about the two incidents as fast as possible even at my expense. It was very apparent that the department cared more about not offending sergeant Lemos and officer Shank than it did about offending me by ignoring what I had been through.

In reality the Department was living up to it's standards. The less formal documentation of the incidents would mean the less paperwork that would need to be "lost" if and when the lawsuits started. I did not know the full "story" of what had happened and what I had suspected and feared was true until Domino settled his lawsuit. Only then was I able to talk with his attorney.

Sergeant Lemos continued on the SWAT team for a few more months until he had another "accidental discharge" at the range, he was practicing an entry on a doorway with officers Shank and Koerner when he shot his AR -15 .223 rifle between them. As it was an official training session with an official record officer Koerner had to put that sergeant Lemos had endangered their lives during the training session. This time he forgot to put his rifle on safe and inadvertently squeezed the trigger almost hitting officer Shank. At least this time his rifle was pointing at the ground.

The new sergeant that took over the SWAT team was sergeant Harps, He also had an accidental discharge at the range, again officer Koerner and sergeant Harps were present when it happened.

# <u>Chapter 7 - Other SWAT Accidents and Incidents</u>

I have included below several incidents that have occurred over the years when SWAT call outs go wrong just to illustrate that my two examples are not all that strange but represent a larger problem that exists.

Sept. 13<sup>th</sup> 2000 in Modesto, California, a SWAT team burst into the home of 11-year-old Alberto Sepulveda to serve a drug trafficking warrant on his father. While rounding up his family, officers ordered Alberto to lie on the floor, face down, which the boy did. Seconds later, an officer accidentally fired a shotgun that was trained on Alberto's back, killing him.

On Oct. 14, 1999, at 1:30 a.m. in Albuquerque, New Mexico, Larry Harper, despondent and unemployed, called his brother and said he was going to commit suicide. The brother alerted police, and nine SWAT team members were dispatched to a picnic area, where Harper was sitting with a gun. After chasing Harper into a stand of juniper bushes, a sniper shot him dead after SWAT officers denied arriving family members the chance to talk to him. The city later settled a lawsuit for \$200,000. The City dismantled the SWAT team after the incident.

On Sept. 29, 1999, Denver SWAT officers killed 45-year-old Mexican immigrant Ismael Mena in what turned out to be a drug raid on the wrong house. The City paid the Mena family \$400,000 to avoid a wrongful death lawsuit.

On Aug. 9, 1999, 20 SWAT officers from the El Monte, California, Police Department raided the home of 64-year-old Mario Paz. While his wife, Maria, screamed, "My husband is sick! He's an old man!" a policeman shot Paz twice in the back. The five remaining members of his family living at the house later said they thought they were being robbed.

On Feb. 13, 1999, at 1:25 a.m. in Osawatomie, Kansas, police set off a flash-bang grenade before bursting into the home of Willie Heard, looking for cocaine. The explosion startled Heard's 16-year-old daughter, who screamed. Heard, in his bedroom and thinking his

daughter was in danger, grabbed a .22 bolt-action rifle. When police smashed into the bedroom they saw Heard with the rifle and shot him dead. The entire incident lasted 11 seconds.

On July 12, 1998, acting on a single tip that Pedro Oregon Navarro was dealing drugs, a team of Houston officers charged into the apartment of the 22-year-old, who picked up a handgun. The officers unleashed some thirty shots, hitting Navarro twelve times, nine times in the back. No drugs were found.

On July 11, 1997, 64-year-old farm worker Ramon Gallardo of Dinuba, California, was shot thirteen to fifteen times when police raided his home looking for a gun allegedly used in a murder. No gun was found, and a federal jury later awarded Gallardo's family \$6 million. The SWAT team was disbanded after the incident.

On Dec. 16, 1996, Ralph Garrison of Albuquerque was awakened by the sounds of windows being smashed in at the house next door, which he owned. He dialed 911 and urged a dispatcher to send police because men were destroying his rental house. Eventually he said, "I've got my gun and I'm going to shoot the son of a bitch," and went to his back doorway with a .22 pistol. The vandals, it turned out, were members of the Secret Service, the Customs Service and local police, including two SWAT teams, looking for counterfeit driver's licenses, birth certificates and checks. The 911 tape ends with the sound of gunfire as police killed Garrison with AR-15 military assault rifles. Garrison's dog was also killed.

On March 13, 1996, in Oxnard, California, the deployment of a flash-bang grenade during a drug raid created such confusion that SWAT team commander sergeant Daniel Christian killed Officer James Jensen Jr. with three shotgun blasts to his side. The city later settled a lawsuit filed by Jensen's family for \$3.5 million.

On Oct. 12, 1995, at 2:30 a.m., Stephen Medford Shively, a college student in Topeka, Kansas, was alarmed when several men battered down his door. He called 911, then grabbed a gun and fired through the door, killing an officer. Officers returned fire from the other side of the door, wounding Shively. A Kansas jury acquitted him of murder charges, saying that he acted in self-defense, and an appeals

court concluded that officers used misleading information to obtain a warrant.

On April 15, 1995, a Dodge County team raided the trailer of Scott Bryant, a 29-year-old technical college student who was living in Beaver Dam with his 8-year-old son. As the first officer to smash through the door was placing Bryant on a couch to be handcuffed, Detective Robert Neuman rushed in and delivered a fatal bullet to Bryant's chest. A small amount of marijuana was found in the trailer. While no charges were ever filed against the detective, the county paid \$950,000 to settle a federal civil rights lawsuit filed by Bryant's family.

On Aug. 9, 1994, in Riverside County, California, 87-year-old Donald Harrison and his 77-year-old wife, Elsie, were asleep in their mobile home when deputies smashed in looking for a drug lab. Donald died of a heart attack four days later. It turned out that police had the wrong place, despite a detailed description of the suspect home, which was a different color than the Harrisons' trailer.

The March 13<sup>th</sup> 1996 Oxnard incident is worth looking at in depth and the 9<sup>th</sup> Circuit Court of Appeals published the following public decision: It is worth reading through the legalese because the Court found that the City was responsible for Jensen's death because he had a constitutional right even as a police officer to be free from unreasonable search and seizure and that right was violated when he was shot by his supervisor.

# U.S. 9th Circuit Court of Appeals JENSEN v CITY OF OXNARD 9755936

JENNIFER JENSEN, individually and as Administrator of the Estate of

JAMES REX JENSEN, JR., deceased and LINDSEY ELIZABETH JENSEN and KATELYN MELISA JENSEN, minors by and through JENNIFER JENSEN, guardian ad Litem, Plaintiff-Appellee, v.

No. 97-55936 CITY OF OXNARD;

CHIEF HAROLD D.C. No. HURTT, individually and as Chief CV-97-01096-SVW of Police;

STAN MEYERS, individually and as Assistant Chief of Police; TOM CADY, individually and as Assistant Chief of Police; JOHN CROMBACH, individually and as Commander; BILL LEWIS, individually and as Sergeant; DANIEL CHRISTIAN, individually and as Sergeant; and DOES 1 through 100, inclusive, Defendants-Appellants.

### **OPINION**

Appeal from the United States District Court for the Central District of California Stephen V. Wilson, District Judge, Presiding

Argued and Submitted February 5, 1998—Pasadena, California

Filed May 28, 1998 Before: J. Clifford Wallace, Stephen S. Trott and Michael Daly Hawkins, Circuit Judges.

Opinion by Judge Hawkins; Concurrence by Judge Wallace

# **COUNSEL**

Jeffrey Held and Alan E. Wisotsky, Law Offices of Alan E. Wisotsky, Oxnard, California, for the defendants-appellants.

Edward Steinbrecher, Steinbrecher and Associates, Encino, California, for the plaintiff-appellee.

### **OPINION**

# HAWKINS, Circuit Judge:

Officer James Jensen was shot and killed by a fellow officer during a SWAT Unit raid to serve a search warrant on an unoccupied residence. His widow, Jennifer Jensen, brought a 42 U.S.C. § 1983 action against the City of Oxnard, its police chief and several individual officers. The defendants moved to dismiss for failure to state a claim under Rule 12(b)(6). The district court denied this motion. We affirm.

# FACTS AND PROCEDURAL HISTORY

In the early morning hours of March 13, 1996, the Special Weapons and Tactics ("SWAT") team of the Oxnard Police Department stormed a two-story townhouse to serve a search warrant on what turned out to be an unoccupied residence. As part of the operation, Officer James Jensen ("Officer Jensen")threw a "flash-bang" grenade from a staircase onto a second floor landing. The grenade exploded with a blast of light, emitting smoke into the surrounding rooms. Officer Jensen and several other SWAT team members, including Sergeant Daniel Christian ("Sergeant Christian"), went up the staircase to the second floor. Shortly thereafter, Sergeant Christian fired three rounds from his 12-gauge shotgun, killing Officer Jensen.

Although the parties dispute the facts as to exactly how Officer Jensen was killed (e.g., whether he was shot in the back; whether he was entering the room directly in front of Sergeant Christian; the degree to which vision was obscured by the grenade smoke), the parties agree that, "in the turmoil of events, [Sergeant] Christian mistook [Officer] Jensen for a gun-wielding occupant of the premises and shot him to death."

Jennifer Jensen ("Jensen"), widow of Officer Jensen, filed a complaint against the City of Oxnard, the Chief of Police, and various individual officers, including Sergeant Christian (collectively "Oxnard" or the "City"). In the complaint, Jensen alleges the intentional and reckless acts of Sergeant Christian, which were a result of Oxnard's "deliberate indifference" regarding the training and control of those officers who conducted the March 13<sup>th</sup> raid, resulted in a violation of her husband's civil rights under 42 U.S.C. § 1983.

Oxnard moved to dismiss under Federal Rule Civil Procedure 12(b)(6), arguing that Jensen failed to state a cause of action upon which relief could be granted. Oxnard argued, as it does in this appeal, that this action should be dismissed because:

- (1)Jensen cannot sustain a § 1983 claim without alleging that specific and well-founded constitutional rights have been violated; and
- (2) the individual defendants are entitled to qualified immunity. The district court denied Oxnard's motion.

# **JURISDICTION**

We have interlocutory appellate jurisdiction to review the denial of a 12(b)(6) motion to dismiss as long as that review does not require the resolution of any controlling facts. See Behrens v. Pelletier, 516 U.S. 299, 305-07, 116 S. Ct. 834, 838-39 (1996). We can resolve this case simply by answering questions of law.

#### STANDARD OF REVIEW

A district court's decision of qualified immunity in a 42 U.S.C. § 1983 action is reviewed de novo. See Elder v. Holloway, 510 U.S. 510, 516 (1994).

While a district court's denial of a 12(b)(6) motion generally is not a reviewable final order, when the question of immunity is raised "we use the collateral order doctrine to exercise jurisdiction" and our review of the district court's denial is de novo. Figueroa v. United States, 7 F.3d 1405, 1408 (9th Cir. 1993). We must assume the truth of all material allegations in the complaint and construe them in the light most favorable to Jensen. See NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). A dismissal is warranted if it appears beyond doubt that Jensen can prove no set of facts in support of her claims that would entitle her relief. See Figueroa, 7 F.3d at 1409.

### **ANALYSIS**

- I. Friendly Fire Seizure
- A. Violation of a Constitutional Right
- [1] "To sustain an action under section 1983, a plaintiff must show:
  - (1) that the conduct complained of was committed by a person acting under color of state law; and
  - (2) that the conduct deprived the plaintiff of a federal constitutional or statutory right." Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir. 1989).
- [2] Moreover, in "seeking to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate a plaintiff's rights [one] must demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences." Board of the County Commissioners v. Brown, 117 S. Ct. 1382, 1390 (1997).
- [3] This complaint adequately states a cause of action. Specifically, it alleges that Oxnard violated Officer Jensen's Fourth and Fourteenth Amendment rights in two respects:

- 1. Sergeant Christian used excessive and unreasonable deadly force; and
- 2. the City of Oxnard and various officials in the Oxnard Police Department acted with deliberate indifference to the maintenance, training, and control of its SWAT teams, and that indifference was a proximate cause in Sergeant Christian's violation of Officer Jensen's constitutional rights. In other words, Jensen alleges that Sergeant Christian was "highly likely to inflict the particular injury suffered by" Officer Jensen as a result of Oxnard's deliberate indifference towards the staffing and training of its SWAT teams. Brown, 117 S. Ct. at 1392.
- [4] The allegation that Sergeant Christian, by intentionally shooting at a figure he mistook to be an armed criminal, engaged in a Fourth Amendment seizure is supported in the law. See Brower v. County of Inyo, 489 U.S. 593, 596-97 (1989) (a seizure is a "governmental termination of freedom of movement through means intentionally applied" and a "seizure occurs even when an unintended person or thing is the object of the detention or taking"); Tennessee v. Garner, 471 U.S. 1, 7 (1985) ("There can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.").
- [5] Somewhat less clearly, the complaint alleges that Oxnard, through its training and control of its SWAT unit, was the "moving force" behind Sergeant Christian's actions. According to the complaint, the City of Oxnard:
  - (1) failed adequately to train or equip the members of the SWAT team;
  - (2) failed to control those members of the SWAT team who have a known propensity for violence; and
  - (3) failed to investigate SWAT team members for potential substance abuse and/or mental problems. Moreover, the complaint specifically alleges that the police chief, assistant police chief, and police commander assigned

Sergeant Christian to the SWAT team "knowing that he was using mind-altering drugs, including Phenobarbital and other substances." These allegations are sufficient to allege a plausible "link between the policy-maker's inadequate decision and the particular injury alleged." Brown, 117 S. Ct. at 1391.

# B. Right to a Safe Workplace

Oxnard contends that these allegations do not suffice to state a potential constitutional violation. Without denying that Sergeant Christian's shooting of Officer Jensen constitutes a seizure under the Fourth Amendment, Oxnard attempts to portray this case as a "safe workplace" case. Oxnard cites a line of cases, discussed below, in which the Supreme Court and other lower courts have held that there is no constitutional right to a safe working environment. Essentially, public employees cannot bring § 1983 claims against their employers for injuries suffered on the job on the theory that the government "violated a federal constitutional obligation to provide its employees with certain minimal levels of safety and security." Collins v. City of Harker Heights, 503 U.S. 115, 127 (1992).

[6] We recognize that the Constitution does not guarantee a right to a safe workplace. See id. at 126-28. In Collins, a city sanitation department worker died while trying to clear a sewer line. His widow brought a § 1983 action against the city on the theory that her husband "had a constitutional right to be free from unreasonable risks of harm to his body, mind and emotions and had a constitutional right to be protected from the City of Harker Heights' custom and policy of deliberate indifference toward the safety of its employees." Id. at 117. She alleged that the city violated that right by following a custom and policy of inadequate training. Affirming the dismissal of this action, the Supreme Court held that the Constitution contains no right to a safe working environment. See id. at 126. Accordingly, the city's alleged failure to train could not amount to a constitutional violation.

[7] Employing Collins, Oxnard argues that Officer Jensen could not have had any of his rights violated because he was injured while performing his duties as a police officer. We reject this argument and Oxnard's attempt to turn this into a safe workplace case. Although this case is similar to the safe workplace cases in that they both concern individuals who "voluntarily accepted ... an offer of employment," id. at 128, this case is different in one significant way — the nature of the injury alleged.

[8] The other cases cited by Oxnard involve a variety of workplace injuries, including attacks by third parties against public employees, see Rutherford v. City of Newport News, 919 F. Supp. 885 (E.D. Va. 1996), affirmed, 107 F.3d 867 (4th Cir. 1997); Hartman v. Bachert, 880 F. Supp. 342 (E.D. Pa. 1995), an alleged government failure to protect its employee, see Skinner v. City of Miami, 62 F.3d 344 (11th Cir. 1995), and attacks by prisoners on guards. See Walker v. Rowe, 791 F.2d 507 (7th Cir. 1986).

[9] None of these cases, however, involve the use of excessive force by a government agent against a government agent. Oxnard argues that this is a "distinction without a difference." We conclude that the difference is quite significant. While the safe workplace cases concern the failure of the state adequately to train, prepare, or protect government employees from non-state actors, this case involves the allegedly intentional or reckless acts of a government employee directed against another government employee. {1}

Oxnard suggests that this case is distinguishable from a case in which an innocent civilian or even a criminal suspect is caught in the line of fire. In either of those situations, Oxnard concedes, the injured party would be able to allege a § 1983 action. The only difference here is the decedent was a police officer injured in the line of duty. Officer Jensen volunteered for the dangerous police work associated with SWAT teams. Thus, we agree with Oxnard, Jensen cannot argue that her husband is like those individuals to whom the State owes a duty to care because they have been deprived of their liberty. See,

e.g., Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982) (persons in mental institutions); Turner v. Safley, 482 U.S. 78, 94-99 (1987) (convicted felons); City of Revere v. Massachusetts Gen. Hosp.,463 U.S. 239, 244-45 (1983) (persons under arrest).

[10] Nonetheless, Officer Jensen did not forfeit all constitutional rights when he became a member of the police force. [2] See Jackson v. Gates, 975 F.2d 648 (9th Cir. 1992) (drug testing of police officers subject to reasonableness test of the Fourth Amendment); Graham v. Davis, 880 F.2d 1414, 1418-19 (D.C. Cir. 1989) (allowing officer to bring excessive force § 1983 action against other officers based on altercation with those officers in the process of an arrest). Rather, like all individual police officers, Officer Jensen maintained some constitutional rights (including Fourth Amendment rights) which, if violated by a state actor, can result in liability under § 1983. In particular, he retained the right at issue here — the Fourth Amendment right to be free from unreasonable seizure by fellow officers while performing police work.

Accordingly, we hold that Jensen has properly stated a claim upon which relief can be granted.{3}

### II. Qualified Immunity

[11] All of the individual defendants claim that they are entitled to qualified immunity. Government officials are given qualified immunity from civil liability under § 1983 "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In analyzing a qualified immunity defense, we must determine:

- (1) what right has been violated;
- (2) whether that right was so "clearly established" at the time of the incident that a reasonable officer would have been aware of its constitutionality; and
- (3) whether a reasonable public officer could have believed that the alleged conduct was lawful. See Gabbert v.

Conn, 131 F.3d 793, 799 (9th Cir. 1997); Newell v. Sauser, 79 F.3d 115, 117 (9th Cir. 1996).

- [12] As stated above, the complaint alleges the violation of a specific right: the Fourth Amendment right to be free from an unreasonable seizure. Thus, we must decide whether that right was clearly established when Sergeant Christian killed Officer Jensen.
- [13] A particular right is "clearly established" if "the contours of that right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). To show that the right in question here was clearly established, Jensen need not establish that Oxnard's "behavior had been previously declared unconstitutional, only that the unlawfulness was apparent in light of preexisting law." Blueford v. Prunty, 108 F.3d 251, 254 (9th Cir. 1997). Indeed, "precedent directly on point is not necessary to demonstrate a clearly established right." Id. at 255. Rather, "if the only reasonable conclusion from binding authority were that the disputed right existed, even if no case had specifically declared, police would be on notice of the right and officials would not be qualifiedly immune if they acted to offend it."
- [14] We conclude that Officer Jensen had a clearly established right to be free from unreasonable seizure at the time he was killed. Although we have been unable to find a case in which a court has found the exact right at issue here, we conclude that if the allegations with respect to Sergeant Christian's conduct are true, then his unlawfulness was "apparent" in "light of preexisting law." Anderson, 483 U.S. at 640
- [15] In Graham v. Connor, 490 U.S. 386, 395 (1989), the Supreme Court held that "all claims that law enforcement officers have used excessive force deadly or not in the course of an arrest ... or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard ..." Similarly, it was

well established at the time of this incident that "there is no question that the apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." Cunrow v. Ridgecrest Police, 952 F.2d 321, 324 (9th Cir.1991).

[16] Moreover, it has long since been established that police officers "are not relegated to a watered-down version of constitutional rights." Garrity v. New Jersey, 385 U.S. 493, 500 (1967). Regarding the rights at issue here, it was clearly established that police officers retain their Fourth Amendment rights. See, e.g., Jackson, 975 F.2d at 652-53 (drug testing of police officers subject to reasonableness requirements of the Fourth Amendment); Graham, 880 F.2d at 1418-19 (allowing officer to bring excessive force § 1983 action against other officers based on altercation with those officers in the process of an arrest); Los Angeles Police Protective League v. Gates, 907 F.2d 879 (9th Cir. 1990) (officer's Fourth Amendment rights violated by administrative search of his garage); Kirkpatrick v. City of Los Angeles, 803 F.2d 485 (9th Cir.1986) (strip searches of police officers conducted at police station violated officers' Fourth Amendment rights). {4}

[17] Finally, concerning the use of deadly force, it was clearly established at the time of this incident that a police officer "may not shoot to kill unless, at a minimum, the suspect presents an immediate threat to the officer or others, or is fleeing and his escape will result in a serious threat of injury to persons." Harris v. Roderick, 126 F.3d 1189, 1201 (9th Cir. 1997), cert. denied sub nom. Smith v. Harris, 118 S. Ct. 1051 (1998). In addition, if practicable, a police officer must issue a warning before using deadly force. See Garner, 471 U.S. at 11-12.

"It is clearly established, both by common sense and by precedent," that, on the day he was killed, Officer Jensen had a right to be free from unreasonable seizure in violation of his Fourth Amendment rights. Newell, 79 F.3d at 117. Precedent informs us that:

- (1) excessive force claims are to be analyzed under Fourth Amendment standards;
- (2) police officers retain their Fourth Amendment rights; and

(3) it is a violation of the Fourth Amendment for law enforcement personnel to use deadly force unless the individual at whom that force is directed presents an immediate or serious threat of danger. Common sense tells us that, if these clearly established precedents are to mean anything, Officer Jensen had the right to be free from an unreasonable seizure even from a fellow officer in the course of police work.

[18] Thus, the question we must answer is whether, in light of the clearly established principles governing Sergeant Christian's conduct at the time of the incident, each of the defendants "could reasonably have believed that the conduct was lawful." Harris, 126 F.3d at 1201. Examining the law concerning the use of deadly force, we hold that, based on the facts alleged in the complaint, Sergeant Christian did not act reasonably when he shot officer Jensen to death. {5}

[19] The reasonableness of an individual's use of force is reviewed "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham v. Connor, 490 U.S. at 396. Moreover, the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments ... about the amount of force that is necessary in a particular situation." Id. at 396-97. Nonetheless, this test is "an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397.

[20] Considering this case, it is clear that some factual issues need to be resolved in order to determine the reasonableness of the City's actions. If, as is alleged in the complaint, Sergeant Christian shot Officer Jensen three times in the back from a distance of three feet in conditions in which he should have been able to recognize that the figure he was shooting was a fellow officer, such a use of force would be unreasonable. Similarly, if police officials knew Sergeant Christian was likely to inflict a constitutional injury or if their practices and

policies showed a "deliberate indifference" to the danger such an individual posed, they should be liable under § 1983. Because, under Jensen's version of the shooting, Sergeant Christian "could not have reasonably believed the use of deadly force was lawful," none of the individual defendants are entitled to qualified immunity at this stage of the action. Cunrow, 952 F.2d at 325 (police not entitled to qualified immunity where, under plaintiff's version of the facts, decedent did not point gun at officers nor was he facing them when they initially shot at him).

Clearly, material and important issues of fact remain to be determined. Those facts might very well show that neither Sergeant Christian nor any of the other defendants acted unreasonably here. As a matter of law, however, they are not entitled to immunity simply because the injured party is a police officer.

### **CONCLUSION**

The complaint adequately states a claim upon which relief can be granted. It asserts that Officer Jensen's Fourth Amendment right to be free from unreasonable seizure was violated when he was shot by another officer. Although individuals assume a certain level of risk by accepting employment as police officers, they do not forfeit their constitutional rights by doing so.

Moreover, while a fully developed set of facts might show that the individual defendants acted reasonably here, they are not entitled to qualified immunity as a matter of law and the district court acted properly when it denied Oxnard's motion to dismiss.

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# WALLACE, Circuit Judge, concurring:

For the reasons stated in part II, I concur in the affirmance of the holding of the district court that the appellants are not entitled to qualified immunity as a matter of law, and, therefore, the district court properly denied the motion to dismiss the action. I would not get to the merits of the action under part I.

The Supreme Court has limited what we may decide on appeal to the question of immunity separate from the merits of the underlying action. Mitchell v. Forsyth, 472 U.S. 511,529 (1985). "An appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations actually state a claim. All it need determine is a question of law: whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions ... " Id. at 528. "The legal determination that a given proposition of law was not clearly established at the time the defendant committed the alleged acts does not entail a determination of the 'merits' of the plaintiff's claim that the defendant's actions were in fact unlawful." Id. at 529 n.10. We have also recognized that the proper inquiry in an appeal similar to this is only whether there is qualified immunity, not whether the complaint states a claim. Figueroa v. United States, 7 F.3d 1405, 1409 (9th Cir. 1993).

#### **FOOTNOTES**

{1} Although Skinner, 62 F.3d at 344, involved employee-onemployee conduct, Skinner did not argue that his Fourth Amendment rights were violated. Rather, he alleged that the city has a constitutional duty to protect employees from one another. Because there is no constitutional right to a safe workplace, the Eleventh Circuit found, this claim must fail. Jensen, on the other hand, alleges a particular constitutional violation — Fourth

Amendment seizure — which exists independent of the workplace.

{2} Oxnard argues for precisely this outcome when it suggests that: the voluntary acceptance of an offer of public employment

precludes the existence of a constitutional right for tragic physical injury sustained by that employee in the very course of operations involved, no matter exactly how the injury may occur, whether at the hands of a criminal or another officer.

{3} We also reject Oxnard's contention that traditional state workers' compensation law precludes Jensen's § 1983 claim. The cases cited by Oxnard are inapplicable to this case as none of those cases involved a deprivation of constitutional rights. See Washington v. District of Columbia, 802 F.2d 1478, 1481 (D.C. Cir. 1986) (prison guard who was attacked by prisoner failed to state constitutional injury); McClary v. O'Hare, 786 F.2d 83, 87 (2d Cir. 1986) (no recovery against state because deprivation of right "did not occur as a result of some state procedure"); Hayes v. Vessey, 777 F.2d 1149 (6th Cir. 1986) (prison teacher injured by "a third party not a state employee or official").

Moreover, to the extent workers' compensation precludes recovery for other causes of action, it does not preclude recovery for claims involving "substantive rather than procedural constitutional rights." Smith v. Fontana, 818 F.2d 1411, 1419-20 (9th Cir. 1987); see also Daniels v. Williams, 474 U.S. 327 106 at 678 (1986) (separate opinion of Stevens, J.) ("If the claim concerns a violation of one of the specific constitutional guarantees of the Bill of Rights, a plaintiff may invoke § 1983 regardless of the availability of state remedy."). Indeed, we have previously recognized that personal injury claims that implicate constitutional rights are not preempted by state workers' compensation acts. See Maynard v. City of San Jose, 37 F.3d 1396, 1405 (9th Cir. 1994).

- {4} Although most of these cases only discuss the police officers' Fourth Amendment right to be free from unreasonable searches, the Fourth Amendment clearly covers unreasonable seizures as well.
- {5} Oxnard argues that this case does not fit within the "deadly force" line of cases because those cases all concerned the rights of criminal defendants or free citizens. We disagree. The only difference between those cases and this case is that the injured person happened to be a police officer. This factor affects neither the rights

at stake nor the test we apply in reviewing Sergeant Christian's conduct.

The significance of this case is that the court agreed that Cities and individual officers are liable and are not eligible for qualified immunity in deadly force incident's under the fourth amendment to the Constitution even if another officer becomes the victim of their actions. The City of Oxnard appealed this case denying they had any culpability and then settled for \$3,500,000. I'm sure the City of Oxnard banded together to present a united front just as the City of San Bernardino did in my case notwithstanding the overwhelming evidence that what had happened was at least untoward and possible criminal in nature. It is exactly the actions that Cities and Departments take after a critical incident in trying to cover up and deflect the blame for the incident that undermines their credibility when it is called into question. If only they would come clean in the beginning, admit their mistakes and pay the financial price at least they would be seen to be accountable to society.

# Part 3

# **Chapter 7- Informants**

The next couple of years after I returned to work I really began to come into my own with the gang enforcement aspect of my duties. I had got to know numerous gang-members and had also been appointed as the focal point of the department in graffiti related crimes. I branched out and started to compile information on party crews as well. I had noticed several graffiti groups had grown up beyond the simple spray painting on walls and they had evolved into party crews as they had got older and discovered drinking and partying.

These party crews differed from graffiti crews in several different ways. They still had graffiti wars where they wrote their gang name and as many moniker's as they could remember on walls but they didn't cover everything with graffiti. They were mainly Hispanic in origin and lived throughout the greater San Bernardino area. Tagger crews may have quite a few members under the same common name but tagging was usually a solo venture, it was very rare to find more than a couple of taggers out actually putting their name up.

The party crews were very large however they usually had one or two families at their center which seemed to control most of their activities. At that time there were three large party crews that were active in San Bernardino. They also had loose ties to several hard-core criminal street gangs by members being active in both or their girlfriend's knew one or more gang members from that particular gang. The party crews, the taggers and the hard core gang members and their respective gangs did not get along with each other. Every Saturday night there would be a shooting or a homicide between these groups. They were so mobile that it wasn't unusual for us to have just got to the first scene when the second or retaliation shooting was already occurring.

One party crew the "BMF" (Brown Mutha Fuckers) had become very active within and around San Bernardino. They used to meet at the Bakers restaurant parking lot on Highland Avenue every Saturday night at around midnight. My partner Jim Beach and I

began to contact them very casually so that we didn't scare them away from the location but with the intention of finding out everything we could about them. If they suspected we were talking with them so that we could increase our intelligence they would have disappeared from the restaurant and we would have spent our time trying to find them. Their rivals had called themselves "Evil Crew" or "EC" and they used to cross out each others graffiti where-ever it was written. We knew this would lead eventually to a shooting over the graffiti battles and we didn't have to wait to long.

We discovered that there were a few ringleaders in these groups and lots of followers. One of the ring leaders was a "Donny Estrada" he was very much into the image of the BMF and had large (12 inch) letters of BMF on his abdomen. He loosely associated with a very violent gang called "East Side Trece" which had originated in Los Angeles and had established a very violent reputation in San Bernardino. They had been responsible for multiple homicides and uncountable shootings with their rivals the largest and one of the original gangs in San Bernardino, "West Side Verdugo". One of Donny's sisters was dating an East Side Trece gang member who was awaiting trial in juvenile hall for a homicide against "West Side Verdugo".

Donny was suspected in a homicide that occurred at an Evil Crew house. That night there was a large party ongoing at the house which was so large it had spilled out into the front yard and the street. As usual in these types of homicides witnesses are very reluctant to come forward and because of this there wasn't enough witnesses to confirm that he had been the shooter. During the evening a small blue SUV had driven past the scene of the party and someone from inside the car had yelled out to the partygoers. The male's had come outside to the edge of the street to see who had been shouting at them when the SUV turned around and had driven past them again. This time the back window was rolled down and someone from inside the car had started shooting. One bullet struck the victim and severed his aorta and he died in his own front yard. The victim Raphael Tenorio was a member of EC and lived at the house. We interviewed several people including the alleged driver of

the SUV who would not tell us that they had been anywhere near there on that night. I know there was several other friends of Tenorio who had seen everything but were so scared that they lied to us and said they had not seen anything. I always thought that it was ironic that they claimed undying loyalty to each other and their party crew unless it meant testifying against someone who had killed one of their own. I guess their loyalties weren't all they claimed them to be.

The next weekend was a large graduation party in the east end of town which was hosted by a graffiti group called TM which stood for "Troubled Minorities". Donny Estrada and his friends turned up at the party and tensions escalated between the groups as the "BMF" group were not invited. There was over two hundred eighteen year-olds at this party and it wasn't long, fueled by alcohol that it turned violent. A large fist fight began in the street between the taggers and BMF and Donny got his gun. He began shooting, striking and killing the head of the tagging crew and then shooting and killing his pregnant girlfriend as she ran into the middle of the melee to stop the violence. Donny left the scene along with most of the witnesses however the homicide detectives were able to talk with enough people to hold Donny accountable for the double homicide.

During the trial I was officially qualified in Superior Court as a gang expert and was able to testify on the different facets of BMF and how they mirrored criminal street gang behavior. Donny Estrada was convicted of the homicides with the enhancements that came with him being a gang member and using a gun. He was sentenced to several life term's without the possibility of Parole.

# **Chapter 8-Informant Cultivation**

While I was working in the gang unit I was partnered with officer Jim Beach for a number of years. I had established myself in the East end of the City but Jim had a love for the downtown area. I had never worked there and was amazed at the level of potential criminal activity. The downtown corridor consisted of run-down motels surrounded by rented residences that gave homes to prostitutes, gang-members, drug addicts and all kinds of societies underworld. The prostitutes brought in the johns (customers) and the drug dealers to the area so it was jumping with activity, any of which could turn violent at any time. We shared the driving each night looking for any kind of criminal activity throughout the whole City, when Jim drove we stayed very close to downtown because this was an area he was very familiar with. I learned a lot about who was who in this area and we contacted and arrested hundreds of people.

We still had the responsibility for the graffiti related crimes and we established quite a reputation with the taggers. We targeted several graffiti crews that were active in the area and got to know quite a few of them. They knew when we worked and would write their graffiti on our days off so when we returned we were busy for the first day playing catch-up. One of the crews became so frustrated in our relentless persecution that they posted information on us on one of the graffiti web sites. It wasn't derogatory and just said, "Hi to Peach and Beach of the S.B.P.D." We of course took this as a compliment, it meant our reputation to aggressively seek out taggers was preceding us.

It seemed no matter where we started out patrolling as the night went on we ended up downtown. We were almost guaranteed to get into something if we just stayed available. I began to develop my own love of the downtown area and it began to feel more like home than anywhere else in the city. I knew all the streets, the alleys and the apartment buildings which sometimes seemed to have been designed like mazes.

But more importantly I knew the people, I knew the prostitutes, the drug addicts and the gang members. I knew where they lived, where they hung out, who they associated with, what there association was to each other and where they got their drugs and weapons. I knew of homeless people that had succeeded in finding somewhere to live but could not leave the street, they were always outside looking for something to eat or for some cash to support their drug habit. I again knew people who would tell us what was happening or what they had overheard or seen. Jim had his own manner with informants, he didn't try to extend the relationship past giving them a few dollars for a location of a drug house or information on someone that was robbing the homeless. I began to again use confidential informants or CI's for information. It must have looked as though I was befriending every person we contacted, I must have given out hundreds of business cards to anyone who would take one.

I always gave out cards for two reasons:

- 1. It gave the recipient a way of contacting me if they ever needed to. By making myself available to them when they had a question I had begun to build up the relationship that I could use for the rest of societies benefit. They begun to trust me and began to give me small amounts of information. I think they were testing me as well to see if I used their information and also to see if I would give up my source.
- 2. I knew that these people would often commit crimes, I wanted to know about what they were up to when I wasn't working. When someone is arrested the arresting officer should conduct an inventory of their property and hopefully they would see my business card and would give me a call. Very often I would get a call from L.A.P.D. or some distant Police Department saying they had just arrested someone who had my business card in their wallet, they didn't necessarily know that they were an informant of mine. When I would bump into them again a

few weeks later they were astounded that I knew so much about what they had been doing.

Jim and I had opposing methods of conducting ourselves to get arrests, our two differing styles complimented each other and we were a formidable team. Jim was a very brusque "hands on" type officer who was able to link up what he was seeing with criminal activity. Sometimes he was out the car and placing someone under arrest before I had even seen them. He liked to walk around to see what we could turn up, so we spent some of our shift just walking around apartment buildings and listening. His arrests were usually because someone was wanted on an All Points Bulletin (A.P.B.), was engaged in criminal activity or happened to be in the wrong place at the wrong time, but they were arrest's that were made right then and there.

I, on the other hand was more of an intellectual officer, I liked to build up intelligence and use the intelligence for our advantage. If someone was wanted I would try to find out as much as I could about that person before I went looking for them. I would use the Department computer systems and records to find out as much as I could before we even left the station, so I would know where their friends and relatives lived, and where they had been contacted the most. I would know where they were buying their drugs, what type of drugs and who from. I would find out what cars they drove and who's cars they had been stopped in before. I would visit exgirlfriends or ex-boyfriends in the hope that they would tell us where they were hiding. If they were in a gang I would locate several members of the same gang and watch their houses for any activity. I would find a reason to stop anyone that knew the subject hoping to find a reason to arrest them with the hope that they would want to strike a deal in exchange for giving up the person's location. I wanted to give the wanted person the impression that they were trapped and that the best and safest course of action would be to turn themselves in to me.

While I was doing this I also built up my intelligence on other people that I contacted. I found out that I have a near perfect memory for faces, names, license plates and types of vehicles and I used to try to remember small details about crimes if I considered them important. For example, I would try to remember the type of gun or ammunition that was used in a homicide because if it was an exotic type it might get used again and I would be able to link the two incidents together.

I made several arrests just based upon being reasonable to family members and convincing them that all things being equal their son or daughter would be treated fairly if the turned themselves in to me. The same concept I talked about earlier applied they didn't trust the Police Department as a whole but they trusted me as an individual officer because I had taken the time to talk with them. Most officers are considerate around a victims family, if they were nice people, but they do not usually try to console a gang members family once they are killed. Do you think I really cared about the gang member's death? Sure it was unfortunate for the family, the gang member had chosen their lifestyle at a very early age when they didn't know of the future consequences of their decision and in reality probably didn't have much choice in the matter. I cared enough to gather intelligence for the retaliations that were inevitable and the family believed I was genuine with my concern.

As I said earlier informants remain one of the most under utilized resources that exist for Law Enforcement. They fall into several categories:

1. The reliable paid confidential informant who works for the law enforcement agency to make money or uses the agency to eliminate some of their competition. These people are well documented by the controlling agency and they often have daily contact with them. They supply the kind of information that is current or even will occur at a given time and location. Their reliability is well documented and tested every time they give information, indeed any superfluous information would not need to have it's credibility established because they had been so reliable in the past

- 2. The mid-level reliable paid confidential informant that is involved in criminal activity and uses the Department to supplement their income. These people are also documented within the agency but the contact's are conducted over the phone when there is information that they can sell. They supply sporadic information as they do not want to bring to much attention to themselves. Their reliability would need to be established on any information that they supply to ascertain their credibility.
- 3. The confidential informant. This category of informant is utilized the most by local law enforcement, they are not routinely documented with the Department but supply information that is very current so it has to be acted upon without delay. They usually would balk at the idea of becoming an official informant and usually give the kind of information that if acted upon would be beneficial to them. When I suggested to a confidential informant that they could get paid for information if they allowed themselves to be documented I usually lost that informant. Their credibility would have to be tested on all information that they supplied. (Notice that they are not deemed a reliable informant yet). I prefer to label these informants as undocumented confidential informants as hopefully they will move up to become mid level reliable informants. They had to make the switch, no-one could force them to become paid informants, it was a decision they alone had to make.
- 4. The citizen informant. This type of informant is one of the most reliable because they are giving information without any prompting and without gaining anything themselves. Their reliability is usually without question because they aren't hiding behind a veil of confidentiality. They are simply saying, "this is who I am and this is what I saw."

So my business card became my method of contact. As their existence was very transitory I was perhaps one of the only anchors

that they had in their lives. It wasn't easy building informants, it is based on a foundation of trust that is very easy to violate. The initial stages of converting a petty criminal to an informer are fraught with trust issues. They have to trust you to not betray them and you have to trust them to give you workable information.

I drew a parallel between working informants and working undercover. When you work undercover, you have to believe that you are the person your pretending to be, you have to be deceptive to everyone, you have to be deceitful with all the people around you. I don't believe that many drug deals would be witnessed by undercover officers if they announced when asked that they worked for the local Police Department. They have to be utterly convincing in their deception, after all their own lives are at stake. Even small undercover or plain clothes operations require you to lie to your contacts. You pretend to be something your not to build up trust and then you have to betray that trust. But its trust that only works one way, the criminal trusts you but you cannot trust anything they tell you.

Informant management involves almost the same thing, it's unfortunate to take advantage of societies under-class in this way but it is necessary. You have to represent yourself to the street level informant's as a genuine concerned person, you don't want to promise them things that you know you can't deliver, but building up rapport with them is very difficult while they are at the undecided stage. They will test you by giving you false information to see if you can be trusted and you want to allow them room to "flip" to your side and make their decision to move up to become a paid informer. The desirous outcome is to allow them to become a paid confidential informant and allow the Department to document them or to stop the relationship altogether. Hopefully, the trust and loyalty between the officer and informant has become strong enough (even though some of it has been based on lies both ways) that they choose to continue. Most of the deception that occurs is allowing the informant to believe whatever they want to about you at this early stage. You're trying to sell yourself as a friend to them, even if you can't stand them they have to believe that you like them. If they

believe that you're a corrupt cop that will do whatever you can to protect them, they regard it as having an ace in the hole with the local Police Department. You have to let them think whatever they want to, it's the most productive way at this stage. If you have to pretend you are interested in the same thing that they if they have an interest in a certain make and model of a car, it might pay the officer to also develop an interest so that there is some common ground for the relationship. The key is not to be deceitful in your interest but to show a genuine liking for them and whatever it is that they like. In reality the officer is deceiving them, but only to establish rapport.

The time to get serious is later, when they are documented and are fully aware of their situation, that is the time to put all of the cards on the table. They have already made the decision to betray their criminal friends and would expect total honesty from the officer to continue the relationship. No-one has cultivated informants by being officious and stand offish, this is the kind of relationship that they expect to have with officers. Remember your relationship with them might be the most stable part of their life. This is the most successful method with all kind of informants, it works just like undercover operations except that there is no betrayal of them in the end. Your goal is to turn them into a paid reliable informant based entirely on manipulation. So much so that their loyalty to you is greater than the loyalty they have for other criminals. Prostitutes are particularly susceptible to this kind of recruitment because they are used to being abused and used by everyone they meet, even other prostitutes look down at competitors.

# **Chapter 9- Informant Motives**

The use of informants has often been open to criticism both on moral and ethical grounds. The general public (with no law enforcement training) has always had a preconceived idea about informants, believing that the police actually protect the criminal activity of the informant in return for their services. This miss-belief gives the impression that the police condone the activities of the informant and hold it over their head in exchange for information. The informant is usually willing to furnish information for a number of reasons, none of which involve being protected when and if they engage in criminal activity.

The primary officer who has cultivated the informant and built up the relationship between them has the responsibility to evaluate the informant and the information given to arrive at the facts. Therefore it is important to establish the informants motivation so that the officer can evaluate the information supplied in the context of that motivation. For example: It is not unheard of for a drug dealer to begin informing on his competitors so that they are not in a position to compete with him. His motivation would therefore be mercenary in nature as he now would receive a larger portion of the drug sales and increase his net worth. Being manipulative and deceptive in your manner and level of interest is crucial to the gathering of intelligence. Which ever motivational factor the informant comes under the officer will find a need to manipulate and maybe deceive the informant about minor issues if the relationship is to be fruitful.

There are many motivational forces that enable an officer / informant relationship to exist and most do not evolve into the informant becoming a paid confidential informant for the Department even though that would have to be the ultimate goal once it has been established that the informants information is worthy and workable.

#### **Fear Motives**

Turning co-conspirators into informants is one of the oldest techniques that is used by law enforcement but it is not traditionally seen as an informant / officer relationship by administrators of Police Departments. It is by definition a fear induced informant / officer relationship that would not come into existence if the subject was not afraid of the law, the officers or the consequences that he or she will face in Court.

When two or more people conspire to commit a crime the potential for the fear motivated officer / informant relationship has a opportunity to be utilized. Self-preservation is one of the underlying fundamentals of our existence, it might be expected then that an uncontrollable emotional reaction that is favorable to the investigators could result when a potential informant becomes afraid of the consequences of their actions.

When one co-conspirator is arrested and interviewed the self-preservation urge is so strong that they often will seek sympathy, extenuation, mitigation or acceptance, in fact they will look for anything that will improve their present position. Sometimes they are disposed to give a full account of the crime committed including the names of the co-conspirators or locations of evidence. Most of the time they will leave out what they consider the most embarrassing part to them or tell almost everything and hold something back. For example, a burglar that is apprehended coming out of a victim's house might describe everything that occurred including naming his accomplices and even to the extent of driving around with the officer pointing out other locations that they burglarized but will not say who defecated inside the house. This holding something back seems to be their way of remaining loyal to themselves.

When this form of motivation is utilized the individual officer does not have the power to make every thing go away. It might be able to help mitigate their sentence somewhat by their cooperation and this has to be explained up front. Usually the details come flowing out when the accused realizes that he will be held responsible for the whole crime and not just his little part. Most criminals have made the decision that they will accept responsibility

for their own acts but are extremely reluctant to take the rap for someone else. There is no honor among thieves.

This type of informant is especially useful in drug related arrests as the first thing most people wish to offer in exchange for their freedom is where or who they bought the narcotic from. The informing of higher ups in the criminal food chain can reap large rewards for narcotic investigators who endeavor to follow the chain by making informant's out of every person on each rung of the ladder.

The most important consideration is that just because the officer has arrested someone they cannot be expected to produce information purely because they have been apprehended. When the suspect is not forthcoming with information under these circumstances it should not be presumed that they do not possess the information or that they simply do not wish to give it to the officer. The officer will need to establish a relationship between them that will assure the suspect that the officer will do whatever he needs to protect the informant from disclosure and that any information supplied will be eagerly welcomed. (Later on in my book there is an interview with a prostitute - Mcmillan conducted by detective Lindsey where she attempts to tell him of several officers that have sexually assaulted her over the years yet he ignores her and keeps on trying to steer the interview back to me.) the message he was sending to her was that he wasn't interested in any other information and did not want to hear it. Just that one interview speaks volumes about his incompetence as a detective because she was trying to tell him what she considered real events but he was more concerned with me and would not listen to his victim.

The fear motive is not only restricted to the Law and of the consequences of the suspects actions. Suspects can also be afraid of their co-conspirators and of the punishment they might receive and can see the Police as the lesser form of two evils.

In gang and high level drug co-conspirators this will work against the Police because the code that exists in the criminal subculture is that to talk is to die. If someone has been through the system enough times and they do not have any other motivating

factors they realize that it is not in their best interests to talk even if it means being convicted of a much larger portion of the crime than they actually committed.

The deception occurs when the officer promises to talk to the Judge or the prosecuting attorney in exchange for the intelligence. Of course the officer does talk with the Judge or the attorney and they ignore him and sentence the defendant to whatever he was going to get anyway. The officer still maintains credibility with the informant because he has lived up to his side of the bargain, and the informant usually doesn't blame the officer.

## **Revenge Motives**

The revenge informant can be a very good informant in that their motives for informing might arise outside of criminal activity. So they may not be involved in the criminal acts themselves but may arise from jealousy and arguments over the opposite sex. Even the closest of friends can turn against each other and inform on the criminal activities that their friendship allowed them to witness. Members of criminal groups can also feel unappreciated, not respected or discriminated against by members of their group and will inform to exact revenge and therefore maintain their position at the same time as getting rid of the people that are causing the anguish.

I remember using an enforcer to a gang as an informant, his job was to collect money from deals that the gang had set up. He was quite ruthless and had become very invaluable to the gang because of his reputation. He could get people to pay him the money owed without having to resort to violence, usually just the mention of his name gained compliance. The head member sent the enforcer across the country to retrieve a few thousand dollars from an absconder who had not paid in a drug deal. He traveled for several days and arrived and got the money, when he returned the head member never gave him one penny for his troubles. After that he would inform on anything that the gang did, he became an informer out of revenge for being slighted.

The deception occurs when the officer begins to give the appearance of siding with the wronged informer and pretends to really want to get them. This makes the informer feel that they now have someone who really appreciates how unjustly they have been treated and will help them to exact revenge.

## **Egotistical Motives**

A common trait among humanity seems to be the characteristic that people take great pleasure in spreading news to interested listeners. A petty offender might relish the investigators attention when they tell a story of how important they really are or how they know some really big criminals. I will talk later about a head gang member and a badge bunny that fell into this category because they loved to boast about their exploits.

This type of informer has a tendency to prattle, great care should be taken in deciphering the good information from the garbage. Unfortunately the investigator has to listen to everything with equal enthusiasm and give the illusion that everything is fascinating just to stroke their ego into revealing more.

The deception occurs when the officer acts so impressed by the wonder that is "them." Wow, they are so impressive, they are the biggest fish that this town has ever seen, and they get away with their crimes too, amazing.

#### **Mercenary Motives**

This type of informant provides information purely for financial gain. The mercenary informer knows their reward is directly proportional to the amount of drugs seized. So the more drugs the Department recovers the more money they get. This can be quite lucrative for the informer. The DEA runs informers all the time that turn on the drug dealers to cash in on the reward. Luckily for law enforcement (and the informer) when these drug deals are discussed the seller becomes greedy and begins to think about the money that they will get if the deal goes through. I'm sure their gut instinct is telling them, "no, don't do it, it's a trap." But because greed consumes them and their common sense, they get arrested.

The competing drug dealer will also motivate himself to inform on other drug dealers to increase his own sales.

The manipulation that occurs with the purely mercenary informer is to encourage them to make larger and larger drug deals because they are so good at it.

#### **Reform Motive**

Some people become informants because they have chosen to repent their prior wrongdoings to make restitution. Often those that decide to leave a gang or criminal group need to feel they can come clean and not feel that at any time they might be arrested because a continuing member of the gang has decided to inform on them. To turn the page and start living without crime is an important first step that needs to occur so that the prior lifestyle is not an option in difficult times.

The drug addict that wishes to stop using drugs would make an excellent reform informer where their motivation for informing would also assist in their abstinence due to the contacts no longer being available.

The officer is deceptive in that he pretends to want to assist in their reform by ridding the world of all the evil people that have taken advantage of them over the years. He may give the impression that this isn't just about them but what about all the other people that they have wronged, the trick is in deceiving the informer so that while they want to break ties and turn over a new leaf this rarely occurs and while they are vacillating between both they supply you with information. The officer would not want to be honest at the beginning by saying: "Rarely will someone reform completely, the probability that you will reform yourself are pretty small and in the mean time you will become an informant for me." The informer will balk and run out the door, so the officer is deceptive and listens to all the backslides that occur feigning empathy and mentally remembering the names and location's and taking advantage of the many attempts the informer has at reforming. Each slip up is someone else that the informer will give up when they try to make restitution.

#### **Demented, Irrational Motives.**

Sometimes an informer may come forward because of a quirk in their personality, this type of informer rarely provides much quantifiably reliable information but should be listened to in the hope that they can provide a previously missing link between a crime and a suspect. San Bernardino has had a government watchdog for years named Jeff Wright, he has been labeled a gadfly by the papers because of his amazing persistence to matters that local government routinely deals with. He is above all trying to route out corruption (which is why the City doesn't like him). San Bernardino even passed an ex post facto law (a law that held Jeff accountable legally for behavior that wasn't illegal when he did it) to stop him from speaking at council meetings. He has a very irrational personality but somewhere in amongst all the information that he collects I would expect that he has a few nuggets that would be invaluable. No one at the Police Department takes him seriously (because they do not want to expose corruption) so he is a wasted resource.

He would also have the tendency to prattle, however the investigator must listen with equal enthusiasm to all the information presented but could steer the conversation more than with the egotistical informer.

The officer handling an irrational informer would have to deceive them into thinking that everything they are conveying is exactly the kind of information that they were expecting. They would also need to believe that the investigator is indeed completely sympathetic to their plight and that they have found someone who is as interested in the cause as they are. One problem that would have to be recognized is that the irrational informers primary information might not (and probably will not) be the information that will do any of your investigations any good. But to give the impression that you are looking into it would seem to be paramount.

#### **Gratitude Motive**

A skillful investigator can invoke a sense of gratitude in the informer that enables the informer to feel that they are providing information in return for certain ethical assistance. Sometimes a mere concern or the belief of a concern perceived by the informant that the officer is interested in their welfare can create this sense of gratitude and loyalty. This type of informer was primarily the type that I used to cultivate, I would treat them respectfully and leave the door open for them to recontact me by giving them my business card.

The deception was that even though the informer believed that I cared about their well-being and their life in general, in reality I didn't care as much as they believed. Sure I cared about them in a rudimentary way, they were making me look good to my supervisors after all and were putting themselves in harms way. I was using them without any reciprocity and I wanted them to become paid documented confidential informers as a result of the relationship but it still had to be their decision to make. The trick is to let the informer inform on their peers and let them realize that they could become a paid documented informant because they believed in the allegiances to the officer over their peers. I believed that it was permitable to allow the informant to believe what ever they wanted to about me and my relationship with them as long as it stayed in their head prior to them becoming a documented informant.

Prostitutes in San Bernardino are one of the better sources of information. They are on the street all the time, they get picked up by all kinds of people and they use the money from their prostitution to support a drug habit (usually). So prostitutes are in a position to witness all kinds of crime. When they are on the street they are in a position to see all kinds of street crime and they talk with other people that frequent their areas including other prostitutes. They get picked up by their customers (who usually consist of blue collar workers) and talk with them and maybe listen to what they have to say about other criminal acts. They have to contact their drug supplier and get to know him and his contacts and who he is in competition with.

Informant cultivation is a very low return business, for every fifty business cards that I had given out I may get only a single return phone call, so out of one thousand contacts that I made I was looking at a return of approximately ten potential informant's. They have to be accessible to you or you have to be accessible to them most of the time. It is no good having an informant who wants to give you crucial information if they cannot find or contact you without going through middle men. As I said earlier they trusted the individual and not the group, an informant will not trust anyone else especially other cops because they are so concerned about being discovered. I have seen a detective receive a call from an informant while they were talking with the suspects the informant had turned in and he accidentally said the informants name. He tried to cover it up by saying the call was from his wife but I saw the criminals look at each other and they knew. I hope the detective had the foresight to warn his informant.

There are many reasons that an informant would not want to be known as an informant. From an officers point of view the most compelling reason is that they would then become unproductive. From their point of view the best that could happen would be that they would be labeled a "rat" in their society. They have already become social outcasts from main stream society and to suffer being further outcast from the criminal subculture that has accepted them so far would mean they would have to leave the area and never return. Usually it means being attacked or killed in retaliation for being an informant. Remember going to jail is a common occurrence, a cost of doing business but going to jail as an informant means further ostracization and being attacked. Personally I would not want it on my conscience that through my actions or inactions that I had got an informant hurt or worse.

When officers manage undocumented confidential informants several rules should be adhered to. The access between the informant and the officer should be immediate and direct, their information is usually occurring as they give it and it has to be acted upon immediately. It is no good waiting for a period of time before verifying the information because it will be gone. For example most

of my informants would give me the information along the following lines: "I just saw Bill on the corner of 5th and G Street, he's wearing a red sweatshirt and has red laces on his tennis shoes, he just threatened me with a gun that he usually keeps in his jacket pocket and took my cocaine from me". I should be able to surmise from this information that my informant was involved in criminal activity (at least possession of cocaine) when they saw Bill. They also seem to allude that they had prior contacts with Bill as they knew where he usually kept his gun. The only way for me to verify if the informant is telling the truth is to go to 5th and 'G' Street and look for Bill. I would still have to develop a reason independent and separate from my informant to contact Bill so that I didn't have to use the informants name in my report. Usually I would try to consensually contact Bill just to see what happens. Luckily for the me and the police in general most criminals feel guilty as soon as the police pull up in their cars and they express their guilt by running or discarding their contraband. Now I have more of a reason to investigate.

But what if I did not have the time to immediately respond to the area, I could file the information away in my mind and look for Bill when I do have time and if I find him it would also add to the informants credibility. Informants sometimes supply information that is so fluid even when you immediately go to where they said the crime was occurring, the subject has already gone. Now you run into a problem, if you cannot respond immediately to the informants information how do you verify if the information is reliable. Obviously the above example would tend to show that the informant was reliable for that instance but if they continued to give you information and you could not respond, you would still need to prove their credibility. This is accomplished by verifying everything the informant tells you, if they say they have an aunt that lives at 13th and 'H' Street, you check it out. If they tell you they have relatives in Anchorage, you check it out. In fact you have to verify any and all of the verifiable information that you can. This is the only other way to see if they are telling the truth about other facets in their lives. If that information is proven to be true then it does add more credibility to any other information that they supply to you. This becomes even more important when or if you have to base a search warrant affidavit on their information because then you can say they have supplied information of a law enforcement nature and information of a non-law enforcement nature that has proven to have been reliable.

The informants identity should always be kept confidential especially from other officers. I have contacted numerous people who have told me that they are working for an officer meaning that they supply information and have an understanding with a certain officer. Usually they are not that complimentary to the officer because they are trying to manipulate you into showing some leniency and maybe letting them go. They try to suggest that maybe if they worked for you instead of their regular officer you would be more responsive to them, it was usually just a ploy to keep them out of jail. The officers need to be very cognizant of who else is around when they start discussing with the informant who they are working for because it is one of the quickest ways of getting the informant hurt or killed. I had one informant that never wanted to be seen talking with the police, even plain clothed officers are easily recognizable to most criminals. The informant has to trust their controlling officer completely as their life is in the officers hands, the flip side of the confidentiality is as soon as the trust is broken they are of no use to law enforcement anymore.

The Police Department has rules that deal with informant management, I documented my first informant when I was in the gang unit. He was a photographer that took pictures of taggers as they sprayed their graffiti. He was very keen to get paid for his information but backed out when he realized that as soon as the first arrest occurred he would be found out. He thought the other taggers would kill him for informing on them so he became more and more reluctant to meet with us. At first I would tell my supervisor, sergeant Lemos that we were meeting our informant but the informant wouldn't show up and then would call with an excuse. In the end sergeant Lemos wasn't interested in whether or not we were going to see the informant and we finally stopped calling him.

Most of the officers in the gang unit had people that they would call for information in different areas of town. Whenever there was a

homicide we would all place our calls into our informants to see if they knew anything. I know these contacts were not documented or reported to our supervisor.

As my expertise with informants became more cultured and I realized that everyone I talked with could be a potential informant, to tell a supervisor every time would be ridiculous. I drew the line between a scheduled in person meeting with an informant would require my notifying a supervisor but if I contacted them by phone or bumped into them I would not. This seemed the most practical, otherwise I would have to start every shift notifying my supervisor that I would be contacting an informant.

I began my return to patrol duties with those concepts in place however when I notified my direct supervisor, sergeant Kilbride he soon began to lose interest as it was so common. He would just wave as I was talking to him and it was clear that he had heard it enough times that he no longer registered any interest.

#### **Juveniles**

I never believed in using a juvenile as an informant, I wanted my informants to be adults and fully aware and able to make their own decisions. I had many offers from juveniles to become informants (who in their immaturity glamorize the informant role) but refused to begin the relationship until they were at least 18. It is also against California law for an officer to use a juvenile as an informant under penal code section 701.5 (b).

#### California Penal Code Section 701.5.

701.5(a) Notwithstanding subdivision (b), no peace officer or agent of a peace officer shall use a person who is 12 years of age or younger as a minor informant.

(b) No peace officer or agent of a peace officer shall use a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) for the purposes of that act, unless the peace

officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation.

- (c) Prior to issuing any order pursuant to subdivision (b), the court shall find, after consideration of
  - (1) the age and maturity of the minor,
  - (2) the gravity of the minor's alleged offense,
  - (3) the safety of the public, and
  - (4) the interests of justice, that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.
- (d) Prior to the court making the finding required in subdivision (c), all of the following conditions shall be satisfied:
  - (1) The court has found probable cause that the minor committed the alleged offense. The finding of probable cause shall only be for the purpose of issuing the order pursuant to subdivision (b), and shall not prejudice the minor in any future proceedings.
  - (2) The court has advised the minor of the mandatory minimum and maximum sentence for the alleged offense.
  - (3) The court has disclosed the benefit the minor may obtain by cooperating with the peace officer or agent of a peace officer.
  - (4) The minor's parent or guardian has consented to the agreement by the minor unless the parent or guardian is a suspect in the criminal investigation.
- (e) For purposes of this section, "minor informant" means a minor who participates, on behalf of a law enforcement agency, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the minor's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the minor is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the minor.

In the late 90's Jim and I found a gang crash house that was in the back of one of the downtown apartment buildings. The apartment complex was largely abandoned and several juvenile runaways had taken up residence inside one of the rear units. It was filthy but when you consider the state of some of the houses where they had grown up, in comparison it was palatial. We used to check on the apartment frequently to build up our intelligence on the gang members inside, one time we contacted a sixteen year old female juvenile inside I'll call "Anne." She had the unfortunate luck to have been born into one of the largest gang families on the West side of San Bernardino, she was the only female out of seven brothers who ranged from twenty years to eight years old. There was no male role model in the family and the mom had given birth to the kids and then let them raise themselves. Anne was the only girl so they had depended on her for everything, she had been raising her mom's children for as long as she could remember and had gotten tired of it and had ran away.

I befriended Anne and with California law being the way it was the best thing that could happen to her was for her to get arrested for something serious. If she was arrested for being a runaway juvenile the only solution would be to take her back home. Even if she was placed into Juvenile Hall they would just try to get rid of her as soon as possible because they didn't have the room to house juvenile felons let alone a runaway. As soon as she got taken home she would runaway again for her own good, so she was caught in a vicious circle. We didn't have to wait long to arrest her, several weeks later she was walking to the apartment across a vacant lot when she discarded a small bag containing methamphetamine. I saw her drop the baggie so we placed her under arrest, processed her, and lodged her into Juvenile Hall, she became a ward of the State and ended up in a group home in Monrovia. I gave her my business card when we arrested her and told her to call me if she needed anything, I thought that I might be able to get her to inform on her brothers activities once she had turned 18 and had returned home.

Several months went by and I got a call on my voice mail at work from her asking if I could visit with her at the group home. I checked with the operators of the home and found that they were delighted that someone was taking an interest in her. Anne's family had not visited with her once or even written her letters and she was feeling very isolated, lonely and rejected.

On my day off I drove out to Monrovia, California and met with Anne and the counselors who ran the home. During my visit I learned that Anne had suffered sexual and physical abuse from her brothers for as long as she could remember and wanted to inform on them so that she could get them out of their house. She did not want to get specific in her allegations against her brothers and did not want them arrested with her being the victim as she feared the rest would kill her as soon as they found out. She also felt sorry for her mother who had almost become a recluse inside her bedroom as it was the only place she could get any peace from her brothers. There was hardly any furniture or anything else in the house as her brothers had stolen everything to pay for drugs, anything the mother wanted she had to secure inside her bedroom lest it too would be stolen.

The counselors were very thankful to me and were aware of the abuse she had suffered and told me they thought my visit was going to prove to be very important to her self-esteem as she considered herself to be worthless. I stayed in touch with Anne by telephone and she decided once she turned 18 she would not return to her mothers house and would stay instead with an Aunt that had seen the change in her. I never did get to use her as an informant, which was my intent but nonetheless my relationship with her proved to be beneficial to her.

#### **Communications**

Communications between informants and officers is how the business of informant management gets accomplished. The trading of secrets for what ever motivates the informant is what it is all about. This aspect needs to be managed very carefully because it is during the meeting that the likelihood for discovery of the informant is at its highest.

The investigator should control all aspects of the meetings, if they are done in person then the investigator should pick the time and

location with due consideration to the officers and the informants normal routines. The officer should avoid predictable routines and plan for them so they do not establish a recognizable pattern. When meetings are conducted in person the investigator should have a second officer with them to act as a silent witness to mitigate the possibility of future claims of impropriety.

In most cases avoiding personal contact is a good thing as it reduces both the exposure of the informant to discovery and provides no opportunity for any accusations regarding the officer. The telephone is probably the most convenient as it is accessible everywhere and allows privacy in the conversation. If the informant is not in a private location they can arrange a follow-up conversation at a later time. With the frequency of cellular phones the difficulty of access to the investigator has been almost eliminated and are now accessible at any time. This allows the informant to control their environment when making the calls to allow maximum privacy therefore reducing the chance of their discovery.

I had three levels of communication for my informants based on where they were in the informant hierarchy:

> 1. The Police Department automated voice mail service; this was an electronic answer machine that a potential informant could leave a message for me either anonymously or they could leave their name. Whenever I gave out my business card I always put my voice-mail number on the front, so that the prospective informant could fold the card in half and hide any of my information. This was the first level that I used to distinguish between a potential informant and someone that wasn't going to rise to any kind of level. If someone wasn't interested in becoming an informant they simply wouldn't call. Obviously I wasn't immediately accessible to the informant and I didn't have immediate access to their messages so the information that was left would usually end up becoming stale. However if there was enough frequent and verifiable information left then they got elevated to the next level. Narcotic enforcement units

- have false business cards printed up so that the informant can have the number but it is listed as a gardening service or some other fictitious business.
- 2. Pager number: I always carried a pager and would give that number out quite frequently but not as liberally as my voice mail number. This allowed quicker access that the voice mail but it had its limitations. Sometimes when I called the number back a different person would answer the phone, so now the beginning of a need for a plausible cover story starts. Sometimes I couldn't call back right away and the phone they would call from wouldn't accept incoming calls. If this happened to frequently the informant would begin to lose interest because they would think that I was too busy or apathetic to them and their information. They didn't like to think that they were being relegated back down to the voice mail and I didn't want to offend their ego.
- 3. Cell phone: This was the most accessible and should only be given out when the informant has proven themselves reliable and does not give out superfluous information that you cannot verify. There is no call back so the communication is the most secure because the informant can control their environment to avoid eavesdroppers. Time guidelines would need to be established so that the informant would only call when the officer was working. I always gave the informant a window of opportunity to call me that I knew I would be working and could therefore respond immediately if the information was of an urgent nature. If the information might be the type that needs to be acted upon very rapidly then nothing surpasses the cell phone for live time updates. I mentioned earlier about the Lady that would give me information that was occurring in the alley in front of her apartment. She would actually talk to me on the phone and guide me in to the narcotics and the suspects over a cell phone. This also plays up to the informant ego in that

they now consider themselves to be a big-shot because they now have immediate access to an officer or detective.

Letter drops or the US mail are both excellent methods for conveying information but great care should be employed in preparing a cover story in case the written communication should fall into the wrong hands. The cover story should be simple and acceptable to the casual observer. Even small details that would alert someone should be carefully avoided, such as the return address. Remember someone discovering an informants letter doesn't find the letter that they wrote, they will only find the letter that originated from the officer. If a criminal was involved in criminal activity and found a letter addressed to one of his co-conspirators that had a return address of the FBI, agent Smith, his assumption would be that there was definitely some form of communication between the FBI and the co-conspirator. The mildest reaction would be to not trust that person and therefore the informants would now not be in a position to get any intelligence. A cunning criminal might use this connection to allow disinformation to flow to the informant to stymie law enforcement or to test the informants reliability. From the controlling investigators perspective any discovery of the true relationship would place the entire relationship in question including any information supplied. Obviously the safety of the informant would also be in question which is or should be of paramount importance to the informant.

I am reminded of an old joke regarding secure written letters and the importance of never knowing who may have access to them and how the information can be used.

An old man lived alone in Idaho. He wanted to dig over his potato garden, but it was very hard work. His only son, Bubba, who used to help him, was in prison. The old man wrote a letter his son and described his predicament.

Dear Bubba,

I am feeling pretty bad because it looks like I won't be able to plant my potato garden this year. I'm just getting too old to be digging up a garden plot. If you were here, all my troubles would be over. I know you would dig the plot for me.

Love Dad

A few days later he received a letter from his son.

Dear Dad.

For heaven's sake, dad, don't dig up that garden, that's where I Buried all the BODIES.

Love Bubba

At 4A.M. the next morning, F.B.I. agents and local police showed up and dug up the entire area without finding any bodies. They apologized to the old man and left. That same day the old man received another letter from his son.

Dear Dad,

If all went according to plan... go ahead and plant the potatoes now, the yard should be ready. It's the best I could do under the circumstances. Love Bubba.

This joke just illustrates the importance of having a plausible cover story that to the casual observer would not set off alarm bells, especially in the drug culture where feelings of paranoia seem to be normal. Just the mere fact of identifying a letter as being from an officer or that they are from an informant would place the informant in jeopardy and should <u>NEVER</u> be revealed.

The cover story should be something that is readily acceptable to anyone that knows the informant and knows their lifestyle so no suspicions can arise.

## **Examples:**

If you wished to keep an informant relationship alive while your informant is in Prison you might want to give the impression to the casual reader that you are just a close friend writing to them and certainly not a police officer. The duality of the paragraphs could be construed both ways, you couldn't just write a letter without including some "fluff" without raising suspicions. A letter that was crafted without the "fluff" would easily be seen through by the most casual reader and certainly seen for what it is by someone who may already be suspicious of the informant. It is unfortunate that for a street level informant to be effective they need to be in the position to see and engage in crime. The choice is theirs to make, If you saved every informant and made them a law-abiding citizen you would never gather any intelligence. Therefore to communicate with them and to prevent them from resenting you, they have to realize that they are not engaging in that lifestyle solely to appease you and you are not judging them for leading their lives as they wish. I did not like taking advantage of the informants by being dishonest with them but I realized that it was necessary to cultivate the relationship. Below are example letters written to an incarcerated informant and in italics the hidden meaning behind each paragraph.

#### 1st Letter

I just thought I would drop you a line to see how you've been. I talked with your friend who still lives where you used to stay and she gave me your address. (At this point I have opened the letter and did not identify who gave me the address even though I alluded to the fact that I had spoken with them, she would realize who I was referring to and probably would realize that they knew she used to inform for me. I also didn't mention where they both used to live).

It seems like forever since I have seen your smiling face, hopefully it won't be too much longer. When are you scheduled to get out? Will they put you on a bus to San Bernardino? (This informant always used to laugh and joke around and had quite a pleasant

disposition, she was a resident of the downtown area of San Bernardino, I am trying to find out if she is going to return to the City and I am propagating and furthering the impression of an "us" versus "them" mentality in her mind).

Things haven't changed much downtown, still the same old stuff going on just with a few new faces. There is a lot of youngsters running around all the time too. (I'm letting her know that her information that she used to supply that was valuable would still be valuable because things are pretty much the same, I am also letting her know that the "youngsters" are taking over the supplying of drugs in the area. "Youngsters" is a common street term for juveniles who deal in drugs. Note that I have mentioned the dealers and that the situation of dealers and users is the same without mentioning either term directly).

Well I hope you haven't gained to much weight - all that good food and no dope. You'll have to take advantage of your time and do some exercise. (When some people go to prison, they gain weight, it's very common as they get three square meals a day and usually no access to drugs. I'm also inviting her to tell me of any narcotic activity inside the prison. Note how I used the term dope and not narcotics, dope is a street term and narcotics would be a police term for the same thing).

Can you get phone calls? I'll give you my voice-mail number if you ever need it (I know you had it once before).

(I'm testing the waters, maybe she would feel more comfortable talking over the phone instead of communicating by letter as she used to feel very confident of this method in the past. I am also telling her that she can leave me messages and I would respond to them).

In the very least write back to me. I would like to know that your doing OK. I think about you most days and if there is anything that I can do for you or help you with out here let me know. That goes now while your inside and when you get out. (I'm inviting her to write back to me, letting her know that I valued the information she would give me and miss that intelligence that was supplied almost daily. It's important that she understands that I'm available for her information while she is incarcerated as well as when she is out on the streets).

I know that you've moved around quite a bit and wherever you decide to go (in case it isn't San Bernardino) call me and let me know,

when you get out I want to visit with you so you can tell me about your experiences etc. (I'm letting her know that I hope that she chooses to return to San Bernardino even though I realize for her own personal reasons she may choose to go elsewhere. She was a valuable informant and could possibly work for which ever Department has the jurisdiction on wherever she resides. My intention was to let her know that I would want to contact her upon her release so she could tell me any intelligence that she had gathered while she was incarcerated in case she didn't want to write it in a letter).

I hope this letter lets you know someone cares about you and what happens to you, hope to see you soon. (She needs to understand that as I could be one of the most stable influences in her life I will not judge her and her actions. Note that I said "someone cares about you" not "someone cares for you." I cared about what happened to her because I would only be able to continue the informant relationship if the relationship was very specific and defined. I would not for example be able to continue the informant relationship if she moved to Seattle, even though it might be in her best interests to do so).

I included the physical address of the Police Station and my voice mail number at the Police Station without identifying them as such.

#### 2<sup>nd</sup> Letter

Hope you had a good Xmas, well as good as you could considering where you are. Thanks for your letter, I'm glad you appreciate me writing to you and hope you feel the same way. (In her reply she said that she felt glad that I was giving her an opportunity for her to continue to inform as she wished to continue to supply information to me even though she was in prison. She also expressed some confidence in the manner of communication but said it wasn't as secure as a telephone, which was the way we had communicated when she wasn't in custody).

I want to give you my pager number, you can call (page) me anytime, but I work Wed-Sat in the evenings and that is the best time to reach me. (Based on her lack of confidence in the letters and preferring to communicate by phone I am trying to facilitate this by supplying my pager number. As I said earlier being accessible is one of the keys to being successful with informants so while I am working would be the best time to

reach me in case she supplied information that I would need to act upon immediately however I realized that she may not have access to a phone during the evenings and even though I would prefer her to call during that time I realized that she may need to supply me information at her convenience.)

Where is the "F.O.T.E.P." center? I know that it is in San Bernardino, but whereabouts? Maybe they'll let me take you out of there for a couple of hours every now and again so you can feel like a regular person. (She had indicated in her letter that she would be returning to San Bernardino but placed in the F.O.T.E.P. center, I had never heard of the place and as she had said she wanted to act as an informant again upon her release I was trying to find out where it was. I was hoping it would be close to downtown, where I was working. These halfway houses are usually very regulated, like a military boot camp and the administrators would probably welcome an officer taking an interest in one of their guests. Obviously she wouldn't be able to inform on anything in front of anyone at the center and if I could get her out of there for a while she would then be in a position to give me information. It had worked for me before with Ann, the juvenile, and I saw no reason that it couldn't work again.)

How do I go about putting some cash on your books? You were very nice to me and I want to repay you any way I can, I still miss your smile. (In her letter she asked me to put some money on her account in prison so she could buy some writing supplies and stamps. I had no intention of giving her any money but wanted to give the impression that I would at some time in the future. I wanted to reaffirm to her that I realized that she had placed herself in danger by being an informant for no monetary reward and that I would try to help her out by facilitation the supplies at least, if it was within my powers).

Well I've been working hard lately, I'm still in the same area doing the same thing. (She knew that one of my primary law enforcement interests lay with the street narcotic activities in San Bernardino. I wanted her to know that it was still very much active and that I had been addressing the problem as much as I could in the same area and my duties had not changed. She needed to realize that I still valued the information that she supplied and could continue to use it.)

I then gave my business address (without identifying it as such), my business pager number, and my cell phone number with the instructions to call Wed-Sat evening after 6:00pm. (She had mentioned that she still had reservations about using letters as a medium to inform and that she preferred to do so over the phone. She had very important information that she wanted to tell me but had to feel extremely confident in the method. I think she was trying to tell me about a police officer rapist and probably felt that the prison guards would be upset if they found out she was trying to inform about an officer. I worked Wed-Sat and was usually in the field after 6:00 pm which would have been the best time for me to react to whatever information she supplied).

# 3rd Letter

Hope you are well, I am doing fine. Thanks for your second letter. I have found out some of the information you wanted but I will do some more checking for you to get up to date stuff. (In her letter she had given me information that her ex-husband and children were located in Sacramento, California. I verified the information at work and found it to be accurate. This was important, she had now supplied me information of a personal nature that I could use to verify her credibility. When and if I ever needed to submit an affidavit for a search warrant I could use this information to establish her credibility in supplying information of a non-law enforcement nature. When you examine what I knew it was quite scant, I knew her name, age, and arrest history but nothing else. She didn't have a permanent address or a job that I could verify. I would need that information and any other verifiable personal facts to establish even a rudimentary basis of credibility for any of the other criminal information that she might supply. She had asked me to give her the information, I knew that would be wrong and did not want to break the law. I also did not want to snub her request so I chose to allude to her that the information was out of date and that I would secure the information at some time in the future. By being directly honest and telling her she didn't have a hope of finding out the information from me would kill the golden goose and any intelligence would soon dry up as she would see that our relationship wasn't a reciprocal relationship. Remember she had not completely flipped to our side yet and

was still wrestling with her conscience, so I still needed to treat her with kid-gloves.)

So I've got to wait until October '02 - hopefully it will go by quickly and I'll come and visit you wherever you end up. Just keep positive about things and we'll see each other soon. I thought you were going to come back to San Bernardino? What happened. (She had told me that she was going to be released in October 2002 and was going to come back to San Bernardino or Los Angeles, she wasn't sure. She still wanted to continue to inform and believed that she could get into bigger cases. She was still hinting that she had a very big scandal that needed to come out and now wanted to tell me over the phone or in person. She had not fully trusted the letter method to reveal her major intelligence.)

Well this is just a short letter as it will be your turn to write next. You can write whatever you want to inside the envelope just don't put any X and O on the outside, I don't want anyone to get nosy. (On her reply to my previous letter there was an X and an O on the outside of the envelope which she had lined out, she had explained that she had got the envelope from a friend in Prison but I wasn't totally convinced. I told her to write whatever she wanted to inside the envelope, hopefully information that I could use but I didn't want her to limit herself. I didn't want the prison guards to open the letter even though seeing the X and O on the outside may have been her way of deceiving the guards as they would think that it was not a letter from an informant).

I especially want to see you again, hopefully for longer than before and more often. I like it when you write and tell me what you want to do, I feel the same way. (She had told me that she wanted to become a paid confidential informant, she was looking forward to getting out of prison and believed that she would be very valuable in that role. I wanted to encourage her to fulfill her goals as it may be beneficial to both of us).

Do they open your in-coming mail and read it? Yours gets to me sealed so you can say whatever you want. (Again I was trying to say tell me the big story, tell me what you know, feel free to go ahead without any reservations because I was the only one who would read it without being obvious in my wording.)

### **Badge Bunny/Informant**

Early in my career I met a woman who I shall call "Susan". Officer Tiny and I were both working third shift patrol when Susan had shown up at the Department with the expectation to go on a ride-along with officer Tiny. He wanted nothing to do with her and begged me to take her on the ride-along for him. I looked at her and she seemed harmless enough so I agreed, he said he was going to owe me in the future for the favor.

Officer Tiny had met Susan when he had been working at a traffic accident, she had just stopped by and they had struck up a conversation while he was waiting for a tow truck to arrive. He found out that her brother-in-law was a supervisor at the Department and that she had a keen interest in Law Enforcement. He didn't think to much of the initial contact but over the next few weeks he would bump into her all over the place and she started showing up on his calls. She made it very clear that she wanted to be romantically involved with him and he didn't know how to stop their friendship before anything happened. Officer Tiny was married and had no desire to further the relationship even though Susan had made it very clear to him that she could keep a secret and no-one else would find out. When she had shown up for the ride-along he panicked and as I was the first person he saw that he could trust, he asked me to take her out instead of him.

During the ride-along we talked about almost everything and I found out that she did have a crush on officer Tiny even though he had not led her along or encouraged her in any manner. She realized that she was in an unhappy marriage and had listened to her brother-in-law's stories over the years and had fallen in love with the idea of being involved with someone from the Police Department. Her sister was living very well on her husbands (a sergeant) salary and she envied their relationship. She knew that most cops were married but that didn't discourage her and she would put up with being the other woman if in the end she got what she wanted. She did not seem to mind who the officer was, just as long as he was an officer or above.

She came on several more ride-alongs with me over the next few years and we stayed in touch over the phone quite regularly. Department rules limit the number of times a citizen can ride-along to six times in a calendar year so I knew every couple of months she would be at the Station waiting for me after briefing.

It was during this time that I realized that she was an invaluable source of information. She would sleep with any officer if they wanted to and would relentlessly pursue them once she had decided they were worth pursuing. We became friends, she understood that I was already a member of the Department and she was an outsider but to impress me with her knowledge she would boast to me about what she had heard or what she had done and with whom. She often suggested that she and I should date or get together sexually however I was not interested. I saw her as a very good source of information and didn't want to compromise my values. She was reasonably good looking and took advantage of her good looks to talk with different officers who would be flattered at this apparent interest she had in them. They didn't realize that behind her smile and flirty nature she was very calculating.

In 1994 or 1995 she told me she had left her children (she had two at the time) with her mother and had gone out to a local nightclub. Her husband worked nights and their marriage was one that had turned into a marriage of convenience as she was not interested in him any longer. When she returned to her apartment it was very early in the morning and she discovered that she had been burglarized. She called 911 and as it was just a report call she realized that she probably would have to wait several hours for an officer to respond. She put her nightclothes on and settled in for a long wait. About four hours later officer Meathook arrived at her apartment to take the burglary report. She showed him in and he began to write his report documenting the ransacked apartment and where the burglar(s) had come in and what had been taken. When he sat down on the couch she began to flirt with him and made it very clear that his uniform turned her on. She said they were two adults alone that should not deny what they both were feeling. As I said she wasn't an unattractive woman and I can imaging how she would have looked

dressed in revealing nightclothes. One of them made a pass at the other and they started kissing on the couch which ended up in sex between them. She was fairly unclear (deliberately) on who made the first move.

Police officers are approached all the time by women and should never let themselves become involved in this way. There is no way to justify that kind of conduct, even though Susan was more than a willing participant you can see how your conduct will compromise your judgment.

Susan and officer Meathook carried on a dating / primarily sexual relationship for the next few weeks that eventually fizzled out. He appeased her in the beginning believing that she would only tell the Department if he scorned her but once he realized that she was looking for more he didn't return her calls and avoided any contact. She then came on another ride-along with me and started by hinting that she had a boyfriend on the Department but wouldn't tell me his name, as the ride-along progressed the secret was to hard for her to bear and she told me the whole story. She realized that it shouldn't have happened or begun in the way that it did but blamed herself, as she had been intoxicated. She didn't realize that it as during these times when women are vulnerable that they should not be taken advantage of at all especially by police officers. She blamed herself so much that if anyone asked her she would say that nothing had occurred as she didn't want officer Meathook blamed in any way. She probably realized that if there was any fallout from her relationship with officer Meathook that would impact officer Meathook and his career then she would be seen as someone to avoid and therefore would not be able to continue her dating relationships with the cops.

She seemed to revel in being the center of attention at the Department and would often tell me that she knew who had shot someone and was going to call the detective who was handling the case. Our relationship became so predictable that when I would get a call from her I knew she had found out something or wanted to tell me of her latest conquest. I would hear a rumor about someone at the Department and a couple of days later she would call me and would

tell me everything that had occurred. Her sources were impeccable, I believed she was getting her information from her brother-in-law but I didn't want to pry to much in case she realized that I was using her as an informant. The key to managing this type of informant is to let them think your not really interested in their information and that you have heard it all before. The urge to ask prying questions is extremely hard to resist, but if you let them believe that your unimpressed with the information they will tell you more and more trying to pique your interest. Of course you need to ask questions that you already know the answers to in order to establish their credibility.

I was in the gang unit at the time and the supervisor (who was married) was seeing a waitress in one of the local Italian restaurants we used to frequent. He kept the affair very quiet and they would barely acknowledge each other when we would go in there to eat. Susan knew all about him and the waitress before I did, she knew where they used to go when they went out and how long they had been seeing each other. This was a supervisor who I used to work with for forty hours a week, you wouldn't think there would be all that much that he could hide from his subordinates but she had far superior sources than I did.

She also knew about another closely guarded secret around the Department. She knew that one of the gang officers had been starring in, and producing pornographic movies. This officer had led a double life for over a decade and the Department knew and chose to ignore it, he used to live in Burbank, California (the heart of the pornographic industry) until he was chosen for the gang unit and had to move closer to the Station. He had made dozens of movies over the years and didn't seem to see the conflict of interest. Susan did and always said she would keep her "ace in the hole" if she ever needed it.

Our friendship developed over the years and she probably romanticized the relationship to some degree in her own mind. When I was single and was at home she would stop by at my residence. (I lived in the City and she found out from someone where I lived and happened to be driving by while I was cutting the grass).

She knew which days I worked and which days I would be at home and it wasn't a big surprise to get a call from her on my pager during the evenings. One time I was at home when she paged me around 8:00 p.m., she said she was going out that evening with a female friend who lived near to me and as she had something important to tell me could she stop by on her way home. I said of course and she arrived at about 10:00 p.m., I was surprised to see that her friend was still with her as she usually would not talk in front of anyone else. They were both slightly intoxicated and said they wished to stay with me for a little while until they had cleared their heads. (Susan had no fear of getting stopped for DWI because she always felt that she could flirt or rely on her brother-in-law to get out of being arrested). We sat around for about an hour in my living room and talked about the Department and I realized that she didn't have any new information for me, the conversation turned to sex as the friend had recently broke up with her boyfriend and was missing that aspect of their relationship. Susan then suggested the real reason they had come by was that they were feeling horny and that I could have sex with one or both of them if I wanted. They put the ball firmly in my court and I would have just had to have stand up and make a move but I realized that it would be a huge mistake to involve myself with Susan or her friend. I told them that I was extremely flattered at their offer and I would have to think about it while we continued talking. After about thirty minutes they realized that I wasn't going to go for it and they made their excuses and left. I again didn't want to give the impression that I wasn't interested in her or her friend so in our phone conversations over the next few weeks I let her believe that I had misunderstood her offer.

In 1999 and 2000 she told me again that she had become involved with another San Bernardino Police officer. She said officer Mike Roberts had been coming by for several weeks during the day when she was home looking after her children. Their relationship had started when officer Roberts had stopped by to meet with the tenants in her apartment building as part of his P.O.P. duties. In the last few years she had another baby from a boyfriend of hers even though she was still with the father of her two eldest children. The baby had

grown up seeing officer Roberts come by very frequently and she now had a problem, when ever the youngest child would see a police officer or a police car he would begin to shout "Mike" over and over again. She said she was developing very deep feeling for Mike Roberts and they had talked about both divorcing their spouses and living together. I talked with Mike on his involvement with Susan to try to see if it was serious, he said he had developed strong feelings for her in the last few months but couldn't contemplate breaking up his family to be with her. I cautioned him that her expectations were that this was going to happen one day and he would need to handle her very carefully so that the relationship didn't ruin his career or his marriage (miss-placed values on my part I know, but I was talking to him like a friend).

The last time I saw Susan she was enrolled in an extended Police Academy at the local college with the hopes of becoming a police officer herself one day. I could see she was still up to her old tricks as one of her male class-mates was getting very jealous of her talking with two cops from the gang unit.

Susan was a classic ego motivated informant that neither desired nor wanted any kind of reward for her information. She was happy to boast of her exploits and would tell me everything if I pretended that I wasn't interested.

#### **Graffiti Search Warrants**

Even though Jim and I had primarily concentrated our efforts on felony crime we continued to investigate misdemeanor graffiti vandalism. During our time downtown we had seen a proliferation of two taggers that just used to write their names in big block letters all over the city. Fatboy and Crown were frustrating everyone's attempts to find them as they did not have an allegiance to a tagcrew they were the only ones that knew who they were. They were very mobile, often spraying their names at twenty to thirty different locations throughout the City so we believed they had access to a car, however we ran into a problem. Judges do not like granting search warrants on misdemeanor crimes. As each of the location was a

separate victim and the total damage was only a few dollars to paint over the graffiti we had numerous misdemeanor victims and could not lump them together to boot-strap all the misdemeanors into a felony charge. We gave it some thought and I realized that Fatboy and Crown would have to conspire together to commit the acts of vandalism and to do so was a felony. We believed that they were both present during the acts of graffiti because the names were written in different styles, we just needed to be able to tie someone to the crimes.

Again the use of an informant proven their undoing, corporal Ronnie Garcia was in the gang unit with us and had been maintaining several informal informants in the South West side of town. He loved working this area as much as we did our areas and had established many in-roads to the community which was a very tight knit Hispanic area with gang members going back generations in the same families. He had used one informant several times that had proven to be reliable in that he had checked information that they had supplied both criminal and non-criminal in nature and found that the information was credible. He contacted the informant and asked them to find out anything they could about Fatboy and Crown and we didn't have to wait long. About a week later he called them and they identified two people who were also on the fringes of a gang, as being the taggers. They lived across the street from each other in the heart of Ronnie's area and he was familiar with them. Several years prior they had been suspected of engineering a car theft / stripping ring that had been responsible for dozens of thefts and abandoned shells of cars abandoned in the area.

The important part of obtaining the search warrant was establishing the informants credibility without identifying them by name or by allowing them to be identified within their credibility statement. For example, if Fatboy, Crown and the informant had committed a crime together and the informant had told us, Fatboy and Crown would easily be able to identify who had informed on them. I interviewed corporal Garcia about how often he had used this informant and how reliable they had been with the information they had supplied and put it all in the affidavit. This is where it is

critical to establish that the informant has supplied non-crime related information that has proven to be credible, such as where relatives lived or what their names were because this type of information is absolute. Judge Krug signed the search warrant which wasn't endorsed for night service but did encompass the two locations, we were looking for anything that tied the two named suspects to the graffiti and therefore the conspiracy to commit graffiti vandalism.

We served the warrants at the same time, sending several officers to both locations. I made contact at Fatboy's house, he was home and denied that he was Fatboy even though he weighed about 320 lbs. As I entered I looked at the pictures of him and his family that were on the TV and the entertainment center, one of the pictures depicted him hugging his mother and he was wearing a baseball cap with the word "Fatboy" embroidered on the front. We went into his bedroom and found lots of pieces of paper which had Fatboy written on them, he must have been perfecting his style on those, but the biggest surprise was when we plugged in a black light that was mounted on the wall. He had positioned little stars all over his ceiling spelling out "Fatboy", he couldn't deny it any longer and admitted to us that he was indeed Fatboy.

At he other house across the street we found the second suspect wasn't home and he shared his bedroom with two brothers who probably wouldn't let him write anything on the walls. Fatboy had a Buick Regal that they used to go out in a spray their graffiti and the trunk was full of spray cans and spray can nozzles or "tips" as they called them. We arrested Fatboy based on the conspiracy as evidenced through the search warrant and arrested Crown later that evening when he came home. Crown was on probation for car theft and was looking at some serious prison time if he committed any other crimes so he realized that we held the power of his future in our hands. He became a fear motivated informant for us in this case, informing on Fatboy and for some time after his arrest as he wanted to be seen as a very co-operative suspect by the courts.

Our beginnings in graffiti enforcement paved the way for the creation of a detail of officers that was entirely devoted to tracking, arresting and gathering intelligence on taggers that was formed at

the Police Department in 2000. When I prepared the search warrant we had the concern of the graffiti being considered a misdemeanor crime based on the cost of repairing or painting over the graffiti which was about \$5.00 per square foot. When the graffiti task force took over the manipulation of statistics began and the price to paint over the same square foot of graffiti jumped up to about \$40.00. This meant that the new graffiti task force would now only need ten square feet of cover-up paint to justify a felony arrest, when I was looking at the same graffiti a few months earlier it would have needed to cover over eighty square feet to justify a felony charge. I would say most graffiti needed over ten square feet of paint so they effectively made almost all their arrests as felonies to justify their existence to the administration. Isn't it amazing how the simple manipulation of one number can suddenly make a supervisor shine to his bosses?

When Jim and I were working downtown we often contacted a prostitute by the name of Michella Roan. She lived in one of the downtown motels and was using prostitution to support her addiction to rock cocaine or crack. Most prostitutes sell themselves to support some kind of drug habit, it isn't a glamorous life in the slightest way. Roan was always respectful to us and would address us as "Sir" when she talked with us and when asked to go inside she would usually stay in for the evening. I realized that she would make a good informant because she wasn't unintelligent and had a realistic view on her life. She had no axes to grind and basically understood that their were no allegiances with the people she saw while she was working because they all existed just to take advantage of her. She was mentally stable and had arrived at her present station in life through her addiction to crack. She had a very low key manner with the people she dealt with and seemed to be able to infiltrate different levels of society without any problems. She always boasted that she would never get into to much trouble because she knew to much about people in the City. She wouldn't elaborate but said when she really needed to expose City hall to save herself she would.

When I first suggested that she should work as a paid confidential informant she laughed and said she had done that before in Los Angeles and the officers had let her name slip as an informant in front of some cocaine dealers so she had to flee the area to avoid being killed. She didn't trust the cops that contacted her at all. So I suggested that she could work for me in a more informal relationship until she trusted me enough to become a paid informant again. I continued to suggest this to her when I had the opportunity to bump into her over the next few years until she had worked out in her mind that it would be a secret and I would not tell any other officers until she decided that she wanted to get paid for her information. She realized that she was in control of the informant relationship and that she could back out at any time. She said she had worked for a few narcotic detectives from S.B.P.D. in the past but they had only taken advantage of her and treated her disrespectfully. She wouldn't elaborate on who she had worked for in the past but assured me that their informant relationship was over.

She suggested that it would be better if the contacts were limited to phone-calls only because this way she would not be seen talking with the police and she could talk freely and only when she was in private. I was agreeable to this as there wouldn't be any personal contact between us that could be viewed as improper and it would also protect her identity as an informant from anyone who might witness the trading of information. We came to an agreement that when I would patrol downtown I would look for her and when I saw her (and she saw me) if she had information to give me she would raise up her hand and mimic that she was on the telephone and would make her way to her room. I would give her a few minutes to get up to her room and call her, sometimes she couldn't talk with me because someone was in her room but when she supplied me with information it was so current I could see the people she was talking about as she described them. I began to contact specific people based on her information and started to make some arrests. I still had to develop my own probable cause so that I wouldn't have to mention her in my reports but I was beginning to have an impact downtown.

Unfortunately it had taken me so long to build up the relationship with her when I finally had gained her ultimate confidence my time in the gang unit had come to a close. I told her

that I would be rotating back to patrol duties soon and that I wanted to allow another officer to take over from me however she said that she wouldn't work for anyone else as she didn't trust them. I originally requested to patrol the East end of the City again but to my surprise I was assigned to the downtown area so I would often find myself in the areas that she would work and she would give me the sign to call and I would call her. Patrol was so busy that I often had to call her as I was on my way to a call across town and I didn't have the time to immediately respond to her information. By the time I would make it back downtown several hours had passed and I had missed the opportunity to act on the intelligence.

She would often flirt with me on the telephone, almost every time she would offer me sex and state that it would be one of the most memorable events because she was very good at it. I initially told her that I wished to keep our relationship completely professional but she started to ignore me and stopped giving me the phone-call sign and I began to realize that I had offended her by refusing her advances so bluntly.

Prostitutes want to think they are attractive and can continue a normal relationship with someone even though they sell themselves to others. I would see her downtown and called her a few more times and began to build up the relationship again until she continued to give me more information. She would continue to ask me out and this time I just made excuses that I had to work or that I had other things to do. I wanted to confine our relationship to when I was working only and she wanted to expand it. This would have been unprofessional and not an option as far as I was concerned but I realized that as she was becoming an informant that was supplying me with good information I would have to not be so blunt and officious with her until she had decided that she was going to become a paid informant again.

In the Summer of 2001 Roan just disappeared, it wasn't unusual to have an informant not be around for a few days or even a few weeks and at first I wondered where she had gone. Of course the possibility existed that she had been arrested but I became busy cultivating other informants that I soon forgot about her.

In November 2001 I met one of her prostitute friends "Norine" from the Royal Motel she used to live in and she asked me if I knew what had happened to Roan. I said that I didn't and she said she had wrote to her in Prison and Roan had expressed a desire for me to write to her. I didn't know for sure if the friend knew that Roan had been acting as an informant for me and I didn't want to bring her attention to it if she didn't know. I asked her just to clarify what Roan had said to her and she lowered her voice so no-one else could hear and said "Michella wants to talk to you, you know, tell you things, like she used to". I took this to mean that we both understood that Roan was my informant without either of us having to actually spell it out. She gave me Roan's address and again said quietly, "don't forget to write to her, I think she wants to tell you something important".

Jails and Prisons are magnificent places to learn things, the inmates constantly talk about their past lives (and past crimes) to each other. Everyone inside is always playing power games upon everyone else including the staff. When you are all reduced to the same level information is power, what you know and who you know can make the difference between life and death.

I thought that Roan may have found out something very important that she knew I would be interested in, but how do I communicate with her without alerting the correctional officers and inmates that my letters were from a police officer to an informant. Surely if anyone found out she would be identified for what she was and probably killed. So I wrote to her and addressed the return address as the Police Departments street address, only people that were very familiar with San Bernardino would know the physical address of the Police Station. I phrased my first letter very generally, without making any reference to police or informants to test the waters and to see if she trusted this form of communication to use as a conduit for information. I still only had Norine's word that she wanted to inform on something and I wanted to verify that this was indeed the case. She wrote back and didn't say too much, it was as if she also was not sure about the medium of communication and she wanted to test it to see if it was secure. She probably thought that the

correctional officers read the letters prior to it being deposited in the U.S. mail so she wrote the letter in a very friendly way and genuinely sounded pleased that I had written to her. I believed that she had either found out something on a major crime in San Bernardino or she wanted to tell me about an officer who was a rapist. This would be exactly the kind of proof that I would need to verify what I had told the Department earlier in the Year. If Roan said that she knew of a rogue officer on the Department I would have solid proof in the form of a letter and they would not be able to ignore me any more. (Details on my initial discovery of an officer serial rapist are later in the book).

My forming a relationship with an informant such as Roan when put in its correct context was not terrible or undesirable behavior. Remember she was someone who would sell her body over and over again to anyone with any money. She would get hit and abused time and time again and was treated as the lowest form of life by anyone who came across her. Prostitutes do this day after day, week after week, year after year. I initiated correspondence with her based on her friend and confidante telling me that Roan had something very big she wanted to inform. As you can see from the above letters, no matter how I tried to phrase the wording in the letters to let her know that she could say what she wanted she didn't reveal specifically what was on her mind. On reflection I think that she was trying to tell me about VanRossum without having to spell it out in the letters as she fully did not trust them as a secure means of communication. In the first letter she made several references to something very big happening in San Bernardino that she needed to tell me about. In her second letter she again said that she knew something that she wanted to tell me, but wasn't sure if she could trust me not to reveal her as being the source. I didn't realize at the time how involved she had been with VanRossum and now believe that she was going through some inner turmoil because of her past alliances to him and now she had the chance to tell someone she wasn't sure if she wanted to betray their relationship.

In 2000 I had several successes of cracking large cases with my accumulated knowledge of working informants and the gang

lifestyle. In the gang unit we had encountered a large Los Angeles based Hispanic gang that was trying to establish itself in and around our City. The gangs name was "Florencia 13" after the Florence area of Los Angeles County, the 13 signified that the gang was from Southern California and / or had allegiance to "La Eme" (the M), the Mexican Mafia, the Prison Gang that controlled the street gangs ("M" being the 13th letter of the alphabet) in Southern California. Northern California gangs identify with the number 14, for "Norteno's (Northerners) and / or with "Nuestra Familia" (New Family) the Prison gang that controlled the Northern California street gangs. Florencia 13 was so large in Los Angeles County that they controlled a five mile square area, completely controlled everything in that area, including the businesses and bars, in fact anything in that area that could be extorted was, by the gang. They had become so invasive that any original gangs that were in that area prior to their existence just became cliques or sub-sets under the Florencia name. The Los Angeles Sheriff's Department had formed a federally funded task force to deal with just them as they had become such a large problem.

We had a homicide of a tagger on the west side of town, he unfortunately was at a party on one of the streets that was known for it's several families of "West Side Verdugo" (a San Bernardino original gang) members. A few Florencia Gang members had been driving around looking to strike back against West Side Verdugo and had driven down the street and had seen a large party in progress. They had parked around the corner and walked up to the victim and shot him in the head, killing him. We figured it probably was a rival gang but we were stymied in our attempts to find out which one. At the time Florencia 13 was establishing themselves in the schools and rumors began to surface that Florencia 13 had claimed responsibility for the murder. We had been gathering intelligence on them very aggressively, every time we saw them we would find a reason and stop them for our intelligence files and began to build up a large database on the membership.

They were very different from our home grown gangs as they were mainly second generation immigrants from Mexico and for the

most part did not look like typical Hispanic gang members. They did not shave their heads or wear baggy clothing like our original gang members, even West Side Verdugo used to refer to them as being fresh from the border without saying it quite as nicely. They used this to their advantage however, upon first appearance they did not look like a typical gang member and it was only by looking at their tattoo's that they would admit their allegiance. They also developed an ingenious method to confuse Law Enforcement and it took us quite some time to realize what they were doing.

Gang homicide investigations at the San Bernardino Police Department were not handled as they should have been (what a surprise). The on-call homicide detectives were the ones who would respond to the murders, if your name was up on the list you got called whether it was a domestic or an arson. So consequently there was no continuity in investigations between gang homicides. We would assist as much as we could but we couldn't interview the witnesses or suspects we had to watch the interviews on closed circuit T.V. and pull the detective out of the interview and ask him to say something that may bring a result. It was very frustrating, the gang members and their associates had a way of talking that to the unitiated (or uninterested) was hard to decipher. The gang investigators on the other hand became very good at reverting to the gang members lingo to communicate. This was another example of having to adapt to the terms set by whoever you were talking to, it would have been a waste of time to appear stand-offish. We were trying to get information from them to solve a crime.

I recently read in the local paper that a San Bernardino homicide detective had threatened a witness with taking her babies away from her if she didn't cooperate with the investigation of her boyfriend. I have heard him say this dozens of times to witnesses in the past, of course this time he denied it to the press. There should have been at least two detectives completely devoted to gang homicides and shootings, the District Attorney had seen a need to centralize their prosecution of the hard core gang member and had assigned a single assistant D.A. to this end. The majority of all the homicides were gang related and we were completely behind the curve, every time a

homicide investigator that hadn't encountered a certain gang before we had to bring them up to speed on who was who. Re-inventing the wheel over and over, what a waste of resources and manpower.

The point raised above is no matter what the interview concerns, the detective must establish common ground if any information is going to be gathered. I used to cringe as soon as the detectives began to get frustrated and started to belittle the gang members and their gang as I knew it would take a lot of work to recover the damage the detectives had done. With Florencia 13 we managed to cultivate several informants who would use the individual gang members street name or "moniker" whenever they talked about the suspects. We would have the informant point out the residences where their associates lived and then we would go to the house and contact them. When we knocked on the door we didn't know who lived in the house or what the real family name was, we just had a moniker. So we would try to ask for "Sleepy" or "Shadow" and we would find that they didn't live there. We then would recontact our informants and they would be adamant on who lived where. What we found out amazed us, the leaders in the gang had been using two monikers. One of them they always gave to the Police as being their moniker so our records (that went back years) would identify "Shadow" as being a certain person. They then had an official moniker that was kept within the gang, so when another gang member identified "Shadow" it was a different person. If we hadn't been persistent in our investigation the real murderer would have got away with it.

The informants we developed in this case remained loyal to me and the other gang investigators after the case was solved because we treated them with respect and let them dictate the terms of the relationship within our boundaries. They felt as though they were in control when in reality they had no power, we had it and just let them think it to feel important.

Throughout my career I have tried to understand and develop my own expertise in what makes the Hispanic gang members so violent towards other Hispanic gangs. The black street gangs exist now for only one reason, to make money from the sale of drugs. The violence between black gangs is drug or personal relationship related

for the most part, there is some friction between "bloods" and the "crips" but as an organized gang they seem to avoid the all out confrontations that Hispanic gang members engage in.

I thought if I could stop the gangs from having such hatred for other members of a different gang then I might stop some of the violence between them. I understood most juveniles needed the bond of a group to identify with especially in the ghetto's where they didn't have much of a family to bond to. I talked with thousands of gang members and I was amazed to find out that my concept of bridging gaps between police and society was the same reason they were violent to each other. While they knew individuals from rival gangs that they liked and talked to (they often lived close to each other) they hated the group as a whole and held the group as a whole responsible for past transgressions against their gang. They understood that to stop the violence one side needed to act first and show that they were not going to retaliate any more. The contention lay in that they wanted the others to concede first. This also explained why the drive by was such a common method of operation, they could drive to a different area and shoot someone they didn't know. Someone they had never talked to before and someone who they had no ties to.

Lately the Hispanic street gang violence has been to protect their drug business and to keep outsiders from taking over the enormous profits that can be made and to kill informants.

In the early 1990's Hispanic gang members would shoot each other on sight until their hierarchy became involved. The Prison gangs control the street gangs by total dominance through fear. Most street gang members know that they will eventually be arrested and put in County Jail or Prison. When they arrive they are young and vulnerable, they need protecting from the other inmates so they claim their allegiance to a certain group. The group allows them the protection under the understanding that when they are released they have to pay their debt back by "putting in some work" for the gang. This could mean killing someone or bringing some drugs into the country from Mexico for them. They know they have to do the work because if they don't the next person released from Prison will have

the job of killing them. They also know that they will eventually find themselves back in Prison where the prison gangs can hold them accountable for failing to do as they were told.

In 1993 the Mexican Mafia had a meeting in Elysian Park (near the L.A.P.D. academy) with the heads of all the local street gangs. Their instructions were simple, no more inter-gang violence. It had to be sanctioned by the Mexican Mafia who were the only ones allowed to put a "green light" (their term to allow violence) on a certain gang or a certain member of a gang. Most of San Bernardino's local gangs heeded the order and Hispanic inter-gang violence was sharply reduced.

There was one gang however that remained aloof from the Mexican Mafia and did not listen to what they dictated. East Side Trece, they were from 13<sup>th</sup> Street in Los Angeles and had moved out to San Bernardino where they quickly established themselves as being ultra violent. There was so many shootings involving them the Mexican Mafia put out a green light on the whole gang to stop the violence through violence and to show that the Mexican Mafia should not be taken lightly.

East Side Trece members were so ruthless they would shoot anyone that they came across, in 1992 I remember a homicide investigation where one of their members shot at a car with a family in it because the mother had looked at him when they were in a liquor store together. She died in front of her children.

I began to contact one member quite often every few months and began to build up a relationship with him. He was one of the leaders of the gang and it was rumored that he was exempt from the hit list. He was so ruthless that the District Attorney believed he was responsible for at least seven homicides that could not be proven. The witnesses would not come forward and testify because they knew his reputation and feared him. He was also very street-wise and did his homework on the officers that investigated him, including me. He found out where I was living at the time and told me that he would stop by one day just to let me know that as far as he was concerned the respect went both ways.

I would arrest him several times over the next few years and would take the opportunity to talk with him about his life. He claimed that he existed by organizing the manufacture of large amounts of methamphetamine for the Mexican Mafia and would get paid \$50,000 for each batch he produced. He had a permanent "red light" on him from the Mexican Mafia which meant that if anyone did try to kill him they in turn would be killed, so he was virtually untouchable. He was a wealth of knowledge and he told me no other officer had tried to talk with him before. They had always been in awe of him (and afraid) or they treated him as the lowest form of life. He exuded confidence and intimidated the officers so much so they didn't want him to remember their names, so they ignored him and wanted to get rid of him as fast as possible. By playing to his ego and sitting down and actually listening to him boast I became a confidante for him, of sorts.

The more I talked with him the harder it was for him to keep his crimes secret, he had a very boastful personality and liked to think that he could tease you with little tid-bits of information but just stopped short of giving a full confession or an admission. He was a classic egotistical based informant and reveled in the fact that he was untouchable and had mastered (at least in his own mind) the criminal sub-culture to such an extent that he was beyond the reach of law enforcement and the criminal Prison gangs. He had a sub-conscious desire to confess everything to me and I had no doubt in my mind that if I could have continued to talk with him eventually he would have confessed to some if not all of his own crimes as well as implicating others.

I had made a lot of contacts in the field that I could turn to for information in one area or another and I tried to help them out when I could. I think most of them romanticized the relationship to some degree as police officers are looked at as knights in shining armor and that one day they would be rescued.

I started to cultivate the allegiance of a family that lived in a very strategic location. They had the unfortunate luck to live in a house that overlooked three narcotic and gang residences. They were a very poor family that did not have a television or even electricity for a few

days so there was not much to do inside their home. I began to establish ties to the family when one of the daughters (she was seventeen) had got drunk and had tried to kill herself over her sixteen year old sister stealing (and getting pregnant by) her boyfriend.

Police officers become good at counseling troubled people and over the years I had become very good at diagnosing problems and offering advise. I often thought that the underclass used the police as an alternative to marriage therapists and psychiatrists who they could not afford. I began to talk with the entire family who had so many problems having a police car parked outside their residence was a common occurrence in the neighborhood. I offered working solutions that the mom could use on her daughters who used to fight all the time over the boyfriend, luckily the oldest daughters father lived far enough away and the solution was to have the oldest daughter stay with her father until she forgot about the mutual boyfriend.

The next few times I stopped by to see how things were going the mom invited me inside and began to point out all the drug and gang locations and described the crimes that she had seen from her vantage point. I asked her to try to remember any cars or anything that was so blatantly wrong and tell me about it the next time I stopped by. She did and I began to utilize her as an informant, she was just grateful that I had stopped her daughters from killing each other. One time I had to take the mom and one of the daughters downtown (they didn't have a car) to retrieve some of their property from a pawn shop because the boyfriend had taken it and had pawned it. They were very grateful to me as I'm sure no-one else from City government had done anything positive for them.

I continued to gather intelligence from the mom for the next several years, the daughters by now were dating other gangmembers in the area and used to tell mom everything which in turn she passed onto me.

My goal was to have a street level informant in all of the high crime areas, it was very strange because you never knew which person would turn out to be of use to you. I began to respond to

every call with the intent on establishing myself as someone who could be called in an emergency and of someone who they could trust. I began to get very good at predicting where the major problems would escalate and where (and with who) however I needed to spend a little more time to get to understand their particular circumstances and who all the players were.

It is very unusual for patrol officers to solve major crimes, they just do not have the time to pick through the interviews and the physical evidence that the detective has. I was still in the gang unit and was riding around with my partner Danny, he was a very timid officer who let me lead on all the interviews and investigations. Several times he had left me hanging, not backing me when he was afraid.

Every few months one of the surrounding agencies used to conduct a sweep of their respective jurisdictions specifically looking for criminals. They usually invited the gang officers from neighboring jurisdictions to show a strong presence in their Cities for the purposes of intimidation.

We were working during the night with the San Bernardino Sheriff's Department on one of their operations looking for any criminals we could find throughout Highland, California. I was driving our car when I happened to see a homicide suspect standing in the street to the front of a house. I had told Danny that "Ryan" was standing in the group of subjects and he was wanted for questioning in a homicide that had occurred in the Sheriff's jurisdiction. It was dark and he was standing there with several associates to the rear of a car. I stopped our Patrol car and got out to confront him, as I walked towards him he saw me and signaled to the driver of the car. Not knowing what their intent was, I backed up and ordered them to get on the ground.

Sometimes the safest approach is to pretend that you are just routinely stopping someone so they do not key in on your interest and realize that you recognize them and are targeting them specifically. Suspects know what they have done in the past and the advantage is all theirs. This suspect had been present with his brother at the murder of his girlfriend for being a suspected informant where they had cut off her head and buried her in a shallow grave so I knew he was very dangerous and the potential for violence was very real.

I told Danny to get out of the patrol car to help me because I had more suspects and potential threats than I could cope with. There was the suspect and his two associates, the car, and there were a few people on the porch of the house that the car was in front of. I couldn't safely cover all three areas of concern with my handgun. Danny didn't move. I again yelled at him to get out of our car but he still didn't move. Ryan looked at his friends and I realized that he had seen I was having a problem. It was dark and they couldn't see into the police car so they either didn't believe that I had a partner or if I did he was scared and didn't want to get out and help me. This escalated the potential for violence immeasurably, the car that was sitting there suddenly started up and began to drive away. I let it go, now I could control everyone a little bit more safely as I wasn't concerned that someone could shoot at me from within the car. After the car left I decided that I needed to do something so that the suspects didn't have any time to formulate a plan. I ordered Ryan to walk over to my location, checked him for weapons and sat him on the curb. I didn't want to handcuff him or put him in my patrol car because that would have alerted the rest that this was more than a routine stop and I couldn't count on Danny helping me at all. I detained the others in the same manner and requested assistance over my radio, the Sheriff's Department showed up and they talked with Ryan convincing him to voluntarily come to their station for an interview. (Making him an informant instead of a suspect, from what I could gather he had only been responsible for luring her away from a party so that his brother and another gang member could kill her.)

Afterwards I confronted Danny about why he hadn't got out of the car to assist me and he made excuses that he was trying to talk on his radio and that he had dropped his flashlight. I had heard the same excuses many times before and from that day on realized that I was basically working alone. I tried to get over his cowardice and gave him the benefit of the doubt until it happened again.

In the summer of 2000 we had responded to a gang infested area where Danny had grown up on a shots fired call. Several of the neighbors had called in and the patrol officers that had originally responded had cleared the call without finding anything. Remember what I said earlier about nothing going unseen in the ghetto, I truly believed this and I started to ask anyone I saw where the shots had come from. Several of the neighbors began to point at a residence and said the shots had come from the back yard. We parked down the street and we walked down the driveway to the rear yard, in the light of my flashlight I could see several spent .22 casings and the stock of a rifle laying on the ground. The stock had been sawn off very recently because the saw and saw dust were laying next to the stock. I looked around for any blood or a body without finding anything but there was a lot of junk in the yard, I couldn't search everywhere due to the large amount of trash that was present but I was fairly confident that no-one was hurt there.

I then decided to make contact with the occupants of the residence for two reasons:

- 1. To make sure that no-one was hurt and,
- 2. To investigate the shots fired call further, if they had just been firing the rifle at least they would know that the Police were aware of it and maybe I could make an arrest or at least recover the firearm.

As I walked up to the front door, Danny started to walk back to our patrol car, I told him to back me up in case they were waiting for us to make contact. Danny continued to walk away saying we didn't have a right to knock on the door. I couldn't believe it, we had every right to knock on the door to check on their welfare and again I realized that he was scared. I knocked on the door, as I did so it swung open and I could see someone laying on a couch in the living room. He was sweating profusely and either was faking being asleep or was injured, I could see his heart beating through his t-shirt and I knew that we had the right house. I had not entered the house yet but realized that I needed to so that I could check on his welfare. I looked over at Danny who was now standing next to our car, I yelled

at him "get over here NOW, I need your help" however he just stood there. I then announced in a loud voice who I was and that I needed everyone else in the house to come out to the living room. I heard lots of crashing from a back bedroom and the sounds of a window opening and I believed someone jumped from a rear window into the back yard where the rifle stock was. The subject on the couch then pretended to rouse himself and sat up, so he was not injured and had obviously been faking being asleep. As he sat up, two more Hispanic gang members walked out of the bedroom into the living room.

Now I had three suspects not including the one that had jumped from the window and still didn't know where the firearm was. I feared being ambushed by the one subject who could run around the house and come up to me from behind and my partner was nowhere to be seen. I realized again that I was in a very dangerous situation alone and I did what I could, I checked the house for any blood without finding any while trying to maintain my visual on the three in the living room. I then wrote down their names so at least I would have a record of who had been there in case a body showed up later and left.

Needless to say I was not happy with Danny, I knew he had grown up in a house about fifty feet from where we were and found out from him that he feared if he became involved the gang members would seek revenge against his parents who still lived there. I couldn't believe that he would potentially sacrifice his partner just so that anyone at the house wouldn't see his face. I wanted a new partner, he was going to get me killed. I talked over my concerns with my supervisor, Sergeant Harps but nothing was done.

A few weeks later Danny and I were working the west side of San Bernardino when a call went out of a shooting victim at 7<sup>th</sup> and "L" street. I drove to the location and saw some fresh graffiti of the 7<sup>th</sup> street gang with a lot of blood on the ground below the graffiti including several 9mm bullet casings in the roadway. The victim had been shot by a passing car when he had been spraying "7<sup>th</sup> Street gang" graffiti and had ran around the corner to his residence where he had called the police. The wound wasn't life threatening and he

was taken to the hospital. We were leaving the area when another call came in of a shooting victim on the 16th Street overpass above the 215 freeway. A school police officer had seen a car parked on the single lane overpass and had stopped to see if he could help. When he opened the door the driver fell out of the car unconscious and bleeding profusely from a bullet wound on his left chest area. We went to the scene which was quickly ruled a homicide and I began to look for the scene. It seemed obvious to me that the victim in the car had been shot somewhere else and had managed to drive until he had fallen unconscious and the car had stopped so I began to walk east. I walked almost two blocks directly east until I found a bullet casing in the street. It was another 9mm, I asked for additional officers to block off the street while I conducted a search for additional casings and found several more. I was very happy, it is very rare to find a crime scene so quickly after the crime had occurred before the evidence is lost or witnesses are gone so I began to ask anyone if they had seen or heard anything. Unfortunately I didn't have any informants or friendly citizens in this area so I felt sure that the residents had heard and seen the crime they didn't trust me enough to tell me about it.

I began to think that if the victim had been driving west then the suspect was probably driving the other way and the had passed each other. This would also link this homicide to the shooting that had occurred at the graffiti location so I was looking for a suspect that had a beef with the original San Bernardino gangs. Probably it was either a "Florencia 13" or an "East Side 13" gang member suspect.

I began to drive around the area directly east of the crime scene in the hope of seeing anything that may be interesting. It seemed unlikely to me that nothing had precipitated the shooting and that maybe the victim had driven past someone and a confrontation had occurred which had culminated in the shooting a few blocks west. As I drove down 14th Street I saw a Hispanic subject walking along the side-walk with dyed blonde hair wearing an orange t-shirt with a black design on the front. He looked like a "tagger" and not a gang member but I turned around for a better look. As soon as I completed my turn he hopped over a fence and went into a house. I filed away

the information on the house in the back of my mind and continued to look for anything else with no luck.

In the meantime several witnesses that had been with the victim in his car when the shooting occurred began to come forward. Danny soon lost interest in the case and went home however I volunteered to stay on after my shift in case I could help. Once the witnesses were rounded up and brought down to the Police Station I listened in on the interviews.

They said that they had been driving West on 16th Street going home from a party when another car had come the other way. As they passed each other the driver of the other car yelled something at them and they stopped because they thought it was someone they knew. As soon as they backed up and pulled level with each other the driver of the other car had said "I'm seventh street, where are you from?" the victim replied "I'm Westside" not really indicating much, other than he was from the largest gang in San Bernardino. The suspect then began firing from his car into the victims car striking the driver once. As he was shooting he was yelling something but the witnesses couldn't hear what he said over the noise of the gunfire and because they were ducking down. They described him as having dyed blonde short hair and wearing an orange t-shirt with some kind of black colored design on the front. I couldn't believe my luck, I had seen someone matching that exact description run into a house a few hours earlier and I told the detectives of what I had seen.

We caravanned up to the area and I started to drive around looking for the house, at first I couldn't find it and I started to panic, thinking that I must have missed it until I expanded my search a little bit. I found the house and we made contact inside, asleep in a bedroom was the suspect Juan Montoya, he was an East Side 13<sup>th</sup> Street gang member, after he and the other occupants of the house were detained he was sat on the living room couch while the witness that could best identify him was rounded up. I was watching him fairly closely and saw that he was trying to get his hands (which were handcuffed behind his back) into his right front pants pocket. He had already been checked for weapons so I was curious to see

what he was trying to get rid of. When I looked into his pocket there was a single key to a vehicle, he wouldn't tell us where his car was but it was found parked down the street. The witness came by and identified Montoya as the suspect and his orange t-shirt was found in the bedroom.

A search warrant was served on the car and a single spent 9mm bullet casing was found under the drivers seat, it matched the bullet casings found at the homicide scene and at the graffiti shooting scene.

When the case went to Court the victims family wanted to hug me over and over again in thanks for my work. I was satisfied that I had stuck through the case to the end and had seen a murderer sentenced to life without the possibility of parole. The families appreciation to me was very touching, and it was its own reward.

I stayed in touch with the residents at the house who were on the fringes of the East Side 13<sup>th</sup> Street gang with the hope of converting the matriarch into an informant. She realized that her son had not chosen his friends very well and she feared that one of her other children might become a victim if any form of retaliation occurred. Initially she was very hostile towards the police but as I contacted her more often she soon began to warm up to me. I never used her as an informant but I probably made some inroads so that she didn't see all cops as adversaries and at least any future contacts were not as contentious as they once had been for my beat partners.

In 2001 I had a unique feeling of potential violence on two of my calls, I'm not saying I could predict the future but after being a street cop for over a decade the feeling that things would escalate on a particular call when there wasn't any cops around was a tangible one. It had taken me a long time to get in tune with my inner or gut feeling, some cops never realize the potential that exists in all of us. I had learned when I trusted my instincts I was usually right and had used them to guide my decisions.

The first incident started off as a "violation of a restraining order" call. The victim had got a restraining order against her husband who had been physically abusive to her approximately three weeks ago. I met the victim Toni around the corner from her apartment and

verified that the restraining order was valid and that it had a proof of service attached. She said the County Marshall's had served her husband with the restraining order a few weeks ago and her husband had moved out.

Today she had left her apartment in the morning to visit with some relatives and had come home and found that her husband had come back and was drunk inside the house. I drove to the apartment and was met by officer Currie who told me that there was an ongoing problem at the house and he had called out sergeant Heston previously and sergeant Heston had resolved the call without arresting anyone. I was amazed, why would a sergeant not enforce a restraining order if it was valid, it was the best and easiest solution as well as it was against the law for us not to act. Officer Currie and I went into the apartment and began to talk with the husband, he understood that he was not supposed to be at the apartment but as sergeant Heston was his friend he had told him that he could come back if Toni was not home. He even asked us to call for sergeant Heston again so that he could walk away. We placed him under arrest for violating the restraining order and officer Currie took him to jail. I took the violation of restraining order report and advised her that I didn't think this situation would resolve itself and that she should consider moving to a different residence for her own safety. She still had divided loyalties to him however because they had recently had a child together, despite his recent violence. Her father arrived at the apartment and I talked with him for quite some time expressing my concern that she could become the victim of her husbands violence again.

I gave her my business card and advised her to call me if she had any further problems, I told her when I was working and that I would respond if I could but if I was busy I would at least return her calls.

I found it was very important to have the same officer respond to a problem if the problem continues. I always tried to put myself in their position and remembered how frustrating it was to have to keep going over the same problem when I have called a customer

service hotline in the past and had to reiterate several times the same information.

A few weeks passed by and she called me to stand by while she removed her property from the apartment. A week later she called me again to say that she had re-united with her husband and that he had been drinking and using drugs throughout the day and she wanted me to stand by while she retrieved her son from her husband. I told her that I would evaluate him first and if in my opinion he was sober and had not been using drugs I would not allow her to take their son form their residence. I realized that she might try and manipulate my concern for her and her situation for her own benefit so when I arrived I was not surprised that he was sober and lucid so I had to leave their son with him. I explained to her that because this was their home, I could not justify taking their son from his residence even though she felt that it was justified. She was not happy with my decision but I would not use my power to do what was wrong. By her re-uniting their relationship she had also voluntarily violated the terms of her restraining order so I would not enforce it even as she insisted and she drove away.

Soon after she moved out again and when I was on my days off the husband attempted to kill himself. He shot himself in his chest but missed anything vital, he left her a note saying that he didn't want anyone else to have her or their son. If she had been there I feel sure that he would have tried to take them with him, sometimes unstable people kill their close relatives first to seemingly justify the reason to then kill themselves.

(She was the same woman who I have talked about earlier, the woman who was so thankful for my involvement detective Otey based her opinion that I would accept a free lunch from her as a reason to prove that I was involved with her).

I had the same feeling when I was sent to a group home in the downtown area. The call was a "subject disturbance" over a civil problem between one of the tenants and a woman in a car. I arrived and was immediately confronted by the woman in the car, Bonnie. She said she had recently become acquainted with Lyra who lived upstairs. Bonnie had been selling clothes to Lyra and Lyra's friends

and one of Lyra's friends owed her \$400.00. She believed that the mutual friend (who lived in Hollywood) had sent Lyra a check for the money and that Lyra had cashed the check and was refusing to give her the money. She had contacted Lyra by telephone earlier and some threats had been made so she had come down to the hotel to confront her. They had used this arrangement before on several occasions when Lyra had given her the money without any problems. I asked Bonnie why she didn't just have the money sent to her directly and she said she had credit problems and could not open a checking account to cash the checks. Bonnie then said Lyra was a pre-operative transsexual and looked like a woman even though physically he was a man.

I went upstairs and contacted Lyra who indeed looked just like a woman, he was with another transsexual and I began to talk with both of them over the problem with Bonnie. Lyra said Bonnie had come to her room earlier in the day and had threatened to beat her up if she didn't give Bonnie her money, he had closed the door and called the Police as he feared being arrested because he was a transsexual. He said he had met Bonnie about six weeks ago and had bought some clothes from her to help her out because Bonnie had just got out of Prison and he thought that Bonnie had also sold some clothes to their mutual friend in Hollywood. He had never cashed any checks for their friend or for Bonnie herself. I asked Lyra if he had any weapons inside his room and he said he didn't so to solve the problem I asked for the friends telephone number so that Bonnie could contact her directly and to avoid being any kind of go-between for Bonnie.

I re-contacted Bonnie and gave her the phone number and told her that what she had was basically a civil problem and that she should seek redress in civil court against whoever was in Hollywood. Bonnie took the number and got into her car and left. I decided to wait for a few minutes to see if she would return and she did. She said the number that Lyra had given her was not a good number and she wanted a good number so she could call her.

I went back upstairs and re-contacted Lyra and saw that the number he had written down was the same number in his phone

book and Lyra picked up his phone and dialed the number. He briefly spoke to someone and then gave the phone to me. I identified myself and asked her if she owed someone called Bonnie \$400.00, she said she had paid Bonnie any money she owed her and that Bonnie was crazy. She then hung up.

I re-contacted Bonnie and told her that the number was good and I had spoken with their friend and told her that Bonnie would be calling her for her money. Bonnie then got into her car and drove away again. I waited around a little while longer and talked with the manager about the situation and I was not surprised when Bonnie returned. She told me she had spoken with their friend and she had denied owing her any money, I explained again that she would have to sue her for the money in Civil Court and she did not have any recourse with Lyra however she seemed unconvinced. She said she wouldn't come back again tonight but she would return the next day to get her money. I could see that no matter how much I tried to convince her otherwise she was sure that she was going to get her money from Lyra and would probably try again once I wasn't around. She then drove away for the last time that night.

I went back upstairs and talked with Lyra again, I told her that Bonnie seemed determined to get the money from her no matter how much I tried to show her what her legal remedies were. I gave him my business card and wrote down the hours that I worked and advised him to get a restraining order against Bonnie. I also told him that if Bonnie did come back he was to not answer the door and to dial 911 as soon as possible.

There was a large size differential between the two parties, Bonnie was a large solidly built woman and Lyra was very petite. I thought if there was any physical confrontation between the two then Lyra would definitely be at a large disadvantage and it seemed that Bonnie was much more aggressive than Lyra. I didn't quite believe that the reason for the contention was the clothes, it seemed that there probably was a much more serious reason that either of them couldn't discuss with the Police, in all likelihood it was over something illegal.

The next day Lyra went to the courthouse and got a restraining order against Bonnie however Bonnie showed up again in the early afternoon. She knocked on Lyra's door and Lyra did not answer, Bonnie went downstairs to the common room to use the phone to call the police. While she was on the phone with dispatch Lyra came downstairs with a shotgun and shot and killed Bonnie. Lyra then returned to his room as the Police were already on the way over. When contact was made at his room he surrendered without incident.

I knew that there was a potential that this kind of call would end up in extreme violence, I just thought that it would be the other way around. I had tried my best to mediate the problem between the two so that they both had other avenues of resolution they could take, but it was not to be.

# **Grey Street SWAT Incident**

I was awarded the Department Distinguished Service Medal for my role in a SWAT operation that was extremely dangerous for everyone there. We were once again paged in the middle of the night to serve an arrest warrant in Muscoy, a small unincorporated area that borders San Bernardino. This was out of our jurisdiction however the Sheriff's Department SWAT team was busy on their own call-out and could not respond.

The suspect Terrance Dolby was a suspect in two homicides that had recently occurred in San Bernardino, he was a large scale methamphetamine producer and dealer that had killed one of his suppliers in his last shooting.

His residence was a large single story building with a smaller house directly south and a large field to the north and it was rumored to have a methamphetamine lab in the garage along with several weapons. There was a large tubular steel fence across the front yard with a steel gate that was closed.

Again we arrived at the command post which was around the corner from Dolby's residence and assignments were made. We positioned a sniper and another officer in the field area behind the

house that could see into the kitchen and partially into the living room area. The arrest team was positioned north of the house alongside the field area in case the suspect exited the residence because they would be able to give him commands and take him into custody. There was perimeter officers directly south of the residence that were responsible for the small house and containment if Dolby tried to escape our perimeter. I was positioned across the street and slightly south of the house along with one of our snipers, I was standing next to a telephone pole against a chain link fence. From our position we had a good observation of the front yard and the front door.

The garage was on the north side of the residence and had a bright light above it. The light was one of the sodium vapor type that was broken and would turn on, slowly get brighter and once it had reached it's full brightness it would switch itself off. It cycled in this manner every 3-4 minutes. The scout officers were completing their scout which was taking a long time due to the size of the property and had just arrived at the south side of the smaller residence when the decision was made to evacuate the residents inside so that they would be safe in the event of any gunfire. The scout team returned to the command post as the perimeter officers made contact at the smaller house. They knocked on the door and told them who they were however they were not co-operative with us. Normal procedure is to tell the occupants to call 911 so that they can verify for themselves that we were in fact the police. We had informed the Sheriff's Department dispatch center that we were in their jurisdiction and they should expect calls from concerned citizens.

We didn't know it at the time but one of the occupants of the smaller house was Dolby's girlfriend. She closed the door on the officers and immediately called over to Dolby's house via cell-phone warning him that several men dressed in black were surrounding his residence and they claimed to be San Bernardino police officers. The lights went out in both houses at approximately the same time throwing the area into even more darkness. I was looking at the front door through night vision goggles that allowed me to see when the overhead garage light wasn't fully bright but ruined my night vision

in case I needed to shoot with my rifle. When the light above the garage became brighter I relied upon my normal vision and tried to look through my rifle sights at the front door. At the time we didn't have night sights on our AR-15 rifles and I had to rely upon the silhouette that the sights produced in contrast with the house.

The front door opened and two subjects walked into the front yard as the light above the garage got brighter, the first one walked down the front yard, opened the gate and walked into the street. The second subject walked out the front door carrying an AK style assault rifle, I could clearly see the gas tube on the top of the barrel and realized the damage that it could inflict on the team if he chose to engage them.

He stood in the driveway cradling the rifle in his arms which was pointed in the direction of the arrest team. The sniper and I confirmed that we both saw that he indeed was carrying a rifle and I was expecting to hear a loud rifle shot from the sniper who was immediately to my left, but it never came. The first suspect was now in the middle of the street and I heard a lot of shouting coming from the direction of the arrest team. The gunfire then started. I heard fully automatic gunfire from the direction of the arrest team and rounds were hitting the chain-link fence immediately in front of me. I kept my observation of the second subject who began to lift up the rifle and I thought was going to start shooting at the arrest team. I was still waiting for the sniper to take the shot and asked him if he was ready, he said no, so I fired two or three rounds at the second subject to hopefully prevent him from shooting at the rest of the team. If he had fired the AK at the team the damage would have been horrendous, our bullet resistant vests or helmets would not stop or slow down the rifle round and no-one from the arrest team was engaging or even seemed to acknowledge that he was there.

The arrest team has been crouched down in a single line when the lights had gone off inside the residences. Once Dolby had come out into the street they had fanned out to contact him and had called out "Police Department" several times. He had ignored them and had raised up his arm and had begun to shoot at them with a handgun. They began to return fire striking Dolby and the metal

fence behind him. I believe they developed "tunnel vision" and their vision narrowed down to the immediate threat being Dolby and they probably never even saw the second subject with the rifle. The rounds that were hitting the chain-link fence to the front of me were ricochets from the steel tubular fence that surrounded his front yard. An enormous amount of rounds were fired by the arrest team, I believe the number was approximately one hundred and forty three rounds fired by six officers. Danny Gomez panicked once the shooting started and tried to move backwards away from the threat, falling over the person behind him. He landed on his back and emptied his entire magazine of thirty rounds straight up into the air. Luckily he didn't hit anyone. The officers that were immediately to the south of the residence were in the direct line of fire from the arrest team and tried to get down behind a Volkswagen Beetle that was parked to the front. Luckily they also remained unscathed.

Once I had fired my rounds the light from the garage turned off and I could no longer see the subject with the rifle, I looked through the night vision goggles and saw Dolby had staggered back and fallen against the gate and the rifle was laying in the driveway. I didn't know where the suspect had gone and no-one approached Dolby who was groaning. All this took occurred in about five seconds. The containment officers in the rear of the house then said over the radio that a suspect had come out of the back door and was running towards them. They took him into custody and brought him around to my position.

It is not very often that you get the chance to talk to someone that you had just shot at so I availed myself of the opportunity. I asked him if he had been the subject in the front yard with the rifle because he was dressed the same as him and he said that he was. I then asked him why he had not fired at the team as they were shooting Dolby and he replied that he had started to think about it when he heard bullets whizzing past him and thought that someone must have been shooting at him too. He panicked, dropped the rifle and ran back inside the house. He said the rifle was Dolby's and that he didn't know if it was loaded or how to shoot it but had brought it out to scare away who-ever was outside. He didn't believe that it was the

police even though Dolby's girlfriend had told them on the phone that the police were outside. He thought it was criminals who had decided to rip off Dolby's drugs which he had inside the house.

The residence was checked for any other suspects and none were found. The team members checked themselves for bullet holes. (I knew that you didn't always feel them when they happened). One of the arrest team had been struck on his upper lip and on his helmet with bullet fragments, whether they came from Dolby's handgun or from ricochets from the fence was never established. The department made a big show of his helmet and the press were taking photographs of it at the after action press briefing. The arrest team fired over one hundred and forty rounds at Dolby striking him a few times and killing him and saving their own lives as well.

# Part 4

# **Chapter 10 - Police Rapist**

In January or February of 2001 I contacted a prostitute named Anne Menifee who I had often contacted over the preceding years. I had built up my relationship with her to the point that she would give me little tid-bits of information about criminal activity when I bumped into her. Nothing major, just who was new in the area and selling drugs, that kind of thing. In fact, just the same kind of information that Roan had given me too, I used to compare the information from both sources to see if either one was trying to use me or deceive me and I used to ask one about something the other had told me just to verify it. For a while they both had lived at nearby downtown Motels and were being victimized by the same dope dealers in the area which proved invaluable from my perspective. I didn't know if they knew each other and I didn't want to tip them off so I never mentioned Roan to her or any other of my informants.

Just as I had done with Roan and a few others I had built up my relationship with her in small ways. Prostitutes never know where they will end up after they conclude their business and it was not uncommon to see them walking from the south end of the City back to the downtown area. The south end is where the nicer Hotels and restaurants were so the 'johns' would take them there and leave them there afterwards. In the past I had seen her walking back downtown and had stopped to give her a lift on the condition that she went home and didn't come out again. I had also mediated her relationship with her girlfriend on several occasions, so she trusted me, she didn't want to become an official informant and set anything up with me of a permanent nature and she was not that reliable or stable for serious consideration anyway.

I had seen her at 13<sup>th</sup> and 'E' Street and had stopped to talk with her for a few minutes. She told me she was glad that I had stopped to talk with her as she had something very disturbing to tell me. She was very nervous and kept looking over my shoulder as she was talking with me and wouldn't tell me unless I swore to keep what

she had to tell me as confidential. I told her that I would and reminded her that I was a cop and if she told me anything that she knew I couldn't keep to myself then she should only tell me with that in mind. She then asked if it might be possible for her to tell me something and if I act on it could I keep her name out of it just like when she had given me tips before, I replied that if possible I would try.

She then told me that she had been walking in the same area very early in the morning and had been stopped by a San Bernardino police officer. She described him as a white male, wearing a blue police uniform, light brown hair with a mustache that extended past the corners of his mouth. He detained her and told her she had a warrant for her arrest and he handcuffed her and put her into the back of his patrol vehicle. They then left the area and began to drive around, but they didn't drive towards the Police Station jail that was only a few blocks away. As they were driving he began to talk with her and asked her if she wanted to work off her warrant. She asked him what he meant by that and he said that if she took care of him he would let her go. She understood this to mean if they had sex she wouldn't have to go to jail for the warrant. She agreed and they drove to a police satellite office located in the north part of the city. The substation was attached to a Stater Brothers market and they entered from the back door.

I asked her to describe the inside of the office and she said as soon as you walked into the office from the back there was a restroom and a store room on either side of the doorway then the room opened up into a large area that had desks and office dividers against the walls. The officer had gone in first and had sat down and removed all of his clothing. I asked her if she was sure, because it seemed a very risky thing to do and she said he removed all that he was wearing and took his gun out and put it in a drawer. He then undid her handcuffs and told her to get undressed and she took of her clothes. She gave him oral sex and they had vaginal sex on the floor and over one of the desks. She said he wore a condom for the vaginal sex but not for the oral sex. After he was finished he told her to get dressed quickly and that she should wait outside. She got

dressed and waited for about ten to fifteen minutes outside. While she was outside she began to wonder what he was going to do with her when he came out and thought that he might kill her and dump her somewhere so she began to get nervous and opened the door to see what he was doing. She had decided that if he wasn't dressed she was going to run and hide from him. She opened the door and he was standing next to the doorway and told her to close the door because he couldn't set the alarm with the door open. She could see that he was looking at a keypad and was waiting for the door to close. She closed the door and walked over to the patrol car and waited for him to come out. When she got back into the backseat of the car she told him she would never tell anyone about what had happened and he said that if she did he would find her and kill her. He drove her to 13th and 'E' Street and dropped her off.

I was stunned, I began to ask all kinds of questions, obviously my first question was if she had seen his name tag or if she knew his name and she said she had purposely not looked as she didn't want to know who he was. I then asked her if he had any tattoo's and she said that she had not seen any. I then asked her if he had any piercing like a nipple ring and she said he did not but she knew which cop had a nipple ring and it wasn't him. I asked her if she knew officer Matlock and she laughed and said he was the one with the nipple ring and she knew that because she had seen him without his shirt. She would not tell me how she had seen him shirtless, although I knew Matlock worked a lot of the vice programs where he would pose as a "john" and he would wear a tank top so I liked to think that was where she had seen his nipple ring.

She continued to tell me that she believed the officer that had taken her, worked in the north end of the City because he had a map of the north end on his clipboard and she also knew most of the officers that worked downtown and had not seen him there before.

I told her that there was no way that I could keep this secret as it was way to big of a crime and it was much too important that he be stopped as soon as possible. I told her that she would have to come down to the Station and talk with the detectives but she refused and said that if she was asked she would say that nothing had happened

and that she just wanted to forget the whole thing. She did not have any warrants at that time and I had no lawful reason to detain her any longer so I let her go. I made sure that I knew where she could be contacted and I left the area.

I had heard a few stories from prostitutes over the years accusing cops of having sexual relationships with them and had asked the prostitutes small details to test their stories which they hadn't been able to deliver. I didn't therefore believe the stories, but Mennifee's story had lots of small details that only someone would know if it had occurred, such as the alarm keypad and the layout of the office. I mulled her rendition of the crime over in my mind for the next hour and I was in a quandary. It was a very serious crime that needed to be investigated if it was true, if it wasn't then I could ruin an officer's reputation and credibility. I decided to do the right thing and when I saw my supervisor, sergeant Kilbride I would tell him and try to convince him that what I heard was very credible and needed to be acted upon. I thought that if a sergeant retold the story to the Department then they would have to act. I realized that personally I was on shaky ground, the Departments reputation to kill the messenger was well known, I hoped to mitigate that event to some extent by insulating my position by sergeant Kilbride. I must admit it never even crossed my mind that the Department would ignore a sergeant and still go after the messenger.

Later that night I met with sergeant Kilbride to hand in my reports. We parked our cars drivers door to door and I handed him my reports and told him what Menifee had told me. He listened and told me that prostitutes were always making wild accusations against cops and that theses things usually worked themselves out. I was incredulous, I reiterated that there was parts of her story that could have only happened if she had been there and had seen things for herself. He asked me if that was it and I said yes, and he drove away. I hoped that he was going to the station to talk with the Watch Commander and finished off my shift.

On the next day I was getting ready for work when I saw sergeant Kilbride in the locker room. I asked him if he had initiated any kind of investigation and he said that he had not and that I shouldn't worry to much. I finished off the week reeling from what I had uncovered. I had discovered that an on duty police officer was raping prostitutes and nothing was being done about it.

The following Wednesday we had SWAT training which this month included training with SIMS (simulated ammunition) in an old building downtown. While we were on a break I told several members of the SWAT team of what I had heard and that I had told sergeant Kilbride and nothing was being done about it. We tried to narrow it down to which officer could be responsible and came up (in error) with officer Passo. He fit the criteria in a number of ways, he worked graveyard shift, he was white, he worked the north end and he had a mustache that extended past the corners of his mouth.

At the conclusion of training we headed back to the Police Station and detective Vasek and I went up to his desk in the detective bureau to try and find out who the rapist was. We initially ran officer Passo's unit history for the past several months but we discovered that he had been accountable for most of his shifts and there was no periods of inactivity. He had also not ran anyone with the name of Menifee or anything close to that and had been in his assigned area for most of his calls. We then tried officer Baughman's unit history but found out that he had been off on injury time during most of the preceding months so he could not be the rapist. We were running out of options, it never occurred to us to run officer VanRossum history as he seemed to fat to be the rapist, he also had a shaved head.

While we were discussing who the officer might be during training officer Kokesh joined in the conversation and said he was going to tell Internal Affairs. When we arrived back at the station he went upstairs and saw detective Gorrell in the upstairs break room. As detective Gorrell was assigned to Internal Affairs officer Kokesh told him of what had transpired with my informant and the conversation at training. Detective Gorrell said that there had been several accusations made against officers recently but they had investigated them all and found them to be false. He even tried to convince him of the small details that added credibility to this victim however detective Gorrell did not seem interested and actually laughed about the possibility of their being a rapist among the

officers. We could plainly see that the administration of the Department did not want to act or admit that there could possibly be a rapist in the ranks. We had notified supervisors and even Internal Affairs and both did not wish to initiate any kind of action to even dispel what I had claimed had occurred. As I said earlier this kind of allegation should be aggressively and thoroughly investigated as soon as it was alleged irregardless of the source.

Detective Vasek and I agreed that if we could find out whether someone was ran for warrants that would indicate at least a contact and maybe would narrow down our search. We agreed that he would check with Internal Affairs during the day to see if it was possible because he worked during the day and I didn't. Later that week detective Vasek spoke with detective Hanley and he also went to Internal Affairs. Detective Vasek also specifically sought out detective Diaz from Internal Affairs and told him the story. He also wanted to know if it was possible to check to see if a subject was ran for warrants. Detective Diaz said that only Internal Affairs could do that as they would have to put in a request with Information Systems, the people who controlled the computers we used. Detective Vasek left them with every clue to find out for themselves that a rapist was amongst the officers of the Department however they failed to do anything about it.

I was irate and upset at the level of apathy and voiced what I had been told to anyone that would listen. Over the next few weeks and months I told the story to at least ten to twenty officers, detectives, sergeants and anyone else who would listen however no one tried to find out if anything had occurred or was still occurring. The answer was always the same, that is terrible, but it is only a prostitute and you should be careful who you tell, this Department has a way of killing the messenger on these kind of scandals. I was still trying to do the right thing and did not think that there could be any consequences to me. I was pretty naive to the workings of the administration at that time as I believed that one way or another this scandal would come out and then they couldn't seek retribution against me because I would have to have been seen as credible

because I had told them first. I thought that just the fact that I had told so many people would insulate me, boy was I wrong.

I continued to work throughout the summer and nothing was investigated, nothing was done. I began to lose interest and thought that whoever it was had got away with it. Maybe it hadn't happened the way she had told me and that she was just trying to get an officer in trouble who had treated her badly.

At most Police Stations internal investigations are conducted in secret, no-one knows who is being investigated or why. This is the way it should be so that investigations can be carried out that hopefully uncover corruption and crimes committed by officers. In reality though the detectives in Internal Affairs at the S.B.P.D. talked so much that most, if not all of the sergeants knew what was going on with every internal investigation. I knew from every sergeant that I talked with that between January 2001 and November 2001 there was not an investigation being conducted by anyone on the Department into a Police rapist.

In November 2001, I heard from my old partner Jim Beach that a prostitute had accused him of raping her. I asked him to tell me the details and he said that detective Lucas had arrested a prostitute and had taken her to the Police Department jail for processing when she had seen Jim walk by and had shouted that he had raped her sometime earlier in the year. I found out on the grapevine that the prostitute who had been arrested was Ann Menifee and she had made the accusation in front of several officers and booking clerks who had written it down and immediately notified their supervisors. I couldn't believe it, almost a year and at last something was going to be done about whoever had raped her. I didn't believe that Jim could have done anything like this so I listened intently for the rumors. At first there wasn't any and Jim was disgusted that they hadn't even interviewed him so he went up to Internal Affairs and asked them why they hadn't talked with him. They replied that they were able to eliminate him very early on in the investigation and again it may be that the rape hadn't happened at all, but they would talk to him if it made him feel any better. They were still avoiding it, still to many people now knew and at last they would have to address it.

In the same month one of the patrol sergeants came to one of our briefings with information regarding someone to Be On the Look Out for (B.O.L.O.). Sergeant Desrochers said he had been contacted by child protective services in Riverside, California regarding a warrant they had secured for the arrest of an Angelique Macmillan. I knew her under her street name of "Loony", she was a downtown prostitute that I had been contacting for the past several years. She was originally from Pomona and had gone under the name of "Loony" when she had associated with the "Pomona 357" criminal street gang. She even had a tattoo of the name "Loony" on one of her arms. She got that name because she wasn't the most stable person I ever contacted and had a reputation of "going off" once she was arrested. She always claimed she was claustrophobic and therefore couldn't be placed inside a vehicle or jail cell, strange how she didn't have a problem getting into her customer's cars.

I looked for her for the next week without finding her until I was sent to the corner of 5th and "G" Street to contact two narcotic officers, officer Johnson and officer Scott Roebuck, who had seen her walking along and had detained her. I arrived and contacted the two officers, I knew that she worked as an informant for officer Roebuck which was obvious by the way they were talking. Narcotic officers and others who have informants will often have other officers take the informant into custody so that their relationship is not harmed by the arrest and this was exactly what was happening now. I detained her by handcuffing her hands behind her back and placing her in my patrol unit until I could verify that the warrant was still active. I searched her pockets of the big jacket she was wearing and didn't find any contraband or weapons. As she was about to sit down in the back seat of my car she lifted her arms up behind her back and brought her arms up over the top of her head. I was amazed and asked her how she was able to do this and she said she had perfected dislocating both of her shoulders when she was in jail in case she ever needed to defend herself. I sat her in the back of my unit just as lieutenant Klettenberg arrived at the scene. He was the lieutenant in charge of the narcotic officers and often used to follow them around when the called out at a certain location. I asked him to watch her for a few minutes while I checked to see if the officers had prepared any paperwork to lodge her in jail. I returned back to my car and asked lieutenant Klettenberg to follow me because she was not the most stable person and would sometimes need extra restraints so that she did not hurt herself by thrashing about in the back seat of my car. As soon as I sat down she told me she had a bottle of baby formula in her jacket sleeve and asked me to take it to her baby at the Royal Motel. Her baby was in the Royal Motel with her mother and they were awaiting her return with the formula to feed the baby.

I removed the formula bottle from her jacket and drove to the Royal Motel with the lieutenant in tow. Upon my arrival she gave me the room number and I took the formula up to the room. The door was open and there was two men in the room, one of them was bouncing a baby on his knee and I asked him if the baby was Loonies. He said it was and they were waiting for her to return so they could feed her. I gave him the formula and told him that Loony was going to jail and he said Loonies mother would return soon to take care of the baby. I went back to my car and I could see that she was beginning to flip out in the car, the car windows were steaming up in the back and it was rocking from side to side as she threw herself around. I realized that I needed to get her into the jail as quickly as I could before she really went wild and injured herself or pretended to be crazy. We left the Hotel and drove to the station which was two minutes away, when I arrived there lieutenant Klettenberg followed me up to the booking area and drove away once I had walked her into the City Jail.

By being respectful and encompassing a small detour into my arrest I had managed to keep Loony relatively stable and therefore had avoided sitting with her at the hospital while she was mentally evaluated. I do not think she realized that lieutenant Klettenberg had followed us the whole time as he drove a plain car which wasn't instantly recognizable as a police vehicle especially at night.

When you have eliminated the impossible, whatever remains, however improbable, must be the truth.

Sir Arthur Conan Doyle 1859-1930

# **Chapter 11 - Conspiracy**

The remainder of the book is concerned with my experiences in 2002 and 2003 at the investigative mercy of the S.B.P.D. I will dissect every facet of the horror that I have been through and explain how the Department has conducted itself illegally and lied afterwards to cover up their malfeasance. I will put the events in chronological order and examine the pertinent information along with my comments. The full documents are included in the appendix at the end of the book. Firstly my informant Roan was interviewed by detectives who were following up on the investigation that patrol officer Ronald VanRossum had been raping people on duty that had been made again by Ann Menifee when she had been arrested. Following Roan's interview the detectives found Loony and interviewed her. Based on that interview I became the victim of the persecution, I'll start off with Roans interviews.

#### Michella Roan's Interviews

Michella Roan was interviewed a total of three times by detectives on three separate occasions, all the interviews were conducted at Chowchilla State Prison while Roan was in custody;

1st interview - December 14th 2002 by detective Otey

2<sup>nd</sup> interview - January 9<sup>th</sup> 2002 by detective Otey and detective Descaro

3<sup>rd</sup> interview - January 16<sup>th</sup> 2002 by detective Otey, Internal Affairs detective Gorrell and sergeant Ringnes.

I will not go into all the niceties of the interviews but will concern myself with the facts and allegations contained therein.

#### 1st Interview

In the first interview Roan said she had worked as a confidential informant in the past for officer VanRossum, officer Steve and officer Tracy. She worked for VanRossum for about a year beginning in 1998 or early 1999. She worked for Steve and Tracy only 2-3 times after she finished working for VanRossum. Steve and Tracy were partners.

• When I had contacted roan when she was working as an informant she had told me that she had worked for S.B.P.D. narcotics detectives in the past but that they had disrespected her. She did not say which officer, but during 1998 and 1999 VanRossum was working in the narcotics unit. During 1999 and 2000 I was in the gang unit and had a partner, officer Jim Beach and officer Danny Gomez along with several other partners during that time. Upon my return back to patrol in January 2001 I drove alone. I do not know of any officers with the first name of Tracy on the department and in fact there was none in 1999, 2000 and 2001. I believe she was referring to me by my first name only and she believed that Jim Beach's name was Tracy.

She said she did not want her name used or to be involved in any investigation involving officer VanRossum. She did not want to get him in trouble.

 At this early stage of the interview she has already expressed her loyalty to VanRossum.

In December 2000 she saw VanRossum working in a marked police car and in uniform, she got in the car and drove to a substation in Highland, California. They went into the sub-station which had a Stater Brothers grocery store attached and had consensual sex on a table in the office. There was no force or fear and they only had sex one time while he was on duty.

VanRossum used to go to her room on his off-duty time, after he got off work, about 08:00 or 08:30 in the morning after his graveyard shift. He would also go to her room before work. They would have sex when he went to her room. This happened about once a week.

I assume from this statement that she and VanRossum were having a sexual relationship from December 2000 until she was incarcerated (Summertime of 2001) 8 months with 4 visit's a month equals at least 32 times that they met and had sex. That concluded the first interview, she said she was an informant for a Steve, could she have meant me? She established that she had a long term relationship with VanRossum and did not want to

see him in any trouble whatsoever. No mention of any sex at all between Roan and I.

### 2nd Interview

In the second interview Roan said She thought that VanRossum and her were boyfriend and girlfriend until he straightened her out by telling her he was married.

 She had romanticized the relationship between her and VanRossum which seemed to be initially based on an informant / officer relationship which VanRossum had used to take advantage of her.

She again said that she and VanRossum began having sex in 1999, about five months after she began working for him. She didn't remember which month they began to have sex, he would just show up and knock on her door at about 8:00 a.m. in the morning, before or after work, she was not sure.

• This differed from her first statement that she started having sex with VanRossum in 2000.

They had sex 4-5 times while VanRossum was assigned to narcotics to include vaginal and oral sex. They had anal sex one time. She said they had oral sex twice every time they had sex. After having vaginal sex, she would orally copulate him and he would then orally copulate her. They had sex one time while he was assigned and working patrol at the substation with the Stater Brothers attached to it. She thought of them as boyfriend and girlfriend and she really liked VanRossum.

 Obviously Roan was deeply involved with VanRossum and she really liked him and thought of him as a boyfriend.

She again described the on duty sex with VanRossum and then described another prostitute that was fucking the police, she described Loony and said Loony was doing an officer in narcotics, she described that officer as a white male, tall, skinny, no facial hair, brown or black long ponytail, 6-3 tall, 180 lbs, about 35-36 yrs old,

his last name starts with an "R" and he is always with a partner. Loony was a snitch (informer) for that officer.

I had called her from my patrol car on a cell phone and asked her to come down however she said she would have looked like an idiot talking with the police so I told her to go next door and I gave her a carton of cigarettes. I would call her and tell her that there was a sweep of prostitutes and that she should stay inside. I was pretty straight. Never on duty.

• First, the officer she described is officer Scott Roebuck. Loony was one of his informants, she used to tell me that she worked for him almost every time I contacted her. I did call Roan from my cell phone when she was working as an informant and would not want to meet with her for her own safety. She did not want to be seen talking with the cops. I was pretty straight, never on duty, whatever that means. That concluded the second interview, still no mention of any sex at all between Roan and I, She also mentions Loony but does not say she had witnessed anything sexual involving her.

#### 3rd Interview

In the third interview she said VanRossum would give her money after they had sex. He paid her \$20.00 three times, \$40.00 one time and nothing one time. She interpreted the money as being money for sex because she had not worked for him as a confidential informant on the days he paid her. She was paid as a confidential informant seven or eight times by VanRossum. The first time she had contact with VanRossum was when he stopped in his truck which was red with a beige bench seat. It was a big truck possible a Nissan with two doors with no camper and it had a long police radio in it. They went back to her hotel where he made her strip and get dressed. He called another officer to the scene she described as a white male,6-2 to 6-3 tall, skinny with a pony tail. She felt uncomfortable at first but after about a month she had a crush on him (Vanrossum).

 She now definitively states that she did work as a paid informant for VanRossum. She described VanRossum's truck very well, Red, Nissan, big truck with 2 doors, beige bench seat with a police radio again she said she developed feelings for him soon after meeting him.

She said she would always use condoms, Trojan condoms in a red box. They come in 3 packs, cost \$2.99 and are not lubricated.

She was very specific in which condoms she used.

The second time he went to her room she didn't have any condoms so they went in his truck to a store to buy some, they returned and had sex.

• This is the second time that she had been in VanRossum's truck.

She described his penis as circumcised and 5 to 6 inches long. She again described the incident where they had sex in the sub-station and after the sex he bought her cigarettes. One time he arrived at her room when she had been having her period, he was driving his red truck.

• This is the third time that she has remembered seeing his red truck, and note the description of VanRossum's penis.

She said officer Steve Peach drives the same red truck that VanRossum does and she first met me in June or July 2001. She arranged to meet me at 2:00 a.m. however I called her and said I was getting off work at 11 o'clock, we arranged to meet at the Stater Brothers on 4th Street. When I arrived I was driving the same red truck that VanRossum had been driving. We drove to an area by the University and we had sex in the truck. I used red Trojan condoms. I then took her back downtown. The next day I called her on my cell phone and gave her cigarettes.

• Roan described VanRossum's truck as being a red Nissan big truck with 2 doors and a beige bench seat and a long Police Radio. My truck was a red Ford F150, 4x4, 4 door truck with a gray interior. I have never been in VanRossum's truck and didn't even knew he had one until I read Roan's statement. I

have never socialized with VanRossum and did not know him personally at all.

- I never got of work early during May, June, July or August 2001 as verified by lieutenant Poyzer. He checked my computer logs which would show when I signed off my computer in the car. He also checked with payroll and they verified I didn't get off early once. I worked my full shift in a police uniform in a black and white patrol car until at least 02:00 a.m. all of the time that I was supposedly having sex with Roan.
- The Stater Brothers store again, it seems as though the store is involved in every sexual story that Roan says.
- The red Trojan condoms again, wasn't it red Trojans that Roan and VanRossum bought together so they could have sex?
- The cigarettes again, wasn't it VanRossum that bought her cigarettes after they had sex? I turned over all my cell phone records to the Department and at no time in June or July did I call Roan from my cell phone.

I called her twice and told her not to go outside when the viceofficers were doing a sting.

• The vice stings were conducted on Tuesdays, my days off during 2001 were Sunday, Monday and Tuesday. With me not being at work on the day that the vice stings were conducted how would I know to call her? This is just not true.

She said I had written her 3 letters while she had been in Prison. She went on to describe Loony again and two other prostitutes that are having sex with officers, Shante and Chocolate.

 She did not say that she witnessed any sex acts by anyone with any prostitutes. (In Detective Lindsey's sworn declaration to Judge Edwards prepared in November 2002 {below} he claimed that he believed she may have been a witness to sex acts by Loony).

## Angelique McMillan's (Loony) Interview

Angelique Mcmillan was interviewed on January 17<sup>th</sup> by Detective Lindsey. On the face page where he listed the time of the alleged crime he put down from 11-01 0200 HOURS to 11-01 0300 HOURS in 2001.

Shift 3 officers were called in from the field and had to sign in our equipment (car, radio, reports etc) at 0200 hrs. How could I rape someone on that date in a black and white patrol vehicle at that time when I had already turned in my equipment and gone home. It would have been very easy for Lindsey to check. I worked shift 3 during all of 2001. He even has a date, he could have seen what I was doing on that day from the moment I signed on in my patrol car to the moment I signed off, it would have all been logged, every call, every meeting, everything.

Loony starts of the interview describing the officer that she had sexual relations with as her "friend". She then describes the rape that had taken place after she was placed under arrest for a warrant by an on-duty San Bernardino Police officer. After the rape she described that he put the used condom into a white Styrofoam spit cup that he kept in the patrol car. The officer chewed tobacco and she demonstrated how he kept the tobacco in his lower lip and she believed that the cup was his spit cup as it contained a brown liquid similar to what would have been used by a tobacco chewer. She then described the officer as white male adult, 42-50 years old, 5-7, bald, with "beautiful blue eyes", chunky build, 170lbs.,and "buff" and that she believed the incident occurred on a Tuesday, a "vice night" meaning that the S.B.P.D. vice unit was out and it occurred at approximately 02:00 to 03:00 hrs.

- I have never chewed tobacco in my life, I have never had a spit cup in my car and would not have a need to have one.
- I am a white male, I was 38 years old at the time, 5-8, light brown hair (not bald or receding) and have green eyes, (it seems as though she especially notices his eye color). I have a Muscular build but I am not "buff". As I previously said I

didn't work on Tuesday nights, the vice night. 11-01-2001 the date that was written on the top of the rape report and which is supposed to be the date of the crime was a Thursday.

She next describes another incident involving an on-duty San Bernardino Police officer that occurred prior to the above incident. She said this incident began at Baseline and Waterman (in San Bernardino) and described the officer as follows: White male adult, 35 yrs old, 5-10, 160 to 170 lbs., black hair, clean shaven, brown eyes "baby face" with a seven inch long penis that was circumcised. He forced her to have oral sex.

• Obviously this again does not resemble me in the slightest.

She then stated she had sex with another officer in 1999 and didn't use a condom and gave birth to their baby. She said she really liked this officer and he appeared to care for her. She then mentioned officer Roebuck's name but did not say he was the one who fathered the baby. She then mentioned that she would give them two other officers, officer Harvey and officer Tullar. She recounts an incident that officer Harvey forced her to perform oral sex on him in 1996 or 1997. Officer Harvey was with a partner and she was with a friend Carol when this occurred and had witnessed the assault. She said the same officer who had transported her to jail on officer Roebuck's arrest warrant was the same one who had forced her to have sex at the railroad tracks. Officer Tullar is again mentioned and she had oral sex with him a total of two times. She then said the same officer who took her to the railroad tracks is also having sex with her mother and the dark haired officer had forced her to orally copulate him on two separate occasions.

Detective Lindsey asked her if her friend spoke with an accent and she replied he did and she was sure it wasn't Spanish. Lindsey then showed her a single picture of officer Harvey and asked if it was the same officer she had been referring to as Harvey and she said that it was. He then showed her a photo-line up and she identified me as her friend. He then asked her if the officer in position #4 (me) was the same officer who took her to the railroad tracks and she said "that's my friend."

- Isn't it strange that at this point in the interview she names two officers that have been sexually involved with her, illegally or otherwise and she described two more incidents of sexual assaults by officers. Yet Detective Lindsey's first probing question is "did her friend speak with an accent?" I am originally from England and have a British accent, Lindsey and Loony both knew this and even if Loony isn't educated enough to know where I was from she knew that I spoke differently. Lindsey was so intent upon tying me to Loony's allegation he forgot (or didn't want) to remain objective. At this point the should have been considering all the factors to put together a mental image of her "friend" not trying his hardest to make me that friend.
- Lindsey's introduction of a single photograph of Harvey would unfairly prejudice him so that there could never be a criminal case with Harvey as a suspect. Lindsey had effectively stopped any prosecution of Harvey by his introduction of a single picture as the District Attorney would never file a case with such a prejudicial identification. However in my case he put my picture in a photographic line up, she would already know to look for someone with an accent, Harvey didn't have an accent so the only suspect left was me in the line up. She knew who Lindsey wanted her to pick without him spelling it out to her.
- She recounts the incident with Harvey accurately and even named a witness that saw the assault. McMillan didn't identify me specifically even when asked if I was the officer that took her to the railroad tracks she replied "that's my friend". Wouldn't it have been easier to have said "yes."

McMillan then re-initiated the interview when she thought that it was all over as they had left the Police Department. She told Lindsey that she had a secret, and the secret was that she was almost sure that officer Roebuck was the father of her child "Simply Beautiful" and that they had an affair that consisted of a single sexual encounter and

based on the appearance of the child she believed officer Roebuck was the father of the child.

• It is patently obvious that she described several encounters with several officers, the most distinctive being officer Harvey and officer Roebuck. She mentioned officer Tullar (who resigned amid a sexual scandal a few years ago). She identified officer Roebuck verbally and officer Harvey from an individual photograph but it was my picture Lindsey put into a line-up. She described the officer who took her to the railroad tracks which did not match my description. (Just based on the description and the tobacco chewing it could have been either officer Vanrossum or officer Matlock). It seems the most egregious offense would have been the claim that officer Harvey had forced her to give him oral sex.

If both interviews with Roan and McMillan are read without any bias it is evident that a few statements are in common.

- Roan stated Mcmillan was having sex with an officer (Roan described officer Roebuck) who's last name began with an "R".
- McMillan claimed officer Roebuck was the father of one of her children.
- Roan had a very long relationship with officer VanRossum going back several years which included frequent sex. Vanrossum and Roan used red Trojan condoms and she had been in his red truck several times. She knew what VanRossum's penis looked like (the importance of which became apparent when she testified).
- The Stater Brothers store was a point of commonality between the VanRossum allegation and the allegation involving me.
- Roan said that I drove VanRossum's truck when I picked her up. Not a similar truck but the <u>same</u> truck. She allegedly was in my truck for some time but could not describe it at all and gave the same description as VanRossum's truck. (In the interviews that followed the detectives tried to tell me she described my truck including the internal color, it was a lie).

- McMillan had one sexual encounter with officer Harvey which was witnessed by a friend of hers "Carol" and possibly witnessed by officer Harvey's partner.
- McMillan did not name me and said I was her friend, even when asked directly she did not positively identify me as the officer who had taken her to the railroad tracks, she simply said, "that's my friend." (The wording in the affidavit for the illegal warrant that was prepared by detective Rogers said " she positively identified officer Peach from a photographic line-up"). It did also not say that the Detective showing Loony the photographic line-up (Lindsey) had unfairly prejudiced the line-up by asking her if the suspect had an accent.

It seems evident that Mcmillan named two officers as being sexually involved with her (Roebuck and Harvey), and whoever matches the description of the tobacco chewer who took her to the railroad tracks. Officer VanRossum clearly needed investigation based on Roan's allegations and I also should have been investigated based on Roan's allegation. Officer Vanrossum, officer Roebuck and officer Harvey have directly been accused of on-duty violations and you would think that it would have been easy to see that they should have been investigated first as if it was true it would have been criminal in nature. I should have been investigated internally by the Internal Affairs investigators only as no criminal activity was alleged concerning me by McMillan or Roan.

This is what did happen in chronological order, Vanrossum was interviewed criminally and placed on administrative leave. I was interviewed criminally and placed on administrative leave. Harvey and Roebuck were interviewed administratively and not criminally and not placed on administrative leave. Why was the process different for me than it was for Harvey and Roebuck? They had both been accused of crime's and I had been accused of a single sexual encounter non criminal in nature.

I have investigated many, many felonies and I would not have conducted this investigation in such a prejudicial manner. It seems as though detective Lindsey wanted me to be guilty of the rape (or at

least investigated for rape) with McMillan being the victim. Why would he conduct an interview where his goal was firmly established prior to the interview. When it is read objectively, she jumps around quite a bit and talks about Harvey and Roebuck but detective Lindsey did not pursue those allegations or show any interest, instead he kept trying to bring her back to the alleged rape at the railroad tracks. I have attended one of the best interview and interrogation school's in the State and when a victim is giving a statement and they mention a completely different crime (surely finding out about the allegation that Harvey and Roebuck were involved with her must have been shocking) you find out everything there is to know about that crime before moving on to something different. Even though the description she gave for the officer who raped her at the railroad tracks did not match me he already had my picture in a photographic line-up and he let her know which "suspect" he wanted her to pick by his suggestion that the "suspect" had an accent.

Based upon my experience McMillan's interview was completely fabricated by her, detective Lindsey didn't believe her at the time which is why he wasn't interested in pursuing the allegations against Harvey or Roebuck but what he was interested in was getting the accusation, however weak and tenuous that I had sexually assaulted her. He never did get a positive identification but he continued in his investigation of me as if he had. I will talk later about the level of ineptitude that detective Lindsey and Otey display in their investigations and why but as you can see at this early stage the decision had already been made to incriminate me of something regardless of what the victim (McMillan) said in her interview.

The interviews of Roan clearly show incompetence by detective Otey in it's purest form. The first interview was barely a page and a half (transcribed) and lasted **twenty seven** minutes. I have written longer petty theft reports with no suspects than Otey did in this case, when you consider he was investigating a police rapist, surely one of the biggest cases he will ever handle his indifference should be sanctionable. Why would Otey drive several hours one way to

interview a Prison inmate and then only interview her for a few minutes?

His second interview with her lasted **twenty five** minutes, it was even shorter than the first! What kind of investigator would hand that poor quality of work in with their name on it and then get it approved by a supervisor, I wouldn't and most of the officers I worked with wouldn't either. But in this case they were allowed to produce such shoddy work. Why?

He didn't mention how long the third interview was but as he had his supervisor (sergeant Ringnes) and Detective Gorrell from Internal Affairs with him this time I'm sure it lasted longer than the first two. He was also (along with Lindsey) coveting a future position in Internal Affairs and wouldn't want to be seen as incompetent. This is the only interview that she mentions me (apart from her being an informant for me in the first interview) in any conduct that could be considered improper or at least undesirable. They didn't ask if VanRossum (or anyone else) had contacted her between the interviews to get her to try to incriminate anyone else instead of VanRossum. They also did not establish what her motivation was, remember this was an officer / informant relationship, she was not alleging any crimes and they had unwittingly on their part allowed themselves to be manipulated by her.

I believe in her loyalties to VanRossum she thought that by throwing someone else's name into the mix she might mitigate the accusation she had made earlier against VanRossum. She had already expressed deep feelings for VanRossum and was betraying that relationship by informing the detectives that VanRossum had been improper with her. The three interviews took place over a period of a month, It seems apparent to me that she did have some time to think about what she had said to the detectives between the interviews and in the last interview she had tried to mitigate her betrayal of VanRossum by claiming that I had also been sexually involved with her. Detective Otey and friends, not having been involved in police work in the past would not have been aware of the dynamics of betrayal that occurs when an informant informs. They

were too stupid and ignorant of her motivations which are very apparent to me and took the information at face value.

There are a few reasons for the short interviews:

- 1. Otey was just plain incompetent, he didn't know what he was doing and didn't know how to conduct an interview. Or more insidious:
- 2. Otey was directed not to conduct an interview that would embarrass the Department, basically get in there write down as little as possible and get out. Roan didn't know anything and wasn't going to say anything. As frightening as this option is, it makes more sense because as the Department realized during December 2001 and January 2002 that this investigation was something they were not going to be able to bury, and on the third interview they now needed to be thorough. That is why the first two interviews were so short and the third more in depth.

# **Chapter 12 - Friendly Fire Number Three**

## Criminal Interrogation January 18th 2002

On January 17th 2002 I had to get a key from the Watch Commander to secure some evidence. The Watch Commander was sergeant Steve Lowes who was the officer who had saved my life when I was dying in lieutenant Poyzer's car and had since been assigned to narcotics as one of their detectives. When I walked in the office he was immediately confrontational and said to me " I hear you have been saying bad things about narcotic arrests needing more medical treatment than they should." I replied that I believed that was indeed the case and that it was a crime to commit such acts and no matter who broke the law we needed to respect the law in we were going to enforce it. He then said, "don't you know people who make waves around here get taken care of, one way or another they find themselves in trouble, no-one likes a snitch." I asked him what he meant by that but he wouldn't reply to me and waved me away when his phone rang. I walked out of the office contemplating what he meant as I knew all the sergeants were privy to investigations and maybe something had been initiated against narcotics because of what I had said to Captain Farmer during patrol briefings. I never realized how prophetic his words would become.

Later on that same day I was working patrol and worked until 2345 hrs. when I received a message to go to the station to see the Watch Commander. I thought maybe sergeant Lowes wanted to say something else to me and drove from the east end of the City and parked my patrol unit in it's space in the back parking lot of the Department. As soon as I got out of the car I was surrounded by lieutenant Henson and several detectives who immediately removed my sidearm, baton, knife and began to search me for any additional weapons. I submitted to them and was escorted into the Internal Affairs interview room and given a printout of a search warrant that stated I and my possessions were being searched for investigation of a rape charge.

I cannot put into perspective the state of shock that I was in, I knew that I had not raped anyone or even had any kind of sexual relationship with anyone other than my wife. I knew that the warrant would have had to have been based on probable cause in the affidavit but I could not image how there could be any probable cause to establish me in any kind of a crime. I felt sick and needed to vomit as I knew this was not something that could easily be undone with the Department. I had seen other investigations of officers that had not encompassed removing of their weapons. Indeed I had been investigated in several shooting investigations where I had been interviewed without the need of removing my sidearm. This was a step that had been taken without having asked me a single question and I knew that the Department would never admit that they were wrong and they had in fact "jumped the gun" in assuming my guilt from the beginning.

I waited in the interview room for two hours, I was going crazy with worry and I wanted to talk with anyone to clear my name. Finally two detectives entered the room, I knew both of them detective Richard Lindsey and detective Lance Otey. This was not good, both of them had the reputation of being cowards. They were the kind of patrol officers that used to volunteer for the petty theft arrests where the suspect was already in custody so they wouldn't have to challenge anyone. They were always the last officers to arrive on scene of any call where there was the slightest potential of any violence, they often used to hide around the corner of the call and wait until the other officer went on scene before arriving themselves.

Both of the detectives had chosen a career path that kept them out of danger and out of any chance of establishing themselves as street-wise cops. I had seen them drive by groups of gang members who were calling out to them without even looking in their direction. I used to stop to talk with them because by calling out to me I thought they were trying to attract my attention and used this time to build up my intelligence. I also knew that they would respect me more because I had stopped and they would sneer openly at cops that ignored them. They figured rightly that the cops that didn't stop were scared and that they intimidated them. I also realized that my

stopping and talking with them I would prevent future problems between these groups and cops. The cops who didn't stop had done a huge disservice to all of their partners because they had lost the respect of the people they had to police.

Of course this type of officer knew all the business owners because it was safe to contact them, as a rule business owners aren't out robbing and raping as soon as they close. I cannot recall a single large investigation where an arrest was made that I could attribute to either one of these two detectives. I knew I was in trouble. This type of officer had never used an informant to gather intelligence and would not understand the dynamics of what was involved in an informant / officer relationship. They had never manipulated a suspect to get what they wanted and I knew that my style of police work threatened and intimidated them.

They knew of my reputation of being a go-getter and not being afraid of anything on the streets. In this interrogation I was the safe quarry, they could vent their frustrations of being inadequate officers without the risk of any violence. In the scale of safety I was the most safe suspect they could encounter, I was another cop, my behavior would be respectful no matter how much they reveled in their personal victory because if I displayed any unproffesionalism I would be held accountable.

They began by reading me my Miranda rights, I initially refused to waive my rights but I then asked them to tell me what was going on as I wanted to clear my name and co-operate in any way I could to bring this about. They said they were investigating a rape and asked me if I had arrested Loony lately and I ascertained that she had accused me of raping her when I had transported her for the narcotic officers. I was almost ecstatic as I knew then that this could be cleaned up very quickly if they spoke with lieutenant Klettenberg. They were not impressed. They then turned the conversation around to my prostitute / informant Michella Roan and began to ask questions about my relationship with her. I was confused, I wanted to get back to the rape and give them any details that I could but they were more interested with Roan. I began to wonder what the connection was between the rape allegation with Loony and the

informant relationship with Roan and I could not make the connection. It began to dawn on me as the interrogation progressed that they had already established prior to the service of the warrant and the interrogation that Loony was not being truthful to them and that they never suspected me of the rape in the beginning. I asked myself, if I was investigating someone in the same circumstances and I suspected they did it I would look for every eventuality where there had been similar or alike circumstances in the contact. They were not interested in exploring any other contacts that I had with Loony and were much more interested in my informant Roan. At the conclusion of the interrogation I was sure I was being set-up, they had fully realized that I had not raped anyone yet they had gone forward with the search warrant and criminal interrogation.

Why was this happening though, what had I done that the Department considered embarrassing enough or exposed their inadequacy to the point that they would risk their careers. Of course, I had exposed that officer VanRossum had been raping prostitutes over a year earlier to the administration and they had done nothing. If they managed to ruin my credibility now it would be the perfect excuse as to why they ignored me earlier. They then could always say that they did not believe me because I am not credible. I told detective Otey and Lindsay that I had originally informed them about VanRossum and they sat there impassive. They did not want me bringing up their own failure with them.

I do not know what happened to the information that I passed on to the Department in the early part of 2001. I do not know if they had the information and failed to connect the dots. I do not know if they did find out that VanRossum had been raping prostitutes and they chose not to act. Maybe they were told not to investigate any malfeasance by officers because any bad publicity would reflect badly on the Department. What I do know is that there was a lot of rape victims that might not have been victims if the Department had acted on the information when I supplied it. A question for any attorneys to pose in their civil suits would be if the Department knew about VanRossum and failed to stop him did that mean they were condoning him and his actions. I realized that to limit the financial

liability that they would be paying out (potentially millions) I was expendable and the decision to forfeit me had already been made. I realized this once I signed the letter that had been prepared to put me on administrative leave. The date on the letter was January 17th, they were not interested in anything that I had to say during the interview and had previously made the decision that I was guilty of something. They didn't even have to prove it, I was assumed guilty from the beginning.

Months later I realized that my assumption was correct, at about midnight while I was sitting in the Internal Affairs interview room lieutenant Klettenberg had walked into the SWAT office and had shouted triumphantly to sergeant Harps "Peach is done, its all over for him, you'll never see him in this office again." Lieutenant Klettenberg did not know that detective Kokesh was around the corner, (actually in the armory) out of eyesight but he had heard everything and had seen Klettenberg walk past the armory and into sergeant Harps office.

When I read the warrant that was served that night I saw that my own personal bag was included. Sergeant Harps said in the warrant that he had seen me place the bag under the fax machine desk on that day. It wasn't true, when I came to work I usually got there two hours early to run and work out and was almost always the first one into the SWAT office. Sergeant Harps wasn't there on that day just like he had not been there on any other day and never saw me place my bag under the desk. There wasn't anything in my bag of interest but it again just goes to prove that they wouldn't let a little thing like the truth get in the way of their investigation.

# **Chapter 13 - The VanRossum Investigation**

I wish to digress a little and examine the VanRossum criminal investigation that the Department conducted. Lets assume that my information had reached the administration and a detective or detectives had been assigned the case when I supplied them the story that I was told in the early part of 2001. What was wrong with the Department that they failed to even look into any of the officers? Just the possibly having a rapist on the force and all the liability that it would incur should have propelled them into action. Maybe they didn't care because the victims were from the lowest rung of society and they had considered that there wasn't any victims present. It would have and probably should have been a matter of routine to view what the patrol officers were doing with their time. Everything that an officer does is recorded on a computer log. These computers can tell when an officer goes en-route to a call, when he arrives, when he leaves and what happened at the call. Every time an officer speaks on his radio it is tape recorded and entered manually by dispatch into which ever call he is on. Every car, person and equipment that is checked out gets logged into several computers and hand written logs.

For example, when I looked at my unit history for one day I would get a printout from the moment that I logged onto my computer in my patrol car to the second that I logged out. There were usually several pages of information listing from when I went to get gas to when I went to the bathroom. There are two pieces of information that are required to initiate any kind of log entry, the location and what you are doing, whether its checking subjects or eating.

This information is not just recorded, every field officer and sergeant can access this information. The Watch Commander and every dispatcher has a live time updated screen depicting where every one in the city is and how long they have been there. So even a lazy detective would only have to walk a few feet to the Watch

Commanders office and look at a computer screen to see what anyone and everyone was doing at any time.

Vanrossum worked fourth shift (graveyard) which patrolled from 10:00 p.m. until 08:00 a.m. After 2:00 a.m. graveyard was the only shift that was patrolling the streets. So the Watch Commander and dispatch would only have to oversee between eight to fourteen officers, not that many considering that a day shift Watch Commander might have to monitor between twenty to forty different officers. But the detectives could not be bothered to come in at night and look at the screen.

The other more frightening alternative is that they looked into it, found out that there was an officer raping prostitutes but chose not to act because of the embarrassment that the department would suffer if it came to light. If this was in fact the case no wonder that the Department to this day has failed to acknowledge that I had told them first.

Now lets assume that my information was suppressed by the administration when I supplied it, no detective was assigned to the case and no investigative work was done until November 2001 when they couldn't ignore it any more because too many people had heard Mennifee's accusation in the jail. The Department chose to create a task force consisting of detective Otey, detective Lindsey and supervised by sergeant Bradley Ringnes. Now they had the information that the rapes were occurring very early in the morning so it was probable that it was a graveyard officer. They knew that the majority of the rapes occurred in the Kendall Drive satellite office or at Cal-State University. On any given night there was only one or two officers assigned to graveyard that worked the north end of the City, one of them was VanRossum. If an officer that wasn't assigned to the north end went up there during his shift it would have been easily observed, so their field of view was limited to officers working the north end only. Now they could have got creative if they thought like competent detectives. There was an unknown number of methods that could have caught VanRossum red handed as it were, the only limit would have been their imagination. I'll list a few ways that I would have used if I had been in their position.

- The patrol cars had software and equipment installed for Global Positioning Satellite technology (G.P.S.) and it was rumored that the department could enable any vehicles software to track them in real time or download the results to a computer. I would have used this technology to track the graveyard units without them knowing. Even if they didn't have this capability, to assign the same cars to graveyard officers and put tracking devices in them would have been a good second alternative. These devices are frequently used by the S.B.P.D. in narcotic and surveillance cases.
- It would have been very easy to install video camera's in the offices to record what activity occurred during graveyard and at any other time. There are video cameras spread around the main Police Station to monitor the building and the prisoners and how they are treated. This could have been done with the office closed to officers and the public so that the detective's (and the administration) would have been the only ones that knew. There is no expectation of privacy when you are working especially in common areas.
- It would have been even easier to sit in a car overlooking the office and send in a field sergeant if anyone arrived there with a prisoner. There were lots of vantage points that would not have raised any suspicion if a car had been parked there that afforded a good view of the rear of the office (the only way in after business hours). According to Menifee the suspect officer removed every item of his clothing so I think that even detectives Otey and Lindsey would have realized that something was wrong with the picture.
- They could have checked the graveyard officers computer printouts to see if there was any officers that were unavailable for long periods of time, at least this would have narrowed down their list of suspected officers.

- Once the field was narrowed down they could have used a plain surveillance vehicle and followed who they suspected from a distance for a couple of weeks.
- They could have used a decoy female officer from another agency who was unknown as an officer to have posed as a prostitute to ensnare VanRossum.

As I said the only limit to this type of investigation is the imagination. There are no constraints put upon detectives conducting this type of operation, in fact the more innovative the better as that would avoid mitigate the potential of discovery. I personally prefer the video-cameras, they would have been the easiest and would offer the greatest return.

Let me tell you what they did to trap VanRossum in his criminal activity from when they found out in November 2001 until they placed him on administrative leave. They did nothing, not one proactive thing. They used the computers to try and track down any females that he had contacted in the past several years, starting with the most recent and worked back in time and then find them and interview them. Several officers also went out and contacted any prostitute they could find and would drag them down to the Station to be interviewed. They interviewed in excess of one hundred females using these tactics, there were no victims that came forward on their own. None.

They did none of the basic investigative techniques that I thought up in the twenty minutes that I considered the problem. (I said earlier that these detectives were among the laziest and most cowardly of our Department, now you can see why for yourselves). In the last several years the detectives that were promoted and Lindsey and Otey are prime examples, were promoted in a testing process that didn't ask any Law Enforcement questions. Can you imagine a testing process that wasn't concerned with the applicants knowledge of the law? At the S.B.P.D. it was the only way.

The testing process under Chief Dean consisted of memorizing the Chief's own philosophy of police work. So the detectives were not promoted because they had accomplished outstanding police

work and were the cream of the crop, they were promoted based on their ability to remember outdated and arguably wrong ideas about how to solve crime. I find it incredulous that officers were promoted to detective without being asked any questions on police work. There were so many areas that offered unlimited questions to show that the candidates had not just hidden for the last several years but had taken it upon themselves to fully understand all aspects of fighting crime. Lindsey and Otey were the types of officers who realized they had plenty of time to study Chief Dean's philosophy because they didn't have to work patrol or fill up their heads with such things as the Constitution or recent case law.

Any good leader welcomes subordinates that challenge his or her point of view. This would mean that an individual has taken the time to understand the leaders thought process and has decided not to agree with it. This kind of forum is the most ideal situation for a leader to talk to interested subordinates and to try to convert them to their ideals. The type of subordinate that challenges ideals is among the most loyal to the organization because they see a need to improve exists and are determined enough to vocalize their beliefs. They are trying to "right wrongs" even though they knew that this type of behavior was frowned on.

I used to put so many suggestions in the suggestion box that addressed problems (I used to sign some of them and would always get a talking to by a lieutenant). But others I never used to sign just to see what happened. Nothing did happen on the unsigned ones, I'm sure they went straight into the round filing cabinet (the trash can).

The hardest employees to influence by the way are the apathetic, they do not care about anything, they just want to get paid and don't bother becoming involved or have become apathetic because they have been shut down fast on anything they have said in the past.

I can remember a suggestion that my partner Jim Beach and I authored when we heard that the Department was going to introduce a standard handgun for all the officers. We heard that they were considering going to an unpopular brand because they were cheap and we both co-authored and signed a letter of protest and put it in the suggestion box. The next day our lieutenant called us into his

office, closed the door and talked to us about the danger of putting in suggestions. He said that out of a courtesy for us he would destroy our suggestion as he was held responsible for any "mal-contents" under his control and the administration had already told him that everyone was ecstatic over the idea of going to a standardized weapon. He then told us a story about officers that raise issues that the Department did not want to hear do not remain officers for very long and are soon disposed of. How true his prediction would become years later for me.

So as detective Otey and Lindsey try to prepare probably the biggest case of their careers' they are heading into it without one scrap of incontrovertible physical evidence. Do you thing that having a video tape of VanRossum raping someone would lead to an easy conviction, I do. Do you think that having a used condom with DNA from VanRossum and his victim would have been advantageous, I do.

What happened to the supervision of graveyard shift? Traditionally graveyard shift comprised of two types of officers. The method for assigning officers to a certain shift was one that was fair to the senior officers but did not provide for an equal share of new officers and veterans throughout the shifts. Every officer working patrol has their seniority number based on how long they have been an officer so the most senior patrol officer would get his pick of which days off he wanted, which shift he wanted to work and which area he would respond to. The most junior officers get whatever is left, usually Tuesday, Wednesday and Thursday off on graveyard. So the only senior officers on graveyard were the officers that wanted to hide away, disregarding any that had to pick graveyard for schooling or other personal reasons. So you had a dichotomy of officers that were on the graveyard shift, the newest rookies and the jaded veterans. The new officers were gung-ho and the jaded veterans just wanted to hide.

If there had been any effective supervision on graveyard VanRossum would not have been able to get away with his crimes. He would have stuck out like a sore thumb because he would not have been answering his radio or calling out stops in areas other than

what he was assigned to. Is it possible that the supervisors had been told not to uncover anything? I was shocked and dismayed at sergeant Kilbride's reaction to an officer that was raping prostitutes but I also realize that other sergeants must have known about VanRossum and chose to ignore it. The Watch Commander must have known also, he would be in an ideal position to see malfeasance by an officer. I know that the Watch Commanders and sergeants were very quick to respond if you took a few minutes more than your assigned thirty minutes for lunch yet they didn't notice VanRossum was disappearing for hours at a time.

# Chapter 14 - Legal Issues

So I left the Station that night in a state of shock, I went home and told my wife of what I had been accused of and what had happened. I didn't sleep at all that night, and I called the Legal Defense Fund (L.D.F.) the next day and I was recommended to engage the services of an L.D.F. Panel Attorney Robert Krause of Castle & Krause, Temecula. The L.D.F. is a fund that is administered by Peace Officers Research Association of California (P.O.R.A.C.). The San Bernardino Police Department has a union of the sergeants, detectives and officers that have collectively joined P.O.R.A.C. to help with contract negotiation and for protection from violations of the Public Safety Officers Bill of Rights by the administration. This was an assembly bill that was passed into law that grants peace officers certain rights when they are investigated by their own or an outside agency. The intent of the legislation was to stop agencies from abuses of power with regard to investigations of officers. There has been several court cases throughout the years that have further defined the application of the statute.

California Government Code Section 3303, The Public Safety Officer Bill of Rights reads:

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is

on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

- The interrogation started after 2:00 a.m. and extended until after 4:00 a.m., a time that I was usually on my way home and / or asleep. The relationship that I had with the informant Roan (which is what the detectives were primarily interested in) was not a serious matter. I was however compensated for the time that I was over after my end of shift. So at this point the Department violated subsection (a) by not interviewing me when I was on duty or during a time that I would ordinarily be awake.
  - (b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.
- I was not informed at any time of the name and command of the officer in charge of the interrogation. I did not know who was present and found out months later that captain Jenifer Aragon was present and was in charge overall. Obviously I knew detective Otey and Lindsey but they did not officially identify themselves or who was supervising them. I was not informed of the identity of all the other persons present the interrogation. Only the two detectives asked the questions. The Department violated several provisions of subsection (b).

- (c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
- I was informed by detective Otey and detective Lindsey that they were investigating a rape. They did not inform me that there was any other facets to the investigation and as the majority of the investigation concerned informant handling with Roan, they were not truthful in advising me they were just investigating a rape. They obviously deliberately misled me in stark contrast to subsection (c). Interrogations are extremely stressful, especially when conducted against police officers by unprofessional detectives. They let their preconceived ideas to filter into the interrogation instead of just trying to find the truth. Subsection (c) is supposed to prevent the blindsiding tactic of pretending an interview is about one thing and then asking questions about what they were really interested in. Of course subsection (c) only applies to lawful interrogations which this one was not because it was not solely concerned with alleged criminal activity.
  - (d) The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.
- No issues under this subsection. The interrogation lasted about 2 hours,
  - (e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to

answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

- Detective Lindsey did threaten me with being arrested when he proved the rape allegation against me notwithstanding the lack of physical evidence. It seemed as though no matter what I said he was going to arrest me. I knew they had stooped low enough to swear out a false affidavit in the search warrant and I believed they would fabricate evidence if necessary to bring about an arrest. Detective Lindsey left no doubt in my mind he was convinced he would soon arrest me for rape, he even wanted an apology from me once he had proved his charges. I in turn asked for an apology once he had proved that I hadn't raped anyone, I'm still waiting.
  - (f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:
  - (1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.
  - (2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that

officer's exclusive representative, arising out of a disciplinary action.

- (3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.
- (4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.
- This is the section that Judge Edwards later used as a means to suppress the illegal criminal interrogation. In his summation he allowed the City to use the illegal interrogation for impeachment only. I think he was in error, paragraph (3) of subdivision (f) is only applicable to subdivision (f) if subdivision (f) is violated. We didn't raise subdivision (f) as an issue in our points and authorities brief to the court as we had much more egregious violations under other subdivisions. If the issue is not raised by the plaintiff (me) then it cannot be adjudicated. So if we didn't bring this issue to the Courts attention then the whole subdivision should have not applied in the decision. The correct decision should have been to issue a temporary injunction against the Department preventing any punitive action. Section 3309.5 (below) gives the court the appropriate level of sanctions against a Department that has violated the act. In fact the Legislators actually desired that the punishment should not fit the crime and that it should go further to prevent future violations of a like or similar nature by the agency. It is fairly plain to see that if the punishment against the agency was not so severe that it did not prevent future violations then what is to stop them. I believe that it was the legislators intent to allow such a strong deterrent to a violation of the act that the agencies would try to work within the law. We also presented the recent case of

other multiple violations of the P.O.B.O.R. by the bad lieutenant against officer Dwyer (above) that were found to have occurred by the same court to show a pattern of abuses by the San Bernardino Police Department. Judge Edwards gave a compromised decision that didn't create any waves, and to the lay-person and many attorneys it looked just and apt. Judge's have a lot of discretion in their decisions but they usually try to apply the law exactly as it's written to avoid cases being overturned upon appeal. I obviously would have preferred a decision that was more in line with what the legislators intended and will appeal this decision on the above merits.

- 3309.5(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.
- (b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.
- (c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.
- (g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer

shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

- During the illegal search warrant the detectives seized my two tape recording devices. I was unable to record the interview and it was my desire to do so. I cannot think of any evidence that could be on my tape recorders that they would need to seize. I think their purpose was to avoid me recording anything that was said to me prior to the interrogation. So I was not allowed to record the interrogation.
  - (h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.
  - (i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal

verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

- This is an important subsection as this is how the Department tried to justify it's position in court.
  - 1. When I was surrounded in the parking lot I was taken to the Internal Affairs interview room. This is in a separate area of the Police Station that only the administrative personnel have access to. The area is controlled by electronic card access that only allows in certain officers and personnel that staff the administrative offices. I have been interviewed regarding possible criminal actions in the past and was always interviewed in the detective interview area. (The previous interviews were regarding the use of deadly force on SWAT call outs). While I was waiting for the detectives to complete the search I was watched by detective Gorrell (an Internal Affairs detective) and lieutenant Henson. They both prevented me from leaving the administrative area and would only let me go to the bathroom. When lieutenant Henson was away from the area detective Gorrell and I talked. He said that he felt sure that this was not a big deal and that once the detectives (Otey and Lindsey) had interviewed me they would get to the bottom of it. The impression I got from him was that this was just a routine investigation and I, unluckily was the target. I attempted to find out anything about why I was a suspect in the rape however lieutenant Henson would return and Gorrell would stop talking.
  - 2. When detectives Otey and Lindsey returned they read me my Miranda rights. I expected them to continue with the Lybarger admonishment (which states that they respect my right to remain silent but they are now ordering me to talk however whatever I say cannot be used against me

criminally). They did not, the interview stopped and I still did not know who was accusing me or what probable cause the search warrant was based on. (I was still in awe that a search warrant had been sworn out against me). I decided to re-initiated the interview because I wanted to know more information and at this point in the interrogation I do not think they were going to tell me. My frame of mind was that I wanted to help in any way that I could, I realized there had been a terrible error made by someone which I desperately wanted to clear up. I also realized that it was not in my best interests to talk with them but by not talking it would give the appearance that I had something to hide.

3. I hoped that detectives Lindsey and Otey would see the truth and I would not need the assistance of a representative. By secluding me in the administrative area they prevented me from seeing any other officers that I may have used in that role. I also realized later that the criminal interrogation was in reality just a sham for a interrogation that focused on non-criminal matters primarily so they could avoid the laws that were there to protect me. Judge Edwards agreed with me in his decision. The interview was a charade of a criminal accusation so that I could be interviewed illegally.

# **Chapter 15 - Illegal Search Warrant**

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

- The search warrant was obtained by detective Rogers on January 17th 2002, at 1130 p.m.
- Penal Code 1529 (below) states how a search warrant should be written. Almost all of the search warrants that I have seen and prepared generally adhere to this format. There was one word added to the warrant that is not in the statute and it is important, they inserted "immediate" before the word "search" (underlined). I have seen this addition in other warrants prepared by the Department so it seems to have become common practice.
- The warrant and affidavit that was prepared by detective Rogers (appendix) did not state any terms for night service. The affidavit never even remotely mentioned anything about any intention to serve the warrant at any time including daytime. Penal Code 1533 (below) states when a search warrant shall be served. The magistrate may if he is convinced by the affidavit or probable cause insert a direction that the warrant may be served at any time of the day or night. Obviously this is a double overt act:
- on the part of the detective who prepared the warrant in specifying a need for nighttime service whether by written affidavit or sworn statement in support of the warrant and
- by the magistrate in directing the warrant to specify that it may be served during the nighttime.
- So did detective Rogers verbally swear that there was a need for night service and the Judge deemed that not enough probable cause existed? Or did he forget to simply ask for it because he did

not address any need for night service in the affidavit. Penal Code 1533 goes on to state that the magistrate shall, when establishing good cause for nighttime service, consider the safety of the peace officers serving the warrant and the safety of the public as a valid basis. Judge Wade would have realized that the warrant was being served at a Police Station against an unarmed police officer. I don't think one could contrive a more safe, controlled and secure location. The variables in any warrant are the subjects who may be present and the location. On this warrant the detectives had direct control over both variables. There was not going to be an armed resistance put up by patrol officers and no-one (except the detectives) had access to the administration area of the Department (where the actual warrant was served on me).

## California Penal Code section 1529.

1529 The warrant shall be in substantially the following form: County of \_\_\_\_. The people of the State of California to any sheriff, marshal, or police officer in the County of \_\_\_\_: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1524, or, if the affidavit be not positive, that there is probable cause for believing that \_\_\_\_ stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to Section 1533), to make search on the person of C.D. (or in the house situated describing it, or any other place to be searched, with reasonable particularity, as the case may be) for the following property, thing, things, or person: (describing the property, thing, things, or person with reasonable particularity); and, in the case of a thing or things or personal property, if you find the same or any part thereof, to bring the thing or things or personal property forthwith before me (or this court) at (stating the place). Given under my hand, and Stephen K. Peach

dated this \_\_\_\_ day of \_\_\_\_, A.D. (year). E.F., Judge of the
(applicable) Court.

California Penal Code section 1533

1533. Upon a showing of good cause, the magistrate may, in his or her discretion, insert a direction in a search warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant shall be served only between the hours of 7 a.m. and 10 p.m. When establishing "good cause" under this section, the magistrate shall consider the safety of the peace officers serving the warrant and the safety of the public as a valid basis for nighttime endorsements.

So the warrant which was not endorsed for nighttime service was served a little after midnight on the 18<sup>th</sup> of January. Serving the warrant at that time violated California State law, the California Constitution and the United States Constitution. The fourth amendment to the United States Constitution is a very brief but important amendment. It simply states the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The manner of execution of warrants is generally governed by statute and rule, as to time of execution, method of entry, and the like. It was a rule at common law that before an officer could break and enter he must give notice of his office, authority, and purpose and must in effect be refused admittance, and until recently this has been a statutory requirement in the Federal system and generally in the States. There is no ambiguity in Penal Code 1533 it simply states in the absence of such a direction (for nighttime service) the warrant shall be served only between the hours of 7 a.m. and 10 p.m.

So am I to believe that the following people did not know about nighttime service of warrants?: Chief Zimmon, assistant Chief Billdt, captain Aragon, captain Farmer, lieutenant Henson, sergeant Blackwell, sergeant Ringnes, detective Gorrell, detective Lindsey, detective Otey, detective Rogers and detective Descaro. They also had access to the City Attorney James Penman, deputy City Attorney Stephanie Easland and several other City Attorneys to ensure that everything was prepared and executed lawfully. I would say if the total number of years that all of them had been in Law Enforcement was added together it would be in excess of four hundred years. So isn't it more reasonable to believe that they knew the could not serve the warrant after 10 p.m. and conspired to do so anyway because they considered themselves untouchable and without reproach? Surely if an agency administration would go to such lengths to violate one of their own officers State and Constitutional rights what hope is there for the regular citizens they are sworn to serve?

As detective Rogers prepared the warrant and affidavit I'm sure he will take the fall for their deviousness, if I was him I would be making some enquiries at another Department before they start looking for a scapegoat.

I found it very curious that my own personal vehicle was included in the search warrant, remember the warrant, according to the detectives in their sworn statements was solely and directly concerned with criminal activity, a rape where Loony was the victim. Remember that probable cause has to exist for a warrant to be sworn out in front of a Judge. The rape allegedly happened while I was on duty driving a black and white patrol vehicle. The only mention of any kind of personal vehicle came from Ms. Roan who said that I had been driving VanRossum's red pick-up truck. (One of my vehicles happens to be a red 4-door pick-up truck too). How did detective Rogers make the connection to include my own personal vehicle in the search warrant? Even if they made the connection that Roan could have meant my truck, she still didn't allege any kind of crime had occurred in it. So that portion of the warrant that allowed the detectives to search my truck could never be justified in any of the circumstances in this case. It was not based on probable cause and in

reality wasn't based upon anything more than a hope that it might turn something up. Incidentally, my truck was searched and checked forensically with negative results.

- 3309.5(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.
- (b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.
- (c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

This is the section that Judge Edwards should have applied to the Department when he reached his conclusion that my rights under the P.O.B.O.R. had been violated. As you can see subsection (c) gives specific remedies that may be levied at a Department to prevent any violations of a like or similar nature. From everything I have read on similar case law and decisions a more applicable remedy to the violations would have been the granting of a temporary restraining order preventing future violations and a preliminary injunction prohibiting the Department from taking any punitive action against me. I think then the standard of review would then shift to Judge Edwards (who the City could not influence) and the City would have to rescind any punitive measures against me.

# <u>Chapter 16 - Administrative Interrogation January 26<sup>th</sup></u> <u>2001</u>

On January 26th 2001 I was interviewed by detective Gorrell and detective Diaz of the Internal Affairs section. The interview lasted over six hours and again was conducted in the Internal Affairs interview room. I was accompanied at the interview by my attorney Bob Krause, I had never met Bob before this investigation and am indebted to him for his perseverance throughout many difficult and trying times. At the beginning of the interview we provided the detectives with more accurate information that had been transcribed from the criminal interview. We noticed in the criminal interview it had been notated that I had said that I had not read letters that Roan had written to me and that I had thrown them away. It must have been a slip of the tongue as I told them I had replied to the letters so I must have opened them, I had meant to say (and thought I did) that I had read the letters and thrown them away. Also I wasn't sure how many letters that I had written, I answered two at the time of the interview but as I thought about it later I realized that that I had written three letters. These were the only two inaccuracies that we noticed in over two hours of the criminal interview and I had failed to see their relevance to the rape charge. During this interview I tried to be as open as possible and gave the detectives as many officers and citizen names as I could so that anything I said could be verified. Obviously I kept my intelligence and notes on informants at work, after January 18th I was not allowed access to the Police Station so I could not retrieve any of my information that I would need for the interview. I knew that if I was unable to provide any exculpatory information no-one from the Department would provide it as part of the investigation on my behalf. I believed that if any information was uncovered by the detectives that would conclusively prove that an allegation could not have happened it wouldn't become a part of the investigation. I attempted to give the detectives as much information that I could remember for several reasons. I wanted to prove my innocence and truthfulness, I hoped that they would verify my

information with the officers and citizens to further prove that I was credible.

I left the interview feeling that they would be able to verify the information I supplied in a number of ways so I felt confident that I would be exonerated.

The internal affairs detectives Gorrell and Diaz were supplied with a multitude of information that they would need to verify.

- I supplied them with the one direct arrest of the cocaine dealer at 450 N. "G" Street that had occurred in the summer based in part on Roan's supplied information. Officer Harvey and officer Tello were present at the arrest and I had fractured my tibia during the struggle over the cocaine. They would need to check my arrests and read the report to verify that it occurred. In the report I made reference that the initial information had been supplied by an informant.
- I told them that I had originally told sergeant Kilbride about the officer that was raping prostitutes in the early part of 2001. They would need to contact him and interview him to see if I was telling the truth.
- They would also need to contact each member of the SWAT team to see if I had told the team of the rapist officer during SWAT training in the early part of 2001.
- Detective Vasek would also need to be contacted because he was the detective that I had teamed up with in an attempt to verify which officer might be guilty of being the rapist.
- They would have to talk with narcotic's officer Johnson and bicycle officer Rueben as they were the officers that I had told about a white Chevrolet Suburban or Tahoe displaying green "Alvarez" dealer paper license plates. Roan had supplied this information to me in 2001 as the occupants were dealing cocaine in the area and were becoming a problem for her.
- They would have to check and if they could find him interview "Kevin Chevelle Brown" a mid level dealer who

- also went under the name of "Capone" that Roan had told me was new to the downtown area and was dealing cocaine during 2000-2001.
- They would have to check and if they could find him interview a subject who had the last name of "Murkeson".
   Roan had warned me that he was extremely unstable and was dealing cocaine and marijuana in the downtown area.
   He also usually carried a gun and would run from the police. She didn't trust him at all and had frequently taken her money without supplying her any drugs.
- I talked about the badge bunny-Susan that I had used as an informant for several years and that she had slept with several officers not including me to illustrate that I did not believe in having sex with just anyone, even attractive women when I was single.
- I discussed several other people that I had used as informants over the years including the potential graffiti informant that we had listed with the Department.
- They would need to interview everyone in the gang unit that I had worked with over the last several years to verify if it was normal for us to have undocumented informants that we could call up and get intelligence from.

We supplied the detectives several pictures of a 10 inch scar that I have on the inside of my right thigh from when sergeant Lemos shot me and we told them that I was not circumcised.

The only part of my supplied information that found it's way into the final investigation was the badge bunny- Susan, they had interviewed her as a matter of routine because I had ran her license plate unknowingly. She didn't mention any information about her affairs with several of the officers from the Department. The detectives did not investigate or did and chose not to include any of the information that I gave them that could have been verifiable. They didn't even interview sergeant Kilbride. Obviously the fix was still on-going.

# **Chapter 17- Blood Search Warrant**

On April 4<sup>th</sup> 2002 detectives Lindsey and Rogers arrived at my residence with a search warrant to draw two vials of my blood. I again submitted to their authority and allowed them to take the blood with the aid of a phlebotomist. When they completed the blood draw they left me a copy of the search warrant. There are only two legal reasons to get blood from anyone in this type of case, the first allows for comparison of DNA evidence and the second allows for HIV testing.

#### **CALIFORNIA PENAL CODE SECTION 297**

- 297(b) (1) Except as provided in paragraph (2), a biological sample taken in the course of a criminal investigation, either voluntarily or by court order, from a person who has not been convicted, may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from any other criminal investigation without a court order.
- (2) A biological sample obtained from a suspect, as defined in paragraph (3), in a criminal investigation may be analyzed for forensic identification profiles, including DNA profiles so that the profile can be placed in a suspect data base file and searched against the DNA data bank profiles of case evidence. For the purposes of this subdivision, the DNA data bank comparison of suspect and evidence profiles may be made, by the DNA Laboratory of the Department of Justice, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB.
- (3) For the purposes of this subdivision, "a suspect" means a person against whom an information or indictment has been filed for one of the crimes listed in subdivision (a) of Section 296. For the purposes of this subdivision, a person shall remain a suspect for two years from the date of the filing of the information or

indictment or until the DNA laboratory receives notification that the person has been acquitted of the charges or the charges were dismissed.

State law allows for testing of blood for HIV once charges have been filed against a suspect.

#### CALIFORNIA PENAL CODE SECTION 1524.1.

1524.1(a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department

of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

No charges were ever filed against me for any crime.

The detectives would need to establish probable cause to obtain a warrant to test my blood for a DNA comparison to the victim (Loony). What this would mean is the detectives would have to have found some physical evidence that would in their belief tie me to a victim and be able to articulate their belief to a Judge. Remember, probable cause is defined as the belief that something may have happened, somewhere between rank impossibility and a certain fact. As I knew that no such victim existed I was very curious to see the supporting affidavit. I repeatedly asked to see the affidavit with no results until finally in February 2003 I received my copy.

When the search was conducted of my patrol unit a towel was found, in the affidavit detective Lindsey submitted the towel for phorensic testing and some blood was found on the towel by the criminalist at the San Bernardino Sheriff's Department Laboratory. Lindsey then secured the warrant for my blood to compare to the blood on the towel to see if they were the same. I am astounded at their level of incompetence again.

- In the affidavit they did not tie the towel to me, there was no nexus between the towel and me spelled out. I realize that it was in the car that I was driving but that patrol car could potentially have had three different officers driving it within the last 24 hrs alone. In any warrant the connection that exists between what the detectives are looking for and where they would expect to find it and why, needs to be articulated very thoroughly and conclusively. Fishing expeditions are not allowed.
- If the towel was mine, what good would it do to see if my blood was on it? Let's assume that the towel was mine and there was blood on it, why would there be a need to test that blood against mine. If it was my blood on the

- towel, all it would indicate would be that I had bled on the towel. That's it, no crime, nothing.
- In a normal investigation the victims blood on the towel would be very important evidence, in this case there was no victim and the warrant was secured to harass me. There is no other legitimate reason.

No wonder they didn't want to give me a copy of the affidavit, what a testament to the incompetence or malevolence of the detectives. My other concern is that the Department now has two vials of my blood at their disposal. It could find itself anywhere, my only hope is that there was a preservative in the vials that could be chemically traced so that if my blood or DNA is found somewhere inappropriate I will be able to prove that it didn't come from me directly. I hate to think this way about law enforcement, it really hurts, but it is a concern of mine. I have already seen the depths that they will go to and I will not put anything past them.

# **Chapter 18 - Disciplinary Review Board**

The San Bernardino Police Department utilizes a specific procedure for suspected misconduct by an officer. Firstly the complaint is investigated by detectives from the Internal Affairs division, they basically conduct interviews and compile the facts. Once they complete their investigation it is forwarded to a sergeant, he reviews the investigative work and looks into the officers personnel file to see if the officer has displayed a pattern of that particular behavior in the past, they also make the recommendation to their lieutenant whether or not they sustain the complaint or unfound it. The sergeant that gets assigned a particular officers complaint is usually from the beat area that he works in because the sergeant may have gained some personal knowledge of your work style or ethics. The sergeant should have complete discretion to overturn a complaint or to recommend discipline. This is very rarely the case, the sergeant has to please his lieutenant and would not want to unfound a complaint if the lieutenant was desirous of discipline. So a meeting usually takes place after the complaint is handed over to the sergeant to make the determination of the outcome uniform. It is so rare that a sergeant has recommended one course of action and a lieutenant has disagreed with it that I cannot recall one. They try to present a united front (even if it's wrong, it is a united wrong front) so that any challenge to their findings means taking on the whole department and not just a single sergeant or a lieutenant.

The Department assigned the internal administrative investigation to sergeant Voss who referred his findings to lieutenant Henson. How interesting, let me ponder on this a moment, when sergeants and administrators make mistakes or fail to act it has been my experience at the Police Department that they never admit that their actions were in error or apologize afterwards, they would rather eliminate the officer that they wronged instead of owning up and taking responsibility. It's a pity they didn't study philosophy because I am reminded of the old Turkish proverb: "No matter how far you

have gone on the wrong road, turn back". They just keep moving forward trying to justify their position and it is much easier for them to sacrifice an underling than to admit they were wrong. After all their career and any chance of promotion is at stake compared to the future of a patrol officer who is under investigation anyway. Let me explain the philosophy in practice as it was in my case.

Sergeant Voss was the Watch Commander and one of the field sergeants when VanRossum had been raping his victims so he ultimately was not supervising when he failed to notice VanRossum disappearing for hours at a time during his shift. Sergeant Voss used to work graveyard with VanRossum so I don't know if he knew and chose to give VanRossum's actions a blind eye or if he was just incompetent. However he had more to gain with my being gone than if I was around to remind everyone of his either condoning Vanrossum actions or his ineptitude. Maybe he and VanRossum were close friends, irregardless of why, the complaint was given to him even though he had not been my supervisor at all in the preceding years. He had no personal knowledge of my work ethic or how I conducted myself with informants and contacts in the field.

Lieutenant Henson had been one of the main lieutenants that had been responsible for the illegal interview and the illegal search warrant that I was a victim of, he quite obviously did not want any reminders of his prowess in violating peoples rights so he would much rather see me discredited. They both now sat in judgment over my future, do you think they would be unbiased? Nor did I.

Sergeant Voss read all the investigations that had been conducted so far and basically compiled the facts and did what he was told to do. He prepared his report which was dated April 10<sup>th</sup> 2002. He did not sustain Loony's allegation of rape but curiously believed the other prostitute (Roan) when she said we had consensual sex one time. In his findings he made reference to the three interviews that were conducted with Roan in Chowchilla, Ca. He listed who conducted the interviews and curiously left off detective Gorrell's name as being involved. He was part of the team that went on January 16<sup>th</sup> 2002 but as I said earlier he was assigned to Internal Affairs for this investigation. I find it amazing that the Department

was on the same page of denying Internal Affairs involvement at what should be the early stages in the disciplinary investigation. It lends more credence that they had all decided what to do prior to conducting the investigation to mitigate the exposure and hope that I or anyone else wouldn't notice. The significance was that the Department including Chief Zimmon has repeatedly stated that Internal Affairs wasn't involved until after January 18<sup>th</sup> 2002. It used to be a common joke around the Department that as soon as a sergeant was given the internal investigation he was told what the discipline was going to be and had to craft his recommendation to that end.

Lieutenant Henson conducted such a biased investigation he must have winced when he wrote it. I was considering going through the entire memorandum line for line as I have done with other documents in my book but that would only serve to give the illusion that lieutenant Henson's memorandum had any basis of credibility. He does not get the facts correct from the beginning and then bases his findings on his flawed foundation. He mentions the illegal interrogation several times and draws most of his references from what was said and later suppressed in Superior Court for it's illegality.

The only parallel that I can think of that used to be particularly entertaining for law enforcement officers is when criminals commit a crime together and one party treats the others unfair. For example, (and this actually happened) two people robbed a bank together and decide prior to the robbery that they were going to split the money 50/50. After the robbery one party decided now the other is only going to get 10 %, the disgruntled party then called the police and wanted to file a complaint on being ripped off by only getting 10% instead of 50%. Lieutenant Henson conspired and stood by while an illegal search warrant was served and an illegal interrogation was conducted. Remember it is just as wrong for a law enforcement officer to stand by and let crimes occur knowing those acts are illegal as it to commit those acts.

He then has the temerity to use the results of those illegal acts to justify his recommendations without mentioning the illegal acts. His disingenuous evaluations of my actions only illustrate what is wrong with the process. Just to illustrate how biased he was in his recommendations he mentioned a dating relationship that I had when I was single (four years prior) as being a problematic relationship. He wanted to cram every piece of anything he could into his report to justify his position even if it had no bearing on the investigation at all.

The Disciplinary Review Board consisted of a captain and two lieutenants. The captain was Jenifer Aragon who was overall in charge of the illegal interview and illegal search warrant. One of the lieutenants was Roger Poyzer, the lieutenant who had been in charge overall at the Domino incident where I was shot. The other lieutenant was Mark Garcia who had openly condemned me for my religious beliefs and in all likelihood was the lieutenant that had heard from sergeant Kilbride that the Department had a rapist officer as he was directly above Kilbride in the chain of command. (The significance of which became apparent when sergeant Kilbride was not interviewed and made unavailable to testify at the City Hearing that followed).

The Board sat and we discussed the findings that lieutenant Henson had provided for them. I did not expect to get a fair hearing and I didn't. The Board focused on the alleged sexual contact that Roan had claimed and my answers in the criminal interview. Interestingly enough lieutenant Poyzer said he had checked into all the computer records he could in May, June, July and August 2001 to see if I had got off work early and he could not find one incident. We supplied the Board with my home phone records, my cell phone records, my wife's cell phone records and the dealer window sticker on my truck but they seemed impassive. For the most part officers that move up to the lieutenant level have forgotten what it is to do police work. There are a few exceptions (and they are soon reigned in) but the majority are only to glad to leave that dangerous stuff behind. They never enjoyed it and were never any good at it either, they have never felt the adrenalin rush that came from putting an airtight case against someone because they were mediocre officers and detectives at best. Detective Otey and Lindsey would be great lieutenant material just based on their ineptitude alone. Each of the

members of this board had a reason that they would prefer me not to be around at the Department if they could bring this about and now they had the perfect opportunity.

A few years ago a law was passed which held a gun owner criminally responsible for any misuse of that firearm if a juvenile managed to harm anyone including themselves. There was a test case in San Bernardino where a juvenile had retrieved her mothers shotgun and had shot and killed another juvenile who was tormenting her. The juvenile was not charged with any crime but the mother was, she was charged with criminal storage of a firearm and was found guilty of a Felony and served a year in jail. At around the same time captain Aragon's juvenile son managed to get one of her unsecured guns and shot himself in the head, as terrible as that must have been for her and her family she was not charged or even investigated for leaving a gun unsecured with a depressed teenager in the house. I was alarmed at the double standard and voiced my opinion at the time it occurred as most of us officers realized that if it had occurred to one of the officers and not a supervisor we would have been prosecuted to the fullest extent of the law. I'm sure captain Aragon did not forget who had been vocal a few years ago. This time she had been overall in charge of the illegal warrant and of the illegal criminal interrogation so I knew she would only find for the Department.

As I said earlier lieutenant Poyzer was the lieutenant in charge at the Domino SWAT call-out where I was shot by sergeant Lemos. It was his plan and his decision to bring about that chain of events that was supposed to look like an unfortunate accident. By now you should be able feel for how much I liked to let people know when I felt an injustice had been done, you should know how much I discussed the Domino incident with anyone who wanted to hear me. I'm sure my opinion got back to lieutenant Poyzer who just wanted to bury the incident (or me). I have never been one to let sleeping dogs lie.

Lieutenant Mark Garcia tried to convert me to believe in religion several times, (I'm an atheist) the climate of religion at the Police Department was so pervasive that it allowed lieutenant Garcia to hold open prayer meetings in the conference room during lunch times. I had voiced that I believed it was illegal for prayer meeting to be held in a government building under the separation of Church and State Doctrine, even City Hall when they open their council meetings would open them up with a prayer to one religion or another. But in a climate of religious zealotry a person that does not believe as the majority does is ostracized and condemned for their beliefs. My belief that I was vocal about was that no-one should be subject to someone else's religion in a government setting. It was inconsequential that I was an atheist (to me, but not the religious leaders in the Department).

# **Chapter 19 - Skelly Hearing and Response**

# **Hearing**

On May 31<sup>st</sup> 2002 I took the next step in the disciplinary process when I had my hearing with Chief Zimmon otherwise known as the "Skelly" hearing after the case with the same name. Bob Krause and I arrived at 0930 in the morning and waited for about 30 minutes for the Chief. We were shown into his office and we sat down to go over the charges. Bob recommended that I do most of the talking in my own defense as he felt that I would be viewed more credible. I covered each of the allegations in depth and the Chief sat there impassive and taking the odd note, he didn't ask many questions and seemed that he was just going through the motions and that this case's final decision had been made long ago.

## **Skelly Hearing Response**

On September 24<sup>th</sup> 2002 I received the Chiefs response to the Skelly hearing. In his letter he began by stating that he did not take the investigation lightly and that he looked at all the materials and had read more than eight hundred pages of information completely and thoroughly. He then went on to describe how the investigation had started in November 2001 following a complaint of sexual abuse that had been filed about another officer. He did not mention that I had told the Department about the same victim over nine months previous to November 2001, according to my statement and detective Vasek's and detective Hanley's letters that were included in the investigation that Chief Zimmon claimed to have read. (Lie # 1by omission, I told you earlier that they won't acknowledge the truth).

He then states a decision had been made to separate the two investigations between the criminal side and the administrative side and the criminal interview was "conducted purely as a criminal interview regarding the allegations made by Mcmillan." this is simply not true, the criminal interrogation primary focus was the relationship that I had with Roan. In fact when transcribed the interview consisted of fifteen pages, ten of these were about Roan

and five pertained to Mcmillan. In Judge Edwards independent evaluation he also reached the same conclusion. (Lie # 2).

In the 5<sup>th</sup> paragraph Chief Zimmon stated " In recapping, the interview of Peach on January 19<sup>th</sup> (sic) was a criminal investigation. Officer Peach had been advised it was a criminal investigation, and at this point there was no Internal Affairs involvement." Again this is absolutely not true, On January 12<sup>th</sup> 2002 detective Gorrell (an Internal Affairs detective) had traveled over five hours one way to Chowchilla State Prison to interview Roan (see appendix of Roan's interview), Chief Zimmon would have known this as it was in the report that was made and that he carefully and thoroughly studied. By trying to deny any Internal Affairs involvement he was trying to justify that the interview was not protected under the P.O.B.O.R. (Lie # 3).

On page 4 Zimmon stated that "First, while he (me) said Michella Roan was an informant, during the Internal Affairs investigation, he could only point out one or two instances where she, in fact provided information that proved useful. Second, he seldom, if ever, supplied that information to anybody else, to narcotics or used it himself to make arrests". I told the Internal Affairs investigators that I had used the information that Roan had supplied to make arrests and to identify criminals, however due to time constraints I had not been able to respond to her information immediately. At no time did anyone interview any narcotic officers or any other officer that had been a recipient of that information or had been with me when I had used the information to make arrests. I supplied all the names of all the officers that could verify my use of Roan as an informant at the administrative interview however the investigators chose not to interview them or did interview them and chose not to include the information. Regardless of this information Zimmon just chose not to accept that I had used Roan as an informant even when she claimed that she was an informant for me in her statement (appendix-Roan's statements). (Lie # 4).

In Chief Zimmon's summation of charges he stated that of all the violations that I had committed being dishonest was the most egregious. I had simply not reflected well on two of my answers in

the contentious illegal criminal interview and misspoke under the stress of being accused of a rape. Chief Zimmon had from May 31st 2002 until September 24th 2002 to complete his Skelly response, almost four months to carefully and accurately reflect upon his response and he was dishonest on several occasions. He didn't just slip up in the above statements, (although he did slip up on the date of the criminal interview throughout his response) he purposefully intended to deceive. To make such outlandish claims while ignoring the truth is extremely dishonest; and to do so to justify illegal acts on the part of his subordinates should be grounds to remove him from office in the least. Interestingly enough when the Civil Service Board gave their decision (January 14th, 2003) they quoted the violation of policies relating to dishonest as being applicable to almost all of the violations I was accused of, it will remain to be seen whether they hold anyone else that investigated me including Chief Zimmon to the same standard.

# **Chapter 20 - Superior Court Hearing**

During September 2002 my attorney filed a Writ of Mandamus in San Bernardino Superior Court (appendix) which addressed the violations of the P.O.B.O.R. that had occurred. It was assigned to Judge Edwards on December 4<sup>th</sup> 2002. We filed points and authorities based on fact, we made reference to cases that were very similar to ours where the court had found that the POBOR did apply to the officers. The most noteworthy was the CCPOA vs. State of California. The City Attorney filed a responsive points and authorities (appendix) that began with the dubious heading of: "Statement of facts".

In the law there is a lot of room for several opinions regarding the same case and it is not unusual for attorneys (and even Judges) to have completely differing opinions about the same case. What is expected is that attorneys tell the truth. This didn't happen with City Attorney Stephanie Easland.

In her statement of facts (page 6 chapter 3) she begins to address the search warrant. She initially stated the warrant authorized nighttime service based upon good cause justifying service at night (page 6, line 21 and 22). She then stated in bold type "The warrant served on officer Peach and executed November (just a typo I'm sure) 18<sup>th</sup> 2002 authorized service at any time". This is simply not true, the warrant only authorized service during the daytime and as previously discussed actually said "YOU ARE COMMANDED at any time of the day, or as the case may be, according to section 1533, to make immediate search of:...."

Warrants that are authorized for nighttime service state "at any time of the day or night", it seems as though attorney Easland should have known this. She probably wrote her response with the warrant in front of her (that's what I would have done) and realized that the City had made a mistake in serving the warrant at night. But why did she try to deceive the court, surely her own license to practice law would be at stake if the State Bar realized that she had not been truthful in her brief.

On the next page (Page 7, line 5 to 13) she continues to try to dig herself out of a hole in that she now offers an opposing argument to her previous statement, she suggests that the issuing Judge (Christianson) intended that the warrant was to be served at night even though no request or supporting information was supplied in the affidavit. Is she then suggesting that she and the detectives that prepared the warrant with the knowledge that nighttime service would not be justified because the grounds did not exist intentionally deceived Judge Christianson? By omitting that the warrant would be served at night and by relying on the word immediate Judge Christianson knew that the warrant was going to be served illegally and that he had authorized this illegal behavior. I cannot believe that a Judge would sign off on an illegal warrant and risk his career. It seems much more likely that the detectives that prepared and served the warrant intended to serve it illegally. However attorney Easland is on a very slippery slope in her over-zealousness to justify an obviously illegal activity in that she has attempted to deceive a Superior Court Judge. First she states that the warrant authorized service at anytime and then she contradicts herself by stating that Judge Christianson was responsible for the warrant being served illegally. Unfortunately she did not think her deception through because in her attempts to justify the illegal warrant she inadvertently places the blame with the issuing Judge. So which lie is it Ms. Easland, the first or the second?

Judge Edwards as I said earlier, gave a compromised decision so that both parties got part of what they requested. In his opinion he did find that the search warrant had been served illegally and that the criminal interrogation had been conducted against my P.O.B.O.R. rights. Both were suppressed however he did allow the criminal interview to be used for impeachment purposes. I have already discussed why this decision was in error and he in fact should have used the remedy that the statute puts forth as being acceptable.

What was very interesting was that he had found that detective Lindsey had not been honest in his declarations which were written under the penalty of perjury.

Judge Edwards stated on page 5, line 9 to line 16:

"Respondents, through the declaration of Richard Lindsey, seem to suggest that the investigation was not focused on Ms. Roans claims because Lindsey 'did not know what the exact relationship was between the two.' (Declaration of Richard Lindsey, paragraph 11). However, this belies his earlier statement that during the three interviews with Ms. Roan, she 'disclosed that she had an ongoing relationship with officer Peach that included sexual intercourse between the two.' (Declaration of Richard Lindsey, paragraph 5)."

This raises an interesting point, Judge Edwards had found Lindsey to be untruthful in his statements, belie is another way of saying lie. Lindsey was trying to justify why the criminal interview did not come under the protection of the POBOR when in fact in his own statement he offered reasons that he knew it did, another lie. I again find it incredulous that to avoid not admitting they were wrong they lie under penalty of perjury. Surely if they had been completely justified in all their actions why would they have to try to deceive Judge Edwards?

There were several more lies in Lindsey's declaration that Judge Edwards would not have been aware of:

**Page 2, line 1 and 2;** McMillan did not identify me as the officer she had been forced to have sexual intercourse with, she identified me as her "friend". (McMillan's statement, January 17<sup>th</sup> 2002).

Page 3, line 4; Lindsey stated he was investigating "alleged <u>criminal</u> sexual misconduct between certain San Bernardino Police officers and female victims and it was possible Ms. Roan may have been a victim of this type of crime." Ms. Roan was interviewed three times on three separate occasions, at no time during those interviews or at any other time did she say she was a victim of any type of <u>criminal</u> sexual misconduct. (Roans statements).

Page 3, line 8; Lindsey stated he needed to determine if "officer Peach would admit to knowing Roan as she may or may not have been a witness to the alleged rape I was investigating". Again Roan never claimed to have been a witness to anything at all in her three interviews. (Roans statements).

Page 3, line 17; Lindsey claims that "at no time before or during my interview with officer Peach did I discuss this matter, or the

questions asked of officer Peach, with Internal Affairs personnel. This may have been technically true as it was his partner detective Otey who accompanied the Internal Affairs detective Gorrell to Chowchilla Prison to interview Ms. Roan. Knowing the climate at the Department at the time I find it highly unlikely that detective Lindsey would not have discussed this matter with Internal Affairs personnel, he was after all coveting one of the positions in that unit (and was placed into the unit in January 2003 by Chief Zimmon).

# **Chapter 21 - Civil Service Board Hearing**

On December 10<sup>th</sup> 2002 the City of San Bernardino Civil Service review Board convened to hear arguments from both sides regarding my potential termination. The board consisted of the following people:

Chairwoman: Juanita Scott

Vice Chairman : Leonard Davenport
Commissioner : Ruth De Sadier
Commissioner : Dennis Reichardt
Commissioner : Ruth Petrucci

The City was represented by City Attorney Stephanie Easland and Asst. Chief Michael Billdt, I was represented by Bob Krause, my attorney.

The Hearing was closed to the public and it was recorded and transcribed by a Court reporter. The Board consisted of the five civilians named above who did not have any legal experience or training who were supposed to rule on issues of law. The chairwoman, Juanita Scott and the commissioners had access to another City Attorney, Huston Carlyle Sr., who gave them legal advice. When Juanita Scott didn't know how to rule on an issue, for the City or for me she would consult with the City Attorney and for 99 times out of 100 she would rule against me. Talk about the fox watching the hen-house, another City Attorney was acting as advisee counsel to the Cities own Board of the Cities appointee's on a case that represented the City. Bob and I were the only outsiders.

The City attorney Stephanie Easland opened up the hearing with a list of charges, dishonesty, inexcusable neglect of duty, violation of the City charter, State law or civil service rules, failure of good behavior or acts during or outside of duty hours, which are incompatible with or inimitable to the public service and violation of Department / division rules. We were flabbergasted, we were facing charges that had not even been sustained against me at the Skelly

level by Chief Zimmon. Attorney Easland had opened the hearing by introducing charges that I had not been charged with and therefore had not prepared for, what a blindsiding tactic. Bob and I looked at each other and wondered if we were in the right hearing. If we were in any kind of competent Court she would not be allowed to get away with this kind of behavior. For example, if someone was arrested for shoplifting they would only have to defend against the charges that had been filed against them. So when they would arrive in Court the prosecutor could not begin the case charging the defendant with robbery. Unfortunately I was not all that surprised, why would I expect to get any kind of fair hearing here.

I subpoenaed one particular witness - sergeant Kilbride, he was the supervisor that I had originally told there was an officer raping prostitutes. He reportedly was on vacation, it was very curious that he could not attend, I believe the Department didn't want him to testify for one of several reasons. You would think that he would have been interviewed by someone during this investigation at some time to see if I did notify him when I found out about the rape. His interview was not included in any paperwork that was supplied to me or my attorney if he was interviewed. If he wasn't interviewed, why not? I believe he probably was interviewed and his interview would show that the Department administration failed to act on VanRossum earlier causing increased liability to them so it wasn't included in the final report. I believe he was "on vacation" for one of the following reasons:

- 1. He had initially denied that I had told him about the rape and therefore could not under oath change his story.
- 2. He had told the administration about the rape and that it was ignored and he could not be allowed to testify in an open hearing that the department knew about a serial rapist officer and did nothing. Of course he would have been asked who he told, which lieutenant and so on. Ultimately the information would have extended up the line to someone who made the decision to ignore it. The department didn't want to expose who that may have been.

### **Direct Examination**

I was the first witness called by the city, I was sworn in and sat to give my testimony. We covered the basics and then attorney Easland needed an in-camera review to see if she could ask me what I had said in the illegal interview. She was able to introduce just three things that I said in the illegal interview that she considered I was not truthful. She didn't introduce anything from the legal administrative interview. I had to admit that I had answered incorrectly about the number of letters, I said two instead of three. I also said that I had not opened letters that she had written to me and that I had thrown them away, I thought I said that I had opened them in the interview and I did throw them away. I also said that I didn't know where Roan was at the time they asked me, and truthfully I didn't know where she was at that moment. In the illegal interview detective Lindsey first asked me what I thought Loony did downtown and I replied that she was a prostitute, He also asked me what Roan did downtown and I began to reply that she did the same as Loony but as I answered I remembered that I had see Loony getting in and out of john's cars but I had never seen Roan do the same. My answer came out as " she's the same as...I don't really know". I was going to say that she was the same as Loony but as I explained earlier I answered truthfully and as a fact did not know what she did. That was the Cities case in Chief, my attorney saved my cross examination until after the City had called all their witnesses.

#### <u>Testimony - Chief Zimmon</u>

Chief Zimmon was sworn in and seemed to display an air of over confidence with his testimony and presence. He did not seem to be prepared in his answers and in fact was dishonest on several occasions. Zimmon said he understood the difference between an inaccuracy and an intentional lie and that an intentional lie was a far graver violation than a simple mistake and then he proceeded to intentionally deceive the board several times.

Chief Zimmon testified that he had found out that I was known in the Department as somebody that knew people and could get

information on the street. Not just from informants but I was known to have contacts in the community that would talk to me and give me information. He realized that most of those people may not rise to the level of an informant, but some of them might. He agreed that there was different levels of informants and gave examples of a citizen informant, a paid informant and other informants that think by giving an officer information they would want in return to have a good relationship with that officer. Sometimes he had found that it might be necessary to lie to an informant to cultivate them and that they might change between levels.

He then said something very strange, he testified that as a long term law enforcement officer someone would not have to violate every element of a law or rule to break that law or rule. This was very strange because to break a particular law or rule YOU HAVE TO BREAK ALL THE ELEMENTS. We are all taught in the police academy that someone breaking a law, has to break or violate all the elements of that crime to be guilty of violating that particular law. For example; For someone to commit Robbery the suspect would have to: Feloniously take personal property in the possession of another, from his person or immediate presence, and against his will, accompanied by means of force or fear. (California penal code section 211). The elements break down as follows:

Felonious Taking Personal Property Possession of Another From Person or Immediate Presence Against his Will

By means of Force or Fear

If any one of these elements are missing from the crime, Robbery cannot happen. The act may be another crime but it could not be Robbery. If the Force or Fear element was missing the crime would be Grand Theft (from a person or immediate presence). You would expect that Chief Zimmon would know this, but to admit that he knew this would mean that he would not be able to find me in violation of certain policies because I did not break all the elements of the policy. Therefore, he knew he had to justify his findings, the only

way to explain his findings was to state that a law or policy could be violated even though not all the elements were broken. What a tangled web we weave when first we practice to deceive. No officer, detective or lawyer would agree with what Chief Zimmon is trying to deceive the board into believing.

With this belief in mind we began to question Chief Zimmon on the fraternization policy (4.12) which he found that I had violated and said that it was one of the more serious of the charges. The policy was read to Chief Zimmon as follows:

"Except as permitted by the authority of the Chief of police, employees shall not knowingly fraternize with, engage the services of, accept services from, or do favors for any person in the custody of the department or convicted felons on Parole or Probation"

The elements of that policy are:

Fraternize with or,

engage services of or,

Accept services from or,

Do favors for.

And the condition being that the person would have to be:

In the custody of the Department or,

On Parole or Probation.

Chief Zimmon then agreed that at the time of the letters were written Roan was not in the custody of the Police Department and she was not on Parole or Probation. He also agreed that he did not sustain the charge of sexual intercourse between Roan and I and then said something else that was a total fabrication. He said that he had a statement that Roan had made that talked about her contact and experience with me prior to her going to Prison. Where was that statement? The three statements she gave in this case (appendix) do not state that there was any kind of personal relationship. He just invented a statement to add to his own credibility. The Board would never know that there wasn't any other statements.

Roan testified (Zimmon wouldn't have known this but he should have realized it) that at all times I was professional towards her when I contacted her when I was working and the only time that I saw her when I wasn't working was when we had sex. So consequently there

was no personal relationship if you remove the sexual allegation because no-one believed her in this regard.

Chief Zimmon also did not sustain the accusation that I had called her and warned her about prostitution sweeps, he said he could not prove the accusation one way or the other even though he examined the phone records that we had submitted to the Department that showed no calls were made to Roan during the alleged time frame from my cell phone, my wife's cell phone or my home phone. In Roan's second statement she said that I had called her from my <u>cell phone</u> while I had been in a patrol car. He also believed that on the days the sweeps were conducted he remembered the Department had looked into whether I had been working or had been aware of any sweeps but could not remember what the findings were. The bottom line was that he did not sustain the charge that I had warned Roan about the sweeps because he couldn't prove it. Zimmon seemed to want to ignore the fact that we had supplied the Department with all my phone records and that I didn't work on the days that the sweeps were conducted. I was not associated with the vice detectives in any manner, shape or form and would not know when the sweeps were pending. In this light there is surely more evidence to show that I didn't warn Roan about the sweeps however that would have tended to show that he didn't believe his witness, Roan and for the sake of this investigation and to justify his findings he could not question her credibility.

We tried to show based on San Bernardino Police Department records that Roan had not been truthful in her testimony when balancing her testimony with official records. Zimmon read from the investigation that she had 162 separate entries of information in the San Bernardino Police Department records that dated from 1997 and he was offered the opposing testimony that Roan had said that she had not been in San Bernardino until 1998 or 1999. We asked him how could it be possible for both to be true. He claimed that as he had not heard her testimony he could not comment on it, he was still trying to defend the credibility of Roan and refused to undermine her testimony even when faced by overwhelming support for the

argument that she was not credible. Isn't it amazing the lengths that the Chief would go to defend his witness?

We then asked Zimmon if Roan is found to be not credible on when she arrived in San Bernardino, the prostitution sweeps and the issue of having sex and a number of other issues both given under oath and in statements given why should we believe her at all? Zimmon side stepped the question and said that is what the Board had to decide.

We then went onto the other Policy violation, 4.02, neglect of duty. Zimmon agreed that I go beyond the call of duty with regularity and had found this out in the review of my personnel file. He found the policy violation had occurred when I had accessed the internet while I was on duty and testified to that when he was questioned by attorney Easland. Chief Zimmon testified under oath:

"And I find that he neglect — or that he violated statute 4.02 in that he freely admitted to me, and I think in the investigation, that he had used the Internet to chat with a personal friend while he was on duty, and he also used the department computerized system to obtain personal information regarding Roan's husband."

Under cross-examination attorney Krause attempted to clarify what Chief Zimmon had testified to under direct examination. Questions by attorney Krause, Answers by Chief Zimmon.

- Q. And your testimony today was that occurred on duty and that was your problem with it, right?
  - A. Yes.
- Q. Did the subject matter of what you just read seem to revolve around officer (Rich) Peterson and officer Peach at the MET office?
  - A. Yes.
- Q. And, again, that's the subject matter of the violation of 4.02, at least in this part, correct?
  - A. Yes.
  - Q. And your concern was that that occurred on duty, correct?
  - A. Yes.

{Attorney Krause then read from the investigation that the police department had compiled against me and had Chief Zimmon follow along }.

Q. On page 375, Gorrell — well, let me back up.

"Gorrell: Is it sometimes during work?" referring to the use of the computer.

"Peach: I can't really remember too many times I've done it during work, no.

"Gorrell: Okay. The incident that were talking about where Rich was with you, was that during work?"

"Peach: That was after work when I was doing his review."

Is that what you just read?

A. Yes.

Q. If it was after work Chief, how can it be on duty?

A. Because I also balanced it with the statement of the officer who said he was there when he was online, and it was based on that totality and not just his recommendation that he was off work that I determined it to be a violation of policy in two accords. One was neglect of duty, and the second was the misuse of Department resources.

Chief Zimmon first stated he thought that I said in the investigation that I was on duty and then became more sure that the internet access had occurred while I was on duty under cross examination, he then is directed to read my statement given at the internal affairs interview where I said I did not access the internet while on duty. To then justify why he reached the conclusion that it occurred on duty he now offers that the other officer (Peterson) contradicted my statement.

Peterson was interviewed on January 22<sup>nd</sup> 2002 by detective Lindsey, (not an Internal Affairs detective at that time) Peterson made the only reference to a computer in the entire interview and said that I had used the computer in the MET (SWAT) office while I was doing his evaluation. HE DID NOT SAY WHETHER WE WERE ON OR OFF DUTY DURING THIS TIME.

In my interview with Internal Affairs I stated that I used the internet off duty mostly and specifically the one incident with Peterson present was done entirely on my own time and I reiterated that point during the Skelly hearing which was witnessed by attorney Robert Krause. (At no time did I say to anyone and

especially in the Skelly hearing that I was on-duty when I accessed the internet with Peterson present.) I'm sure that attorney Krause will also remember exactly what was said. The department could check into the time of the day that the computer was accessed as I did sign on with my name and password. I'm sure they did check into it and found that it was entirely on my own time, unfortunately for the Chief it would show that he had also lied in his reasoning also so they could not let the exculpatory evidence come out.

Chief Zimmon intentionally lied again during his sworn testimony in that he said I was on duty when I accessed the internet and said his main problem (in justifying the violation of section 4.02) was that I was on duty when it occurred. The only two people present during my accessing of the internet were Peterson and I. Peterson did not say when he was interviewed whether it occurred on or off duty in his statement, Chief Zimmon testified that it was exactly that statement (Peterson's) that led him to believe that it had occurred on duty. Where in Peterson's statement did it say that I was on duty? It didn't, so Chief Zimmon also lied under oath about balancing my statement with Petersons. He falsely tried to give the impression that Peterson had said that I accessed the internet while I was on duty. He also lied under oath about my saying that I freely admitted to him that I was on duty when I accessed the internet with Peterson present. Surely if I had said anything along those lines the Chief and the Department would have seen the glaring inconsistency and raised it as an issue. It was not raised because it wasn't true. As for the misuse of Department resources namely the computer system, almost everyone at the Police Department would use the computers to access the internet. Detective Vasek testified the following day that is was very common and in fact he had just ordered some pants online. I particularly remember officer Granado arranging dates for himself over the internet and officer McBride downloaded a video of a Russian soldier being executed in Afghanistan, all during on duty times with absolutely no consequences. In fact officer McBride would call in numerous sergeants, officers and lieutenants to view the killing.

Chief Zimmon then testified that I had violated the policy on computer systems including criminal database information and DMV records. He was shown the form that I had signed in 1991 and identified it as being the policy that was applicable in this case and that it was specifically the policy that we were defending against. He testified earlier that the policy said that the officer need not share the information but only receive it and reiterated that was his earlier testimony.

Bob Krause then read the policy to Zimmon.

"11142 Penal Code, authorized person furnishing a record or information to unauthorized person. Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor."

He then asked Zimmon if I had furnished the information to anyone and he said no and based upon his 29 years of law Enforcement experience if someone is to violate a law, they must violate what the law either dictates they do or do not do.

Wait a moment, now Zimmon is saying that in order for a law to be broken the suspect would need to break all the elements of that law. That's not what he said earlier, I guess his answers change to what the circumstances dictate so he must have not been truthful in his earlier testimony, I would agree with him in this answer only. My attorney then read Penal Code 13302 which was the second paragraph of the policy,

"Furnishing to unauthorized person by employee of local agency. Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the information is guilty of a misdemeanor."

Zimmon again said that I had not given any information to anyone. Lastly Bob read the final paragraph to Zimmon.

"Excerpt from Department of Motor Vehicles (DMV) regulations and guidelines. Information supplied to law enforcement agencies from the Department of Motor Vehicles

is intended strictly for the purpose of enforcing the law and shall not be given out to unauthorized second parties."

For the third time Bob asked Zimmon if I had given out the information and he replied that I had not. He agreed that it was a purpose and role of law enforcement to test information that an informant supplied against known information such as contained in DMV records for the affidavit in support of a search warrant for example.

Zimmon could see where this was heading, he had agreed in his answers that he had found me guilty of violating a policy that I had not violated. He then offered that there was other laws that pertain to just accessing the information and those were the laws that he meant to apply in my case but he had not included those laws (if they exist) in the two volumes of material that his agency had compiled.

Chief Zimmon again tried to wriggle out of his error, he agreed that based on his knowledge of administrative law and being the Chief of Police an employee is entitled to all the information and all of the charges pending against him prior to the Skelly process but then claimed he didn't know if the information that wasn't supplied could be used against them in the same process. Surely this must either be a lie again on Chief Zimmon's part in that he said he didn't know if the missing information could be used or that he did know and realized that the information supplied to me must contain all of the information and all the charges and therefore he would be seen as finding charges against me on non-existent evidence. Which is worse, is he just plain incompetent at his job or more maliciously, finding charges sustained against me without relying on evidence or policies that would make it a sustained charge based on the minimum standard of a preponderance of the evidence.

Chief Zimmon testified that the main reason he decided to terminate me was because, he didn't believe what I said and that it had become a "Brady" issue. The doctrine of the Brady case was that once an officer had found to have been untruthful he could no longer function as a police officer because it would have to be disclosed to the defense in any case that the officer had been found untruthful. There are many levels of being untruthful, Zimmon could not give

any examples where I had maliciously been dishonest but as a whole he didn't believe me. The next level would be that someone of independent review had found that the officer was dishonest, above that would be any conviction for any offence where being dishonest was one of the elements of the crime, such as perjury.

Under further cross examination Chief Zimmon was asked if an officer was found by a court of competent jurisdiction to have not been believed by that court, would it raise a Brady issue? He answered that it would depend, but it could. Attorney Krause then asked him if he was aware that detectives in this case had prepared declarations under penalty of perjury in response to an action that we had brought to court and that Judge Edwards had found detective (Lindsey) statements had belied each other. The Chief said he wasn't aware of it but if it was brought to his attention he would conduct an internal affairs investigation.

The decision from Judge Edwards ruling was made public on December 5<sup>th</sup> 2002, surely the Chief either lied about not reviewing the decision. If he didn't review the decision, why not. Is he that incompetent to ignore his Department when it is sued and a decision is published that stated his Department violated the law several times. Departments do not get sued every day, surely the publicity that was in the local papers alone would stir his interest in his Department, after all he is the Chief. If he did review it why wasn't detective Lindsey placed on administrative leave and an Internal Affairs investigation initiated as he testified he would do? Instead Chief Zimmon assigned detective Lindsey to Internal Affairs, was he going to allow Lindsey to investigate himself? Chief Zimmon surely lied again in his testimony by testifying that he was not aware of the decision or at least showed his incompetence by not taking any interest when his Department is sued and found to be in violation of the law.

Chief Zimmon said that he had reviewed parts of my personnel or 201 file during the investigation and in the "Skelly" hearing that assisted him in recommending my termination. Included in his review he remembered looking at my performance evaluations, some awards that I had received from the Department and he also looked at my past disciplinary history. He was testifying under oath so he should have been telling the truth because I have no past disciplinary history. I have never been "in trouble" at the Police Department throughout my career, so I'm sure that he was trying to paint me in the worst possible light to the Board by telling them that I had a disciplinary history and leaving it up to them to infer the contents of that history instead of being honest and admitting that there was none.

When attorney Easland began to re-question Zimmon he did not tell the truth again. When I used the information that Roan supplied to me to check her credibility I ran the name through one of the systems that police have access to for this purpose. There never was a record of my running the name and Internal Affairs detective Gorrell in fact said there was no record because they could not find when or if, I had ran the name. I had told them that I had ran the name because it was the truth. Zimmon was asked by attorney Easland if he remembered the Internal Affairs interview regarding the running of the name. He said he did remember and said "we did in fact determine that he had ran the people". This was another lie, the Department did not have any evidence, there was not a printout from a computer that was included in the investigation that I had ran anyone connected with this case and the Department only knew about it because I told them.

### Testimony - Michella Roan

The Department didn't know if they would be able to find Roan prior to the hearing and had prepared a deposition that she had signed on December 12<sup>th</sup> 2002 while she was in Chowchilla, California. The City Attorney handed my attorney the deposition on the first day of the hearing, not only was it improper but it also wasn't timely. We would need to have been in possession of the

deposition at least five days prior to the commencement of the hearing. We were going to object to its introduction however it became moot as the City had placed Roan into a motel so she was accessible when she was needed.

She was sworn in and gave her testimony, she stated that she had never worked as an informant for me and the "Steve" she referred to in her first interview was someone else who worked patrol. She had worked as an informant before for officer VanRossum as well as others. She said that she had initially came to San Bernardino in 1998 and had never used any other names. She said we had met one time for sex in July or August 2001 and had never seen each other when I wasn't working except for the sexual incident. I had treated her professionally at all times when I had seen her when I was working. She described that we had arranged to meet at 02:00 a.m. but then I changed it to 11:00 p.m. as I was getting off work early. I picked her up in a truck at the Stater Brothers on 4th Street and we went to the University area and stopped to have sex. She gave me oral sex and then we had regular sex in the pick-up truck.

I had given her a carton of cigarettes some time afterwards in payment for the sex and I had called her when the vice officers were working to warn her of prostitution sweeps so that she wouldn't get arrested.

My attorney then cross-examined her, he asked her if she had arrived in San Bernardino in 1998 how come there was officers computer entries in 1997 with her name and information with the officers having contacted her in one capacity or another. She said the computer records at the Police Department must be wrong as she had not come to San Bernardino until 1998. He then asked her if she had used any other names and she said that she had not and disputed the same computer records that listed her as having 15 aliases.

She said under direct examination that she had first met me in June or July 2001 and had when I had stopped her when she was working at Spruce and 'H' street. I had pulled up to her asked her if she had anything on her and she had shown me her breasts. When she was interviewed she said that she had offered to show me her

titties, strange how the way she described the initial contact has changed. Spruce and 'H' street is a very busy intersection, I'm sure if she had been showing anyone her body parts to anyone a passer-by would have seen it and reported it at the time. No-one did because it never happened.

She testified that I had called her and warned her about prostitution sweeps when I was working in a black and white patrol car in June or July 2001. When asked how in 2001 every time there was a prostitution sweep I wasn't working so how could I have warned her. She didn't have an explanation.

He then asked her about the alleged sex act and that this was the first time that she had mentioned oral sex, she said that it had happened and that she had forgotten to mention it the first time she was interviewed. Now I am not like most American men, I was born in England and as is the tradition over there I wasn't circumcised. Most American men are. We had divulged this fact to the Internal Affairs detectives so it was in the investigation and it was a gamble to introduce it because we did not know if attorney Easland or one of the detectives had coached Roan in her testimony and told her that I was a complete man. Bob didn't want to risk it but I said go ahead, she couldn't possibly know and according to her earlier testimony she gave me oral sex, so she would have known if I was circumcised if the sex had occurred. Bob asked her if she knew the difference between a circumcised penis and an uncircumcised penis and she said she did. ( I would think she could qualify as a penis expert). He then asked her if I was circumcised or uncircumcised and she replied that I was circumcised. Now I don't know personally but I would think that if a woman is as experienced with penii as she obviously was she would have known the difference. She didn't say that she didn't know, she tried to guess and went with the majority and she guessed wrong.

I almost fell off my chair, at last I had proven that her allegation wasn't true, she had stated something that was totally provable and should vindicate me completely. Bob asked her if she was sure and she said she was. He then said what she would say if it was true that I am uncircumcised and not circumcised as she claimed and she

replied that on the day we had sex I was definitely circumcised. I was still ecstatic, attorney Easland (or any of the detectives) had not realized that the truth is in the details and they had not foreseen or prepared her to get her story to match up to the established facts. I secretly thanked my Mom and Dad for not circumcising me 40 years ago. Bob rested his cross-examination and then an interesting thing happened.

The stenographer needed to stop for some reason and we were given a ten minute break. Bob and I went outside to congratulate ourselves and returned a few minutes later, as I was walking in attorney Easland was talking with Roan, she quickly looked up, saw that it was Bob and I walking back into the hearing, stopped talking and went back to her seat. Attorney Easland then tried to limit the damage that had been done, she began her questions asking about the lighting in the truck, it was dark that night and that I had been wearing a condom during the oral sex and that she now was not so sure that I was circumcised. It was completely obvious that attorney Easland had taken the opportunity of the break to go up to Roan and tell her to lie in her testimony, to now pretend that she wasn't so sure of the memory that had been so crystal clear to her a few minutes ago. I was amazed, I thought attorneys had ethics, they can't approach a witness in mid-testimony and tell them to change the story for the benefit of their case. She got away with it at the hearing, if it had occurred in front of a real Judge she would have been sanctioned. She got away with it on that day at least until now.

#### <u>Testimony - Detective Beach</u>

As detective Jim Beach was walking from the parking lot to City hall to testify he was approached by captain Farmer who told him in passing "do the right thing Jim." Jim did not know what captain Farmer meant by his comment at the time and continued to the hearing to give his testimony.

Detective Beach testified that he had been at the department for about fourteen and a half years and in that time I was one of the best partner he had ever had. I was good at remembering names and tactically correct. He described the different levels of informants that the Department utilized between the narcotic enforcement informant program and street level informants that we used to contact while we were working in uniform. We would often use the term "CI" even though the informant was not registered at or with the Department.

We used downtown prostitutes a lot for information, I was a lot better than he was because he was a little short and more direct with them and he didn't trust their information. We made quite a few dope arrests based on the prostitute and CI information including gun arrests. Jim did not consider the amount of arrests to be indicative of whether or not someone was an informant, just that they supplied information.

He mentioned an informant that he had used for several years that used to lead to arrests and he would give him some money so that he could eat. He didn't document the informant with the department because in his opinion he did not rise to that level of an informant. He believed that kind of informant / officer relationship was very common at the Police Department and it more often than not occurred without supervision being aware of it.

Jim was asked if he had ever witnessed how I worked with informants and potential informants and he said "Steve had more patience with people out there than I did. He'd always leave his business card with them. He'd take them aside, away from me, because a lot of people downtown had different opinions on each one of us as you're contacting these people, you know, the good cop—the mean cop, the nice cop. Steve was usually the nice cop. I would walk away, and Steve would get information from them. He did that a lot".

He said he was not always honest to informants and would sometimes lie to informants to get to the truth and had seen me pretend to like someone to get information even when he knew that I didn't particularly care for them. He said that I had corresponded with informants while they were incarcerated to continue to get information from them because I would stay in touch with my informants, even though that was something he had not done because he wasn't as good at developing informant relationships as I was.

Jim remembered that I had told him in the early part of 2001 that I had found out there was an officer that had raped a prostitute in the north San Bernardino satellite office from a prostitute informant and that I had wanted to find out who the officer was and turn them in. I had also told sergeant Vince Kilbride, so I had passed the information up the chain of command however that information was not acted upon. We had tried to start our own investigation in our minds to narrow down which officer may have been responsible however we were not successful.

The rest of Jim's testimony was concerned with the letters and in that under direct and cross examination he said that it would not be unusual for me to continue an officer / informant relationship using letters and in fact he had remembered in 2000 I had told him that there was some correspondence between a informant where I was trying to find out any information that they knew about a homicide.

After Jim testified he returned to the station and was sitting at his desk in the detective bureau catching up on some paperwork. Most of the other detectives had already gone home and the detective bureau was almost deserted when assistant Chief Billdt came up to him and said, "We were disappointed in your testimony today Jim." Jim replied that he had been honest in his testimony and Assistant Chief Billdt walked out. Remember, assistant Chief Billdt was the only representative from the Police Department that was allowed in the hearing. Jim was subject to being recalled as a witness and was very scared at being told this by someone as high up in the Department, after all the assistant Chief was one step below the Chief and anything that he says must be looked as though the Chief himself had said it.

Jim believed that captain Farmers comment along with assistant Chief Billdt's were meant to try to persuade him to lie under oath for the benefit of the administration. Captain Farmers comment was nebulous enough on its own but Billdts comment could only be taken one way. When you put both comments together coupled with the fact that captain Farmer just happened to be at City Hall at exactly the right time to make the comment it was highly suspicious. The captain and Billdt have offices next to each other in the

administrative portion of the Department and I bet their cell phone records would show a contact between the two on the same day.

Jim swore me to secrecy and then the implications of what had happened to him began to weigh on his mind. He realized to save himself and his career he needed to tell as many people as he could, he told twenty other people what had occurred including the Police Officers Association President sergeant Steve Filson.

In January 2003 I was interviewed by reporter Ben Goad of the Riverside Press Enterprise in preparation of an article on what I had been through. I told him of what assistant Chief Billdt had said to detective Beach which could also be verified by sergeant Filson. Ben called sergeant Filson who said that Beach had told him what Chief Billdt had said he then called Chief Billdt and asked him if he had said anything to detective Beach along the lines of being disappointed in his testimony and Billdt denied it completely. Of course he was also denying a crime, trying to intimidate a witness is a felony under penal code section 136.

# **Testimony- Detective Vasek**

Detective Vasek testified that he had been a police officer and detective for the last twelve years and during that time he was assigned to the gang unit I had been responsible for training him. His opinion was that I was a highly capable officer and that he trusted his life with me. Within that training I had instructed him on cultivating informants which was an eye opener for him as he had been more direct with people he dealt with in the past and had not tried to establish rapport. He remembered the East side 13th Street gang member that had committed several murders and how he had opened up to me just by me not treating him so "hard-nosed" and trying to intimidate him even when I knew that this subject was actively trying to find out information of where police officers lived.

Detective Vasek authored two memoranda that he submitted to the Department during the early stages of the investigation (appendix). In the first memorandum detective Vasek said. "Officer Peach gives other examples of using informants to our advantage. One such example came to mind just these few past days. It was an

example of an informant that keeps in contact with him through letters, even when the informant is in custody. Officer Peach never told me the informant's name, but I think it was female, because he referred to the informant as a "she" when he gave the example. The lesson learned from this example was that an informant that is properly handled could continuously used and manipulated to supply vital information to solve crime."

Vasek then gave his definition of what he meant by manipulating to supply and said that it's difficult to explain. When we have a relationship like this or friends and family, you feel for them one way. But this is a business relationship. We need to get a job done, and there's a criminal out there. We need to focus on not getting to close to them, but giving them the impression that we really care about them and their lives. It may not be truthful, but that's how we want them to perceive us so they keep giving us information.

Vasek was then given an example of how not to write to an informant while they were in custody which said "Dear Michella, this is officer Peach from the Police Department. I hope that we can get together and get information in the future." he said that if an officer wrote a letter like the above example and signed it officer Peach then that informant could get killed or beaten up or something (worse) and the officer would have to communicate with them in a different way even to the extent of disguising the relationship to prevent the informant from being labeled as a snitch which would make their lives miserable. He believed it would be common for officers to promise something to an informant that you never intended to deliver because you wanted the informant to believe that you cared about them and to give the impression that you care about them and that you are working with them to keep the information flowing. In his memorandum he said that basic informant work can yield almost a loyalty from a criminal. When asked to explain what he meant he said "Handling an informant properly and giving getting information from them, making them feel good about themselves and about what they're doing, its almost like were the good guys, and they're actually producing something for the good guys, and by keeping them on our side and feeding us information and - I don't want to say befriending them, because you need to keep a distance from them to you in your mind. To the informant there's no difference, but between the Police Department and us, there is a distance. But having the informant's mind-set such that they think that there is this bonding between you, provides much more information to come, flow through to you and keeps the informant working with you. Through my career, officer Peach has been bringing in some good arrests and good information for the gang unit and for homicide, and it was obvious that he was working informants to do this. You can't go on the street just cold and all of a sudden pull someone over that's a murderer. It doesn't work that way. I was always looking at that and kind of impressed with how he did it, and in the few months that we worked together, he was telling me about working informants. He didn't identify his informants to me, but he was trying to get me geared with working informants more instead of what I had been doing in the past."

It was important to realize that informants supplied more than arrest information and might supply information about officer safety issues as well. Vasek remembered a case where narcotic officers had developed information that there was someone who was looking to kill a police officer in a certain area, no-one was arrested but the information was valuable none the less.

He said in the early part of 2001 I had discovered from an informant that an officer was raping prostitutes and that I we had made attempts to find out who that officer was. I had told him that I had informed my supervisor sergeant Kilbride and he had informed Internal Affairs.

He said that the use of a computer at work to access the internet was extremely common and had seen numerous detectives over the years on the internet during work hours. He even remembered checking on the performance of his stocks on the previous evening and also ordered a pair of pants. He was not aware that using the internet during off duty times was a violation of any policy.

Chairwoman Scott then asked Vasek what other examples he remembered where I had used informants to the polices' advantage. He said "Well this one came to mind, specifically because I

remember him, because he was trying to track down other officers, where they lived and their personal lives, that's burned in my mind, and a picture of him hangs in one of the D.A.'s offices because she may be victimized as well. The other one came to mind when I heard on a Sunday that officer Peach was a subject of investigation. That's when I heard about him possibly being involved with this, and I wanted to notify the Department of my contacts with him and of what I knew. Those were the two that came to mind. We discussed others, the gang member wasn't an informant, he was a hard core gang member that he was able to deal with in a cordial level. The people are very reluctant to give up the identity of their informants. If another officer knows that this person is an informant, they may not handle them right and you lose the working capabilities of them. There are times though, when one person will be done working a certain detail and he will turn an informant over to another officer. I've seen that happen."

My attorney introduced another memorandum that sergeant Bill Hanley wrote (appendix) that essentially said the same thing as Vasek's memo's. In Hanley's memo he said that in the early part of 2001 he also became aware from Detective Vasek that I had reported an officer who was raping prostitutes and that he had notified Internal Affairs as well at that time.

### Re-Direct and Cross Examination - Myself

My attorney called me to the stand and I was sworn in. I started off by telling the Board about my career. I started in Law enforcement in 1991, spent the first few years in patrol primarily working the East end of San Bernardino then in 1996 I transferred to the gang / SWAT unit. We didn't have many call-outs for the SWAT team for the first few years and my primary responsibility was to gather intelligence on gang members. I attended a Los Angeles County Sheriff's class that began to centralize the raw intelligence under the acronym of G.R.E.A.T. which stood for Gang Reporting Evaluation And Tracking. It was a county based system that eventually evolved into an internet based system that was state wide and called Cal-Gang. I was the focal point for all the intelligence that

came through the department that was gang related, it was my responsibility to ensure that the intelligence was verified for accuracy and subsequently entered into several systems.

I initially started off on the SWAT team as a perimeter officer and eventually progressed upwards ending up as an entry team member which was one of the most trusted positions on the team. I was also responsible for training other newer members of the unit in what was expected of them and their responsibilities and duties. My tour of duty lasted four years before I would have to rotate back to patrol however my time was extended by six months because of the time that I allowed to recover from the two shooting incidents.

I dealt with and cultivated many informants in the gang unit and learned from the more senior members who all had an informants in different areas of the City or in different gangs. Each member of the unit was a primary contact point for a particular gang who was encouraged to cultivate informants within their respective gangs however there was some crossover. West side Verdugo was the largest gang in San Bernardino with over a thousand members that claimed allegiance to the gang and we were all expected to develop intelligence and informants from amongst the members.

My primary areas of responsibility became the graffiti enforcement, intelligence and tracking and party crews however my partner at the time officer Beach developed a lot of intelligence into several sub-sets of West Side Verdugo so I was also familiar with those members.

While I was in the gang unit I attended multiple training sessions orchestrated by different agencies that specifically dealt with making inroads into different gangs. Specifically I used to attend a monthly meeting within the county that was called S.M.A.S.H. San Bernardino Movement Against Street Hoodlums. It was a program that was designed for the different agencies within the county to come together and discuss gangs, intelligence and who was wanted. When I first started in the unit our patrol cars used to have SMASH painted on the front fender and the gang members used to refer to us as S.M.A.S.H. officers. It wasn't unusual to drive into a gang infested

neighborhood and hear the locals shouting a warning of "SMASH" so we removed the name to try to thwart their radar.

I received both informal and formal training of informant cultivation and handling from several different agencies and within the Department. I discussed the different levels of informants from the confidential informant to the paid informant and their motivations. I only had one informant that wanted to be registered and paid for their intelligence (the graffiti informant) however the others did not desire to be registered even though they supplied valuable information. Officers were very protective of their sources of information and wouldn't reveal who their informants were even to other officers because to have many contacts and having the ability to use that intelligence to solve crime was how officers were judged by their peers. The extent that the identity of informants was so guarded I would not always reveal my source of information even to my partner officer Beach in respect to the informants safety. After all another officer had not invested the time and energy into cultivating the informant and therefore may not place as much thought in protecting their identity and may inadvertently say the name, placing the informant in jeopardy.

We discussed how I cultivated Roan as an informant, it started of very slowly. Most police officers do not treat prostitutes very well, they can be disrespectful and even insulting to them which is how Roan had been treated by officers in the past. I tried a different approach, I would actually talk with her, ask for her opinion on things and what she thought about her life. I don't think anyone had ever talked to her in this way. It was also a test to see if she would be suitable for consideration as an informant as I needed to find out her level of intelligence, her outlook on life and to see if she harbored any grudges. She began to realize that she didn't have to fear me if I was the officer driving past as I wouldn't degrade her. In my evaluation I also found out that for the most part she was not involved with drugs other than being a user, she was primarily a prostitute and her potential to supply intelligence would focus around her activities.

I stated that I had never given Roan anything during the entire time that I had known her. She had testified that the first time she saw me in 2000 she had shown me her breasts. In 2000 I was still in the gang unit and had a partner, this was a total fabrication on her part which I said to the Board. She also said that I was circumcised and I let the board know that in fact I was not. I even offered to show any male members of the board my penis, one of the female commissioners said she wanted to see as well. I lived in the City of San Bernardino from my own choice as I believed that officers should reside in the City that they work in to add to their accountability to the citizens they serve.

We then began with specific allegations that had been leveled at me from Roan and the department. Bob asked me if it was true that Roan had testified that during June or July 2001 I had got off work early to have sex with her to remind the commissioners of her testimony. I replied that was what she has said. We then discussed the Disciplinary Review Board hearing where lieutenant Poyzer had checked through payroll and the Department computer logs to see whether I had left work early in May, June, July and August. He had found that at no time did I go home early. It was apparent from the computer logs that at all times I had been working patrol in a black and white police car, in uniform, taking reports and responding to calls until I was called into the station at 02:00 a.m. I also offered my home phone records, my personal and my wife's cell phone records to offer to the Disciplinary Review Board to establish that at no time during those months did I call Roan from my house or by utilizing a my personal cell phones.

I explained that for the four and a half years I had been assigned to the gang unit a cell phone was made available for my use, so that I could contact informants as needed without having to go back to the station to make a call. When I rotated back to patrol I had to return the Department cell phone but had become reliant on the convenience of a cell phone and continued to use my own personal phone to conduct police business.

We discussed that there was often a legitimate reason that an officer might tell a prostitute that a sweep was imminent. When the vice detectives would ask for patrol officers to assist them in a problem area they would suggest that we saturate an area as much as

possible and tell the prostitutes that a sweep was occurring so that they would relocate their activities. I had never used this tactic but I have heard other officer's say this to prostitutes when a sweep was not imminent or occurring just to get them off the streets for a while.

We returned back to informants and what I would have to do to establish their credibility, I said that to verify the information they would supply everything needed to be checked against known information to establish their credibility. When the officer / informant relationship is in the cultivation stage the informant has not established themselves because there is not a foundation of other cases to reference them against where they have proven themselves credible. Any information supplied of any nature would have to be verified if it was possible to do so. I discussed when I had received information from Roan that someone was carrying a gun I gave that intelligence more weight than if she had described someone who had narcotics on them. I reasoned that it was easier for someone to hide narcotics on their person than a gun. I have seen subjects hide narcotics in the rectal cavity, somewhere I cannot search on the street. A gun is much harder to conceal and if Roan saw a gun then she saw a gun, I didn't believe she would tell me about it if she had not seen the weapon. Also if Roan saw some narcotics on a subject I wouldn't know if the dealer sold those narcotics directly after leaving her however it is much more difficult to dispose of a gun which would need to be accessible to them for protection from other narcotic dealers.

The questions then went to the night of the illegal interrogation and what had happened. I described how I was sent to the station and surrounded in the parking lot by six officers and dis-armed and then I was detained in the administration area of the Department and told I was being investigated on a rape charge. I said I was devastated, I felt like vomiting, crying completely overwhelmed by the accusation. Especially because over a year prior to this I had reported another officer who had raped a prostitute and now I was being questioned. I was told only that I would be interrogated about the rape by Detective Otey and Detective Lindsey, two officers that I considered to be both cowardly and incompetent. The mood at the

interrogation got more and more contentious as both detectives knew that I wasn't going to admit to something that they knew I hadn't done. My focus during the interrogation was the rape allegation and I couldn't understand the relevance of my informant Roan and what she had to do with it. The detectives focus was primarily regarding Roan as they knew I had not raped anyone and were using the interrogation as a tool to illegally question me about Roan. I tried to help them by offering as much information as I could even though I knew it was not in my best interests (legally) to talk to them. I explained that within any Department there was different levels of officers, some are very accomplished in certain areas and some are not. Detectives Lindsey and Otey had reputations as being the kind of officers that liked to go to calls that were already resolved or where someone was already in custody because they did not like any level of confrontation or challenging that sometimes is involved in police work.

We discussed how frustrated I had become when I had transitioned from the gang unit back to patrol and wasn't able to devote the time needed to effectively use the information that an informant like Roan might supply. When I was in the gang unit I didn't have to respond to calls for service and would choose where I wanted to go and what I wanted to do, upon returning back to patrol I realized that I couldn't respond to Roan's information as readily as I once could and I was unable to use her effectively. She had refused to allow another officer to assume my role and I believed she would be a wasted resource for the department if she wasn't worked. She would still supply the information but as I was getting dispatched to calls all over the City I was not able to immediately respond.

My entire work history that had been compiled by the Department and contained in my personnel file was handed out to the commission members and we went over certain pages where I had been commended for my knowledge and ability to forge bonds within the community including my continuing work ethic. My last two performance appraisals had eleven exceeds standards reviews each out of twenty three categories. It is very unusual to have so many standards exceeded in one evaluation and most officers only

get between five and seven exceeds standards per appraisal. (We went over several highlights of my career which were very lengthy so I included the transcripts of the hearing in the appendix that pertain to my appraisals and commendations).

### **Rebuttal Witnesses:**

# Sergeant William Zehms, San Bernardino County Sheriffs Department

Sergeant Zehms was called as a rebuttal witness by the City to disrepute my testimony and the testimony of detective Vasek and Beach. After their testimony the Department was sent scrambling to come up with an "expert" on informants and they knew from my testimony that I had attended a class on Informant Management and Cultivation at the San Bernardino Sheriff's Department so the Police Department had sent someone to the Sheriff's Academy hoping to find anyone who could fill that role. Sergeant Zehms was a narcotic sergeant that had taught some of the classes at the Academy so unfortunately for him they roped into testifying. He had the curriculum of the informant class with him and he had to admit that he didn't write the curriculum and that he didn't teach the class when I took it. He had to admit that he had never qualified as an expert in Informant Management in Court or any other forum so his expertise was brought into question and it was found wanting.

It was patently obvious that he had been coached in his testimony and that he was to say that no-one lies to an informant, his answers were strained and evasive except when asked about whether deception was used with informants, he sat up straight and said that it never was.

He had to admit that he had not taught me in any class and didn't know what was taught in the informant class that I attended in 2001.

At the conclusion of his testimony commissioner Ruth DeSadier was reading the curriculum from the class and asked pointed out that "manipulation" was listed under methods of cultivating informants and she asked him to explain the difference between

manipulation and lying. He was so unprepared for the question, he looked at City attorney Easland hoping that she would bail him out and said nothing for twenty seconds. Commissioner De Sadier then said "I was asking how can you manipulate an informant without lying to them? He again did not answer as he couldn't answer honestly without lying himself, so he did not reply he sat there making "uuummm" sounds for about thirty seconds and was looking rapidly between Commissioner De Sadier and attorney Easland. I felt sorry for him, he had been lured in to testify falsely about something that he hadn't thought through and embarrassed himself in the process. His final answer Commissioner De Sadier took to mean that the person "would be set up". Zehms then said he didn't know what she meant by setting him up. The Departments informant expert couldn't or wouldn't define one of the terms of the class that he had taught because the definition would have been to my benefit. If he wasn't coached how would he know what was favorable to me and what wasn't.

# **Lieutenant Kimball**

Lieutenant Kimball was called as a rebuttal witness by the City to disrepute my testimony and the testimony of detective Vasek and Beach. We assumed that as he was a newly promoted lieutenant on probation and had been called on rebuttal he would testify in favor of the Department.

Attorney Easland asked about his vast experience and he said he had been an officer, detective, sergeant and now a lieutenant and had dealt with informants in one capacity or another for the last nine years. He was shown the 1<sup>st</sup> letter that I had written to Roan and was asked by attorney Easland if this was the kind of letter that would indicate an informant / officer relationship. He replied that it did. We were shocked, my attorney had the stenographer read back his answer in case he had replied in error. Attorney Easland then asked him to clarify if this was the kind of letter that indicated an informant / officer relationship and he again said that it did. She then showed him the second letter and he said that essentially it was the same thing.

Attorney Easland could not get him off the stand fast enough. We didn't have any questions for him as he had said it all under attorney Easland. I really did appreciate his honesty as it was the first that I had received from a lieutenant since this nightmare had begun.

### **Closing Arguments - Attorney Easland**

On December 13th 2002 City Attorney Easland gave her closing arguments. She started off by saying that the Board could only recommend my termination based on the totality of the circumstances. She initially starts off by making several references to the illegal interrogation and my mistakes that were made during the interview without mentioning that the entire thing was illegal. She places the blame entirely at my feet that Detective Beach didn't remember who Roan was, as if his memory was my fault. Attorney Easland then said that there was no evidence that Roan was an informant for me, no memos or notes that may indicate that fact.

• Roan in her statement said she was an informant for an officer Steve, also I did not have my notes or memo's, the Department seized everything including my tape recorders in January 2002. The City had control of all of my informant and contact file (I used to keep all my contact, informant information in a green notebook, it must have been destroyed because it was never returned to me even though it was seized during the service of the illegal warrant).

Easland goes on and details the allegation that Roan said we had sex, she then said I was circumcised and then corrected herself. Roan also said that she always uses condoms and that when they are used she couldn't tell if someone was circumcised or not.

• Attorney Easland failed to mention that she had coached the witness in that particular piece of testimony, she had not mentioned that she could distinguish the difference initially and in fact as she testified she <u>always</u> used a condom, if that was the case she would have used one in her initial story too and therefore her first adamant answer that I was circumcised was the right and unwittingly wrong answer.

She continued to construct a figurative puzzle of all the pieces of evidence, ignoring totally that they didn't apply because I didn't violate the policies. It was very hard to just sit there and listen to things that I knew were not true being said about me. I wanted to stand up and shout out, but Bob said to just ignore it and remember that it was her job to paint me in the worse light possible irregardless of the truth. She even tried to throw doubt on the fact that as I hadn't proven to the Board I was uncircumcised the Board should take my testimony that I wasn't and question it. (I had offered to show anyone who wanted to see, however I believe modesty stopped the Board from actually looking.)

# Closing Arguments - Bob Krause

Bob did such a great job of giving his closing argument and summing up the entire case I decided to present it almost verbatim, try to imagine yourself listening to the words and understanding the message contained therein.

Good morning. On behalf of Steve Peach and on behalf of the Police Officers Association and on behalf of myself, thank you for your tolerance with me over the last several days. Sometimes I get a little wrapped up in these things because I have the privilege and honor of meeting people like Steve Peach, who serves the communities you live in. Let me tell you this: I had a thought last night - and that's a scary concept - but I had a thought last night that I wanted to share with you. I was laying in bed, and I was wondering, where do I get my mail? It struck me that all my business mail goes to my business, and all my personal mail goes somewhere else. I have a couple of places, including my home, but the rest - all my business mail goes to my business, all my business e-mails, all my business voice mails, all my business pages.

All of the issues that Steve Peach talked about in this hearing, all of the business-related issues that he gave to Michella Roan, all went to the business; that is, except, of course, his personal cell phone after his Department cell phone had been removed after he had left MET

(the gang unit). So he carried on his tradition, I'll just leave you with that for a minute.

Unfortunately, we have to face reality here. This case is a byproduct of the unfortunate case of VanRossum. There can be no doubt about that. Of that, there is no doubt. Unfortunately, there is bleed over from that case, and the bleed over is found in some of the facts, especially as articulated by prostitute Roan.

The fact of a red truck which happens to be the same color of a truck that VanRossum has and she had contact with VanRossum, its not beyond the realm of possibility that Roan knew: "I'm going to know a red truck." The evidence of the cigarettes, isn't it a coincidence that cigarettes were also involved in the VanRossum case for alleged payment? And isn't it no strange coincidence that the sum of the contacts occurred also by the college in the north end of town? Too many coincidences there not no be some bleed over. Intentional or otherwise, nevertheless a bleed over.

But, ironically, the first officer who first uncovered through a female prostitute informant what turned out to be the VanRossum mess is Steve Peach. He, over a year ago, prior to the Department catching on, had CI information that didn't lead to an arrest. We can't attribute the arrest of Mr. VanRossum to his CI, but by God, it occurred, didn't it? It occurred, didn't it? [Point of fact, it was the same prostitute / informant - Ann Menifee]

So the standard is a false, fleeting standard that the Department would have you apply that there must be linked arrests to an informant at that level. The VanRossum case is unfortunate, but don't - please don't let that prejudice, if you have any, bleed over to this fine officer.

When Steve Peach found out about what was allegedly going on in the downtown area with officers, he was mad, he was visibly shaken. Officers testified about that in this hearing. He wanted them caught, and he took efforts to make them get caught. He reported the incident to his superiors and to Internal Affairs, specifically sergeant Kilbride.

The response back, if you look at the memoranda before you in evidence - it was either the Vasek or Hanley memos - is that, "Well, if this guy keeps it up he'll get caught." And he did. But you know something? For over a year, there was victim after victim, liability after liability, for issues that Steve Peach brought to the forefront.

It struck me when Chief Zimmon testified about his Skelly letter-this is kind of a side thought, but its important - he said, "I had a City attorney, who wanted the Skelly letter soon. He wanted it now," words to that effect. And in - I don't know -15, 16 years of practicing before this commission, I've never seen the involvement at the level of the City Attorney that we've seen in this room. I just ask why, I just ask why. [The elected City Attorney, James Penman was involved in every aspect of the hearing, he would listen and give advice to Ms. Easland constantly, this was something that Bob Krause hasn't ever seen before.]

I would ask you to consider that the Department has not treated officer Steve Peach fairly from the beginning in this. It was so unfair and maybe that's why we have the attention that we're getting - but it was so unfair that we had to have a Superior Court intervene in this case. Very rarely do we have to do that. And the Superior Court agreed and found multiple violations of officer Steve Peach's rights and multiple violations of law by the Department during the course of this investigation in their zeal in this pursuit of this good officer.

To go so far - to continue to go so far - and Ms. Easland even alluded to it a little bit today, quite by accident, I'm sure - as to charge under the DMV computer use, and under 4.12 fraternizations, when you read the sections, do not apply to the activities of Steve Peach. Chief Zimmon agreed to that. When I read him the sections, I said "Did he do anything that's consistent with those sections?" He had to say no. Yet they brought those charges.

Dishonesty and fraternization were the motivating forces, according to Chief Zimmon, for the cause of termination. It doesn't deal so much with use of the computer after hours or before hours or anything else. Let's face reality here. We're dealing with dishonesty and fraternization that were the motivating forces, because that's what the Chief testified to.

But they failed miserably. They failed miserably under the weight of the evidence presented at this hearing. Fraternization, Section 4.12,

the Chief had to admit did not apply to the letter writing. In reading Section 4.12, it can't apply. The elements aren't there. So the Chief decides it is for all the other reasons, as near as I could determine, that there was fraternization. Lets look at those reasons. First the alleged sex act that was not sustained by the Chief, because he couldn't prove it occurred. In the real world outside of however this process works, if you don't sustain something, I don't have to defend against it. The defendant in a case doesn't have to defend against a charge he's not charged with. But, see, fraternization fell aside, didn't it, under the weight of its own rule, so we have to find another way to build Ms. Easland's puzzle.

We have to build the City attorney's puzzle here, so the first thing were going to rely on is an act that the Chief admitted under oath he did not sustain, and that is the taking of this prostitute out to the north end of town and having sex with her in June or July of 2001.

Now, the records of the Department will readily show that he never took of early [from work] during June or July 2001. In fact, the state of the evidence is that the investigators looking into it - and I back up a minute. Not the Internal Affairs investigators, not the criminal investigators, but the Disciplinary Review Board looked into it and went a month either side of June or July, and he never took off for any period of time, especially at 11:00 o'clock at night till 2:00 in the morning.

I would have those records for you, ladies and gentlemen, had I known I was defending against an unsustained complaint. The Department did not show you any records that contradicted the testimony that's in the record. And as Steve Peach testified yesterday, there are multilevels of ways to prove that you weren't here: Your personnel file as it regards your use of time - your accountable for your time - the computer systems that you log in and off of, and somewhat of a signing of forms to get court time, because you have to account for your time.

None of that evidence is before you because - you know why? It doesn't exist. He did not take off early, he could not have been off

early, and he wasn't off early, he could not have met this lady, he could not have had sex with her. So this next level of proof has failed.

Second, the forewarning of the prostitution sweeps, again, Chief Zimmon testified to you, "I did not sustain that complaint." I read to you from page 6 of his Skelly letter to officer Peach. I read to him "I did not sustain that complaint." Yet, ladies and gentlemen, here we stand before you defending against a charge that was not brought because the City needs that charge now because 4.12 [fraternization] failed on its face.

I don't think they knew that before they got here. I don't think they knew that. I don't think they read it. And if they read it and they brought the charge anyway, shame on them, because the elements weren't there. And as a police officer, particularly a four-star police officer [Chief], you should know the elements of a crime before you charge it as an act of misconduct.

In addition to that, there's evidence here that Steve offered and, indeed, supplied phone records. He offered everything he had. He couldn't go to every phone booth in town and offer up the phone records, but he readily offered everything he had, just like he tried to cooperate with those criminal investigators, who I will get to their behavior in a moment, ever so briefly.

Third - well, that one fails. That one fails. So now another piece of Ms. Easland's puzzle's gone. We don't have fraternization. We don't have the sex. We don't have the warning of the prostitutes. So now we have to turn to the content of the letters, C1 through C4. And I'll get to that in more detail in a minute.

So as the Chief said, it was not one thing, it was a combination of the parts that matters. And as I submit to you that when, as we presented and proved here, that where each and every component fails - and I'm going to show you how the component of the letter fails; I think you know already from the evidence, not so much my argument - that there can be no whole.

My son's not the brightest kid on the block in math because his old man wasn't, but I'll tell you what: zero plus zero plus zero equals zero. And you can have all the components you want. You can have all the suspicions you want. You can have anything else you want. If

you haven't proven it - and largely because it didn't occur - if you haven't done that, then you didn't have a whole. It's like the old saying, you know, "All Indians walk in single file. At least the one I saw did." That is not the completion of a puzzle.

As to the content of the letters, first, only the authors can tell you what their true intent was. And if there can be an alternative reasonable interpretation of their intent, you must take that into consideration, but before you get there, you have to decide which author your going to believe. Are you going to believe prostitute Roan? Let's assume that for a minute. How can you? Not after what we've been proven in this case. She can't be believed about anything as it relates to this matter. Some of the things are benign, but they're all true. Some are not benign and they're devastating.

First her time in San Bernardino, she said she got her roughly in 2000. She had 162 contacts since 1997 by the police. Her explanation: "The police records are wrong." That's what she told you. "The police records are wrong." 162 contacts by the San Bernardino Police Department, and they're wrong, but she's right.

How many names - different names, aliases, does she go by? "Oh, a couple." The record before you is that she goes by at least eight. That's in San Bernardino [alone].

"Is that true Ms. Roan?"

"No. Their records are wrong."

She's right. The San Bernardino Police Department was wrong.

Her false declaration under penalty of perjury, somewhat benign because it was never really put in, but I read from it, for the Chief where she signed it in Chowchilla under penalty of perjury. She was wrong. She testified she was not in Chowchilla. She was down here in San Bernardino on the 9<sup>th</sup> . Is that a big deal in and of itself? No. You know what is a big deal? The Department gave it to her. The Department had it signed. The Department knew it wasn't true. That is not benign. That is another attempt at this fine officer.

And, you know, we've all kind of got a chuckle out of the circumcision issue. To a point, you know, that's human nature when things get uncomfortable that we kind of chuckle. That is part of human nature. But the point of fact is - and I will contradict my

colleague [Ms. Easland]; I think it was just a slip of the tongue - he is not circumcised. Her testimony, prostitute Roan -and I don't mean to be insensitive, but I don't need to be - I'm certain has seen a lot of penises in her line of work; I'm just certain of that - said that he was circumcised, and he is not. That is a crucial issue when it comes down to the believability of this witness. And all this bunk that it was in the dark and all that is just that. It's absolute bunk.

Therefore, if we now want to weigh her testimony and what her intent was in the letters and what her intent was in this relationship, we have to weigh those issues that I just explained to you. And I submit, based on those and those alone, you cannot believe her. Therefore, the contents of those letters and, more importantly, about her feelings about Steve Peach are incorrect or are they suspect? But you know something? Wait a minute. Wait a minute. Because this case goes beyond that. There's testimony in the record that Steve Peach was manipulating her, because he was trying to make sure because of the informant relationship that he was lying to her in order to maintain a relationship.

"Manipulate" is defined under the World English Dictionary in part number [definition] 3, "to control somebody or something deviously; to control or influence somebody or something in an ingenious or devious way." You know, us laypeople call that lying. You know the nice people write "disingenuous" and all that stuff. Us people, kind of the street guys, call that lying to somebody, and that's what you do, and that's what "manipulate" means.

C8 [The San Bernardino County Sheriff's curriculum from an informant class I attended in 2000] says you manipulate informants. And not withstanding their alleged expert [sergeant Zehms] - and I'll get to him in a bit - you do manipulate informants. You had other testimony on that. You have that from [detective] Beach. You have that uncontroversial from [detective] Vasek. Also under the definition of "manipulate" under section 4 in that dictionary, it's "falsifying something to change or present something in a way that is false but personally advantageous." In other words to say "love." In other words, to say, "I'll put money on your account." In other words to lie to an informant. And that's what happened here.

So you know something - back to my "but wait a minute" - maybe Steve's efforts worked. Maybe she did actually believe that this guy actually cared for her, and, therefore, she would stay in contact with him. She was manipulated just like your supposed to manipulate someone in this case.

Or can we believe Steve's version? Under scrutiny and under all the evidence in this case, is his version reasonable?

Now, I'm going to share with you a common jury instruction. I'm not saying that this is an order to you or you're charged by it, because this is an administrative hearing, but this is instructive, and I think you need to hold yourselves collectively and yourself individually to this in your deliberations. And the instruction goes something like this: "Whenever there are two reasonable interpretations of the evidence, then you shall find the reasonable interpretation in favor of the defendant," in this case, Steve Peach, "because the Department has the burden of proof." it's the old adage the tie goes to the runner. But this is more than that here because the overwhelming reasonableness inures to Steve Peach.

This is crucial, this is a crucial thing for your deliberations, because on the face of these letters, we have always admitted there can be an improper interpretation. Remember the evidence. Not everything we do in police work looks good. We shoot somebody, it doesn't look good, not to anybody. But sometimes we have to do that. Sometimes we get down and dirty in fights with people and we have to use our weapons, and sometimes we have to put our hands on people, and sometimes it doesn't look good. But does that mean it's improper? No, it just doesn't look good.

So then when you come here in a case like that, you have to weigh, as you have to weigh in this case, are there two reasonable interpretations of what had happened, the witness that said he saw this person get beat up for no reason or the officers and others who testified that, "well, I saw something different." So you have to weigh that, and then you have to resolve those in favor of the defendant. In the real world of police work, in the real world of police work in the City of San Bernardino now, the contents can and do have a second reasonable interpretation.

Now, I'm not going to go line by line. That's been laid out to you. We spent a lot of time yesterday and through cross-examination going over this. But it's been laid out to you by Steve Peach, it's been laid out to you by officer Vasek, and it's even been relayed ever so reluctantly by Chief Zimmon. When he had to here, when he had to here, he told you. He told you. Remember the admonishment: Whenever there are two reasonable interpretations, it must be found in favor of the defendant.

Now, the Department has the burden of proof to prove each and every element of every charge, and I submit they failed. The Chief applied what he called a reasonable standard to the analysis in coming to his conclusion. And remember, his conclusion is advisory to you. That's all. It's your conclusions that matter. You hear all the evidence. We've never spent four days in front of the Chief doing what we did here, asking the questions as we did here, being able to cross-examine as we did here.

The Chief applied what he called a reasonable standard to the analysis, but I'm going to ask you to consider, as I've asked others here, if I'm engaging in sex with a prostitute, why would I seek an investigation that might expose me? If my big deal is I'm downtown and I'm having sex with a prostitute, why am I going to go to my superiors indignant that somebody else is doing that with the reality that if there's an investigation started, I might get caught? That's not only not reasonable, that's stupid. And Steve Peach is a lot of things, he's a fine officer, he is not stupid, you've heard nothing to indicate that.

Second, if I'm conducting a private, personal liaison with a criminal, why do I talk openly with my colleagues about getting and sending mail to her? That's not reasonable, it doesn't make sense does it? So you don't have to be an expert at anything to see when things don't make sense. You know we used to train young cops, we didn't train them in the little nuances of the law. We said "you know, if it looks bad it probably is, now investigate it and come to a reasonable conclusion."

And third, if the letters can get me in trouble, if they are not business related, why do I have them sent to my place of business? Kind of like my epiphany last night. Why am I getting business mail anyplace but at business? And why do I give a Department pager and voice-mail? All of that is not unreasonable. And, you know, something that came out yesterday that is absolutely important on that point is why do I request to get calls from Michella Roan during business hours? You know why? Because I'm conducting business, that's why. Doesn't that make sense to you?

I don't know what line of work you folks are in. I know what line of work I'm in, and unless it's an emergency, I take business calls during business hours, if not I'm working 24/7. That's a discipline I have had to learn. That's a discipline Steve Peach has had to learn, although he's got, like I do, the ability to work 24/7. He just tries not to, like anybody else.

As to the false statements, false statements cannot and should not be found for simple variations in details, like the purported impeachment here of Steve Peach in C7[the illegal criminal interview]. C7 is a 45 page document. There are six entries from a 45 page document. there's half a sentence in one of those six entries that can even arguably be clearly anything that was misleading.

Now, I beg you to consider, as the Superior Court did the illegal and coercive nature of that interview from which the purported inconsistent statements occurred. I ask you with all my heart for a moment to put yourself in the place of this superb police officer. At the end of his shift, he's surrounded at his own Department, he is disarmed, he is patted down and searched, and he is escorted to the Internal Affairs room and locked down. His freedom is taken away. He has gone from a highly decorated officer to a criminal in a nanosecond. In a nanosecond he's a rapist.

His mind - as yours would not be - would not be on how many letters you wrote to someone totally unrelated to what your being charged with? Because that's an unreasonable standard to apply. The inconsistencies as brought forth as impeachment do not rise to the level of impeachment. They are simply that in context, in context. He was not trying to mislead anybody, he certainly wasn't false under the meaning of the rules.

Weigh Steve's statements before you in this hearing. He's a truthful credible officer with impeccable integrity, you know, the kind of officer Vasek said, since we're quoting Vasek today, "I would trust my life with," and that's a quote. "I would trust my life with."

Nor was there any departure from the truth in the Internal Affairs interviews simply because the Chief of Police doesn't seem to believe Steve's version. The Chief of Police wasn't privy to all the information that you were. There is no forum that allows that up until this level for that evidence to be examined at the level you good folks get to hear it.

And this all, once again, centers around the content of the letters that has been discussed here. There is now, and forever will be, a second reasonable interpretation in light of all the evidence presented here, you've heard it. I don't want to have to repeat it and repeat it and repeat it, that interpretation must be found in favor of Steve Peach.

As for the use of the computers, this is a reach at best. It's almost embarrassing to defend the Peterson issue in light of what Vasek said. I'm going to quote Vasek again. He's at the end of his shift, he's off of shift, and he's running his stock numbers. "I didn't know there was anything wrong with that, I didn't know there was anything wrong with that."

Remember, the Chief actually testified here under oath that Steve readily admitted that while on duty, he used the Department Internet to communicate with a friend, and that was in context of the Peterson information. But when the record was read to the Chief, it was clear that the Chief was wrong. Under oath he was wrong.

Does that make him a liar? I hope not. I hope you don't think that. I hope you don't think that making a mistake or misstating something that comes out of volumes of materials makes one a liar. I hope you don't hold the Chief to that standard. But if your not going to, don't hold Steve Peach to it either. The chief wasn't locked down, the Chief wasn't just searched, the Chief didn't have his gun taken

away. The Chief was in a safe environment and made a mistake, he made a mistake.

Were we to impeach or find dishonesty every time someone misspoke just during this hearing or made an error - I made an error yesterday- about an objection I made, I was wrong. Does that make me dishonest? No. It made me inaccurate on a point, that's all. Ms. Easland misspoke here today, she's not under any real pressure, all she did was misspeak about the circumcision issue. She got it backwards, she reversed the fact. Do we throw her out of the room? Do we disbar her? Hold my client, this good officer, to the same standard that you would hold yourself to and that you hold me to and that you hold Ms. Easland and you hold the Chief to. That's not an unreasonable thing to do.

Again, I've already mentioned the six entries in the 45 pages and the circumstances that they arose in. But the Department then goes beyond that and tries to sift through an additional 154 pages of the Internal Affairs interview, and any deviation it can find, it tries to elevate to the level of dishonesty or impeachment. 154 pages, several hours of interrogation. Yet the Chief, again under no pressure, misstates a fact, and we're not going to hold him to that standard. 154 pages. What we're there? A couple of deviations that were explained.

Again, please remember the Department has the burden of proof here. They must prove each and every element of each and every charge that they bring as it is brought. They have a legal obligation under the Skelly Doctrine and it's progeny to inform Steve Peach and his counsel prior, prior to this hearing, of all of the charges with specificity and to supply us with all of the materials upon which those charges were based. That is the Skelly doctrine. You must, as a matter of law, hold them to that standard. There's no option. There's no option about that, that's what they have to do.

Here we had to defend against charges that the Chief admitted he didn't sustain. We should not have had to do that. But, you know, I'm glad we did. I'm glad we did because it showed the weakness in the Department's case. It showed the desperation they had to go to in

order to do this: sex with Roan, warning of sweeps, even the content of the letters.

Then, after what clearly has been shown under C5 [computer access and sharing information policy] and the Chief's testimony, Steve did not violate the charges that were brought in advance as required. He did not share any of the info that he researched. You have to read theses sections and even Roan and the Chief agreed he did not [give any information out to unauthorized parties].

Ironically - it came out here but with so much having come out, you might not have caught it, so let me remind you. Ironically, the Department has no recorded evidence, no records that Steve Peach ran anybody particularly in the Roan matter. They only know that because he was honest and he told them he did. That's the only reason they know that. He was honest and told them he did because it was the truth. It was honest, and he told them he did because he thought he had reasonable grounds to do so.

Now, in your deliberations, if you haven't done so already please thoroughly review our Exhibits 1 through 45 [my personnel file]. I hope you already have. Doesn't that document in most of it's parts corroborate, ad nauseam sometimes, Steve's approach to citizens, victims and informants? And if it does corroborate that, then we have another notch on Steve's pistol, so to speak, that he is telling you the truth about why he would write letters in the manner he did.

The evidence here, all those documents, we could not re-create those. We didn't make those up. These were the observations of his superiors for all of these years, from the beginning. Has not that approach yielded multiple commendations and exceed standards? He was never warned to change his ways, he was praised for doing it. Has not that approach yielded a safer City for you [commissioners], Steve, because he lives here also, to reside in? Steve was never told or trained to approach his work in any other manner, his eight hour block of training in CI relationships in 2000 was self initiated. If the Department wants me to do it a different way, if the Department has a standard and I do something different, then don't write me dozens of commendations for doing it the way I'm doing it, don't write me 10 or 15 performance evaluations thanking me for

doing it that way and exceeding my standards and then don't train me.

As to the City Attorney's witnesses in rebuttal, sergeant Zehms, from the evidence, he's clearly not a qualified expert witness in the field of informant development. More importantly, he testified he never trained Steve, he had never seen him before yesterday. He didn't create the curriculum in C8 [the informant class curriculum], he wasn't present when the information in C8 was taught, he doesn't have a clue what was taught.

Frankly his testimony that you never lie to an informant is laughable based on the evidence before you, based on C8, it says manipulate. What did I just read to you "manipulate" means? Ms. DeSadier [one of the commissioners] hit it on the head yesterday, how can you manipulate somebody but be honest with them? That's what the dictionary says, and that's what common sense tells you, that's what common sense tells us.

So Zehms added nothing to these proceedings, other than he said the letters were unusual. He did not say it never happens. He says he'd never seen it. We admit this is unusual. Steve Peach has had numerous informants over the years, this just doesn't happen every day. This was an aberration, this was different, we admitted to that.

Lieutenant Kimball, bless his heart, arguably the most qualified witness brought by the Department about informant relationships that has anything to do with the San Bernardino Police Department - and the reason I say that, because sergeant Zehms, while a nice guy, doesn't have a clue what goes on in the San Bernardino Police Department. He told you that, "I don't know, I don't have a clue."

But lieutenant Kimball does, and lieutenant Kimball - and I thank him for his honesty - when he was shown the letters, he said that it did indicate a CI relationship. Was it unusual, we've already admitted that, you don't have to prove it's unusual. Their witness, lieutenant Kimball came in here and said "That's a CI relationship., maybe it's not the way I would have done it." But he didn't know all the reasons that you folks do for why it was being done. He doesn't understand the level of manipulation that was going on. He doesn't understand what you now, hopefully, understand, and that's officer

Peach's approach, his successful approach to keeping the streets of the City of San Bernardino safer.

Lieutenant Garcia had to admit that he drew his conclusions based on what happened at the Disciplinary Review Board. Again, the Disciplinary Review Board is not at the level of this hearing. His responsibility is not to come to those conclusions. He's entitled to, but you have the duty, you hear all the evidence. It is not disparities that lieutenant Garcia of the San Bernardino Police Department has an opinion after not having heard the evidence. I could run this by my son tonight and he could have an opinion. My partner has an opinion, but he hasn't read this file. He hasn't heard the evidence.

Ladies and gentlemen, the charges that have been brought have failed before your very eyes in a fair reading of them, in a fair application of the evidence. The Department and the City Attorney have been wrong on many levels here. Please correct their errors. On behalf of Steve Peach, on behalf of the citizens of the City of San Bernardino, in the interests of righting a wrong, we pray that you not sustain the charges and return Steve Peach to where he belongs, protecting you. Thank you for your time and patience.

# **Chapter 22 - Civil Service Board Findings**

The Civil Service Board released their findings and conclusion on January 14<sup>th</sup> 2003, The final document is in the appendix but below I will highlight certain sections that we proved did not occur or where the Board chose not to weigh the evidence.

Page 2 Line 1, The Board made the finding that I knew Roan was a convicted felon when I first met her while working in the gang unit, this is not the case, during my first few encounters I did not immediately know or was even interested in knowing her or her circumstances, she was just another prostitute downtown and I was in the gang unit dealing with gang members. Prostitution is not a felony crime unless certain other conditions apply, an HIV infected prostitute knowingly committing prostitution for example. Drug possession is not necessarily a felony conviction and can be wiped clean if the person attends a drug diversion program. To make this finding the Department would have had to prove to the Board that I knew for a *fact* that she was a convicted felon when I first encountered her. They did not prove it in the slightest and in reality did not address it at all, I think they failed to consider it as an element of the fraternization.

<u>Page 2 Line 2,</u> The Board stated that I left the gang unit in 2000, I actually left the gang unit in 2001.

Page 2 line 3-15, The Board said I had between fifty and one hundred contacts with Roan, this is true and it was what I testified to. They chose to take my contacts with Roan out of context and view my total amount of contacts as all being informant related. For the first few years my contacts with Roan were not informant related at all and consisted of just telling her to go home or just talking with her in the normal course of duty. The informant relationship that I had with Roan did not come to fruition until 2000 - 2001. During this time I probably had between ten to thirty informant related contacts

where she actually supplied me information. I explained that working as a patrol officer during 2001 and not having the time to immediately respond to Roan when she had information to give me severely hampered my ability to act on the intelligence. I did however say that to the best of my recollection she supplied one arrest that I knew was directly attributable to her based on information she supplied right there and then. I told them about a drug dealer at the Sunset Hotel that I had arrested based on her information (I remembered this arrest specifically because I fractured my tibia when the arrestee tried to fight with me and several other officers). I also explained that she had given me a lot of information that I had acted upon at a later date so she wasn't directly involved in those arrests but had supplied the trigger information that had subsequently led to an arrest.

Maybe this was a concept that was beyond their comprehension, I don't think that they understood that if Roan gave me information and I wasn't able to act on that information right there and then that I could remember that information and use it when I had some free time, or when I saw the subject she had described walking around downtown. They seem to be under the impression that officers just walk up to people and tell them to start talking about crimes that they may be involved in without establishing any prior relationship. Can you imagine a complete stranger wearing a uniform walking up to you and saying "tell me what you know, tell me if you've witnessed any crime, tell me if your involved in crime, I want to know now".

Roan did testify she wasn't an informant for me, however when she was initially interviewed she said she was an informant for an officer Steve and his partner Tracey. No other officers were downtown that had partners during that time that were named Steve except me and my partner who primarily was Jim Beach. San Bernardino traditionally has used single officer patrol vehicles so having two officers in a car would have been the exception and there was not an officer Tracey on the Department.

The Board believed that I had called Roan and told her about prostitution sweeps even though I did not work on Tuesdays (the

prostitution sweep day) and because I was not at work I would not have been privy to that information. Even Chief Zimmon did not believe that he could prove that it had occurred which is why he didn't sustain this at the Skelly level several months earlier. We supplied all my cell-phone records to the Department which would have shown all the calls I made. I have heard other officers verbally tell other prostitutes that a sweep is going to be conducted just to get them off the street, this tactic was suggested by the Vice detectives when they came to our briefings because they had received complaints about prostitutes in a certain area of town and needed them gone for a while. I never did call her and warn her, if I didn't know when the sweeps were being conducted and they were held primarily on days that I didn't work, how would I know to warn her? The Board found me guilty of warning Roan even though there was more evidence to suggest that this was not the case.

The Board stated that Roan felt that the relationship was a little bit more than friendship - romantic. She had romanticized her relationship with VanRossum and had also romanticized her relationship to me. This thought was entirely in her mind, she believed, not knew that she was romanticizing the friendship. The dynamics of informant development and cultivation went entirely over the board's collective head. They did not understand any part of informant / officer relationships.

The Board asked me during the hearing what I believed would be in Roan's best interests- to return to San Bernardino or not. I honestly replied that to return to San Bernardino would probably mean a return to prostitution and drug use and that it probably would be in Roan's best interest to go anywhere else so she did not fall into the same trap that had led her to prison. The board took my answer out of context again and seemed to state that because I felt that it was in Roan's best interest to be anywhere else I could not use her as an informant. The question they should have posed was, would it be in **my** best interest if Roan lived anywhere else based on the informant / officer relationship and of course my answer would have been "no." Again the board skewed my answer to justify their position or they simply did not have the ability to comprehend complex issues.

The Board looked upon my attempts to keep my informant relationship secret as being suspicious. I have said earlier in my book several reasons that an officer / informant relationship should be kept confidential, maybe if the board wanted to know why they should read the newspapers more often as informants are being killed purely because of being an informant all the time.

Page 2, line 16 to 17 The Board believed that at some time the relationship between Roan and I became more than an police officer / confidential informant. This was never established and a police officer / informant relationship was all there was, the Board didn't believe the allegation that sex had occurred between us and that Roan testified that she had never seen me when I wasn't working. If the sex didn't occur and Roan had not seen me when I wasn't working where was the personal relationship? There was no personal relationship.

<u>Page 4, line 4 to 8</u> During the illegal criminal interrogation I established that Mcmillan was a prostitute downtown, I had seen her get in and out of numerous cars and I had stopped cars where the driver and Mcmillan obviously did not know each other and the driver had admitted that he had picked her up for sex. They then asked me if I knew what Roan did downtown and I answered "I don't know, she's a ...., I haven't seen her in a long time either." I began to answer that she was the same as Mcmillan (meaning that she was a prostitute) but as I spoke I had the thought that I had never actually seen her getting in or out of anyone's car, I had also never stopped any cars where she was a passenger or arrested her for prostitution (I had arrested Mcmillan once for a prostitution warrant). It was my belief that Roan was a prostitute and I thought of her as such but I didn't actually know for a fact that she was. Later in the interrogation I was asked if I thought Roan was a prostitute and I said yes. The Board believed that my answer was deceptive instead of being entirely truthful. They believed that I knew that Roan was a prostitute and a convicted felon when she was downtown. My answer was the literal truth in that when asked what Roan did

downtown I honestly said I didn't know. Remember I wanted to present the most accurate answers in the interrogation as I knew that they would be grasping at anything to justify their illegal acts. I did not know, (and still don't know) for a fact that Roan was a prostitute. The Board seemed to think that being a convicted felon downtown was an occupation. I was asked what Roan did, I took it to mean what did she do to exist as far as I know you don't get paid for being a convicted felon. You could exist by being a career criminal but they didn't put that in their summation because it didn't fit into the fraternization definition.

My manner of answering questions is thus: I liked to try and think of myself as being in the witness box in a courtroom, when asked any question I should answer as truthfully as I can based on my own particular knowledge without referring to beliefs or presumptions. I always tried to think like Joe Friday and his "just the facts please" and thought that most cops thought the same way. I'm sure if a devoutly religious person was asked if god existed they would answer "yes", I on the other hand would answer "no" based on my not having any evidence to suggest that he does. We could go on forever with the theological arguments for both pro and con but police should deal and be interested in fact only.

Page 4 Line 9, I was asked during the illegal interrogation if I knew where Roan was now. Again I was trying to answer completely truthfully and said that I didn't know. I always thought that now meant now and not some other time, I was asked if I knew where Roan was right at that moment and answered that I didn't know, for all that I knew she could have been sitting in the next room. This again speaks of the incompetence of detective Lindsey and Otey in the phrasing of this question as I answered truthfully. Accomplished police officers are usually very careful in the phrasing of questions and ask questions that can only be interpreted one way, unless they wanted to ask a question that they knew I would answer accurately so they could use the double meaning against me later. (Which is exactly what happened). The only way Lindsey and Otey could make this happen was by accident, someone who could see the

double meaning would have had to point it out to them later. A competent detective would have realized that there was more than one answer to the question and probably re-asked and rephrased the question to clarify, but they didn't bother.

Again if I was on the witness stand in a courtroom and I was asked that question I would answer the same way. A lawyer would immediately see the double meaning and would ask a follow up question along the lines of :" Do you have a belief that she is somewhere?" and of course I believed she was in prison.

Page 4, line 16, I must have said during the illegal interrogation that I never opened the letters and threw them away, I miss-spoke and meant to have said I opened the letters and threw them away, my error. I didn't even realize that I had answered incorrectly until I saw the annotated version of the interview. I was amazed, my mind was not on letters at all. When I confirmed my answer with detectives Lindsay or Otey I said that I had sent two letters, I had forgotten about the middle letter which was more of a note than anything else.

<u>Page 4, line 25-28,</u> The Board stated that I did not answer the above questions fully, completely and truthfully. I realized that I needed to answer all questions truthfully and honestly and have endeavored to do that throughout the entire proceeding. As I have explained above I did answer the questions fully, completely and truthfully but the Board needed to justify the Cities position even though I did nothing wrong. Admittedly during the criminal interrogation I did miss-speak about opening the letters and I did throw them away but considering my state of mind is one misstatement totally condemning? The POBOR is designed to stop Police Departments from doing exactly what they did to me in the criminal interrogation, they are committing a crime if they try to lambaste someone the way that they did to me. The Department knew this and did what the set out to do, they found one error in two interrogations and lynched me over it. When you consider that we are talking about being interrogated in excess of eight hours is one

misspoken word so bad. So as I was held responsible for all my answers in an illegally conducted interview, why isn't Chief Zimmon held responsible for the four lies in his Skelly response? Why isn't detective Lindsey held responsible for his perjury as mentioned by Judge Edwards? Why isn't attorney Easland held accountable for her lies in her brief for Judge Edwards? I had less than a second to answer, I did not have time to think or consider what I was saying completely, everyone above had hours, days, weeks or months to carefully consider their answers and were still dis-honest. What a double standard.

<u>Page 5, line 1 to 11,</u> The Board again reiterated that they believed I had an inappropriate relationship with a known convicted felon, Roan. They found this relationship inappropriate because:

- 1. I wrote letters to her while she was in Prison.
- 2. The language in the letters.
- 3. How Roan viewed the relationship.
- 4. The language in the letter that Roan wrote to me.
- Because of protecting Roan from any police contact of any kind.
- 6. Warnings to Roan about upcoming prostitution sweeps.

We have covered number 1 and number 2 enough earlier in my book, but sufficed to say, the Board did not have the education or powers of reasoning to evaluate an informant / officer relationship. Even when other (3) witness officers found nothing wrong with the letters or their content they chose to ignore the officers and the Department expert lieutenant Kimball.

3. And 4. Roan was a prostitute informant that I was manipulating to gather information, the Board did not understand the dynamics of this relationship. That was the point, I was deceiving her. I don't see how I can be held responsible for anything else other than my actions, I surely cant be held responsible for other peoples feelings can I? If George Bush makes a speech and you disagree with it so strongly that you punch a wall and break your hand is it George

Bush's fault? Or your fault for reacting to it. People are lied to all the time especially in police work, the board couldn't comprehend it.

- 5. I don't understand this reason and don't know what they were referring to.
- 6. I never warned Roan of sweeps, I didn't work on the sweep day and wouldn't have known about them anyway. This was a totally unproven accusation.

Page 5, line 12 to 27, This section defines the policy that I signed (appendix), I have read this policy numerous times and I cannot see where I committed any violation. All three sections mentioned in the policy, 11142 PC, 13302 PC and the excerpt from DMV all say that I have to give any information gathered to any unauthorized second parties. Just accessing the information is not a violation of the policy however they still found a violation of this policy knowing full well that I did not violate it's terms.

Page 5, line 28 to Page 6, line 3, The Board found that I misused the computer in violation of the above policy. I do not see how as I never gave any information to anyone including Roan. Roan herself testified that I didn't give her any information about her children, husband or any other information. The Department didn't produce any record of my accessing the information and to be completely honest in the interrogations and the hearing I said that I had accessed information to verify whether Roan was being credible with information she had supplied to me. As I said earlier an officer has a duty to the public to verify any and all information that an informant supplies to test the credibility of the informant. At least I could now say that Roan had supplied me with information of a non-criminal nature that had proven to be credible. Without verifying this information I could not make this statement.

This policy was not violated in any manner, shape or form.

Page 6, line 4 to 12, Conduct unbecoming an officer, the Board found that my conduct was unbecoming for an officer, how so. They defined it as: employees shall at all times act in a manner so as to

reflect credit to the Department. Any conduct that adversely affects the morale or efficiency of the Department and any conduct which has a tendency to adversely affect, lower, or destroy public respect and confidence in the Department and the employee shall be considered unbecoming conduct.

What I did was report an officer that was raping prostitutes and continue to cultivate an informant to verify that the rapes were occurring. I tried to stop a criminal activity that was being ignored by the Department. For what I did and tried to do I should be commended. The moral at San Bernardino Police Department is in the toilet now because of the administrations zealousness to persecute the messenger. The line officers have seen how I tried to stand out against corruption and how I was fired. The officers know the bare facts and have seen it all to regularly with other officers that stand against illegal business as usual. I believe the public will view Chief Zimmon and everyone that has involved themselves in this case and been dis-honest to have destroyed the public respect and confidence in the Department and hopefully will hold them accountable.

<u>Page 6, line 14 to 22</u>, the Board found that I violated Federal, State or Local Ordinance. Or that I violated the charter of San Bernardino, rules and regulations of civil service and the rules and regulations of the department. How?, I'm sure if I had committed a crime I would have been arrested or charged, (I never was) I am still unaware of violating any Law or rule.

Page 6, line 23 to 28, the Board quoted the rule that pertains to false statements. They stated they believed that I wasn't truthful in the illegal (criminal) interview. The relevant part states: "Employees shall not make false statements when questioned or interviewed or in reports submitted. If requested to make a statement in the course of an official Department investigation, employees shall make full, complete, and truthful statements." The rule does not make any provision for illegal interrogations, so if the Department conducts an illegal interview and claims it to be legal and official does that mean

that the Department allows illegal interviews and condones them as being official? We will see if they apply the same standard to the investigators as they knowingly made and put into writing their official false statements.

<u>Page 7, line 3 to 9,</u> The board found that I neglected my duty, neglect of duty states:

"Employees may be deemed incompetent and subject to discipline when they: fail to properly perform their assigned duties; act in a manner tending to bring discredit to themselves or the Department; or fail to assume responsibility or exercise diligence, intelligence, and interest in pursuit of their duties." Again this one is out of left field, I do not think the Department could find a more dedicated officer, throughout my career I have received glowing reviews applauding my style of police work. I have always gone beyond the call of duty in every aspect and I have never done anything that would discredit the Department or myself.

# Conclusion

All the conclusions find that I violated 3 things and those 3 things applied to all the charges in one form or another.

- a. I accessed the DMV computer for a non law enforcement purpose
- b. My relationship with Roan was not an informant / officer relationship and
- c. I lied in the illegal interrogation.
- 1. We have already discussed this violation ad nauseam, but one more time will only illustrate how the conspiracy was engineered. This charge was not sustained at the Skelly hearing and in the Chiefs own report. Having said that, when you actually examine what I did, it didn't violate any policy. That is probably why Chief Zimmon did not sustain the computer access charge against me, to his credit he read the policy and saw that it did not apply.
- 2. My relationship with Roan, it was an informant / officer relationship in every sense of the phrase, I was hoping she would tell

me about VanRossum or supply other important information and manipulated her to bring about that end. The Board didn't believe that I had sex with Roan because she claimed she gave me oral sex and then normal sex in her testimony, (incidentally in her statement to detective Otey she said it was just sex, she didn't mention oral sex) however she didn't know that I was not circumcised. When asked under oath she said I was, or at least I was on that day. She also claimed that the officer "Steve" who she worked for as an informant was someone else.

There was a fraternization policy that was introduced throughout the Hearing that has raised my suspicions because the Board never mentioned it by name in the findings even though they found me guilty of its provisions. The policy defined fraternization as having a personal relationship with anyone knowing that they are on Parole or Probation or are in custody of the Department. The intent of the policy is to prevent personal relationships developing between officers and people who are on Parole or Probation or are in the custody of the San Bernardino Police Department. Lets explore this policy, when I contacted Roan initially I was working at all times. The only time I allegedly met her when I wasn't working was for sex and at all other times I was working and acted professionally (according to her testimony). That was the only time I (allegedly) met her when I wasn't working. No-one believed that the sex allegation was true, not Chief Zimmon and not the Board. So if the only time I met her when I wasn't working was proven not to have occurred, where was the personal relationship? That would mean that all of my contacts with Roan occurred when I was on duty, in uniform and were professional. When she was in Prison she wasn't on probation or parole and wasn't in the custody of the San Bernardino Police Department. I didn't visit her, send her money or conduct any other form of a relationship other than writing to her to get information. Surely then my contention that this was an officer / informant relationship is more credible because the relationship didn't extend outside of working contacts and no fraternization occurred. The New Oxford Dictionary defines fraternization as " to mingle as friends" but the City and I proved no mingling occurred. There was no improper relationship.

3. Dishonesty, that I lied in the illegal interview, I miss-spoke once under the stress of being accused of Rape and having an illegal search warrant served against me. As soon as I found out that I had miss-spoke at the interrogation I tried to let the Department know what the correct reply should have been, I didn't even realize what I had said until I read the transcribed interrogation.

Even when attorney Easland was giving her closing arguments she accidentally miss-spoke and said that I was circumcised, should she be dis-barred and fired from the City because of a harmless error, I don't think so. The amount of untruths that I have uncovered in this investigation are not viewed in the same light as my misstatements even though they are intentional lies engineered to disguise or justify illegal acts. Surely this type of lie is far graver than a misstatement unless the goal is to discredit me by whatever means are available.

I also find it amazing that the Board never mentioned that I had discovered an officer was raping prostitutes almost a year prior to the Department initiating it's own investigation. Why would they not want to mention that in their findings, it was a fact testified to by me and witnesses including reluctantly by Chief Zimmon. The reason the city has ignored this fact is because by ignoring it they hope that it will go away. This also means that the Board was influenced by the City Attorneys office or by the Police Department Administration, because they would not have known to not included such pertinent information without the advice to paint the City in the best possible light.

# **Chapter 23 - Specific Crimes**

Hopefully someone reading my book will have the power and backbone to see how I have been the victim of a conspiracy of a very serious nature and will take steps to right the injustices that I have suffered. I will condense who did what below and hopefully they will be held to answer for their crimes, lies and the deliberate assassination of my character.

### Michella Roan

She lied so many times under Oath throughout this proceeding that she should be held to answer for Perjury. Of course the agency that would have to investigate this would be the San Bernardino Police Department. They would not want to impeach the testimony of their own witness so nothing will happen. She can and did lie multiple times in her interviews and under Oath but because she was doing so at the behest and in favor of the Department she did so with impunity.

### **Chief Garrett Zimmon:**

He was overall responsible for violating my 4<sup>th</sup> Amendment right against illegal search and seizure and State law regarding the illegal search warrant because he was responsible for all officers beneath him as well as being overall responsible for the illegal interrogation that was conducted on January 18<sup>th</sup> 2002. Violating numerous City Rules and regulations for Falsifying facts (lying) or not completely telling the truth in his Skelly response letter and committing Perjury in his testimony in the hearing. Clearly Chief Zimmon should be held to the same standard that all other officers are held to in that false statements made by employees are not tolerated. Especially statements given under oath and under the penalty of perjury. Chief Zimmon had in almost a year to familiarize himself with the facts in my case and deliberately chose to deceive the Civil Service Board. Chief Zimmon should not have found that I violated section 4.02 (conduct when accessing the internet while on-duty) if based on the

above criteria because it just didn't happen. Indeed I have heard and seen the command staff themselves bidding on e-bay while **on-duty** openly and with the full knowledge of the Department without any detriment to them or their careers. Surely with that in mind, I believe Chief Zimmon is also guilty of being in dereliction of his duty in finding a violation based on non-existent facts and then lying under oath to justify his position. Chief Zimmon could have offered the position that he did not remember whether I had been on or off duty at the time. Instead he chose to be firm and resolute several times in that I had indeed been on-duty, surely a more egregious violation than a simple mistake or a slip of the tongue.

California Penal code section 118-126 (Perjury) above is very clear in what constitutes a violation of it's provisions, Chief Zimmon is in clear violation of Penal Code 118 (a), in that he knowingly testified, not once but several times that I had been on-duty when there was no evidence offered to make that conclusion in any part of the investigation offered in support of his position. In fact when viewed independently there is in fact more evidence to the contrary. Chief Zimmon also testified that he had read the entire report carefully and as a law enforcement officer with over thirty years experience it is unreasonable for anyone to believe that Chief Zimmon did not know to be very careful in his sworn testimony.

Penal Code section 118 (b), Perjury states that direct or indirect evidence may only be used to convict someone of perjury. The Chief's own testimony, offered with the statement that I made that I was off duty coupled with Petersons statement is direct evidence of a violation of perjury as these statements were made almost a year prior to the Chief's testimony.

### **Assistant Chief Michael Billdt:**

By trying to influence detective Beach in his testimony Chief Billdt committed a violation of Penal Code 136 dissuading a witness from testifying, a felony. He needs to be held accountable for this crime. I have written a letter to Mike Ramos the District Attorney of San Bernardino County (appendix) and filed a complaint with the SBPD asking them to look into this violation. The district attorney

did not comment on my allegation in their response letter thus adding another layer to the corruption. Penal code 136 is transcribed below for your reference.

He also is directly responsible for not initiating an investigation into a possible police rapist when I made the Department aware back in January 2001. Internal affairs was directly under his control at that time. The decision not to investigate or to ignore the accusation ultimately would have been his to make.

# **CALIFORNIA PENAL CODE SECTION 136**

# 136. As used in this chapter:

- (1) "Malice" means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.
  - (2) "Witness" means any natural person,
- (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or
- (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or
- (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or
- (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (iv), inclusive.
- (3) "Victim" means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated.
- 136.1. (a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

- (1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.
- (2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. (3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.
- (b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:
- (1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.
- (2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.
- (3) Arresting or causing or seeking the arrest of any person in connection with that victimization.
- (c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:
- (1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.
  - (2) Where the act is in furtherance of a conspiracy.
- (3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if

the act prosecuted was committed in this state, would be a violation of this section.

- (4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.
- (d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.
- (e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.
- (f) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170.

# **Captain Aragon and Lieutenant Henson**

Should be held responsible for violating my 4<sup>th</sup> amendment right against illegal search and seizure, California State Constitution and State Law for allowing the service of an illegal warrant. They should also be held accountable for violating the POBOR in allowing an illegal interrogation to occur in their presence and with their blessing.

#### Sergeant Voss

Should be held responsible for "conduct unbecoming an officer" and "dereliction of duty" for not supervising Vanrossum while he raped dozens of victims. If he had just done his job Vanrossum would have been unable to commit as many rapes as he is accused of because he wouldn't have had the opportunity.

### **Detective Rogers**

Should be held accountable for perjuring himself in the affidavit for the search warrant that he obtained from Judge Wade. He signed the affidavit where he falsely said that Mcmillan had identified me as the rapist (if you remember she identified the tobacco chewing, blue eyed, bald officer.) She picked me out of a line up as her friend, not a rapist. Penal code sections 118-129 reiterated below defines perjury. Of particular interest is penal code section 125, it states: An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. In other words detective Rogers relied on the unqualified statement (because Rogers did not know it was true) of whoever told him that Mcmillan had identified me. If he did not know that she had not identified me and relied on the word of detective Lindsey (or whoever) then he relied on an unqualified statement. He therefore should have qualified Lindsey's statement by looking at what exactly Mcmillan said in the interview (or he could have told Lindsay to write his own affidavit). By not qualifying the statement (because he didn't know for a fact that it was true) he should have regarded the statement as equal as a false statement. Penal Code section 125 is supposed to stop the kind of warrant based on hearsay and upon unverified sources as such statements should be viewed as being not true until they are qualified.

### **CALIFORNIA PENAL CODE SECTION 118-129**

118a. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false.

- 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.
- 124. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.
- 125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.
- 126. Perjury is punishable by imprisonment in the state prison for two, three or four years.

Detective Rogers attended Law School in an attempt to become a lawyer but has not (to the best of my knowledge) passed the bar exam. Having said that detective Rogers has had some legal education above a regular police officer and should have realized the implications of his actions.

# **Detective Lindsey and Detective Otey**

Both should be found guilty of "dereliction of duty" in conducting such a poor investigation into Vanrossum. They also violated my Fourth Amendment right against illegal search and seizure and conducted an illegal interrogation under the POBOR. Surely conduct unbecoming an officer would include trying to frame another officer with a rape accusation instead of conducting a fair and impartial investigation to uncover the truth. I do not know if these two detectives can be held responsible for not uncovering Vanrossum when I initially brought it to the Departments attention in January 2001, but it sure does look like they were so incompetent

that it could be possible that they investigated it back then and missed all the obvious signs.

Detective Lindsey also perjured himself several times in the Superior Court Hearing in December 2002 by authoring a declaration that tried to justify his prior illegal acts. Judge Edwards saw through his deception and even made reference to his disingenuousness because he wrote conflicting statements.

# Sergeant Kilbride

Should at least be questioned whether he passed on what I told him about the rapist officer that turned out to be VanRossum. As far as I can tell he never has been asked by anyone, I believe he did pass it on and the information went up to the Chiefs office who chose to ignore it at the time. After all it is the Chiefs office that directly controls Internal Affairs. Isn't it incredulous that he has never been asked? If he was and he said he told his lieutenant, Mark Garcia and he told his captain, Wesley Farmer who told assistant Chief Billdt what kind of picture of corruption would that paint? No wonder I needed to be discredited at any cost, I was the only one that would raise the issue. Remember lieutenant Mark Garcia sat on the board that recommended my termination and captain Farmer was one of the captains responsible for and condoned the illegal interrogation and the illegal service of the search warrant.

### **Attorney Easland**

Should be held to answer in her points and authorities brief that she filed in Superior Court in December 2002. It was a tissue of lies that tried to justify illegal acts committed by the City. I filed a complaint with the State Bar and with the City Attorneys office regarding attorney Easland's conduct and hope that she is sanctioned for being so dishonest. I'm sure she didn't act alone and we will see how far up the chain she is willing to go to save her license to practice Law. On February 18th 2003 I received a letter from Sr. City attorney Robert L. Simmons (appendix) attacking my accusation and stating that attorney Easland did "at no point in the motion misstate the actual language of the warrant or the law" and that the issuing

Judge intended for the warrant to be served at night. I'll leave who is telling the truth up to you. It just goes to prove that even when faced with overwhelming evidence to the contrary (by comparing the warrant and the motion) the denials are still forthcoming. Surely then it should be a simple matter to compare both documents and they should be the same. They are not. The state bar has asked me to forward my accusations to the State Supreme Court.

# **Complaint Letters**

Police Departments are required by Law to investigate citizen complaints. It is a citizens right to file such complaints without retribution by the department and under California Penal Code section 832.5 they are required to have a system to conduct the investigations. Throughout my career I have had my share of complaints filed on me by different citizens and been investigated in every one. Penal Code section 832.5 is reiterated below:

# **CALIFORNIA PENAL CODE SECTION 832.5.**

(a)

- (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.
- (2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.
- (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or

agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

- (c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.
- (1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.
- (2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.
- (3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.
  - (d) As used in this section, the following definitions apply:
- (1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

- (2) "Unfounded" means that the investigation clearly established that the allegation is not true.
- (3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

Departments can make the determination that a complaint is frivolous but surely they would have to conduct the investigation first of the accusation to make that determination. I supplied the Department with everything they would need to investigate the complaint. The above section defines frivolous as the same definition under section 128.5 of the Code of Civil procedure, which is reiterated below:

### **CODE OF CIVIL PROCEDURE SECTION 128.5.**

- (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.
  - (b) For purposes of this section:
- (1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.
  - (2) "Frivolous" means
  - (A) totally and completely without merit or
  - (B) for the sole purpose of harassing an opposing party.
- (c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding

papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

- (d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.
- (e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

In February 2003 I filed a personnel complaint against Chief Zimmon alleging perjury, assistant Chief Billdt alleging intimidation of a witness. Detectives Lindsey and Otey for violating my rights under the constitution of the United States and detective Rogers for perjury. I sent my complaints to the Department through registered delivery with the US mail and have been waiting several months without any form of reply or even an acknowledgement that they had received them contrary to State Law. Reporter Ben Goad published an article in the Riverside Press Enterprise regarding my complaints and the Department did not wish to respond. I have included the actual complaint letters in the appendix.

### **Theft**

In January of 2003 I out-processed from my employment with the City. My attorney and I went to the Police Station to turn in my equipment and to retrieve my personal belongings. When I arrived the Department would not let me retrieve my own possessions and detective Otey and Lindsey brought my possessions after they had gone through them. This was completely illegal, I did not give them or anyone else permission to rake through my personnel effects in

any way, shape or form. They claimed during the previous summer they had needed to use my lockers for other officers and had removed my possessions and stored them in the interim without seeking my permission. I was still an officer on the payroll in the summer of 2002 and they would have again needed a search warrant or my permission again to search my belongings. They again had violated the P.O.B.O.R. section 3309 regarding searches on personal property, nothing, even the law would not stop the Department and these detectives from doing as they wished.

I had several personal jackets and a personal rappelling equipment including a harness that were not returned to me which were kept in the SWAT armory. Only about twenty officers had access to the armory under the supervision of sergeant Harps and the items disappeared. The total value of my stolen property was in excess of \$700.00 making it a felony theft. I filed another personnel complaint regarding the felony theft of my property with the Department but do not anticipate getting anything back or the theft even looked into.

### **Commendations**

Lieutenant Kimball should be commended for his honesty when it was not in his (at least his careers) best interests to do so. He was a new lieutenant and I'm sure will suffer the retaliation of the administration regarding his testimony just as detective Beach has already experienced.

#### **Chapter 24 - Medical Issues**

When I was shot the second time, I returned to work five months later with residual pain in my knee and ankle. Over the years this pain has steadily increased especially when I was inactive for an extended period of time in one position and had to move. I resisted officially notifying the Department because I did not want to retire yet as I had fought so hard to return to my duties. I thought if I could just soldier through it for a few more years I eventually would be selected for a detective position and hopefully this would alleviate my pain as I wouldn't need to carry all the equipment patrol officers have on their belts.

When I was placed on administrative leave in January of 2002 I soon began to realize how much pain I had been bearing in my knee and went to see my doctor. He suggested a regimen of physical therapy which would hopefully build up my muscles so that I would not need surgery. An MRI revealed a tearing of the meniscus in my knee but we didn't know if it was the tearing or nerve damage that was causing the pain.

The City had other idea's, I was refused medical compensation and had to take two depositions at their request because they did not believe that I was injured. They made appointments for me to see their doctor who concurred that he would be surprised if I wasn't in considerable pain. They still refused my claim.

In 2001 I had developed a small abdominal hernia that was found by my personal physician during a routine examination. The City refused to acknowledge that the hernia existed so I had my wife's insurance pay for the surgery even though an abdominal hernia is presumptively a work inflicted or related injury. After the surgery the City had me respond to see one of their doctors so he could look at my scar and write a report.

The Cities knee doctor believed that his physical therapists would be able to reduce my knee pain so I began to travel to their facility three times a week to receive their physical therapy which did not make the slightest difference.

#### Stephen K. Peach

My attorney, Norm Gillette has sought a disability retirement from the City for me as I am permanently disabled from my injury which may lead to knee replacement surgery at some time in the future. The City has not even acknowledged his letters. I am dumbfounded, the City shot me twice, caused me to lose muscles in my lower leg that have lead to constant pain for me yet they refuse to acknowledge that I have an injury. I have scars from my groin to my ankle yet the City of San Bernardino will not offer me a retirement or compensate me for the injury and pain. We will eventually have to take them to Court to force them to own up to their responsibilities.

#### **Epilogue**

Throughout 2002 and 2003 I received the unrestrained support from a lot of the men and women who I previously worked with at the Department. They knew what was happening to me was unjust and illegal but have been powerless to address it without drawing the spotlight upon themselves. The Department held briefings and told officers not to have any contact with me in an attempt to isolate me and my story. I am thankful that in spite of their directive I have had the support from several friends throughout this trying experience even at the risk of their own career's. If the administration had found out I'm sure the officers would soon have found themselves in my position. I have also had a lot of unvoiced support from the rank and file who knowing the power that the Chief's office has over them have chosen to keep their distance so they remain employed.

I know this sounds ridiculous but it is true, my old partner, Jim Beach even went to the extreme of accessing an out of State calling service to talk to me on the phone so that the Department wouldn't know if he was calling me. The paranoia that exists is real because there is no trust between officers and the administration and my case has exemplified that to the officers. Even though I'm sure the Department would not be able to secure a warrant to tape my phone line, the officers have seen them secure other illegal warrants against officers without any consequences to them. If this is the extremes that a Department such as the San Bernardino Police Department has gone to against one of their own, someone who knows and understands the law, what hope is their for the rest of the citizens they serve?

Overall, this book has been about people working towards different goals, I have always maintained the highest standards of ethics and devotion to the society that I hold myself accountable to. The Department views my devotion differently because I have not and will not accept any level of corruption in the Department and believe that they also should be held accountable to society. I'm sure

#### Stephen K. Peach

if the fired Chaplain, Tom Gronewald had ignored the corruption he saw with the grant money and not raised it as an issue he would still be a Department Chaplain. Their belief has always been, and remains, that as long as their crimes are in pursuit of limiting their liability, benefiting themselves or as long as the underclass is the victim, then those crimes are allowable. As we have seen in all my examples of corruption, the administration believes that as long as everyone stays quiet then the blue veil of secrecy conceals all.

I'm aware of many other corrupt activities that the administration has allowed to occur and has not addressed but I have not included in this book as I'm sure the examples that are included serve well enough to illustrate the extent of the problem. I continue to ask myself, irregardless of what I have been through why would they not want to investigate my accusations of crimes that occurred in my case? If there is no truth to them and I could be seen as a bitter exemployee then surely that would be to their advantage. On the other hand - and this I believe is the real reason - if there is truth to my accusations and it is found that the crimes did occur, what then? How high up will the corruption go and what further acts of corruption will be exposed? Surely they believe it is more important to continue the façade than to be open and accountable, as I said earlier it is the second act of deception, the cover up of the crime that is the most insidious and despicable because it is done with the full knowledge of the illegality of their acts and shows their intent to hold themselves above the law and above the citizens they serve.

I know that I am not alone with my experiences and I hope that this book serves as a catalyst for others to come forward and change the status quo. As I said in the beginning, these people exist because the majority of victims do nothing, we must act together to change their accountability. If I am ultimately vindicated of all charges as my case winds it's way through the Court system I'm sure the Department will come up with a back-up accusation, just as they did in the Dwyer case. They'll probably pay someone to level another accusation at me, I'm surprised they haven't seen the necessity of having a back up plan yet as the first looks as though it will

ultimately fail. I'm sure in the fullness of time we will see just how devious they can be.

I would like to offer my thanks to Mike Madigan of Orange County, California who authored a book several years ago called the Twisted Badge. Indeed his website www.twistedbadge.com offers a vehicle to bring other such examples of corruption to light. Please write to him with any other examples of corruption in local government so that we can expose these criminals for who they are. I would also encourage you to write to the State Attorneys Generals Office, in Sacramento, California and to the current Mayor of San Bernardino, Judith Valles at: City of San Bernardino, 300 N. "D" Street, San Bernardino, Ca 92410 and let the elected officials know your opinion.

Thank you and I remain, your servant.

## **Appendix**

# San Bernardino County Sheriff's Report

## Friendly Fire?

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## Stephen K. Peach

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## **Domino Federal Law Suit**

#### Stephen K. Peach

FILED GARY WENKLE SMITH STATE BAR No. 87277 P.O. BOX 90417 SAN BERNARDINO, CA 92427 98 DEC -7 PK 1:45 (909) 880-9815 Attorneys for Plaintiff, DOUGLAS J. DOMINO 5 6 UNITED STATES DISTRICT COURT 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA EASTERN DIVISION 10 11 12 EDCV 98-339 RT(VAFX) DOUGLAS J. DOMINO, Case No.: COMPLAINT FOR DAMAGES FOR DEPRIVATION OF RIGHTS UNDER COLOR OF STATE LAW and DEMAND FOR JURY TRIAL 14 Plaintiff, 15 VS. 16 CITY OF SAN BERNARDINO, a municipal 17 government, Lee Dean, Roger Poyzer, 18 Ernest Lemos, Daniel Blum, Robert Evans, Richard Taack, Vincent Kutch, David 20 Dillon, Steven Filson, Vincent Kilbride, 21 Brian Koerner, Marco Granado, James 22 Beach, Thomas Shank, Brett Baumgartner, 23 Carl Currie, Stephen Peach, Steven Lowes, 24 Michael Hamrick, Carlos Quiroz, and Lyle 25 Reyes, and DOES 1-10, inclusive, 26 Defendants 27 Plaintiff alleges: COMPLAINT & DEMAND FOR JURY TRIAL - 1

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#### FIRST CAUSE OF ACTION

- This is an action for deprivation of constitutional rights under color of state law brought pursuant to the provisions of Section 1979 of the Civil Rights Act of 1971, Title 42 United States Code, section 1983, for remedies for Defendants deprivation of Plaintiff's civil rights. Plaintiff, DOUGLAS JOSEPH DOMINO, alleges that Defendants, and each of them, have deprived Plaintiff of protected rights when they unlawfully entered and searched Plaintiff's home, attempted to kill him, assaulted him with deadly weapons, and caused him loss of his personal property by its destruction. By this action, Plaintiff seeks all legal and equitable relief to which he may be entitled, including, but not limited to, compensatory and punitive damages, attorney's fees and costs, as well as prejudgment interest.
- Jurisdiction of the subject matter of this action is established in this Court under Title 28 of the United States Code, Section 1343.
- At all times herein mentioned, Plaintiff was, and now is, a citizen of the United States, and resides at 950 Devore Road, Devore, County of San Bernardino, California.
- At all times herein mentioned, Defendant, CITY OF SAN BERNARDINO, was a municipal government, legally organized and existing pursuant to the laws of the State of California as a governmental entity, located within the County of San Bernardino, State of California, and within the Western Division of the United States District Court for the Central District of California; Defendant, LEE DEAN was the Chief of Police employed by the Police Department of the De endant, CITY OF SAN BERNARDINO; Defendant, ROGER POYZER, was a Lieutenant employed by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, DANIEL BLUM, was employed as a Sergeant by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant,

28

ROBERT EVANS, was employed as a Sergeant by the Police Department of Defendant, CITY OF SAN BERNARDINO; Defendant, RICHARD TAACK, was employed as a Sergeant by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, VINCENT KUTCH, was employed as a Detective by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, DAVID DILLON, was employed as a Detective by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, STEVEN FILSON, was employed as a Detective by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant VINCENT KILBRIDE, was employed as a Detective by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, BRIAN KOERNER, was employed as a Police Officer by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, MARCO GRANADO, was employed as a Police Officer by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, JAMES BEACH, was employed as a Police Officer, by the Defendant, CITY OF SAN BERNARDINO; Defendant, THOMAS SHANK, was employed as a Police Officer by the Police Department of the Defendant, CITY OF SAN BERNARDINO; Defendant, BRETT BAUMGARTNER, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; Defendant, CARL CURRIE, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; Defendant, STEPHEN PEACH, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; Defendant, STEVEN LOWES, was employed as a Detective by the Police Department of Defendant, CITY OF SAN BERNARDINO; Defendant, MICHAEL HAMRICK, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; Defendant, CARLOS QUIROZ, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; Defendant, LYLE REYES, was employed as a Police Officer by the Defendant, CITY OF SAN BERNARDINO; and DOES 1-10, inclusive, and each of them, were law enforcement officers employed as such by the Police Department of the Defendant, CITY OF SAN

BERNARDINO, and in doing all of the things hereinafter mentioned acted under color of their authority as such, and under color of the statutes, ordinances, regulations, customs, and usages of the State of California, the City of San Bernardino, and the San Bernardino City Police Department, and pursuant to the official policy of the Defendant CITY OF SAN BERNARDINO, and as created by Defendant, LEE DEAN, acting under color of his authority as such.

- At all times mentioned herein, Defendants DOES 1-10, inclusive, and each of them were duly appointed peace officers employed by Defendant, CITY OF SAN BERNARDINO, and were acting in the scope of their authority as such. Plaintiff is ignorant of the true names and capacities of some of the Defendants who are designated as DOE Defendants, and therefore sues them by these fictitious names. When the true identities of the said DOE Defendants become known to Plaintiff, Plaintiff will seek leave to amend this Complaint to allege their true names and capacities and substitute each in the place of the DOE designations.
- On or about September 23, 1998, Defendants, ROGER POYZER, ERNEST LEMOS, DANIEL BLUM, ROBERT EVANS, RICHARD TAACK, VINCENT KUTCH, DAVID DILLON, STEVEN FILSON, VINCENT KILBRIDE, BRIAN KOERNER, MARCO GRANADO, JAMES BEACH, THOMAS SHANK, BRETT BAUMGARTNER, CARL CURRIE, STEPHEN PEACH, STEVEN LOWES, MICHAEL HAMRICK, CARLOS QUIROZ, LYLE REYES, and each of them, and Defendants, DOES 1-10, inclusive, and each of them, acting in their capacity as San Bernardino City Police Department officers, and members of the San Bernardino City Police Department S.W.A.T. Team, and at the direction of Defendant, LEE DEAN, who was delegating such authority as the Chief of Police of Defendant, CITY OF SAN BERNARDINO, arrived at Plaintiff's home at approximately 10:20 a.m. for the purpose of executing a search warrant to search Plaintiff's home. Said Defendants, and each of them, were armed with firearms with live ammunition. Said Defendants, and each of them, did not knock upon Plaintiff's front door, or any door to his residence, they did not announce

their presence, they did not announce their purpose for being at the Plaintiff's residence, nor did they demand entry into the Plaintiff's residence, and, therefore, did not allow Plaintiff any time whatsoever to surrender his privacy peacefully, all of which was required of them by the United States Constitution by way of the Fourteenth and Fourth Amendments, as well as California Penal Code, section 1531. On the contrary, said Defendants, and each of them, set off an explosion in Plaintiff's back yard to divert Plaintiff's attention from the front of his residence, then pried and broke open the screen doors and broke the glass windows in said screen doors covering the front doors to Plaintiff's residence, then, using a battering ram, forced and broke open the front doors to Plaintiff's residence. There and then, Plaintiff walked into the entranceway of his residence, thrust his hands into the air, and shouted, "Don't shoot! Don't shoot!" Said Defendants, and each of them, began to fire their guns at Plaintiff, attempting to kill Plaintiff. Numerous shots were fired at Plaintiff, causing Plaintiff to dive away from the area of said gunfire, where he hit his head on a coffee table. Plaintiff did not consent to the method of entry made into his residence by said Defendants, and each of them, nor did he conduct himself in any manner which would justify their failure to comply with "Knock-notice" requirements of the Fourth Amendment, as affirmed by the United States Supreme Court in Wilson v. Arkansas 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976 (1995) and of California Penal Code, section 1531. Further, Plaintiff did not conduct himself in any manner which would have justified the use of excessive force by said Defendants, and each of them, when they shot at him and attempted to kill him. As a result of the means of making entry into Plaintiff's residence, and the shots fired at Plaintiff, Plaintiff's residence, and the fixtures thereon, were damaged. Said Defendants, and each of them, thereafter made entry into Plaintiff's residence, searched through his personal belongings, and seized numerous items of his personal property.

7) By reason of the conduct of Defendants, and each of them, Plaintiff was deprived of rights, privileges, and immunities secured to him by the Fourteenth and Fourth

Amendments of the Constitution of the United States, and laws enacted thereunder. Specifically, that the search and seizure executed in violation of the "knock-notice" requirements of the Fourth Amendment amounted to an unlawful intrusion by said Defendants, and each of them, into the security of Plaintiff's privacy, person, and home. Further, the contacts on Plaintiff's person, restrictions on his movements, damage to his residence, and seizure of his possessions deprived Plaintiff of liberty and property without due process of law in violation of the Fourteenth Amendment. Further, Plaintiff alleges that the conduct of said Defendants, and each of them, when attempting to kill him, and assaulting him with deadly weapons constituted the use of excessive force, and is therefore a further violation of his above-described rights, privileges and immunities guaranteed to Plaintiff.

- As a proximate result of the actions of Defendants, and each of them, against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff's right to privacy was violated; he was placed in fear for his life; he has suffered infliction of severe emotional distress; he suffered bruises and abrasions, and otherwise was injured; he was subjected to humiliation and indignity; he has been unable to transact business; and he has suffered great physical and mental pain and suffering, all to his damage in an amount according to proof; he has further incurred medical expenses in an amount according to proof.
- As a further proximate result of the acts of Defendants, and each of them,
   Plaintiff's real and personal property was damaged in an amount according to proof.
- The above-recited actions of Defendants, and each of them, in depriving Plaintiff of his constitutionally protected rights were performed knowingly, intentionally, and maliciously, or with reckless or callous indifference to Plaintiff's rights, thereby entitling Plaintiff to an award of punitive damages in a amount appropriate to punish Defendants, and each of them, and to set an example for others.
- As a direct result of the above-recited conduct of Defendants, and each of them, Plaintiff has had to employ the services of an attorney to bring this action to enforce

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his rights, and to seek recovery for the damages he has sustained and to remedy the wrongful conduct of said Defendants, and each of them, and is therefore entitled to recover reasonable attorneys fees pursuant to Title 42 of the United States Code, Section 1988(b).

#### SECOND CAUSE OF ACTION

- 12) Plaintiff refers to paragraphs 1 through 11, inclusive, of his first cause of action, and re-pleads and re-alleges the same as though set forth fully herein;
  - Beginning on or about September 10, 1998, and dates thereafter, including September 23, 1998, Defendants, ROGER POYZER, DANIEL BLUM, ROBERT EVANS, VINCENT KUTCH, DAVID DILLON, and Defendants, DOES 1-10, inclusive, and each of them, agreed and conspired that they would devise a plan to deprive Plaintiff of his civil rights guaranteed to him by way of the Fourth and Fourteenth Amendments to the Constitution of the United States. As the essential elements of said conspiracy, said Defendants, and each of them, committed the following Overt Acts, in furtherance of said conspiracy:

#### FIRST OVERT ACT

On or about September 11, 1998 at the approximate hour of 0010, Defendants, DANIEL BLUM, VINCENT KUTCH, DAVID DILLON, CARLOS QUIROZ, LYLE REYES, and DOES, 1-10, inclusive, and each of them, effectuated a vehicle stop on Plaintiff's vehicle at a location near Plaintiff's residence. The purpose of said Defendants, and each of them, stopping Plaintiff's vehicle was to detain Plaintiff, and his wife, for the purpose of questioning Plaintiff about his possible involvement in an alleged hit-and-run automobile accident, and a possible brandishing of a weapon, as well as the possible firing of said weapon in the air. Said Defendants, and each of them, solicited and received consent from Plaintiff and his wife, to search Plaintiff's vehicle, as well as Plaintiff's person for weapons. No weapons were found. Defendant, VINCENT KUTCH, questioned Plaintiff about his whereabouts on the evening in question, and his possible involvement in the above-described criminal acts. Plaintiff denied any

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involvement in the same. Defendant, DAVID DILLON, questioned Plaintiff's wife about Plaintiff's whereabouts on the evening of September 10, 1998, and was rude and disrespectful to Plaintiff's wife, by cursing and yelling at her. Defendant, DAVID DILLON, conducted himself in that manner in order to provoke Plaintiff into some form of violent or aggressive behavior. However, Plaintiff only verbally expressed his resentment toward Defendant, DAVID DILLON. Defendant, DANIEL BLUM, apologized to Plaintiff and his wife for the conduct of Defendant, DAVID DILLON. Thereafter, Plaintiff and his wife were released and permitted to drive to their home. Some time thereafter, between September 11, 1998 and September 23, 1998, said Defendants, and each of them, caused to be prepared affidavits in support of search warrants and reports wherein they falsely and fraudulently represented that Plaintiff was belligerent when detained on September 11, 1998, as above-described, that Plaintiff had been the individual to commit the alleged hit-and-run accident, as well as the alleged brandishing of a gun, and the alleged discharging of a firearm, and that Plaintiff might be in possession of the alleged firearm used on the evening of September 10, 1998, as above-described. The purpose of said affidavits and reports was to acquire search warrants to search Plaintiff's cellular phone records, and Plaintiff's home. In truth and in fact, the alleged victim of the hit-and-run accident, and the alleged brandishing of a weapon, and the alleged discharge of a firearm, had been shown a photographic lineup that included Plaintiff's photograph, but said alleged victim could not identify Plaintiff, but selected another depicted individual as the possible suspect.

#### SECOND OVERT ACT

Sometime between September 15, 1998 and September 22, 1998, inclusive, a search warrant, based upon the affidavit of Defendant, DAVID DILLON, was executed at L.A. Cellular offices, whereupon phone records for the cellular phones owned by Plaintiff, and Plaintiff's wife, were seized by said Defendants, and each of them. Said affidavit was based in part upon the unlawful intrusion into Plaintiff's privacy by Defendant, STEVEN FILSON, who unlocked the security system of Plaintiff's cellular

ownership of said phone, as well as the name and location of the cellular phone service provider. Further, said Defendants, and each of them, were attempting to determine the last number called by way of Plaintiff's said cellular phone. However, after having seized said cellular phone records, said records clearly established that Plaintiff had not used his cellular phone subsequent to September 6, 1998. Without regard to the truth or facts, Defendant, DAVID DILLON submitted an affidavit in support of a search warrant for the search of Plaintiff's residence, wherein said Defendant alleged that Plaintiff had committed a hit-and-run accident, the brandishing of a firearm, and had discharged said firearm, then fled from his vehicle on foot. Said Defendant further alleged that Plaintiff had used his cellular phone to call his wife to pick him up in her vehicle at a pre-arranged location so that Plaintiff might avoid arrest following the commission of the above-alleged crimes.

phone without Plaintiff's knowledge or consent, and for the purpose of determining

#### THIRD OVERT ACT

Between September 11, 1998 and September 23, 1998, inclusive, Defendants, ROGER POYZER, DANIEL BLUM, ROBERT EVANS, VINCENT KUTCH, DAVID DILLON, and DOES, 1-10, inclusive, and each of them, agreed to conduct a briefing prior to the search of Plaintiff's residence on September 23, 1998, during which they would advise the members of the San Bernardino Police Department S.W.A.T Team that Plaintiff was extremely dangerous, and that he might arm himself with a weapon, and that he might have to be killed at the time of entry into his residence for the purpose of executing a search warrant. On the morning of September 23, 1998, said Defendants, and each of them, did conduct such a briefing, and so advised the said S.W.A.T. Team members, as well as other police officers, that Plaintiff was mentally unstable, extremely dangerous, may arm himself against any intrusion into his home, and that the execution of the search warrant at Plaintiff's residence was possibly the most dangerous search warrant they would ever execute. Said Defendants, and each of them, then instructed the said S.W.A.T. Team members, and other police officers,

specifically, Defendants, ERNEST LEMOS, STEVEN FILSON, VINCENT KILBRIDE, BRIAN KOERNER, MARCO GRANADO, JAMES BEACH, THOMAS SHANK, BRETT BAUMGARTNER, CARL CURRIE, STEPHEN PEACH, STEVEN LOWES, MICHAEL HAMRICK, CARLOS QUIROZ, LYLE REYES, and DOES 1-10, inclusive, and each of them, to arm themselves in the manner of a special weapons and tactics team, and drive to Plaintiff's residence for the purpose of executing a search warrant in a manner consistent with the execution of a search warrant at the residence of an armed and dangerous individual. Specifically, said Defendants, ROGER POYZER, DANIEL BLUM, VINCENT KUTCH, and DAVID DILLON, and DOES 1-10, inclusive, and each of them, intended to cause the said S.W.A.T. Team to violate Plaintiff's rights guaranteed to him by way of the Fourth and Fourteenth Amendments to the United States Constitution; to be free from unreasonable searches and seizures, and to not be deprived of life, liberty or property without due process of law, and, thereafter, to kill Plaintiff when they entered Plaintiff's residence.

#### **FOURTH OVERT ACT**

On or about September 23, 1998, Defendants, and each of them, drove to Plaintiffs residence for the purpose of executing a search warrant at said residence, and to arrest Plaintiff. Acting in concert, Defendants, and each of them, set up a command post at a store near Plaintiff's residence. Said Defendants, and each of them, visited the local elementary school, and warned authorities at said school, known as Kimbark Elementary School, that there may be gunfire that morning, and that the children attending said school should be kept inside. Said Defendants, and each of them, also warned other neighbors of Plaintiff, that they should remain inside their homes, as there may be gunfire at Plaintiff's residence during the execution of a search warrant. Thereafter, said Defendants, and each of them, entered upon Plaintiff's property, and surrounded the residence thereon. Defendants, ERNEST LEMOS and RICHARD TAACK, instructed Defendants, MARCO GRANADO and MICHAEL HAMRICK, and each of them, to ignite a "flash-bang" grenade in Plaintiff's back yard, which was so

ignited, for the purpose of diverting Plaintiff's attention to the back of his house so that Defendants, ERNEST LEMOS, BRIAN KOERNER, JAMES BEACH, BRETT BAUMBARTNER, CARL CURRIE, STEPHEN PEACH, and THOMAS SHANK could make a forcible entry into Plaintiff's residence in violation of the *Fourth Amendment to the United States Constitution*, and to shoot and kill Plaintiff at that time. Said Defendants, and each of them, also intended said "flash-bang" grenade to cause Plaintiff to arm himself with a firearm so that killing Plaintiff would appear to be justified. Said Defendants, and each of them, did forcibly enter into Plaintiff's residence, in violation of the *Fourth Amendment*, and began firing their weapons at Plaintiff, who was standing in the entranceway to his residence, holding his hands over his head and shouting "Don't shoot!" Don't shoot!" Said Defendants, and each of them, fired numerous bullets at Plaintiff, causing Plaintiff to dive out of the line of fire, and hit his head on a coffee table.

- The conspiratorial actions on the part of said Defendants, and each of them, were not the actions of individuals, but of law enforcement officers, employed by the Police Department of Defendant, CITY OF SAN BERNARDINO, and said Defendants, and each of them, therefore, and acted under color of their authority as such, and under color of the statutes, ordinances, regulations, customs, and usages of the State of California, the City of San Bernardino, and the San Bernardino City Police Department, and pursuant to the official policy of the Defendant CITY OF SAN BERNARDINO, and as created by Defendant, LEE DEAN, acting under color of his authority as such.
- 15) By reason of the conduct of Defendants, and each of them, Plaintiff was deprived of rights, privileges, and immunities secured to him by the Fourteenth and Fourth Amendments of the Constitution of the United States, and laws enacted thereunder. Specifically, that the search and seizure executed in violation of the "knock-notice" requirements of the Fourth Amendment amounted to an unlawful intrusion by said Defendants, and each of them, into the security of Plaintiff's privacy, person, and

home. Further, the contacts on Plaintiff's person, restrictions on his movements, damage to his residence, and seizure of his possessions deprived Plaintiff of liberty and property without due process of law in violation of the *Fourteenth Amendment*. Further, Plaintiff alleges that the conduct of said Defendants, and each of them, when attempting to kill him, and assaulting him with deadly weapons constituted the use of excessive force, and is therefore a further violation of his above-described rights, privileges and immunities guaranteed to Plaintiff.

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- As a proximate result of the actions of Defendants, and each of them, against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff's right to privacy was violated; he was placed in fear for his life; he has suffered infliction of severe emotional distress; he suffered bruises and abrasions, and otherwise was injured; he was subjected to humiliation and indignity; he has been unable to transact business; and he has suffered great physical and mental pain and suffering, all to his damage in an amount according to proof; he has further incurred medical expenses in an amount according to proof.
- 17) As a further proximate result of the acts of Defendants, and each of them, Plaintiff's real and personal property was damaged in an amount according to proof.
- The above-recited actions of Defendants, and each of them, in depriving Plaintiff of his constitutionally protected rights were performed knowingly, intentionally, and maliciously, or with reckless or callous indifference to Plaintiff's rights, thereby entitling Plaintiff to an award of punitive damages in a amount appropriate to punish Defendants, and each of them, and to set an example for others.
- 9) As a direct result of the above-recited conduct of Defendants, and each of them, Plaintiff has had to employ the services of an attorney to bring this action to enforce his rights, and to seek recovery for the damages he has sustained and to remedy the wrongful conduct of said Defendants, and each of them, and is therefore entitled to recover reasonable attorneys fees pursuant to Title 42 of the United States Code, Section 1988(b).

## Stephen K. Peach

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2	٧	VHEREFORE, Plaintiff prays for judgment, as follows, against Defendants, and each
3	ti	hem:
4		AS TO THE FIRST CAUSE OF ACTION
5	1)	For general damages in an amount according to proof;
6	2)	For medical expenses in an amount according to proof;
7	3)	For punitive damages in an amount appropriate to punish Defendants, and each of
8		them, for their wrongful conduct and to set an example for others;
9	4)	For reasonable attorney's fees;
10	5)	For costs of suit herein incurred; and
11	6)	For such other and further relief as this Court deems just and proper.
12		AS TO THE SECOND CAUSE OF ACTION
13	7)	For general damages in an amount according to proof;
14	8)	For medical expenses in an amount according to proof;
15	9)	For punitive damages in an amount appropriate to punish Defendants, and each of
16		them, for their wrongful conduct and to set an example for others;
17	10)	For reasonable attorney's fees;
18	11)	For costs of suit herein incurred; and
19	12)	For such other and further relief as this Court deems just and proper.
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	///	,
22		DATED: DECEMBER 7, 1998
23		GARY WENKLE SMITH
24		ATTORNEY FOR PLAINTIFF
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26	///	
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28	111	
		COMPLAINT & DEMAND FOR JURY TRIAL - 13

**DEMAND FOR JURY TRIAL** The Plaintiff in the above-entitled action requests a trial by jury as provided by Amendment VII of the United States Constitution and by Rule 38 of the Federal Rules of Civil Procedure. DATED: DECEMBER 7, 1998 GARY WENKLE SMITH ATTORNEY FOR PLAINTIFF 10 /// COMPLAINT & DEMAND FOR JURY TRIAL - 14

**VERIFICATION** I, DOUGLAS J. DOMINO, am the Plaintiff in the above-entitled action. I have read the foregoing COMPLAINT & DEMAND FOR JURY TRIAL and know the contents thereof. The same is true of my own knowledge, except as to matters therein stated on information and belief and as to those matters I believe them to be true. DATED: DECEMBER 7, 1998 DOUGLAS J. DOMINO, Plaintiff COMPLAINT & DEMAND FOR JURY TRIAL - 15

## Performance appraisals 2000 and 2001

Stephen K. Peach Emp ee Evaluation Report M E T S L O W EXCEEDS SECTION A: I M P R O V E M E N T N E E D E D 5-31-01 0 T FACTOR CHECK LIST EMPLOYEE NAME EMP NUMBER STEPHEN PEACH 50077 S T A N D A R D S BSERV DEPARTMENT DIVISION POLICE PATROL-AREA D STANDADS ACTORY IMMEDIATE SUPERVISOR SECTION B: COMMENTS ON JOB STRENGTHS AND SUPERIOR PERFORMANCE AND ITEMS CHECKED IN COLUMN #5 MUST CHECK EACH FACTOR IN THE APPROPRIATE COLUMN D SEE ATTACHED Observance of Work Hours Attendance Grooming & Dress Compliance with Rules Safety Practices PublicContacts COMMENTS ON SPECIFIC WORK PERFOR-MANCE DEFICIENCIES AND ITEMS CHECKED IN COLUMN 1 AND 2 Service Contacts X 8. Employee Contacts X 9. Knowledge of Work 10. Work Judgements NONE 11. Planning & Organization X 12. Job Skill Level X 13. Quality of Work X 14. Volume of Acceptable Work
 15. Meeting Deadlines
 X 16. Accepts Responsibility X 17. Accepts Direction 18. Accepts Change
X 19. Effectiveness Under Stress SECTION D: AGREED UPON OR PRESCRIBED PERFOR-MANCE GOALS FOR THE NEXT EVALUATION 20. Appearance of Work Station 21. Operation & Care of Equipment X 22. Work Coordination X 23. Initiative SEE ATTACHED X 24. Problem Solving SUPERVISORS ONLY Planning & Organizing
 Scheduling & Coordination 3. Training & Instruction 4. Effectiveness 5. Evaluating Subordinates Judgements & Decisions 7. Leadership SECTION E: VERIFICATION OF CURRENT DRIVER'S Operational Economy Supervisory Control EXP 10/01 LICENSE (SEE ADDITIONAL SHEETS) RATER: This report is based on my observation and/or knowledge. It represents my best judgement of the employee's performance. EMPLOYEE: I CERTIFY THAT THIS REPORT HAS BEEN DISCUSSED WITH ME. I UNDERSTAND THAT MY SIGNATURE DOES NOT NECESSARILY INDICATE Signature: SqT. V. Kickerisis Date: 5-31-4 ☐ I WISH TO DISCUSS THIS REPORT WITH THE REVIEWER FOR FINAL PROBATION REPORTS ONLY: I DO RECOMMEND THIS EMPLOYEE BE SIGNATURE: GRANTED PERMANENT STATUS I DO NOT Department Employee
File: S/T Drive (Forms)

☐Human Resources

#### To 2s4. JAN BERNARDINO POLICE DEPARTMENT Employee Evaluation Report

Name:	STEVE_PEACH					
Employee No	50077			_		
Due Date:	5-31-01	10	-			

This will be the annual evaluation report for Officer Steve Peach. A review of his 201 file and sick file were done prior to this evaluation as well as a pre-evaluation conference. I have been assigned to Patrol for the last nine months and have had the opportunity to work with Officer Peach since the board change on January 17<sup>th</sup> 2001. Prior to this evaluation, I also spoke with Sergeant Waterhouse, Sergeant Henson and Sergeant Jones regarding Officer Peach, since they also work with Officer Peach. I spoke with Sergeant Harps who had Officer Peach for the majority of this rating period in the Multiple Enforcement Team.

Officer Steve Peach is currently assigned to Patrol in the D Team area. Prior to this assignment he was assigned to the Multiple Enforcement Team and was there for approximately four years. Seven months of this rating period was under Sergeant Harps. The last five months he has been with the D Team. The rating of this Officer is a combined work of the information I received from the Sergeants mentioned above.

#### SECTION B

Officer Peach was rated exceeds standards in the area of public service and employee contacts. He maintains an outstanding appearance before the public and promotes a good public image. Officer Peach understands the importance of how the public perceives the Department and also knows that one negative contact could dissuade the public from ever seeking help from the Police. He remains calm and projects a professional appearance with every contact he makes. He is able to adjust his attitude to each situation that he encounters. His attitude and behavior are an asset to the agency. He has command presence and knows how to take charge of a situation and promotes a good service environment. Officer Peach has a willingness to mentor and show honest concern for other officers efforts in the area of Police work. He works hard at his commitment to assist in the work of his fellow employees and remains a positive influence on the morale of his co-workers.

Officer Peach consistently applies the wealth of knowledge he has amassed in his 11 years with this agency. He has a strong working knowledge of this department's Policies and Procedures as well as the general working day-to-day responsibilities of an efficient patrol officer. The four years he spent in the MET Team he perfected his job skills and has carried them over to his patrol functions without skipping a beat. He continues to have high shooting scores. His devoted attention to the gang problem hear in the city goes far beyond a general interest.



Officer Peach's reports are consistently complete, thorough and accurate. His reports are clear, concise and leave no room for doubt in his efforts. I have had no complaints or report correction notices forwarded to me regarding this officer's work. Officer Peach uses every minute of the day to accomplish the task of taking care of the citizens of San Bernardino. He has shown that he works well without supervision but calls for a supervisor when the situation warrants it.

Officer Peach has a willingness to accept responsibility and in fact volunteers for work that others may shirk. Officer Peach, without question, follows orders to the letter. He has never complained about the tasks put before him and has demonstrated a willingness to do the job requested without direct supervision. He carries out the tasks given to him to the best of his ability. Prior to Officer Peach returning to patrol he was assigned to the Multiple Enforcement Team. Basically he worked with a partner and did not respond to dispatched patrol calls and had the run of the city. Upon returning to Patrol, he went right back into a controlled environment and adapted to this new way of work without incident. He was able to adapt to new procedures and supervisors without stumbling.

Officer Peach was rated exceeds standards for his effectiveness under stress because of his prior detail and my personal observations of him while under stress in a variety of different situations. Peach consistently remains calm and in control. He also allows for any unforeseen contingencies. Officer Peach initiates actions against the problems that he faces in his area. He has a working knowledge of the gangs in the area and initiate's the needed work to accomplish the tasks before him. Peach has a wealth of knowledge and expertise in the area of gangs. He uses this information in his investigations and shares his expertise with others. He is willing to help all that need it.

#### SECTION D:

#### AGREED UPON GOALS:

Officer Peach has placed high on the promotional list for the investigations division and is looking forward to getting promoted as one of his goals.

He has already taken several self-initiated training classes in the area of investigations to broaden his knowledge and has a goal to take additional classes when they are available.

He recently completed a two-week refresher-training program in Problem Oriented Policing and has a goal to apply the POP philosophy when he is promoted to Detective.



Rater: Charles  Reviewer: Charles	Date: 6-20-01  Date: 6-20-01  Date: 6-19-01
Division Commander:	Date:
PLEASE INITIAL:  Sick Time Usage:NONE	Expiration:10 / 01

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## SAN BERNARDINO POLICE DEPAR LAENT Employee Evaluation Report

Name:	Peach, Stephen
Employee No:	50077
Due Date:	06-30-00

#### SECTION B:

Officer Peach is a ten year veteran of the San Bernardino Police Department and has been assigned to the Multiple Enforcement Team (M.E.T.) for just over four years. He has exceeded standards in several areas over the past evaluation period and is an excellent gang and S.W.A.T. officer. Based upon several letters of appreciation received for presentations conducted by Officer Peach he was rated an exceeds standards in the area of public contact. A letter thanking him for his work at route 66 praising him for his attitude and demeanor also rated an exceeds standards in the area of service contacts. Peach rated an exceeds standards in the area of employee contacts not only from the tremendous effort he demonstrated recovering from a critical gunshot wound, but also from his tenacious dedication to locate and arrest suspects. He has been especially helpful in locating and identifying gang members, and locating witnesses and suspects in various gang homicide investigations.

Officer Peach is very knowledgeable regarding several gang members and continues to build his experience entering numerous gang cards into the Cal gang computer system. He has also been working on his experience related to interview and interrogation procedures not only in practice but also watching and assisting homicide investigators during homicide interviews. Due to his gang knowledge Peach is able to provide invaluable insight to investigators during interviews to assist them in obtaining valuable information related to the crimes being investigated. Based upon this Peach rated an exceeds standards in the area of **knowledge of work**. In addition to his gang knowledge and interview skills. Peach was eager to complete his first telephonic search warrant following a gang related shooting in the C area. As a result we recovered an assault rifle that was used in the shooting and completed an excellent case against the suspect for later prosecution. Peach clearly demonstrated above standards performance in the area of **job skill level**.

A thank you letter from DDA. C. Kersey clearly demonstrated his above standards work product in the area of **quality of work**. Peach testified as a gang expert in a homicide trail and was praised by the district attorney as articulate, informed and well prepared. His testimony was further described as invaluable to the trial providing information to the jury reference gang violence, weapons and criminal behavior. He also successfully impeached various defense witnesses throughout the trial.

Officer Peach was rated exceeds standards in the areas of volume of work and accepts responsibility. He currently not only enters almost all of the gang cards for the cal-gangs system, he is also one of the best producers in the unit for the identification or arrests of various gang members in the city. No matter what his assignment Officer Peach has demonstrated his willingness to complete the task at hand and produce a quality work product. I have found Peach

#### Stephen K. Peach

not only capable to complete assignments given but know I can trust him to carry out those assignments. Based upon this Peach was rated exceeds standards in the area of **accepts** direction.

Based upon his demonstrated performance not only on the special weapons team but also in his daily dealings with various dangerous gang members Peach was rated exceeds standards in the area of **effectiveness under stress**. Officer Peach as a result of his actions on January 6, 2000 in the Muscoy area when he engaged an armed adversary resulted in a recommendation that he be awarded the Police Cross for his actions.

I have found Officer Peach to be a self-starter and a motivated individual who demonstrates outstanding work habits and pride in his work product. Peach takes it upon himself to conduct data entry into the £al- gangs system to assist him in learning various gang members and their associates. Officer Peach is an employee who requires little supervision and will take the initiative to do the right thing. In a letter extending Officer Peach in the detail, Chief Dean wrote in a description of Peach, "never never quit" and further described Officer Peach as demonstrating extraordinary courage and commitment to resume duties following his shooting. Rating Officer Peach exceeds standards in the area of **initiative** is an understatement.

#### SECTION D:

Officer Peach's prior goals were to become an expert in the area of Asian gangs, obtain a search warrant reference a tagger investigation and pass the physical agility test for the special weapons team. Peach has completed all but the goal reference Asian gangs as another Officer was assigned that task through no fault of Officer Peach.

Peach's goals for the next evaluation period are to successfully compete in the next P-2 testing process. I firmly believe Officer Peach would do an outstanding job in investigations as a detective. His second goal is to have the current cal-gangs system updated to allow real time entry of data and to get the back dated gang files entered and up to date in the system.

Employee:	Date: 8-16-00
Rater: Sgt. W. Harps	Date: 7-8-00
Reviewer: W. J. J.	Date: 8/14/00
Division Commander:	Date:
PLEASE INITIAL:  Sick Time Usage: 0 Driver's License: Expir  Pursuit Policy, Chapter #36-3: Use of Force Policy & Procedures #3.04/3.05/SOP #35.1: Discrimination/Harassment Policy, Chapter #22-18	ration: 10-01  SP

## **Prior Citizen Complaints**

#### City of San Bernardino San Bernardino Police Department Interoffice Memorandum

To:

Assistant Chief Mike Billdt

From:

Captain Wes Farmer

Subject:

Complaint History Review Form

Date:

4-15-02

Copies:

Lt. T. Henson

IA Case:

02-I-02

Officer/s:

Peach, Stephen

#### **COMPLAINT HISTORY CHRONOLOGY**

	Case #	<u>Type</u>	<b>Disposition</b>	Summary
•	96-10	Discourtesy & Derogatory Conduct	Exonerated	A traffic stop led to the unlicensed complainant's vehicle being Impounded. Allegation Officer Peach directed sarcastic remarks toward complainant, i.e., "nice uniform" (complainant was in security guard uniform), and that Officer Peach used profanity in the presence of the complainant.
•	99-23	Unnecessary Force & Discourtesy	Not Sustained	"Blanket Complaint" lodged against all members of the Department's Multiple Enforcement Team, (MET), including Officer Peach.
٠	01-20	Unnecessary Force/ Improper Tactics	Unfounded	Officers contacted parties in a Landlord/Tenant dispute. Complainant was upset and assaulted one officer with a vacuum cleaner. Independent witness stated the officers used "remarkable restraint".

THE SBPD IS COMMITTED TO PROVIDING:
PROGRESSIVE QUALITY POLICE SERVICE;
A SAFE ENVIRONMENT TO IMPROVE THE QUALITY OF LIPE;
A REDUCTION IN CRIME THROUGH PROBLEM RECOGNITION AND PROBLEM SOLVING



## Michella Roan Interviews (3)

POLICE DEPARTMENT CA0361000 SAN BERNARDINO, CALIFORNIA	CR2 PAGE 1	. (5)		CASE NUMBER 01-53682
CODE SECTION(S) INCIDENT SEXUAL ASSAULT				REPORT TYPE SUPPLEMENTAL
VICTIM'S NAME/FIRMS NAME (LAST, FIRST, MIDDLE) CONFIDENTIAL SAN	RESIDENTIAL ADDRESS I BERNARDINO, CA	CITY	STATE	

#### **VICTIM STATEMENT:**

#### **CONFIDENTIAL VICTIM #1**

On 12-14-01 at 1333 I interviewed VICTIM #1 while she was incarcerated in the Central California Women's Facility, 23370 Road 22, Chowchilla, CA. The interview was conducted in an office in the Investigations Unit and the interview was audio taped. The tape was placed into evidence at San Bernardino Police Department.

I advised her that I was investigating a case from the City of San Bernardino. She was not a suspect and she was not in any trouble regarding this case. I told her that she had a choice, she could talk to me or not talk to me. I told her that she could stop talking to me at any time during the interview if she chose. Her talking to me had no bearing on the case that she was incarcerated on.

She said she was a confidential informant in the past for officers from the San Bernardino Police Department. The officers' names were VAN ROSSUM, STEVE, and TRACY. She worked for VAN ROSSUM for about a year, beginning in the end of 1998 or early 1999. She worked for STEVE and TRACY only 2-3 times after she finished working for VANROSSUM. STEVE and TRACY were partners.

She started working as a confidential informant for VANROSSUM after he arrested her for prostitution. He stopped her while he was in his undercover car, while working as a narcotics officer for San Bernardino Police Department. He told her that he wanted to fuck. She got into the car and they went to her motel room. He had her take off her clothes so he could see that she did not have anything. She said he wrote her a citation for prostitution. She had been working as a prostitute in the area of Spruce and "H" St in San Bernardino. No other police officers were present or assisting VANROSSUM. They did not have sex or any touching by him or her of the other person. He told her that this charge would go away if she would work as a confidential informant for him. She agreed and signed several papers.

She said she did not want her name used or to be involved in any investigation involving VANROSSUM. She does not want to get him into trouble.

She said she after he returned to work as a patrolman and she had just been released from jail, in December of 2000, she saw him working in a marked police car and in uniform in the downtown area. She thought that was strange because she new he worked the Highland area. He got out of the car, opened the door and told her to get into the car and she did. She got into the rear seat of the patrol

REPORTING OFFICER (S)	IDENTIFICAT	TON NUMBER (S)	DATE:	RECORDS BARCODING ONLY
DET LANCE OTEY	25126		12/21/01	
REVIEWED BY:	DATE:	FURTHER ACTION:	RECORDS PROCESSING BY:	
		YES		

059

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 2	01-53682

car, without having handcuffs placed on her. They went to the substation in Highland and he used his key to unlock the door of the office. There was a Stater Bros. store in front of the substation. They entered the substation and went into an area with a lot of desks and a bathroom in the back. They had sex on the table in the office. The sex was consensual. She said she knew that they were going to have sex when he told her to get in the car. There was no force or fear. They had sex one time while he was on duty.

She said he would go to her room on his off-duty time, after he got off work, about 8:00 or 8:30 in the morning. She said he worked the graveyard shift. He would also go to her room before work. They would have sex when he went to her room. This happened about once a week.

She and VANROSSUM never used narcotics together and she never saw him use narcotics and he never supplied her with narcotics.

She said he never let her go if she had a warrant. He told her that she could not work for him if she had a warrant. One time, while he was still assigned to narcotics, he took her to the judge to clear up a warrant. The judge told her she had ten days to return to court. She failed to go to court within the 10 days and after that he could not help her.

The interview was terminated at 1400 hrs.

REPORTING OFFICER (S)  DET LANCE OTEY	IDENTIFICAT	25126 (S)	DATE: 12/21/01	RECORDS BARCODING ONLY
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	060

POLICE DEPARTMENT CA0361000 SAN BERNARDINO, CALIFORNIA	CR2 PAGE 1	turni a sun di di girondi di re		CASE NUMBER <b>01-53682</b>
CODE SECTION(S) INCIDENT			1	REPORT TYPE SUPPLEMENTAL
VICTIM'S NAME/FIRMS NAME (LAST, FIRST, MIDDLE)  CONFIDENTIAL SAN	RESIDENTIAL ADDRESS BERNARDINO, CA	CITY	STATE	

#### **CONFIDENTIAL VICTIM INTERVIEW:**

On 01-09-02 at about 0945 hrs Det. DESCARO and I conducted an interview with the victim. She is currently incarcerated in the Central California Women's Facility, 23370 Road 22, Chowchilla, CA. The interview was audio taped. The interview was to clarify points of her last interview.

She said that VAN ROSSUM gave her a citation for prostitution in 1998 and told her that if she would work for him, he would drop the case. She added that he never dropped the case. It was in 1998 that he picked her up from the street and went to her motel room with her. At her room, he made her strip naked. She said no one has ever made her strip naked before. They had no sexual contact. She said the men cannot search or touch her. He then searched her room. She felt intimidated the first time that she met VAN ROSSUM. She was scared to death while he did that. The fear did not continue. She said she never felt scared of VAN ROSSUM. She never felt as though she had to have sex with him. She was still having sex with him after she learned he had turned in the ticket he gave her for prostitution. She felt they were boyfriend/girlfriend until he straightened her out by telling her he was married.

She learned at a later time, when she was arrested by another officer that VAN ROSSUM had filed the prostitution case. The arresting officers were bicycle officers. They took her to the City jail and she told the officers that she was working for VAN ROSSUM. The officers called him and he told them to take her to the station, but not to book her.

VAN ROSSUM responded to the city jail and took the victim from her cell to a judge. He transported her in his undercover car and did not handcuff her. She added that they had been having sex with each other at this time.

After seeing the judge, the judge gave her eight days to return to court. VAN ROSSUM was going to speak on her behalf before Judge MORRIS. The victim failed to show for the court appearance, so the warrant showed up again. She does not know when the warrant was issued or re-issued.

She said she and VAN ROSSUM began having sex in 1999, about five months after she started working for him. He was assigned to the San Bernardino Police Department Narcotics unit. She said he would go to her room to check up on her. She does not remember what month they began having sex together in 1999. He would just show up and knock on her door. He would arrive at her room about 8:00 in the morning, before or after work, she was not sure. She then clarified it by saying it

REPORTING OFFICER (S)  DET. LANCE OTEY	IDENTIFICAT	25126 (S)	DATE: 1/15/02	RECORDS BARCODING ONLY  061
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	1 001

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 2	01-53682

was after work because he would go to work at 2:00, just like STEVEN PEACH. She said she would be asleep and stinking when he would arrive at her place.

They had sex 4-5 times while he was assigned to narcotics to include oral and vaginal sex. They had anal sex one time. She said they had oral sex twice every time they had sex. After having vaginal sex, she would orally copulate him and he would then orally copulate her. They had sex one time while he was assigned and working patrol. She thought of them as boyfriend/girlfriend, until he set her straight one day. She really liked VAN ROSSUM. She asked him, if he was married, why was he fucking her? He did not answer; he just pulled up his pants. They never argued or fought.

One time he did knock on her door and she was getting high. She opened the door and he asked her if she was getting high. She told him she was and he left. He did not enter the room. He did not arrest her. The thought this incident was around March of 2001. He would never watch her get high.

She had been released form jail in December 2000. In January 2001, she saw him in the downtown area of San Bernardino and asked him what he was doing down town because she knew he did not work that area. She knew he was assigned to the Highland area. He was working, in uniform and driving a marked police car. He got out of the car, opened the rear door of the patrol car and told her to get in, let's go for a ride. She knew they were going to have sex and went willingly. They went to the substation and had sex.

She described the substation as on Highland or in Highland. There was a Stater Bros. connected to the same building as the substation. She said they entered the substation via the rear door. He had keys to the substation. When asked if they got naked in the substation, she said no, he just pulled down his pants and took off his gun. She took off her pants. They had vaginal sex, no oral sex that time.

She said she had twins 5 years ago. She said she had been pregnant, but lost the baby. She was pregnant while she was in county jail in 1999. She was in jail for a year. VAN ROSSUM was not the baby's father; it was a boyfriend of hers.

VAN ROSSUM had a partner. The partner, unknown name, was straight up, on the level. He never came at the victim with anything.

She said it was wrong to screw a cop (have sex with an officer). She said she did it because she knew that if she did, it could keep her out of trouble or help her get out of trouble. She never felt as though she had to have sex with VAN ROSSUM. He told her he could have done something to get her out if her were still in narcotics, when she was arrested for the charge that currently sent her to prison.

She added that she is not the only one fucking police. She said a girl described as bald, always wearing collar length, braided wig, dark skin, 23 yrs old, 6-0 tall, about 100 lbs, skinny, wearing no make up, known as "LOONY", is doing an officer in narcotics. The San Bernardino Police Department Narcotics officer is described as a white ale, tall, skinny, no facial hair, brown or black,

REPORTING OFFICER (S)  DET. LANCE OTEY	IDENTIFICAT	TON NUMBER (5) 25126	1/15/02	RECORDS BARCODING ONLY 062
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	000

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 3	01-53682

long ponytail, 6-3 tall, 180 lbs, about 35-36 yrs old, his last name starts with an "R", and he is always with a partner. "LOONY" hangs out in the downtown area of San Bernardino. The victim says "LOONY" is a snitch for the officer. She said there are more, but she cannot name them.

Officers see the girls on the street working as prostitutes and let them work. If the officers approach the girls and want to fuck, the girls do so, because they are going to sell it to them anyway. She said it is narcotics and patrol officers from the San Bernardino Police Department. She said that when she was working Baseline and new to the game, about six officers approached her and she was scared so she never did it with them. But after being in the game for a little bit, she said that it would be a cool way to let her prostitute. If they see her, the offices do not trip. If they see you out there standing or doing something you are not suppose to do, they are not going to fuck with you. The will not fuck with the girls because they are fucking them. They are going to let the girls slide.

She added, that is why the girls do it. "LOONY" said they saw her buying dope, got on the mic and told her to go home. They then stopped the guy, but let him go because they could not take the guy without taking "LOONY". They see you doing stuff and just let you go. That is why lots of the prostitutes fuck them. It is an easy way out.

She said STEVE PEACH called her from his car on the cell phone and told her to come down, he wanted to see her. She asked if he was in a patrol car and he told her yes. She told him that she was not going down to see him while he was in a patrol car. He wanted to stop in her motel parking lot and have her go downstairs to talk to him. She said that she would have looked like an idiot, talking to the police. He was trying to give her something. Then he called her about 15 minutes later and told her to go next door. She went next door and met him and he gave her a carton of cigarettes. PEACH would call her and tell her that there was a sweep of prostitutes and tell her to stay inside. He was pretty straight. Never on duty.

The interview was terminated at 1010 hrs.

REPORTING OFFICER (S)  DET. LANCE OTEY	IDENTIFICAT	TION NUMBER (S) 25126	DATE: 1/15/02	RECORDS BARCODING ONLY
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	063

POLICE DEPARTMENT CA0361000	CR2			CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 1			01-53682
CODE SECTION(S) INCIDENT			F	REPORT TYPE SUPPLEMENTAL
VICTIM'S NAME/FIRMS NAME (LAST, FIRST, MIDDLE)  CONFIDENTIAL  SAN BE	RESIDENTIAL ADDRESS ERNARDINO, CA	CITY	STATE	TELEPHONE NUMBER

#### **VICTIM STATEMENT**

ROAN, MICHELLA DENISE
DOB:
CENTRAL CALIFORNIA WOMEN'S FACILITY
CHOWCHILLA, CA

On 01-16-02 at 1203 hrs Sgt RINGNES and I interviewed the victim. She was incarcerated at the time at Central California Women's Facility. Also present in the room was San Bernardino Police Department Detective GORRELL. She was advised that she was not in any trouble and I wanted to clarify information we had talked about in our previous interviews. This is a synopsis of her statement

She said VANROSSUM would give her money after they had sex. He would usually leave \$20 on the dresser in the room, saying this was to help her out. He paid her \$20 three times, \$40 one time, and nothing one time. He would normally take the money from his wallet or a wad of money he had in his pocket. She interpreted the money as being money for sex. She believed this because she had not worked for him as a Confidential Informant (CI) on the days he paid her, but they had just finished having sex.

VANROSSUM would pay her for jobs she did working as a Cl. One time he paid her \$90 and another time he paid her \$50. These are the only times she remembers signing for the money he gave her. She said she worked for him seven or eight times over a year's period of time. The times were all on separate days. She would be paid \$10 for knocking on a door and getting a response. She would be paid \$30 if she bought dope. If there were no answer or response at the door, she would be paid nothing. She bought dope more than two times, but only remembered being paid twice.

The first contact she had with VANROSSUM was while she was standing on Spruce and "H" St. He stopped and she got into his truck, which she described as a red truck, possibly a Nissan. The truck was a big truck with two doors and no camper. The seat was a bench seat with beige fabric. There were no other markings. There was a long portable police radio. She sat in the right front passenger seat. He told her that he wanted to fuck. She told him to go back to her room. She was staying at the Central City Motel, room #19. He identified himself as a police officer and displayed his badge, which he removed from his rear pants pocket. She did not see a gun. He told her that they were going back to her room to talk. She felt she was under arrest because he told her that she was in trouble for this ticket. She thought she was under arrest because he was a police officer and she did not feel that she could leave if she wanted to.

REPORTING OFFICER (S)  DET. L. OTEY	IDENTIFICAT	TON NUMBER (S) 25126	DATE: 1/27/02	RECORDS BARCODING ONLY
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	004

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 2	01-53682

Upon arrival at her room, he told her, let's go inside. Once inside the room, he removed his badge and placed it on the table.

She asked him, "What do I do now?"

He told her to strip naked. He did not check her clothing for weapons or narcotics before or after she removed them. He never patted her down for weapons. This was the first time she had been arrested for prostitution. She did as she was told and stood there naked for about five minutes while he searched her room. She was going to lie about her name, but her prescription medicine bottles were visible in her room and he saw her real name. He wrote her a citation for prostitution and told her that he was not going to turn it in or take her to jail if she decided to work as a confidential informant. Having not been arrested for prostitution before, she did not realize that she would have been held for about four hours, then released. If she would have know this, she would not have agreed to work as a CI for him and signed the papers. While standing there naked, she thought she was going to have to fuck him in order to get out of this ticket. She said it was not her idea to strip. While he searched her room, he found a pipe. She got dressed after he completed the search of the room.

He called for another officer to the scene. The other officer, described as a white male, 6-2 to 6-3 tall, skinny, with a ponytail, arrived about 15 minutes later in a white van. The second officer took her picture with a Polaroid camera. She does not know the second officer's name.

She felt uncomfortable with him at first, but after about a month, she had a crush on him.

She said she would always use condoms for any sex she has, whether vaginal or oral. She uses Trojan condoms in the red box. They come in three packs, cost \$2.99 and are not lubricated.

The first time he went to her room to have sex, she was living at the Royal Motel in room 222. She was in bed and had just finished getting high. She was wearing shorts and a baby doll dress. He took off her clothes and he took off his clothes and they were both in bed. He rubbed her back, but, and breasts, and then finger banged her. They began kissing and getting hot. They ten had to go the store to purchase condoms. They returned to the room and stripped naked. She gave him oral sex, he gave her oral sex, they had vaginal sex, he gave her oral sex, he put his penis in her vagina and he ejaculated one time. After they finished, he got up and left a \$20 bill on the dresser.

She said sometimes she would supply the condoms and sometimes he would supply them. He would keep them in a brown paper sack in his vehicle.

She went to jail for about four months. When she got out of jail, she was working and he pulled up in his vehicle. She got into the vehicle and he showed her his badge and told her, "Miss ROAN, you don't remember me." It was then that she recognized him and said, "VANROSSUM." She got out of the vehicle. She added that this happened about four months after the first incident.

REPORTING OFFICER (S)  DET. L. OTEY	IDENTIFICATION NUMBER (S) 25126		DATE: 1/27/02	RECORDS BARCODING ONLY	
REVIEWED BY:	DATE:	FURTHER ACTION: YES		065	

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 3	01-53682

The second time he went to her room, she was living in room 46 of the Sahara Motel. They did not have any condoms so they had to go to the 98-Cent Store by the Laundromat at Fifth and "G" St. They went in his truck. He stayed in the truck and she went inside the store to get the condoms. When she returned to the truck, he had his gun on his lap. She said he did this because there were only black people around. She said he keeps his gun in a little sports bag.

They returned to her room and she gave him oral sex, he gave her oral sex and they had vaginal sex. She described his penis as circumcised and five to six inches long.

She said he had been assigned to the Narcotics Division when they had sex one time. They had sex three to four times while he was in plainclothes and one time when he was in a marked police car.

He told her that he was leaving the Narcotics detail and was going to be assigned to Patrol. She was later arrested and sent to jail. After getting out of jail, she learned that he was working the Highland

After getting out of jail, February 2001, she was walking to the store to buy cigarettes. It was about 2 o'clock in the morning when he stopped her downtown. He told her he was looking for her and her had heard she was out of jail. He told her to walk around the corner and her met her there. He frisked her and told her that was going to take her for a ride. He opened the rear door of his marked police car and she got inside. He drove her to Highland or on Highland. She said she is not familiar with the city outside of the downtown area. She does not recall any hills being in the area. He drove her to the substation and described the substation as being connected to a store that had trees for sale and a gate around the trees. They entered the substation from the back door.

Inside the substation she said the restroom was on the left as soon as you enter. There is a large room with lots of tables. He removed his gun and put it on the table. He turned off his police radio. He pulled down his pants and she removed her clothing. She said she gave him oral sex to get him started. She sat on the edge of a table and leaned back and they had vaginal sex. After completing the sex, he went to the front with her in the car and bought cigarettes at the store. She thought it was about 3 o'clock in the morning. He then took her back to her room at the Sahara Motel.

One time he went to her room and she was having her period. He was in plainclothes and driving his red truck. They had anal sex and it hurt. He told her that he likes anal sex and does it all the time with his wife.

She added that the manager at the Royal Motel would charge her \$5 for each guest. She said she had to pay a couple of times for him being a guest at her room.

She clarified the times he paid her. The first time they had sex he paid her \$40. The second time he paid her \$20. The third time was at the substation and he bought her cigarettes. The fourth time they had anal sex. She did not say he paid her. She said she would see him about once a week and guessed that they had sex five times.

REPORTING OFFICER (S)	NG OFFICER (S) IDENTIFICATION NUMBER (S) DATE:		RECORDS BARCODING ONLY	
DET. L. OTEY		25126	1/27/02	
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	066

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 4	01-53682

VANROSSUM did not talk about other girls. She said that the other girls (prostitutes) did not talk about him, either. She said the girls do not talk to each other about other people they have sex with.

He went to her room two different times while she was getting high. He would knock on the door and she would answer the door. He asked if she was getting high and she told him yes. He did not enter the room. He would just leave. They would have sex the other times when he stayed.

In 1999 she was in the area of Spruce and "H" St. when two bicycle officers stopped her. They arrested her for an outstanding warrant and had her transported to the police station. She told the officers that she was working for VANROSSUM and they called him. He told them not to book her and he responded to the station. He took her from the jail and took her to see a judge. The judge dropped the warrant. She does not know the bicycle officers, but one was a Mexican officer who also wrote her a citation for open container. The Mexican officer had told her that he would rip up the citation if she was working for VANROSSUM. She said that he did not rip up the cite and it had been submitted to the court.

The last time she saw VANROSSUM was June 2001.

She said the Officer STEPHEN PEACH drives the same truck that VANROSSUM does.

She said she first met PEACH in June or July 2001. It was about 9 o'clock at night and she was working as a prostitute in the area of Spruce and "H". He stopped and got out of his marked patrol car and asked what she was doing. She told him that she was prostituting. She asked if he wanted to see her titties and he said yes. She leaned forward and exposed her breasts to him. She asked if he wanted to see her vagina and he told her yes. She then exposed her vagina to him.

He asked if she wanted to hook up with him and she told him yes. He told her that he gets off work at two o'clock in the morning. She gave him her number and he called her about five minutes later to tell her that he was getting off at 11 o'clock. They agreed to meet at the Stater Bros. at Fourth and "G" St. She sad she was staying at the Royal Motel at this time.

When PEACH arrived, he was in the same red truck that VANROSSUM had been driving. PEACH drove her to the area of Cal State where there was a big field and they could see the whole city. They went by way of the freeway. She does not remember which way they turned, but remembered houses on the street. The street did not have a median. They drove to a dirt road and other roads were present. There were no gates, but she did notice a chain link fence. She said there was a second entrance to the area because a car had come from another area. She is not familiar with the area. She remembered driving by the university and seeing trees. There was no conversation as they drove to the area. She said she knew they were going to have sex. PEACH used red Trojan condoms. While in the truck, she pulled up her dress and straddled him. His pants were pulled down and he was sitting. They lay down on the seat of the truck and had sex. After sex, they sat back up and she got back on top of him. They kissed. She told him that she needed some help and he told her that if he gave her money now, he would be breaking the law, but if he bought her something in a couple of days, he would feel better. He then returned her to the area of 6<sup>th</sup> and "H".

REPORTING OFFICER (S)  DET. L. OTEY	IDENTIFICAT	TION NUMBER (S) 25126	DATE: 1/27/02	RECORDS BARCODING ONLY	
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	067	

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 6	01-53682

about 36 years old, 180-190 lbs., and lives at the Sahara Motel. She does not know if the same officers are doing the same girls. She said that the girls do not tell each other who they are having sex with. She learned of these other girls while talking to them in County Jail.

REPORTING OFFICER (S)	IDENTIFICAT	TON NUMBER (S)	DATE:	RECORDS BARCODING ONLY
DET. L. OTEY		25126	1/27/02	
REVIEWED BY:	DATE:	FURTHER ACTION: YES	RECORDS PROCESSING BY:	069

# Angela MacMillan Interview

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Police Department CA0361000 Case No. 17-12246 San Bernardino, CA CONFIDENTIAL Date: VICTIMS OF SEX CRIMES/DOMESTIC VIOLENCE/STALKING Acknowledgement of California Penal Code Section 293(a) Notification/Request for Confidentiality of Information **Victim Advisal** Pursuant to California Penal Code Section 293(a) and California Government Code Section 6254, you are informed that your name will be a matter of public record unless you request that it not become a matter of public record. I have been informed of the above rights to privacy sections. Signature Victim/Parent/Guardian **Victim's Statement** (Check One) I hereby elect to exercise my right to privacy, pursuant to California Government Code Section 6254. I do not elect to exercise my right to privacy, and understand that my name will become a matter of public record and may become available for publication. Victim # Date of Birth Date of Birth Victim Name (Print Full Name) Home Address: Phone Number: (Cell/Pager/Message) Work Address: -4 Work Phone: Height J-10 Weight 135 Hair AL Eyes BAN Reporting Officer 10/6/26-1 25714 Records Use Only This form must be attached to all criminal reports relating to the following California Penal Code Sections: 220, 243(e)(1), 243.4, all 261 reports, 262, 264, 264.1, all 273 reports, 286, all 288 reports, 289, 422.7, 422.75, 646.9, and all incident reports involving suspected or possible sexual or physical abuse

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POLICE DEPARTMENT CA0361000	CR2		T	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 1			02-2248
CODE SECTION(S) PC 261(A)(7) RAPE UNDER COLO	R OF AUTHORITY			REPORT TYPE
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### **INVESTIGATION**

On 12-19-01, Detective Rogers and I were assigned to assist the detectives investigating allegations of inappropriate sexual contact between Officer VanRossum and various prostitutes. I was supplied with a list of female subjects that Officer VanRossum had arrested over the previous several months. Det. Rogers and I were tasked with locating these females and interviewing them in reference to their contacts with Officer VanRossum.

On of the females on the list was the Confidential Victim. Officer VanRossum had arrested the Confidential Victim on 2-11-00 for a warrant in the 400 block of West Baseline. This arrest was carried under Case #00-5868. As a result of this arrest the Confidential Victim was placed on the list and was one of the females detectives had attempted to locate to interview about her contact with VanRossum.

Using the list of females Officer VanRossum had arrested I compiled a file on each of these females. In this file I placed the original arrest by VanRossum as well as any other information; for example, RMS NAMS file, criminal history, driver's license history, etc. thinking that all this information may become useful in trying to locate and interview these females. When compiling this information for the Confidential Victim I noted that one of her aliases was "Looney".

On 12-27-01, Det. Descaro and I responded to 4144 North 3<sup>rd</sup> Street, Apt. D in hopes of locating and prviewing the Confidential Victim. We discovered there was no apartment D so we made contact at pt. B. We contacted a subject who identified himself as Willie Jackson. I informed Mr. Jackson why we were there and asked if he knew the Confidential Victim. He told me she was a relative of his but does not live at this address. He stated he had not seen her since her release from jail and did not know where she could be located.

On 1-8-02, I again ran the Confidential Victim's name through SBPD Records and located a new address of 906 North 'G' Street. The RMS screen showed that the Confidential Victim had been field interviewed on 12-19-01 and this was the address she used.

On 1-8-02, Det. Rogers and I went to that address in an effort to locate and interview the Confidential Victim. Upon arrival we knocked on the door and it was answered by a white male adult who verbally identified himself as Steve Anderson. He stated that he knew the Confidential Victim, but she does not live at the address. He stated she was a friend and she occasionally comes to the address and talks to him. He told us that he does not know where she lives and to the best of his knowledge she was living in downtown motels. Det. Rogers left one of his business cards with Mr. Anderson, asking him to pass on the information to the Confidential Victim should he see her.

During the next several days Det. Rogers and I canvassed several downtown motels along with motels along the Mt. Vernon corridor. We contacted all the managers and asked if they had seen or had rented

R. LINDSEY /RM		ION NUMBER (S)	DATE: 1/28/02	RECORDS BARCODING ONLY
VIEWED BY:	DATE:	FURTHER ACTION:	RECORDS PROCESSING BY:	042

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 2	02-2248

a room to the Confidential Victim and showed them a booking photo of her. None of the managers stated γ had seen the Confidential Victim before.

On 1-9-02, Detectives Otey and Descaro responded to Chowchilla Prison to interview Michella Roan in reference to the ongoing VanRossum investigation. During this interview they learned that Roan was aware of a prostitute with the street name of "Looney" who had been having sexual relationship with a San Bernardino police officer. Roan did not know the officer's name but she believed that his last name started with a "R".

It was also learned in several of the interviews with Roan that she had received handwritten letters from Officer Stephen Peach while she was in prison.

On 1-16-02, I asked for Detective Mulleavey to assist me in trying to locate the Confidential Victim. Det. Mulleavey did some research and located a field interview card from October 2001 in which the Confidential Victim was contacted by the police at 775 West Spruce Street. Det. Mulleavey and I went to that area and we found the address to be a boarded up residence. We checked the residence but were unable to find any leads as to the location of the Confidential Victim.

As we were walking back to our unmarked police unit Det. Mulleavey saw a vehicle parked along the north side of Spruce Street west of our location. Det. Mulleavey suggested that we contact the occupants of this vehicle and I contacted the passenger while Mulleavey contacted the driver. Upon contacting the passenger, she verbally identified herself Regina Dewberry. I asked why she was in this area and she stated she was a friend of the driver's and they were just talking. I asked Dewberry to step out of the 'nicle so I could talk to her away from the driver. I escorted her to the curb behind the vehicle and had ... take a seat. I asked if she was there by her choice and she stated she was. I asked if she knew where "Looney" ould be located and she stated "Looney" was her aunt. Upon receiving this information I asked Dewberry to give me "Looney's "true name, but she was unable to. She stated she was not really related to "Looney". I asked if she knew where "Looney" could be found and Dewberry told me that "Looney" was currently at the Johanna Manor in either Apartment #8 or #9.

Det. Mulleavey and I went to the Johanna Manor and I parked our police unit on 6<sup>th</sup> Street directly along the south side of the Johanna Manor. We went into the complex and attempted contact first at Apt. #8. We knocked on the door and it was answered by a female who verbally identified as Nina Jackson. We asked if "Looney" was in the apartment and Jackson stated she wasn't, but pointed towards the apartment just south of hers (#9) and said she could be found there.

We went to Apt. #9 and knocked on the door. After a few moments a black male adult answered the door and I identified myself as the police. I asked if "Looney" was in the apartment and the male said something that I didn't understand. As the male was talking he opened the door more, allowing us entry into the apartment. Det. Mulleavey and I entered the apartment and upon checking a bedroom along the north portion of the apartment I saw a female who I immediately recognized as "Looney" from the booking photograph I had in my possession. At this point "Looney", the Confidential Victim, was placed under arrest for an outstanding misdemeanor warrant, Warrant #MSB059463 issued 12-10-01. The

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 3	02-2248

Confidential Victim was handcuffed in the apartment and informed that she was under arrest for a rrant. Det. Mulleavey and I escorted her to my unmarked patrol unit and placed her in the front seat.

Due to the fact that the Confidential Victim was possibly involved in the ongoing VanRossum investigation, I brought her to SBPD where she was taken to upstairs interview room #211E to be interviewed about the incident. This interview later for several hours and the following statement is a synopsis of her interview.

The interview was video and audio taped and I maintained possession of these tapes.

#### Confidential Victim's Statement:

When I first placed the Confidential Victim in the interview room she was very upset and made several spontaneous statements, something to the effect of "I know you are going to ask about the police." I asked the Victim if she had been living at the Johanna Manor and she stated she had not. She told me that she was there visiting her cousin, Nina Jackson. She stated she had been in the apartment next door for approximately 20 minutes prior to Det. Mulleavey and me arriving.

I asked the Victim what she meant when she said that she knew I was going to want to talk about the police. She said she didn't want to talk about "those cops", then changed it to "that cop." She said there would be "too many problems" and that he may hurt her if she talked about him. I asked what she had to tell and she said she had a lot that she wanted to tell, but "who am I?" She then said something to the effect of "These fuckin cops are tricks" and "They're only tricks if you got a warrant" and "They don't give "OH money."

I asked the Confidential Victim what the officers did if she had a warrant and she said the officers would release her. I asked why they released her if she had a warrant and she said she had to give them "a favor". I asked if she had ever done what she was describing and she said she had. I asked what the favor was and she said, "The favor that I do." She said the "favor" was sexual relations.

I asked if she had ever had to have sex with an officer and she stated she has had sex but she didn't "have to." She said she did not want to go to jail. I asked if she didn't want to go to jail what did she do and she said something to effect of "You do a favor for a favor." She stated after she has had to have sex with these officers they can make her life more difficult. She stated they call her and it creates lots of problems. She told me because of this she did not return my calls when she received my card from Steve Anderson.

I asked if she had ever had to have sex with an officer and she stated she has had to different times with different officers. I asked her to tell me about the most recent event and she described an event that happened approximately one week before her last arrest (11-17-01). As she was describing this incident she stated that the officer involved was "her friend".

She told me that she had been at the Sahara Motel, 795 West 5<sup>th</sup> Street, and was coming out of one of the rooms with one of heg<sub>r</sub>regular customers. She believed it was either Room #3, #4, or #5, she could

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 4	02-2248

not remember for sure. As she was exiting the room she saw a marked SBPD patrol unit entering the 'king lot. She was concerned that the officer would contact her because she was exiting the room with one of her customers. She quickly turned around and went back inside the room but before she did she saw that the officer was now going to the manager's office, apparently to contact the manager "Mamasan".

The Confidential Victim stated she went back to the room and waited for several moments and eventually someone knocked on her door. She opened the door and it was the officer she had seen coming into the parking lot. This officer informed her that she had a warrant and was "going to jail." He handcuffed her and escorted her to his marked patrol unit in the parking lot and placed her in the back seat. The Confidential Victim told me that the officer exited the parking lot and instead of turning right, which would be the direction towards the San Bernardino Police Department, the officer turned left and went over the bridge going over the freeway. She knew at this point that there was something wrong.

The officer went to either the first or second street and made a right (northbound) turn. The officer continued on this street and eventually they arrived in a dirt field very close to some railroad tracks. The officer stopped the patrol unit and got out. He walked to the rear of the unit and opened the driver's side rear passenger door. The officer was standing in the doorway with the Confidential Victim seat in the back seat. At this point the officer said something to the effect of "You know I can take you in on this or you can do me a favor." The Victim told me she believed the officer was referring to drug dealers so she replied that she did not know where any drug dealers could be located. The officer said something to the effect of "I'm not talking about any drugs, you know what I'm talking about." He said "Do what you get paid to do, but I can't pay you, but I'm going to pay this warrant no mind."

...sked the Victim what the officer meant when he said, "Do what you get paid to do." She told me she understood that statement to mean they were going to have sex. I asked if she was scared and she said she was. I asked why she was scared and she said something to the effect of "You can't tell 'em no."

The Victim told me that the officer instructed her to exit the patrol unit and stand up. He removed the handcuffs and she said something to the effect of "How you want to do this?" The officer told her to turn around so she was facing the vehicle and he was standing behind her. The officer told her to bend over and she put her upper torso into the patrol unit and placed her hands on the rear seat so she was bending over.

I asked what she was wearing during this encounter and she told me she was wearing a short skirt and no panties. She stated it was her normal procedure to not wear panties. She told me as she was in this position she heard a sound that she recognized as a condom pack being opened. She told me she did not see the condom nor did she see the officer's penis as she was in the back seat of the patrol unit with her feet and legs outside the open door.

She said a few moments after hearing the sound she recognized as the condom pack being opened the officer placed his penis in her vagina. She stated they had vaginal sex for approximately six to seven minutes. I asked if the officer was saying anything during this encounter and she said he was saying things like "Prostitutes, bitches." I asked if she responded and she stated she did not.

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 5	02-2248

er six to seven minutes the officer withdrew his penis from her vagina. The Victim told me that she bound up and turned around in time to see the officer remove the condom from his penis. He tied the condom in a knot apparently in an effort to keep the semen inside. The officer placed the condom in a napkin and she watched as the officer placed the napkin into what she described as a white Styrofoam cup on the MDC area of the patrol unit. I asked where the napkin had come from and she stated the officer keeps a box of napkins on the center console of his marked patrol unit. The Victim told me she asked the officer if he wanted her to dispose of the condom. She stated when she has customers this is her normal procedure. The officer said something to the effect of "No, I'll take care of it."

The Confidential Victim described the cup as a spit cup. She stated that this officer was a tobacco chewer and she demonstrated how he kept the "black tobacco" in his lower lip. She believed that the cup on the MDC was his spit cup based on the fact that it contained a brown liquid similar to what would be used by a tobacco chewer.

The Victim told me after placing the napkin in the spit cup the officer sat down in the driver's seat. He told the Confidential Victim that he could not take her back and then drove off. The Victim told me she walked back to her motel room.

I asked if the officer was alone during this encounter and she stated he was. She told me he was a white male adult and he works the downtown area late at night. I asked what the officer was wearing and she said "a police suit", later describing a blue or black uniform. She described the vehicle he was driving as a black and white police car. I asked if she recognized the vehicle to be a marked San Bernardino Police roartment patrol unit and she stated she did. I asked if she recognized the officer to be an on-duty ...iormed San Bernardino Police Department officer and she stated she did. The Victim described the officer as a white male adult, 42-50 years old, 5-7, bald, with "beautiful blue eyes", chunky build, 170 lbs., and "buff". I asked if she could remember what day of the week the incident occurred and she stated it was a weekday, but she could not remember which. The Confidential Victim believed it was a Tuesday, a "vice night" meaning that the SBPD Vice Unit was out. She told me the incident occurred at approximately 0200 to 0300 hours.

I asked if she had ever seen the same officer before this incident and she stated she had seen him. I asked if she had had sex with this officer before and she stated this was the first time. She told me something to the effect of she was going to have sex with the same officer for days prior to this interview. She then said, "He's going to be a regular, he said." I asked if that meant he was going to be regular client and she said yes.

She told me she had seen "my friend" several days ago. He was near the Johanna Manor in the general area where Det. Mulleavey and I had parked when we arrested her for this warrant. She said this was the last time she had seen the officer and he had told her that the detectives would be attempting to find her. "Looney" told the officer that I had been trying to find her. He told her that she a warrant, but it was not serious enough for detectives to be trying to find her. The officer went on to tell her that the detectives would want to talk to her about bad cops. She said he made it very clear to her that she was not to talk to the detectives and if she did this information would get back to him.

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 6	02-2248

Representation of the patrol unit during this meeting. She stated the vehicle was driven by a partner and during their conversation "my friend" told her he was only going to have a partner for this week. She told me during this encounter "my friend" told her that he was going to be near the "Los Portales" restaurant in the area of 5<sup>th</sup> and 'H' Street on Sunday (1-13-02) and she should meet him there. I asked why she would meet the officer at the restaurant and she said they were going to have a "date". I asked if she could identify the officer and she stated she could.

I asked her to describe the incident immediately before the railroad tracks incident. She stated this incident occurred approximately one year before the railroad tracks incident. She was at the Master's Donut Shop (Baseline and Waterman) about to get in the vehicle of one of her regular clients. She knew this client by the first name of "Brent" and stated he is a child custody lawyer from the 29 Palms area. She later told me that he drives a new full size maroon SUV. As they were in the parking lot she was about to get into "Brent's" car when they were "blurped" by a police unit. The officer got out of the unit and told them to get out of the vehicle and have a seat on a parking lot bumper.

The officer asked for their names. The Victim told me she had just recently been released from jail so she was confident she did not have any warrants and gave the officer her true name and birth date. The officer took this information and went back to his marked patrol unit. The Victim later told me it was approximately three minutes and she felt it was too quick for the officer to run both subjects for warrants. After this short period of time the officer came back and told "Brent" to leave, which he did. The officer told the Victim that she had a warrant and handcuffed her. He placed her in the back seat of his marked "trol unit along the driver's side and they left the parking lot.

I asked the Confidential Victim to describe this officer and she described him as a white male adult, 35 years old, 5-10, 160 to 170 lbs., black hair, clean shaven, brown eyes, "baby face". She stated he was wearing a blue or black uniform and driving a black and white patrol car. She stated she recognized him to be an on-duty San Bernardino Police Department officer and the unit to be a marked San Bernardino Police Department patrol car. She told me she could identify this officer if seen again.

She stated they traveled southbound on Waterman Avenue and eventually ended up on a street she believed to be 9<sup>th</sup> Street. As they were on 9<sup>th</sup> Street the officer drove to what she believed to be either a school or a park along the north side of 9<sup>th</sup> Street. The officer backed in his patrol unit so it was facing the street.

The officer got out of the vehicle and went back to the trunk. After a few moments he came back and was holding pictures that the Victim recognized as pictures normally taken by the Vice Unit when prostitutes are placed under arrest. The officer began asking her if she knew where any of these females were. I asked if she could remember who any of these pictures were and she stated she remembered one to be a female she knows as "Kathleen", "Katie", or "Kat." She also recognized another picture as "Pepper." The officer asked if she knew where these females were and she stated that even though she did know (Pepper was in prison then and still is) she did not tell the officer that, stating that she didn't know where they could be.

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 7	02-2248

officer placed the pictures back in his trunk and after a few moments came back to the open driver's side rear door of the unit where the Confidential Victim was seated. He then said something to the effect of "I'm gonna get down to business" and "I'm gonna be straight with you." The officer said something to the effect of "I want my dick sucked." The Confidential Victim then asked if the officer was going to let her go after this took place and he said something to the effect of "I'll think about it" and began laughing. After a few moments the officer then said, "Yeah, I'll let you go."

The Victim told me she was still sitting in the back seat cuffed. She stated she is double jointed and was able to bring her hands from the small of her back and place them to the front of her lap. She stated her hands were in this position during the act of oral sex and the officer told her not to do that any more, however he did not handcuff her back behind her back.

She told me as she was in the rear seat the officer removed his penis through the fly of his uniform pants. She described his penis as approximately 7" long and circumcised. The officer inserted his erect penis into the Victim's mouth and grabbed her shirt and began having oral sex. The Victim told me that this officer held her head with one of his hands and forced her head back and forth during the act. She stated this officer was rough and said something to the effect of "he humped my mouth." I asked if she was scared and she stated she was. I asked if the officer said anything during the act of oral sex and she said all he did was moan.

The Victim told me the oral sex lasted approximately 15 minutes. I asked if the officer ejaculated in her mouth and she stated he did not. She stated he pulled his erect penis out and ejaculated onto the black of the parking lot. The officer then washed his penis with small alcohol wipes. He threw these wipes .... o the parking lot and placed his penis back in his pants. The officer zipped up his uniform pants. He instructed the Confidential Victim to place her feet back in the unit, which she did. He closed the door and got in the driver's seat of the patrol unit.

The Victim told me she thought the officer may have "called in" and believed that he said something on the radio. She believed she might have heard the words "En route" or possibly the officer giving his mileage. She stated she was not sure.

The officer left the parking lot and drove back to Waterman. He eventually ended up at "Franks Meats" and dropped her off. He drove away and the Confidential Victim walked home.

At this point I reminded her that we had talked about two incidents where she had sex with police officers. She said something to the effect of "One time I had sex with this cop and I didn't use a condom and I came out with this baby." I asked if this was another officer other than the ones we had spoken about and she stated it was an officer she was "messin with" in 1999. She told me that she really liked this officer and he appeared to care about her. He told her he didn't want to find her dead some day and gave her numbers, for example, numbers to the Option House.

I asked the Victim what she could tell me about the officer who cared, the officer who gave her the numbers. She did not respond for a few seconds and then said something to the effect of "You know

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 8	02-2248

Officer Roebuck, he's a good cop." I asked if she knew Officer Roebuck and she told me she has known for years. I asked if this was the officer who cares about her and she said, "Yeah, he cares too." I asked if he was the one who had given her the number of Option House and she said "No, that's not Roebuck." I continued asking the Confidential Victim who the officer was and she was unresponsive. I told her that it appeared that she wanted to tell me something and she said something to the effect of "I do, I'm just so scared of these people. I know these officer's names."

I asked what the officer's name was who took her to the railroad tracks and she stated something to the effect of "That one I'm scared of." I asked if she knew his name and she stated she did. I continued trying to get her to tell me this officer's name; however, she continued to refuse to tell me. She said something to the effect of "I'll give you Harvey, and Tullar". I asked if either Officer Harvey or Tullar were the officers who took her to the railroad tracks and she stated they were not. She said something to the effect of "That's the only two I can give you."

The Victim told me she had received a warning from the other officers and told me again about the contact at the Johanna Manor. She confirmed again that the officer who had seen her with his partner by the Johanna Manor was the same officer who had taken her to the railroad tracks and had sex with her.

I asked if she knew the name of the officer who took her to the school and she stated she did not. I asked how Officer Harvey was involved and at first she stated it was in 1995 then stopped and said it was in 1996 or 1997. She said she had given Officer Harvey oral sex and said something to the effect of "I'm telling you now because Officer Harvey is an asshole."

"Id her to tell me about Officer Harvey and she told me in 1996 or 1997 she was behind the "Cake Lady" sometime in the afternoon. She remembered that the sun was out at the time. She told me she was smoking a cocaine pipe and Officer Harvey and his partner, who were on bicycles, caught her "red handed". The Victim told me that Officer Harvey's partner grabbed her arm and took the pipe away from her. She said something to the effect of "I'll give you the mother fucker." She told me that Officer Harvey and his partner began discussing what they should do. She said the partner said something to the effect of "I think we should take her down." The partner said he believed there was enough narcotics present to charge the Confidential Victim with possession.

Officer Harvey took the pipe and broke it by crushing it on the ground. Officer Harvey said something to the effect of "We got some unfinished business" and then grabbed the Confidential Victim and took her to the "church on the street". She stated this church is across the street from the Cake Lady. She told me when she and Officer Harvey left, the partner was still on the street by the Cake Lady.

When they got to the church they went to the rear of the building and she described a descending stairwell, which apparently went to a basement below the building. She stated from this position she could see the "Taco Tia" at the corner of Baseline and Acacia. She stated when they arrived at this stairwell she walked down the stairwell first going down approximately six steps. Officer Harvey followed her and then passed her and walked down approximately eight steps so he was below her. Once in this position he removed his penis from his shorts through his fly. I asked her to describe the penis and she

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 9	02-2248

stated he couldn't remember if it was circumcised but remembered that Officer Harvey has blond public . Officer Harvey placed his erect penis in her mouth by pulling her head onto his penis.

I asked if Officer Harvey forced her to give him oral sex and she said, "May as well have. He just caught me with a pipe, I didn't have a warrant." I asked if she was afraid and she stated she was.

The Victim told me she had to give Officer Harvey oral sex for approximately 20-25 minutes. She stated he ejaculated in her mouth and she spit the semen out between his legs on the stairwell. After the act of oral sex, Officer Harvey told the Confidential Victim something to the effect of "Don't let me catch you with a dick in your mouth." She told me that the word "dick" when used in this sentence meant a "cocaine pipe".

She said Officer Harvey placed his penis back in his shorts and they walked out of the stairwell. She said she walked first with Harvey following her. She said they walked back to where the partner were waiting by the Cake Lady and then Officer Harvey told her to leave. She stated she began walking northbound away from the Cake Lady and happened upon another prostitute that she knows by the name of Carol. The Victim told Carol that she had just had to give the officer oral sex and Carol replied that she had seen what had happened.

I asked the Victim if that was the only time she had to have sex with Officer Harvey and she stated it was. She told me that she does not count that incident in the original six incidents that she wanted to describe.

At this point I talked to the Victim about the three incidents that she had already described. I asked if she need to do any of those things and she stated she did not. I asked if the incident at the railroad tracks been her choice or if she had been forced and she stated it was not her choice. I asked if she had told the officer that she did not want to have sex and she stated she did not. I asked why and she stated that she did not want to go to jail.

I asked the Victim if she had told the officer who took her to the park no and she stated she did not. She told me that even though she didn't say no she was scared and knew if she didn't have sex with the officer he would hurt her.

I asked the Confidential Victim if she told Officer Harvey no when he found her at the Cake Lady and she stated she did not. I asked why and she said something to the effect of "You can't say no cause who are you to tell them no?" At this point the Victim began discussing her last arrest on 11-17-01. She stated that although Officer Roebuck was the one who arrested her, he was not the one who took her to jail. She said something to the effect of "His name is there." She told me that the person who transported her from Officer Roebuck's warrant arrest was the same person who had taken her to the railroad tracks and the same person who had seen her at the Johanna Manor and told her not to talk to the detectives. I again asked her what his name was and she said "It's going to get me in a bunch of trouble" and "I don't want to get hurt" and "I know something on this man for him to hurt me."

I began to ask her about the incident before the incident at the park. She told me about an incident involving Officer Tullar, where he was at the Motel 7 at 14<sup>th</sup> and 'E' Streets. She told me that he had

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 10	02-2248

assaulted one of her friends, Debra Dukes. I asked if Officer Tullar had done anything to her and at first said he had not. She then told me she had oral sex with Officer Tullar two times. I asked why she u.u.n't tell anyone and she said something to the effect of "Who could I tell?" I suggested that she could have told her relative Nina Jackson and she stated she did but Ms. Jackson told her to leave the police officers alone.

She told me that "he's my Mom's friend too." She said the officer who took her to the railroad tracks had also been having sex with her mother. She stated she had just recently discovered this and had learned it because her mother had told her. She told me that approximately two or three months ago, before the railroad track incident, she was walking near 'H' and Spruce when she saw her mother walking eastbound away from the dead end of Spruce just north of the Sunshine Motel. A few moments later she saw a marked San Bernardino Police Department patrol car driving away from the dead end and looked in to see her "friend" driving. I asked her how many times her friend had been with her mother and she stated she didn't know.

I asked the Confidential Victim how many times she had been with the dark haired, rough officer who had taken her to the park and she stated she had been with him two times, both at the same place. She stated that another time occurred approximately one month after the incident at Master's Donuts. I asked her where this incident had started and she told me she had been exiting an abandoned house somewhere in the area of Baseline and Sepulveda. As she was coming out of this house an officer shined a light on her and then quickly stopped his unit. She stated the officer got out of the unit and she immediately recognized him from the donut shop incident.

officer walked up to where the Confidential Victim was standing. He put his hand on her arm or coulder and escorted her to the back seat of his patrol unit. She told me he placed her in the back seat without handcuffing her. She said he put her in the rear seat on the passenger side and he got back in the driver's seat.

She told me the officer drove eastbound on Baseline, then southbound on Waterman and went to the same school or park and backed in just as he had the last time. I asked if there was any conversation during the trip from Baseline to the park and she stated that the officer was saying something to the effect of "I haven't seen you for a while." She was explaining that she doesn't generally stay in the area of Baseline. She told me she knew they were going to the park and she knew they were going for the same reason.

I asked what she thought would have happened had she tried to pull away from the officer as he was escorting her to his marked patrol unit and she said she was confident he would have hurt her had she tried to pull away. She told me she was afraid as he was escorting her to the marked patrol unit.

After they arrived at the same park he parked in a similar fashion as the first time. She told me the vehicle was facing southbound towards the street. He got out of the driver's seat and walked back to the passenger side rear door and opened the door. The officer removed his penis through his fly and grabbed the Confidential Victim's head and forced his penis into her mouth. She told me he held her head with his left hand during the entire incident. I asked what she was doing with her hands because

ORTING OFFICER (S)  R. LINDSEY /RM	DENTIFICATI	ION NUMBER (S)	DATE: 1/28/02	RECORDS BARCODING ONLY
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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 11	02-2248

she was not handcuffed and she said she held his penis with her right hand and left her left hand on her

She described the officer as "humps her face real hard". She stated the officer did not wear a condom and he was in her mouth for approximately ten minutes. She stated after about ten minutes the officer removed his penis and again ejaculated on the black top, similar to the first occurrence. The officer wiped his penis just as he had done the previous occasion and put it back in his pants and zipped up his fly. She placed her feet back in the marked unit and the officer shut the door. The officer got back in the driver's seat and they drove away from the park to Frank's Meats where the officer dropped her off. I asked if they had any conversation during the trip to Frank's Meats and she stated there was not.

I again asked the Victim if she knew the name of this officer and she stated she did not. She told me she could identify him if seen again. She confirmed that this officer was not Officer Harvey nor was it the officer who had taken her to the railroad tracks. I confirmed with the Victim that these two times at the park with this officer were the only two occurrences and she stated they were.

I again asked if she wanted to tell me the name of the officer who had taken her to the railroad tracks. She stated she did not. She told me she had already said too much and she had been warned. She did tell me that she believed the same officer who took her to the railroad tracks was "doing a few more girls".

It was approximately 1630 hours and the interview was concluded. The Confidential Victim was taken to the booking area of SBPD where she remained for the evening. She remained in Cell #1, isolated and had no contact with any other officers or other prisoners.

On 1-17-02, at approximately 1025 hours, Detective Rogers and I took the Confidential Victim from the booking area and began a trip in an effort to have her identify the areas where all of these incidents happened. She stated in the interview on the previous day that she could point out the railroad tracks and the park. We were also going to go by Nina Jackson's apartment in an effort to find her release papers to verify that she had been in custody when the warrant was issued as well as letters that she stated she had received from "Brent".

Our first stop was Apartment #8 at the Johanna Manor where we contacted Nina Jackson. The Confidential Victim informed her why we were there and asked that she try and find the papers. Ms. Jackson searched her apartment for several minutes; however, none of the papers were found. It should be noted that while at the apartment we remained outside. There were several people inside the apartment and as the Victim was explaining what was going on, I heard several voices from inside the apartment say "Roebuck".

We then transported the Victim from the Johanna Manor and she directed us over the 5<sup>th</sup> Street bridge and then to the area of the 700 block of North 'I' Street. As she was looking around this area she confirmed that this was the area where the railroad track incident had occurred. She described that the vehicle was facing northbound and during the sexual act she was facing towards the railroad tracks/ freeway.

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 12	02-2248

'le in this area I again asked her to give me the name of the officer. She said something to the effect or I don't want that man to hurt me" and "It's easier if I don't say the name". She said the same officer had taken her to jail from the arrest on 11-17-01. She told me that when he took her to jail from Officer Roebuck's arrest he had taken her to a hotel to give her cousin baby bottles for one of her children. After doing that he took her to jail. She said that she has no nickname for "her friend", but her mother calls him "my little pet".

After identifying the area where the railroad track incident occurred we transported the Confidential Victim to attempt to find the school/park on 9<sup>th</sup> Street. Upon arriving on 9<sup>th</sup> Street she looked around and realized that she was in the wrong place. She stated she wanted to go to the next major block south of our location, 6<sup>th</sup> Street. Upon arriving on 6<sup>th</sup> Street we were traveling westbound from Del Rosa. We eventually arrived at a ballpark along the north side of the street and she identified this as the place where the dark haired officer had backed in and had oral sex with her. We went into the parking lot and the Victim stated that during the Master's Donut Shop incident the officer had backed up along the west perimeter of the parking lot. She stated during that the Baseline and Sepulveda incident he had backed up along the east side of the parking lot, down a long driveway.

After locating the park on 6<sup>th</sup> Street we then drove northbound on Waterman to the area of Baseline and Waterman. As we were driving the Victim told me that Officer Tullar had forced her to have oral sex and vaginal sex with him two different occasions. She described him as having a "weird style" and said he was a "control freak".

ce arriving at the intersection of Baseline and Waterman the Victim identified the Church's Chicken acaurant and the Master's Donut Shop as the area where the two incidents started.

The trip was ended and we returned to San Bernardino Police Department. I escorted the Confidential Victim back to interview room #211E. Once in the interview room I asked her if her "friend" spoke with an accent and she said he did. I asked what kind of accent she thought it was and she stated she did not know; however, she was sure it was not Spanish.

I reminded her that she stated when she was transported on her last arrest by her "friend" he took her to a hotel to take baby bottles to her cousin. I asked what hotel and she stated it was the Royal.

I showed her a single photograph of Officer Harvey and asked if that was the same Officer Harvey she was referring to. She laughed and said something to the effect of "That's Doug." She later informed me that she refers to Officer Harvey as "Doug" because of his resemblance to the cartoon character.

At this point I read the Victim the modified admonition for photo lineups. The modification was taking the word "guilty" out of the admonition. I asked if she understood and she stated that she did. I asked if she had any questions and she stated she did not. I then handed her the photo lineup containing Officer Peach and asked if her "friend" was one of those photographs. After just a few seconds the Confidential Victim said something to the effect of "That's my friend." I asked which photograph she was referring to and she stated "Number 4." It should be noted that the picture of Officer Peach was in Position #4. I

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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 13	02-2248

asked if she was sure and she stated she was. She said something to the effect of "That's me and my m's friend." I asked if the picture in Position #4 was the same officer who took her to the railroad Lacks and she responded by saying "That's my friend."

I showed her the photo lineup containing Officer VanRossum in Position #2 and asked if she recognized any of those photographs. After a few seconds she pointed to the picture in Position #2 and said that was the mean officer. She told me that she remembered him from somewhere, however she could not remember where. She said this officer is real mean and has a "nasty mouth". She told me that this officer tells the prostitutes what their customers should do to them and described him as "another Tullar." She said the officer pictured in Position #2 has never sexually assaulted her.

I asked if the officer in Position #2 was the same officer who had taken her to the park and she stated it was not. She said the officer in Position #2 had arrested her in the past and stated she believed it was for a warrant.

I showed the Victim the single photograph of Officer Roebuck and asked if that was the same Roebuck we had been talking about. The Confidential Victim responded something to the effect of "Yeah, that's the head honcho of the Narcotics Division." I asked if Officer Roebuck had ever done anything to her and she stated he had not. I asked if she would tell me if Officer Roebuck had and she said she would.

I asked if she knew the victim who had supplied Detective Otey with the information that "Looney" had been having sex with an officer with the last name that begins with 'R'. She stated she knew who I was referring to and I asked why that person would say that "Looney" was having sex with a police officer. They victim said something to the effect of "That's just a word." She said she and Officer Roebuck have ver messed around. I asked why the word on the street was that she had had a sexual relation with Officer Roebuck and she stated she had a child who looks like Officer Roebuck. I asked if the child could be Officer Roebuck's and she stated he could not because they have never done anything.

I showed the Confidential Victim a single photograph of Officer Schuelke and asked if that was the same Officer Schuelke she had referred to in her statement. She stated that it was.

I later asked her her children's names and birthdays. They are:

Keontrae Lejuan McMillan 4-2-94 father: Alex Garcia Christopher Lemont Scott Jr. 5-2-95 father: Christopher Scott

Kemaria Gamielle Myalique McMillan 3-31-97 father: known only as "Solo"

Simply Beautiful McMillan 10-26-99 father: unknown

Angel Baby McMillan 3-24-01 father: known only as Jesse

She told me she is approximately four months pregnant and the father of this child is a former boyfriend known as Nathaniel Robertson. She said she has had no contact with Robertson in the last several weeks.

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KEVIEWED BY:	DATE:	FURTHER ACTION:	RECORDS PROCESSING BY:	

POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 14	02-2248

At this point the interviews at the station were concluded. Det. Descaro and I escorted the Confidential im to the court in order to answer to the warrant she had been placed under arrest for. We responded usuage Petrasek's court where we advised the bailiff why we were there. Judge Petrasek asked the Confidential Victim how she pled to the warrant and she stated she was not guilty. She began telling the judge that she had been placed under arrest and was in custody when the warrant was issued and that she could not have responded to court because she was in jail. The judge asked for my input and I confirmed that I had talked to West Valley Detention Center and confirmed that the Confidential Victim was in their custody on 12-10-01. She was not released until 12-12-01. The duty officer I spoke to related that West Valley Detention Center does not as a rule check for warrants when they release prisoners and it was entirely possible that the Victim had been released even though a warrant had been issued for her arrest. At this point Judge Petrasek recalled the warrant and issued the Confidential Victim a new court date (2-13-02).

As the judge was completing the necessary paperwork I was seated in the front row, one seat beyond where the Victim was seated. As the papers were being filled out, the Victim leaned over and whispered something to the effect of "I've got a secret for you now that this is over." I told her to wait until we were out of the courtroom and we would talk.

After the Victim was given her court papers we were escorting her back to our unit to transport her back to the station. I asked her what secret it was that she wanted to share with me. She began to relate to me that she was almost positive that Officer Roebuck was the father of her child, Simply Beautiful. We were on the sidewalk of 3<sup>rd</sup> Street between Arrowhead and Mt. View during this conversation and as we were talking several subjects were walking by. I told her to wait and we would continue the conversation in we arrived at the SBPD.

Upon arrival back at SBPD we went to the upstairs conference room where Det. Descaro and I conducted one final interview of the Confidential Victim. I asked her who the father of her child Simply Beautiful was. She began by saying that she used to work for the father of Simply Beautiful. I asked what she did for him and she said she used to give him dope dealers. She said in late 1998 or early 1999 she "had a crush on Officer Roebuck" and "we had an affair." She stated the "affair" was a single sexual relationship with Officer Roebuck. She stated she had gotten pregnant shortly after that sexual encounter and based on the appearance of the child she believed that Officer Roebuck was the father.

I asked her why she thought Officer Roebuck was the father and she stated it was a mixed race child. I asked if she had been having sex with other white males at the time and she stated she had, but none of them looked like Officer Roebuck. She was very sure that Simply Beautiful McMillan's father is Officer Roebuck.

I asked if she had had other sexual encounters with Officer Roebuck and she stated she did not; it was just one time. She then counted back from Simply Beautiful's birthday, 10-26-99, and decided the sexual encounter had to have happened in the first part of 1999. She told me that she had been living at the Royal Motel and it was a "raid day." She stated the police officers were looking for a drug dealer that she knew as either "Chilly Willy" or "Chill Will." She stated during their search for this subject they had gone to the Royal and gone to he room. She stated there were several officers there and Officer Han, who she

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PORTING OFFICER (S)	IDENTIFICAT	TON NUMBER (S)	DATE	RECORDS BARCODING ONLY
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POLICE DEPARTMENT CA0361000	CR2	CASE NUMBER
SAN BERNARDINO, CALIFORNIA	PAGE 15	02-2248

described as a big Japanese officer, was the last officer there. She stated that after Officer Han left `zer Roebuck was the only one in the room and they had a single consensual sexual relationship. She swited that as a result of that relationship she became pregnant and Simply Beautiful was born. She said that the "raid day" was probably on a Thursday. She could add nothing further about this encounter.

I asked if there were any other officers she had had sex with and she described as incident involving a school police officer by the name Officer Scott. She described him as a black male adult and said "He more or less forced me." She said she was at the "Jim's Whatasteak" restaurant on Baseline near Acacia on the payphone. She stated that Officer Scott approached her and told her she was trespassing. Scott transported her to the Adult Education building at the northwest corner of Baseline and 'E' Street. Once in the building they "went all the way down" to a room where she noticed there were several computers running. She told me that during her encounter with Officer Scott she gave him a false name and somehow he discovered that lie. She stated she had also lied about her tattoos and he had caught her in that lie as well. As a result, Scott forced her to have oral sex. She stated this happened approximately two to three years ago and she could be no more specific about the date. She did say that Officer Scott arrested her and took her to jail that night.

At this point Det. Descaro asked if she had been using drugs and alcohol when this incident occurred and she stated that she had.

The interviews with the Confidential Victim were concluded. Because we had only been able to briefly discuss some of the encounters, I asked if she would be willing to be re-interviewed at a later time should it be necessary. She said she would be willing to and she was instructed to keep in touch with me to "rise me of her whereabouts.

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ORTING OFFICER (S)  R. LINDSEY /RM	DENTIFICATION NUMBER (S)		1/28/02	RECORDS BARCODING ONLY
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### Search Warrant January 18th 2002

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 2 2 2002

SBSW02-0061

Deputy

COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Personally appeared pefore me this 17<sup>th</sup> day of January, 2002, William G. Rogers, Detective, San Bernardino Police Department (SBPD), who on oath, makes complaint and deposes and says:

#### EXPERTISE OF AFFIANT:

I am a police officer for the City San Bernardino and have been so employed for over 24 years. I attended the San Bernardino County Sheriff's Basic Academy and was then assigned to the patrol division for 16 years prior to being promoted and reassigned to the Detective Division. I have spent approximately 2 years in the specialized crimes unit, 2 years in the homicide detail and 2 years in the property crimes unit. During my assignment in the Specialized Crimes Unit I have investigated rape and other sex related crimes.

As a result of my training and expertise I have learned that subjects involved in rape and sex related crimes, often keep "trophies" and records of their actual and intended Victims.

As a Police Detective I also have knowledge that Police Officers have access to records, backgrounds and identifying information concerning the general public. This information is commonly disseminated in both paper and computerized form.

#### PROBABLE CAUSE:

On Saturday, November 03, 2001, a criminal and internal police investigation was initiated by the San Bernardino Police Department. Detective M. LUCAS arrested ANN T. MENEFEE in the City of San Bernardino for an outstanding arrest warrant. The warrant, Number MSB042999, issued in the County of San Bernardino on 08-18-99. While in the custody of Det. LUCAS, MS. MENEFEE reported the following information:

MS. MENEFEE said that about three weeks prior to 11-3-01, she was walking in the area of the 500 block N. "H" St, San Bernardino at about 2:50 am when she was contacted by a uniformed San Bernardino Police Officer, driving a marked police patrol car. The officer conducted a records check on her and learned that MS. MENEFEE had an outstanding warrant for her arrest.

The officer then drove to an area north of Cal State University San Bernardino. He parked the patrol car in a secluded area where he raped and sodomized her.

The officer then drove MS. MENEFEE back to the area where he had found her, and released her in the area of  $7^{th}$  and "G" St, San Bernardino.

During the subsequent investigation San Bernardino Police Officer RONALD VAN ROSSUM was identified as the suspect in this crime. While investigating VAN ROSSUM, one of his former confidential informants was contacted at the Central California Women's Facility at Chowchilla. She told Detectives R. Descaro, L. Otey and Sgt. B. Ringnes that she had sex with another San Bernardino Police Officer who she identified as STEPHEN PEACH. She said that he had contacted her while he was working as a uniformed patrol officer. They had consensual sex after he ended his shift. Although she asked for money Officer PEACH sazid thast would be wrong but he would give her "something" in a week or two" because that would make him feel better. He met her the following night and gave her a carton of eigerettes worth approximately \$ 45.00. He maintained contact with her by telephone and personal visits. On 2 separate occasions he called her and told her to stay in her room because the police were conducting prostitution programs. On the first occasion she left her room during the program at which time he called her and told her she was almost caught. She was later arrested and sent to prison on a charge not related to prostitution. Officer PEACH maintained contact with her by mail and telephone. He has offered to gather information regarding the location of her children's father who is believed to be in Sacramento.

During her interview the female said that another prostitute by the street name of "LOONEY" was also having sex with San Bernardino Police Officers. A records check was conducted and "LOONEY" was identified as ANGELIQUE MCMILLAN. MCMILLAN was located and interviewed. During the interview she said that a San Bernardino Police Officer had contacted her during the late night hours in the first half of November 2001 while she was on the street. He told her she had a warrant. She was then handcuffed, placed in the caged rear portion of the marked black and white police car and taken to an isolated area near 7th and "T" St. in San Bernardino. The Officer unhandcuffed her and had sexual intercourse with her in the back of the police car. He released her afterwards telling her be could not take her back. She was not transported to jail during this encounter. And was let out at the isolated location. MCMILLAN said that she had no choice. MCMILLAN either would not or could not give the name of the Officer but was shown a line up of 6 color pictures. Officer PEACH was depicted in position number 4. After viewing the lineup MCMILLAN pointed at Officer PEACH's photograph and identified him as the one who had arrested and then had sex with her.

had sex with her. THE INTER USEN OF THE VICTIM WAS CONDUCTED IN 2
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SECOND AT APPROX. 1300 HAS TO APPROX. 1800 1-17-02.

DESCRIPTION OF PLACES / PERSONS TO BE SEARCHED:

The person of STEPHEN PEACH, 10-28-62, San Bernardino Police Department employee number 50077.

Uniform locker number 120 issued to San Bernardino Police Officer STEPHEN PEACH at the San Bernardino Police Department, in the men's locker room, downstairs equipment locker assigned to Officer PEACH, a 2'x 20" open cupboard assigned to Officer PEACH, located in room number 135B (armory), marked with his name in black tape. Also to be searched within room number 135 is 1-2'6" x 1' black nylon closed bag kept under the fax table within the south side of the room All other personal gear bags, and brief cases or other personal property owned or possessed by STEPHEN PEACH. The personal vehicle driven to the San Bernardino Police Department and parked in the police parking lot by STEPHEN PEACH. All lockers and who say the fax all the police parking lot by STEPHEN PEACH. All lockers and who say the fax all the fax t

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storage areas are located at 710 N. 'D" ST., City of San Bernardino, County of San Bernardino, State of

#### DESCRIPTION OF PROPERTY TO BE SEIZED

- 1.) Condoms.
- Lists, letters, or other paperwork containing the names and or other identifying information of actual and / or intended victims.
- 3.) Telephone bills and or records, for both stationary and cellular telephones.
- 4.) Photographs.
- 5.) Cellular Telephones
- 6.) Electronic storage devices
- 7.) Police reports, records, and criminal histories including field interrogation cards and note pads.
- 8.) It is further requested that a forensic technician, swom or non-swom, be granted authorization to examine, make duplicate images/copies of the above-mentioned electronic media and to determine if evidence of the offenses enumerated above are contained therein. Therefore authorization is requested to make image/copies of the actual pre-requested data. Evidence copies of the items relating to these offenses will be created and retained for further proceeding and made available to the authorities.

#### STATUTORY GROUNDS

Your affiant states that the above property constitutes evidence which tends to show that a felony has been or is being committed in the city and county of San Bernardino, state of California, or tends to show that a particular person has committed a felony; to wit P.C.261, Rape. Your affiant also believes that obtaining a search warrant for the address at 710 N. "D" St. San Bernardino, County of San Bernardino, State of California could show that a particular person committed the crime of rape which is a felony in the city and county of San Bernardino, state of California.

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JAN-17-2002 22:36 FROM: INVESTIGATION

### Stephen K. Peach

And this complainant prays that a search warrant may be issued to search for the same, and that the same may be brought before a magistrate and disposed of according to law.

Subscribed and sworn to before me this 17th day of January, 2002

County of San Bernardino
State of California

9093884842

9097836704 T0:9097836704 P.01

P. 882/884

## IN THE CENTRAL COURT DISTRICT COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

Search warrant (Penal code 1529)

THE PEOPLE OF THE STATE OF CALIFORNIA: To any Sheriff, Constable, Marshal, Peace Officer, or Policeman in the County of San Berngrino:

Proof, by affidavit, having been this day made before me by William G. Rogers, Detective, San Bernardino Police Department, that there is probable cause for believing that:

There is now located at 710 N. 'D' St., City of San Bernardino, County of San Bernardino State of California, evidence of a Rape, Rape is a felony in the City of San Bernardino, County of San Bernardino, State of California under Penal Code Section 261.

YOU ARE COMMANDED at any tithe of the day, or as the case may be, according to Section 1533, to make immediate search of:

The person of STEPHEN PEACH, 10-28-62, San Bernardine Police Department employee number 50077.

Uniform locker number 120 issued to San Bernardino Police Officer STEPHEN PEACH at the San Bernardino Police Department, in the men's locker room, downstairs equipment locker assigned to Officer PEACH, a 2' x 20" open outploard assigned to OFFICER PEACH, located in room number 135B (armory), marked with his name in black taps. Also to be scarched within room number 135 is 1-2' 6" x 1" black nylon closed bag kept under the fax table within the south side of the room All other personal gear bags, and brief cases or other personal property owned or possessed by STEPHEN PEACH. The personal vehicle driven to the San on 1-17-01.

Bernardino Police Department and parked in the police parking lot by STEPHEN PEACH. All lockers and storage arreas are located at 710 N. "O" ST., City of San Bernardino, County of San Hernardino, State of California.

for the following property:

- 1.) Condoms.
- Lists, letters, or other paperwork containing the names and or other identifying information of actual and
  / or intended victims.
- 3.) Telephone bills and or records, for both stationary and cellular telephones.
- 4.) Photographs.

### Stephen K. Peach

JAN-17-2002 11:38 PM

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P.02

JAN-17-2002 23:85 FROM: INVESTIGATION

9093004040

T0:9097836704

P.003/004

- 5.) Cellular Telephones
- 6.) Electronic storage devices
- Police reports, records, and criminal histories including field interrogation cards and note pads.
- 8.) It is further requested that a forensic technician, sworn or non-sworn, be granted authorization to examine, make duplicate images/copies of the above-mentioned electronic media and to determine if evidence of the offenses enumerated above are contained therein. Therefore authorization is requested to make image/copies of the actual pre-requested data. Evidence copies of the items relating to these offenses will be created and retained for further proceeding and made available to the authorities.

And if you find the same or any part thereof, to bring it forthwith before me at my courtroom, or any other judge of this court.

GIVEN UNDER MY HAND, and dated /-/7-52 @ // 300m.

Judge of the Central Trial Court County of San Bernardino State of California

## Blood Search Warrant April 4th 2002

COPY

#### SEARCH WARRANT (PENAL CODE §1529)

THE PEOPLE OF THE STATE OF CALIFORNIA: To any Sheriff, Constable, Peace Officer, or Policeman in the County of San Bernardino.

Proof, by Affidavit, having been this day made before me by Detective Rick Lindsey, San Bernardino Police Department, that there is probable cause for believing that:

There is now located on the person of Officer Stephen Kenneth Peach, evidence of a rape. Rape is a felony in the City of San Bernardino, County of San Bernardino, State of California under Penal Code section 261 A 7.

YOU ARE COMMANDED at any time of the day, or as the case may be according to Section 1533, to make immediate search of:

The person of Officer Stephen Kenneth Peach, DOB 10-28-62, WMA, 5'-7" tall, 185 pounds, brown hair, green eyes.

For the following property:

Two samples of the suspect's blood to be obtained by trained medical personnel and stored in two separate purple top vials.

And if you find the same or any part thereof, to bring it forthwith before me at my courtroom, or any other judge of this court.

Judge of the Central Trial Court County of San Bernardino State of California

GIVEN UNDER MY HAND, and dated 4-4-02

# Supporting Letters by Detective Vasek

#### City of San Bernardino San Bernardino Police Department Interoffice Memorandum

To:

Sergeant B. Ringnes

From:

Detective J. Vasek

Subject:

Officer Peach

Date:

January 22, 2002

Copies:

Lieutenant Mankin

I was at SWAT training with the rest of the San Bernardino Police Department SWAT Team in the early part of 2001. I spoke with Officer Stephen Peach at one of the rest breaks. Other team members were congregating in the area but no one else was within earshot. I asked Peach how patrol was since he had recently rotated out of the MET Unit and was now in uniform patrol. He told me he was adjusting to the change in schedule and duties. He told me of an informant that he had recently contacted.

Officer Peach did not identify this informant except to tell me that she was a female and a prostitute. She had supplied him with information in the past and the information had been credible. On the last contact he had with her she told him of an incident involving her and an unidentified San Bernardino police officer. The following is what Officer Peach told me the informant had said to him:

She had been in the central corridor of Baseline and had been contacted by a San Bernardino police officer. She described the officer as having pasty white skin, blond hair, about the size and stature of Officer Peach and having a mustache. The ends of the mustache extended downward at the corners of the mouth. The officer told her that she had an outstanding warrant. The officer told the informant that he would not arrest her for the warrant if the informant had sex with him. The officer drove the informant to the Area B COP located on Kendall Dr. They entered the COP and the officer disrobed. He had anal and vaginal sex with the informant. The informant said the officer did not appear to be concerned with being interrupted by anyone else entering the COP. She also thought it was strange that the officer took off every stitch of clothing that he had on and was totally naked while committing these sex acts.

When the officer finished he got dressed. The informant was told to wait outside, she complied. After waiting for a while she opened the door to see what was taking the officer so long. She saw the officer inside. He told her to close the door because he had to set the alarm prior to leaving and the door had to be shut to accomplish this. The informant closed the door and waited for the officer. When the officer came outside the

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A REDUCTION IN CRIME THROUGH PROBLEM RECOGNITION AND PROBLEM SOLVING

Peach Conversation Page 2 of 4

COP he told the informant that he would take her back to where he had picked her up. She told him that it was okay, she could walk. The officer insisted that the informant get in the car. It was at this time that the informant believed that the officer was going to take her somewhere and kill her; however, the fear went away when the officer told her that she could sit in the front seat. The informant got in the front seat of the police unit and was driven back to the location where the officer had originally contacted her.

The informant described the Area 'B' COP to Officer Peach. She talked about the large room and the access to the other offices. She also described the bathroom. Her description of the COP and her knowledge of the alarm pad and the door needing to be closed made her statement credible to Officer Peach. Based on the time frames given by the informant, Officer Peach believed that this unidentified officer worked Shift 4.

I began questioning the credibility of the informant. Officer Peach told me that she had supplied him with information in the past that turned out to be good. I did not ask him for specifics or details regarding these prior incidents. Officer Peach said the informant's knowledge of the COP added to her credibility. I asked if this informant knew the officer's name. He told me she did not and she specifically did not look at his nametag when he was dressed. I asked if this informant would come forward and speak to Internal Affairs detective. Peach told me she would not. I told Peach that it was common for crooks to lie to us about each other in an attempt to make disharmony in our organization for their own gain. Officer Peach told me he did not believe this was the case with this informant.

Officer Peach seemed upset that we had a dirty cop on the San Bernardino police force. He asked me who I thought might fit the description of this officer on Shift 4. We first thought of officers who had mustaches similar to those described by the informant. We came up with Officer Matlock, Officer VanRossum, and Officer Passo. We ruled out Officer Matlock because he has dark hair, not blond as the informant had stated. Officer Peach ruled out Officer VanRossum, believing that VanRossum's head was shaved and was heavier in stature than what the informant described. Officer Peach felt that Officer Passo most closely fit the informant's description of the person who had sex with her.

As the training day progressed there were times when Officer Peach and I did not have continuous direct contact. It was during this time that I believe he must have confided in or asked the opinions of other officers regarding what this informant had told him. I based this belief on the fact that towards the end of the day I heard a SWAT officer in a large group commenting on Passo and some improper activity occurring on graveyard. I don't recall which officer it was who made these comments, the full team was scheduled for training.

When the training day was over Officer Peach and I went to my desk in the Detective Bureau. We used my computer to query Officer Passo's unit history on the possible days in question. We were searching Passo's unit history for areas that listed people being run for warrant checks. I was doing the manual work with the computer. Officer Peach was reading the information. This was necessary because he did not tell me the name of the informant or her date of birth. Because this was obviously an informant that he had known and used in the past, I did not ask him to reveal the informant's identity to me.

0( 238

Peach Conversation Page 3 of 4

We checked several days of Passo's unit history spanning a couple of weeks but he stated that he did not see the informant listed in any of the data. Officer Peach and I discussed the procedures for running warrant checks and noted that it is possible to run a subject on the MDC while on duty but not have it show up in your unit history based on the query we were running.

The next day I called Mike Eckley, who is in charge of the Police Management Information Systems. I did not mention any aspects of the case to Mr. Eckley; I only inquired as to the procedures to go about seeing which officer ran a specific person during a certain time period. Mr. Eckley explained the procedures to me regarding going through the chain of command. Several days later I spoke with Officer Peach and told him the results of my contact with Mr. Eckley.

Officer Peach and I agreed that the facts of this case were that there was a known prostitute involved in criminal activity who had made an accusation against a police officer. This prostitute would not come forward and even if brought to the SBPD would not talk to Internal Affairs detectives about the case. The dilemma for Officer Peach was that he felt there was a dirty police officer working Shift 4, but he had no corroborating evidence to back up the informant's claim. Officer Peach did not want to jeopardize the credibility of a policeman based on mere statements of an informant without having proof.

Within a week or two I contacted Detective Diaz from Internal Affairs. I told him of Officer Peach's information and dilemma. I told Detective Diaz that Officer Peach did not want to put a cloud over the name of a good police officer but that Officer Peach believed that Officer Passo may be involved in criminal activity with this prostitute. I told Detective Diaz that Officer Peach was reluctant to come forward officially with this information because the claim at this point was lacking any corroborating evidence. While speaking to Detective Diaz he told me that this case had already been looked into and it had not been substantiated. I told him that I would tell Officer Peach that I had this discussion with him and he could come talk to Detective Diaz about the case at a later date. A few days later I told Officer Peach of the conversation I had with Detective Diaz.

In the meantime I learned that Officer Peach had spoken to Sergeant Kilbride about the incident. I'm not sure how much detail Officer Peach went into as I was not present for this conversation. Sgt. Kilbride reportedly told Officer Peach that if this informant was being truthful then the officer would eventually be caught because this pattern of behavior would eventually surface. Hearing this explanation seemed to set Officer Peach at ease. He appeared upset that we had a dirty cop on the department. Knowing this dirty cop would be caught seemed to give him peace of mind.

It was some months later that Officer VanRossum's name came out as being a Shirt 4 officer involved in improper sex acts with prostitutes.

On Thursday, 1-17-02, I became aware of rumors that there was a second person involved with the VanRossum prostitute scandal. I heard talk of more search warrants being prepared.

0(239)

Peach Conversation Page 4 of 4

On Sunday, 1-20-02, I learned that Officer Peach was said to be the subject of this new investigation.

On Monday, 1-21-02, in the early hours of my workday I went to you and Lieutenant Mankin and told you of my above stated contacts with Officer Peach. I was then directed to write this memo.

Since speaking with the two of you, I have tried to narrow down the date of when Officer Peach first told me about the informant and the accusation she had made. So far, I have come up with two most likely times for this to have occurred, 1-25-01 or 5-9-01. Both were full team training days with similar activities.

I don't recall running a unit history inquiry on Officer Passo other than as described in this memo. Perhaps MIS could provide information as to the date this was done on my computer.

Please contact me if there are any questions I can answer for you.

#### City of San Bernardino San Bernardino Police Department Interoffice Memorandum

To:

Sergeant B. Ringnes

From:

Detective J. Vasek

Subject:

Officer Peach

Date:

January 24, 2002

Copies:

Lieutenant Mankin

Per our conversation of 1-23-02:

I was assigned to MET in January of 2000. When I came into the detail Officer Peach had already been with the unit for some years. We rode together as partners for the first few weeks. During this time he provided OJT (on the job training) for me. One issue he covered early on was the necessity of gathering information from suspects and informants. The intelligence that the MET unit gathers links suspects to violent felony crimes.

Officer Peach told me about his contacts and the relationship he developed with a known violent gang member named Tito Perez. He told me of other officers contacting Perez and not getting any cooperation from him based on the way they approached Perez and any prior contacts they have had with him. He told me of how he talks to Perez and the information he learns just by having what appears to the suspect as a casual conversation.

Officer Peach gave other examples of using informants to our advantage. One such example came to mind just these past few days. It was the example of an informant that keeps in contact with him through letters even when the informant is in custody. Officer Peach never told me the informant's name but I think it was a female because he referred to the informant as "she" when he gave the example. The lesson learned from this example was that an informant that is properly handled could continuously be used and manipulated to supply vital information necessary to solve crime.

Officer Peach did not tell me how often he received letters from this informant or when the first/last time was that he got a letter. He did not tell me what address this letter(s) was sent to. I don't remember if he told me that he answers the letters or not. The basis for this example was to show me how basic informant work can yield almost a loyalty (for lack of a better word) from a criminal. He used this example to show me how good he was with developing informants.

Officer Peach's comments to me about working informants and other aspects of MET were not confined to the first weeks of January 2000. I am not sure when he told me about receiving letters from the informant. We have continuously spoken about aspects of police work at various

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241

Peach Conversation Page 2 of 2

MET functions. Some topics discussed are revisited weeks or months later. As with my last memo to you, I cannot be specific as to the date Officer Peach told me about receiving the letter from the informant. I believe it was sometime in the year 2000 but it could have been in 2001 as well.

I don't know what other information known to me about Officer Peach would be helpful to the investigation. I last had contact with him on 1-9-02 at SWAT training. I may have run into him in the halls at work since then but that would only be to say hi in passing. I learned of the possibility of this investigation on 1-17-02 but I did not know who this involved. I did not have any contact with Officer Peach on that day. I learned that Officer Peach was the focus of this investigation on 1-20-02. I have not had any contact with Officer Peach anytime since 1-16-02.

# **Supporting letter by Detective Hanley**

#### City of San Bernardino San Bernardino Police Department Interoffice Memorandum

To:

Sergeant B. Ringnes

From:

Detective B. Hanley Wy

Subject:

Officer Peach's informant

Date:

January 22, 2002

Copies:

On 1-21-02, I was asked by Lieutenant Mankin to complete a memorandum that described the circumstances around how I learned that Officer Steve Peach had an informant who made allegations against an unnamed police officer regarding inappropriate sexual conduct.

During February or March of 2000 I had a conversation with Detective Vasek in which he described to me a conversation he had with Officer Peach. He told me that during this conversation Steve Peach was very upset about a story he had heard from his informant. According to Detective Vasek, Officer Peach said that his informant alleged that a San Bernardino police officer raped her. Detective Vasek told me the following account, explaining to me that this was what Officer Peach had shared with him one afternoon during SWAT training.

Officer Peach's informant told him that one evening she was taken to a COP office where a police officer had sexual intercourse with her. According to Officer Peach's informant, the officer who had sex with her in the COP was unnamed and was reported to have removed all of his clothing during the encounter. At the conclusion of the event, the officer put his clothes back on, reset the alarm and took the woman, who was a known prostitute, back to the area where she was picked up. According to Detective Vasek, Officer Peach's informant said that she was very afraid that she would be hurt by the officer because the officer told her to get back in the car when she tried to leave the COP after the encounter.

Upon hearing this I explained to him that I felt the situation needed to be reported and he told me that he had a conversation with Detective Diaz of Internal Affairs. He said this conversation took place in the gym shortly after he and Officer Peach had their conversation. Detective Vasek further explained to me that he and Officer Peach attempted to check the unit history of an officer matching the general description of the officer accused. He told me that the officer's unit history they checked was Officer Passo.

Detective Vasek explained to me that Officer Peach was very concerned about accusing anyone of such a serious charge without some kind of corroborating information. Vasek told me that

THE SBPD IS COMMITTED TO PROVIDING:
PROGRESSIVE QUALITY POLICE SERVICE;
A SAFE ENVIRONMENT TO IMPROVE THE QUALITY OF LIFE;
A REDUCTION IN CRIME THROUGH PROBLEM RECOGNITION AND PROBLEM SOLVING

Page 2 of 2

after briefly checking Officer Passo's unit history, he and Officer Peach were unable to find anything that corroborated this accusation.

Detective Vasek explained to me that he recognized the seriousness of this conversation and that was why he spoke to Detective Diaz. Detective Vasek told me that his conversation with Detective Diaz included a comment by Detective Diaz that Sergeant Blackwell from Internal Affairs would be notified about this accusation. Based on this information I was confident that Detective Vasek had made proper notifications, reporting this incident.

On 1-20-02, I learned that Officer Peach had been placed on administrative leave. There were a variety of rumors surrounding the circumstances of Peach's removal from duty as well as the removal of Officer VanRossum from duty. Upon hearing this I recalled the conversation I had with Detective Vasek. At approximately 2000 hours, 1-20-02, I had a conversation with Detective Vasek where I encouraged him to contact Sergeant Ringnes or Lieutenant Mankin and ensure that he and his concerns regarding the information provided by Officer Peach months ago was known to them. Detective Vasek told me that on Monday, 1-21-02, the first thing in the morning he would contact Lt. Mankin and inform him of this.

My concern for informing Detective Vasek of these rumors was to ensure that any misunderstanding surrounding his knowledge of Officer Peach's informant's allegation was well documented so as to avoid any misunderstanding surrounding these events.

/rm

# **Use of Criminal and Law Enforcement Information Policy**



CHAPTER #26 PROCEDURE #3

#### USE OF CRIMINAL JUSTICE AND LAW ENFORCEMENT INFORMATION

The San Bernardino Police Department maintains criminal record information and has full access to many State and Federal automated computer systems. As an employee of the San Bernardino Police Department, you may have access to such information. Misuse of such information adversely affects the civil rights of the individual concerned, violates regulations established by the Department of Motor Vehicles and the Department of Justice, and violates the law.

11142 PC AUTHORIZED PERSON FURNISHING RECORD OR INFORMATION TO UNAUTHORIZED PERSON

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

13302 PC FURNISHING TO UNAUTHORIZED PERSON BY EMPLOYEE OF LOCAL AGENCY

Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the information is guilty of a misdemeanor.

EXCERPT FROM DEPARTMENT OF MOTOR VEHICLES REGULATIONS AND GUIDELINES

Information supplied to law enforcement agencies from the Department of Motor Vehicle records is intended strictly for the purpose of enforcing the law and shall not be given out to unauthorized second parties. This policy applies whether the information is obtained through a remote EDP terminal or by regular request from D'IV Headquarters. Information is not to be relayed to any unauthorized second party, including the licensee himself or herself.

Such misuse is a misdemeanor under California Law as it pertains to criminal record information and in direct violation of this department's policy; therefore, any employee of this department who is responsible for such misuse is subject to disciplinary action which may include dismissal. Violations of the law may also result in additional legal and civil action.

I have read the above and understand the policy regarding misuse of such information.

DATE: 21 DEC 90

STEPHEN KENNETH PEACH (Print or Type Name)

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## Writ of Mandate against S.B.P.D.

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Attorneys for Petitioners

### SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN BERNARDINO-- CENTRAL DISTRICT

STEPHEN PEACH and SAN BERNARDINO POLICE OFFICERS' ASSOCIATION,

Petitioners,

vs.

CITY OF SAN BERNARDINO; CITY OF SAN BERNARDINO POLICE DEPARTMENT; GARRETT ZIMMON, CHIEF OF POLICE, CITY OF SAN BERNARDINO POLICE DEPARTMENT; and ROES 1 through 10,

Respondents.

Case No.:

MOTION FOR INJUNCTIVE RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE (Gov. Code Section 3309.5)

Date: Time: Dept.:

#### INTRODUCTION

Respondents (the "Department") seek to terminate petitioning police officer Peach's employment based on statements he made during a departmental interrogation that failed to comply with the requirements of the Public Safety Officer's Procedural Bill of Rights Act, and on evidence obtained as a result of those statements and pursuant to an improperly implemented search warrant. Most

Motion for Injunctive Relief Page 1 of 10 egregious of these violations was the Department's failure to inform Officer Peach of the nature of its investigation prior to interrogating him at length about it. Because this Court previously found the Department violated the Act-just five months ago-it is evident an injunction is necessary to deter future violations.

#### STATEMENT OF FACTS

At about midnight on January 18, 2002, as he was exiting his patrol car at the station, Officer Peach was surrounded by six members of the San Bernardino Police Department who escorted him to the Department's Internal Affairs Interview Room. (Officer Peach's declaration is filed herewith.)

 At 12:06 AM, Officer Peach was served a warrant to search his locker at the Department. The warrant was not endorsed for service at any time of the day or night, and there were no facts in the affidavit justifying night time service, nor a request that the warrant be endorsed for night service. (The warrant, affidavit and return are attached hereto as Exhibit A.) Officer Peach was not present during the search, did not consent to the search, and was not informed the search would be conducted in advance.

In the interview room, Officer Peach was made to wait for two hours before being interviewed. During that time he was reassured by a detective from the Internal Affairs Department there was nothing to worry about and the interview was no big deal, but no one would tell Officer Peach what it was to be about.

Finally, at 2:10 AM, Officer Peach was told he was under criminal investigation and was being interrogated about a rape charge. That is all he was told in advance of the interrogation-not who made the charge, nor when or where it was supposed to have happened. Nor did the investigators inform Officer Peach of their name or rank, who was in charge of the investigation, or who would be interrogating him. (The Department's synopsis of the interrogation is attached hereto as Exhibit B.)

Motion for Injunctive Relief Page 2 of 10 At first Officer Peach asserted his right to silence, but he was very concerned and curious about what the allegation was all about. Knowing there was no basis for the charge, he agreed to talk just in order to find out what was going on. During the course of the interrogation, it came out that a prostitute nicknamed "Looney" had incriminated Officer Peach while she was being questioned during a department-wide investigation stemming from charges that another San Bernardino police officer had been sexually abusing prostitutes.

Officer Peach denied having had any sexual relations with Looney. He also had an iron-clad alibi for the time he was supposed to have been raping Looney: it turned out that during that time, Officer Peach was transporting Looney in his patrol car to jail, followed-at Officer Peach's request-by the narcotics lieutenant who was at the scene of the arrest. Apparently the narcotics lieutenant corroborated this, because the rape allegation was subsequently found unsustainable by the Department, and Officer Peach was never formally charged.

The interrogating detective then showed Officer Peach a photograph of Michella Roan, whom Officer Peach recognized as a prostitute he had used as an informant in the past. Officer Peach was questioned at length about Michella Roan.

It appears that Ms. Roan had also been interviewed by the Department in connection with the prostitute/police officer investigation, during which she had stated that Officer Peach was her "friend," and that they had once had consensual sexual intercourse. It is uncontroverted that Ms. Roan had nothing to do with the charges made by Looney against Officer Peach. She was not a witness in that investigation, nor had she made similar charges against Officer Peach herself.

Even though this was an entirely different-and non-criminal-interrogation, however, the Department failed to inform Officer Peach he was under investigation for his relationship with Ms. Roan prior to questioning him about it. And "under investigation" he definitely was, for prior to their interview with Officer Peach the interrogating officers had already questioned Ms. Roan about her relationship with

Motion for Injunctive Relief Page 3 of 10 Officer Peach, and obtained several letters Officer Peach had written her. After the interrogation the Department obtained a letter Ms. Roan had written to Officer Peach. The ultimate result of these blind siding tactics was Officer Peach's dismissal from the Department.

#### POINTS AND AUTHORITIES

#### I. The Department Violated the Act In $\,$ Its Interrogation of Officer Peach

The Public Safety Officers' Procedural Bill of Rights Act (Government Code sections 3300 et seq.-hereafter "the Act") at section 3303 <sup>1</sup> provides that "[w]hen any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

 Perhaps the most important of the "conditions" contained in this section is that officers being interrogated must be told, in advance, the subject matter of the interrogation.

#### A. <u>Officer Peach Was Not Told the Nature of the Investigation In</u> Advance of Being Interrogated About It

Prior to the interrogation the Department told Officer Peach he would be questioned about a rape charge. He was not told, however, who had made the charge, or any other information about it at all. Because he knew the charges were unfounded and wanted to know what the allegation was all about, Officer Peach agreed to talk to the interrogating officers. The first part of the interview did concern an allegation of rape, refuted by Officer Peach and later determined to be unfounded.

Officer Peach was not informed at any stage of the interrogation-including

Motion for Injunctive Relief Page 4 of 10

<sup>&</sup>lt;sup>1</sup> Unless otherwise stated, all section references are to the Government Code.

 midway through, when the interrogators switched the topic of questioning-that he was also being investigated for having a relationship with Michella Roan. Inasmuch as Ms. Roan had nothing to do with any allegation of rape against Officer Peach-not as a potential witness nor as a victim-it is indisputable the questions about her were a "different" interview. Nonetheless, the Department interrogated Officer Peach at length about his relationship with Ms. Roan, and later terminated his employment on the basis of his responses to those questions.

The Department's failure to inform Officer Peach in advance that he would be interrogated about his relationship with Ms. Roan was in direct violation of Government Code section 3303(c)'s provision that a public safety officer under investigation "shall be informed of the nature of the investigation prior to any interrogation."

Had Officer Peach been informed of the true nature of the second part of the investigation, he would have requested representation. <sup>2</sup> Moreover, the violations of section 3303 might have affected the content of Officer Peach's statements to the investigators, as well as the investigators' version of his statements. (*See, Hanna v. City of Los Angeles* (1989) 212 Cal.App.3d 363, 374—multiple violations of section 3303 may have affected content of officer's statements because officer may have been "'" too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors;""thus it was "possible a different outcome would have been reached had respondent been afforded the protections of the Act he was denied.")

#### B. Officer Peach Was Not Told Who Would Be Interrogating Him

Nor was Officer Peach informed of the rank, name, and command of the officer in charge of the interrogation and the other interrogating officers, in contravention of Government Code section 3303(b)'s charge that "[t]he public safety officer under investigation shall be informed prior to the interrogation of the rank,

Motion for Injunctive Relief Page 5 of 10

<sup>&</sup>lt;sup>2</sup> See declaration of Officer Peach filed herewith.

name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation."

## C. The Interrogation Was Conducted in the Middle of the Night, Rather Than While Officer Peach Was On Duty or During Normal Waking. Hours, And Was Not For a "Reasonable" Length of Time

At subdivision (d) section 3303 states: "The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated." It was not "reasonable" to force Officer Peach to wait for two hours prior to being interrogated, especially without letting him know the nature of the ensuing investigation so he could at least use the time productively to determine if he should seek representation. By the time the interrogation was finished, it had been over three hours and the time was 3:18 AM.

Government Code section 3303(a) provides in full "[t]he interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed."

The Department's interrogation was conducted not only while Officer Peach was off-duty, but in the wee hours of the morning, from about midnight to after three AM. And inasmuch as investigating a consensual relationship with Ms. Roan-referred to as a "friendship" by both parties-cannot be deemed "serious" enough to require a middle-of-the-night interrogation, the Department violated this subdivision of the Act as well.

#### E. The Department Was Not Exempt From Obeying the Act

Motion for Injunctive Relief Page 6 of 10

<sup>&</sup>lt;sup>3</sup> But then, perhaps that was the point.

#### **Under the Exception for Criminal Investigations**

Section 3303 does "not apply . . . to an investigation concerned **solely** and **directly** with alleged criminal activities." (Emphasis added.) The Department told Officer Peach he would be interrogated pursuant to a criminal investigation into allegations of rape. After he agreed to waive his right to silence on that basis, however, his interrogators also questioned Officer Peach about his relationship with Michella Roan.

There were no "criminal activities" alleged that had anything to do with Ms. Roan. She was not a witness to, nor a victim of, any criminal conduct. Because the questioning about Ms. Roan was not concerned "solely and directly with alleged criminal activities," therefore, the Department was not exempt from complying with the provisions of the Act under the exception for criminal investigations. <sup>4</sup>

In California Correctional Peace Officers Association et al. v. State of California (2000) 82 Cal. App.4th 294, ("CCPOA") the Department of Justice ("DOJ") interviewed officers employed by the California Department of Corrections ("DC"), in the course of which provisions of section 3303 were violated. The CDC claimed it was exempt because the DOJ-a separate organization-conducted the interviews, which were pursuant to a criminal investigation.

The reviewing court held that investigations made by an officer's employer do not come under the exception from compliance with the Act for criminal investigations. The *CCPOA* court found that the CDC and DOJ were acting "in concert," in light of the fact that the "interviews took place during work hours or immediately thereafter, on work premises." "If these provisions are not limited to investigations conducted by outside agencies that are substantially independent of the employer," . . . . the court reasoned, "[a]lmost every administrative

Motion for Injunctive Relief Page 7 of 10

<sup>&</sup>lt;sup>4</sup> Moreover, Officer Peach was paid for off duty time spent in the interview, and the interview was conducted in the Department's Internal Affairs interview room by members of the Department.

investigation of alleged misconduct could be recast as a criminal investigation to avoid the requirements of the Act." (*CCPOA* at p. 309.) Casting the Roan investigation as a "criminal investigation" to avoid compliance with the Act is just what the San Bernardino Police Department has attempted to do here.

### II. THE DEPARTMENT VIOLATED THE ACT IN ITS SEARCH OF OFFICER PEACH'S PERSONAL PROPERTY

Government Code section 3309 states in full: "[n]o public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency." (Emphasis added.)

The Department searched Officer Peach's locker to obtain evidence of his relationship with Ms. Roan. Officer Peach was not present during the search, did not consent to the search, and was not informed the search would be conducted in advance.

Penal Code section 1533 provides that "[i]n the absence of [a direction in a search warrant that it may be served at any time of the day or night], the warrant shall be served only between the hours of 7 a.m. and 10 p.m." The warrant used by the Department for its search contained no direction that it could be served at any time of the day or night, and the affidavit neither requested night service nor stated facts justifying a night search of Officer Peach's locker. Nonetheless, the Department served the warrant at 12:06 AM.

Therefore, all items seized in the search of the locker must be suppressed. (*Tuttle v. Superior Court of San Luis Obispo County* (1981) 120 Cal.App.3d 320, certiorari denied 102 S.Ct. 571, 454 U.S. 1033, 70 L.Ed.2d 477--"Failure to comply with this section requiring showing of good cause for nighttime service of a search warrant compelled suppression of all items seized upon execution of search

Motion for Injunctive Relief Page 8 of 10 warrant before 7:00 a.m.")

The Department also obtained a search warrant to obtain a letter written by Ms. Roan to Officer Peach, based on information gleaned from Officer Peach during the improper interrogation. This evidence, as well, must be suppressed as it arises out of the interrogation in violation of the Act.

## III. THE DEPARTMENT HAS DEMONSTRATED THAT, UNLESS RESTRAINED FROM DOING SO, IT WILL PERSIST IN VIOLATING OFFICERS' RIGHTS

This Court found that the Department violated Government Code sections 3303(h) and 3303(i) of the Act in *Dwyer et al. v. City of San Bernardino et al.*, case number SCVSS 082249, in its judgment filed June 12, 2002. <sup>5</sup> Because that case-in conjunction with the instant action—demonstrates the Department's proclivity to ignore the express provisions of the Act, an injunction should issue prohibiting the Department from continued violations of the Act.

## AS A REMEDY FOR VIOLATING THE ACT AND TO DETER FUTURE VIOLATIONS, THE DEPARTMENT SHOULD BE ENJOINED FROM TAKING ANY PUNITIVE ACTION AGAINST OFFICER PEACH, OR IN THE ALTERNATIVE, FROM USING ANY OF THE STATEMENTS OR EVIDENCE OBTAINED AS A RESULT OF THE IMPROPER INTERROGATION IN ANY DISCIPLINARY PROCEEDINGS AGAINST OFFICER PEACH

The Department should be enjoined from taking any punitive action against Officer Peach, as a remedy for its multiple violations of the Act, and to deter such illegal conduct in the future. (California Correctional Peace Officers Association et al. v. State of California, supra, 82 Cal.App.4th 294, 312; Gov. Code § 3309.5(c): "In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public

Motion for Injunctive Relief Page 9 of 10

<sup>&</sup>lt;sup>5</sup> A copy of the Notice of Decision and judgment is attached hereto as Exhibit C; Petitioners request that the Court take judicial notice of the record and file of all proceedings in this case.

safety department from taking any punitive action against the public safety officer.")

In the alternative, Officer Peach's statements made in the interrogation and any evidence obtained as a result of them, should be suppressed. (*City of Los Angeles v. Superior Court of Los Angeles County et al.* (1997) 57 Cal.App.4th 1506, 1515-1516-suppression appropriate where officer not informed of nature of investigation in advance but statements could come in for impeachment; *Hanna v. City of Los Angeles* (1989) 212 Cal.App.3d 363, 367 6--suppression warranted as a remedy for multiple violations of section 3303.) Thus, at the very least, the Department should be prohibited from producing evidence of the statements obtained in the improper interrogation, and any evidence obtained as a result of them, at any future administrative hearings or other proceedings involving discipline of Officer Peach.

#### CONCLUSION

For the foregoing reasons, petitioners request that this Court issue an injunction prohibiting respondents from taking any punitive action against Officer Peach, or in the alternative from using any of the statements made in the improper interrogation of him, or evidence arising therefrom, in any future disciplinary actions against Officer Peach, and that respondents be enjoined from any future violations of the Act.

Date: November 5\_, 2002

Law Office of Castle & Krause

Robert W. Krause, Attorney for Petitioners

<sup>6</sup> To the extent that the *Hanna* court's holding was based on the fact that the officer was not given access to investigative reports, it was overruled by *Pasadena Police Officers Association* 51 Cal.3d at 576. Nevertheless, the Hanna court found suppression appropriate based on multiple violations. (P.1517)

Motion for Injunctive Relief Page 10 of 10

## **Response to suit by City Attorney**

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Facsimile: (909) 384-5238 RECEIVED NOV 2 5 2002 Attorneys for Respondents, CITY OF SAN BERNARDINO, CITY OF SAN BERNARDINO POLICE DEPARTMENT, GARRETT ZIMMON, CHIEF OF POLICE CASTLE & KHAUSE 8 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 COUNTY OF SAN BERNARDING-CENTRAL DISTRICT 11 STEPHEN PEACH and SAN BERNARDINO POLICE OFFICERS' ASSOCIATION, SCVSS 096534 12 RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF 13 Petitioners, CITY OF SAN BERNARDINO; CITY OF SAN BERNARDINO POLICE DEPARTMENT; GARRETT ZUMON, CHIEF OF POLICE; CITY OF SAN BERNARDINO POLICE DEPARTMENT, and ROES 1 through 10, 14 Date: 12/04/02 Time: 8:30 a.m. Dept.: S15 15 17 Respondents. 18 Respondents' CITY OF SAN BERNARDINO, CITY OF SAN BERNARDINO POLICE 19 DEPARTMENT and GARRETT ZIMMON, CHIEF OF POLICE, CITY OF SAN BERNARDINO 20 POLICE DEPARTMENT (hereinafter "City"), hereby oppose Petitioners' Motion for Injunctive 21 22 Relief as follows: 23 STATEMENT OF FACTS 24 In or about November 2001, a criminal investigation was initiated to investigate allegations 25 of sexual assaults by a San Bernardino Police Officer on multiple female victims, primarily 26 prostitutes, over an approximate two year period. As part of this investigation, Michella Roan was 27 28 interviewed at Central California Women's Facility in Chowchilla, California where she was SDE/ed[Peach.oss,wpd] RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INTENDITIVE RELIEF

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incarcerated at the time. Ms. Roan was contacted as a potential victim and during the course of her 2 | interviews on December 14, 2001, January 9, 2002 and January 16, 2002, it was disclosed that she 3 had an ongoing relationship with Officer Peach that included sexual intercourse between the two. During these interviews, Ms. Roan also advised Detectives that another prostitute known by the name of "Looney" was involved in sexual conduct with San Bernardino Police Department police officers.

Further investigation revealed that "Looney" was Angelique McMillan, who was located and contacted by Detectives Lindsey and Mulleavey on January 16, 2002. At that time, Ms. McMillan was brought to the San Bernardino Police Department for questioning. Ms. McMillan was interviewed on January 16, 2002 and January 17, 2002. During the course of these interviews, she alleged she had been raped by an on-duty San Bernardino Police Department police officer. After viewing a photo line-up, Ms. McMillan identified Officer Stephen Peach as the officer with whom she was forced to have sexual intercourse.

After concluding Ms. McMillan's interview, members of the task force investigating allegations of rape by San Bernardino Police Department police officers met, at which time Detective William Rogers obtained the information necessary to obtain a search warrant to search Officer Peach's locker, car and other storage items located at the San Bernardino Police Station. A search warrant was obtained at 11:30 p.m. that evening (January 17, 2002) and served on Officer Peach when he returned to the station at approximately 12:06 a.m. on January 18, 2002. Officer Peach was then escorted to the Internal Affairs interview room for questioning. Although interview rooms were available in the Detective Bureau, It was decided by the criminal investigators not to use one of these rooms so as not to unnecessarily subject Officer Peach to the scrutiny of his peers present in the Department at that time.

The search of Officer Peach's locker concluded at approximately 2:00 a.m. at which time Detectives Otey and Lindsey began their interview of Officer Peach. Prior to questioning Officer Peach, Detective Lindsey advised him of his Miranda rights as well as the criminal allegations being investigated. Officer Peach was also advised that the interview was being audio taped.

After being advised of his rights, Detective Lindsey asked Officer Peach if he wanted to talk SDE-ad (Peach ope. apd)

RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

to the detectives regarding the criminal charges against him at which time he declined, signing a
 form reflecting this decision.

Detective Lindsey proceeded to conclude the interview when Officer Peach voluntarily elected to speak to the detectives in regard to the criminal allegations being investigated. Therefore, the interview continued.

During the course of Officer Peach's criminal interview, questions were asked regarding his relationship with Michella Roan, the woman who had referred investigators to Angelique McMillan, and who had received letters from Officer Peach. The purpose of this questioning was to 1) test Officer Peach's credibility and truthfulness with Detectives; 2) to clarify the relationship between Officer Peach and Ms. Roan to determine whether or not Ms. Roan was a victim of sexual misconduct by Officer Peach; and 3) to determine whether Officer Peach would admit to knowing Ms. Roan who was possibly a witness to the rape alleged by Angelique McMillan.

An administrative investigation was initiated subsequent to the criminal interview in regard to Officer Peach's conduct with Michella Roan. This investigation ultimately concluded with a recommendation to terminate Officer Peach's employment with the San Bernardino Police Department. That matter is currently set to be heard by the City of San Bernardino Civil Service Board on December 10, 2002 through December 13, 2002 at which time the Civil Service Board will decide whether to uphold the Police Department's decision to terminate Officer Peach. (See Declaration of Assistant Chief Michael Billdt attached hereto as Exhibit "1").

2.

## THE PUBLIC SAFETY OFFICERS' PROCEDURAL BILL OF RIGHTS DOES NOT APPLY TO THE CRIMINAL INTERVIEW OF OFFICER PEACH SINCE THE INTERVIEW WAS SOLELY AND DIRECTLY RELATED TO A CRIMINAL INVESTIGATION

The Public Safety Officers' Procedural Bill of Rights Act found in Government Code §§3300-3311 (hereinafter "Act") sets forth certain procedural rights that must be accorded to police officers when they are subject to investigation or discipline. Government Code §3303 sets forth the rights of a police officer when being investigated and interrogated. Specifically, Government Code §3303 sets forth provisions regarding the nature and scheduling of an interrogation subject to the

SOE-ed[Peach opp.wpd]

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RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

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Act; representation at investigations and interrogations; self-incrimination and "Lybarger" warnings; documents to be provided; tape recording of interrogations; and assignment of the accused officer during an investigation.

In the subject matter, Petitioners allege that the Act was violated by Respondents as a result of Detectives questioning Officer Peach on January 18, 2002 about criminal allegations of rape and his relationship with Michella Roan. Specifically, Petitioners claim Officer Peach was not informed of the nature of the investigation prior to being questioned, or who would be questioning him. Petitioners also claim that the interview was conducted in the middle of the night, rather than while Officer Peach was on duty or during normal waking hours, and that the interview was not for a reasonable length of time, all allegedly in violation of the Act.

However, the Act itself provides for exceptions from the procedural requirements set forth in Governmen: Code §3303:

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities. Government Code §3303(2), (emphasis added.)

The January 18, 2002 interview of Officer Peach by San Bernardino Police detectives solely and directly related to alleged criminal conduct on the part of Officer Peach and was not subject to the provisions set forth in Government Code §3303. Despite what Petitioners allege in their moving papers, it is simply not true that the criminal activities being investigated had nothing to do with Michella Roan. Not is it true that at the time of the criminal interview, Ms. Roan was not a witness to, nor a victim of, any criminal conduct. The uncertainty of Ms. Roan's relationship with Officer Peach is one of the reasons detectives questioned Officer Peach about her.

As set forth in Detective Lindsey's Declaration, attached hereto as Exhibit "2", Detective Lindsey was involved in an investigation of alleged criminal sexual misconduct by San Bernardino police officers and there was a possibility that Ms. Roan may have been a victim of such criminal conduct. Additionally, Detective Lindsey states that Ms. Roan may have been a witness to the alleged rape of Angelique McMillan by Officer Peach in that Ms. Roan herself referred Detectives

RESPONDENTS' OPPOSITION TO PETITIONERS' MOTHIN FOR INJUNCTIVE RELIEF

to Ms. McMillan based upon her having information about a relationship between Ms. McMillan and
 a San Bernardino Police Department police officer. Detective Lindsey needed to question Officer
 Peach about Ms. Roan to determine whether he would admit to knowing her.

Lastly, Detective Lindsey, utilizing established investigative techniques, questioned Officer Peach about Ms. Roan in regard to matters in which the detectives knew the answers, in order to determine how truthful, or as the case may be, untruthful he was being in the interview.

Clearly, the reasons articulated by Detective Lindsey for questioning Officer Peach about Ms. Roan solely and directly relate to Detective Lindsey's criminal investigation of Officer Peach. In fact, the criminal investigation would have been incomplete if the detectives investigating the alleged criminal conduct had not questioned Officer Peach about Ms. Roan.

In their moving papers, Petitioners cite California Correctional Peace Officer's Association, at al. v. State of California, 82 Cal.App.4th 294 (2000) ("CCPOA") for the premise that investigations made by a police officer's employer do not come under the exception from compliance with the Act for criminal investigations. However, Respondents respectfully disagree with the First District Court of Appeal's interpretation of Government Code §3303(i). In looking at the introductory paragraph of Government Code §3303, it specifically makes the provisions of Section 3303 applicable to interrogations by members of a Public Safety Officer's "employing public safety department." In City of Los Angeles v. Superior Court, 57 Cal. App.4th 1506, 1515 (1997) the court held that the exceptions found in Government Code §3303(i) apply to the entirety of the protections provided for in section 3303. Since subdivision (i) provides for an exception from the provisions set forth in section 3303 for interrogations solely and directly related to a criminal investigation, and since the provisions set forth in section 3303 apply to interrogations by a police officer's employer, criminal interrogations by an officer's employer solely and directly related to a criminal investigation are excepted from compliance with the Act.

Furthermore, the facts found in CCPOA are quite different from what occurred with Officer Peach. The interrogated officers in CCPOA were told that they would not be allowed legal representation during questioning or the opportunity to consult with counsel ahead of time. Interviewed officers were not informed whether they were a "witness" or a "target" until interviews

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RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

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were underway, nor were they given any advance notice of the nature of the investigation. 2 Additionally, they were threatened with disciplinary action if they did not answer investigator's 3 questions, and were told that any tape recordings made by them would be seized as criminal evidence 4 at the end of the interviews.

Such is not the case with Officer Peach. At the start of his interview, Detectives informed 6 Officer Peach that the interview was being audio taped. Officer Peach was informed of the nature 7 of the allegations and was read his Miranda rights. After refusing to answer questions, Detectives 8 would have concluded the interview but for the fact Officer Peach voluntarily elected to speak with 9 the interviewing detectives about the criminal allegations they were investigating. Last but not least, 10 at no time during this interview or criminal investigation was Officer Peach threatened with 11 disciplinary action if he did not answer the detectives' questions. As such, the criminal interview 12 of Officer Peach by his employing agency did not violate his rights under the Act and therefore. 13 injunctive relief is not appropriate.

### THE SAN BERNARDING POLICE DEPARTMENT SEARCHED OFFICER PEACH'S LOCKER PURSUANT TO A VALID SEARCH WARRANT

On January 18, 2002, at approximately 12:06 a.m. and while he was on duty, the San Bernardino Police Department served Officer Peach with a valid search warrant. The purpose of this warrant was to conduct a search of Officer Peach's locker at the San Bernardino Police Station as part of an investigation into allegations of criminal conduct on the part of Officer Peach. As discussed more fully below, the subject warrant authorized nighttime service based upon good cause justifying service at night.

A. The Warrant Served On Officer Peach And Executed November 18, 2002 Authorized Service At Any Time.

In regard to the service of search warrants Penai Code §1533 states:

Upon a showing of good cause, the magistrate may, in his or her discretion, insert a direction in a search warrant that it may be served at any time of the day of night. In the absence of such a direction, the warrant shall be served only between the hours of 7 a.m. and 10 p.m. Penal Code §1533.

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RESPONDENTS: OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

The search warrant at issue in this matter specifically states that the warrant was to be executed "at any time of the day, or as the case may be, according to Section 1533, to make 3 immediate search..." This language refers to Fenal Code §1533's provision allowing a magistrate to insert a direction in the search warrant that it may be served at any time of the day or night. The 5 fact that the judge was contacted at 11:30 p.m. to obtain a search warrant, coupled with the fact the warrant provided for immediate search, evidences the judge's intent to provide for service at night.

Additionally, in looking at the warrant, it appears the judge inserted the date January 17, 2002 in reference to the car to be searched so that the detectives were specifically authorized to search the car driven to work by Officer Peach on November 17, 2002, the night the warrant was sought. This 10 also indicates an intent on the part of the issuing judge for an immediate, nighttime search. 11 Therefore, service of the search warrant on Officer Peach at or about 12:06 a.m., approximately 30 12 minutes after obtaining the magistrate's signature on the warrant, is clearly authorized by the 13 language of the warrant. Thus, the search is valid.

#### B. Good Cause Existed For Nighttime Service Of The Subject Search Warrant.

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As previously stated, Penal Code §1533 provides for nighttime service of a search warrant 16 upon a showing of good cause. A magistrate need not rely solely on the facts articulated by the affidavit as being those which justify nighttime service. See, People v. Lopez, 173 Cal. App.3d 125. 138 (1985). Furthermore, the court in People v. Cletcher, 132 Cal.App.3d 878 (1982) held that Penal Code §1533 does not require a separate statement of good cause for nighttime service. Id. as 882. In so holding, the court explained:

"'If an affidavit, read in a common sense manner and as a whole, reasonably supports the informer that the interests of justice are best served by the authorization of nighttime service, provision for such service in a warrant is proper." \*People v. Cletcher. 132 Cal.App.3d at 882. citing \*People v. McCarter, 117 Cal.App.3d 824, 906-07 (1981).

in the subject action, the investigating officers obviously believed there was an urgency in searching Officer Peach's locker at the San Bernardino Police Department, his place of employment. This was communicated to the judge signing the search warrant by the fact the detectives contacted him at approximately 11:30 p.m. In the affidavit attached to the search warrant, the judge received

RESPONDENTS: OFFOSTION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

information from the affiant regarding Officer Peach's status as a police officer, the serious nature 2 of the crime and the business location of the place to be searched. 3 Clearly, based upon the totality of the circumstances, the warrant needed to be served 4 immediately during Officer Peach's shift and before he left the premises of the police station so as 5 to prevent any removal or destruction of evidence relevant to the criminal investigation. (See Detective Rogers' Declaration, attached hereto as Exhibit "3".) Also relevant is the fact the locker room to be searched at the police station is open 24 hours a day and does not function as a residence for the police officers. In People v. Morrongiello, 145 9 Cal.App.3d 1 (1983), the court addressed the issue of a nighttime search of the defendant's duffle bag recovered from the defendant in the hallway of a hotel and not from a place in which the 10 11 The officers did not enter defendant's hotel room to search the bag. They encountered defendant in the hallway outside his room and escorted him to the hotel security office. This intrusion into defendant's privacy was no greater because it occurred at approximately 10:00 p.m. than if it had occurred at 10:00 a.m. 1d. at 14. 12 13 14 15 16 Such is the case here. Any intrusion into Officer Peach's privacy by the nighttime search is 17 minimal. Officer Peach was on duty at his place of employment at the time he was served with the 18 search warrant to search his locker at the police station. The place to be searched was at his place 19 of employment, open 24 hours and within the station of the agency requesting the warrant. Thus, 20 any intrusion into Officer Peach's privacy by the nighttime search is minimized by these facts as well 21 as the fact such intrusion was no greater because it occurred at approximately 12:00 a.m. as opposed 22 to 7:00 a.m. The only difference is that if the search was conducted at 7:00 a.m., potential relevant evidence could have been removed from the premises by Officer Peach when he left the station at the conclusion of his shift at 2:30 a.m. that morning. Therefore, good cause existed for this 25 nighttime search at the police station. 111 26 27 111 111

RESPONDENTS: OPPOSITION TO PETITIONERS! MOTION FOR INJUNCTIVE RELIEF

#### SUPPRESSION OF EVIDENCE SEIZED DURING THE SUBJECT NIGHTTIME SEARCH IS NOT COMPELLED IN THIS MATTER

In their moving papers, Petitioners state that all items seized as a result of the nighttime search of Officer Peach's locker located at the San Bernardino Police Department must be suppressed. In support of this statement, Petitioners cite Tuttle v. Superior Court of San Luis Obispo County 120 Cal. App 3d 320 (1981) for the position that failure to comply with Penal Code §1533's requirement of good cause for nighttime service and a search warrant compels suppression of all items seized pursuant to such warrant before 7:00 a.m.

However, in Rodriguez v Superior Court, 199 Cal.App.3d 1453 (1988) the court held suppression is not mandated. Id. at 1469. Although the Rodriguez court noted that Trutle had held that a violation of Penal Code §1533 required suppression of evidence seized in a nighttime search, the court further acknowledged that the Trutle decision, as well as that in People v Wasson. 75 Cal.App.3d 592 (1977), failed to consider, as required after Proposition 8, whether suppression would be required under federal law.\(^1\) As such, Rodriguez held that in light of Article 1, Section 28(d) of the California Constitution (which was added by Proposition 8) and existing federal law. suppression is not automatically required. Rather, any potential violation of the nighttime service requirement must be considered in light of the totality of the circumstances. "If exclusion of evidence is not compelled under federal law, evidence seized in violation of Section 1533 should not be excluded if the search is otherwise reasonable in a constitutional sense." Id. at 1470.

In Rodriguez, the reviewing court found nothing in the record suggesting anything unreasonable in the nighttime search of the subject residence beyond the statutory violation in executing the warrant at approximately 10:30 p.m. Therefore, the court concluded the evidence seized pursuant to that search need not be excluded. Id. at 1470.

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Proposition 8 precludes California courts from excluding relevant ev
28 exclusion is compelled by the federal Constitution. See, In re Lance W., 37

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RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

 The same is true here. Petitioner alleges that the nighttime search of his workplace locker was improper pursuant to *Penal Code* §1533. Since Petitioner only alleges a statutory violation and there is no suggestion the execution of the subject search warrant was otherwise unreasonable, pursuant to the conclusion set forth in *Rodriguez*, the evidence need not be suppressed.

Nor should the evidence seized as a result of Officer Peach's criminal interview be suppressed as a remedy for alleged violations of the Public Safety Officers' Procedural Bill of Rights Act, as set forth more fully above, since such interview fell outside the previsions of such Act.

#### INJUNCTIVE RELIEF IS NOT APPROPRIATE IN THIS MATTER

An injunction is an extraordinary remedy which a court should issue only with great eaution, especially against a public agency. In Mallon v. City of Long Beach. 164 Cal.App.2d 178 (1988), the court explained:

"Injunction is an extra-ordinary power, and is to be exercised always with great caution" and the power rarely, if ever, should be exercised in a doubtful case." *Id.* at 190.

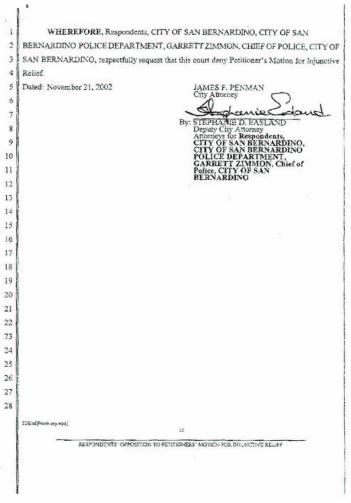
This rule applies with special force where an injunction is sought to restrict public officers in the discharge of their duties. See, Tahoe Keys v. Water Resource Control Board. 23 Cai. App. 4th 1459 (1994):

"Where, as here, the defendants are public agencies and the plaintiff seeks to restrain them in the performance of their duties, public policy considerations also come into play. There is a general rule against enjoining public officers or agencies from performing their duties. This rule would not preclude a court from enjoining unconstitutional or void acts, but to support a request for such relief the plaintiff must make a significant showing of irreparable injury." Id. At 1474.

Although Government Code §3309.5 empowers a court to render an injunction to remedy violations of the Act (See, Crupi v. City of Los Angeles, 219 Cal.App.3d 1111, 1119 (1990)), co violation of the Act has occurred in the subject matter to warrant such a remedy. As set forth in detail above, the interview of Officer Peach on January 18, 2002 was solely and directly related to a criminal investigation and not subject to the provisions of Government Code §3303. An injunction is unnecessary to deter future illegal conduct since no illegal conduct has occurred on the part of

RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR INJUNCTIVE RELIEF

Respondents in their dealings with Officer Peach. 2 Nor should the use of any evidence or statements obtained as a result of Officer Peach's criminal interview be enjoined since to improprieties occurred during the interview to warrant such relief. Lastly, no proclivity to violate the Act has been shown by Petitioners to warrant an injunction to prohibit future violations of the Act. In support of their request for injunctive relief, Petitioners cite the case of Dwyer et al. v. City of San Bernardino, et al., San Bernardino Superior Court Case No. SCVSS 082249. However, one case alone does not represent a pattern, especially in light of the fact Respondents' actions in the criminal investigation of Officer Peach, which are the basis of 10 Petitioner's request for injunctive relief, fall outside the provisions of the Act. Therefore, injunctive 11 relief is not proper. 12 13 CONCLUSION The interview of Officer Peach on January 18, 2002 was solely and directly related to alleged criminal activities. Therefore, compliance with provisions found in Government Code §§3303 was not necessary, and thus, no violation of the Public Safety Officers' Procedural Bill of Rights Act 17 occurred during this interview. As to the search of Officer Peach's locker at 12:06 a.m., good cause 18 existed for the nighttime search and the search warrant that was signed by the issuing judge at 11:30 p.m. allowed for an immediate search at that time. Based upon these reasons, injunctive relief 20 and suppression of evidence is not appropriate in this matter. 21 22 23 26 27 111 28 /// SDE/td/Plack.ogp.wpd? RESPONDENTS! OPPOSITION TO PETITIONERS! MOTION FOR INJUNCTIVE RELIEF





#### DECLARATION OF MICHAEL BILLDT I, MICHAEL BILLDT, declare as follows: I have personal knowledge of the facts stated herein, and, if called as a witness, I could and would competently testify to the following: 1. I am the Assistant Chief of Police of the San Bernardino Police Department, a position I have held since February 2001. I have been employed at the San Bernardino Police Department for 24 years. 2. On January 24, 2002, Officer Stephen Peach was interviewed by Detectives Gorrell and Diaz of the San Bernardino Police Department's Internal Affairs Unit as part of 10 an Internal Affairs administrative investigation into Officer Peach's relationship with 11 Michella Roan. 12 3. On September 26, 2002, the San Bernardino Police Department notified Officer 13 Stephen Peach of its intention to terminate his employment based upon his 14 relationship and improper conduct with Michelia Roan. 15 4. Officer Peach appealed the Police Department's decision to terminate his 16 employment and the matter is scheduled to be heard before the Civil Service Board 17 for the City of San Bernardino on December 10, 11, 12 and 13, 2002. 18 5. Pending the decision of the Civil Service Board, Officer Peach remains an employee 19 of the City of San Bernardino. 20 I declare under penalty of perjury under the laws of the State of California that the foregoing 21 Executed this 21 5T day of November, 2002 at San Bernardiao, California. 22 23 24 Michael BILLDT 25 26 27 28 DECLARATION OF MICHAEL BILLDT SDEfed(Peach Billids Dec. 1990)

# **Judge Edwards Decision**

FILED-Central District SUPERIOR COURT SAN BERNARDING COUNTY DEC 0 5 2002 2 3 5 6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO 8 9 SAN BERNARDINO DISTRICT 10 STEPHEN PEACH and SAN BERNARDINO CASE NO. SCVSS 096534 11 POLICE OFFICERS' ASSOCIATION, 12 NOTICE OF DECISION Petitioners, 13 14 15 CITY OF SAN BERNARDINO; CITY OF SAN BERNARDINO POLICE DEPARTMENT; 16 GARRETT ZIMMON, CHIEF OF POLICE, CITY OF SAN BERNARDINO POLICE 17 DEPARTMENT; and ROES 1 through 10, 18 Respondents. 19 20 Petitioner Stephen Peach (Peach) is employed by respondent San Bernardino Police 21 Department (Department) as a police officer. Based on evidence uncovered during an 22 investigation by the Department of sexual misconduct by officers with prostitutes, the 23 Department has determined to discharge Peach from his employment. Peach has appealed 24 his discharge to the City's Civil Service Commission. A four-day hearing is scheduled to 25 commence on December 10, 2002. Peach claims that the evidence against him was obtained 26 by the Department in violation of Government Code section 3300 et seq., commonly known as the Public Safety Officers Procedural Bill of Rights (PSOPBR). Accordingly, he has petitioned

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this court for injunctive relief that would enjoin the Department from proceeding with his termination, or, in the alternative, an order that such evidence be suppressed from use in this or any future disciplinary proceedings. Peach and petitioner San Bernardino Police Officers' Association (Association) also ask the court to issue a permanent injunction prohibiting the Department from engaging in future violations of PSOPBR, and seek attorney fees under the Private Attorney General doctrine. For the reasons stated below the court will order that Peach's statements obtained at an interview conducted on January 18, 2002, and evidence seized during a search of Peach's locker be suppressed as obtained in violation of his rights under PSOPBR. However, the court does not believe that there has been a sufficient showing that would justify the issuance of a permanent injunction against the Department respecting future violations.

#### **FACTUAL BACKGROUND**

In the latter part of 2001 and early part of 2002, the Department was conducting an investigation of sexual misconduct, including allegations of rape, involving one of its officers (not Peach) and several known prostitutes. As part of the investigation, on three separate occasions investigators traveled to a prison in Chowchilla, California, to interview a female inmate by the name of Michella Roan. Ms. Roan gave investigators the name of a woman known as "Looney" as being a prostitute who may have been involved sexually with San Bernardino Police officers. She also told them of her (Roan's) involvement with Peach. This relationship included consensual sexual intercourse and letter-writing between the two. In fact, she gave the investigators a letter from Peach written to her while she was imprisoned.

Based on Ms. Roan's statements, the investigators were able to locate a woman named Angelique McMillan, aka "Looney." Ms. McMillan was interviewed, and she related an incident where she was arrested by an on-duty officer and transported in a patrol car to a remote area where the officer engaged in non-consensual sexual intercourse with her. She did not know the officer's name but picked Peach's picture from a photo lineup. There were two interviews of Ms. McMillan. The first took place on January 16, 2002, and the other on January 17. At

 at the station. The warrant was issued at 11:30 that evening. While it did not contain a specific authorization for night service, it did contain the following language: "YOU ARE COMMANDED at any time of the day, or as the case may be, according to [Penal Code] Section 1533, to make immediate search of...." The warrant was served shortly after midnight on the 18th of January. Evidence linking him with Ms. Roan was seized from his locker.

Just prior to service of the warrant, Peach had arrived at the station in his patrol car. He was immediately escorted to the Internal Affairs Interview room where he was served with the

the conclusion of the second interview, the investigators sought and obtained a search warrant for Peach's person and personal property—specifically his personal automobile and his locker

Following the search, Peach was interviewed by Detectives Lindsey and Otey. The interview took place at 2:10 in the morning of the 18th. He was advised of his Miranda rights and told that he was being investigated for an allegation of rape. Initially, Peach declined to talk to the detectives but soon changed his mind out of curiosity concerning the charge of rape.

warrant. The search took approximately two hours. He was not present during the search, did

not consent to it, and was not informed in advance that the search would be conducted.

The interview commenced with inquiries about Peach's involvement with "Looney." He admitted to knowing her and having transported her on one occasion after she had been arrested. He denied any inappropriate behavior with her including any conduct of a sexual nature. Peach was then shown a picture of Ms. Roan and the remainder of the interview concerned his involvement with her. He denied any romantic or sexual involvement with Ms. Roan but did admit to writing her a letter while she was in prison. Apparently, it is undisputed that at no time preceding this shift in the interrogation was Peach advised that he was suspected of having an inappropriate relationship with Ms. Roan.<sup>1</sup>

Peach claims the following violations of his rights under PSOPBR:

 failure to conduct the interrogation at a reasonable hour, preferably at a time when the officer is on duty, or during normal waking hours for the officer (3303 (a));

That there was a focus on such a relationship with Ms. Roan prior to the interview is evidenced by the declaration of Detective Lindsey, as well as letters between Peach and Roan that had already been discovered.

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not being informed of the rank, name and command of the officer in charge of the interrogation and all other persons present during the interrogation (3303 (b));

- not being informed of the nature of the investigation prior to interrogation (3303 (c)); and
  - not allowing Peach to record the interrogation (3303 (g)).2

### DISCUSSION

"Protection of peace officers from abusive or arbitrary treatment in their employment is the essence of [PSOPBR]. To accomplish this, the Legislature set out certain rights and procedures." (Pasadena Police Officers Assn. v. City of Pasadena (1990), 51 C3d 564, 576). The superior court has initial jurisdiction over any proceeding for violation of PSOPBR. "In any case where the superior court finds that a public safety department has violated any of the provisions of [PSOPBR], the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including...the granting of a temporary restraining order, preliminary or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer." (GC section 3309.5 (c)). Suppression of evidence obtained in violation of PSOPBR is also an appropriate remedy if failure to do so would substantially prejudice the officer and there is no other reasonable deterrent to continued violation of the act. (City of Los Angeles v. Superior Court (1997), 57 CA4 1506, 1515-1516).

Respondents, for the most part, do not dispute the facts but argue that section 3303 is not applicable in this situation because this was a purely criminal investigation which is exempt from these requirements (3303 (i)). Petitioner counters that this was not a purely criminal investigation because nothing in the information provided by Ms. Roan concerning him was related to criminal activity. However, assuming arguendo that it was a purely criminal investigation, Peach directs the court to the recent case of California Correctional Peace

<sup>&</sup>lt;sup>2</sup> Although this is alleged as a violation in the petition, it is not addressed in the points and authorities or opposition to the petition. In fact, Detective Lindsey, in his declaration in opposition to the petition, states that Peach was advised that the interview was being audio taped. Therefore, this does not appear to be an issue.

Officers Assn. v. State of California (2000), 82 CA4 294, where the court held that section 3303 (i) only applies when an outside agency is investigating the officer. Otherwise, "[a]Imost every administrative investigation of alleged misconduct could be recast as a criminal investigation to avoid the requirements of the Act." (82 CA4 at 308). While respondents believe this holding to be wrong, it is on point and is determinative of this issue. The requirements of PSOPBR are applicable in this case.

Respondents next argue that there was no violation of Peach's right to be informed of the subject-matter of the investigation because he was told that he was being questioned about charges of rape. Respondents, through the declaration of Detective Lindsey, seem to suggest that the investigation was not focused on Ms. Roan's claims because Lindsey "did not know what the exact relationship was between the two." (Declaration of Richard Lindsey, paragraph 11). However, this belies his earlier statement that during the three interviews with Ms. Roan, she "disclosed that she had an ongoing relationship with Officer Peach that included sexual intercourse between the two." (Declaration of Richard Lindsay, paragraph 5). The investigators also knew about the letters, and had them in their possession at the time of the interview.

Detective Lindsey also justifies this line of questioning as an interview technique he uses to test a suspect's truthfulness and credibility. While this may be a legitimate technique, it did not obviate the need to advise Peach in advance that the investigation had shifted from the alleged rape of victim "Looney" to his alleged inappropriate relationship with Ms. Roan. Since the evidence shows that the subject-matter of the interview changed, the court believes that Peach should have been told of the nature of Ms. Roan's claims against him before proceeding further. That he was prejudiced by the failure to do so is evidenced by Peach's claims that, had he been told about an on-going investigation into his relationship with Ms. Roan, he would have requested representation at the interview and would have been more careful to be absolutely accurate in answering the detectives' questions and expanded upon his answers with greater particularity. (Declaration of Stephen Peach, paragraph 12). Failure to do so was a violation of section 3303 (c). The court also finds that there was no

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technical compliance with section 3303 (b) and that the interview was conducted at a time when Peach was off-duty and normally sleeping (3303 (a)).

The next issue concerns the validity of the search of his locker. Although it is not entirely clear what incriminating evidence was found in his locker, the evidence suggests that letters from Ms. Roan and perhaps some condoms were seized. Section 3309 provides that no public safety officer shall have his locker searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. Peach argues that the warrant was invalid in this case because it was not endorsed for night service pursuant to Penal Code section 1533. That section provides that "upon a showing of good cause, the magistrate may...insert a direction in a search warrant that it may be served at any time of the day or night. In the absence of such a direction the warrant shall be served only between the hours of 7 a,m, and 10 p.m."

Respondents rely on the language in the warrant, quoted earlier, as amounting to an endorsement for night service. However, the language used in this warrant is ambiguous at best. Such ambiguity in search warrants is frowned upon especially in light of the policy that search warrants are to provide clear directives to the officers serving them as to the identity and location of persons or objects to be searched and the items to be seized. The words "YOU ARE COMMANDED at any time of the day, or as the case may be according to Section 1533, to make immediate search of..." do not rise to the level of an authorization for nighttime service. Moreover, there is no specific request in the affidavit in support of the warrant for nighttime service, together with the reasons for such a request. Respondents point out that an affidavit need not contain a separate statement of good cause for nighttime service; that good cause can be found from reading the affidavit as a whole. (People v. Cletcher (1982), 132 CA3d 878; People v. Lopez (1985), 173 CA3d 125). While this may be true, 3 there is insufficient information contained in the affidavit to support an argument that the magistrate found good cause and intended to authorize nighttime service.

<sup>&</sup>lt;sup>3</sup> Although the court would note that the Cletcher and Lopez cases cited by respondents involved warrants that did contain specific nighttime service endorsements and the arguments there centered on the finding of good cause.

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Counsel, in their points and authorities, devote considerable argument over the question of whether suppression is a proper remedy where evidence is seized pursuant to a warrant that was served in violation of Penal Code 1533. Whether or not this remedy is still available in criminal cases, the court believes that, under the rather liberal provisions of section 3309.5 (b), it would be available here assuming the court finds that petitioner would be substantially prejudiced if the seized evidence were to come in at his hearing, and suppression is the only reasonable means of deterring future violations. Because the court finds that the search of his locker was not with his consent, in his presence, with prior notice to him, or pursuant to a valid search warrant (or at least a validly executed warrant), the court finds a violation of section 3309.

Having found that respondents violated Peach's rights under certain provisions of PSOPBR, the next question is which remedy to impose. Peach asks the court to enjoin respondents from taking any punitive action against him. However, even without his interview statements or the physical evidence seized from his locker, respondents may still have sufficient evidence in the form of Ms. Roan's statements and the letter she provided the investigators to go forward with disciplinary actions, including termination, against petitioner. Therefore, the court will grant petitioner's alternative request that the statements obtained in the interrogation, and any evidence obtained as a result of them, as well as the physical evidence seized pursuant to the search warrant, be suppressed and not produced in evidence at any future hearings. This remedy is based on the court's conclusion that petitioner is likely to suffer substantial prejudice—i.e. possible loss of his job—if such evidence is allowed to be presented to the Civil Service Commission. Moreover, there does not appear to be another reasonable method of deterring future violations.

Finally, both petitioners seek permanent injunctive relief against the Department directing it to refrain from violating the requirements of PSOPBR in the future. A similar request was made and denied by this court in the case of Dwyer v. City of San Bernardino. At that time, the court found that petitioner had not met his burden of proving that the Department was likely to continue to engage in such violations unless enjoined and restrained from doing

so. Petitioner now argues that his case presents sufficient evidence of a continued violation to warrant injunctive relief.4 2 As respondents point out, injunctive relief against a public agency is an extraordinary 3 remedy that should only be granted with great caution. (Mallon v. City of Long Beach (1958), 4 164 CA2d 178). Petitioners rely on two relatively recent incidents in support of their position 5 that the Department has willfully violated the requirements of PSOPBR. The violations in this 6 case occurred prior to the court's decision in Dwyer, and, while the violations were significant in the one instance (failure to inform), they were not particularly egregious. The court is not 8 9 persuaded that a sufficient showing has been made to warrant injunctive relief. 10 11 CONCLUSION The petition is granted to the extent that evidence of petitioner's statements during the 12 interrogation of January 18, 2002, and the physical evidence seized pursuant to the search 13 warrant executed on the same date, shall be suppressed. However, this does not preclude the 14 use of such statements for impeachment pursuant to 3303 (f) should petitioner testify at any 15 future hearings provided the statements do not come within a specified exception. The 16 request for injunctive relief is denied. 17 18 DATED: December 5, 2002. 19 20 21 JAMES A. EDWARDS 22 Judge of the Superior Court 23 24 25 26 At the hearing on the petition, petitioner's counsel also referred to the "Bennett" case as another example of communing 27 violations. That case was briefly alluded to in the Dwyer case and the court held there was insufficient information proson at that time to justify a finding of a continuing course of conduct. Mr. Krause, in this case, provided an update of the Bennett case in support of his position. However, this was not under oath and the court does not believe it should consider this as evidence of another violation. -8-

# **Civil Service Decision**

	RECEIVED
1	BEFORE THE CIVIL SERVICE BOARD JAN 5 G ZHUS
2	OF THE CITY OF SAN BERNARDING CASTLE & KHAUSE
3	In the Matter of the Hearing of ) FINDINGS OF FACT, CONCLUSIONS AND STATEMENT OF DECISION;
4	STEPHEN PEACH ) NOTICE OF TIME LIMITS FOR ) FILING PETITION FOR WRIT
5	) OF MANDATE
6	
7	The above-captioned matter concerning the termination of STEPHEN PEACH by the City of
8	San Bernardino Police Department ("Police Department") initially came on for hearing on December
9	10, 2002, and was held as well on the subsequent dates of December 11, 12, 13 and 16, 2002, before
10	the Civil Service Board of the City of San Bernardino at the San Bernardino City Hall at 300 North
11	"D" Street, San Bernardino, California 92418.
12	STEPHEN PEACH was present and was represented throughout the hearing by Attorney
13	Robert K. Krause of the Law Offices of Castle & Krause. The Police Department was represented
14	by Deputy City Attorney Stephanie D. Easland. The Civil Service Board heard the testimony of the
15	witnesses, received the Notice of Charges and Administrative Action, received the Statement of
16	Causes, received into evidence from the Police Department Exhibits C-1 through C-8, inclusive, and
17	from STEPHEN PEACH Exhibits A-1 through A-48, inclusive, and examined the proofs offered by
18	the parties, including the evidence presented and exhibit admitted as a result of the Chairperson's in
19	camera proceeding, based upon the Notice of Decision filed on December 5, 2002 in Case No.
20	SCVSS 096534 and California Government Code §3303(f)(3), and the cases of <i>People v. Carroll</i> , 4
21	Cal. App. 3d, 52, 59 (1970) and <i>People v. Acosta</i> , 18 Cal. App. 3d, 895, 903 (1971), and the cause was
22	submitted for decision. Accordingly, the Civil Service Board being fully advised, makes its Findings
23	of Fact, Conclusions and Statement of Decision as follows:
24	FINDINGS OF FACT
25	1. STEPHEN PEACH (hereinafter "Peach") has been a police officer with the City of San
26	Bernardino Police Department for approximately eleven one-half (11 ½) years.
27	2. Sometime during Peach's police duty in the gang unit (1996-2000) he met a person named
28	Michella Roan ("Roan"), and soon after this meeting he became aware that she was a
	A second

prostitute and he was also aware that she was a convicted felon when she lived in downtown 2 San Bernardino. Peach left the gang unit in 2000 and returned to patrol. 3 3. Peach had 50-100 "contacts" with Roan, claiming that Roan was solely his "confidential 4 informant." However, there was, at most, only one arrest which could be traced in any way 5 to any contact that Peach had with Roan. The Civil Service Board finds that only one arrest 6 (at best) out of 50-100 "contacts" with a "confidential informant" who is a known prostitute 7 and a known convicted felon is a highly suspicious situation. Further, Roan testified that she 8 was not an informant for Peach, but had been an informant for other police officers in the past; 9 that Peach had called her at least twice to warn her "not to go outside" when the police were 10 about to conduct "prostitute sweeps;" and that Roan felt that her relationship with Peach was 11 "little bit more than friendship - romantic." Further, Peach stated that he felt it would be 12 better for Roan if she did not return to San Bernardino, a development which, if it occurred, 13 would negate any alleged "informant" value for the City of San Bernardino Police Department. 14 Testimony further indicates that Peach did not share any information about his "confidential 15 informant" with other police officers, and continually was vague about her identity. 16 4. At some point between after their initial meeting, the relationship between Peach and Roan 17 became considerably more than an alleged "police officer-confidential informant" relationship. 18 5. Sometime in the latter part of 2001, Peach was told by a friend of Roan that Roan was in 19 prison. 20 By letter postmarked November 1, 2001, Peach wrote to Michella Roan at Chowchilla State 21 Prison (Exhibit C-2). Included in this letter by Peach to Roan are the following passages: "It 22 seems like forever since I have seen your smiling face, hopefully it won't be too much longer" 23 ... "Can you get phone calls? I'll give you my voice-mail # if you ever need it (I know you had it once before)" . . . "But in the very least write back to me. I would like to know that 24 you're doing OK. I think about you most days and if there is anything I can do for you or help 25 26 you with out here let me know. That goes now while your inside and when you get out" . . 27 "I hope this letter lets you know someone cares about you and what happen's to you, hope to 28 see you soon." 2 HTC [Peach.1] January 13, 2003

- By letter postmarked December 22, 2001, Peach wrote a second letter to Michella Roan at Chowchilla State Prison (Exhibit C-3). Included in this letter by Peach to Roan are the following passages: "Hope you had a good Xmas, well as good as you could considering where you are. Thanks for your letter, I'm glad you appreciate me writing to you and hope that you feel the same way. I want to give you may pager #, you can call (page) me anytime, but I work Wed-Sat in the evenings and that is the best time to reach me"... "How do I go about putting some cash on your books? You were very nice to me and I want to repay you anyway I can. I still miss your smile"... "Are you putting on any weight? 3 square meals a day will do that to you. August isn't that far away and hopefully it will pass quickly. Got to go for now, write back soon. Love, Steve."
  - By letter postmarked December 28, 2001, Peach wrote a third letter to Michella Roan at Chowchilla State Prison (Exhibit C-4). Included in this letter from Peach to Roan are the following passages: "Hope you are well, I am doing fine. Thanks for your second letter, I have found out some of the information you wanted but I will do some more checking for you to get up to date stuff"... "So I've got to wait until October '02 hopefully it will go by quickly and I'll come and visit you where ever you end up. Just keep positive about things and we'll see each other soon. I thought you were going to come back to S.B.? What happened? Well this is just a short letter as it will be your turn to write next. You can write whatever you want to inside the envelope just don't put any X and O on the outside, I don't want anyone to get nosy. I especially want to see you again, hopefully for longer than before and more often. I like it when you write and tell me what you want to do, I feel the same way. Do they open your in-coming mail and read it? Yours gets to me still sealed so you can say whatever you want. Till next time, Love, Steve (I'm thinking about you.....)."
- Michella Roan wrote a letter to Peach dated February 5, 2002 (this was at least her third letter to him). Included in this letter from Roan to Peach are the following passages: "Hello. What's going on with you? Are you okay? Did I do something to make you stop writing me? If so, I'm very sorry about it. Well honey, how are you?"..."Did you find out anything about my kids?"..."I would appreciate it if you'd look for them for me"..."I hope that you know just

HTC [Peach.1] 3 January 13, 2003

how much I care about you. You make me feel special and I can't wait until we can make love 2 to each other. I'll keep you in my heart. I must go now. I would like to know if you'd please send me some money" . . . "Love Ya, Michella." 3 At a January 18, 2002 interview conducted by the San Bernardino Police Department, police 4 10. 5 officers, who were conducting the interview as part of an official Department investigation, asked Peach several questions about Roan. When asked "What does she do downtown?" 6 7 Peach answered "I don't know, she's, I haven't seen her in a long time either," even though 8 he knew that she was a convicted felon and a prostitute when she was in the downtown area. 9 When asked "You don't know where she's [Roan] at now?" Peach answered "No," even 10 though he had written her two letters within the last month at Chowchilla State Prison and had spoken to her on his cell phone within the last two weeks while she was still in prison and 11 knew that her release date from prison was in October, 2002. When asked "How many letters 12 13 have you written [to Roan]?" Peach answered "I think one," even though he had written her 14 twice within the last month and knew that he had written her at least three different letters by 15 January 18, 2002. Peach further stated to the police officers conducting the interview that "Yeah, I, I never even opened them [referring to Roan's letters to Peach], I threw them away," 16 17 even though he knew he had read Roan's letters (more than one), as evidenced by the wording 18 in his letters and his testimony. Finally, Peach confirmed once again to the police officer 19 conducting the interview that he had written only one letter to Roan when he knew that he had 20 written at least three different letters. The findings contained in this Paragraph are based upon 21 the result of the Chairperson's in camera proceeding, based upon the Notice of Decision filed on December 5, 2002 in Case No. SCVSS 096534 and California Government Code 22 23 §3303(f)(3), and the cases of People v. Carroll, 4 Cal. App. 3d, 52, 59 (1970) and People v. 24 Acosta, 18 Cal. App. 3d, 895, 903 (1971). 25 Peach is a seasoned police officer and regardless of the reason for the interview and 26 investigation, knows that he is obligated to answer all such questions fully, completely, and truthfully. The Civil Service Board finds that Peach knowingly did not answer the questions 27 set forth in Paragraph 10 either fully, completely, or truthfully. 28 HTC [Peach.1] January 13, 2003

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The Civil Service Board finds that Peach had an inappropriate relationship with a known prostitute and known convicted felon, Michella Roan. This relationship was inappropriate because he wrote letters to her while she was in prison; because of the language he used in his letters; because of how Roan viewed their relationship and the language she used to Peach in her February 5, 2002 letter; because of Peach's actions in protecting Roan from other police contact of any kind; because of Peach's warnings to Roan about upcoming "prostitute sweeps;" because consorting with a known felon under these circumstances places the police officer, and the police department, in a position of disrepute and discredit and of being criticized for permitting such a relationship and questioned as to what information police officers might be telling people who should not have any such information; and because such a relationship violates the Police Department's core values.

Exhibit C-5 is a copy of Chapter #26, Procedure #3, entitled USE OF CRIMINAL JUSTICE AND LAW ENFORCEMENT INFORMATION. Peach acknowledges receiving and signing this document at the bottom. The first paragraph of this document states as follows: "The San Bernardino Police Department maintains criminal record information and has full access to many State and Federal automated computer systems. As an employee of the San Bernardino Police Department, you may have access to such information. Misuse of such information adversely affects the civil rights of the individual concerned, violates regulations established by the Department of Motor Vehicles and the Department of Justice, and violates the law." The excerpt from the Department of Motor Vehicles Regulations and Guidelines in Exhibit C-5 contains the following language: "Information supplied to law enforcement agencies from the Department of Motor Vehicle records is intended strictly for the purpose of enforcing the law and shall not be given out to unauthorized second parties." Exhibit C-5 also contains the following admonition at the end: "Such misuse is a misdemeanor under California law as it pertains to criminal record information and in direct violation of this department's policy; therefore, any employee of this department who is responsible for such misuse is subject to disciplinary action which may include dismissal."

The Civil Service Board finds that Peach misused the computer in violation of the edict in
 httc [Peach.1]
 January 13, 2003

Exhibit C-5 in obtaining information from the Department of Motor Vehicles relative to the whereabouts of the children of Michella Roan. This was not done solely for law enforcement

Exhibit C-6, San Bernardino Police Department Rule 3.01, Conduct-General Behavior, states:

"Employees shall at all times act in a manner so as to reflect credit to the Department. Any conduct which adversely affects the morale or efficiency of the department and any conduct which has a tendency to adversely affect, lower, or destroy public respect and confidence in the department and the employee shall be considered unbecoming conduct. Conduct unbecoming an employee shall include any conduct which brings the Department into disrepute or reflects discredit upon the employee or the Department. It also includes any conduct which impairs the operation or efficiency of the Department or of any employee." The Civil Service Board finds that Peach violated San Bernardino Police Department Rule

- Exhibit C-6, San Bernardino Police Department Rule 3.02, Obedience to Laws, Regulations, and Orders, states in relevant part as follows:
  - Employees shall not willfully violate any federal statute, state law or local
  - Employees shall conform to and abide by the following: Charter of San Bernardino, rules and regulations of Civil Service, and the rules and regulations of the Department. . . ."

The Civil Service Board finds that Peach violated San Bernardino Police Department Rule

Exhibit C-6, San Bernardino Police Department Rule 3.25, Statements by Employees, states

"Employees shall not make false statements when questioned or interviewed or in reports submitted. If requested to make a statement in the course of an official Department investigation, employees shall make full, complete, and truthful

HTC [Peach.1]

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January 13, 2003

January 13, 2003

The Civil Service Board finds that Peach violated San Bernardino Police Department Rule 2 3.25. 3 18. Exhibit C-6, San Bernardino Police Department Rule 4.02, Neglect of Duty, states: "Employees may be deemed incompetent and subject to discipline when they: fail to 5 properly perform their assigned duties; act in a manner tending to bring discredit to 6 themselves or the Department; or fail to assume responsibility or exercise diligence, intelligence, and interest in the pursuit of their duties." 8 The Civil Service Board finds that Peach violated San Bernardino Police Department Rule 9 10 19. Civil Service Rule 513.1 states in relevant part as follows: "Disciplinary actions . . . shall not 11 be taken except for cause related to performance of duty, personal conduct or qualifications of the employee, which causes may include but are not limited to: . . . inexcusable neglect of 12 13 duty . . . dishonesty . . . violation of the Charter or of any Rule governing City personnel 14 practices, or any failure of good behavior or acts, during or outside of duty hours, which are 15 incompatible with or inimicable to the public service." The Civil Service Board finds that 16 Peach violated Civil Service Rule 513.1. 17 CONCLUSIONS 18 After considering all of the evidence, including that permitted as a result of the in camera 19 proceeding noted on the first page of this document, the testimony, the Notice of Charges and 20 Administrative Action, the Statement of Causes, Exhibits C-1 through C-8, inclusive, Exhibits A-1 21 through A-48, inclusive, and listening to the arguments of the parties, by a unanimous vote of the five-22 member Civil Service Board, the Board concludes that the Police Department has met its burden of 23 proof by presenting sufficient evidence supporting the following: 24 The allegation that STEPHEN PEACH committed inexcusable neglect of duty is sustained 25 based upon (1) his computer misuse in obtaining information for his personal knowledge/use from the Department of Motor Vehicles, (2) his inappropriate relationship with a known 26 27 prostitute and known convicted felon, Michella Roan and/or (3) his violation of the Police 28 Department's core values (commitment to the highest of standards, integrity, loyalty, respect

HTC [Peach.1]

for the law, and accountability). Any one of these three basis is sufficient to sustain this allegation. 3 2. The allegation that STEPHEN PEACH committed dishonesty is sustained based upon (1) his lack of truthfulness in his statements during his January 18, 2002 interview which were allowed into evidence for impeachment purposes concerning his relationship and knowledge 5 6 of Michella Roan and/or (2) his being less than truthful about his relationship with a known 7 prostitute and known convicted felon, Michella Roan, as his informant, when compared to Peach's actions and the language in Roan's letter to Peach of February 5, 2002 (Exhibit C-1) 8 9 and Peach's three (3) letters to Roan at Chowchilla State Prison, postmarked November 1, 10 2001, December 22, 2001 and December 28, 2001 (Exhibits C-2, C-3 and C-4, respectively). Either basis is sufficient to sustain this allegation. 11 12 3. The allegation that STEPHEN PEACH violated State law or Civil Service Rules is sustained 13 based upon (1) his computer misuse in obtaining information for his personal knowledge/use 14 from the Department of Motor Vehicles and/or (2) violation of Civil Service Rule 513.1 for 15 inexcusable neglect of duty, dishonesty and/or failure of good behavior or acts, during or 16 outside of duty hours, which are incompatible with or inimicable to the public service.. Either 17 computer misuse or violation of Civil Service Rule 513.1 for any of the three reasons 18 enumerated is sufficient to sustain this allegation. 19 The allegation that STEPHEN PEACH committed failure of good behavior or acts during or 20 outside of duty hours, which are incompatible with or inimical to the public service is 21 sustained based upon (1) his inappropriate relationship with a known prostitute and known 22 convicted felon, Michella Roan, (2) his computer misuse in obtaining information for his 23 personal knowledge/use from the Department of Motor Vehicles, (3) his lack of truthfulness 24 in his statements during his January 18, 2002 interview which were allowed into evidence for 25 impeachment purposes concerning his relationship and knowledge of Michella Roan and/or (4) his violation of the Police Department's core values as set forth in the first sustained 26 27 allegation herein. Any one of these four basis is sufficient to sustain this allegation. 28 The allegation that STEPHEN PEACH committed violation(s) of Police Department work 5. HTC [Peach.1] January 13, 2003

1	rules is sustained; specifically violations of:
2	Rule 3.01 Conduct - General Behavior;
3	Rule 3.02 Obedience to Laws, Regulations, and Orders;
4	Rule 3.25 False Statements by Employees; and
5	Rule 4.02 Neglect of Duty;
6	Rule 3.01 is violated based upon (1) Peach's inappropriate relationship with a known prostitute
7	and known convicted felon, Michella Roan, (2) his computer misuse in obtaining information for his
8	personal knowledge/use from the Department of Motor Vehicles and/or (3) his lack of truthfulness
9	in his statements during his January 18, 2002 interview which were allowed into evidence for
10	impeachment purposes concerning his relationship and knowledge of Michella Roan. Any one of
11	these three basis is sufficient for a finding of a violation of Rule 3.01.
12	Rule 3.02 is violated based upon Peach's computer misuse in obtaining information for his
13	personal knowledge/use from the Department of Motor Vehicles.
14	Rule 3.25 is violated based upon (1) Peach's lack of truthfulness in his statements during his
15	January 18, 2002 interview which were allowed into evidence for impeachment purposes concerning
16	his relationship and knowledge of Michella Roan and/or upon (2) Peach being less than truthful about
17	his relationship with a known prostitute and known convicted felon, Michella Roan, as his informant,
18	when compared to Peach's actions and the language in Roan's letter to Peach of February 5, 2002
19	(Exhibit C-1) and Peach's afore-mentioned three (3) letters to Roan (Exhibits C-2, C-3 and C-4).
20.	Either basis is sufficient for a finding of a violation of Rule 3.25.
21	Rule 4.02 is violated based upon (1) Peach's computer misuse in obtaining information for his
22	personal knowledge/use from the Department of Motor Vehicles and/or (2) his inappropriate
23	relationship with a known prostitute and known convicted felon, Michella Roan. Either basis is
24	sufficient for a finding of a violation of Rule 4.02.
25	STATEMENT OF DECISION
26	By a unanimous 5-0 vote, the Civil Service Board of the City of San Bernardino does hereby
27	order as follows:
28	The recommendation by the City of San Bernardino Police Department that STEPHEN
	HTC [Peach.1] 9 January 13, 2003

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PEACH be terminated is hereby SUSTAINED. Said termination is sustained based upon Conclusions
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     Number 1, Number 2, Number 3, Number 4 and/or Number 5 (Conclusion Number 5 is sustained by
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     a violation of any of the four enumerated Rules) as noted previously herein, both collectively and
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     separately; that is, the Civil Service Board has determined that the termination of STEPHEN PEACH
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     is sustained even if only any one of its five Conclusions is upheld in a subsequent judicial challenge.
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     STEPHEN PEACH is terminated from the City of San Bernardino Police Department effective close
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     of business, December 16, 2002.
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    DATED: Jugares toos
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     APPROVED:
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                                                                                    January 13, 2003
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# **Complaint Letters**

January, 2003

City Attorney James Penman Office of the City Attorney 300 N. "D" Street San Bernardino Ca 92410

Dear Sir,

I wish to file an official complaint of dishonesty against City attorney Easland that was involved in the above case.

During November 2002 my attorney Robert Krause filed a writ of mandate in Superior Court which addressed the violations of the POBOR that had occurred in my case with Judge Edwards in San Bernardino Superior Court. It was heard on December 5<sup>th</sup> 2002. We filed points and authorities based on fact, we made reference to cases that were very similar to ours where the court had found that the POBOR did apply to the officers that interrogated me. The most noteworthy was the CCPOA vs. State of California. City attorney Easland filed a responsive points and authorities that began with the dubious heading of "Statement of facts".

I have consulted with many attorneys and have found that the points and authorities that are filed in propagation or defense of a case should be as honest as possible and should not be filled with untruths to bolster any position. I was the focus of an illegal criminal investigation which included the securing of a search warrant that was based on dubious probable cause. The search warrant was obtained by Detective Rogers of the San Bernardino Police Department and served a little after midnight on January 18<sup>th</sup> 2002. The warrant was not endorsed for night service and the affidavit did not even mention a need or desire for it to be served at any other time than during the Day. I will address the violation of my 4<sup>th</sup> amendment right against unreasonable search and seizure under

another forum but I do wish to bring to your attention attorney Easland's deliberate lying in the declaration she prepared and signed.

In attorney Easland's statement of facts (page 6 chapter 3) she begins to address the search warrant. She initially stated the warrant authorized nighttime service based upon good cause justifying service at night (page 6, line 21 and 22). She then stated in bold type "The warrant served on Officer Peach and executed November (just a typo I'm sure) 18th 2002 authorized service at any time". This is not true, the warrant only authorized service during the daytime and as previously discussed actually said "YOU ARE COMMANDED at any time of the day, or as the case may be, according to section 1533, to make immediate search of:"

Warrants that are authorized for nighttime service state "at any time of the day or night", it seems as though attorney Easland should have known this. She probably wrote her response with the warrant in front of her (that's what I would have done) and realized that the City had made a mistake in serving the warrant at night. Clearly, her statement that the warrant authorized service at any time is not true, and as a public servant she does have a duty to be honest in her duties which include the filing of legal responses with the court. Surely her own license to practice law would be at stake if the state bar realized that she had not been truthful in her brief.

On the next page (Page 7, line 5 to 13) she continues to try to dig herself out of a hole in that she now offers an opposing argument to her previous statement, she suggests that the issuing Judge (Christianson) intended that the warrant was to be served at night even though no request or supporting information was supplied in the affidavit. Is she then suggesting that she and the detectives that prepared the warrant with the knowledge that nighttime service would not be justified because the grounds did not exist intentionally deceived Judge Christianson? By omitting that the warrant would be served at night and by relying on the word immediate Judge Christianson knew that the warrant was going to be served illegally and that he had authorized this illegal behavior. I cannot believe that a Judge would sign off on an illegal warrant and

risk his career as suggested by attorney Easland. Penal Code section 1529 and 1533 are reiterated below. I find it ironic that the word "immediate" is not mentioned in the section but it has become common practice for it to be inserted in search warrants.

Section 1533 is pertinent in that it lays out a frame of reference for allowing nighttime searches and gives the reasons for their inclusion in the search warrant. The warrant was served in a police building interrogation room against an unarmed officer. Surely no safer set of circumstances could exist for the officers who served the warrant and for the public.

1529. The warrant shall be in substantially the following form: County of \_\_\_\_. The people of the State of California to any sheriff, marshal, or police officer in the County of \_\_\_\_: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1524, or, if the affidavit be not positive, that there is probable cause for believing that \_\_\_\_ stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to Section 1533), to make search on the person of C.D. (or in the house situated \_\_\_\_\_, describing it, or any other place to be searched, with reasonable particularity, as the case may be) for the following property, thing, things, or person: (describing the property, thing, things, or person with reasonable particularity); and, in the case of a thing or things or personal property, if you find the same or any part thereof, to bring the thing or things or personal property forthwith before me (or this court) at (stating the place). Given under my hand, and dated this \_\_\_\_ day of \_\_\_\_, A.D. (year). E.F., Judge of the (applicable) Court.

1533. Upon a showing of good cause, the magistrate may, in his or her discretion, insert a direction in a search warrant that it may be

served at any time of the day or night. In the absence of such a direction, the warrant shall be served only between the hours of 7 a.m. and 10 p.m. When establishing "good cause" under this section, the magistrate shall consider the safety of the peace officers serving the warrant and the safety of the public as a valid basis for nighttime endorsements.

Doesn't it seems much more likely that the detectives that prepared and served the warrant intended to serve it illegally or did not realize that they didn't ask for night service and overlooked the requirement when they served the warrant. However Attorney Easland is on a very slippery slope in her over-zealousness to justify an obviously illegal activity in that she has attempted to deceive a Superior Court Judge. First she states that the warrant authorized service at anytime and then she contradicts herself by stating that Judge Christianson was responsible for the warrant being served illegally. Unfortunately she did not think her deception through because in her attempts to justify the illegal warrant she inadvertently places the blame with the issuing Judge.

Judge Edwards concurred with my position that the interrogation did come under the auspices of the POBOR and the search warrant was served illegally because it wasn't endorsed for night service nor was there even a hint of a desire for a consideration for nighttime service in the affidavit.

I only think that it is equally fair that all City employees are treated with the same amount of fairness and that dishonest activity should be treated accordingly. To make a harmless mistake is quite different than an obvious intent to deceive and/or cover up an illegal act that was conducted by other city employee's and I am amazed at the depths that attorney Easland went to cover up those acts.

I am at a loss to who to refer to with my complaint and hope that you as the elected City Attorney will diligently investigate my complaint as I feel that your office would hope to maintain the highest ethical standards.

Sincerely,

Stephen Peach

Cc Judge Edwards Judge Christianson State Bar of California January, 2003

Office of the Chief of Police 710 N. 'D' Street San Bernardino Ca 92401

Sir,

I wish to file an official police complaint against one of your officers for trying to influence a witness during a hearing which is my right under penal code 832.5.

My complaint is against Assistant Chief Billdt

In December 2002 a hearing was being conducted at City Hall. Detective Jim Beach was called as a witness and testified during that hearing. I assume that as he was sworn in his testimony was the truth. Assistant Chief Billdt was present during the hearing and heard Detective Beach's testimony.

Later that same day Detective Beach returned to the station and was approached by Assistant Chief Billdt. Assistant Chief Billdt said to Detective Beach, "We were disappointed in your testimony today." Detective Beach was very afraid of the implications of being told this

by someone of Assistant Chief Billdts stature in the organization. He called me at home and told me of the conversation and was so scared that he swore me to secrecy. He then told several other people including Sergeant Steve Filson.

When Assistant Chief Billdt made the statement the hearing was still being held and he could have been recalled at any time.

I believe that Assistant chiefs conduct falls under Penal code section 136 and I wish to see it investigated as such.

Sincerely,

Stephen Peach

February, 2003

Office of the Chief of Police 710 N. 'D' Street San Bernardino Ca 92401

Sir,

I wish to file an official police complaint against one of your officers for being untruthful in a declaration that was made under penalty of perjury and in violation of SBPD department rule 3.25 which is my right under penal code 832.5.

My complaint is against Detective Richard Lindsey. In November 2002 Detective Lindsey was asked to prepare a declaration in the above action which was heard in front of Judge Edwards on December 5th 2002. In that declaration he specifically and maliciously lied or did not tell the truth to establish grounds to cover up his own prior illegal acts (the criminal interrogation which was conducted on January 18th 2002). I have enclosed a copy of his declaration and Judge Edwards final decision for your reference and have highlighted the pertinent sections. Judge Edwards concurred that there was some falsehood by Detective Lindsey as his statements conflicted with each other and stated in his decision one belied the other:

"Respondents, through the declaration of Richard Lindsey, seem to suggest that the investigation was not focused on Ms. Roans claims because Lindsey "did not know what the exact relationship was between the two." (Declaration of Richard Lindsey, paragraph 11). However, this belies his earlier statement that during the three interviews with Ms. Roan, she "disclosed that she had an ongoing relationship with Officer Peach that included Sexual intercourse between the two." (Declaration of Richard Lindsey, paragraph 5)."

Judge Edwards also continues to state that the interrogation on January 18<sup>th</sup> was focused on Roan's claims primarily and therefore Lindsey's declaration to the contrary is also not true. The independent review by Judge Edwards establishes that Lindsey did lie under penalty of perjury and should be investigated and held accountable.

Rule 3.25 states "Employees shall not make false statements when questioned or interviewed or in reports submitted. If requested to make a statement in the course of an official Department Investigation, employees shall make full, complete and truthful statements."

Perjury is also a crime under penal code section 118a for anyone to swear an oath or affirmation about information that they know is untrue

California Penal Code § 118a. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false.

California Penal Code § 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

California Penal Code § 124. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this

chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

**California Penal Code § 125**. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

**California Penal Code § 126**. **Perjury** is punishable by imprisonment in the state prison for two, three or four years.

Sincerely, Stephen Peach January, 2003

Office of the Chief of Police 710 N. 'D' Street San Bernardino Ca 92401

Sir,

I wish to file an official police complaint against one of your officers for being untruthful in a affidavit that was made under penalty of perjury in violation of penal code section 118a and in violation of SBPD department rule 3.25 -false statements which is my right under penal code 832.5.

My complaint is against Detective Rogers.

Detective Rogers Should be held accountable for perjuring himself in the affidavit for the search warrant that he obtained from Judge Wade on January 17<sup>th</sup> 2002. He signed the affidavit where he falsely said that McMillan had identified me as her rapist ( if you remember she described someone else by describing the officer as a tobacco chewing, blue eyed, bald officer, none of which match my description). And she picked me out of a line up as her friend, not a rapist.

Penal code sections 118-129 reiterated below defines perjury. Of particular interest is penal code section 125, it states: *An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.* In other words Detective Rogers relied on the unqualified statement (because Rogers did not know it was true) of whoever told him that McMillan had identified me. His name was not listed as being present on the report that was made on McMillan's interview so if he did not know that she had not identified me and relied on the word of Detective Lindsey (or whoever) then he relied on an unqualified statement. He

therefore should have qualified Lindsey's statement by looking at what exactly McMillan said in the report (or he could have told Lindsay to write his own affidavit). By not qualifying the statement (because he didn't know for a fact that it was true) he should have regarded the statement as equal as a false statement. Penal Code section 125 is supposed to stop the kind of warrant based on hearsay and upon unverified sources as such statements should be viewed as being not true until they are qualified.

# CALIFORNIA PENAL CODE SECTION 118-129

118a. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of **perjury**. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false.

123. It is no defense to a prosecution for **perjury** that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Friendly Fire?

124. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

126. **Perjury** is punishable by imprisonment in the state prison for two, three or four years.

San Bernardino City Employee's Rule 3.25 states "Employees shall not make false statements when questioned or interviewed or in reports submitted. If requested to make a statement in the course of an official Department Investigation, employees shall make full, complete and truthful statements."

Sincerely,

Stephen Peach

February 14th, 2003

Office of the Chief of Police 710 N. 'D' Street San Bernardino Ca 92401

Sir,

I wish to file an official police complaint against one of your officers for dishonesty by not being truthful when questioned under oath in a hearing in front of the City of San Bernardino Civil Service Commission. Incorporated in this dishonesty is the violation of Penal Code section 118 et al, a felony, San Bernardino Police Department rule 3.25 and also the San Bernardino Police Department core values. It is my right under penal code 832.5 to file a complaint as a citizen.

My complaint is against Chief Zimmon.

San Bernardino Employee's Rule 3.25 states "Employees shall not make false statements when questioned or interviewed or in reports submitted. If requested to make a statement in the course of an official Department Investigation, employees shall make full, complete and truthful statements."

In the Civil Service hearing that was held in December 11<sup>th</sup> 2002 Chief Zimmon was sworn in by Mr. Newbry and gave his testimony under oath. A photostatic copy of the proceedings as transcribed by the court reporter relating to this proceeding is attached hereto and incorporated herein by reference. He was directly examined by deputy city attorney Easland regarding my violation of section 4.02 {page 127 line 15-21}. Chief Zimmon testified under oath "And I find that he neglect -- or that he violated statute

4.02 in that he freely admitted to me, and I think in the investigation, that he had used the Internet to chat with a personal friend while he was on duty, and he also used the department computerized system to obtain personal information regarding Roan's husband."

Under cross-examination attorney Krause attempted to clarify what Chief Zimmon had testified to under direct examination {page 159 line 12}. Questions by attorney Krause, Answers by Chief Zimmon.

Q. And your testimony today was that occurred on duty and that was your problem with it, right?

A. Yes.

{page 161 line 16-25}

Q. Did the subject matter of what you just read seem to revolve around Officer (Rich) Peterson and Officer Peach at the MET office?

A. Yes.

Q. And, again, that's the subject matter of the violation of 4.02, at least in this part, correct?

A. Yes.

Q. And your concern was that that occurred on duty, correct?

A. Yes.

{page 162}

Q. On page 375, Gorrell -- well, let me back up.

"Gorrell: Is it sometimes during work?" referring to the use of the computer.

"Peach: I can't really remember too many times I've done it during work, no.

"Gorrell: Okay. The incident that were talking about where Rich was with you, was that during work?"

"Peach: That was after work when I was doing his review." Is that what you just read?

A. Yes.

Q. If it was after work Chief how can it be on duty?

A. Because I also balanced it with the statement of the officer who said he was there when he was online, and it was based on that totality and not just his recommendation that he was off work that I

determined it to be a violation of policy in two accords. One was neglect of duty, and the second was the misuse of department resources.

Chief Zimmon first stated he thought that I said in the investigation that I was on duty and then became more sure that the internet access had occurred while I was on duty under cross examination, he then is directed to read my statement given at the internal affairs interview where I said I did not access the internet while on duty. To then justify why he reached the conclusion that it occurred on duty he now offers that the other officer (Peterson) contradicted my statement.

Peterson was interviewed on January 22<sup>nd</sup> 2002 by Detective Lindsey. A photostatic copy of the interview as submitted by Detective Lindsey is attached hereto and incorporated herein by reference. On page 5, paragraph 4, Peterson made the only reference to a computer in the MET office that I used once through Yahoo while I was doing his evaluation. HE DID NOT SAY WHETHER WE WERE ON OR OFF DUTY DURING THIS TIME.

In my interview with internal affairs I stated that I used the internet off duty mostly and specifically the one incident with Peterson present was done entirely on my own time and I reiterated that point during the Skelly hearing which was witnessed by attorney Robert Krause. (At no time did I say to anyone and especially in the Skelly hearing that I was on-duty when I accessed the internet with Peterson present.) I'm sure that attorney Krause will also remember exactly what was said.

Chief Zimmon intentionally lied during his sworn testimony in that he said I was on duty when I accessed the internet and said his main problem (in justifying the violation of section 4.02) was that I was on duty when it occurred. The only two people present during my accessing of the internet were Peterson and I. Peterson did not say when he was interviewed whether it occurred on or off duty in his statement, Chief Zimmon testified that it was exactly that statement (Peterson's) that led him to believe that it had occurred on

duty. Where in Peterson's statement did it say that I was on duty? It didn't, so Chief Zimmon also lied under oath about balancing my statement with Petersons. He falsely tried to give the impression that Peterson had said that I accessed the internet while I was on duty. He also lied under oath about my saying that I freely admitted to him that I was on duty when I accessed the internet with Peterson present. Surely if I had said anything along those lines the Chief and the department would have seen the glaring inconsistency and raised it as an issue. It was not raised because it wasn't true.

# CALIFORNIA PENAL CODE SECTION 118-129

- 118. (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of **perjury** in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of **perjury** and willfully states as true any material matter which he or she knows to be false, is guilty of **perjury**. This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.
- (b) No person shall be convicted of **perjury** where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.
- 118.1. Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or

any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This section shall not apply to the contents of any statement which the peace officer attributes in the report to any other person.

118a. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of **perjury**. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false.

- 119. The term "oath," as used in the last two sections, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.
- 120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.
- 121. It is no defense to a prosecution for **perjury** that the oath was administered or taken in an irregular manner, or that the person accused of **perjury** did not go before, or was not in the presence of, the officer purporting to administer the oath, if such accused caused

or procured such officer to certify that the oath had been taken or administered.

- 122. It is no defense to a prosecution for **perjury** that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.
- 123. It is no defense to a prosecution for **perjury** that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.
- 124. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.
- 125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.
- 126. **Perjury** is punishable by imprisonment in the state prison for two, three or four years.

Clearly Chief Zimmon should be held to the same standard that all other Officers are held to in that false statements made by employees are not tolerated. Especially statements given under oath and under the penalty of perjury. Chief Zimmon had in almost a year to familiarize himself with the facts in my case and deliberately chose to deceive the Civil Service Board. Chief Zimmon should not have found a violation of section 4.02 if based on the above criteria

because it just didn't happen. Indeed I have heard and seen the command staff themselves bidding on e-bay while **on duty** openly and with the full knowledge of the department without any detriment to them or their careers. Surely with that in mind, I believe Chief Zimmon is also guilty of being in dereliction of his duty in finding a violation based on non-existent facts and then lying under oath to justify his position. Chief Zimmon could have offered the position that he did not remember whether I had been on or off duty at the time. Instead he chose to be firm and resolute several times in that I had indeed been on-duty, surely a more egregious violation than a simple mistake or a slip of the tongue.

California penal code section 118-126 above is very clear in what constitutes a violation of it's provisions, Chief Zimmon is in clear violation of Penal Code 118 (a), in that he knowingly testified, not once but several times that I had been on-duty when there was no evidence offered to make that conclusion in any part of the investigation offered in support of his position. In fact when viewed independently there is in fact more evidence to the contrary. Chief Zimmon also testified that he had read the entire report carefully and as a law enforcement officer with over 30 years experience it is unreasonable for anyone to believe that Chief Zimmon did not know to be very careful in his sworn testimony.

Penal Code section 118 (b) states that direct or indirect evidence may only be used to convict someone of perjury. The Chief's own testimony, offered with the statement that I made that I was off duty coupled with Petersons statement is direct evidence of a violation of perjury as these statements were made almost a year prior to the Chief's testimony.

Sincerely,

Stephen Peach

February 18th, 2003

Office of the Chief of Police, Internal Affairs 710 N. 'D' Street San Bernardino Ca 92401

Sir,

I wish to file an official police complaint against several of your officers for serving an illegal search warrant in violation of the Constitution of the United States of America and California State Law and for conducting an illegal interview in violation of The Peace Officer Bill of Rights (POBOR) on January 18<sup>th</sup> 2002. It is my right under penal code 832.5 to file a complaint as a citizen against illegal acts perpetrated by police officers who conducted these illegal acts when they were so employed.

My complaint is against Detective Lindsey, Detective Otey, their Supervisor Sergeant Ringnes and whomever was their direct lieutenant and whomever was their direct Captain and the Chief of Police.

A search warrant was served upon me and my belongings at the police department on January 18th 2002 at 0006 am or a few minutes after midnight. The affidavit that was prepared in support of the warrant was prepared by Detective Rogers ( I have filed a separate complaint on Detective Rogers ) and signed by Judge Christianson. The search warrant was not endorsed for night service and nothing in the search warrant would lead anyone to believe that it was night serviceable. The affidavit in support neither asked for or when read as a whole made any reference that there was any desire to serve the warrant at any other time than during the day. The penal code is very specific on when search warrants can and must be served:

California Penal code § 1533. Upon a showing of good cause, the magistrate may, in his or her discretion, insert a direction in a search warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant shall be served only between the hours of 7 a.m. and 10 p.m. When establishing "good cause" under this section, the magistrate shall consider the safety of the peace officers serving the warrant and the safety of the public as a valid basis for nighttime endorsements.

Good cause did not exist when it is considered that the warrant was served on an unarmed police officer in the middle of a police station, surely no safer conditions could exist for the officers serving the warrant or for the public.

On December 5<sup>th</sup> 2002 Judge Edwards suppressed the warrant for violating POBOR section 3309 because the warrant was not served between the hours of 7 a.m. and 10 p.m. which by definition did not comply with State Law. The suppression however does not address the conduct of the detectives and supervision in preparing and serving a warrant in clear violation of State Law and the Constitution of the United States. The detectives and supervision were in the best light extremely negligent and in the worst, malicious in their intent to conspire to deprive me of my rights under color of authority.

In the months between January and December 2002 the department as a whole (from the Chief to the City Attorney) only tried to justify the illegal act by the use of semantics and deception and based on their conduct I must assume that the latter is a more accurate representation of the events. It is my desire to bring to justice those that did conspire against me and those that diligently worked to cover up that conspiracy.

During that same night (January 18<sup>th</sup> 2002) I was interrogated by Detective Lindsey and Detective Rogers under the guise of a criminal

interrogation. This was not the case, the interrogation primarily focused on matters that were non-criminal in nature and therefore I should have been afforded the protections that the Law requires under the POBOR as decided by Judge Edwards in his decision of December 5<sup>th</sup> 2002. As you may or may not be aware the Peace Officer Bill of Rights allows certain protective right to prevent the duplicitous interview techniques that were engaged in by Detective Lindsey and Detective Otey.

The interrogation and service of the warrant were witnessed by several other members of your department including but not limited to the following: Captain Aragon, Lieutenant Klettenberg, Lieutenant Henson, (Command Staff) Sergeant Blackwell, Sergeant Ringnes and Detective Gorrell. None of which made any attempt to stop the service of the warrant or to stop the illegal conduct of Detective Lindsey or Detective Otey in the interrogation, choosing instead to remain inactive and therefore condoning the illegal activity during this time. Again it would be case of extreme negligence on the part of everyone present to not realize the illegality of the acts in the minimum or conversely an act of conspiracy to allow these acts to occur with impunity.

Since the release of the decision on December 5<sup>th</sup> 2002, it is my understanding that there has been no attempt to investigate any of the aforementioned officers for any misconduct even when faced with such egregious violations as concluded by Judge Edwards in his competent and independent review. To allow this conduct to occur and by failing to investigate it or take any action in over 1 year is by definition condoning the illegal activity. Detective's Otey and Lindsey and their direct supervision were responsible for the illegal actions of January 18<sup>th</sup> 2002 and the command staff present including the Chiefs office are equally guilty of the conspiracy to deprive me of my rights by not acting to prevent the breaking of the law when those acts were committed in their presence and then by attempting to justify those illegal acts and not hold the officers present accountable. I find it inconceivable that Chief Zimmon would

transfer Detective Lindsey and Otey to the Internal Affairs unit in December 2002 after they clearly broke the rules and regulations of the San Bernardino Police Department, California State Law and the Constitution of the United States. I have to ask myself if they were transferred and given an elevation of status as a reward for their conduct.

I wish to see all of the above officers held accountable for their actions and inactions and would competently testify to the above facts if requested to do so.

Sincerely,

Stephen Peach

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS **THIS** PROCEDURE. **AGENCY** MAY **FIND AFTER** INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS

Friendly Fire?

AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

May,2003

California Department of Justice Public Inquiry Unit P.O. Box 944255 Sacramento, Ca 94244-2550

Dear Sir, I wish to file a complaint against the following Department: San Bernardino Police Department 710 N. "D" Street San Bernardino Ca 92410 (909) 384-5742

I wish to file a complaint of a violation of my California civil rights under the color of authority and several criminal acts committed by members of the San Bernardino Police Department in retaliation for trying to expose a police officer rapist. I was terminated in December 2002 from my position as a police officer with the City of San Bernardino. In January and February 2003 I sent registered delivery complaint letters to the Department and to the District Attorney of San Bernardino County. The Police Department has ignored my letters and the District Attorney has chosen not to address my accusations. I also realize that the Department is again breaking State Law by not addressing my complaint letters which is one of my rights as a Citizen to file such letters.

I am a white male, originally from England who is an atheist. I was a Police Officer for the San Bernardino Police Department (Department) for the last 11 years and have received numerous commendations and awards during that time for outstanding Police work.

In September 1998 I was shot twice in two separate occasions by officers from the San Bernardino Police Department.

The first time I was shot by officer Shank who was the weapons expert and firearm trainer of the Department on a SWAT call-out. My injuries were not life threatening as I was able to move out of the line of fire and the bullets struck my right hand. Officer Shank was not disciplined in any manner and in fact recruited and allowed to become one of the Departments firearm trainers in 1999 which included unlimited overtime.

Upon my return to work two weeks later I was again shot by Sergeant Lemos, my supervisor on another SWAT call-out, this injury was life threatening and I almost died from lack of blood as he shot my femoral artery. We were attempting to serve an arrest and search warrant on Douglas Domino, an ex-officer from the Department. It is mine, as well as Ex Detective Domino's belief that I was shot to initiate a gunfight between the SWAT team and Domino so that the Department would "accidentally" kill Domino. There was a lot of bad blood between the administration and Domino which was voiced prior to leaving the Station by Lieutenant Poyzer and others. We as a SWAT team should have never been at his residence which was out of our jurisdiction and in the San Bernardino Sheriff's Departments area. The San Bernardino Sheriffs Department were on scene and wanted to handle the call however SBPD Lieutenant Poyzer and Lieutenant Kinsman argued with them for us to take it and ordered us to assume our positions in a hurry so their SWAT team could not respond. The plan was to surround and call out and if Domino did not come out then we were to hand the call over to the Sheriff's Department. Once we were in position phone calls were placed into the residence and Domino did not come out. Someone then said over the radio "SERVE THE WARRANT" which was not in the plan. The radio was not taped (another aberration) and no-one claimed to have said it.

When we moved up to the front door Sergeant Lemos shot me on my right side with the bullet traversing my leg. I was directly in front of Lemos and the only way he could have shot me and it look

as though it had come from inside the residence was for him to extend his MP-5 out and point it laterally across his body. A highly unnatural position. The rest of the SWAT team believed that Domino had shot me and attempted to shoot him including me. Luckily noone managed to shoot Domino. This was also alleged in Domino's subsequent law suit against the City of San Bernardino. The Department settled the law suit and it did not go to trial and no officers were deposed. Sergeant Lemos was not disciplined in any manner for shooting me. I believe the plan was for me to die of my injuries as Lieutenant Poyzer tried to drive me to the hospital and luckily for me had to pass a California Department of Forestry Paramedic fire station on the way to the freeway and had to stop. The Phorensic Technician, Willison tried to process and document the scene but the physical evidence did not match how Lieutenant Poyzer wanted the scene portrayed. This led to a heated discussion between them and it became apparent to Willison that he was expected to lie in his report about the location of physical evidence. His integrity won over and he documented the scene as it was and so began the demise of his own career at the SBPD.

When I was in hospital recovering from my injuries it became well known throughout the Department that I was an atheist. Several supervisor's tried to convert me while I was in the hospital and it continued once I had recovered and returned to work.

The religious climate at the Department allows Lieutenant Mark Garcia to conduct prayer meetings at lunch time in the administrative conference room with the blessing of the Chief of Police, Lee Dean.

I returned to work in March 1999 after multiple surgeries and rated at 37% disability as I had all my dorsa-flexors removed from my right leg.

In January 2001 I uncovered the fact from an informant (Ann Menifee) that there was a Police officer raping prostitutes on duty while working patrol in the city. I informed Sergeant Kilbride ( my direct supervisor) and internal affairs detectives were duly notified.

The Department chose to not investigate my claim and I was ignored, I spoke with in excess of 20 officers, detectives and supervisors in an attempt to bring about an investigation into who had been raping prostitutes however nothing was done. I even attempted to initiate my own investigation but was unsuccessful in finding out who the officer was.

Another officer, Victor Ramos also contacted a prostitute in August 2001 who told him that she had been raped by an Officer while he was on Duty. Officer Ramos immediately informed two supervisors who arrived to assist in the evaluation of the credibility of the victim. The two supervisors were Sergeant Henson and Sergeant Smith. Sergeant Henson interviewed the victim and she reiterated what she had told Officer Ramos. From her information they deduced that Officer VanRossum was the likely suspect, Sergeant Smith then began calling Officer Ramos a snitch and Sergeant Henson either did not pass on any of the information or did pass it on and the Department again ignored the implications of having a serial rapist working as an Officer. Sergeant Smith then accused Officer Ramos of falsifying a report and he was confined to the Station for the next 10 months while the Department decided what to do with him, he was after all a potential witness to a coverup and had seen sergeant Henson interview a rape victim where the suspect was an Officer and he had obstensively done nothing.

In November 2001 the Department began an investigation, uncovered by Detective Lucas who had arrested Menifee (my original informant), into officer VanRossum who was subsequently arrested for raping approximately 20-40 people while on duty. Additional victims were raped by VanRossum during the time of my initial reporting of the rape and when he was arrested. Ann Menifee was one of the victims along with the prostitute that had reported the crime to Officer Ramos and Sergeant Henson. The reason the investigation started was that Menifee had made her accusation in the Jail, witnessed by several Officers and Custody personnel who had all forwarded their reports up many separate chains of command.

In January 2002 a prostitute (Angela Macmillan), was interviewed by detective Lindsey. Macmillan has abused drugs throughout her life and has a lot of mental problems including claiming to have claustrophobia, indeed her street name is "Loony." In that interview detective Lindsey manipulated the results of that interview to get me identified as another rapist even though she had clearly described someone else physically and did not identify me in any regard except as being her "friend." He framed his first question into who the rapist was by asking her if he spoke with an accent. I was the only Officer working in that area with an accent so she knew who detective Lindsey wanted her to identify in the Six-pack photo line-up. When presented with the Line up he asked her to identify the person who raped her and she pointed at my picture and said "That's my friend."

She accused two other officers of committing sexual crimes which any prosecution thereof was effectively precluded by Lindsey when he showed her individual pictures of those officers to establish their identity. As you probably are aware a single photographic identity is considered too prejudicial and the District Attorney would not file such a case.

A search warrant was obtained by Detective Rogers. In his affidavit in support of the warrant he falsely said that Macmillan had identified me as the rapist. As you also may be aware under California Penal Code § 125 An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. Detective Rogers did not conduct the interview of Macmillan and in reality had no personal knowledge of her statement which was not transcribed until after the warrant was served. He relied on the unqualified statement of Detective Lindsey that she had identified me. As he did not know that in fact the statement was true he should have regarded it as being false as specified in the section.

The warrant was served on me and my personnel effects including my locker and personal vehicle by the Department. The warrant was not endorsed for night service and nothing in detective Roger's affidavit asked or even implied that there was a need for

night service. Nonetheless, the warrant was served just after midnight on January 18<sup>th</sup> 2002, in clear violation of my Fourth Amendment rights against unreasonable search and seizure. Present at the warrant service were Captain Aragon, Captain Farmer, Lieutenant Henson, Sergeant Ringnes, Sergeant Blackwell, Detective Otey, Detective Lindsey, Detective Rogers, Detective Descaro and Detective Gorrell.

Probably present but not personally seen by me at the time were either Chief Zimmon or Asst. Chief Billdt. I was also interrogated by Detective's Lindsey and Otey about my relationship with a confidential informant-Roan in the guise of the rape allegation of Macmillan. The rape allegation was not sustained as at the time I was allegedly raping her I was with a lieutenant Klettenberg. The charge against me was just one of a number of allegations made by Macmillan against a few officers that were all eventually not sustained because she was found to have been deceitful throughout her interview.

Both the warrant and the interrogation were suppressed by Superior Court Judge Edwards of the San Bernardino Superior Court for violations of my Peace Officer Bill of Rights (case # SCVSS 096534). The warrant was served illegally as it wasn't endorsed for night service and the interrogation was conducted illegally because the detectives lied about the true nature of the interrogation.

On 4/4/02 I was served a search warrant for my blood by detective Rogers and detective Lindsey. California state law states that a warrant for blood may be obtained for testing for HIV once charges have been filed with the court. No charges were ever filed against me for any crime. I believe that my blood was obtained to harass me as the affidavit only tried to establish a tie between my blood and a towel that was found in my patrol vehicle. This is not evidence or even a hint of a crime and would have only established that I had bled on my own towel. There is no evidentiary value to such a discovery and it's intrinsic worth is therefore negligible at best.

A Disciplinary Review Board was convened to recommend discipline to the Chief for my handling of the confidential informant Roan. The Board consisted of Lieutenant Garcia (the prayer leader), Lieutenant Poyzer (the lieutenant that was responsible for the Domino incident) and Captain Aragon (the Captain that was responsible for the illegal service of the warrant and the illegal interview). Obviously they were not impartial and had a lot more to gain with my not being around.

I have been through the disciplinary process and the end result was that I was terminated effective 12/16/02 from my position as a police officer. During my final hearing with the Civil Service Board at the City I called a number of witnesses. One of my witnesses was Detective Beach. As Beach was walking to the hearing he was approached by Captain Farmer who told him "Do the right thing Jim." After he testified the Departments representative Assistant Chief Billdt who had been in the hearing told Detective Beach, "We were disappointed in you and your testimony today." Detective Beach was scared of the implications of being told this by the Assistant Chief and believed that Captain Farmer and Assistant Chief Billdt were trying to curry favor with him and that he should have lied in his testimony for the benefit of the Department. Detective Beach also told the Police Officers association President Sergeant Filson of what Billdt had said to him. When Billdt tried to sway Detective Beach the hearing was only in it's second day and Detective Beach could have been recalled to the stand. Another witness that gave favorable testimony to me was Lieutenant Kimball, I believe he will be punished for telling the truth by the Department as the Department called him as a witness and his testimony was sympathetic to my position. My attorney has not had the opportunity to talk with Lieutenant Kimball yet but I believe that if questioned under oath he would tell the truth about what was said to him after he testified in my case.

During this hearing Chief Zimmon was sworn in and was dishonest on several occasions. Zimmon said he understood the difference between an inaccuracy and an intentional lie and that an intentional lie was a far graver violation than a simple mistake and then he proceeded to intentionally deceive the Board several times.

Chief Zimmon testified that he had found out that I was known in the Department as somebody that knew people and could get information on the street. Not just from informants but I was known to have contacts in the community that would talk to me and give me information. He realized that most of those people may not rise to the level of an informant, but some of them might. He agreed that there was different levels of informants and gave examples of a citizen informant, a paid informant and other informants that think by giving an officer information they would want in return to have a good relationship with that officer. Sometimes he had found that it might be necessary to lie to an informant to cultivate them and that they might change between levels.

He then said something very strange, he testified that as a long term law enforcement officer someone would not have to violate every element of a law or rule to break that law or rule. This was very strange because to break a particular law or rule YOU HAVE TO BREAK ALL THE ELEMENTS. You would expect that Chief Zimmon would know this, but to admit that he knew this would mean that he would not be able to find me in violation of certain policies because I did not break all the elements of the policy. Therefore, he knew he had to justify his findings, the only way to explain his findings was to state that a law or policy could be violated even though not all the elements were broken. No officer, detective or lawyer would agree with what Chief Zimmon is trying to deceive the Board into believing.

With this belief in mind my Attorney Robert Krause began to question Chief Zimmon on the fraternization policy (4.12) which he found that I had violated and said that it was one of the more serious of the charges. The policy was read to Chief Zimmon as follows:

"Except as permitted by the authority of the Chief of police, employees shall not knowingly fraternize with, engage the services of, accept services from, or do favors for any person in the custody of the department or convicted felons on Parole or Probation"

The elements of that policy are:
Fraternize with or,
engage services of or,
Accept services from or,
Do favors for.
And the condition being that the person would have to be:
In the custody of the Department or,
On Parole or Probation.

Chief Zimmon then agreed that at the time of the letters were written my informant Roan was not in the custody of the Police Department and she was not on Parole or Probation. He also agreed that he did not sustain the charge of sexual intercourse that Roan had said occurred and then said something else that was a total fabrication. He said that he had a statement that Roan had made that talked about her contact and experience with me prior to her going to Prison. Where was that statement? The three statements she gave in this case do not state that there was any kind of personal relationship. He just invented another statement to add to his own credibility. The Board would never know that there wasn't any other statements and therefore there was no fraternization.

Roan had testified (Zimmon wouldn't have known this but he should have realized it) that at all times I was professional towards her when I contacted her when I was working and the only time that I saw her when I wasn't working was when we had sex on one occasion only. So consequently, if Roan is to be believed on some level there was no personal relationship if you remove the sexual allegation because no-one believed her in this regard.

Chief Zimmon also did not sustain the accusation that I had called her and warned her about prostitution sweeps, he said he could not prove the accusation one way or the other even though he examined the phone records that we had submitted to the Department that showed no calls were made to Roan during the alleged time frame from my cell phone, my wife's cell phone or my home phone. In Roan's second statement she said that I had called her from my cell phone while I had been in a patrol car. He also believed that on the days the sweeps were conducted he remembered

the Department had looked into whether I had been working or had been aware of any sweeps but could not remember what the findings were. The bottom line was that he did not sustain the charge that I had warned Roan about the prostitution sweeps because he couldn't prove it. Zimmon seemed to want to ignore the fact that we had supplied the Department with all my phone records and that I didn't work on the days that the sweeps were conducted. I was not associated with the vice detectives in any manner, shape or form and would not know when the sweeps were pending. In this light there is surely more evidence to show that I didn't warn Roan about the sweeps however that would have tended to show that he didn't believe his witness, Roan and for the sake of this investigation and to justify his findings he could not question her credibility.

We tried to show based on San Bernardino Police Department records that Roan had not been truthful in her testimony when balancing her testimony with official records. Zimmon read from the investigation that she had 162 separate entries of information in the San Bernardino Police Department records that dated from 1997 and he was offered the opposing testimony that Roan had said that she had not been in San Bernardino until 1998 or 1999. We asked him how could it be possible for both to be true. He claimed that as he had not heard her testimony he could not comment on it, he was still trying to defend the credibility of Roan and refused to undermine her testimony even when faced by overwhelming support for the argument that she was not credible. Isn't it amazing the lengths that the Chief would go to defend his witness?

We then asked Zimmon if Roan is found to be not credible on when she arrived in San Bernardino, the prostitution sweeps and the issue of having sex and a number of other issues both given under oath and in statements given why should we believe her at all? Zimmon side stepped the question and said that is what the Board had to decide.

We then went onto the other Policy violation, 4.02, neglect of duty. Zimmon agreed that I go beyond the call of duty with regularity and had found this out in the review of my personnel file.

He found the policy violation had occurred when I had accessed the internet while I was on duty and testified to that when he was questioned by attorney Easland. Chief Zimmon testified under oath:

"And I find that he neglect -- or that he violated statute 4.02 in that he freely admitted to me, and I think in the investigation, that he had used the Internet to chat with a personal friend while he was on duty, and he also used the Department computerized system to obtain personal information regarding Roan's husband."

Under cross-examination attorney Krause attempted to clarify what Chief Zimmon had testified to under direct examination. Questions by Attorney Krause, Answers by Chief Zimmon.

Q. And your testimony today was that occurred on duty and that was your problem with it, right?

A. Yes.

Q. Did the subject matter of what you just read seem to revolve around officer (Rich) Peterson and officer Peach at the MET (SWAT) office?

A. Yes.

Q. And, again, that's the subject matter of the violation of 4.02, at least in this part, correct?

A. Yes.

Q. And your concern was that that occurred on duty, correct?

A. Yes.

{Attorney Krause then read from the investigation that the Police Department had compiled against me and had Chief Zimmon follow along. Detective Gorrell was an Internal Affairs detective.}

Q. On page 375, Gorrell -- well, let me back up.

Gorrell: "Is it sometimes during work?" referring to the use of the computer.

Peach: "I can't really remember too many times I've done it during work, no."

Gorrell: "Okay. The incident that were talking about where Rich was with you, was that during work?"

Peach: "That was after work when I was doing his review."

Q. [Krause] Is that what you just read?

A. Yes.

Q. If it was after work Chief, how can it be on duty?

A. Because I also balanced it with the statement of the officer who said he was there when he was online, and it was based on that totality and not just his recommendation that he was off work that I determined it to be a violation of policy in two accords. One was neglect of duty, and the second was the misuse of Department resources.

Chief Zimmon first stated he thought that I said in the investigation that I was on duty and then became more sure that the internet access had occurred while I was on duty under cross examination, he then is directed to read my statement given at the internal affairs interview where I said I did not access the internet while on duty. To then justify why he reached the conclusion that it occurred on duty he now offers that the other officer (Peterson) contradicted my statement.

Peterson was interviewed on January 22<sup>nd</sup> 2002 by detective Lindsey, (not an Internal Affairs detective at that time) Peterson made the only reference to a computer in the entire interview and said that I had used the computer in the MET (SWAT) office while I was doing his evaluation. HE DID NOT SAY WHETHER WE WERE ON OR OFF DUTY DURING THIS TIME.

In my interview with Internal Affairs I stated that I used the internet off duty mostly and specifically the one incident with Peterson present was done entirely on my own time and I reiterated that point during the Skelly hearing which was witnessed by attorney Robert Krause. (At no time did I say to anyone and especially in the Skelly hearing that I was on-duty when I accessed the internet with Peterson present.) I'm sure that attorney Krause will also remember exactly what was said. The Department could check into the time of the day that the computer was accessed as I did sign on with my name and password. I'm sure they did check into it and found that it was entirely on my own time, unfortunately for the Chief it would show that he had also lied in his reasoning also so they could not let the exculpatory evidence come out.

Chief Zimmon intentionally lied again during his sworn testimony in that he said I was on duty when I accessed the internet

and said his main problem (in justifying the violation of section 4.02) was that I was on duty when it occurred. The only two people present during my accessing of the internet were Peterson and I. Peterson did not say when he was interviewed whether it occurred on or off duty in his statement, Chief Zimmon testified that it was exactly that statement (Peterson's) that led him to believe that it had occurred on duty. Where in Peterson's statement did it say that I was on duty? It didn't, so Chief Zimmon also lied under oath about balancing my statement with Petersons. He falsely tried to give the impression that Peterson had said that I accessed the internet while I was on duty. He also lied under oath about my saying that I freely admitted to him that I was on duty when I accessed the internet with Peterson present. Surely if I had said anything along those lines the Chief and the Department would have seen the glaring inconsistency and raised it as an issue. It was not raised because it wasn't true. As for the misuse of Department resources namely the computer system, almost everyone at the Police Department would use the computers to access the internet. Detective Vasek testified the following day that is was very common and in fact he had just ordered some pants online. I particularly remember officer Granado arranging dates for himself over the internet and officer McBride downloaded a video of a Russian soldier being executed in Afghanistan, all during on duty times with absolutely no consequences. In fact officer McBride would call in numerous sergeants, officers and lieutenants to view the killing.

Chief Zimmon then testified that I had violated the policy on computer systems including criminal database information and DMV records. He was shown the form that I had signed in 1991 and identified it as being the policy that was applicable in this case and that it was specifically the policy that we were defending against. He testified earlier that the policy said that the officer need not share the information but only receive it and reiterated that was his earlier testimony.

Bob Krause then read the policy to Zimmon.

"11142 Penal Code, authorized person furnishing a record or information to unauthorized person. Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor."

He then asked Zimmon if I had furnished the information to anyone and he said no and based upon his 29 years of law Enforcement experience if someone is to violate a law, they must violate what the law either dictates they do or do not do.

Wait a moment, now Zimmon is saying that in order for a law to be broken the suspect would need to break all the elements of that law. That's not what he said earlier, I guess his answers change to what the circumstances dictate so he must have not been truthful in his earlier testimony, I would agree with him in this answer only. My attorney then read Penal Code 13302 which was the second paragraph of the policy,

"Furnishing to unauthorized person by employee of local agency. Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the information is guilty of a misdemeanor."

Zimmon again said that I had not given any information to anyone. Lastly Bob read the final paragraph to Zimmon.

"Excerpt from Department of Motor Vehicles (DMV) regulations and guidelines. Information supplied to law enforcement agencies from the Department of Motor Vehicles is intended strictly for the purpose of enforcing the law and shall not be given out to unauthorized second parties."

For the third time Bob asked Zimmon if I had given out the information and he replied that I had not. He agreed that it was a purpose and role of law enforcement to test information that an informant supplied against known information such as contained in DMV records for the affidavit in support of a search warrant for example.

Zimmon could see where this was heading, he had agreed in his answers that he had found me guilty of violating a policy that I had not violated. He then offered that there was other laws that pertain to just accessing the information and those were the laws that he meant to apply in my case but he had not included those laws (if they exist) in the two volumes of material that his agency had compiled.

Chief Zimmon again tried to wriggle out of his error, he agreed that based on his knowledge of administrative law and being the Chief of Police an employee is entitled to all the information and all of the charges pending against him prior to the Skelly process but then claimed he didn't know if the information that wasn't supplied could be used against them in the same process. Surely this must either be a lie again on Chief Zimmon's part in that he said he didn't know if the missing information could be used or that he did know and realized that the information supplied to me must contain all of the information and all the charges and therefore he would be seen as finding charges against me on non-existent evidence. Which is worse, is he just plain incompetent at his job or more maliciously, finding charges sustained against me without relying on evidence or policies that would make it a sustained charge based on the minimum standard of a preponderance of the evidence.

Chief Zimmon testified that the main reason he decided to terminate me was because, he didn't believe what I said and that it had become a "Brady" issue. The doctrine of the Brady case was that once an officer had found to have been untruthful he could no longer function as a police officer because it would have to be disclosed to the defense in any case that the officer had been found untruthful. There are many levels of being untruthful, Zimmon could not give any examples where I had maliciously been dishonest but as a whole he didn't believe me. The next level would be that someone of independent review had found that the officer was dishonest, above that would be any conviction for any offence where being dishonest was one of the elements of the crime, such as perjury.

Under further cross examination Chief Zimmon was asked if an officer was found by a court of competent jurisdiction to have not been believed by that court, would it raise a Brady issue? He answered that it would depend, but it could. Attorney Krause then asked him if he was aware that detectives in this case had prepared declarations under penalty of perjury in response to an action that we had brought to court and that Judge Edwards had found detective (Lindsey) statements had belied each other. The Chief said he wasn't aware of it but if it was brought to his attention he would conduct an internal affairs investigation.

The decision from Judge Edwards ruling was made public on December 5th 2002, surely the Chief either lied about not reviewing the decision. If he didn't review the decision, why not. Is he that incompetent to ignore his Department when it is sued and a decision is published that stated his Department violated the law several times. Departments do not get sued every day, surely the publicity that was in the local papers alone would stir his interest in his Department, after all he is the Chief. If he did review it why wasn't detective Lindsey placed on administrative leave and an Internal Affairs investigation initiated as he testified he would do? Instead Chief Zimmon assigned detective Lindsey to Internal Affairs, was he going to allow Lindsey to investigate himself? Chief Zimmon surely lied again in his testimony by testifying that he was not aware of the decision or at least showed his incompetence by not taking any interest when his Department is sued and found to be in violation of the law.

Chief Zimmon said that he had reviewed parts of my personnel or 201 file during the investigation and in the "Skelly" hearing that assisted him in recommending my termination. Included in his review he remembered looking at my performance evaluations, some awards that I had received from the Department and he also looked at my past disciplinary history. He was testifying under oath so he should have been telling the truth because I have no past disciplinary history. I have never been "in trouble" at the Police Department throughout my career, so I'm sure that he was trying to paint me in the worst possible light to the Board by telling them that I had a disciplinary history and leaving it up to them to infer the

contents of that history instead of being honest and admitting that there was none.

When the City Attorney Easland began to re-question Zimmon he did not tell the truth again. When I used the information that Roan supplied to me to check her credibility I ran the name through one of the systems that police have access to for this purpose. There never was a record of my running the name and Internal Affairs detective Gorrell in fact said there was no record because they could not find when or if, I had ran the name. I had told them that I had ran the name because it was the truth. Zimmon was asked by attorney Easland if he remembered the Internal Affairs interview regarding the running of the name. He said he did remember and said, "we did in fact determine that he had ran the people." This was another lie, the Department did not have any evidence, there was not a printout from a computer that was included in the investigation that I had ran anyone connected with this case and the Department only knew about it because I told them.

In Judge Edwards decision on my Peace Officer Bill Of rights Violations he found that Detective Lindsey had attempted to not tell the truth in his declarations in support of the Cities motions. He in fact said that one of his statements in his declaration "belied' his earlier statement. Chief Zimmon was served with Judge Edwards case decision and chose not to initiate any kind of investigation into Lindsey as should be conducted with the implications of the Brady V. Maryland case law. Chief Zimmon was also informed of Judge Edwards language in the Civil service hearing and has failed to act and in fact promoted Lindsey and Otey to Internal affairs positions.

It is obvious to me that having been shot twice in the line of duty by officers, having reported an officer of raping prostitutes and being subsequently investigated and terminated on non-provable charges by the Civil service Board I am the victim of discrimination on a number of different bases. Firstly I believe I am being persecuted for my choice of religion as being an atheist in a climate of dedicated Christianity followers at all levels of the Department.

Secondly I am being persecuted for being a whistle-blower and alerting the Department of a corrupt rapist officer, isn't it just to hard to believe that **TEN** senior and seasoned officers did not realize that their warrant was not night serviceable. Morse insidious is the real probability that they knew the warrant was not night serviceable and just served it anyway. The Department even went to the extent of trying to corrupt witnesses during the hearing to persecute me in clear defiance of the Law.

Please investigate this Department, since I have gone public with my case I have been contacted by numerous other employees that have been victimized in the same kind of manner. There are lots of other examples of corruption and brutality that do not pertain to me but violate State, Federal law and the Constitution committed by the Department and hope that you will leave no stone unturned. In fact it has just came to light that a Department minister, Tom Gronewald has just been fired from his volunteer position for trying to expose corruption.

I talked with Tom and found out that in 2000 the Chaplains program had received a federal grant for \$125,000 to be used for clerical duties around the Station. In 2002 lieutenant Mark Garcia had authored another grant asking for an additional \$105,000.00 from the Federal Government purportedly for the Police Department Chaplains Corporation. Tom Gronewald was the president of the Chaplains Corporation and didn't even know that another grant had been applied for and the funds had been received, he accused Lieutenant Garcia of being a thief and a liar at a Chaplains Board meeting because he had applied for and received grant money under the pretext of the Chaplains program when in fact it had been for something else entirely, probably something that would not qualify for federal money on it's own.

A few weeks went by and unbeknownst to Chaplain Gronewald he was fired from his position as a volunteer Chaplain and President of the Corporation at a meeting where he was not present and Lieutenant Mark Garcia was. Later that same day he

went down to the City of San Bernardino Credit Union in the normal course of his business to check up on the Corporate accounts to see how much money was missing, so far \$25,000.00 was unaccounted for in initial account and no-one from the administration of the Department would tell him what had happened to the funds. When he walked into the bank he was greeted by an embarrassed employee who told him that Lieutenant Garcia had been in the bank earlier and had told them to remove Tom's name from the Corporate account. Tom was taken into a back room and asked the manager to explain what had happened, she explained that Lieutenant Garcia had come into the bank in uniform, displaying his gun and badge and had told them to remove Tom's name. They knew that legally they could not do such a thing because Lieutenant Garcia was not on the account but they felt scared and intimidated by him so they did it anyway. They immediately reinstated Tom's name back onto the account and offered him their deepest apologies. He wrote his letter to the Department of Justice not to point any fingers at the guilty parties but just to say he didn't think that he wanted to associate himself or the Chaplains Corporation any more with any further grant applications. Of course the Department knew of their previous transgressions and FBI investigation into their misappropriation of grant funds totaling \$2,500,000 in 1997 and did not want to be back under the spotlight, after all this time they might get caught and the potential of a Federal Prison sentence is enough of a incentive to get rid of and discredit Tom Gronewald, the whistle-blower.

But it is exactly this misuse of funds that upset Gronewald because of his honesty. He was too honest for the Department and couldn't be trusted not to say anything. Isn't it ironic that a chaplain could be considered too honest and not trustworthy enough to even continue as a volunteer at a Police Department?

Again, time will tell if there is any investigation of Gronewald's claims. Based on my experience I know the City itself will not want to uncover anything that might expose them to further liability. The Mayor - Judith Valles and the City Attorney - James Penman are fully aware of the accusations however Penman has already stated publicly that he **knows** there was no impropriety.

I realize that it is unusual for an Officer to come forward with violations against his Department but it is obvious that the San Bernardino Police Department is out of control and maybe the publicity and all that it brings with it may make them accountable. The level of corruption extends to the Office of the Chief of Police and having been shot twice by the Department I am running out of avenues to bring this to light. Please feel free to call me at any time and I am available to meet anywhere. I hope that your agency will investigate and hold those that sully the Law Enforcement name accountable.

Sincerely,

Stephen Peach

#### REVIEW OF SUBMITTED MEDICAL RECORDS

OF

#### STEPHEN PEACH

<u>Undated</u>: Consultation Sheet from San Bernardino County Medical Center indicated the bullet traveled through the right dorsal aspect of the distal phalanx of the middle finger. Ninety percent of the nail was removed with 10% of base intact.

<u>Undated</u>: Handwritten chart note from San Bernardino County Medical Center indicated the patient was a male police officer for evaluation of gunshot wound to right hand, complained of pain and bleeding.

 $\underline{09/12/97}$ : Certificate of Disability from San Bernardino County Medical Center indicated the patient was disabled from 05/12/97 to 09/16/97.

 $\underline{09/12/97}$ : Record from San Bernardino County Medical Center indicated the patient was seen for bilateral swelling of the ankles. Assessment was bilateral pedal edema and pain. He was off work until 09/16/97.

09/11/98: Report from SBCMC Radiology Medical Clinic indicated x-rays of the right hand revealed tuft fracture of the third finger. X-ray of the right hand revealed the splint had been placed. Tuft fracture of the middle finger is not well seen on this examination. This was interpreted by Thuan Dang, M.D.

09/23/98, 09/30/98, 10/01/98: Handwritten chart notes from San Bernardino County Medical Center indicated the patient complained of right leg pain, light-headedness, fever, chills, leg elevated by pillow.

09/24/98, 09/25/98, 09/26/98, 09/27/98: Handwritten chart notes from San Bernardino County Medical Center indicated the police officer was status post gunshot wound to the right thigh, status post SFA repair.

 $\underline{09/28/98}$ : Handwritten chart notes from San Bernardino County Medical Center indicated that swelling developed in the leg. There was redness at the anterior compartment and was very tender and tight.

09/28/98: Department of Radiology Report from San Bernardino County Medical Center Radiology Medical Clinic, interpreted by Frederick L. Orr, M.D., revealed the following impression: "No evidence of deep vein thrombosis although the right proximal superficial femoral and common femoral region are obscured technically."

Page 2
Review of Submitted Medical Records
RE: Peach, Stephen

10/01/98: Orthotic Notes from San Bernardino County Medical Center indicated the patient was evaluated and fitted with a prefab leaf spring AFO to help patient control drop foot. The patient had no complaints of fit and feel of the AFO.

10/02/98: Statement of Pathology from San Bernardino County Medical Clinic gave the following diagnosis: "Debridement tissue: Fragments of necrotic skeletal muscle and fibroadipose tissue consistent with stated origin. Benign." Diagnosis: "Femoral artery: Segmentally ruptured and thrombosed femoral artery segments showing focal intimal microcalcification."

10/05/98: Consultation Sheet from San Bernardino County Medical Center indicated the patient sustained a gunshot wound to the right finger on 09/23/98, as well as to the right anterior thigh. He was presently attending physical therapy.

10/06/98, 10/07/98, 10/08/98, 10/09/98, 10/12/98, 10/13/98, 10/14/98: Handwritten Inpatient Progress Notes from Arrowhead Regional Medical Center indicated the patient had a blood clot of the thigh. He was status post gunshot wound to the right femoral artery and status post fasciotomy.

10/13/98: Department of Radiology Report from SBCMC Radiology Medical Clinic, interpreted by Frederick L. Orr, M.D., revealed the following impression: "No evidence of deep venous thrombosis involving the right superficial femoral and popliteal vein."

10/14/98: Antimicrobial Order Form from San Bernardino County Medical Center indicated cellulitis, right leg.

10/14/98: Inpatient Progress Record from Arrowhead Regional Medical Center indicated the patient complained of discomfort and pain right medial thigh, increased redness. The patient noted that the redness was a new onset. Assessment was mild cellulitis of medial thigh. IV Ancef was started.

10/16/98: Handwritten chart note from San Bernardino County Medical Center indicated the patient was status post gunshot wound, SFA repair, RLE anterior compartment fasciotomy. He was provided crutches, Vicodin and Tylenol.

 $\underline{10/16/98}\colon$  Discharge Summary from San Bernardino County Medical Center gave a final diagnosis of: 1. Status post right femoral artery gunshot wound with repair using a saphenous vein graft. 2. Status post anterior compartment syndrome with fasciotomy and debridement. 3. Status post split-thickness skin graft to the right lower extremity.

Page 3
Review of Submitted Medical Records
RE: Peach, Stephen

10/19/98: Handwritten Clinical Notes from San Bernardino County Medical Center indicated the patient was status post gunshot wound, SFA repair and RLE anterior compartment fasciotomy. The patient should present to ER for evaluation of wound, looks as if wound is infected.

10/22/98: Handwritten Clinical Notes from San Bernardino County Medical Center indicated the patient was status post gunshot wound to the right thigh. Return in three weeks.

10/22/98: Handwritten chart notes from San Bernardino County Medical Center were reviewed. The patient was status post gunshot wound and fasciotomy of wound.

10/29/98: Handwritten Clinical Notes from San Bernardino County Medical Center indicated the patient was doing well. Status post gunshot wound two weeks previously.

 $\frac{11/05/98}{1}$ : Handwritten Clinical Notes from San Bernardino County Medical Center indicated the patient's wound was healing. A prescription was given for HBO therapy, right leg.

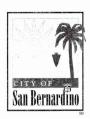
12/03/98: San Bernardino County Medical Center Clinical Notes indicated the patient was status post gunshot wound to right thigh and SB graft for SFA. Status post anterior compartment syndrome with debridement. The plan was electrical stimulation, ortho consultation, Vicodin.

<u>02/04/99</u>: Clinical Notes from San Bernardino County Medical Center indicated the patient had a gunshot wound to the right thigh. He underwent repair of the femoral artery but developed compartment syndrome requiring debridement of nonviable muscles in the leg. The patient healed and would complete physical therapy next week. The patient reported he was able to walk, run, jump, climb stairs, climb ladders with his AFO prosthesis. He was unable to dorsiflex his right foot, however. He was able to return to police work.

<u>Undated</u>: Record from Arrowhead Regional Medical Center, Dr. Merkel, indicated the patient was seen for consultation for foot drop. He was status post gunshot wound to the right thigh, anterior leg compartment syndrome. Assessment was right quad weakness with possible lateral patella ?, right drop foot two degrees.

Multiple records from San Bernardino County Medical Center were reviewed. Only those pertinent to the patient's orthopedic status are summarized.

DLW/rm62 079915



#### HUMAN RESOURCES DEPARTMENT

300 North "D" Street • San Bernardino • CA 92418-0001 909.384.5161 • Fax: 909.384.5397 www.ci.san-bernardino.ca.us

December 5, 2002

Stephen Peach



Date of Injury: 01/18/02 CT Claim Number: 0213-02-00288 City of San Bernardino 300 North 'D' Street San Bernardino, California 92418 909-384-5173

Employer: City of San Bernardino

# NOTICE OF DENIAL OF CLAIM FOR WORKERS' COMPENSATION BENEFITS

Gloria Alarid, SIA is handling your workers' compensation claim on behalf of the City of San Bernardino. This notice is to advise you of the status of your workers' compensation claim for your injury of 01/18/02. Only the items completed below concern your benefits at this time.

[ ] After careful consideration of all available information, we are denying all liability for your claim of injury based on

[X] After careful consideration of all available information, we are denying liability only for your claim of a continuous trauma injury to your right leg and right knee based on the report of Jerome Wall, M.D., wherein he states that a continuous trauma injury did not occur.

The State of California requires that you be given the following information: If you disagree with the decision, you may consult with a State Information and Assistance Officer at 1-800-736-7401 or call your local Information and Assistance Officer at 909-383-4522. You may also consult with and be represented by an attorney, and/or apply to have your case heard by the Workers' Compensation Appeals Board.

If you have any questions, please call me at 909-384-5173.

Sincerely,

Gloria Alarid, SIA, Claims Examiner

Enc.:[] Benefits Pamphlet

[] Employee Claim Form

cc [X] Law Office of Norman Gillette

[X] Carrie O'Connor, Serembe, Bakke & Seaman [X] File

DWC 500-E

3/96



HUMAN RESOURCES DEPARTMENT

300 North "D" Street • San Bernardino • CA 92418-0001 909.384.5161 • Fax: 909.384.5397 www.ci.san-bernardino.ca.us

December 5, 2002

Stephen Peach

Dear Mr. Peach,

I am handling your claim for workers' compensation benefits on behalf of your employer.

After careful consideration of all available information, we concluded that only the hernia claim of injury was work related.

We will pay for appropriate medical care and will reimburse you for necessary transportation expenses at 34 cents a mile.

(If you are disabled, this section applies.)

Since you are a City of San Bernardino safety officer, through Labor Code 4850(a) injury or illness arising out of and in the course of his or her duties, he or she shall become entitled to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

If you receive any medical bills, please send them to me. Your claim number is #0213-02-00288.

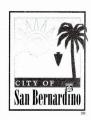
Please review the pamphlet previously sent to you for a full explanation of workers' compensation benefits. If you have any questions, please feel free to call me at (909) 384-5173.

Sincerely,

Gloria Alarid, SIA

Workers' Compensation Specialist

GA/ld



#### HUMAN RESOURCES DEPARTMENT

300 North "D" Street • San Bernardino • CA 92418-0001 909.384.5161 • Fax: 909.384.5397 www.ci.san-bernardino.ca.us

January 23, 2003

Stephen Peach

Dear Mr. Peach,

I am handling your claim for workers' compensation benefits on behalf of your employer.

After careful consideration of all available information, we are accepting the CT knee claim as work related.

We will pay for appropriate medical care and will reimburse you for necessary transportation expenses at 34 cents a mile.

(If you are disabled, this section applies.)

Since you are a City of San Bernardino safety officer, through Labor Code 4850(a) injury or illness arising out of and in the course of his or her duties, he or she shall become entitled to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

If you receive any medical bills, please send them to me. Your claim number is #0213-02-00288.

Please review the pamphlet previously sent to you for a full explanation of workers' compensation benefits. If you have any questions, please feel free to call me at (909) 384-5173.

Sincerely,

Herris Cederal Id Gloria Alarid, SIA

Workers' Compensation Specialist

GA/ld

cc Law Office of Norman Gillette Law Office of Serembe, Bakke & Seaman

# San Bernardino County Sun

# Dismissed chaplain: PD misused grant

'No impropriety,' says SB's attorney
By TERESA ROCHESTER
Staff Writer

Tuesday, May 06, 2003 -

SAN BERNARDINO - The Police Department's former chaplain alleged Monday before the City Council that the department inappropriately used a nonprofit group he said he headed to secure federal grant funding.

The allegations were denied by the city attorney.

Tom Gronewald said he was fired last week from the volunteer chaplain job he held with the Police Department for five years after writing a letter of complaint to the Department of Justice.

Gronewald told the council that he was the president and chief executive officer of the nonprofit Inland Empire Chaplain Corps. At the suggestion of the department's previous chief, Gronewald applied for a grant from the Department of Justice, he said. The group received a partnership grant for \$125,000.

But Gronewald alleged that the grant application was rewritten without the group's input and that the money was not used for what was outlined in the the original proposal. He said his attempts to view the revised application were blocked.

His complaints, Gronewald said, fell on deaf ears.

"I was told to go open a bank account with my personal name on it, under the nonprofit, and with the (Police Department) liaison's as well,' Gronewald told the council. "I was in total disagreement with how this money was spent. Disclosure of grant fund expenditures were being asked for at our board meetings. It was evident we were supposedly partnering on something we were not allowed to know much about.

Penman said the organization was not Gronewald's but the Police Department's.

"The truth of matter is, to form this organization the Police Department drew up the paperwork,' Penman said. "This (nonprofit) was always to be part of the Police Department. I do know there has been no impropriety.'

Gronewald alleged that another grant proposal had been submitted under the group's name without his knowledge. And, he said, an officer allegedly had his name removed from the organization's bank account.

Shortly thereafter, Gronewald said, he sent the letter to the Department of Justice.

Last Tuesday, Gronewald said, he was voted off the organization's board.

http://www.sbsun.com/cda/article/print/0,1674,208%7E12588%7E1372117,00.html

5/6/2003

Friendly Fire?

# **About the Author:**

Stephen Peach was born in England and emigrated to the United States and became a police officer in Southern California. He was a highly regarded SWAT and gang officer for over a decade that had a knack for developing informants that led to the discovery of a police officer serial rapist. He has received numerous commendations for outstanding police work throughout his career and is a Superior Court recognized gang expert. He lived a nightmare as a victim of a corrupt Police Department that is still ongoing and remains a resident of the City of San Bernardino with his wife and children.