



VANGUARD

OFFICIAL PUBLICATION OF THE SAN JOSE POLICE OFFICERS' ASSOCIATION

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**We Are Proud
To Fight For You**

By Paul Kelly And Sean Pritchard - Page 06

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- Unsolicited articles and letters may not exceed 500 words.
- Writers are assured freedom of expression within necessary limits of space and good taste.
- Please keep letters and/or articles legible.
- The editor reserves the right to add editor's notes to any letters submitted if necessary.

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The Truth Is Its Own Defense

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Meeting Dates For 2020/21:

The following dates for SJPOA Membership Meetings are subject to change based on COVID-19 restrictions:

December 1, 2020; Tuesday 0730 hrs.

Santa at the POA: **TBD**

POA Christmas Open House: **TBD**

January 5, April 6, June 1, October 5, December 7, 2021;
Tuesdays 0730 hrs.

This schedule is subject to change, please contact the POA office for confirmation of dates and times.

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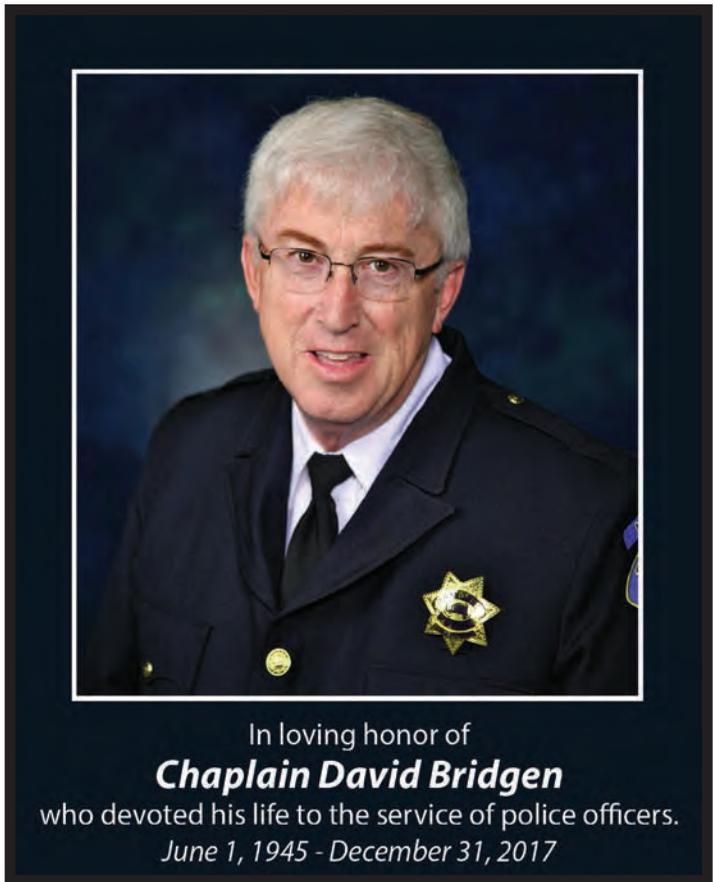
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VANGUARD

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Legal Defense Fund Report

Franco Vado, LDF Administrator

Requests: 13

Approved: 13

Denied: 0

Board Representative: 13

Attorney Request: 0

THIS IS A SYNOPSIS OF LDF TRUSTEE ACTIONS FOR the month of September 2020. Due to an individual's right of privacy, specific details of LDF cases cannot be revealed by your LDF Trustees without written authorization from the involved member.

Your Legal Defense Plan provides you with legal services for acts or omissions arising in the course and scope of your employment as a San Jose Police Officer. Be advised that incidents which arise while you are performing duties associated with off-duty employment are excluded from coverage under the Plan. □

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Paul Kelly



Sean Pritchard



President/VP's Message

We Are Proud To Fight For You

When we look at the road traveled by our membership and our association, what has made us strong is our sense of purpose and our belief that we are the Thin Blue Line that keeps dangerous criminals from victimizing society. The core of our association is unity and the understanding that we will support each other and collectively confront the many challenges we face together as one unit.

SUPPORTING EACH AND EVERY MEMBER HAPPENS in many ways. After all, to be effective as a union, we cannot play checkers, we must play chess. We have to evaluate the immediate move on the chess board and its implications on future moves as well.

So, as we scan the chess board, we have to ask ourselves the question; what's better, achieving the best results or making you feel good about what we do? For us, the answer is simple; we must deliver results for you. We don't want to capture pawns, we want a checkmate.

Would some feel better if you saw your union leaders in uniform, out on patrol to show we are with you? Maybe. But, will that accomplish what you need with the Department, at City Hall, in Sacramento, or in the media? No. It will not.

Sometimes our best uniform may be a SJPOA polo or a business suit, because we must suit up in the uniform that puts us in the best position to win. We want you to feel good by knowing that your union has your back.

We want you to feel good knowing that we're fighting to ensure you are not the subject of a politically-motivated indictment or fighting to protect you from being civilly sued for following your training during a difficult incident in the field.

We protect your livelihood by advocating to make sure you are compensated justly and are able to take care of yourselves and your families today and into retirement. We

“So, as we scan the chess board, we have to ask ourselves the question, what's better, achieving the best results or making you feel good about what we do? For us, the answer is simple; we must deliver results for you. We don't want to capture pawns; we want a check-mate.”

protect you by confronting legislative craziness in Sacramento that is pushed by anti-police organizations that will make your job more difficult.

Many times we are very public about our actions. Sometimes discretion is the wiser course of action.

In the instance of former IPA Aaron Zisser, we felt it was necessary to publicly expose his shortcomings and push for his removal from the job as the IPA. We were together as a union on his being a danger to our profession, and over 500 of you signed a petition that was sent to the city leadership calling him out for his numerous mistakes. We were loud, we were public, and we prevailed.

There are times where the Board is advocating in a less public manner to ensure you get a fair shake when under scrutiny. We often don't go public when we are negotiating over wages and working conditions, unless the other side is being unfair.

That happened years ago during the reign of terror when Chuck Reed was mayor. During the midst of our battle to keep your pensions vested, the city offered us a raise that



we believed was too small and a slap in the face, so the POA Board scheduled a vote. The membership rejected the raise by a vote of 850 to 2. We eventually agreed to a higher raise and demonstrated to all the detractors that the POA is strongest when we are united. We are entering negotiations now on wages and we will work hard to deliver for you.

Just like a criminal sizing you up on the streets looking for an advantage, some on the City Council, anti-police activists, and state legislators, are also sizing us up and looking for ways to exploit us. They are looking to pit us against each other with a CANCEL CULTURE mentality. And just like any seasoned detective, special ops, or veteran street cop, our union does not always announce our intentions; we do not telegraph our next move.

Your POA will make decisions out loud or quietly for you, all of you. In supporting each and every one of you the most important thing we can do is ensure the job gets done. The focus is on results, not credit. We work strategically. A majority of the time we work quietly but at the end of the day we are working 24/7 for you by:

- Saving a cop's job
- Providing experienced representation and legal counsel when you are under scrutiny
- Protecting your personal freedoms as it relates to Qualified Immunity or criminal filings against you
- Challenging the Department and City Hall on new policies that jeopardize the safety of you and your fellow officers
- Continuing to put thousands of dollars into your pocket because your FLSA rights were violated
- Getting you the biggest raises in the history of SJPD
- Continuing to fight a District Attorney that is looking to arrest cops to further his political career

- Fighting bad bills in Sacramento that are not well thought out, poorly crafted, and designed to take your rights away
- Calling out those that want to defund our department and put our residents and you in danger

The list does not end here. Let's take a look at other ways each and every day YOU, as a member, are not forgotten about. A mistake is made, after all each of us are human. An officer calls in a panic because there is an issue with his/her insurance for their child. Their child needs certain medical help, yet there is no insurance due to an oversight, a mistake, heck it doesn't matter what happened. All that matters is we help that officer who's in crisis mode. And once that issue is resolved, regardless of how we solve it, the officer can take a breath because he/she knows their child will be okay and their family will be okay.

When an officer came to us because they had received discipline that would normally prevent them from going to a unit and we stepped in, it didn't matter how it was accomplished, it didn't matter that we didn't beat our fists on a table or scream and holler. What mattered to that officer is they were given a fair chance to continue their career in the way they wanted to.

Every day presents new challenges. Together, we must meet them. Every move we make is made in the name of EVERY SINGLE OFFICER in this department. We use every experience to help guide us in the never-ending pursuit of SUPPORTING YOU! And we're proud to fight for you. □

Editor's Note: Please send any comments to Paul Kelly at: president@sjpoa.com or Sean Pritchard: vp@sjpoa.com

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Your Association Depends On it!

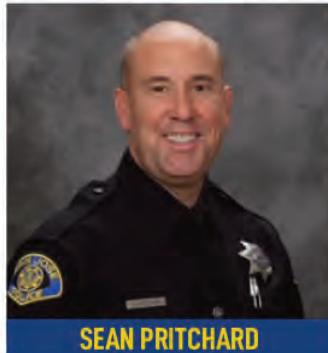
EXPERIENCED LEADERSHIP FOR A STRONG SJPOA

Re-Elect This Team to Keep Delivering Results



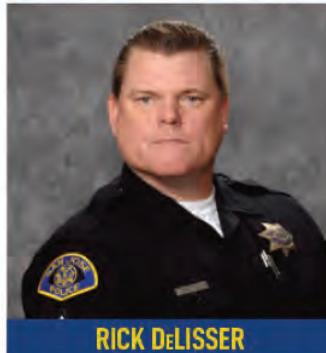
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- ✓ Negotiating Team since 2013
- ✓ PORAC Board Member
- ✓ SJPD for 27 years. Patrol, VCET, Special Projects Gang Team, FTO, Domestic Violence Supervisor, Homicide, Night Detective.



SEAN PRITCHARD

- ✓ Legal Defense Committee
- ✓ Negotiating Team Member
- ✓ SJPD for 25 years. Patrol, METRO, FTO, Night Detectives, Homicide, SAIU, VCET.



RICK DeLISSER

- ✓ 27 years in Law Enforcement
- ✓ FTO, Vice, Gambling Division, FBI Regional Lab, Traffic Investigation, Auto
- ✓ SJPOA Negotiations Team Member



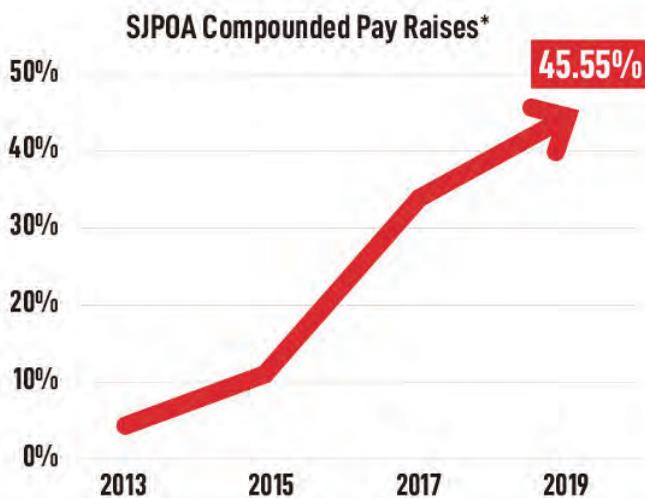
TODD CLEAVER

- ✓ SJPD for 29 years
- ✓ Motors, FTO, Metro, Patrol
- ✓ SJPOA Reserve Director

"When my back was against the wall Sean reached out to me and assured me that he and the POA were there for me. I knew that POA support and work on my behalf were the key to a quick and just resolution."

-SGT. CHRIS SCIBA

SJPOA has obtained a 45.5% compounded raise since 2013 for our members. (38.66% straight percentage that compounds to put 45.5% more in an officer's paycheck). SJPOA has begun negotiations on a new wage package.



The New York Times

Police Help Defeat California Bill on Removing Problem Cops

By The Associated Press

Sept. 1, 2020



SACRAMENTO, Calif. — Police unions and other law enforcement organizations went into overdrive to thwart a measure that would have added California to the majority of states that can end the careers of officers with troubled histories. It failed as lawmakers scrambled to wrap up their work, and while the nation's most populous state still has no way to permanently remove problematic officers, a number of other police reforms passed.

EXPERIENCED LEADERSHIP FOR A STRONG SJPOA

Re-Elect This Team to Keep Delivering Results



STEVE SLACK

- ✓ SJPD for 24 years
- ✓ FTO, SAIU 290 Team, Metro, IA, Family Violence Unit and currently
- ✓ SJPOA Sergeant at Arms, LDF Committee and Negotiations Team Member



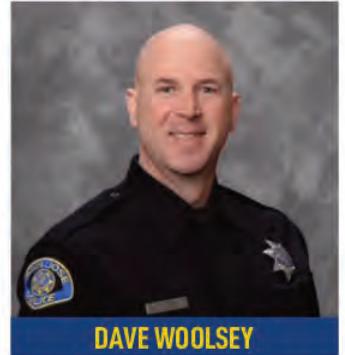
JOSE MARTINEZ

- ✓ SJPD for 25 years
- ✓ Financial Crimes, Assaults, Patrol, Office of the Chief, Family Violence
- ✓ SJPOA Board of Directors 2-yr



DAVE WILSON

- ✓ SJPD for 24 years
- ✓ FTO, NCI, Patrol
- ✓ SJPOA Reserve Director, LDF & Negotiations Team Member



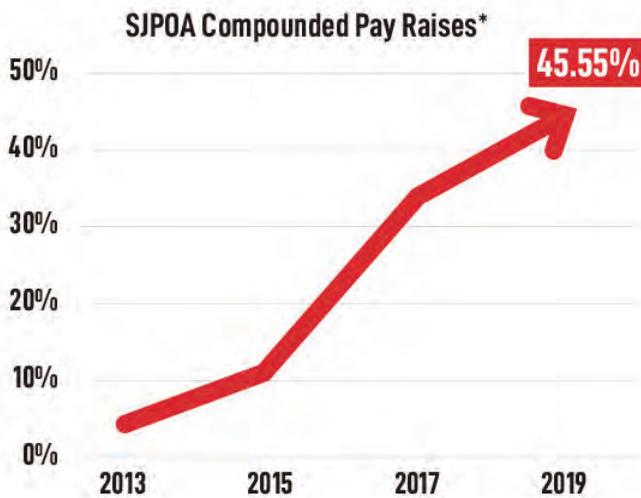
DAVE WOOLSEY

- ✓ 25 years in Law Enforcement
- ✓ FTO, SAIU, GIU, Division of Cannabis Regulation, Patrol
- ✓ SJPOA Negotiations Team Member

"When my back was against the wall Sean reached out to me and assured me that he and the POA were there for me. I knew that POA support and work on my behalf were the key to a quick and just resolution."

-SGT. CHRIS SCIBA

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Franco Vado



C.F.O.'s Report

Supporting The Board

Traditionally we would do this in person but because there is not a membership meeting, your CFO and the undersigned Board Of Directors would like to nominate our current Board of Directors that are up for re-election: Dave Wilson, Rick Delisser, Todd Cleaver, Dave Woolsey, and Jose Martinez. Additionally, we would like to nominate our current Executives: President Paul Kelly, Vice President Sean Pritchard, and Sgt. At Arms Steve Slack.

MYSELF AND OUR REMAINING BOARD OF DIRECTORS whole heartedly support these nominations. Your current Executive Team and Board have led our members through probably the most contentious time in the history of Law Enforcement, fiercely fought for the protections of every

“Your current Executive Team and Board have led our members through probably the most contentious time in the history of Law Enforcement...”

single member, and have the experience to continue to navigate us through the fight of our lives.

Respectfully,

– **CFO Franco Vado. Board of Directors: Anthony Kilmer, Catherine Alvarez, Gina Barajas, Teddy Davis, Greg Connolly, and Aidan Guy.** □

Editor’s Note: Please send any comments to Franco Vado at: cfo@sjpoa.com

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December 12, 2019 article by Javier Vivas Director Economic Research

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S.J.P.O.A. WINTER ELECTIONS *Candidate Statements*

Incumbent President



Paul Kelly

WE ALWAYS TALK ABOUT BEING part of a police family and how important that is. I know it is to me. I have leaned on the shoulder of many of my brothers and sisters, and they have leaned on mine. In any family, there are going to be brothers or sisters that disagree, but we never stop supporting each other, we don't leave, and we never try to divide

or break up our family for personal gain. Never.

I know my opponent does not feel the same way as I do about our family, and that is unfortunate. But this election is not about personal animosity; it is about you and improving and protecting your wages, benefits, and working conditions. This election is about confronting and defeating the police de-funders and misguided activists who are attacking our profession and trying to make our jobs that much more dangerous.

We have your backs and always will. That is not just talk. It shows in the results we have delivered for you. We just can't say that, we have to prove that to all of you every day. I keep hearing from Eddie Chan that we are not there for our membership, and that is farthest from the truth.

I humbly ask for your vote to continue to deliver results, guided by a well thought out plan, and experienced board members executing that plan for your benefit. If there is change now and division, we lose. Below is just some of the work we have done for our police family that should not be lost:

- During my time on the Negotiating Team and as President, the SJPOA has obtained a 45.5% compounded raise since 2013 (38.66% straight percentage that compounds to put 45.5% more on a top step police officer's

paycheck), averaging 6.5% a year, EVERY year.

- Protected our pension and finalized the Measure B fight that validated pensions as a vested right.
- Just from our last wage deal from 3½ years ago, a top step officer gets over \$1,500 more a month.
- Fought to get a settlement of \$750,000 from the City for unpaid wages for our officers due to FLSA violations.
- Fought horrific Use of Force Bills and Anti-Police Bills in Sacramento that focused on criminalizing you and risking you and your family's civil freedoms and financial security – this job is far from over.
- Exposed an IPA who used misleading statistics to create bias towards our officers, shielded a credible threat on our officers' lives, and who openly attended activists' protests. This led to his resignation.
- Initiated a second Legal Defense Fund that would protect our officers during any criminal case, but also would cover civil assistance to work with the City Attorney's Office in the case that a civil suit was brought against you.

These are real results, gained through constant hard work, building relationships, persistent pushing on behalf of our officers, and solidified with a united membership. I want this work to continue.

Our profession is facing the most crucial time in decades. The stakes for our SJP family are huge. The last thing we need is to be divided. Make no mistake about it, every anti-police activist in the world is hoping for division within the ranks of police unions.

From every angle, we are being attacked and we must protect ourselves. We are now back at the negotiations table to discuss wages. Our District Attorney is in search of more headlines and just looking to make a political criminal filing. Our very own City Attorney's Office has hung us out

to dry on things like the protest curfew enforcement. Negotiations related to "Police Reform" are gearing up with our City within the next month.

We have an experienced negotiating team that has weathered every storm that has come our way and we are actively engaged in planning how best to protect you and our family. Eddie Chan wants to take this same seat at the negotiations table with no experience of ever having been part of our negotiations during his entire tenure and has not developed any relationships with any city leaders. This is not fair to our membership to ask for such a gamble. I ask all of us to stand patch to patch; senior officers, younger officers, and retirees. We need to be unified.

Unfortunately, when Eddie Chan decided to run for president, he did not do so to better the SJPOA. He did so because he was angry, or "infuriated," in his words, over one incident, which I owned and always will. No leader is perfect, and when a leader screws up, they should own it. I have and will.

Rather than work with me to ensure that everyone knew our intent was never to take due process rights away from anyone, Eddie Chan quit. Just ask your two fellow officers who the SJPOA defended, and who have successfully returned to duty, if the POA had their backs. We did and always will.

But Eddie didn't just quit the Board of Directors. He quit the SJPOA. He turned his back on all of us members and proclaimed that he would work to take SJPOA members to another union. He chose to try and weaken our organiza-

tion rather than make it better. Leaders don't quit. Period.

I believe in anyone running for any position on our board, but I don't believe in abandoning your union and then attacking the same Board you worked with for years because you're mad and your feelings are hurt.

As we enter into negotiations, face more police reform fights at the local, state, and national levels, and deal with a DA determined to make headlines at your expense, experience and resolve matters. Now more than ever.

I am blessed to work with a thoughtful, dedicated, and talented Board of Directors. I whole-heartedly support the re-election of Vice President Sean Pritchard, Sergeant At Arms Steve Slack, Rick Delisser, Dave Wilson, Dave Woolsey, Todd Cleaver, and Jose Martinez. They have all earned re-election over and over again.

We will not be distracted by personal issues. Rather, we will stay focused on our primary job: protecting and improving your wages, benefits, and safety. We will keep you safe from reckless laws and misguided policy decisions from City Hall, Sacramento, and Washington, D.C. We will protect you and your families from political prosecution intent on destroying your lives. We will make sure you are compensated fairly for the dangerous work you do. We will stay focused on you and the issues that impact you.

I humbly ask for your vote. I humbly ask for you to vote for our current POA Team running. They have earned it, and no matter what, we are family.

Respectfully,
- Paul

□

Incumbent Vice President



Sean Pritchard

VP-SEAN PRITCHARD PROTECTS YOU. NOTHING IS PERFECT - WE ARE ALL HUMAN!! BUT Leaders Lead, they don't Quit; Leaders find a way to overcome obstacles; Leaders don't focus on ONE thing, they focus on EVERYTHING!

After all, these last three years should demonstrate to EVERYONE, NOT allowing anything to get by us has provided

every member the **ULTIMATE PROTECTION & REPRESENTATION.**

WORDS WITHOUT ACTION HAVE NO MEANING. As I sit here and humbly ask for your support in **re-election as your Vice-President**, I want to reaffirm why you have been right and why you will remain right in choosing me to continue this fight for YOU. **Let my proven work for YOU be the reason to re-elect me.**

I have worked tirelessly to support each and every member 7 DAYS A WEEK in my tenure. No matter what time it was or day of the week, anyone that has worked with me, or around me understands the ultimate level of commitment that I bring to our members. With any position I have had held in the POA, **NOTHING has been given to me.** When others say that the POA has failed in supporting its members, **I challenge them to show me where!** When some talk about Trust and Confidence in the POA, my body of work has clearly defined each of those things in my **SUPPORT OF EVERY SINGLE MEMBER.** I say this with absolute certainty based on the hundreds of contacts I have and continue to receive. From Patrol, to BOI, to Special OP's, from every rank within our department, when you needed someone there to fight for you, sometimes facing the greatest challenge of your career because of public scrutiny or a political decision, it has been I who stood by your side vigorously fighting to PROTECT YOU. **There will be those that attack**

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me, but you CANNOT attack my work!

“When my back was against the wall, Sean reached out to me and assured me that he and the POA were there for me. I knew that POA support and work on my behalf were the key to a quick and just resolution.”

– Chris Sciba

Let me be very clear, Eddie Chan asked me on different occasions to be President, demonstrating he had faith in me to lead the POA. He must have believed I **EARNED** the right to be President. Why else would he ask me to step in to be President? **BUT because I didn't agree with or believe in his views**, all of a sudden in the same breath, I am no longer capable of being a leader or fit to lead our POA. I would hope that others see through this narrow-minded thought process and truly see **Eddie Chan's obvious mantra of how HE would lead - IF YOU DO NOT AGREE WITH ME THEN YOU ARE AGAINST ME.**

Below is a glimpse of some of the important work that has been accomplished under my watch, all in the name of YOU!! EACH and EVERY item described was not about me or done for one person, it was done in the name of EVERY POA MEMBER!!

Work That Demonstrates WE Support Everyone

- 20%+ pay raise (2017-2020 MOU) - **\$1,500 MORE per month in your pocket (TOP Step OFFICER)**
- Defended Officers who faced TERMINATION and helped **SAVE THEIR JOBS**
- Defended Officers which resulted in MAJOR reduction of suspension hours
- Protected your PENSION & COLA
- Created BODY SCAN PROGRAM for SJPD - Results have **SAVED** officers lives
- **FLSA back pay** for hundreds of officers to the sum of \$750,000
- Grievances resulting in TENS OF THOUSANDS of dollars in backpay for an entire unit
- **PROTECTING YOUR PERSONAL FREEDOMS** in Sac-

ramento and successfully beating back (FAILING to intervene legislation-2020); SB 731 - QUALIFIED IMMUNITY LEGISLATION

- Helped **get rid of an IPA** whose focus was purely biased against you as an officer
- Re-imagined and established a new Legal Defense Fund to ensure you don't just have a lawyer, you have the **BEST possible legal protection**

In 25 years of service, I have worked relentlessly to establish relationships that have proven to benefit you. When you completely discount relationships and the benefits of working locally, in Sacramento, or in Washington, D.C., those individuals become short sided in looking out for the members. **That body of work goes directly to protecting the members and it demonstrates that WE do put members FIRST in everything we do.** Working in Sacramento to defeat ANTI-POLICE LEGISLATION that would take away Qualified Immunity, charge YOU CRIMINALLY for failing to intervene, or PUBLICLY forcing the city to use federal money during the pandemic towards payroll for officers, therefore **preventing layoffs or defunding.** Make no mistake, the actions taken have been about **BENEFITING ALL MEMBERS.**

The fight for you has never been in better hands than it is with President Paul Kelly and our current board members who are up for re-election (Steve Slack, Rick Delisser, Dave Wilson, Dave Woolsey, Todd Cleaver, Jose Martinez). Years of proven work and successes all in the name of our members SHOULD be considered when you make your decision in who will lead this POA.

EXPERIENCE COUNTS. ARE YOU WILLING TO GAMBLE IT DOESN'T?

If you are making decisions that impact your life, shouldn't those decisions be based on facts and things that are tangible, not just words of what others believe or say they can do, but **concrete actions that I have proven to be about YOU!**

Respectfully,

– Sgt Sean Pritchard #3286

Please Don't Forget To VOTE!

Incumbent Board Of Directors



T. Cleaver

Todd Cleaver

I WOULD LIKE TO TAKE THIS OPPORTUNITY to request your vote for my reelection for POA board member. I have been on the board for one term and I would like to continue helping with the work getting accomplished by our board members on a day to day basis. The constant fight to try and improve our working conditions and contracts is a never

ending battle and one that has become increasingly more difficult in the past year.

I have been a San Jose Police Officer since 1993. Prior to that, I worked at a smaller agency, Santa Cruz PD. Most of my time here has been working the streets in Patrol and

Special Operations. I have worked TEU (Motors) as an officer and Metro and Field Training as a Sergeant. I was promoted to Sergeant in 2001, and I'm currently the most senior Sergeant on the Department. I have been assigned to the Reserve Unit, as the Reserve Director, since 2018. I am asking for your vote in the upcoming board member elections. Having over 25 years of police experience, 19 years as a supervisor, I feel I can offer good representation and insight for the members. As the department continues to grow, it's important that we protect the things we've worked so hard to gain while continuing to improve working conditions. This includes representing officers during internal affairs investigations, negotiating for better contacts and fighting poorly written legislation when it impacts us in a negative manner.

Thank you for your consideration.
 – Sergeant Todd Cleaver #3033



R. Delisser

Rick Delisser

IT IS THAT TIME AGAIN, WHEN I reach out to you, the membership of the SJPOA and ask for your support. 10 years ago I did this for the first time. Enough of you had faith in me that I was allowed to step up and fulfill the various obligations that the position demands.

During the past 10 years, I have grown in numerous ways through my participation on the POA board. I have represented many of you in IA and through the Skelly process. I have served on the Legal Defense Fund committee. I have been on the POA's negotiating team in the past and have recently committed to re-joining the team as we have started our negotiations with the City to get a pay increase to you as soon as possible.

I have always looked at my service to you (the membership) as a dedication to the future of this organization and the SJPD. I now carry with me a historical knowledge (fight-

ing through Measures V and W, Measure B, serving under three different POA Executive Boards, and serving during the tenure of two mayors) that I know is useful fighting for your pay and benefits as well as disarming the numerous grenades being lobbed at us on a local, state, and national level. Based on my experience, **I ask for your support and your vote to return me to the POA board in an effort to serve you, the membership of the SJPOA.**

I also ask you to consider the time we are in; the fights in which we are currently engaged, and the need to show the strength and solidarity that is required to defeat those that would want to tear down our profession. I am NOT a "yes man" in our boardroom and have spoken up during periods of disagreement. But the one thing that has given the POA strength is the solidarity and unity we show to those who want to take us down. I not only whole-heartedly support our President Paul Kelly and VP Sean Pritchard, but I ask you to do the same by casting a vote for each of them.

Respectfully,
 – Rick Delisser



J. Martinez

Jose Martinez

I HAVE BEEN WITH SJPD FOR OVER 24 years. I am currently assigned to BOI for my fifth tour. I have been on your Board for two terms. Should I be afforded the privilege to serve a third term it would be an honor to continue serving you and the SJPOA cause. As a third generation officer I have been around law enforce-

ment my entire life as my father and brother have served the Thin Blue Line as well. Holding the Line alongside my family has been a pride that cannot be matched nor duplicated. Having served on the SJPOA Board has been an honor to be a part of protecting this family, this culture, that is now under attack. Before being elected in my first term I naively believed I was sufficiently knowledgeable as to the amount of work, understanding, dedication, and learning it took to

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come up to speed with all of the collective efforts necessary to make a successful Union. It has been an eye-opening experience and a steep learning curve. The time and effort it takes to work through the complicated issues of the disciplinary cases, political red tape, complex personalities, personal agendas and public interest matters is extraordinary. I am thankful to those that have *faithfully* served the Board and have continued the commitment to our membership regardless of the pressures, stressors, and criticisms. As Law Enforcement continues to be attacked by politicians, self-serving interest groups/individuals, and stragglers it is important to continue momentum on works in progress that will have a bearing on our policies, wages, processes, and profession as a whole despite relentless distractors. It will be extremely important to continue the dialogue and efforts that have been in the works over the last months and years. Much like outsiders that misjudge police work, there will be those that believe they know what it takes on a day to day basis to build and maintain a strong union. Choose wisely those candidates that have their hearts and dedication to building the Union, not its fracture, that have the patience to remain loyal to the members and not their own personal causes, those that are willing to place themselves into the chaos of politics and hatred in the name of the Union, those that stand for the Union despite their differences with other department members in the processes. We as a profession are already under fire to be perfect at all times, in every scenario, within each word uttered, and every action taken. The Union exists partly because we are not perfect, and we will make mistakes, despite our mission to do the job as completely and righteously as humanly

possible. The Union exists because WE need a voice for the ALL that speaks to duty, honor, loyalty, values and dedication to the whole. We need that voice to be loud when necessary, timely, and effective during fluid situations and high profile cases. Everyone who sits on the Board to-day has committed to these necessary pillars, including myself. If you agree to these commitments because these values represent you, then you will choose your Board based on those that carry those very same truths. There are many groups and individuals in society that will choose to disrupt the unions of America, including ours. Some of those people are within our own membership for whatever reasons they believe creating havoc and chaos is in YOUR best interest, while it is detrimental to established dialogues and understandings that are in progress with the stakeholders and leadership. Those that compromise these values will be easy to identify because they will lead you into misinformation and personal vendettas that do not speak to the purposes and causes of this Union. Vote your conscience and do so with these points in mind. Candidates for Director should possess these values as a foundation for learning how to represent you and this Union. Candidates for higher positions within the Union should have already proven themselves worthy and faithful as Directors to have a firm understanding on what it takes to lead a Union. I am grateful and humbled for the last two terms I have been afforded to serve you as your Director. Should another take my seat with the same dedication, experience, values, and commitment to this great Union, then I will be content that we are forging ahead with the same truths that speak to the legacy of our profession, our department, and our Union.

– *Jose Martinez* □



S. Stack

Steve Stack

I WANT TO START BY EXPRESSING my gratitude for those who voted for me to represent you as a POA director again last election. Over the past four years, I have continued to learn about the Association's relationships with Department leaders, outside agencies, and political figures at all levels of government. The past two years, I have additionally served

as your Association's Sergeant-At-Arms which has provided me with invaluable experience into the inner workings of labor representation. I have also been a voting member of the Legal Defense Fund committee, as well as a voting member of the Association Negotiation team.

I take my responsibility of representing the membership in Internal Affairs very seriously. I worked Internal Affairs for two years as a sergeant which gave me a perspective on officer discipline and common issues that required thorough,

but fair and impartial, investigation. Our current District Attorney has picked a fight with the police agencies in this county regarding officer investigations. Our Association has been vocal and will continue to be against Mr. Rosen's ill-advised political moves. I have represented a significant number of members and am truly grateful for the trust you have shown in me to support you through these stressful investigations. I have never shied away from taking a case, no matter how politicized or scrutinized it may become. Whether I'm contacted by a Captain about a training issue or an Officer still on probation facing termination, each member receives the same level of effort from me.

Unfortunately, the war on the law enforcement profession continues nationally. Media, politicians, and outlier groups have combined to collectively make our jobs less safe. If reelected, I plan to continue to fight against this war. The interests of the membership will always drive my decision-making. Upcoming issues where I want to continue to represent your voice are: wage increase in contract negotiations, officer-involved investigation conflicts with DA's office, Department policy relating to BWC release of use of force

events, and defending against the inevitable attacks against pensions and the police officer's bill of rights. I am thankful for the opportunity to run for a Director position and fight for the men and women of this Department. I am appreciative of the confidence shown in me by the President and Vice-President and I support Paul Kelly and Sean Pritchard

in their re-election. I humbly ask you for your vote. If you do not vote for me, please vote in the election. It's important, more than ever, to participate in the process of selecting those you wish to represent you. It is YOUR ASSOCIATION.

Stay safe and God bless.

– Sgt. Steve Slack #3318

□



D. Wilson

Dave Wilson

SIX YEARS AGO, I DECIDED TO RUN for the Board of Directors. It was a much different time; we were in the middle of the fight for Measure B. Friends of mine were being demoted while others were being laid off. I made the decision to run for the Board because I believed in the fight. I was not going to sit idly by while the City was trying to destroy our Department.

I made the conscious decision to step up and fight. To be fair I wasn't sure how much I was going to be able to accomplish but I knew that if I could help at all I was willing to do whatever it took. I remember going to each and every briefing (yes, we actually had briefings back then) and talking to everyone to let them know as long as I was financially able to stay with this Department (we had just taken a 10% pay cut) this was where I was going to stay. I was blessed that enough of my fellow Department members believed in my ability to help that they voted me onto the Board as a Director.

During my time on the Board I have represented numerous officers and sergeants in Internal Affairs, Skelly Hearings, Official Grievances and Officer Involved Incidents. I have served and currently still serve on the Legal Defense Fund Committee and the Negotiations Team. I have volunteered my time at numerous events for our members including walking against Measures V & W, Camp Hoosegow, our Open House, and community BBQs.

I have always believed in the San Jose Police Department and the men and women who put on the uniform, gun and

badge every day to serve our community. Every decision I make as a Director is made with my brothers and sisters in mind and how it will benefit them, whether in the short or the long term. Those who know me personally, have worked with or around me, know that I am honest and sincere and always think of those I serve first.

During this year we again find ourselves in a fight. However, this fight is no longer just at the local level but at all levels; local (DA Rosen and the City Council both), State (bills attacking qualified immunity and the duty to retreat), and Federal (pension reform and attacks on qualified immunity, again). We are also in the middle of a wage negotiation for our current contract and will start to negotiate for our next contract in the first part of 2021. Now is not the time to disrupt what has been working. Paul Kelly and Sean Pritchard have the experience and have LED this fight on ALL levels, including within our own Department. We are no longer a wages and benefits union. With all the attacks on our profession, we can't afford to be that narrow sighted. We have to be able to step up and fight both locally and at the State and Federal levels. Paul and Sean have done this and have been successful at each and every level.

This voting cycle I ask first and foremost that you vote. **I also humbly ask that you vote for me, Dave Wilson, as one of your Board of Directors.** When it comes to your choice for who leads this union I ask that you vote for the President and Vice President who, that when the attacks on our profession and on you and your families came, made the conscious decision to step up, not step down. I support Paul Kelly for President and Sean Pritchard for Vice President. As always if you have any questions or want to discuss anything whatsoever please feel free to call me.

– Dave Wilson

□



D. Woolsey

David Woolsey

I WANT TO THANK YOU FOR ALLOWING me to serve as a POA Director for the past 8 years. I have over 25 years of law enforcement experience with two agencies; I am one of many laterals who came to San Jose for better wages, opportunities, special assignments and promotion.

I am one of six Directors up for re-election, and I'm asking for your vote. Despite my overall

tenure as a law enforcement professional, I have at least five and a half years to go before I'm eligible to retire. That means I'm in this for the long haul and take our long-term interests very seriously. Your current Board of Directors and Executive team have made great strides in the last few years, and I'm ready to keep doing the work we've been doing day in and day out on your behalf.

I'm also asking you to support our President, Paul Kelly, and Vice President, Sean Pritchard. Their leadership and credibility have helped the POA stave off attacks both lo-

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cally and from Sacramento. You may not always see the work they do, and you may not always like the things they say, but they have never walked away from a challenge or an officer in need. If you hear otherwise, ask around. Get the facts. Talk to those with firsthand knowledge of the work done on our members' behalf. Any current Director can answer your questions, because we have all the facts.

While your POA does many things, for me, these are the top three:

- Negotiating for better wages, benefits and working conditions;
- Representing individual officers in IA investigations, shootings (or other deadly incidents), and Skelly hearings;
- Fighting against legislation threatening to make it harder for us to do our job, and easier to fire us without due process.

A common theme I hear when talking with individual members is, they want a Director who will fight for them, who will stand behind them, and who will watch their back. That is definitely an important theme, and I'd ask you to take it one step further – I want someone who is willing to do those things, *and do them strategically*. It's not enough for me to get in the ring and fight for the sake of fighting. ***I want someone fighting for me who won't quit when things get tough and who's prepared to win – and you should too!***

Giving to charitable organizations, coordinating fundraisers for our Chaplaincy, communicating with the membership, representing our bargaining unit on City committees like the Retirement Board (RB) or the Deferred Compensation Advisory Committee (DCAC), providing a liaison to the statewide California Peace Officers' Memorial Foundation, having a liaison with the San Jose Police Foundation, and maintaining our Hall are other examples of the many different things your Board Directors do on your behalf. What has each candidate done in the area of these

extra-curricular duties? ***What's their track record and how have they handled tough, controversial incidents?***

With that in mind, here's my track record, and I challenge you to look at the track record of every other candidate:

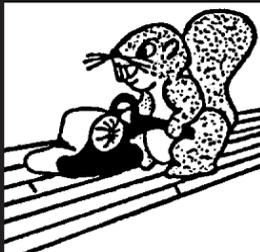
- I've served on the negotiating team responsible for increasing wages and benefits by over 35% over the last 8 years;
- I serve as the POA representative to the Deferred Compensation Advisory Committee – the committee responsible for administering the Deferred Compensation plan. We meet quarterly and work to provide the best deferred comp plan we can for your benefit;
- I've represented officers in IA interviews, making sure they were given due process and were able to provide a counter-narrative to their accusations;
- I've represented officers in Officer Involved Shootings, making sure the Department followed the Officer-Involved Incident Guidelines and were represented by an attorney during those stressful times;
- I've represented officers in Skelly hearings, giving them an opportunity to appeal discipline, usually resulting in a reduced disciplinary action;
- I've worked towards protecting your POBAR rights in areas like releasing videos of officers on the internet, and in promoting COVID-19 safety precautions;
- ***Most importantly, when things got tough and I didn't like how they were going (Measure B, layoffs, demotions, wage cuts, adverse media) I dug in my heels and fought instead of quitting and walking away.***

During this time of uncertainty and "cancel culture," it's common to let one moment, one incident, shape and define our opinions. But I believe we, as professionals, are above that. We are trained to look at the "totality of the circumstances" before making critical decisions. We gather facts and look for evidence. We shouldn't be swayed by the rumor mill. The last thing we need is to start fighting amongst ourselves. United we are strong; divided we give opportunity to those who would do us harm. Look at what we've accomplished, look at the battles we are involved in right now, and ask yourself: ***are we fighting the important fights and are we doing so strategically? Are we better off as an organization today than we were five years ago?***

I believe the answer is YES, and if you do too, I'm not only asking for your vote, but I'm asking for you to re-elect our President, Vice President and each current Director up for re-election. We're stepping in the ring with experience, proven-effective relationships, and a plan, and we're prepared to keep fighting for you no matter how ugly it gets!

– Sgt. David Woolsey #3692 □

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Chief *Eddie Garcia*



Chief's Message

Together You're Stronger!! Stay United, Always Committed To Your Calling

MY BROTHER AND SISTERS, Let me begin by thanking our POA and President Kelly for the chance to address you in this forum. It is an honor, and I'm truly humbled to be afforded this opportunity. As the end of my time as your chief nears, I've enjoyed reflecting, not only on the last 5 years, but on nearly 3 decades as a San Jose police officer. As some of you have heard me say several times at academy graduations, my bottom rocker that reads "Chief," gives me a tremendous amount of pride, but the words "San Jose Police" are truly the most meaningful.

SINCE 1992, THIS CITY, THIS DEPARTMENT, AND THIS union have helped me achieve my goals. To be given this opportunity in the *Vanguard* is yet another example of the positive collaboration this chiefs office has enjoyed with your union and its leadership. Although we may not agree on all the issues, I can guarantee you that our goals have always been aligned. Your safety, wellness, and enjoyment of our beloved profession has always been a top priority. Many of us know that this collaboration doesn't always exist in police departments, and as chief I will be forever grateful for the partnership.

To the hard-working men and woman of this Department, I cannot thank you enough for allowing me a front row seat to witness your amazing work. We're entering unprecedented times in American law enforcement. As we continue this

“Although we may not agree on all the issues, I can guarantee you that our goals have always been aligned. Your safety, wellness, and enjoyment of our beloved profession has always been a top priority. Many of us know that this collaboration doesn't always exist in police departments, and as chief I will be forever grateful for the partnership.”

journey, we must remember why you do what you do. I know you will rise to these challenges. We must rise to the challenge. I realize the negative opinions, offered by some, regarding your honorable sacrifices. Although we must always strive to be better, we mustn't allow the voices of some to dissuade you from continuing the promises you made on your graduation day. I've said this before and I'll say it again; I've been to neighborhood meetings all over our city, and regardless of language spoken, racial make-up, or economic status, I have yet to hear anyone ask for less San Jose Police officers on their streets. Yes, they absolutely want and deserve fair and just policing, but your neighborhoods also

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Chief's Message

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demand your proactive police work. It is the combination of these elements that keeps our city afloat. Take care of one another, please do not allow anyone to tarnish our badge, and continue to HOLD THE LINE. Our neighborhoods would be lost without you.

I want to thank your SJPOA Board of Directors, President Kelly, and Vice President Pritchard. As I mentioned earlier, the partnership that has existed these last 5 years simply does not exist everywhere. Your welfare has always been the top priority for myself, Paul, Sean, and the entire Board of Directors. There have been many battles, I'm sure I may have been one from time to time. But the truly important work that has been done will never be forgotten, and in these times, the work that your current POA is tasked with is of huge importance. Stay united as always; don't let anyone take you off course.

To some, Measure B seems like a distant memory. I will never forget the long nights, as both the city and your Union worked for this department. We were dying, and collectively we all came together and saved our beloved SJPD. Many were not officers yet when this took place. It's something we can never forget. Soon, we'll be back doing body scans. This POA idea was easy to support, and one that should be supported by any chief. Knowing that this project saved lives and will continue to save lives is the only thanks your representatives need. I know that this current POA Executive team will work closely with any chief to ensure your well-being is always a top priority. These types of relationships simply aren't built overnight, but are desperately needed. Through the years and especially now, the importance of a union that recognizes the value of initiatives as we strive to balance equity and pro-active police work has never been more crucial. I have been fortunate to have a team willing to accept a seat at the table to discuss these issues with me. We have not always agreed, but I can tell you because of their collaborative nature, I always listened.

In closing, I simply wanted to thank you all for allowing me to live a dream. It has been an honor being your chief. This department was built on the backs of hard-working men and women. Some have given the ultimate sacrifice. Honor them. Do not give up, stay together. Together you are stronger.

May God bless the SJPD,
- Chief Eddie Garcia



**Please Don't Forget
To VOTE!**



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New Candidate Statements



E. Chan

Eddie Chan

NOVEMBER ELECTIONS ARE UPON us and I am seeking your vote for POA President. Unlike the previous elections where the election for POA President went uncontested, I want to give you an alternative on who you would like to lead your POA. For those of you who do not know me, I have been a police officer for over 26 years. After spending 6 years

in the United States Marine Corps, I attended Cal State Hayward and then was hired by the Milpitas Police Department in 1994. Wanting to move up to bigger and better things, I became a San Jose Police Officer in 2001. I promoted to sergeant in 2010. During my career, I have been in the following assignments: Motors, SWAT, Air Support, and FTO. I was elected to the POA Board of Directors in 2013.

I am running for POA President because it's time for a change in leadership. There is a lack of trust and confidence in the leadership of the POA. You cannot have leadership without trust. Without leadership, this association is no longer an effective organization. While relationships with command staff, elected leaders, and the community are important, I believe the most important relationship should be with you, the membership. I spoke with Vice President Sean Pritchard shortly after President Kelly's response to the Facebook posts that were considered racist. I told Vice President Pritchard several times that President Kelly needed to step down immediately so he could step up and be POA President. This didn't happen. This demonstrated to me a total lack of leadership on Vice President Pritchard's part and that he was not fit to lead the POA. Vice President Pritchard would rather be appointed POA President after President Kelly retires in the middle of his term instead of running for POA President himself. The Marines have a saying: *The title 'Marine' is earned, not given.* I don't believe that the position of POA President should be given away.

If I am elected President, I want to accomplish the following goals:

- Increased transparency and interaction with the membership.
- Consult the Board of Directors before making public statements and political endorsements.
- Mentor both Tier 1 and Tier 2 members to become more involved with the POA and prepare them to lead the POA.
- Continue to advance our interests at the local, state, and national level.
- Evaluate and critique proposed reforms and determine

how they should be implemented.

Additionally, I will always push for safer working conditions and ensure that your rights are protected. I will strive to achieve contracts that are beneficial to both Tier 1 and Tier 2 officers. I will always look for solutions on how we can better serve our retirees.

In my 7 years as your POA director, I have an untarnished record of selfless service to the membership. I represented many of you in your IA interviews and Skelly hearings, addressed your grievances, and voted on contracts and political endorsements. I served on the LDF Panel and ensured members were treated fairly and were provided legal representation. I have coordinated memorial services for our fallen officers and assisted their families. No one at the POA can contest my integrity, commitment, work ethic, or conduct.

The POA has inundated you with membership alerts. Many are themed, *"We got your back"* and *"We will never quit."* These are nice phrases, but the actions of President Kelly last June demonstrate otherwise. President Kelly betrayed your trust when he publicly condemned, defamed, and threatened over 800 current and retired members of the POA without any investigation whatsoever. In President Kelly's own words:

"I am announcing tonight that I am taking swift action against any member of the SJPOA that has participated in this online ring of hate because there is zero room in our department or our profession for racists, bigots, or those that enable them."

President Kelly further stated that he would immediately file charges to expel the officers participating in the Facebook group from the police union.

This public condemnation was released to the public without consulting the Board of Directors. President Kelly embarrassed himself, the POA, and the entire membership. I found this public condemnation unforgivable and so should you. These statements caused irreparable harm to the membership and President Kelly needs to be held accountable.

On June 9, 2020, I watched KPIX CBS News coverage of a press conference where President Kelly sat alongside Chief Garcia. The Chief was addressing the actions of SJPD officers during the George Floyd protests and the police reforms that would follow. President Kelly stated, *"The representation for our people will be there, but if an officer did wrong, I support discipline."*

I had to hit the replay button because I could not believe any union president would make such a statement. These are hardly the words of someone who has your back.

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I have spent my entire 26 years working on the street. I know firsthand how dangerous and challenging this profession has become. I have withstood the scrutiny that comes with policing in today's hostile and politically charged environment. As FTO Sergeant, I have trained and mentored hundreds of Tier 2 police officers and FTOs. A great majority of these officers have gone on to become FTOs, moved on to specialized assignments, or promoted to sergeant.

I came in on my days off to work the skirmish line at the George Floyd protests. I stood on the line with you and took the rocks, bottles, and tear gas because when my brothers and sisters need help, **I got your back!** If elected, I intend to continue to work in a uniformed assignment whenever time allows. I believe whatever actions I take as POA President should affect me just as much as it affects you. Also, I will spare no effort to be accessible to both you and the retired members of the POA.

Whenever I disagreed with a political endorsement or position made by the POA on your behalf, I always voiced my dissent when I thought it was not in the membership's best interests. My concerns typically went ignored. I decided that resigning as Director was the appropriate thing to do because I was not in a position where I could influence the direction of the POA. It was apparent to me that these decisions were going to be made unilaterally by the President and his executive team. I would like to change that. The Board of Directors are there to represent you, not be a rubber stamp for the President.

Unbeknownst to the membership, the POA supported Mayor Sam Liccardo's strong mayor initiative last summer. This disastrous initiative would have given the mayor the power to hire and fire the Chief of Police and the City Manager. In a 6-5 majority vote, the Council approved in favor of putting the mayor's initiative on this November's ballot. Again, this support was made on your behalf without informing the membership. How would this have affected us? The mayor recently voted to ban less lethal projectiles as a force option for crowd control. Fortunately, the mayor was the sole vote favoring the ban on less lethal projectiles. You can imagine how things would have turned out if the city operated under a strong mayor system.

The POA has recently raised the alarm over the actions by the Santa Clara County District Attorney, yet they seem to have forgotten that they, despite my concerns, voted to endorse DA Rosen when he sought re-election.

The POA even resorted to inappropriately using the membership email alerts as their own campaign tool against me. One email states:

"We have heard recently from an individual or two, that working with local city leaders and legislators in Sacramento and Washington D.C. is not important. We believe this opinion is not only false but extremely dangerous to you. Anyone who would take this philosophy and try to lead this Association is gambling with not only your career, but you, and your family's lives. It's reckless."

This statement was directed at me and references a conversation between Vice President Pritchard and me when he called me and tried to dissuade me from running for POA President. What was omitted from this statement was the part where I mentioned those relationships were not as important as the relationship with the membership. It's my opinion that every other relationship takes a back seat to the membership. This is something the POA leadership seems to have forgotten.

On October 8, 2020, President Kelly sent out a membership email blast targeting me by name. This may have been in response to me reaching out to retired members of the POA. You can read my message to the retirees at: www.sjpoa.net.

Many of the retirees are unaware that they can vote for elected officers of the POA, so I was soliciting them for their vote. President Kelly accused me of telling members to leave the POA and join the FOP. This is 100% false. In fact, I discouraged any member, and there were many, from leaving the POA. You will not find a single member of the POA who can say I told them to leave the POA. Not one. I joined the FOP and became a dual member of both associations because I lost all confidence in my union and didn't believe my union would support me if I found myself on Admin Leave.

President Kelly goes on to insinuate that I said the POA didn't defend the officers who were put on Admin Leave over their social media posts. Again, this is 100% false. I have never discussed what actions the POA took on these officers' behalf. I don't know where President Kelly gets his information, but if he is going to use the membership email blast to personally attack another member who is running for POA President, those accusations should at least be factual.

Contrary to what the POA leadership claims, I am not the one who has divided the POA. President Kelly's actions, as well as the inaction of the rest of the POA leadership, caused this rift between the membership and themselves. As many as 50 POA members immediately joined the FOP following President Kelly's actions.

The union bylaws call for elections every year. Elections

Please Don't Forget To VOTE!

are held so you can hold your POA leadership accountable for their actions. President Kelly and Vice President Pritchard feel differently. Why is the POA leadership using the membership email blast to insult and attack POA members who wish to run for office? It appears they have "got your back" so long as they maintain power and you don't threaten the status quo.

When I represent members in Internal Affairs, I will often ask, "What's the going rate?" This is in reference to the discipline that's handed down in the event an allegation against

an officer is sustained. Based on the harmful actions by your POA President, I believe the going rate should be dismissal from office. However, it's not what I believe, it's what you believe that matters in this election. This election isn't about Paul Kelly or me. This election is about you reminding the POA leadership, present and future, that they are accountable to the membership.

Respectfully,
 – *Eddie Chan #3735* □



Steven Jeffrey

AS WE ALL ARE ABUNDANTLY AWARE, we as law enforcement officers and as a police officers association are in the midst of some unprecedentedly times locally and throughout our country; and have faced an extreme level of scrutiny in all aspects of our professional and personal lives.

The current political environment is proving to be a very difficult challenge now

and will certainly continue to be in the future. The numerous proposed statewide legislative changes will continue to be challenge in the years to come and we must be prepared and willing to stand up for what is right to ensure that we protect our officer rights and to ensure that we all have to the opportunity to safely do our jobs. It is my belief that in times like these it is more important than ever to remain diligent in our support of each other and stand strong together as we traverse these turbulent times.

A trustworthy, membership focused association is vital during the crucial times we currently face. We are a brotherhood that must remain united; and trust must be at the very core of this association. The current association regime has shattered that trust by failing to perform its most basic function of membership support. This is not acceptable. We are an association that needs to get back to the basics by supporting our members and creating an environment where we all can thrive both professional and personally. The current times are not perfect, and the foreseeable future will be difficult, but I believe a change is necessary within our association and we must give ourselves the opportunity to once again thrive as an association through membership support and a positive outlook.

If elected to the position of Vice-President of the San Jose Police Officers Association, I purpose the following areas of focus:

- Immediately work tirelessly to regain the trust of our entire membership
- Negotiate for better wages and benefits for our entire membership
- Improve the quality of our work environment with a

focus on employee attraction and retention.

- Provide proper representation and membership support
- Provide increased communication and transparency of association activities
- Increase our political footprint through aggressive political action
- Increase our engagement and support of the communities we serve

I have worked for the City of San Jose for 22 years. Throughout my career with the San Jose Police Department I have served as a patrol officer, Field Training Officer, Traffic Enforcement Unit, Special Events Team and Criminal Intelligence Unit. I am currently assigned to patrol as a District Sergeant. Prior to my law enforcement career, I was a member of Sheet Metal Workers Local 104 and San Jose International Firefighters Local 230. I am also proud to say that a large portion of my family are members of the International Brotherhood of Electrical Workers IBEW 595. I have been associated with labor my whole adult life.

Therefore, I am seeking your vote for the position of Vice-President of the San Jose Police Officers Association. Your voice matters and this November, you and the entire membership will have a choice to move forward with a positive purposeful change or remain rooted in the current stagnant existence. I believe that we must adapt as the world changes around us and as we face significant change it is extremely import to have a police officers association that has its entire membership's best interest at heart and an association that is willing to protect its own to the end.

I recognize that our police officer's association is not the executive board's association or their political platform, it is an association that belongs to all the hard working men and women of the San Jose Police Department who deserve better; who deserve to be heard and protected at all costs. If elected, I will work diligently to help create a police officer's association that we can all be proud of and an association that we can all feel confident in knowing we will be supported in both our professional and personal lives.

Remember: This is **OUR** association! **YOU** are a critical part! We must **ALL** stand as one!

Thank you for your consideration.
 – *Steven Jeffrey #3520* □

John Cary

No Picture
Provided

J. Cary

IN A FEW WEEKS, I'LL REACH MY 28th anniversary as a member of the San Jose Police Department. Until recently, I never had any interest in being involved with the POA beyond going to meetings for the free breakfast and voting during elections. That changed last June 26th.

While most of you are probably aware of the events that unfolded that day and in the days that followed, I'm going to recap them here because they are the reason I decided to submit my name for consideration in this year's election for the POA Board of Directors.

On that day, an article entitled "Racism and Hate behind the Blue Wall: Exposing Secret Law Enforcement Facebook Groups" was posted on an internet blog site (<https://blog.usejournal.com/racism-and-hate-behind-the-blue-wall-exposing-secret-lawenforecment-gacebook-groups-6cf23a596a98>). The article, purportedly written under a pseudonym by the partner of an active Bay Area police officer, discussed posts which had allegedly been made on a Facebook page entitled "10-7ODSJ" by active and retired San Jose Police Department members. The article identified several officers by name and attempted to use the posts it highlighted to claim they were racists. The author further alleged the posts demonstrated that San Jose Police Department Chief of Police Eddie Garcia and POA President Paul Kelly had failed to address the issue, stating "that they have remained silent about their officers' and sergeant's (sic) Facebook posts, we should question their complicity as well as their sincerity in reforming the SJPD."

Later in the day, the article was cited and expanded upon in a story published on local website "sanjoseinside" (<https://www.sanjoseinside.com/news/sjpd-officers-mock-muslims-blm-protesters-on-facebook/>). This story, entitled "SJPD Officers Mock Muslims, BLM Protesters on Facebook," cited many of the same posts contained in the original article and included condemnations of the officers by Mayor Sam Liccardo and Chief Garcia. Mayor Liccardo called for "swift action" and Chief Garcia was quoted as saying he had launched an investigation and "I will be recommending termination."

A few hours later, "sanjoseinside" published a second story on the situation entitled "DA to Investigate Bigoted Online Posts; POA Promises to Hold SJPD Officers Accountable" (<https://www.sanjoseinside.com/news/da-to-investigate-officers-bigoted-social-mediaposts/>). In this story, Santa Clara County District Attorney Jeff Rosen added his name to the chorus of powerful figures condemning the officers before any investigation had even begun, saying he was "sickened" and that his office would "immediately begin a comprehensive review of every case in which these officers, active or retired, played a role. Anyone who writes this kind of trash has no role in our criminal justice system."

Given the nature of politics and politicians, Rosen's response was hardly surprising. What followed, however, was stunning. In the same story, POA President Paul Kelly joined Mayor Liccardo, Chief Garcia and DA Rosen in pre-judging and condemning the named officers and then went even further, stating "I am announcing tonight that I am taking swift action against any member of the SJPOA that has participated in this online ring of hate because there is zero room in our department or our profession for racists, bigots or those that enable them." Kelly listed "initial steps" he was taking, which included filing charges against and expelling POA members who had participated in the Facebook group. He concluded by saying "To the community we serve, we are sincerely sorry and our actions must rise to meet this terrible stain on our profession."

Still later the same day, President Kelly amplified his views in a YouTube video entitled "SJPOA VIDEO RELEASE June 26th, 2020." In the video, which has since been taken down, he stated "participating in an online ring of hate makes me sick and I say this to anyone who participated: the San Jose Police Officers Association will provide you no shelter, no protection. We will not represent you because you do not represent us and you do not represent our community." He went on to explain he would be contacting "experts in racism, bias and hate" in order to establish required and ongoing training for all board members "to ensure that our leadership is grounded in the principle that every single member of our community must be treated with respect and dignity." He ended by saying he was "saddened" and would "work to restore trust with our community."

The next day, Kelly sent out an email to Association members in which he called the Facebook posts "reprehensible" and said he was moving to "eradicate those who participated." He described those he was taking action against as "hateful and dishonorable." He told members "we must all look in our souls and confront the demons of racism, bias and hate that permeate our society." He implied there were Association members who were guilty of this type of thinking and said that they needed to change or "go to Chief Garcia and turn in your badge."

In all my time here, I had never before seen any elected POA representative, much less the President, attack Association members in this way. At no time during any of these statements did Kelly even suggest that any of the members who had been named in the story might have been falsely accused or deserve due process before any conclusions were drawn. This was despite the fact at least some of the allegations were obviously ridiculous. One member was condemned for using the phrase "Stinkin' Lincoln." Does anyone really believe that phrase has anything to do with race? Another member was attacked for comparing Islamic terrorists to Nazis. The writer absurdly claimed the comparison meant the member believed all Muslims are terrorists, which was obviously untrue.

I couldn't believe what I was reading and hearing and thought it likely that in an attempt to defend himself from the accusation that he had failed to take action, Kelly had

willingly thrown the people he was supposed to represent under the wheels of a speeding bus. In response, I sent Kelly the following email:

“Paul:

You publicly sold out POA members before an investigation was even conducted. In other words, you did the same thing the press, politicians and some so-called police “leaders” have done to officers across the country, repeatedly, over these past few weeks.

The denial of fairness and due process for officers is hard to take whenever and wherever it occurs, but it is inexcusable when it comes from someone like you, whose position exists to ensure that fairness.

No one wants to work with a racist and I doubt anyone would oppose the removal of an officer who professed racist beliefs, but I also believe, and I’m sure many members agree with me, that any officer accused of such beliefs is entitled to a fair process. What you have done, as our elected representative, is acted as judge and jury before any process at all has taken place. You’re not a king, entitled to do and say whatever you please. You were elected to serve the membership and, for the reasons I’ve stated in this email, you have failed at one of your most important duties. With your words and actions over the past few days, you’ve proven you’re no longer up to the job. You should resign.”

As it turned out, many members did feel the same way I did, which resulted in the apology tour President Kelly eventually took throughout the department. When my unit’s chance came, I asked him directly whether he’d been trying to save himself at the expense of the members. He told us that he hadn’t even been aware he’d been attacked. I would’ve thought that a POA President would read a story like this one very carefully before making any comment at all, but I guess that detail slipped by him.

We’ve recently been bombarded with POA email blasts

describing how hard President Kelly is working to protect us, but given his words and actions this past June, I have to wonder how much of what’s being said now is simply an effort to hang on to his position. I just can’t see how anyone who truly believes in the importance of protecting the rights of members could have said what he said then. For the reasons I’ve stated, I think change is needed within the POA and I’d like to be a part of that change. The current leadership will argue that their political contacts and connections are vital to advancing our goals, but I’ve been around long enough to know that politicians serve only themselves and will ultimately do whatever they believe is in their best interests, regardless of how it impacts us or how much we attempt to dissuade them. When he thought it would help his political profile, Sam Liccardo did all he could to try to destroy SJPD. When the political winds shifted, he was suddenly in favor of re-building the Department. It was always all about him. That’s who politicians are and will always be. They come and go, but what must remain constant is that the elected representatives of the POA must never forget that they serve to ensure fairness, regardless of political considerations.

Ultimately, no one has our backs but us. That got lost this year, which is why I’m running for the Board and why I’ll be voting for Eddie Chan for President and Steve Jeffrey for Vice President. I think change is most needed at the top of the organization and Eddie was the only board member I’m aware of who immediately and publicly objected to Paul Kelly’s actions. I also like Eddie’s commitment to consulting with POA Board members before making public statements and endorsements. If Paul Kelly had shared this philosophy, its likely none of this would have happened. The POA isn’t the one person at the top; it’s all of us. But no matter what, if I’m elected, you’ll get someone who isn’t afraid to say what they think or speak out when they see something that isn’t right, and who will never forget that the POA exists for the sole purpose of serving its members.

– Sgt. John Cary #2989

□



R. Ferguson

Ryan Ferguson

NOTHING TO LOSE

I am not here to talk about what I have accomplished at this Police Department or provide you with my resume. Lets be honest, most people don’t care about other officer’s resumes. What I will tell you is I have 15 years of experience at SJPD, a degree in Political Science, and I have been disciplined on several occasions. These incidents were absolutely, 100% my fault, and I took responsibility and learned from them. I am running for POA Director for two primary reasons: (1) Always being your voice, especially if you want to remain anonymous,

and (2) To provide you with certainty when you are uncertain about situations or your future at the Agency.

I was once told by one of my supervisors, “Ryan, you can have an impeccable personnel file/reputation, and someone with an agenda will try to put a black mark on your record, to make themselves look better.” I have seen this play out many times in my 15 years. How many times have you heard coworkers or even yourself say, “That person is out for themselves, they will step on you to get where they want to go?” Well, it happens, often, but what’s the recourse? Filing a grievance and risk being blackballed from a unit or promotion, or even outcast and ostracized? Well I am not out for myself and I have **nothing to lose**. As a POA Director I will have no issue filing the grievance on your behalf. This

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will allow you to be free of fearing retaliation and ensuring your Officers Bill of Rights is not violated.

I think the POA has done a tremendous job with everything that's been on their plate the last few years. However, there is always room for improvement. The executive board is fighting many battles on all levels, department wide, with City Hall, and at the state and national level. Some feel that the focus should be more localized within the Department. As a POA Director I will fight these localized issues Department wide allowing other Directors to focus their efforts on the other important battles. I believe it's a common feeling to have uncertainty when you need a rep or what the outcome will be in disciplinary matters. You may think that if you never do anything wrong you will never have to go to Internal Affairs. I can assure you that, in this day and age, you will. For that reason as a Director, I will take the time to ensure you are more than prepared for your Internal Af-

fairs interviews, you understand your Officers Bill of Rights, what the common discipline is for similar allegations, and devise a plan to defend the allegations. In addition, I want to keep you informed on all matters and be available to you for any questions regarding the MOU, negotiations, retirement, your rights, and anything else you might need representation for.

I am not an incumbent director, but I do have the resources to get the job YOU need done. I come from a union family. I have various family members that have been leaders in different unions who are more than willing to support me in whatever way possible. Their unions are strong not only because of the leverage they are willing to flex but also due to their unity. I will provide a fresh perspective and bring new strategies to our board. Let me be your voice and allow me to fight your battles for you. I will take you out of the hot seat and put myself in it. I have nothing to lose.

Respectfully,
 - *Ofc. Ryan Ferguson #3921*

□



Bob LaBarbera

I AM RUNNING FOR A POSITION AS a Director for one simple reason, for YOU. I want what is best for the officers that come to work each day and do what many people are simply not willing to do. The men and women of our department make sacrifices every day so that the world is a better place and I can think of no greater

honor than serving those who serve. If elected I will do whatever is in my power to fight on your behalf, you've earned it.

- *Bob LaBarbera*

□

Steven Valentine

No Picture
 Provided

S. Valentine

GREETINGS, MY NAME IS STEVEN Valentine. I have been an officer with San Jose Police Department for 14 years. I served for almost 10 years in the United States Air Force as a Law Enforcement Officer and as a Military Working Dog Handler. In almost 25 years of experience, all of it has been spent working in the field. I have been on patrol for the

duration of my career here in San Jose with the last 6 months working as an Field Training Officer.

I have seen lots of ups and downs with our Police Union. I have seen the highs and the lows. I have seen the membership be active within the union and in current times, I have never seen so much inaction within the membership as seen today. I look to change that. I look to bring the union back to the forefront of the membership. I look to be available to you the members. I strongly believe I could bring

my years of experience in law enforcement to good use to further strengthen our membership. As a member of the Board of Directors I look to present each and every single one of you with what is important to you.

As I ask for your vote I want to ask one question of you. Do you know who your current board of directors are? Ask yourself, who on the board of directors is on patrol and readily available to you to ask questions. I am not pursuing this position to make friends, I am not by any means trying to say any member of the board is not fulfilling the duties they took on. What I am asking you is when was the last time you had an encounter with a director? Most of you see me often if not in passing but on calls for service, crime scenes, the PAFF Poker night, I am a committed member to the Keith Kelley Club, I have competed with Baker 2 Vegas the last 4 years with no plans of ever not competing.

I think it is time for change and a push to get back what we once were, a well organized active membership. These times are different than the last 7 to 10 years, It may be time for a different approach and some change. I thank you for your time and do me one favor, at least make a vote and a

SJPOA ELECTIONS

vote that means something to you!

Be Safe, watch out for each other and wait for your fills
– *Steven Valentine #3985* □



Phillip White

DEAR MEMBERS OF THE SAN JOSE Police Department's Police Officer's Association, I am humbly running for a seat on the SJPOA Board of Directors and the opportunity to represent you... ALL of you. It is essential that we have representation from all facets of our organization, including Tier 1 and Tier 2 officers, as well as having voices from all Bureaus.

In my 23 years here at the SJPDP, while my experience has taught me a lot, I have also noticed that we have come to fall into the same trap as our Federal government where we lean toward voting for the incumbent without thought because they have the experience. Our bylaws, as was the Constitution, were specifically written to avoid such complacency. Every two years, we have the opportunity to vote for new blood, new ideas, new energy, new problem-solving capabilities and new skill sets that would benefit the organization and membership. Yet we continue to vote for the same folks, if we even vote at all.

Here are the facts:

- I have 2-4 years left at SJPDP and want to give back and work for you.
- I have a Tier 2 nephew on the PD and very close "Tier 2 friends."
- I have both personal and professional experience with IA and its inner workings.
- I have close ties with officers of all tenures through my assignment in the Field Training Program.
- I have no agenda other than voicing my own and your opinions and voting with my conscience.
- I will work for you ALL.

Make sure to vote when online polls are open November 3, 2020-November 10, 2020. Even if you do not vote for me, have your voice heard and vote!

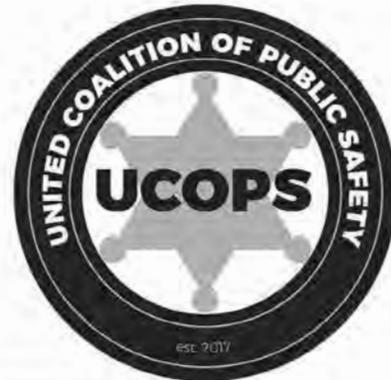
– *Officer Phillip White #3431* □

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To VOTE!**



The San José Police Officers Association is proud to be a founding member of the United Coalition of Public Safety.

**Building Relationships
to Keep Our Communities Safe**



MISSION

The United Coalition of Public Safety works on behalf of law enforcement officers and the communities they serve nationwide to shape strong partnerships and break down communication barriers; building trust through active engagement, honest dialogue, education, and outreach.

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 @UnitedCops



Gregg McLean Adam



Legal Counsel

When Will Labor Arbitrators Push Back? And The Critical Role This Police Union Played in Rebuilding The San Jose Police Department

I address two topics in this column. One is the continuing – and largely misguided – attacks on police discipline procedures. The other, in this age where many consider a police union a negative, is a look back on the constructive role San Jose POA has played in rebuilding the City’s Police Department, which the prior mayoral regime left on the brink of collapse.

“As most readers of this column know, most discipline matters never get to a hearing. Some analysts have shown that less than 5% of all discipline matters end up in a contested evidentiary hearing, often far less.”

AMONGST THE ATTACKS LEVIED ON POLICE UNIONS is the idea that they’ve successfully stacked the deck in cops’ favor in discipline proceedings. There are typically two types of police discipline procedures: one involves adjudication by a civilian personnel or civil service board; the other involves a third-party labor arbitrator. Loathe to critique civilian boards, police union critics have found a scapegoat: “unelected labor arbitrators.” According to an October 3, 2020 editorial from the New York Times, the nation’s pre-eminent broadsheet newspaper, these labor arbitrators are “men and women who routinely reinstate abusive officers who have been fired for misconduct.” The opinion cites “one study of 624 arbitration awards” by a law professor, who determined that “arbitrators forced departments to re-hire officers 46 percent of the time.” The Times’ article is the latest in a series of attacks on the process.

It is classic ivory tower stuff. The Times, like the good professor, gives the misleading impression that in 46% of cases involving terminated cops, departments are “forced” to return them back to work by “unelected arbitrators.” That’s nonsense.

As most readers of this column know, most discipline

matters never get to a hearing. Some analysts have shown that less than 5% of all discipline matters end up in a contested evidentiary hearing, often far less. That’s because of several real life factors.

First, not all discipline actions are contested. Many cops, even in a termination case, will accept punishment. Or a compromise may be worked out at the Skelly Hearing. Compromise is not a bad word – and any compromise by definition would have to be approved by the employer.

Compromises happen frequently because of the second point: police administrators will often promise unjustifiably severe discipline, doing so in anticipation of lowering the penalty at some stage of the disciplinary process. While one would hope that in a just system each discipline would be judged on its individual merits, the process matters, too. Think of a defendant in a mediation. The defendant doesn’t immediately make its best offer to the plaintiff; it makes a lower offer in anticipation of having to make higher offers



later in the process.

Not every case plays out in this way, but many do. The cases where overcharging by administrators is less defensible are those which are politically-sensitive, typically a use of force with accompanying video-footage; where the administrator knows the officer's actions were warranted, within policy, or certainly not grounds for termination; but fearing a political backlash, the administrator terminates the officer. Call these cases the "let the arbitrator send the officer back to work, not me." They are not uncommon, and they are part of the reason why, in a fair, non-politicized environment, police officers can overturn unjust or unsupported disciplinary actions. They also make up a large proportion of the cases that do go to a contested hearing. And because they are founded on factors not traditionally recognized by arbitrators as "just cause" (i.e., political expediency), they tend not to hold up under standard of due process.

This perhaps explains why the Times' Opinion seems to conclude that because cops "carry guns and have the ability to deprive members of the public of life and liberty" they "are not like other workers" and do not deserve that quintessential worker protection: "just cause." However, the opposite view can be argued far more convincingly. Given the extraordinary complexity and politicization of police work, police officers deserve as robust procedural protections as any other workers. Arbitrators protect substantive and procedural due process. I know of one local police discipline system run by political appointees. Officers can be given as little time as an hour to present evidence in a termination case. Too often, the process creates the perception of the Stalinist show trials of the 1930s.

The Times has been revered for its indepth reporting for decades – think of the Pentagon Papers. That its arguments in this instance are buttressed only upon a couple of dubious studies makes the opinion read more like kowtowing to ideology than a reasoned and supported argument.

But what is most disappointing is the lack of any meaningful contribution to this debate from the target of the Times' piece: the arbitrators. These are professional people, often retired judges, or persons who have spent their careers in dispute resolution. They operate under rules the parties agree to. They are governed by standards that ensure due process and substantive fairness. As they work cases they develop expertise in the field. They handle all types of labor disputes and are a mainstay of American industrial relations.

And they are not appointed randomly. Parties either agree to use them or select from lists. If an arbitrator makes a poor decision, or is perceived as favoring one side or the other, they will simply not be selected, particularly in high-profile cases.

These arbitrators are not the stooges portrayed in these critiques of police discipline, and it is high time the arbitrators and the Associations that represent them say so.

Those attacking police unions overlook the extraordinary contributions police unions have played in improving police officer wages, benefits and working conditions. Not only

that, but to improve training, health and wellness. In an amicus brief filed in the United States Supreme Court in *Janus v. AFSCME*, San Jose POA, and a group of other public safety amici explained that public safety unions improve the safety and training of public safety employees, foster vital solidarity among public safety employee, and improve the recruitment and retention of high-quality public safety employees.

Those looking for an example of how a successful police union can help not only cops but the community and the City could do worse than look at the contributions of the San Jose POA. After Measure B, 500 cops left this City, and with them went thousands of years of institutional knowledge. The Department shrunk to the point where it could barely put enough officers on the street. Since that low point, the SJPOA has been instrumental in achieving a series of victories to help restore the SJPD:

- Negotiated landmark pension settlement that restored Tier 1 benefits and competitive Tier 2 benefits in a deal that consigned Chuck Reed's Measure B to the dustbin of history.
- Recouped more than \$1.3 million in attorneys' fees for the POA from the Measure B litigation through further litigation and settlement.
- Fought side-by-side with the City in a *Quo Warranto* action to prevent malcontent former councilmember Pete Constant from trying to upend the Unions' pension Settlement Framework.
- Secured \$800,000 FLSA settlement with the City, without litigation, to recover unpaid wages to officers.
- Established cutting-edge Wellness protections for San Jose police officers.
- In an age of often ill-conceived and politically-motivated civilian oversight of police departments, persuaded a reasoned City Council to fire an Independent Police Auditor, who had become less a fair arbiter and more an anti-police fanatic.
- Secured greater than 45% in increases (plus one-time benefits of 7% and \$5000) for San Jose police officers since the City made a 10% cut in pay in 2011.

Perhaps most importantly, these successes have been achieved while fostering a collaborative relationship with the City's administration. There have been battles aplenty, as the above list illustrates, but it has been done with maturity and level-headedness. This has brought important benefits not only to officers but to the City and the community. While much remains to be done, the positive contribution of San Jose POA to the recovery of the Police Department deserves to be part of the debate over the role of police unions. □

Editor's Note: To contact Gregg McLean Adam, email: gregg@majlabor.com



Johnene Stebbins



Third Degree Communications: Training Bulletin

Miranda: But You Didn't Tell Me You Wanted To Talk About That!

Officers have been involved in this scenario a hundred times: You have a suspect and say, "can we talk to you?" He asks, "what about?" What do you have to tell him before he waives his Miranda rights to have his waiver considered voluntary, knowing and intelligent?

IN *UNITED STATES V. DAVIS* (DEC. 10, 2019) 2019 WL 6713394, the United States Supreme Court explains that *Miranda v. Arizona* (1966) 384 U.S. 436, 384 does not require law enforcement to explain the nature of the crimes under investigation for a suspect's waiver of his rights under *Miranda* to be "voluntarily, knowingly and intelligently" waived. So, what do you have to tell the suspect?

In *Davis*, Defendant Davis was convicted of providing false statements to a licensed firearms dealer from whom he was purchasing firearms. On the forms, Davis indicated that he was the actual buyer, but in fact Davis was acquiring the firearms for other persons. When ATF performed search warrants at Davis' house, agents interviewed Davis. Prior to questioning Davis – and setting aside the issue of whether he was "in custody" for purposes of *Miranda* as that was not an issue before the Court – agents twice advised Davis of his *Miranda* rights, once by memory and again from a written card. The only information given to Davis about the nature of their investigation was that the search

warrants "related to his activities in firearms." Davis waived his *Miranda* rights and made admissions about his firearm purchases.

At trial, Davis tried to suppress his statements, first, by claiming that by failing to inform him that he was being investigated for making false statements, law enforcement failed to fully and adequately advise him of his rights under *Miranda*. It is clear that Davis was fully informed of his rights – twice! As explained above, the United States Supreme Court affirmed that *Miranda* does not require an explanation of the investigation as part of the *Miranda* waiver.

Next, Davis tried to suppress his statements claiming that his waiver was not "voluntarily, knowingly and intelligently" made because the failure to inform him of the charges being investigated, amounted to "trickery or deception" to persuade him to waive his privilege under the 5th Amendment. The U.S. Supreme Court reiterates that the Supreme Court has never found mere silence by law enforcement as to the subject matter of an interrogation to constitute trickery sufficient to invalidate a suspect's waiver. Instead, the U.S. Supreme Court has previously held, and affirmed here, that a suspect's awareness of all possible subjects of questioning in advance of interrogation is not relevant to determining whether the waiver is voluntarily, knowingly and intelligently made. Regardless, here where the agent told him the warrants were related to firearm activities was not misleading at all.

What does this mean for you? You do not need to tell the suspect anything about your investigation before he waives *Miranda*, but if you do tell him something, best to keep it truthful and vague...as you don't want to give rise to "trickery." □

Editor's Note: This article was presented by The Principals of Third Degree Communications, Paul Francois and Enrique Garcia. Tel. 408.766.1909 Email. info@tdcorg.com or visit www.tdcorg.com

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Karen Nelsen



Real Estate Perspective

Why Selling This Fall May Be Your Best Move Despite It Being An Election Year...

All things considered, overall, it's been a pretty positive year for real estate. Now, as we prepare for election time, you may be wondering how the upcoming election could impact real estate activity.

LESS PEOPLE CHANGING THEIR PLANS – IN A RECENT survey, Redfin found just 22% of buyers and sellers said the upcoming election is impacting their plans to buy or sell. That number is actually less than this time last year, when it sat at 32%.

Changes in housing and location preferences as a result of the pandemic seem to be outweighing anything to do with the election, which brings us to the next point.

Demand for space – More people than ever are learning and working from home, facilitating the demand for more space.

Low rates make upgrading even more appealing – The Fed still has rates at unprecedented lows, making buying and refinancing a hard bargain to pass up.

Historically, elections have minimal impact on activity – Another analysis by Redfin looked at home sales in past presidential election years over the last 40 years. Sales typically dip 1.5% in December and bounce back by 1.5% in January.

If you're thinking about moving, selling your house this fall might be the way to go.

Here are four highlights in the housing market that may make your decision to sell this fall an easy one.

1. Buyers Are Actively in the Market

Showing Time, a leading real estate showing software and market stat service provider, just reported that buyer traffic jumped 60.7% compared to this time last year. That's a huge increase.

It's clear that buyers are ready, willing, and able to pur-

“In a recent survey, Redfin found just 22% of buyers and sellers said the upcoming election is impacting their plans to buy or sell. That number is actually less than this time last year, when it sat at 32%.”

chase – and they're in the market right now. In many regions of the country, multiple buyers are entering bidding wars to compete for the home they want. Take advantage of the buyer activity currently in the market so you can sell your house in the most favorable terms.

2. There Are Not Enough Homes for Sale

In the latest Existing Home Sales Report, the National Association of Realtors (NAR) announced that there were only 1.49 million units available for sale. That number was down 18.6% from one year ago. This means in the majority of the country, there aren't enough homes for sale to satisfy the number of buyers.

Due to the health crisis, many homeowners were reluctant to list their homes earlier this year. That will change as the economy continues to recover. The choices buyers have will increase going into the new year. Don't wait until additional sellers come to market before you decide to make a move.

3. The Process Is Going Quickly



Today's ultra-competitive environment has forced buyers to do all they can to stand out from the crowd, including getting pre-approved for their mortgage financing. This makes the entire selling process much faster and simpler, as buyers know exactly what they can afford before shopping for a home. According to the latest Origination Insights Report from Ellie Mae, the time needed to close a loan is just 49 days.

4. There May Never Be a More Important Time to Move

You've likely spent much of the last six months in your current home. Perhaps you now realize how small it is, and you need more space. If you're working from home, your children are doing virtual school, or you just need more space, your current floor plan may not work for your family's changing needs.

Homebuilders are beginning to build houses again, so you can choose the exact floor plan to match what your family needs, and you can make sure the outdoor space is what you want too.

The housing market is prime for sellers right now, so reach out to a local real estate professional to get the process started this fall. If the timing is right for you and your family, the market is calling your name. □

Editor's Note: Article brought to you by Karen Nelsen, GRI REALTOR® Intero Real Estate Services, 175 East Main Avenue, Suite 130 Morgan Hill, CA 95037. Office: 408.778.7474 Cellular: 408.461.0424 Email: knelsen@interorealestate.com BRE License: 00891921



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Marc F. Derendinger



Insurance News

Hello Again

It's been a while...I miss the monthly membership meetings and visiting with friends and customers I have made over the last 35 years. Thank you to those who call me to better understand their SJPOA insurance: I appreciate the opportunity to stay connected.

THIS VANGUARD ISSUE WILL PLAY CATCH-UP AND touch on three insurance issues; I hope at least one of them benefits you:

- Do any of the Allstate plans cover COVID?
- The travel assistance plan has a new provider.
- Age 55 is the recommended age to request a review of your SJPOA life insurance coverage.

Allstate Cancer And Specified Diseases

THE ALLSTATE GROUP CANCER PLAN CONTAINS policy wording, such that Cancer or one of the Specified Diseases can trigger a number of benefits, including hospitalization, ICU, surgery, nursing care, new or experimental treatments and more, as described in the policy.

Specified Diseases: *Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease), Muscular Dystrophy, Poliomyelitis, Multiple Sclerosis, Encephalitis, Rabies, Tetanus, Tuberculosis, Osteomyelitis, Diphtheria, Scarlet Fever, Cerebrospinal Meningitis (bacterial), Brucellosis, Sickle Cell Anemia, Thalassemia, Rocky Mountain Spotted Fever, Legionnaire's Disease (confirmation by culture or sputum), Addison's Disease, Hansen's Disease, Tularemia, Hepatitis (Chronic B or Chronic C with liver failure or Hepatoma), Typhoid Fever, Myasthenia Gravis, Reye's Syndrome, Primary Sclerosing Cholangitis (Walter Payton's Liver Disease), Lyme Disease, Systemic Lupus Erythematosus, Cystic Fibrosis, and Primary Biliary Cirrhosis.*

While COVID is not named as one of the Specified Dis-

“Life insurance planning at age 55 is more important than ever, as you start the estate planning phase of your life: Take charge of this incredible financial planning tool, and call us today.”

eases, the policy will pay benefits if COVID causes you to be admitted to the Intensive Care Unit (ICU). This is the case because Allstate pays ICU benefits for almost all conditions, not just Cancer specific (good-to-know).

The high option Cancer policy pays ICU benefits of \$800 per day for up to 45 days (the low option pays \$200 per day up to 45 days). The cost of these “Cancer” policies is quite reasonable: \$27.50/ pay period for the high option family plan or \$16.00 for the low option. The premium for individual coverage is even less. Have you remembered to add all of your dependents? If you have acquired new dependents since 2010, there is a real chance they are missing from the policy – call me or **Allstate 1-800-521-3535** to find out!

Finally, please know you cannot buy this plan as a retiree. However, if you enroll while an active member, you can keep it for life, even during retirement! I recommend this plan for everyone who can still get it.

Travel Assistance

THE SJPOA INSURANCE & BENEFITS TRUST INCLUDES a travel assistance plan through Assist America, Inc., which is paid for by Standard Insurance Company. The new vendor has created a mobile phone App. to access services. Assist America may be reached via telephone at **1.800.872.1414**. If you ask, I will email the new brochure, which includes a specific reference number to activate eligibility. Just email **info@derendinger.com** or phone us at **1.408.252.7300**. Another option is to use this case-sensitive password: **IBT** (short for Insurance & Benefits Trust) and download it from my webpage: **<https://wp.me/P3Qlk3-c3>**



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If you need protection past age 60, we encourage members to work with us to develop a customized, longer-term life insurance solution.

Life insurance planning at age 55 is more important than ever, as you start the estate planning phase of your life: Take charge of this incredible financial planning tool, and call us today. □

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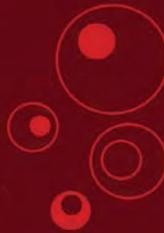
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Stephanie Whitmore



Home & Auto News

Mental Health In Law Enforcement: No Longer Taboo

Studies have shown that first responders are at a much greater risk to develop post-traumatic stress disorder than the general public due to their exposure to high levels of physical and emotional stress. Sadly, throughout their career, many first responders will develop anxiety, depression, PTSD, and other mental health issues, that are often times linked to suicide.

MENTAL HEALTH, A ONCE-TABOO SUBJECT FOR DEPARTMENTS, is now becoming more normalized with the aid of department programs, advocacy campaigns, and initiatives that help educate and bring awareness to PTSD, depression, and other types of mental health issues commonly found in first responders. Learning indicators that may be signs of mental health challenges can help yourself and those you serve with prioritize early efforts.

Early Signs Of PTSD To Look Out For Include:

Intrusive Memories: flashbacks, nightmares, and emotional reactions trigger by a reminder of traumatic event.

Eluding & Avoiding: Not speaking of the event or avoiding people, places, or activities

Behavioral Changes: Irritability, lack of interest, feeling detached, memory problems

Physical Reactions: Easily startled, trouble sleeping or concentrating, exhibiting self-destructive behavior

Over time, these symptoms can differ and vary in intensity. If you or someone you know is struggling with any of these signs of PTSD or other mental health issues, you are not alone. Please reach out to a mental health professional. If you do not feel comfortable speaking to a professional, start by reaching out to a close colleague, family member, or friend. If you are experiencing thoughts of suicide call

“Mental health, a once-taboo subject for departments, is now becoming more normalized with the aid of department programs, advocacy campaigns, and initiatives that help educate and bring awareness to PTSD, depression, and other types of mental health issues commonly found in first responders.”

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Mike Rains



Legal Report

Q & A: Michael Rains's Take On The Effect Of AB 392

California's law enforcement community has been grappling with the implementation of AB 392 for the better part of a year. As most know, AB 392 amended the standard dictating whether a peace officer's use of force is lawful. Debate has ensued as to exactly how, and to what extent, AB 392 implemented practical change. Below, Michael L. Rains discusses his view of how the new law has been implemented.

When is deadly force justified under AB 392?

Penal Code section 835a now states that deadly force is justified only when the officer "reasonably believes," based on the "totality of circumstances," that such force is "necessary" to either defend against an "imminent threat of death or serious bodily injury," or to "apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended." An "imminent threat" is defined as a person who has the present ability, opportunity, and intent to immediately cause death or serious bodily injury.

The new language also states that peace officers "shall use other available resources and techniques if reasonably safe and feasible," and that the totality of circumstances includes the officer's tactical decisions and conduct *before* using force.

Has AB 392 led to more criminal prosecutions of peace officers?

The amended language of Penal Code section 835a has not, on its own, led to a rash of new criminal filings against peace officers. I believe that the public narrative surrounding a particular use of force has a greater impact on the likelihood of a criminal filing against a peace officer than

“An ‘imminent threat’ is defined as a person who has the present ability, opportunity, and intent to immediately cause death or serious bodily injury.”

the legal standard used by a District Attorney to evaluate that use of force. After all, Penal Code section 835a still makes reference to what a "reasonable officer" would believe in light of the "totality of circumstances." This sounds a lot like the familiar *Graham v. Connor* standard to me. On the other hand, experience has taught that the public is simply not equipped to rationally and dispassionately evaluate graphic video depictions of force, especially when such video is disseminated without the proper background, context, or explanation of the surrounding circumstances. Therefore, the combination of AB 392 and SB 1421, and the manner in which an employing agency decides to handle the release of video depicting force, is more consequential to the possibility of a criminal filing.

Will AB 392 expose peace officers to more civil liability?

I believe AB 392 will have its greatest impact in the civil liability context. For decades, plaintiff civil rights lawyers have consistently argued two themes: (1) the employing agency failed to properly train its officers on how to deal with particular situations, and (2) the defendant peace officer in question should have used different tactics to avoid using force altogether. As amended by AB 392, Penal Code section 835a's mandate that officers "shall use other available resources and techniques if reasonably safe and feasi-



In Memoriam

ble” seems to fit squarely within the plaintiff’s lawyer’s play-book. Civil lawsuits are uniquely situated for lawyers to engage in after-the-fact second guessing of an officer’s tactical decisions, as they have extensive pretrial discovery procedures which do not traditionally exist in criminal cases, and they have a stable of “experts” on the payroll eager to play Monday-morning quarterback.

How would you rate the response by most law enforcement agencies to the new requirements under Penal Code section 835a?

I believe law enforcement employers could and should provide more high quality scenario-based training based on real life encounters which have resulted in the use of lethal force by officers.

Since AB 392 became effective, I have attempted to determine what training has been given to peace officers in a variety of jurisdictions concerning the issues presented by the new law, such as more robust “de-escalation” and “tactical repositioning” training, how to determine if a suspect is a danger only to themselves and not to others, how to decide if a suspect has the “apparent intent” to cause death or serious bodily injury, and how to determine if a threat is “imminent” or poses only “future harm.”

Unfortunately, I have not often seen the type of high-quality intensive training necessary for officers to acquire the tools to meet the practical and tactical challenges of this new law. My suspicion is that agencies are waiting for the effective date of SB 230 (January 1, 2021), which requires new policies on force standards. Of course, peace officers are already subject to AB 392 every work day, and must be given the opportunity to ensure their skills conform to the new law. Frankly, collective bargaining organizations should be pressuring their employer agencies much more aggressively to provide this training. □

Editor’s Note: *Mike Rains is a principal and founding member of Rains Lucia Stern St. Phalle & Silver, PC. He heads the firm’s Criminal Defense and Legal Defense of Peace Officers Practice Groups.*



Officer **John J. COVALESK**,
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Shot and killed on November 15, 1950, by an armed burglar whom Covalesk found burglarizing a business.



Officer **Jeffrey FONTANA**,
Badge #3702

Shot on October 28, 2001, while initiating a car stop during the early morning hours in the Almaden Valley area of San Jose.



Officer **Desmond J. CASEY**,
Badge #2705

Killed on October 25, 1999, when the police helicopter he was piloting crashed.



Officer **Robert WIRHT**,
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Officer **Richard HUERTA**,
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Reliable Informer

In this month's issue of the Reliable Informer, I will cover two cases decided by the California Court of Appeal. These cases look at the law relating to vehicle stops and the crime of kidnapping to commit robbery. I look forward to hearing from you about ideas for future columns, as well as any other comments you might have.

A Vehicle Stop By A Border Patrol Agent Away From The Border Lacked Reasonable Suspicion Of Criminal Activity

Many specialized law enforcement agencies operate with specific purposes and duties. One such agency is the United States Border Patrol. Like all specialized agencies, Border Patrol employs agents who have specialized training and experience. Under what circumstances may a border patrol agent conduct a vehicle stop away from the border based on the agent's specialized training and experience?

RECENTLY, THE FOURTH DISTRICT OF THE CALIFORNIA COURT OF Appeal looked at this question in the case of *People v. Mendoza* (2020) _____ Cal.App.5th _____.

In the *Mendoza* case, a Border Patrol agent was on duty on an autumn morning. He was driving an unmarked patrol vehicle and was driving on an interstate highway in San Diego County just south of the border with Riverside County. The agent was a member of a high intensity drug trafficking area task force. He was assigned to look for illicit activity on the highways and to run records checks. The agent had been a border patrol agent for almost ten years.

The highway where the agent was patrolling, I-15, was known as a major corridor for trafficking narcotics from Mexico. The agent had been trained in "behavior analysis," which he later explained in the context of reasonable suspicion as "a hunch of articulable facts that will allow us to pull over a vehicle." He also later stated, "The explanation could be something simple, something simple as a lane

change, the behavior or the person in the vehicle, the vehicle slowing down."

While on patrol, the agent observed an SUV on the highway. The agent did not observe anything unusual about the vehicle or about the way it was operated. The agent ran the license plate through his electronic data system and found that the vehicle had crossed the U.S.-Mexico border within the previous week. The agent also found out that the vehicle was registered to a woman who resided in Chula Vista, a city near the Mexican border. The agent ran the license plate because his practice is to run license plates to try to get a nexus to the border.

The agent pulled up next to the SUV to see who was driving. He was unable to see her until he rolled down his window. At that point, he looked over and saw that the driver was female. He and the woman made eye contact and maintained eye contact for a while. He noted that the woman appeared to get a really good look at him.

The agent noted that the woman immediately slowed down and then got behind the agent's vehicle. The agent then moved his vehicle into the slow lane, to the right of the woman. The woman made no effort to pass him, even when the agent slowed down to approximately 50 miles per hour. They drove like that for about three miles – the agent ahead of the woman and one lane to her right. At that point, the woman passed the agent's vehicle. She had both hands on the steering wheel and did not look at the agent as she passed.

The agent initiated a vehicle stop, using his vehicle's lights and siren once he got behind the woman's SUV. The agent later explained that he based his stop on the "totality of the circumstances," citing the nexus to the border, the woman having crossed the border, the driver being a woman, the driving behavior, the lane changes behind the agent, speed,



not passing him, and the rigid posture of the driver as she drove past him.

The woman yielded to the traffic stop and identified herself as Blanca Mendoza after the agent identified himself as a border patrol agent. While questioning Mendoza, the agent observed a backpack on the passenger-side backseat of the SUV. The agent asked Mendoza for permission to search the vehicle and Mendoza consented. The agent looked inside the backpack and found seven packaged bricks of cocaine. Each of the bricks weighed approximately one kilogram.

The agent placed Mendoza under arrest. Because the vehicle stop occurred in Riverside County, Mendoza was charged in Riverside County court with transporting a controlled substance for sale and with possessing a controlled substance for sale. Mendoza also was charged with sentencing enhancements for possession of more than four kilograms of cocaine.

In the trial court, Mendoza made a motion to suppress the evidence. She alleged that the vehicle stop was not based on reasonable suspicion, in violation of her Fourth Amendment rights against unreasonable searches and seizures. The trial court denied Mendoza's motion and she took her case to a jury trial. She was convicted of transportation of a controlled substance for sale and the enhancement. The court sentenced her to eight years of county custody, four years in county jail and four years of mandatory supervision.

Mendoza appealed her conviction to the Court of Appeal. She argued that the trial court should have granted her motion to suppress the evidence. The Court of Appeal reviewed Mendoza's case and agreed with her. The Court overturned her conviction.

In its written decision, the Court first stated, "The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. The primary purpose of the Fourth Amendment is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions. A defendant may move to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure if the search or seizure without a warrant was unreasonable. A traffic stop is a seizure within the meaning of the Fourth Amendment."

The Court continued, "It is settled that circumstances short of probable cause to make an arrest may justify a police officer stopping and briefly detaining a person for questioning or other limited investigation. However, law enforcement officers are not free to detain citizens at will. To justify an investigative stop or detention the circumstances known or apparent to the officer must include specific or articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity."

The Court further stated, "Officers may properly draw on their own experience and specialized training to make in-

“The highway where the agent was patrolling, I-15, was known as a major corridor for trafficking narcotics from Mexico. The agent had been trained in ‘behavior analysis,’ which he later explained in the context of reasonable suspicion as ‘a hunch of articulable facts that will allow us to pull over a vehicle.’”

ferences from and deductions about the cumulative information available to them that might well elude an untrained person. However, the officer's suspicion must be objectively reasonable. The facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on their training and experience to suspect the same criminal activity and the same involvement by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch, is unlawful, even though the officer may be acting in complete good faith."

The Court looked at the facts of Mendoza's case and stated, "Here, it was not objectively reasonable to suspect Mendoza was involved in criminal activity. [The agent] said Mendoza caught his attention initially only because she was driving in a known drug trafficking corridor in a vehicle that had crossed the U.S.-Mexico border approximately a week earlier."

The Court then stated, "There's no question that driving on the I-15 is not sufficient to warrant a stop. Interstate 15 is a heavily traveled stretch of highway. The portion of the I-15 in San Diego County is among the top 20 most traveled highway stretches in the United States, averaging 295,000 vehicles a day in 2008.... An officer's assertion that the location lay in a 'high crime' area does not elevate facts into a reasonable suspicion of criminality. The spectrum of legitimate human behavior occurs every day in so-called high crime areas."

The Court continued, "Nor does Mendoza's 'nexus' to the

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border warrant a stop. The U.S.-Mexico border is the most crossed border in the world. According to the United States Department of Transportation, Bureau of Transportation Statistics, 1,158,239 personal vehicles entered the United States from Mexico through the San Ysidro port of entry in November 2017. Thus, though Mendoza's vehicle's recent border crossing and location on the I-15 provided some reason to look into her activities further, they provided almost no basis for thinking she was involved in criminal activity. Those factors would draw into suspicion tens of thousands of people every day, perhaps more. The factors law enforcement rely on to justify a stop, if amenable to innocent explanation, must serve to eliminate a substantial portion of innocent travelers. [The agent] therefore needed some other basis for stopping Mendoza."

The Court then stated, "The additional factors [the agent] described were simply insufficient to warrant the stop. The agent said he also considered the fact that Mendoza slowed and moved over behind him after he pulled alongside to inspect her vehicle. However, the manner of his approach is critical to evaluating Mendoza's reaction. He acknowledged he drove an unmarked vehicle with no signs of its relation to law enforcement. As a result, when he pulled alongside her it was his conduct that looked suspicious, not hers. The agent said he drew even on her passenger side, couldn't see her through his tinted windows, lowered his window, and then stared at her. Indeed, he said he bent forward to get a better look and their eyes met. She reacted by taking fairly innocuous action to avoid him. Mendoza didn't drive erratically, didn't change lanes repeatedly, and didn't use other evasive maneuvers. She just slowed down and pulled behind him."

The Court continued, "Given the fact that [the agent] drove an unmarked vehicle and did nothing to identify himself as law enforcement, the most natural interpretation of Mendoza's conduct is that she sought to avoid him because she found his conduct threatening and potentially aggressive. [The agent] did not appear to make this connection but instead inferred she was trying to avoid him to cover up her criminal conduct."

The Court further stated, "We don't mean to suggest the reactions of a person under observation by law enforcement can't warrant a stop. They may, under the right circumstances. But for such a reaction to evince guilt, rather than a general fear or caution, there must be some indication the person is aware they're being observed by law enforcement. That element is absent here..."

The Court concluded, "To initiate a stop, an agent must have an objectively reasonable basis for suspicion. The agent in this case did not have such a basis. Nothing about Mendoza's car suggested she might be involved in criminal activity, and though she sought to avoid the agent, the evidence



doesn't suggest she knew he was law enforcement. That fact undercuts the agent's inference that she was trying to avoid detection of criminal conduct, but given the setting, Mendoza's reaction to being observed was so minor it wouldn't provide adequate ground for suspicion even had the agent been driving a marked law enforcement vehicle. We therefore conclude the agent acted without a reasonable basis for suspicion when he stopped Mendoza, and the trial

court erred in denying her motion to suppress."

The Court's decision in the *Mendoza* case is a significant one for at least two reasons. First, the Court has provided a very clear example of how the reasonable suspicion standard applies to a car stop not based on a traffic violation. Second, the Court has shown the limitations on using the training and experience of a specialized law enforcement officer to establish reasonable suspicion for a detention. □

The Crime Of Kidnapping To Commit Robbery Requires More Than Movement That Is Merely Incidental To The Robbery

California Penal Code section 209(b) makes it a felony to kidnap or carry away an individual to commit robbery or certain other serious crimes. In order to be guilty of violating section 209(b), the movement of the victim must be beyond that merely incidental to the commission of, and must increase the risk of harm to the victim over and above that necessarily present in, the intended underlying offense. During the course of a robbery, how much movement is necessary for the crime also to constitute kidnapping to commit robbery?

RECENTLY, THE SECOND DISTRICT OF THE CALIFORNIA Court of Appeal looked at this question in the case of *People v. Taylor* (2020) _____ Cal.App.5th _____.

In the *Taylor* case, a man who worked in a nail salon in Los Angeles County stepped out of the business on a winter evening to smoke a cigarette. He went to his usual place, a sidewalk in front of the business. Because the spot he chose was in front of a poster in the window, the patrons inside the business could not see him smoking. Although it was dark out, there was light coming from the interior of the shop. There was an alley that led from the sidewalk. A video camera was positioned to observe the space in front of the shop. The alley did not have similar lighting. It was dark in the alley.

As the man left to smoke, a man later identified as Isaac Taylor passed the man and then circled back about half a

“As the man left to smoke, a man later identified as Isaac Taylor passed the man and then circled back about half a minute later. Taylor yelled something to the man and ordered him to look down. When the man looked down, he observed that Taylor was pointing a gun at the man's waist area. Taylor ordered the man to move back into the alley. The man obeyed by taking three or four steps backward.”

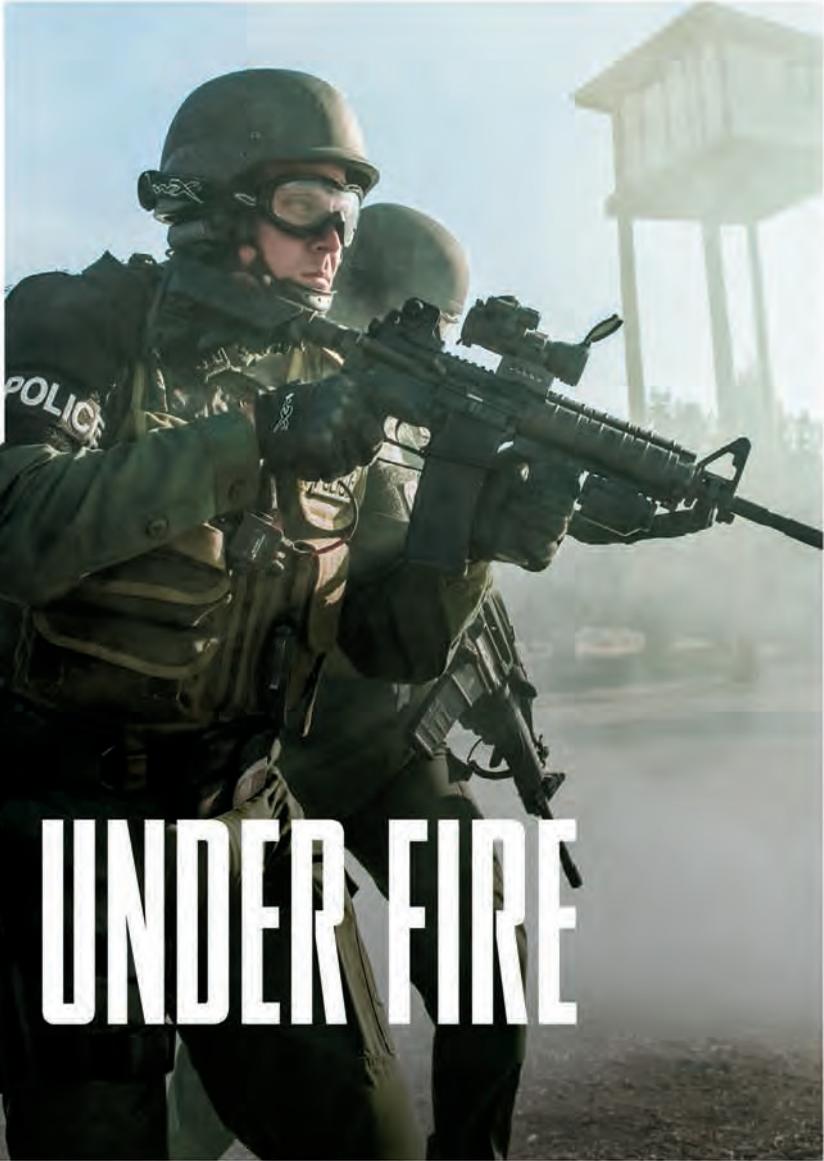
minute later. Taylor yelled something to the man and ordered him to look down. When the man looked down, he observed that Taylor was pointing a gun at the man's waist area. Taylor ordered the man to move back into the alley. The man obeyed by taking three or four steps backward.

When the man stopped, he was at the corner of the building and about a foot into the unlit alley, blocked from view.

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Taylor demanded the man's wallet, which he surrendered. Taylor told the man that he would die unless there was money in the wallet. Taylor then told the man to walk back into the shop and not to look back. The man returned to the shop.

Taylor was arrested and was charged with robbery and with kidnapping to commit robbery. He also was charged with a sentencing enhancement for use of a firearm. Taylor took his case to a jury trial and was convicted of the charges. Taylor was sentenced to serve 29 years to life in prison.

Taylor appealed his conviction to the Court of Appeal. He argued that there was insufficient evidence to support a conviction for kidnapping. The Court of Appeal reviewed Taylor's case and agreed with him. The Court overturned his kidnapping conviction.

In its written decision, the Court first stated, "The crime at issue is section 209's kidnapping to commit robbery, which is aggravated kidnapping, in contrast to simple kidnappings illegal under section 207. How much must kidnappers move victims to commit aggravated kidnapping? The jargon for this issue is 'asportation.'"

The Court continued, "The statute sets two requirements: 1. The defendant must move the victim beyond movement 'merely incidental' to the robbery, and 2. This movement must increase the victim's 'risk of harm' beyond that necessarily present in the robbery."

The Court then stated, "Both requirements are essential. The requirements are interrelated. No minimum distance is required if the movement is substantial. In 1997, the Legislature modified the second requirement by replacing the need *substantially to increase* the risk of harm to the victim with a requirement merely *to increase* that risk." The Court noted that the outcome of Taylor's case hinges on the first requirement, whether the movement was "merely incidental" to the robbery.

The Court noted the challenge in determining how to decide what is "incidental" to a robbery. The Court stated, "To determine what is 'incidental' about a robbery, courts cannot ask the obvious person: the robber. Taylor did not testify in this case, but more fundamental than this practical obstacle is the fact robberies can be highly opportunistic, as was Taylor's. [The victim] popped out for a smoke just as Taylor happened to walk by. In the space of 27 seconds, Taylor with his gun and on the prowl, apparently reacted to [the victim]'s chance appearance by deciding to go back for [the victim]'s wallet. It is unknowable whether Taylor in those seconds formulated some plan featuring major and incidental elements, or whether Taylor just formed a vague notion – 'get his wallet' – and resolved to react as events unfolded. The man who authorized the event will never say what was central or incidental."

The Court continued, "Nor is it easy, after the fact, to impose objective and logical order on a robbery by dividing

it into major and incidental elements. There is no clear method or meter. The criteria are amorphous. Subjectivity imperils this work."

Acknowledging the challenge, the Court then looked at whether the movement in Taylor's case was "incidental." The Court stated, "There was nothing like a classic aggravated kidnapping in this case. Rather, this robbery was just an ordinary robbery. The victim backed up four steps and ended up 12 inches into an alley, where the darkness and the corner screened the robbery, which is where robbers typically want to be: out of public view. Taylor never confined [the victim] in an isolated room. The whole episode lasted a mere minute and a half. This movement was trivial and incidental to the robbery. This case has no evidence of kidnapping for robbery."

The Court concluded, "The law is not always simply logical and commonsensical, but here it is, and that is desirable because criminal law aims to express and to enforce a community's shared moral intuitions. The average Californian would be surprised to hear four steps backwards could be kidnapping. And here the average Californian would be right: that is not a kidnapping under these facts."

The Court's decision in the *Taylor* case is significant because the Court clearly demonstrated the limitations to the facts required for a suspect to commit the crime of kidnapping to commit robbery. □

Editor's Note: Lance Bayer is a private attorney specializing in police training and personnel issues in the Bay Area and can be reached by writing to: Lance Bayer, 443 Lansdale Avenue, San Francisco, CA 94127, by calling 415.584.1022, or by email at lbayer@comcast.net



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