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RE: Fortner v City of Memphis

I am a Professor of Criminal Criminology and Criminal Justice at the University of South Carolina, and I have been retained by Ms. Delois Fortner to provide my expert opinions in this case. I have a Ph.D. in sociology from Washington State University, and have conducted research on police policies and customs for the past twenty years. I have published extensively in the area of criminal justice, including scholarly articles concerning internal affairs, early warning systems and use of force. I have worked with numerous police agencies to develop policies, conduct training, and provide them with other consulting services. I am familiar with police operating procedures as well as the customs developed by practice. I base the statements contained herein on my education, research, work experience, knowledge of police policies and customs, as well as my review of the documents and material provided to me for review set forth in Exhibit G. I have previously been accepted as an expert in an excessive force case by the appellate courts in the Sixth Circuit in the published case of Champion v. Outlook Nashville, Inc. 380 F.3d 893 (6th Cir. 2004). A copy of my CV setting forth my qualifications and documents is attached as Exhibit A. A list of the cases that I have testified at trial or by deposition is attached hereto as Exhibit B. A copy of my fee schedule is attached as Exhibit C.

I have previously been retained as an expert witness in civil rights cases against the City of Memphis and reviewed extensive materials concerning the policies, practices and customs of the MPD and have previously formulated opinions. In particular, I was retained by the Plaintiff in the following cases to express opinions and prepare an expert report: 1) Boyd v. City of Memphis, et al. No. 94-3077 HA; 2) Buckley v. Memphis, et al. No. 03-2875; and 3) Hampton v. Memphis, et al. No. 04-2537. I also provided consulting expert services in Palazola v. Memphis, et al. but did not prepare an expert report prior to the settlement of the case. I have also prepared an expert report in Bland v. Memphis, 07-CV-02388 on September 16, 2008, which I attach hereto as Exhibit D. The information review in these cases and contained in these reports is also part of the basis for my opinions and conclusions. In formulating my opinions, I have reviewed the information identified in Exhibit E.

SUMMARY OF FACTS

Michael George Smith was a 17 year African American male who was involved in an incident with officers of the Memphis Police Department on July 14, 2006, who ultimately died on July 22, 2006. On July 14, 2006, Michael Smith was with his brother Jerome Fortner and his girlfriend, Erica Sheffa, who are both juveniles. The three juveniles had gone to the residence of Willie Campbell to ask advice about how to care for the sick puppy. As the juveniles were leaving the residence of Willie Campbell, they were encountered Officers Kay, Leslie and Goodwin who were patrolling in an unmarked vehicle in plain-clothers. The circumstances surrounding the encounter with police are disputed.

Accordingly the testimony, Officers Leslie, Kay and Goodwin were assigned to a plain-clothes duty riding in a completely unmarked car with tinted windows. Given that it was the weekend, this was not an unusual duty call as many times many officers ride in plain-clothes and undercover cars to patrol problem areas looking for criminal activity. In this particular incidence, two separate shifts combined their forces to saturate problem areas. Lt. Moffit and Lt. McCord were involved in this matter as supervising officers. In this detail, the plain-clothes officers riding in unmarked cars were patrolling problem areas looking for criminal activity. Once the undercover officers observed criminal activity, they would routinely radio marked patrol units who would investigate the alleged criminal activity. A paddy wagon was available in the event that arrests were made. Officer Kay believed that the assignment was part of the MPD's Blue Crush Initiative and that they were concentrating on certain high crime areas.

On July 14, 2006, the officers were driving the unmarked unit. Officer Leslie was driving the vehicle, Officer Kay was in the front seat and Officer Godwin was in the back seat. The officers were traveling in the area of Piney Woods Street and observed suspected criminal activity and radioed patrol cars to investigate. After the officers radioed patrol cars, they positioned their vehicle on the next street to be on the lookout in case any potential suspect fled when the marked officers arrived. After they did not observe any suspects fleeing, they drove down Dobbins Ferry Road. The officers testified that they were traveling slowly down Dobbins Ferry Road when they observed three individuals in the middle of the road, blocking traffic. These individuals were later identified as Michael George Smith, Erica Sheffa and Jerome Fortner. The officers testified that they kept inching up their un-marked vehicle when they encountered the juveniles, but the individuals would not move. The officers testified that the reason for the making contact with juveniles was because they were obstructing a highway or passageway. The officers all admitted that if the juveniles were not in the road or blocking a highway that there would have been justification to stop and question the juveniles. (Goodwin, pp. 20-21; Kay, p. 24; Leslie, pp. 18). The circumstances of the original stop are significant in analyzing the conduct of the officers.

Based on the officer's testimony, the officers decided to stop the juveniles because they were obstructing a highway or passageway. The officers then exited the vehicle and identified themselves as police officers. Michael Smith and Erica Sheffa began walking

back towards the house and Jerome Fortner was walking in the other direction towards a white car. Officer Kay concentrated on Jerome Fortner, Officers Leslie concentrated on Erica Sheffa and Officer Goodwin concentrated on Michael Smith and Erica Sheffa. The officers ordered the juveniles to halt and the juveniles complied. The officers did not observe the juveniles holding any weapons. After ordering the juveniles to stop, Officer Goodwin noticed that Michael Smith was holding a puppy and Officer Leslie became aware that Michael Smith was holding a puppy after he heard Officer Goodwin state something about a puppy. Officer Goodwin did not note that Michael Smith was experiencing any medical distress upon initial contact. Officer Goodwin testified that Michael Smith went "limp" and his head and torso hit the vehicle. Officer Goodwin then stated that he grabbed Michael Smith by the back of his pants to attempt to keep him from hitting his head on the ground. However, while Officer Goodwin was attempting to stop Michael Smith from falling to the ground, his head did hit the ground. Officers Kay and Leslie stated that they heard a "thud" and then saw Michael Smith sliding off the front of the vehicle. Officer Kay then indicated that he told Jerome Fortner to stay seated on the curb when he went to assist Officer Goodwin. The officers all testified that the conduct of the juveniles would not have justified any officer to use force by picking up Michael Smith and slamming him on the hood of the vehicle and that any such conduct would have been improper. (Kay, p. 37; Leslie, p. 25; Goodwin, p. 29). The officers then testified that when Michael Smith was on the ground, he appeared to be in medical distress, medical personnel were call and CPR was started after Lt. Moffit arrived. If this version of events is believed, the officers all acted appropriately.

However, the civilian witnesses and other evidence contradict the officers' version of events. Based on statements Jerome Fortner and Erica Sheffa, Michael Smith and Erica Sheffa were not in the street when the officers' unmarked vehicle came driving down the street at a high rate of speed. Jerome Fortner was walking in front on Michael Smith and Erica Sheffa. As the officers' vehicle came down the street at a high rate of speed, Jerome Fortner attempted to cross the road and was almost hit by the officers' vehicle. At that time, the vehicle stopped and the officers exited the car and told the juveniles to stop. The juveniles complied. However, an officer then pick up Michael Smith and slammed his head onto the vehicle and Michael Smith went into medical distress. In addition, Willie Campbell also gave a written statement indicating that the officers had slammed Michael Smith's head onto the police vehicle.

In addition to the statements mentioned above, I have reviewed certain medical records concerning the incident. After Michael Smith was found to be in medical distress, he was not responsive. Michael Smith was transported by ambulance to Delta Medical Center for evaluation. Thereafter, Michael Smith was transported by ambulance to LeBonhuer Hospital. The ambulance report indicates that Mr. Smith had an abrasion on his forehead when transported to Delta Medical Center. The Delta Medical Center Emergency Department Triage Record indicates: "17 year old witnessed [in] full arrest per MFD Unit 10. 'Officers pushed 17 year old against car roughly and child went down.' Officers doing CPR on arrival of MFD." The Delta Medical Center Emergency Department Nurse Assessment and Continuation Sheet indicates: "17 year old black male witnessed [in] arrest per MFD Unit 10. Child pushed against car and child went down. Officers

doing CPR on arrival of MFD." LeBonheur Hospital Neurology Consultant's Report notes: "17 year old African American male. Last evening was pushed against a car. Full arrest noted." LeBonheur Hospital Consultant's Report notes: "17 year old African American male brought to LeBonheur PICU from Delta Medical Center. He was in an altercation last evening and collapsed, found to be in full arrest by MFD." LeBonheur Hospital ICU Fellow/Attending Admit Note indicates: "Patient is a 17 year old African American Male who last evening was pushed against a car and reportedly went to the ground. Child full arrested. CPR performed." LeBonheur Hospital Lab and Radiologic findings notes: "17 year old black male s/p full cardio resp. arrest. Circumstances not entirely clear. Collapsed during altercation with police." As Michael Smith was not responsive, he could not have provided information concerning the circumstances of his encounter with police. Therefore, the medical records contradict the officers' version of events.

The autopsy reports notes that Michael Smith had ulceration on his lip and small abrasions on his arms. The cause of death determined by the medical examiner was undetermined. However, the Affidavit of Dr. Kris Sperry refutes this contention and has opined that Michael George Smith's death was caused by his encounter with officers of the MPD.

After the incident, the MPD had its Inspectional Bureau Division investigate the incident based on the fact that there were serious injuries that occurred during an encounter with MPD officers. The investigation was instigated administratively and not on the basis of any complaint by the civilians. When a complaint is investigated, the file initially gets assigned the disciplinary rule violation - DR 101 - Compliance with Regulations. While Sgt. McNamee was not on duty at the time of the incident, the ISB file was assigned to him. Sgt. McNamee did not make the scene or perform the initial investigation or interviews. After Mr. Fornter was taken from the scene of the accident, ISB took statements of civilians and the officers involved.

Despite the fact that the civilians indicated that Michael Smith was slammed against the hood of the police vehicle and the officers indicated that Michael Smith's head and/or torso struck the police car, the vehicle was not immediately secured as evidence or tested in any fashion. ISB had the vehicle tested four days after the incident for fingerprints or evidence of blood or human fluids that turned out negative. This fact neither confirmed nor corroborated either the civilian witnesses' or the officers' testimony that Michael Smith's head struck the police vehicle. (McNamee, p 37).

Sgt. McNamee noted that his investigation concluded that the sole reason for the encounter with the juveniles was because they were standing in the street blocking the roadway and there was no other justification for the stop. However, Sgt. McNamee testified that he did not focus on whether the initial stop was proper or improper. (McNamee, p. 44-45, 53). Further, the manner in which the unmarked patrol car was being driven by the officers on the night of the incident was not investigated. (McNamee, p. 55). Sgt. McNamee testified that on the night of the incident, many statements were done "live" and immediately transcribed. (McNamee, p. 45). Jerome

Fortner and Erica Sheffa's statements were taken that night as well as the officers' statements. Sgt. McNamee testified that investigators spoke with a witness on the scene whose statement was allegedly consistent with the officers' account, but this statement was not recorded. The ISB investigation contained documents that reflect that MPD investigators spoke with Michael Smith's physicians who informed the investigators that a drug test performed on Michael Smith tested positive for THC, PCP and amphetamines. The ISB file does not contain any document that provided the investigators with consent to obtain Michael Smith's medical information or to speak with his physicians. Significantly, the toxicology tests completed by the medical examiner's officer noted that Michael Smith did not have any drugs in his system.

Sgt. McNamee testified that the officers' statements were consistent and acknowledged that the civilian statements contradicted the officers' statements. In addition, Sgt. McNamee testified that a civilian witness, Willie Campbell, gave an initial statement to officers on the scene that was consistent with the officers' version of events. As noted, this initial statement was not recorded or transcribed. However, the recorded statement given by Willie Campbell contained in the ISB file which was transcribed contradicted the officers' version of events and indicated that he gave the MPD investigators the same information on the night of the incident. Sgt. McNamee gave no explanation why the original oral statement of Willie Campbell was not recorded. Sgt. McNamee noted that all of the officers noted that Michael Smith had injuries after the encounter that were not present prior to the encounter.

Officers Jay, Leslie and Goodwin did not complete separate incident reports of this matter. The ISB file only contains an Offense Memo that was completed in part by Officer Leslie and Officer Kay and a supervisory report completed by Lt. Moffit about his observations on the scene. Significantly, Officer Goodwin did not complete any report about his participation in or observations of the events.

After his investigation, Sgt. McNamee concluded that the conduct of the officers was appropriate and in conformity with the MPD policies. In reaching that conclusion, Sgt. McNamee noted that the civilian "witness accounts of the incident are contradicted by the results of the crime scene report and the DNA tests conducted by the TBI" which indicated that there was no blood, fingerprints or other evidence on the officers' car tested days after this incident. Sgt. McNamee reached this conclusion despite the fact that the lack of evidence on the vehicle also contradicted the officers' version of events and is clear evidence of the bias of the investigation. (McNamee, pp 67-68). In reaching his conclusion, Sgt. McNamee also discounted the testimony of Willie Campbell because he testified that his recorded statement contradicted his oral, unrecorded statement. However, in Mr. Campbell's recorded statement, he indicated that he told the officers on the scene the exact same information he gave Sgt. McNamee in his recorded statement. Due to the fact that the officers did not record the first statement of Mr. Campbell, this conclusion cannot be corroborated. Finally, Sgt. McNamee testified that he did not believe that a "code of silence" exists where officers will stick together and not "snitch" on fellow officer so he does not consider this in his investigations. This shows a clear

lack of understanding of police misconduct investigations and illustrates a clear bias in favor of police officers in ISB investigations.

SUMMARY OF OPINIONS REGARDING OFFICERS' CONDUCT

Based on my review of the materials, there are two divergent versions of events. If the officers' version of events is believed, the actions of the officers were entirely appropriate. However, if the civilians' version of events is believed, then the officers conduct was improper and amounted to an improper seizure through the use of excessive force. Based on the civilian statements, the officers did not have any probable cause or reasonable suspicion to initiate any citizen contact. Therefore, any stopping or seizure of Michael Smith and the two other juveniles would have been inappropriate. The officers in this case all acknowledged that if the juveniles were not in the street blocking the roadway, there would not have been any legal justification to seize and question the juveniles. Further, based on the civilian statements, the officers used excessive force by slamming Michael Smith's head into the police car. According to all of the testimony in this case, Michael Smith and the two other juveniles complied with the officers' commands and orders and did not act in a threatening manner or display any type of weapon. In fact, Michael Smith was observed to be holding a puppy by Officer Goodwin. Under nationally recognized police standards, an officer may use only that degree of force that is necessary to dispel a threat. Given that Michael Smith and the other juveniles were not posing any threat to the officers, any use of force would have been excessive. Again, the officers all testified that if Michael Smith's head was slammed against the police vehicle, this conduct would have been improper and would have amounted to the use of excessive force.

SUMMARY OF OPINIONS REGARDING MUNICIPAL LIABILITY

Municipalities have a duty to assure that their police agencies do not violate the constitutional rights of citizens. The governing body must ensure that the department operates in a manner which will ensure proper procedures and require adherence to effective policies.

A police chief is an appointed department head, and is accountable to the city officials for the management and internal affairs of the department. The duty to ensure that constitutional rights are protected by the police can not be delegated to the chief. Only the responsibility of proper management can be delegated. This duty requires that the city officials monitor the police agency for proper operation, and ensure that approved policies and procedures are in place, and are being followed.

Every law enforcement agency, over the course of its history of operations, develops a definable "culture" within its ranks that is unique to the organization. Some cultures demonstrate reverence for the Constitution and adherence to standards of excellence in police operations and training. Bad conduct is not tolerated in these departments, and the mission statement is one that is embraced by the majority of personnel at all levels. Expectations are high, public perceptions are highly favorable, and personnel of the

department wear their uniforms and do their jobs with pride and excellent public support. Morale is high. Often, the establishment of such a culture begins with the head of the department, operating under a mandate from the municipality. Characteristics of such departments include a commitment to the formulation, enforcement, and continuous evolution of written policies and procedures; specialized training; effective liaison with other agencies and the prosecutor's office; thorough and objective investigation of allegations of misconduct; effective supervision and discipline; and integrity.

When these expectations are not met, and there is no conformity to ethics, the "culture" that matures within a police agency can also be very poor. It takes a long time for these institutional identities to develop, and once entrenched they are difficult to evict without a long-term commitment to a new philosophy of doing business. While there is no one set of standards for the determination of whether a department has allowed a negative culture to take root, evidence of the existence of a custom and practice of deliberate indifference to police misconduct that has become institutionalized within a corrupt law enforcement agency can be found in:

- a. Failure to set up properly running units and/or divisions to properly train, supervise, monitor and discipline officers that act according to written procedures and protocols.
- b. Failure to properly analyze data regarding officer conduct.
- c. Failure to take civilian complaints and perform timely and thorough investigations of allegations of police misconduct.
- d. Negligence in the application of constitutional requirements and restraints in the daily conduct of police business.
- e. Bad public relations and press relations.
- f. Legitimate criticisms from investigative agencies or grand juries are ignored.
- g. Subordinate personnel are poorly or improperly supervised.
- h. Evidence of internal cover-ups.
- i. Officers plant evidence or deliberately state untruthful information and/or willfully omit relevant information in official reports in order to strengthen cases and increase their arrest statistics.
- j. Officers and supervisors conceal or destroy evidence of official misdeeds.
- k. Peer pressure to violate the law or constitutional constraints is commonplace.
- l. Officers violate the rights of citizens in the presence of eyewitnesses with impunity because they know they will not be disciplined.
- m. Employees who observe serious misconduct do not report it, because they have learned that they will be identified as "rats", and the report will be officially ignored by executive management.
- n. Officers are arrested for serious crimes.

When characteristics such as those listed above are present, this is strong evidence that there exists within an organization a long-standing and pervasive custom and practice within the agency of deliberate indifference to the constitutional duties and responsibilities of the agency in its operations and contacts with citizenry, which has been established and is being perpetuated by policy making officials at the highest levels. In

today's enlightened law enforcement environment, a continuation of such a pattern and practice of deliberate indifference can only be seen as intentional. This becomes a primary causative factor in unconstitutional and illegal acts committed by officers acting in their official capacity.

When illegal and unconstitutional acts are committed by officers and ignored by the highest officials who are charged with the duty to act, this sends a message to personnel at all levels. The message is that police can do whatever they want and get away with it. Officers and supervisors who are inclined toward abuse of their authority thrive in these environments, and the public becomes frustrated and distrustful when it sees that complaints and allegations of serious misconduct are ignored, ratified or deliberately covered up by administrators.

In reviewing the conduct and performance of a police department, it is important to analyze the leadership of the department. As noted by Professor Joycelyn M. Pollock in Critical Issues in Policing, Fifth Edition, Chapter 16, p.292:

Most agree that the strongest correlate to the level of dishonesty among employees is the level of dishonesty among administrators. If there is wide-scale corruption in a police department, inevitably that corruption has reached high levels of management that protected and even encouraged dishonesty on the part of the rank and file. What is also true though is that even honest administrators and managers can foster and encourage corruption when they do nothing about it. In most wide-scale corruption scandals there was an attempted cover-up from high in management ranks. There is an aversion to "airing dirty laundry" in law enforcement that influences decisions to curtail investigations of dirty cops and keep evidence of corruption under wraps. Ironically, this often results in worse publicity in the long run.

At the times in issue in this case, Larry Godwin was the Director of Police. During his law enforcement career, Director Godwin was found guilty of violating the MPD's truthfulness policy when he lied about his location to a dispatcher to cover-up the fact that he was not at his assigned location, but at a lady friend's house. In order to maintain the integrity of police officers both in and out of court, all officers must act with integrity and truthfulness. The fact that Director of Police has been previously found guilty of untruthfulness in performing his job duties is an indication that the MPD does not value integrity as a necessary officer qualification. While Director Godwin's self interest may have led him to testify that officers can still perform their job duties after being found guilty of untruthfulness, this testimony was clearly refuted by other City of Memphis corporate representatives. (Tow, pp. 21-24; Winters, 3/3/08, pp. 105-106).

Further, it is significant to note that members of Director Godwin's own command staff, Deputy Chief Bobby Todd and Major James Krepela, were actually indicted for their roles in changing police reports stemming from an accident involving the mayor's daughter-in-law. Both men agreed to one year of probation for the charge of Destruction or Tampering with Evidence. The fact that officers in the command staff have been

indicted for serious misconduct issues is compelling evidence that a negative culture has been established at the MPD that makes officer misconduct foreseeable and predictable. That a negative culture has been established at the MPD that make officer misconduct foreseeable and predictable is further illustrated by a review of the disciplinary records of the supervisory officers involved in this incident, Lt. Moffat and Lt. McCord.

Lt. Moffatt originally applied for a position at the MPD but his application was denied because he failed the psychological test. Despite failing the psychological testing, Lt. Moffatt was encouraged reapply. After reapplying, Lt. Moffatt was hired as an officer for the MPD where he rose through the ranks to become a Lieutenant and member of the command staff. However, Lt. Moffatt's disciplinary resume indicates that he had numerous complaints against him during his service with the MPD as follows:

Date	Charge	SOC #	Action
3/21/1997	DR- 104 – Personal Conduct	MI035-97	Unsubstantiated
5/3/1997	DR-301 – Exccssive Force	I 012-06	Unsubstantiated
6/2/1997	DR-301 – Excessive Force DR-104 – Personal Conduct	S06-057	Unsubstantiated
6/14/2007	DR-803 – Rough or Careless Handling of Equipment	Soc97-0611	Written Reprimand 8 hrs Remedial Driving
6/24/1997	DR-101 – Compliance with Regulations	I118-97	Unsubstantiated
12/24/1997	DR-803 - Rough or Careless Handling of Equipment	Soc97-1208	1-Day Sust-8 hrs. Remedial Driving School
8/19/1998	IN CUSTODY DEATH	S98-044	Unfounded
8/28/2000	DR-104 – Personal Conduct DR-120 - Neglect of Duty	I128-00	Written Reprimand
12/19/2002	DR-104 – Personal Conduct	S02-104	Not Sustained
5/20/2004	DR-104 – Personal Conduct	I108-04	Not Sustained 10/23/2006
7/7/2006	DR-803 - Rough or Careless Handling of Equipment	Soc06-0726	Written Reprimand 9/27/2007

The head of the MPD's early warning system, Betty Winters, testified that Lt. Moffatt's disciplinary resume was troubling and should have raised questions concerning Lt. Moffatt. (Winters, 8/19/08, p. 24). However, Betty Winters testified that the MPD's current early warning system would not have tagged Lt. Moffatt's conduct for evaluation.

Further, the following charges are contained in Lt. McCord's disciplinary resume that illustrate significant problems with Lt. McCord's service at the MPD:

Date	Charge	SOC #	Action
8/20/1991	DR-130–Inventory & Processing Recovered Property	I166-91	Not Sustained

12/4/1991	DR-301 - Excessive Force	I 201-91	Dropped
1/16/1992	DR-104 - Personal Conduct	MI003-92	Not Sustained
4/18/1992	DR-104 - Personal Conduct	MI041-92	Not Sustained
5/5/1993	DR-104 - Personal Conduct	MI031-93	Not Sustained
5/24/1994	DR-301 - Excessive Force	I073-94	Unfounded
6/17/1994	DR-104 - Personal Conduct	I092-94	Not Sustained
6/29/1994	DR-104 - Personal Conduct DR-301 - Excessive Force	MI055-94	Dropped
12/10/1994	DR-130-Inventory & Processing Recovered Property DR-104 - Personal Conduct	I204-94	Not Sustained
12/28/1994	DR-101 - Compliance with Regulations	Soc94-1210	Written Reprimand
1/12/1995	DR-104 - Personal Conduct DR-130-Inventory & Processing Recovered Property	I018-95	Not Sustained
6/14/2005	DR-104 - Personal Conduct	Soc95-0617	Written Reprimand
7/29/1995	DR-104 - Personal Conduct	S95-028	Not Sustained
9/15/2005	DR-107 - Courtesy	I163-05	Not Sustained
12/20/1997	DR-104 - Personal Conduct DR-130-Inventory & Processing Recovered Property	S98-030	Suspension-2 Day
7/14/1998	Theft of Property over \$500- T.C.A	S98-038	Not Sustained
8/16/2000	DR-104 - Personal Conduct	MI074-00	Not Sustained
1/25/2001	Theft of Property-T.C.A.	S01-014	Not Sustained
4/18/2001	DR-107 - Courtesy	MI032-01	Not Sustained
6/22/2003	DR-803 - Rough or Careless Handling of Equipment	Soc03-0520	Oral Reprimand
9/15/2005	DR-107 - Courtesy	I163-05	Not Sustained
1/11/2007	DR-101 - Compliance with Regulations DR-107 - Courtesy	I011-07	Both Not Sustained 07/11/07
5/30/2007	DR-101 - Compliance with Regulations DR-104 - Personal Conduct DR-120 - Neglect of Neglect	I102-07	101=10 Days, 120=30 Days, 104=Dismissed
6/20/2007	DR-104 - Personal Conduct DR-108 - Truthfulness DR-601 - Completing Official Reports	I111-07	104=Terminated, 108 & 601 = Dismissed

Again, the head of the MPD's early warning system, Betty Winters, testified that Lt. McCord's disciplinary resume was not acceptable. (Winters, 8/19/08, p. 24-27). Betty Winters testified that Lt. McCord had been terminated, but has since regained his job.

Betty Winters testified that she agreed with the termination of Lt. McCord and is not comfortable that with his reinstatement as a supervisory officers at the MPD.

In addition, the U.S. Attorney's Office's "Operation Tarnished Blue" has resulted in the indictment of numerous officers. While the MPD does not track the number of officers that have been who have been indicted, Sgt. Mullins compiled a list of 30 officers who have been indicted or terminated in recent times. However, Director Godwin testified that the number of officer indicted in recent times could be as high as 45. This significant number of indictments of police officers in recent times in unprecedented and is significant evidence that a negative culture has taken root at the MPD where police misconduct and corruption are tolerated and accepted at the MPD.

Based on the evidence reviewed, it is clear the MPD, from the highest levels of management, has allowed this negative culture to take root. This is further evidenced by the manner in which officers are hired, supervised, monitored and disciplined.

Specifically, the City of Memphis' corporate representative testified that the recent rash of indictments of MPD officers is the highest by sheer volume since he has been on the force since 1989. (Tow, p. 33). Further, the City of Memphis' corporate representative also testified that he had serious issues with allowing officers who had failed a psychological evaluation to reapply as set forth in a recruitment add placed in the newspaper by the MPD. (Tow, p. 34-35). As previously noted, Lt. Moffatt had failed a psychological test and was encouraged to re-apply. The corporate representative further noted that a lot of the officers who were hired at the MPD in recent times did not have integrity when hired and could have been weeded out in the application process. (Tow, p. 37). With respect to the problems with the hiring and recruitment process, the City of Memphis' corporate representative testified as follows:

Q Okay. What I'm trying to talk about is the department, how the department reacts. Number one, I think, based on your prior questions, is hopefully you can weed a lot of them out in the application process, correct?

A Yes and no.

Q I mean, up until, I think, 2005 Memphis allowed people to get Post waivers?

A And, again, that's not the application process. That's the directives from the 12th floor and City Hall that they will hire bodies. So, to get 500 bodies, if you only have 400 that pass and they say, no, 500 bodies, then they will get 500 bodies.

Q So if we start there, then according to that kind of example, we may have 100 bodies that we really didn't want?

A That's a fair statement. You could look at that nationwide. When you have departments that hire a mass hiring within the years, the cycle comes around and they have mass firings.

Q I don't disagree with you. What I'm trying to figure out is what cycle we're in at Memphis, and I want to basically start with the premise that we're talking about. We may have had some situations where we had a lot of people and we

hired too many people. We may be feeling some of the repercussions of it now. Is that a fair statement?

A Yes, sir, we've hit that, yes, sir.

Q So we have a situation where, you know, you have somebody -- I'm going to use your example and obviously the numbers aren't right. We need 500 officers. We've got 400 that we're happy with. We might have 100 that may not have passed the test you'd like to apply, okay?

A Correct. (Tow, 38-39).

Based on this testimony, it is clear that the MPD is experiencing serious problems with its officers based on the failure to ensure that all officers hired had the necessary integrity and qualities to perform their important duties as law enforcement officers.

Early warning systems are essential to the proper operation of police department. An early warning system is designed to identify officers whose behavior has established a pattern or trend of problem behavior and to identify officers whose conduct needs to be to be scrutinized to determine if they need any intervention to ensure that their behavior conforms to their constitutional duties and obligations. If officers are provided an intervention, the intervention needs to be documented and the effect of the intervention needs to be evaluated. Further, in order to establish consistency within the department, any early warning system must be supported by proper written policy that covers the essential elements of the early warning system which includes: 1) the selection criteria for flagging officers; 2) the notification of officers; 3) intervention; and 4) evaluation of the intervention.

The early warning system at the MPD is run entirely by Betty Winters who operates without any formal written policy guidance. The lack of a written policy in the early warning system fosters inconsistency and confusion regarding the structure and function of the early warning system from officers and supervisors alike. Without proper written policies, the early warning system cannot function in a predictable or systematic fashion and amounts to a hodge-podge of goals and ideals without any effective mechanism to ensure that the goals of an early warning system are met. Without proper policy, the early warning system run by the MPD fails to properly meet national standards and the goals of a properly functioning early warning system.

Prior to Betty Winters taking control of the early warning system, the MPD appeared to have tracked six behaviors: 1) personal conduct; 2) duty performance; 3) use of force; 4) use of equipment; 5) reports and communications; and 6) dependability. Inexplicably, when Betty Winters took over operating the early warning system, she reduced the criteria to be evaluated by the early warning system to reviewing only instances of personal conduct and excessive force. Proper early warning systems track multiple indicators of officer behavior and the net cast by the MPD is too limited. Further, it appears that this change to track fewer officer behaviors was a result of the MPD's inability to link the previous data set together with the current system which is inexcusable. In modern day policing, the trend is to track more aspects of officer

behavior with early warning systems, not to reduce the points that are analyzed as has occurred in the MPD.

Further, one of the most important aspects of early warning systems is the notification of officers that they have been identified by the early warning system. The notification of officers that they have been identified by the early warning system serves as a deterrent to improper behavior. Without notification, this important deterrent effect of the early warning system is lost. In the MPD's early warning system, there is no requirement that an officer be notified that he/she has been flagged by the early warning system and, therefore, the deterrent effects of the program are lost.

Given the lack of a written policy in the early warning program, there are also no written policies concerning the range of interventions to be provided to officers or the evaluation of the intervention which is another systematic failure of the MPD's early warning system.

Finally, Betty Winters testified that officers flagged by the early warning system are discussed at quarterly meetings with the command staff. However, Betty Winters was instructed that no notes of these meetings should be taken (Winters, 3/3/08, pp 141-144). These are not the actions of a department concerned with providing assistance to officers and ferreting out bad officers. Police departments should evaluate their officer's conduct with transparency to ensure consistent and thorough evaluations. Without documentation of the officers who were flagged, the specific interventions performed and an evaluation of the specific interventions, the MPD's early warning system fails to meet acceptable police standards. Further, without proper documentation of the early warning meetings, there is no way to effectively evaluate the MPD's early warning process.

Based on Betty Winter's own testimony, the creation of a properly functioning early warning system is essential to the operation of a police department. Despite Ms. Winters' basic understanding of the requirements of a proper early warning system, it is clear that the MPD does not have a properly functioning early warning system based on acceptable police standards. Betty Winters testified that the majority of her work revolved around the completion of disciplinary charts for use after a Statement of Charges has been brought against an officer for the purpose of a disciplinary action. This is not a function of an early warning system, but a disciplinary matter. Therefore, by her own admission, the majority of Betty Winters' work is not devoted to the early warning system. Finally, based on Betty Winters own testimony, it is clear that she did not have the resources or staffing to properly run an effective early warning system.

In addition to properly recruiting officers and properly monitoring officers, a department must thoroughly investigate all allegations of misconduct to prevent and deter police misconduct. However, it is clear that the investigative process utilized by the MPD is designed to favor the police officer and not seek the truth. The Standard Operation Procedures of the MPD Inspectional Services Bureau is deficient based on the following:

1. ISB does not investigate anonymous complaints. In order for an investigation to be commenced, it must be initiated by a citizen who must be physically present to sign a sworn complaint or the complaint must be initiated administratively.
2. The complainant is not allowed to have an attorney present during an interview. However, the officers are allowed to have a union representative present during all questioning, whether being investigated as a witness or principal. Many times all officers involved in an investigation are represented by the same union representative.
3. The investigators do not review the officer's prior disciplinary record when investigating a complaint. However, the investigators are entitled to review the complainant's prior record during their investigation.
4. The principal officer being investigated is allowed to give his statement after all the other statements have been completed.
5. There is no official burden or proof necessary to sustain a complaint. This has resulted in a finding that a complaint is not sustained whenever the investigation is based solely on the testimony of the complainant versus the officer.

This method of investigating complaints heavily favors the officer's testimony and is not designed to find the truth. Most responsible law enforcement departments allow complaints to be filed in any form or fashion and do not require a complainant to file a complaint in person without any assistance of counsel or other representatives. This factor heavily discourages the filing of complaints against officers and the search for the truth about police misconduct within any agency. A proper policy concerning the manner in which complaints should be taken and investigations carried out is set forth in the U.S. Department of Justice's, Principles for Promoting Police Integrity, Examples of Promising Police Practices and Policies, January 2001 which was attached as Exhibit 35 to Director Godwin's deposition. This systematic defect in the investigative process only leads to further police misconduct as fewer complaints are investigated and sustained which sends a message to police officers that such conduct is both protected and tolerated which was acknowledged by corporate representatives of the MPD as follows:

Q And when you're training people that way, if the department does not give significant discipline to officers who are guilty of corruption or untruthfulness, what does that instill in the officers?

A It opens the door for many things.

Q Just tell me some of them. It's kind of an open-ended question.

A Well, if the department doesn't deal with their ethics issues then the ethics issues are going to continue to get worse.

Q So it creates a negative culture within the department?

A That's a fair statement.

Q Okay. And this negative culture is what you try to dispel with proper training, correct?

A Yes, sir.

Q. Proper discipline, correct?

A Yes, sir.

Q Proper policies?

A Yes, sir.

Q And without this kind of whole aspect of training, accountability, policies, you have to keep that all functioning and working together, otherwise a negative culture can grow within a department, would you agree?

A I believe that's a fair statement. (Tow, p. 35-36)

Q And the department itself has to have systems in place that will evaluate officer conduct and mete out appropriate discipline or investigations in order to not let any type of that corruption or quote, unquote, code of silence, you know, grow in the department, correct?

MR. KLEIN: Object to the form of the question.

A Yes, sir, that's a fair statement.

Q And if the department isn't doing its job in investigating officer misconduct, a negative culture can grow within the department, correct?

MR. KLEIN: Objection. Asked and answered.

A I believe so, yes, sir. (Tow, 48-49).

Colonel Williams also testified:

Q. Now, when you had any issues or learned anything about the code of silence, did you also understand that Security -- ISB in order to effectively ferret out, they had to do prompt, thorough and fair investigations?

A. Correct.

Q. And when you got there in 2005, there was this backlog, right?

A. Correct.

Q. And what does that have to do with respect to -- I mean, does that have any impact on officer conduct in your opinion?

A. When you say conduct, what do you mean?

Q. Well, you know, what happens if we don't investigate things and hold officers accountable to to complying with the policy?

A. Well, I would say definitely it would have an effect, not all officers, I would say, like an officer that has caused some problems, I mean, while being investigated might continue with that type of action. I would say that.

Q. I'm having a bad time asking the right question. But if we don't properly hold them accountable to their policies and investigate them thoroughly and discipline them appropriately, that does not rule out the bad behavior, would you agree with that?

A. I agree.

Q. And it allows bad behavior if it has started to continue, right?

A. Correct.

Q. And what we are trying to do with our investigations is to ferret out that conduct and appropriately discipline the officer so that they know there are going to be ramifications for misconduct, right?

A. Correct. (Williams, pp. 64-65).

As acknowledged by the City of Memphis' corporate representatives, proper investigations of complaints are necessary to discourage and ferret out police misconduct. The investigations must not favor either the officers or complainant, but must be a search for the truth. The investigations must be performed in a thorough and timely manner. However, it is clear that the MPD does not have proper policies in place guide the investigators search for the truth. Further, it is also clear that the MPD has failed to perform its investigations in a thorough and timely manner and that only fosters more police misconduct. The official ISB policy requires investigations to be completed within 45 days. However, it is clear that ISB lacks the manpower, resources and/or desire to comply with this policy and it routinely takes much longer to complete the investigations. Colonel Williams noted: 1) When he took over ISB in 2005, there was a serious backlog of cases (over 200) (p. 61); 2) Despite the backlog, the MPD did not hire additional investigators although "he wished" they did (p. 61) and although he would have liked to have more investigators (p. 69); and 3) As a result of the backlog, he made personnel changes and tried to bring in more experienced investigators (30% to 40% of the Internal Affairs investigators were changed) (p. 61-64, 67-68).

The systematic problems with the ISB policies and the failure to promptly investigate complaints leads to further officer misconduct as it sends a message to officers that misconduct is not taken seriously. It clear that the MPD has failed to place a high priority on police misconduct that has allowed it to thrive and has created a negative culture, custom and practice of tolerating police misconduct. This is especially problematic given that the MPD has been experiencing a serious problem with police corruption as acknowledged by Colonel Williams as follows:

Q. Now, you talked about in the last three or four years there seems to be more police corruption, correct?

A. Correct.

Q. Has it been more pervasive in your opinion? I mean, do you know -- wasn't Deputy Chief Bobby Todd indicted?

A. Yes, uh-huh.

Q. And he's in the -- was he under Director Godwin?

A. Yes. (Williams, pp. 75-76).

My review of numerous ISB files over the years and for this case, leads me to the conclusion that the MPD has a practice and custom of not seriously investigating misconduct against officers that has led to the establishment of a culture of misconduct that is tolerated and fostered by the MPD.

Further, ISB has produced a spreadsheet that sets forth the number of use of force complaints against the MPD over the past five years. During that period of time, the chart contains 449 excessive force complaints. Of those complaints with results, the complaint was sustained in only 14 cases. Therefore, the percentage of excessive force complaints that have been sustained by the MPD over the five years covered by the chart is approximately 3%. This percentage of sustained use of force complaints from the

MPD is far below the national average as compiled by the U.S. Department of Justice. According to Department of Justice statistics, the national average percentage of sustained complaints for use of force for large police departments such as the MPD was 6% to 8%. Therefore, it is clear that the MPD rate of sustained complaints for use of excessive force was far below the national average which can be traced to the systematic deficiencies with the ISB's SOP which heavily favors the officers version of events.

When officers arrive at a scene, they should always be required to complete reports of their participation in and observation of the events. Officers Jay, Leslie and Goodwin did not complete separate incident reports of this matter. The ISB file only contains an Offense Memo that was completed in part by Officer Leslie and Officer Kay and a supervisory report completed by Lt. Moffit about his observations on the scene. Significantly, Officer Goodwin did not complete any report about his participation in or observations of the events. The failure to require or ensure that all officers prepare reports of their participation and involvement in an incident deprives the department of critical information and documentation of officer conduct.

Further, properly functioning police departments that are interested in ensuring that their officer's use of force is in compliance with policy require that whenever an officer uses force, a separate Use of Force Report is completed and then analyzed by the department to hold officers accountable for misconduct and to ensure that the police department is acting according to constitutional standards. Based on the testimony, the MPD did not start utilizing Use of Force Reports until 2005. Further, the deposition testimony has indicated that the MPD has not been able to properly analyze the data contained in the Use of Force Reports. Therefore, while the City of Memphis has recently required its officers to complete Use of Force Reports, it has been unable to use the information in these reports to come to any conclusions regarding the MPD's use of force practices.

It is well known in police work that officers are reluctant to report misconduct of fellow officers. This has been extensively documented and discussed in the police literature and has been referred to as the "code of silence" or the "thin blue wall." This has been defined as an unwritten code that officers shall not provide information concerning other officer's misconduct. Any responsible department should recognize the existence of this police subculture and take affirmative steps to remove it. While many officers, including Director Godwin, testified that they have never heard of the "code of silence," other officers candidly acknowledged that it exists at the MPD. The fact that Director Godwin and other officers testified that they have no knowledge of the "code of silence" and/or its existence at the MPD shows either: 1) a complete lack of proper training or understanding of issues of police management; or 2) evidence that the "code of silence" exists at the City of Memphis in the highest levels of management.

CONCLUSION

After review of the materials set forth in Exhibit E, I have formulated the following opinions that have been more thoroughly explained herein. It is my opinion that if the officers version of events is believed, the officers acted entirely appropriately. However,

if the civilians' version of events is believed, the officers conducted an improper seizure through the use of excessive and unreasonable force against Michael George Smith. Based on the totality of the circumstances, I have formulated the opinion that the MPD has, by custom and practice, created an atmosphere where improper conduct of police officers is foreseeable, condoned and tolerated by the MPD. In formulating this opinion, I have considered the following:

1. The leadership of the MPD has serious issues with integrity as Director Godwin has been found guilty of untruthfulness in his official capacity as an officer of the MPD. Further, members of the command staff have been placed on probation for Destruction and Tampering with Evidence. The lack of proper leadership is further illustrated by a review of the history disciplinary resumes of the supervisory members of the command staff who were involved in this incident, Lt. Moffatt and Lt. McCord, which were admitted to be troubling by the head of MPD's early warning system.
2. The U.S. Attorney's Office has indicted numerous officers (30-45 officers) for official misconduct during the course of their official duties with the MPD. This number of indictments of officers is unprecedented and illustrates that a negative culture of corruption has taken root in the MPD.
3. An effective early warning system is essential to a properly functioning police department to predict improper behavior and address officer conduct before it becomes a problem. The MPD does not have a properly functioning early warning system. The MPD's early warning system does not even have any written policies or standards. The failure to have a properly functioning early warning system has resulted in the failure of the MPD to address problem officers and behaviors before they become problematic which has led to the continuation of improper conduct by MPD officers.
4. A properly functioning police department must have a mechanism for promptly and thoroughly investigating complaints of police misconduct. The Inspectional Services Bureau is charged with this function. ISB's standard operating procedures are flawed in that they discourage the filing of complaints by citizens and heavily favor the officer's version of events. As a result, most citizen complaints are not sustained which sends a message to officers that their misconduct is accepted at the MPD and leads to the continuation of improper conduct by officers.
5. The MPD has failed to require its officers to complete formal reports of all officer's participation in and observations on calls. As a result, the MPD does not have sufficient documentation of officer actions in subsequent investigations. Further, while the MPD has recently required officers to complete separate Use of Force Reports in 2005, the information gathered from the Use of Force Reports has not enabled the MPD to do any analysis regarding its officers' use of force.
6. It is my opinion that the "code of silence" exists among officers at the MPD whereby officers have created a subculture where reporting fellow

officer misconduct is discouraged which was acknowledged by many officers who testified in this action. However, the fact that many officers did not even understand the concept of "code of silence" shows a lack of understanding of proper police management at best and is compelling evidence of the existence of the "code of silence" at the MPD. The failure to understand and take steps to combat the "code of silence" at the MPD directly results in the continuation of improper behavior among MPD officers. The MPD's has failed to take adequate, affirmative steps to combat the "code of silence" and is a direct and proximate cause of future misconduct of police officers and makes such misconduct both foreseeable and predictable.

Based on the totality of the information available to me, it is my opinion that the if the conduct of the civilian witnesses is believed, the officers involved improperly seized Michael George Smith through the use of excessive and unreasonable force which was proximately caused by the policies, practices and customs of the MPD set forth herein.


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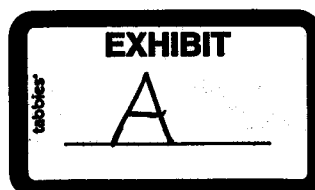
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The Impact of Mariels and other Entrants on South Florida. Final Report of the Grand Jury, Dade County, Florida (Spring 1982).

BOOK REVIEWS:

American Journal of Police
Criminology
Criminal Justice Review
Journal of Criminal Law and Criminology
Sociology: Reviews of New Books

EDITORIAL EXPERIENCE:

Editorial Board, <u>The Justice System Journal</u>	1994 - 1998
Associate Editorial Consultant, <u>Journal of Criminal Law and Criminology</u>	1990 - 1998
Editorial Board, <u>American Journal of Criminal Justice</u> .	1989 - 1998
Contributing Editor, <u>Criminal Law Bulletin</u> .	1987 - 1995
Board of Editors, <u>Sociological Inquiry</u> .	1987 - 1998
Associate Editor, <u>Criminology</u> .	1980 - 1984.
Advisory Board, <u>Police Liability Review</u> .	1989 - 1998.
Advisory Board, <u>Annual Editions: Criminal Justice (Dushkin)</u> .	1988 - 1994.
Editor, <u>Georgia Journal of Corrections</u> .	1971 - 1972.
Editor, <u>American Journal of Police</u>	1995 - 1997.
Associate Editor, <u>Justice Quarterly</u>	1995 - 1998.
Editor, <u>Policing: An International Journal of Police Strategies and Management</u>	1997 - 1999.
Associate Editor, <u>Justice Research and Policy</u>	1998 - 2001
Editorial Board, <u>Encyclopedia of Law Enforcement</u>	2004 - 2005.
Executive Board, <u>Journal of Crime and Delinquency</u>	2000 -
	present.
Series Editor, Wadsworth Publishing	2000- 2007.

Special Reader:

<u>American Journal of Criminal Justice</u>	<u>Police Quarterly</u>
<u>American Journal of Police</u>	<u>Law and Society Review</u>
<u>American Journal of Sociology</u>	<u>Sociological Inquiry</u>
<u>American Sociological Review</u>	<u>Sociological Focus</u>
<u>Crime & Public Policy</u>	<u>Social Problems</u>
<u>Criminal Justice and Behavior</u>	<u>Social Science Quarterly</u>
<u>Criminology: An International Journal</u>	Cambridge University Press
<u>Journal of Crime and Delinquency</u>	McGraw Hill Publishing Company
<u>Journal of Criminal Justice</u>	Praeger Press
<u>Journal of Justice Issues</u>	Sage Publications
<u>Journal of Research in Crime and Delinquency</u>	Wadsworth Publishing
<u>Journal of Quantitative Criminology</u>	West Publications
<u>Judicature</u>	
<u>Justice Quarterly</u>	

Justice System Journal
Law and Human Behavior

SELECTED PROFESSIONAL ACTIVITIES:

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2008.

Member, International Association of Chiefs of Police, Committee on Use of Force. 2008 – present.

Member, California POST Study Group on Driver Training. 2008 – present.

Presenter, *Suing and Defending the Police*. Annual Meeting of the Police Executive Research Forum. Miami, April 2008.

Keynote Speaker, Seattle Police Department. *Investigating and Evaluating a Police Pursuit: Reducing Exposure and Liability*. Seattle, WA. February 2008.

Keynote Speaker, Washington State Criminal Justice Training Commission. *Offender Pursuit Seminar*. Bothell, WA. February 2008.

Presenter, Charleston Police Department. *Seminar for Pursuit Management*. Charleston, SC. February 2008.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. December 2007.

Presenter, The Charleston Area Crime Summit. North Charleston, SC. November 2007.

Presenter, *To Protect and to Serve ... Police and Policing in an Age of Terrorism and Beyond*. Ministry of Public Security and National Institute of Justice. Jerusalem, Israel. October 2007.

Presenter, *Police Driver Trainers' Seminar*. Peel Regional Police, Brampton, Ontario Canada. August 2007.

Presenter, Major Cities Chiefs of Police Task Force on Internal Affairs. Dallas, TX. May 2007.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2007.

Presenter, *Scott v Harris*: The Supreme Court revisits police use of deadly force. Annual Meeting of the Police Executive Research Forum. Chicago. April 2007.

Consultant, Advisory Committee on Police Standards (Racial Profiling). State of New Jersey. January, 2007.

Member, Research Advisory Committee, Police Foundation. Washington, DC. 2007 – present.

Invited Participant, Workshop on Policing Research. National Institute of Justice. Washington, DC. November 2006.

Presenter, New Developments in Criminal Justice and Crime Prevention Conference, University of Shanghai, Shanghai, China. October, 2006.

Instructor, Early Identification Systems. International Association of Chiefs of Police. Maple Grove, MN. September 2006.

Instructor, Police Use of Force and Pursuits. Pharr, TX. Police Department. June, 2006.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2006.

Instructor, National Summit on Police Use of Force. Institute for Law Enforcement Administration. Plano, TX. January 2006.

Invited Participant, Strategies for Resolving Conflict and Minimizing the Use of Force. PERF, San Diego, CA. December 2005.

Senior Advisor, Major Cities Chiefs of Police Task Force on Internal Affairs. Los Angeles, CA. 2005 – 2008.

Invited Participant, Symposium on Conducted Electronic Devices. PERF, Houston, TX. October 2005.

Guest Editor, Police Quarterly. Vol. 8 Number 3, September 2005.

Invited Participant, 14th World Congress of Criminology. University of Pennsylvania. Philadelphia, PA. August 2005.

Invited Participant, Less-Lethal Technology Symposium. U.S. Department of Justice. Washington, DC. April 2005.

Member, South Carolina Law Enforcement Training Advisory Council. Department of Public Safety. Columbia, South Carolina. 2005 – 2006.

Invited Participant, Best Practices in Managing Police Use of Force. Los Angeles Police Department. Los Angeles, CA. March 2005.

Presenter, Early Identification Systems: A Changing Paradigm. Internal Affairs. Institute for Law Enforcement Administration. Plano, TX. November 2004.

Presenter, By the Numbers: How to Analyze Race Data from Vehicle Stops. Kansas City, Police Executive Research Forum. August 2004.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. Washington, DC.

July 2004.

Presenter, Pursuit Driving, Executive Management Program. Northwestern University Center for Public Safety. May 2004.

Consultant, Coroner's Office. Inquest on Police Pursuit Driving. Quebec, Canada. 2004.

Presenter, Western Regional Racially Biased Policing Summit. Sacramento Police Department. Sacramento, CA. February 2004.

Panelist, Pursuit Driving Training Symposium. Federal Law Enforcement Training Center. Glynco, GA. (Sites throughout the United States) 2002 - 2004.

Consultant, Citizen Advisory Panel on Pursuit Policy. Orlando Police Department. Orlando, FL. December 2003.

Presenter, Enrichment Retreat. Royal Bahamas Police Force. Nassau. November 2003.

Presenter, The Annual Conference on Racial Profiling. Northwestern University. Chicago. November 2003.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. Washington, DC. July 2003.

Invited Participant, Minority Trust and Confidence in the Police. National Institute of Justice. Washington, DC. July 2003.

Presenter, Community Oriented Police Services Annual Meeting. Washington, DC: June 2003.

Presenter, Promoting Cooperative Strategies to Prevent Racial Profiling. Sacramento Police Department. Sacramento, CA. June 2003.

Presenter, Confronting Racial Profiling in the 21st. Century: New Challenges and Implications for Racial Justice. Northeastern University. Boston, MA. March 2003.

Moderator and Panel Member, Racial Profiling Conference, The Foley Institute for Public Policy and Public Service. Washington State University. February 2003.

Presenter, Pursuit Driving. Rocky Mountain Criminal Justice Conference. Gatlinburg, TN. November 2002.

Invited Participant, Minority Trust and Confidence in the Police. National Institute of Justice. Washington, DC. October 2002.

Panelist, Racial Profiling. Smith College, Northhampton, MA. September 2002.

Presenter, State Bar of Texas Suing and Defending Governmental Entities Course. Galveston, TX. August 2002.

Panelist, Excessive Force Demonstration. State Bar of Texas Suing and Defending Governmental Entities Course. Galveston, TX. August 2002.

Presenter, Annual Convention of the Association of Trial Lawyers of America. Atlanta, GA. August 2002.

Presenter, Committee to Review Research on Police Policy and Practices. National Research Council. Washington, DC. April 2002.

Presenter, Racial Profiling: Setting the Research Agenda. Center for Studies in Criminology and Law. University of Florida. October 2001.

Presenter, Racial Profiling, Bureau of Justice Statistics/Justice Research & Statistics Association Annual Meeting. New Orleans, LA October 2001.

Presenter, Early Warning Systems and the Police. Pasadena, California Police Department, October 2001.

Presenter, "Pursuit Driving - Dynamics and Liability." High Liability Trainers' Conference. Florida Department of Law Enforcement. Orlando, FL. August 2001.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. Washington, D.C. July 2001.

Academic Community Liaison, National Commission on Law Enforcement Integrity. 2001 - 2005.

Invited Participant, Ethics and Integrity Curriculum Development. Office of Community Oriented Policing Services. Washington, DC: May 2001.

Presenter, Early Warning Systems and the Police. School of Professional Studies, Johns Hopkins University. Baltimore, MD. April 2001.

Panelist, Pursuit Driver Training Symposium. Federal Law Enforcement Training Center. Glynco, GA. March 2001.

Presenter, Speed Enforcement/Aggressive Driving Conference. Institute of Police Technology and Management. Orlando, FL. March 2001.

Invited Participant: Early Warning System Curricula Development Meeting. Regional Community Policing Institute for New England. Boston Police Department. Boston, MA: January 2001.

Presenter, Working Session on Police Practices. Department of Justice. Washington, DC: November 2000.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 2000.

Invited Participant: Police Pursuit Issues for Managers and Supervisors: Curriculum Development Conference. Federal Law Enforcement Training Center. Glynco, GA. May 2000.

Presenter, Police Use of Force in Miami-Dade County, Florida. Miami-Dade County Criminal Justice Council. Miami, FL: November 1999.

Presenter and Moderator, Building Accountability into Police Operations. Department of Justice. Washington, DC: November 1999.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 1999.

Invited Participant: Homicide Clearance Rate Project. Implementation Group Meeting. Justice Research and Statistics Association. Washington, DC. May 1999.

Presenter, Less than Lethal Force: A Safe and Reasonable Response to Suspect Resistance, Law Enforcement Applications of Non-Lethal Weapons. Quantico, VA. May 1999.

Presenter, Measuring Police Use of Force Relative to Suspect Resistance. International Association of Chiefs of Police Annual Conference. Salt Lake City, October 1998.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 1998.

Keynote Speaker, Seminar on Risk Management: Police Use of Deadly Force and Pursuit Driving. Southwestern Law Enforcement Institute. Dallas, Texas. November 1995, May 1996, May 1998.

Presenter, Locally Initiated Research Partnership Program Conference. National Institute of Justice. February 1998.

Presenter, Pursuit Policy and Practice. International Association of Women Police Conference. Dallas, November 1997.

Presenter, Meeting the Challenges of Crime and Justice: The Annual Conference on Criminal Justice Research and Evaluation. Office of Justice Programs, Department of Justice. Washington, DC: July 1997.

Presenter, Locally Initiated Research Partnership Program Conference. National Institute of Justice. January 1997.

Faculty, Southwestern Law Enforcement Institute Management College. Dallas, Texas. January 1977.

Presenter, State and Local Partnership Training for Criminal Justice. Bureau of Justice Assistance. January 1997.

Presenter, Lessons Learned from the 1996 Olympic Games. Special Events Planning and Management Symposium. Metro-Dade Police Department. September 1996.

Member, National Criminal Justice Network Consumer Advisory Network. 1996.

Presenter, and Workshop Director, Building a Safer Society: The Annual Conference on Criminal Justice Research and Evaluation. Office of Justice Programs, Department of Justice. Washington, DC: August 1996.

Police in Pursuit: Policy and Practice. Research in Progress Series (Video). National Institute of Justice. July 1996.

Presenter, Use-of-Force Cluster Conference. National Institute of Justice. Washington, DC: April 1996.

Discussant, Measuring What Matters, National Institute of Justice. Washington, DC: November 1995, May 1996.

Presenter, Police Pursuits and the Use of Force: Recognizing and Managing "the Pucker Factor." The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. Washington, DC. July 1995.

Invited Participant, Police Use of Force Focus Group. National Institute of Justice/Bureau of Justice Statistics. Washington, DC: May 1995.

Presenter, Hi-Risk Police Activities and Managing Their Risks. South Carolina Sheriff's Association. May 1995.

Presenter, Police Pursuits. Making Policy Decisions. Transportation Research Board. Washington, DC. January 1995.

Invited Participant, Strategic Planning Workshop: Developing a Police Research and Evaluation Agenda. National Institute of Justice. December 1994.

Presenter, Special Events Planning and Management Symposium. Metropolitan Police Institute. Miami, October 1994.

Invited Participant, Justice Research & Statistics Association Annual Meeting. Atlanta, October 1994.

Pursuit Driving and Risk Assessment Seminar. Indiana Police Chiefs Association. Anderson, IN. September 1994.

Principal Evaluator, State Evaluation Capacity Building Program. National Institute of Justice. 1992-Present.

Invited Participant, Focus Groups Sessions on Community Policing and the Crime Bill. National Institute of Justice, Washington, DC. July - August 1994.

Presenter, Use of Force and Pursuit Risks, Southeastern Campus Safety Institute. Long Beach, Mississippi, August 1994.

Invited Speaker, South Carolina City and County Management Association Annual Meeting, Hilton Head, July 1994.

Member, Pursuit Guidelines Development Advisory Committee, California Peace Officer Standards and Training, 1994.

Facilitator, Pursuit Policy Workshop. Criminal Justice Institute, St. Petersburg Community College. February 1994.

Presenter, Frontiers of Legal Thought Conference. Duke Law School. Durham, North Carolina. January 1994.

Keynote Speaker, Seminar on Risk Management: Police Use of Deadly Force and Pursuit Driving. Southwestern Law Enforcement Institute. Dallas, Texas. May 1993.

Keynote Address, Police Vehicle Pursuits: Policy Implications and Liability. Illinois State University and the Traffic Institute, Northwestern University. Normal, Il. April 1993.

Invited Lecturer, Institute of Criminology, Cambridge University. Cambridge, England. March 1993.

Presenter, Reducing the Risk of Emergency Vehicle Operations, Risk Management Services, South Carolina Budget and Control Board. Columbia, South Carolina. December 1992.

Invited Participant, Bureau of Justice Statistics/ Justice Research and Statistics Association 1992 Annual Conference. New Orleans, September 1992.

Testimony on police pursuit to United States House of Representatives, Committee on Government Operations Sub-Committee on Government Information Justice and Agriculture. July 1992.

Faculty, Graduate Course on Victimology. The Free University. Amsterdam, July 1992.

Invited Participant, Annual Conference on Evaluating Drug Initiatives. Washington, DC. July 1992.

Curriculum Development for the Bachelor's Degree in Law Enforcement. State of Minnesota 1992.

Testimony on police pursuit to the House Safety Committee, State of Massachusetts, March 1992.

Developing a Decentralized Police Department from a National Police Force. Presented to Bundeskriminalamt Wiesbaden, Germany. March 1992.

Managing a Community-Oriented Police Department. Presentation to the Wiesbaden Police. March 1992.

Testimony on police pursuit to the Senate Transportation Committee, State of Pennsylvania. February 1992.

Pursuit Driving Policy Development Seminar. Texas Commission on Peace Officer Standards and Training. Austin, TX. May and November 1991.

Keynote Speaker, Risk Management and Pursuit Driving. Texas Municipal League. Arlington, Texas. August 1991.

Invited Participant, National Field Study on Gangs and Gang Violence. U.S. Department of Justice. Dallas, June 1991.

The Importance of Data Quality for Practice and Research. National Conference on Improving the Quality of Criminal History Records. Washington, DC. June 1991.

Keynote Speaker, Training Versus Education in Law Enforcement. Virginia Criminal Justice Educators Annual Conference. Leesburg, VA. May 1991.

Pursuit Driving and Risk Assessment Seminar. Indiana Police Chiefs Association. Jasper, IN. April 1991.

Invited Participant, Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties. Washington, DC. March 1991.

Matching Structure to Objective. Law Enforcement Management Institute of The Texas Commission on Law Enforcement Officer Standards and Education. San Antonio, Texas. February 1991.

Managing Risk: The Case of Pursuit Driving. National A.L.E.R.T. Conference. Columbia, SC. February 1991.

Invited Speaker, Risk Assessment, Pursuit Driving and Police Use of Deadly Force. South Carolina Association of Counties. Columbia, December 1990.

Invited Speaker, Pursuit Driving: Analyzing Risk. National Municipal Lawyers Organization. Boston, September 1990.

Keynote Speaker, Police Pursuit Driving. Texas Municipal League. San Antonio, TX. July 1990.

Consultant, Monroe County (Florida) Sheriff's Department, Key West, FL. June - July 1990.

Keynote Speaker, Seminars on Pursuit Driving. Southwestern Law Enforcement Institute. 1989 - 1990.

Commencement Speaker, Charleston County Police Academy, Charleston, SC. September 1989.

Consultant, Duval County (FL) Grand Jury. April - July 1989.

Invited Speaker, Civil Disorders and Police Use of Deadly Force, Southwestern Law Enforcement Institute, Dallas, Texas, March 1989.

Invited Participant, Cross-Gender Supervision, National Academy of Corrections, Boulder. December 1988.

Invited Participant, Workshop on Communities and Crime Control, National Research Council, Miami. January 1988.

Conferecier, La Maison des Sciences de L'Homme, Paris. December 1987.

Invited Speaker, Criminal Law Section, Annual Meeting of the Oregon State Bar. Seaside, Oregon. September 1987.

Board of Directors, Adolescent Chemical Dependency Program. Dade County, Florida. 1987 - 1988.

Keynote Speaker, Sports and Violence. The American College of Sports Medicine. Las Vegas. May 1987.

Keynote Research Address, Police Pursuit Seminar. Empirical Determinants of Police Pursuits. The Police Foundation. Los Angeles. March 1987.

Educational Consultant, G. Gordon Liddy Institute of Corporate Security and Private Investigation. Miami, Florida. 1986.

Consultant, Dade County (Florida) Grand Jury. February, 1982 - August 1986.

Board of Directors, Citizens' Crime Commission. Miami, Florida. March 1985 - August 1988.

Member, Dade County Community Task Force on Jury Selection. May 1984 - December 1984.

Member, Dade County Mayor's Committee to Develop an Action Plan for Social and Economic

Development for the Black Community. May 1983 - January 1984.

Member, City of Miami Blue-Ribbon Committee to Study Racial Unrest. Jan. 1983 - July 1984.

Invited Speaker, John Jay College of Criminal Justice. New York. Police Use of Deadly Force in Miami. April 1984.

Consultant, Florida Department of Corrections, Tallahassee, Florida. January 1982 - June 1984.

Consultant and Trainer, National Street Law Institute, Georgetown University Law Center, Washington, DC. 1982 - 1984.

Member, Dallas Criminal Justice Task Force, Dallas, TX. October 1975 - December 1977.

COURSES TAUGHT:

Graduate

Criminal Justice
Social Control
Criminology
Formal Organizations
Juvenile Delinquency
Law and Society
Policing in America
Research Methods
Politics of Crime

Undergraduate

Criminal Justice
Corrections
Criminology
Juvenile Delinquency
Law and Society
Police and the Community
Social problems
Sociology of Organizations
Survey Research Methods

Law Enforcement

Accountability Systems
Police Use of Force
Police Use of Deadly Force
Performance Measures
Pursuit Driving Decisions
Report Writing
Ethics and Integrity

PROFESSIONAL ASSOCIATIONS:

Academy of Criminal Justice Sciences

American Bar Association

Committee on Corrections

1980

American Sociological Association

American Society of Criminology

Student Affairs Committee

1989-1990

Publications Committee	1985-1986
Site Selection Committee	1984-1985
Chair, Site Selection Committee	1983-1984
Chair, Local Arrangements Committee	1978
Committee on Criminal Justice Education	1977-1978
Membership Committee	1975-1977
Program Committee	1995-1997
Statewide Policy Committee	1995- 1997
National Policy Committee	1996- 1998
International Association of Chiefs of Police	
Ethics Training Sub-Committee	1997-1999
Justice Research and Statistics Association	
Board of Directors	2004-2005
Western Society of Criminology	
Vice-President	1979-1980
Executive Secretary	1977-1978
Chair, Program Committee	1976-1977

Prior Testimony of Geoffrey Alpert
(2005 - 2008):

Petraski v Thedos et al. (Emergency Response, Deposition, February 2005, Trial May 2006).
Attorney: Francis Murphy, Chicago, IL.

Parsons v Tishomingo, Co. (Pursuit, Deposition, February 2005). Attorney: Drayton Berkeley.
Memphis, TN.

Huang v City of Chicago (Pursuit, Deposition, May 2005, Trial, October 2005). Attorney:
Michael Baird. Chicago, IL.

Isham v City of Ft. Lauderdale (Pursuit, Deposition, September 2005). Attorney: W. Clay
Mitchell. Orlando, FL.

Sheets v Piecre Co. (Pursuit, Deposition, October 2005). Attorney: Rogers Wilson. Tacoma,
WA.

Villalta v Waller et al. (Use of Force, Trial, November 2005). Attorney: Tom Mumgaard, City
Attorney's Office, Omaha, NE.

Ruch v City of Normal (Pursuit, Use of Deadly Force, Deposition, January 2006). Attorney:
David Doris, Normal, IL.

Scarborough v Pima County (Pursuit, Deposition, February 2006). Attorney: Elliot Glicksman,
Tucson, AZ.

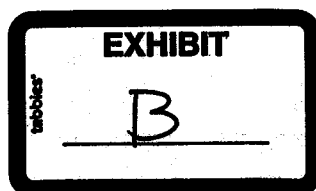
Best v Cobb County (Pursuit, Deposition, April 2006). Attorney: George Shingler, Atlanta, GA.

Harris v City of Circleville (Use of Force, Deposition, July 2006). Attorney: Charles H. Cooper,
Jr., Columbus, OH.

Johnson v District of Columbia (Pursuit, Deposition, August 2006). Attorney: Melissa Rhea,
Washington, DC.

Monroy v Los Angeles Police Department (Response to Call for Service, Deposition, September
2006). Attorney: R. Rex Parris, Lancaster, CA.

Cepulionis v Village of Blue Island Police Department (Pursuit, Deposition, November 2006).
Attorney: Thomas F. Boleky, Chicago, IL.



Timberlake v Dugger et al. (Pursuit, Deposition, December 2006). Attorney: Rebecca Royals, Richmond, VA.

Kingdom v City of Riviera Beach (Pursuit, Deposition, February 2007). Attorney: Andrea McMillan, Palm Beach, FL.

Parker v Stanhope (Deadly Force, Deposition, February 2007). Attorney: Jeffrey Boyd Jackson, TN.

Sharp v Fischer et al., (Pursuit, Deadly Force Deposition, February 2007). Attorney: Henry Garrard, Athens, GA.

Hobley v Burge et al., (Use of Force, Deposition, April 2007). Attorney: Dan Noland, Chicago, IL.

Fox v Goodwine et al. (Pursuit, Deposition, May 2007). Attorney, Arthur Blue, Carthage, NC.

Baker v Ross Township Police Department (Pursuit, Deposition, July, 2007). Attorney: Marc Mezibov, Cincinnati, OH.

McCants v Georgetown (Police Procedure, Deposition, August, 2007). Attorney: Tom Nelson, Mt. Pleasant, SC.

Wilson v City of College Park (Pursuit, Deposition, September 2007). Attorney: William C. Lanham, Atlanta, GA.

Wolfanger v Laurel County (Deadly Force, Deposition, October 2007). Attorney: Jack Ruzicho, Lexington, KY.

Terranova v New York State Police (Roadblock, Deposition, October 2007). Attorney: Michael Grace, Yorktown Heights, NY.

Smith v Clayton County Police Department (Pursuit, Deposition, April 2008). Attorney: Richard Hendrix, Atlanta, GA.

Geoffrey P. Alpert

1905 Salem Church Rd. Irmo, South Carolina 29063-8543
Telephone: (803) 446.4139 ☎ Fax: (803) 777-7319

Contract and Fee Schedule for Consulting and Expert Services

My fees include a non-refundable retainer of \$5000 for case review. I charge for all time spent on a case, including research, reading documents, preparing affidavits, reports, consultations and travel from door-to-door at a rate of \$275 per hour. During travel, I charge for all expenses incurred including air fare, hotel, meals, and parking and other miscellaneous expenses. All air travel will be first class. My other customary fees include a \$2500 charge for deposition or trial testimony that lasts four hours or less. There is an additional \$2500 fee for each additional four hour (or less) block of deposition or trial testimony. Travel expenses and deposition and trial testimony fees are to be paid before the beginning of any testimony. No amendment to this agreement or change in the aforementioned rates or charges shall be enforceable unless it is expressly agreed to by the parties, reduced to writing and signed by all parties.

Invoices will be sent periodically and prompt payment will be made within 30 calendar days from the day the bill was sent. After 30 days, interest will be added at the rate of 1 ½% per month, compounded monthly, on the outstanding balance, computed on the date of the invoice. The contacting attorney expressly states that he is an authorized agent to enter into this agreement on behalf of his/her firm and his/her client(s). The contracting attorney, individually and as an authorized agent for the contracting attorney's firm and client(s), agrees to obligate him/her, his/her firm and his/her client(s) for payment of all fees and expenses billed for the consulting and expert services of Geoffrey P. Alpert. It is expressly understood that the prompt payment of bills for the fees and expenses by Geoffrey P. Alpert is in no way contingent on the agreement or arrangement between the contracting attorney, his/her firm and his/her client. Further, it is expressly understood that the prompt payment of all fees and expenses billed by Geoffrey P. Alpert is in no way contingent on the ability to pay of the client of the contacting attorney and his/her firm. Accordingly, by entering into this agreement, the contracting attorney expressly obligates himself/herself and his/her firm to promptly pay all bills for fees and expenses of Dr. Alpert.

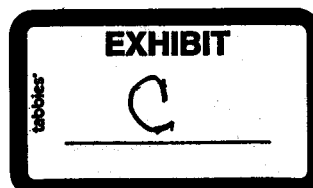
By entering into this agreement, the contracting attorney, his/her firm and his/her client(s) expressly agree to the jurisdiction of the courts in Columbia, South Carolina. Should it become necessary for Geoffrey P. Alpert to institute an action to collect money due under this agreement, the contracting attorney, his/her firm and his/her client(s) agree that the courts in Columbia, South Carolina shall have exclusive jurisdiction over such action and the interpretation and enforcement of this agreement. Further, the contracting attorney, his/her firm and his/her client(s) agree that they will be responsible for all expenses and attorney fees associated with any action brought by Geoffrey P. Alpert to collect money due under this agreement or to enforce this agreement.

Entered into this the ____ day of _____, 2008, by:

Contracting Attorney, Individually

Contracting Attorney, As Authorized Agent for Firm

Contracting Attorney, As Authorized Agent for Client(s)



Geoffrey P. Alpert

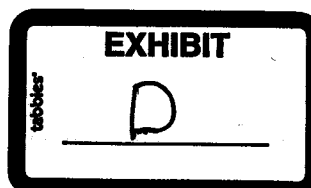
1905 Salem Church Rd. Irmo, South Carolina 29063
Telephone: (803) 732-1336 Fax: (803) 777-7319

September 16, 2008

RE: Bland v City of Memphis

I am a Professor of Criminal Criminology and Criminal Justice at the University of South Carolina, and I have been retained by Mr. David Bland to provide my expert opinions in this case. I have a Ph.D. in sociology from Washington State University, and have conducted research on police policies and customs for the past twenty years. I have published extensively in the area of criminal justice, including scholarly articles concerning internal affairs, early warning systems and use of force. I have worked with numerous police agencies to develop policies, conduct training, and provide them with other consulting services. I am familiar with police operating procedures as well as the customs developed by practice. I base the statements contained herein on my education, research, work experience, knowledge of police policies and customs, as well as my review of the documents and material provided to me for review set forth in Exhibit G. I have previously been accepted as an expert in an excessive force case by the appellate courts in the Sixth Circuit in the published case of Champion v. Outlook Nashville, Inc. 380 F.3d 893 (6th Cir. 2004). A copy of my CV setting forth my qualifications and documents is attached as Exhibit A. A list of the cases that I have testified at trial or by deposition is attached hereto as Exhibit B. A copy of my fee schedule is attached as Exhibit C.

I have previously been retained as an expert witness in civil rights cases against the City of Memphis and reviewed extensive materials concerning the policies, practices and customs of the MPD and have previously formulated opinions. In particular, I was retained by the Plaintiff in the following cases to express opinions and prepare an expert report: 1) Boyd v. City of Memphis, et al., No. 94-3077 HA (Report Attached as Exhibit D); 2) Buckley v. Memphis, et al., No. 03-2875 (Report Attached as Exhibit E); and 3) Hampton v. Memphis, et al., No. 04-2537 (Affidavit attached as Exhibit F). I also provided consulting expert services in Palazola v. Memphis, et al. but did not prepare an expert report prior to the settlement of the case. Finally, I have been retained by the Plaintiff to express an opinion in the following case: 1) Fortner v. City of Memphis, et al., No. 2:07-cv-02526 which I am currently in the process of completing. The information review in these cases and contained in these reports is also part of the basis for my opinions and conclusions. In formulating my opinions, I have reviewed the information identified in Exhibit G.



SUMMARY OF FACTS

At the time of the incident giving rise to this lawsuit, the Plaintiff, Mr. David Bland, was an 81 year old legally blind man, residing at the Memphis Towers located at 1081 Court Ave, Apartment # 225(b), Memphis, Tennessee. Mr. Bland has also indicated that he has arthritis in his shoulders and arms and poor circulation in his left leg. (Bland p. 41)

On May 19, 2006, the Memphis Police Department (MPD) received a call from a citizen, Mr. Antus, who was complaining that Mr. Bland was playing his music/TV loudly and smoking with his door open, which was creating a disturbance at the Memphis Towers. Mr. Antus indicated to the dispatcher that the residents of the Memphis Towers were all disabled in one way or another and that he just wanted an officer come to the scene and talk to Mr. Bland. Mr. Antus also indicated that he was leaving the scene to go to work and would not be able to meet with the responding officer. Accordingly, the call that was received by the MPD was a low priority call.

After receiving the call, the MPD dispatcher placed a call over the radio for an officer to investigate the call at the Memphis Towers. Officer Peacock, who was driving in a one-man unit, responded to the call. Officer Peacock testified that he was aware that many people living in the Memphis Towers were elderly and/or disabled. Given this fact, Officer Peacock was required to appreciate and understand the special needs of persons suffering from disabilities in his handling of the call. Further, given that this was a low-priority service call, time was not of essence which would allow Officer Peacock sufficient time to adequately investigate the complaint and assess the situation.

According to the ISB file, when Mr. Peacock arrived on the scene, he informed the security guard that he was going to Room 225(b) and that he would talk to her when he returned. However, Officer Peacock failed to attempt to gather any further intelligence about the complaint or Mr. Bland from the security guard or other building personnel prior to going up to Mr. Bland's apartment. Given that this was a low priority call and Officer Peacock's knowledge that many residents of the Memphis Towers are elderly and/or disabled, Officer Peacock should have spoken with the security guard and/or building personnel to find out more information about the situation and Mr. Bland's condition to assist him in responding to the call. Had Officer Peacock simply spoken with the security guard and/or building personnel, he would have gathered valuable information to assist him in his handling of the call, including information about the complainant, the specifics of the call and Mr. Bland's condition and disabilities. Further, Officer Peacock could have also requested that the security guard and/or building personnel accompany him to Mr. Bland's room to assist with dealing with Mr. Bland's disabilities and to diffuse any potential situation. Despite Officer Peacock's failure to gather important intelligence, he entered the elevator to go to the second floor to respond to the call.

According to Mr. Bland's statements, when Officer Peacock arrived at Mr. Bland's apartment, Mr. Bland was walking to his front door to close it. Mr. Bland denies that

Officer Peacock announced his presence or that he was a police officer before Officer Peacock entered his apartment. Mr. Bland stated that he and Officer Peacock bumped into each other in his apartment when he was attempting to close his door. Mr. Bland then asked for the person to identify himself and Officer Peacock stated that he was the police. Based on this statement, Mr. Bland thought that Officer Peacock was the MIFA meal person who regularly delivers food to Mr. Bland and often tells Mr. Bland that he is "the police." Believing that the MIFA representative was about to serve him lunch, Mr. Bland stated, "Bring it on." Officer Peacock immediately placed a handcuff on Mr. Bland's left hand. After placing a hand-cuff on Mr. Bland's left hand, Officer Peacock attempted to get Mr. Bland to place his right hand behind his back and ordered Mr. Bland to place his right arm behind his back. However, Mr. Bland told Officer Peacock that he could not put his hand behind his back because he had arthritis. When Mr. Bland was unable to place his right hand behind his back, Officer Peacock sprayed Mr. Bland in the face with OC Spray. After being sprayed with OC Spray, Mr. Bland began clawing at the air in front of his face because he did not know what was going on and was trying to protect himself as he could not appreciate any potential threat due to his blindness. Mr. Bland testified that he tried to cooperate with Officer Peacock and did not resist Officer Peacock, but that he was unable to comply with Officer Peacock's demands due to his disabilities.

While Officer Peacock was attempting to handcuff Mr. Bland, Officer Peacock called his dispatcher and requested another car. Because Officer Peacock did not respond to numerous radio calls, numerous other officers from the MPD responded to the call for assistance. Officers Kellum, Brown and Lewis were the first officers to arrive on the scene and came off the elevator at the same time. Officer Kellum exited the elevator with his baton drawn and was followed down the hall by Officer Brown and then Officer Lewis.

It is undisputed that Officer Kellum struck Mr. Bland with a baton. While Officer Kellum indicated that he struck Mr. Bland with a baton, the ISB file does not contain any Use of Force Report completed by Officer Kellum which is a clear violation of MPD policy. Officer Kellum stated that he struck Mr. Bland one time with the baton in the calf which dropped him to the floor. However, Officer Lewis testified that Officer Kellum struck Mr. Bland several times with a baton above the knee. (Lewis p. 44-45). Further, when Officer Lewis observed Mr. Bland with Officer Peacock in the hallway, he did not observe Mr. Bland with a weapon and did not see Mr. Bland strike or use any force against Officer Peacock. Based on Officer Lewis' testimony, there was no justification for the use of a baton because Mr. Bland was not presenting a danger to the officers. Finally, Officer Lewis noted that he heard Mr. Bland screaming that he was blind during the arrest. (Lewis ISB Statement, p. 3).

After Officer Kellum struck Mr. Bland with his baton, Mr. Bland was taken to the ground. Officers Kellum, Brown and Lewis then handcuffed Mr. Bland by joining together two sets of handcuffs. Mr. Bland stated that he was struck after he was handcuffed.

After Mr. Bland was handcuffed, numerous other officers from the MPD arrived on the scene, including Officers Stone, Sloan, Ngien and Renfroe. However, not every officer who arrived on the scene was identified during the ISB investigation, including the identity of one officer who exited the elevator carrying a shotgun. The only documents completed by officers on the scene were: 1) a computer generated Incident Report completed by Officers Kellum and Peacock; 2) Record of Arrest completed by Officers Kellum and Peacock; 3) Use of Force Report completed by Officer Peacock; and 4) OJI Report completed by Officer Peacock. The other officers who arrived on the scene did not fill out any reports setting forth their participation or observations on the scene.

Shortly after the incident, Mr. Bland was taken into his room where his face was washed with water. Mr. Bland was patted down and a pistol was located in his pocket. However, none of the officers testified that they observed the pistol until after the scene was secured and Mr. Bland was patted down. Mr. Bland was then transported to the hospital where he received treatment for injuries that he sustained in the incident. Excluding Officer Lewis, all officers testified that they did not know that Mr. Bland was blind or had arthritis during the incident. However, this testimony is refuted by David Bland's testimony, the statements of other residents of the Memphis Towers and Officer Lewis.

During this incident, residents of Memphis Towers witnessed some of the events including Anthony Richards, Sandra Nash, Tracey Taylor and Barbara Smith. The statements indicate the following:

Mr. Richards stated that he heard Mr. Bland yelling in the hallway that he was being beaten. Mr. Richards saw a police officer wrestling with Mr. Bland in the hallway. Mr. Richards stated that he told the officer that Mr. Bland was blind and to leave him alone. However, the officer then pepper sprayed Mr. Bland. He then saw additional officers arrive, strike Mr. Bland in the leg with a baton and then jump on Mr. Bland.

Ms. Nash stated that she was in the room of Tracey Taylor and heard a police officer stating, "Put your hands behind your back." She then heard Ms. Taylor telling the officers that Mr. Bland was blind.

Tracey Taylor stated that she heard Mr. Bland screaming that he was being beaten and she then got into her wheelchair and looked outside her door. When she saw Mr. Bland with police officers out in the hall, she started screaming to the officers that Mr. Bland was blind and he could not see. Ms. Taylor heard Mr. Bland screaming that he had arthritis and that he could not put his hand behind his back. She then saw the police officers spray mace in his face. She then saw additional officers arrive on the scene and strike Mr. Bland about the legs with a baton more than once and take him to the floor.

Ms. Barbara Smith stated that she heard someone yelling for help in the hallway and she looked into the hallway. She saw the officers trying to put handcuffs on Mr. Bland and heard Mr. Bland saying that he could not put his hands behind his back due to arthritis. Ms. Smith then saw additional officers arrive on the scene. Ms. Smith noted a short white officer with a baton who tackled Mr. Bland to the ground. Ms. Smith noted there

were a number of officers piled up on Mr. Bland. Ms. Smith saw more officers arrived including an officer with a shotgun. Ms. Smith stated that she and other people were telling the officers than Mr. Bland was blind. Ms. Smith saw an officer hitting Mr. Bland with a nightstick.

Many of the officers acknowledged that there were witnesses to the events that occurred in the hallway. In particular, Officer Renfroe arrived on the scene and noted that a number of residents from the apartments were in the hallway. Officer Renfroe noted that the residents in the hallway were agitated and stated that "the police were wrong, that the man didn't do anything." Officer Renfroe stated that he kept the residents back from the scene. However, Officer Renfroe did not fill out any report concerning the statements of the residents or communicate this information to his supervisors.

SUMMARY OF OPINIONS REGARDING OFFICERS' CONDUCT

The complaint which precipitated this event was a low priority service call to a location known to house elderly people and people with disabilities. Specifically, the complainant, Mr. Antus indicated that Mr. Bland was playing his TV/music loudly and smoking with his door open. Ms. Antus specifically informed the dispatcher that Mr. Bland probably had a disability as everyone at the Memphis Towers was disabled in one way or another. Mr. Antus then noted that he was leaving the scene to go to work and would not be present to meet with an officer. Mr. Antus noted that he simply wanted an officer to speak to Mr. Bland. Based on the call, there was no indication that anyone was in danger or that this was anything other than a low priority service call.

After receiving the call, the dispatcher placed a request for an officer to respond to the Memphis Towers to investigate the complaint. In the call, the dispatcher stated, "422 disturbance at Memphis Towers, 1081 Court. Darrell Antus is advising a male is playing loud music and smoking with his door open causing a disturbance and aggravating the health conditions of others." This was a request by the dispatcher for a two man unit to respond to the scene. (Peacock, p. 42). Approximately 5-6 minutes after the first call by the dispatcher for an officer to respond to the Memphis Towers, the dispatcher again placed a call for an officer to respond to the Memphis Towers. In this dispatch, the dispatcher noted that the complainant had left and wanted an officer to speak with Mr. Bland about his loud TV/music and smoking.

Officer Peacock's call number on this date was 462 and he was riding as a one-man unit. Despite the dispatcher's request for a two-man unit, Officer Peacock responded to the scene. Given that Officer Peacock actually knew that many of the people who resided in the Memphis Towers were elderly and/or disabled and that there was no urgency, it was incumbent on Officer Peacock to learn as much information about the call as possible. This would include any additional information he could discover about the call, the complainant and Mr. Bland. Officer Peacock could have discovered this information by speaking with the security guard located in the lobby of the Memphis Towers or building personnel. Had Officer Peacock simply discovered that Mr. Bland was blind and had arthritis, this whole incident could have been avoided as Officer Peacock could have

avoided any contact with Mr. Bland, which created the circumstances that precipitated this incident. As Mr. Bland was blind, it is clear that the contact between himself and Officer Peacock started the sequences of events that led to Mr. Bland's injuries. Therefore, Officer Peacock clearly created the dangerous condition that directly led to his use of physical force and pepper spray against Mr. Bland.

According to the testimony of Mr. Bland, Officer Peacock was informed that Mr. Bland was unable to place his hands behind his back due to arthritis. As Mr. Bland was suffering from this disability, Officer Peacock had an obligation to consider this fact when attempting to arrest Mr. Bland as Mr. Bland's physical inability to place his hands behind his back does not justify the use of any force against Mr. Bland, unless he poses some sort of threat to the officer. According to Mr. Bland, he was not resisting, but physically unable to comply with Officer Peacock's request. Therefore, the use of pepper spray against Mr. Bland amounted to the use of excessive force. Further, Officer Peacock's use of pepper spray in a confined area against an elderly man living in an apartment complex which housed numerous sick and disabled persons was a questionable use of force under the circumstances and applicable police standards. Finally, the manner in which Officer Peacock used his OC Spray (i.e. shooting the pepper spray back at Mr. Bland's face while standing behind Mr. Bland) was not in compliance with applicable police standards and training.

As noted, had Officer Peacock complied with his obligation to gather additional information about Mr. Bland's disabilities and condition, this whole situation could have been avoided. By failing to discover information about Mr. Bland's condition, Officer Peacock created the situation that led to Officer Peacock's use of force, which amounted to excessive force, against Mr. Bland. Officer created jeopardy must be considered in evaluating an officer's use of force. Officer Peacock's own behavior created the need for force that could have been avoided had he investigated the circumstances of the complaint, situation and potential suspect.

After Officer Peacock called for another car, numerous other officers arrived on the scene. Officers Kellum, Brown and Lewis were the first group of officers to arrive. It was appropriate for a number of officers to arrive on the scene in response to the call. It appears that the responding officers did not gather any information about Mr. Bland but quickly responded to the request for assistance. Further, while a number of officers arrived on the scene, these officers failed to complete any report which would indicate their participation in and observations of the incident.

While Officer Peacock clearly should have gathered additional information prior to his encounter with Mr. Bland, it is also clear that both Mr. Bland and numerous civilian witnesses informed Officer Peacock and other officers about Mr. Bland's disabilities. At this time, the officers were required to take into consideration Mr. Bland's age and disabilities in assessing any possible threat posed by Mr. Bland when utilizing force.

According to the testimony of Mr. Bland, he was not resisting Officer Peacock during the encounter but trying to protect himself from uncertain threats that he experienced when

he was pepper sprayed as a result of Mr. Bland's blindness. Officer Lewis confirmed that Mr. Bland was not posing any threat to Officer Peacock when he arrived on the scene with Officers Kellum and Brown. Therefore, Officer Kellum's use of a baton to strike Mr. Bland clearly amounted to the use of excessive force. Under nationally recognized police standards, an officer may use only that degree of force which is necessary to dispel a threat. As Mr. Bland was not posing a threat to the officers, the striking of Mr. Bland with a baton by Officer Kellum amounted to the use of excessive force.

Further, the circumstances of Officer Kellum's use of force are disputed by the statements of Mr. Bland, Officer Lewis and civilian witnesses. While Officer Kellum states that he only struck Mr. Bland one time in the calf with his baton, Officer Lewis testified that Mr. Kellum struck Mr. Bland in the thigh area numerous times. Further, the civilian witnesses indicated that Mr. Bland was struck with a baton more than once. Finally, Officer Kellum was required to fill out a use of force report upon the use of a baton. However, no such report exists.

It is clear that there were numerous civilian witnesses who observed the incident and complained about the manner that Mr. Bland was treated by the officers. In particular, when Officer Renfroe arrived at the scene, he indicated that the civilian witnesses were agitated and complaining about how Mr. Bland was handled. However, Officer Renfroe failed to inform his supervisors of these complaints or complete a report documenting their statements. Had Officer Renfroe informed his supervisors about these complaints, an immediate investigation could have been commenced. A failure to report complaints of misconduct of fellow officers is an indication that a "code of silence" exists. Officer Renfroe's failure to inform his supervisors about the civilian's complaint nor document these statements in a police report is an indication that the "code of silence" exists at the MPD.

While Mr. Bland was at the hospital recovering from his injuries, Mr. Bland signed a sworn complaint against the officers who arrested him. During the course of the investigation, the MPD conducted interviews with civilian witnesses and the officers on the scene. In addition, the investigation collected the dispatcher's tape, the video tape of the elevators at the Memphis Towers and all reports of the incident. Based on the ISB file, Officer Peacock was the only officer investigated for the use of excessive force. The investigation failed to consider that other officers could have used excessive force or violated Mr. Bland's constitutional rights. In addition, there were numerous discrepancies between the officer's and civilian's version of the events regarding the officer's knowledge of Mr. Bland's disabilities and the use of force. Based on the testimony of Mr. Bland and the civilian witnesses, it is clear that the officers were informed that Mr. Bland was blind and had arthritis and that the officers used excessive force. However, the ISB investigation concluded that Officer Peacock acted according to the policies, practices and customs of the MPD and did not use excessive force during Mr. Bland's arrest. To come to this conclusion, the ISB investigation had to disregard the statements of Mr. Bland and the civilian witnesses. Further, it is unclear why Officer Kellum was not a target of the investigation. Officer Kellum admitted to striking Mr. Bland with a baton and failed to complete a Use of Force Report as required by policy.

Therefore, Officer Kellum's use of force and failure to complete a Use of Force Report should have been thoroughly investigated. Despite clearly violating the policy with respect to the completion of Use of Force Reports, Officer Kellum was not disciplined.

SUMMARY OF OPINIONS REGARDING MUNICIPAL LIABILITY

Municipalities have a duty to assure that their police agencies do not violate the constitutional rights of citizens. The governing body must ensure that the department operates in a manner which will ensure proper procedures and require adherence to effective policies.

A police chief is an appointed department head, and is accountable to the city officials for the management and internal affairs of the department. The duty to ensure that constitutional rights are protected by the police can not be delegated to the chief. Only the responsibility of proper management can be delegated. This duty requires that the city officials monitor the police agency for proper operation, and ensure that approved policies and procedures are in place, and are being followed.

Every law enforcement agency, over the course of its history of operations, develops a definable "culture" within its ranks that is unique to the organization. Some cultures demonstrate reverence for the Constitution and adherence to standards of excellence in police operations and training. Bad conduct is not tolerated in these departments, and the mission statement is one that is embraced by the majority of personnel at all levels. Expectations are high, public perceptions are highly favorable, and personnel of the department wear their uniforms and do their jobs with pride and excellent public support. Morale is high. Often, the establishment of such a culture begins with the head of the department, operating under a mandate from the municipality. Characteristics of such departments include a commitment to the formulation, enforcement, and continuous evolution of written policies and procedures; specialized training; effective liaison with other agencies and the prosecutor's office; thorough and objective investigation of allegations of misconduct; effective supervision and discipline; and integrity.

When these expectations are not set, and there is no conformity to ethics, the "culture" that matures within a police agency can also be very poor. It takes a long time for these institutional identities to develop, and once entrenched they are difficult to evict without a long-term commitment to a new philosophy of doing business. While there is no one set of standards for the determination of whether a department has allowed a negative culture to take root, evidence of the existence of a custom and practice of deliberate indifference to police misconduct that has become institutionalized within a corrupt law enforcement agency can be found in:

- a. Failure to set up properly running units and/or divisions to properly train, supervise, monitor and discipline officers that act according to written procedures and protocols.
- b. Failure to properly analyze data regarding officer conduct.

- c. Failure to take civilian complaints and perform timely and thorough investigations of allegations of police misconduct.
- d. Negligence in the application of constitutional requirements and restraints in the daily conduct of police business.
- e. Bad public relations and press relations.
- f. Legitimate criticisms from investigative agencies or grand juries are ignored.
- g. Subordinate personnel are poorly or improperly supervised.
- h. Evidence of internal cover-ups.
- i. Officers plant evidence or deliberately state untruthful information and/or willfully omit relevant information in official reports in order to strengthen cases and increase their arrest statistics.
- j. Officers and supervisors conceal or destroy evidence of official misdeeds.
- k. Peer pressure to violate the law or constitutional constraints is commonplace.
- l. Officers violated the rights of citizens in the presence of eyewitnesses with impunity because they know they will not be disciplined.
- m. Employees who observe serious misconduct do not report it, because they have learned that they will be identified as "rats", and the report will be officially ignored by executive management.
- n. Officers are arrested for serious crimes.

When characteristics such as those listed above are present, this is strong evidence that there exists within an organization a long-standing and pervasive custom and practice within the agency of deliberate indifference to the constitutional duties and responsibilities of the agency in its operations and contacts with citizenry, which has been established and is being perpetuated by policy making officials at the highest levels. In today's enlightened law enforcement environment, a continuation of such a pattern and practice of deliberate indifference can only be seen as intentional. This becomes a primary causative factor in unconstitutional and illegal acts committed by officers acting in their official capacity.

When illegal and unconstitutional acts are committed by officers and ignored by the highest officials who are charged with the duty to act, this sends a message to personnel at all levels. The message is that police can do whatever they want and get away with it. Officers and supervisors who are inclined toward abuse of their authority thrive in these environments, and the public becomes frustrated and distrustful when it sees that complaints and allegations of serious misconduct are ignored, ratified or deliberately covered up by administrators.

In reviewing the conduct and performance of a police department, it is important to analyze the leadership of the department. As noted by Professor Joycelyn M. Pollock in Critical Issues in Policing, Fifth Edition, Chapter 16, p.292:

Most agree that the strongest correlate to the level of dishonesty among employees is the level of dishonesty among administrators. If there is wide-scale corruption in a police department, inevitably that corruption has reached high levels of management that protected and even encouraged dishonesty on the part

of the part of the rank and file. What is also true though is that even honest administrators and managers can foster and encourage corruption when they do nothing about it. In most wide-scale corruption scandals there was an attempted cover-up from high in management ranks. There is an aversion to "airing dirty laundry" in law enforcement that influences decisions to curtail investigations of dirty cops and keep evidence of corruption under wraps. Ironically, this often results in worse publicity in the long run.

At the times in issue in this case, Larry Godwin was the Director of Police. During his law enforcement career, Director Godwin was found guilty of violating the truthfulness policy when he lied about his location to a dispatcher to cover-up the fact that he was not at his assigned location, but at a lady friend's house. In order to maintain the integrity of police officers both in and out of court, all officers must act with integrity and truthfulness. The fact that Director of Police has been previously found guilty of untruthfulness in performing his job duties is an indication that the MPD does not value integrity as a necessary officer qualification. While Director Godwin's self interest may have led him to testify that officers can still perform their job duties after being found guilty of untruthfulness, this testimony was clearly refuted by other City of Memphis corporate representatives. (Tow, pp. 21-24; Winters, 3/3/08, pp. 105-106).

Further, it is significant to note that members of Director Godwin's own command staff, Deputy Chief Bobby Todd and Major James Krepela, were actually indicted for their roles in changing police reports stemming from an accident involving the mayor's daughter-in-law. Both men agreed to one year of probation for the charge of Destruction or Tampering with Evidence. The fact that officers in the command staff have been indicted for serious misconduct issues is compelling evidence that a negative culture has been established at the MPD which makes officer misconduct foreseeable and predictable.

In addition, the U.S. Attorney's Office's "Operation Tarnished Blue" has resulted in the indictment of numerous officers. While the MPD does not track the number of officers that have been who have been indicted, Sgt. Mullins compiled a list of 30 officers who have been indicted or terminated in recent times. However, Director Godwin testified that the number of officer indicted in recent times could be as high as 45. This significant number of indictments of police officers in recent times is unprecedented and is significant evidence that a negative culture has taken root at the MPD where police misconduct and corruption are tolerated and accepted at the MPD.

Based on the evidence reviewed, it is clear the MPD, from the highest levels of management, has allowed this negative culture to take root. This is further evidenced by the manner in which officers are hired, supervised, monitored and disciplined.

Specifically, the City of Memphis' corporate representative testified that the recent rash of indictments of MPD officers is the highest by sheer volume since he has been on the force since 1989. (Tow, p. 33). Further, the City of Memphis' corporate representative also testified that he had serious issues with allowing officers who had failed a

psychological evaluations to reapply as set forth in a recruitment add placed in the newspaper by the MPD. (Tow, p. 34-35). The corporate representative further noted that a lot of the officers who were hired at the MPD in recent times did not have integrity when hired and could have been weeded out in the application process. (Tow, p. 37). With respect to the problems with the hiring and recruitment process, the City of Memphis' corporate representative testified as follows:

Q Okay. What I'm trying to talk about is the department, how the department reacts. Number one, I think, based on your prior questions, is hopefully you can weed a lot of them out in the application process, correct?

A Yes and no.

Q I mean, up until, I think, 2005 Memphis allowed people to get Post waivers?

A And, again, that's not the application process. That's the directives from the 12th floor and City Hall that they will hire bodies. So, to get 500 bodies, if you only have 400 that pass and they say, no, 500 bodies, then they will get 500 bodies.

Q So if we start there, then according to that kind of example, we may have 100 bodies that we really didn't want?

A That's a fair statement. You could look at that nationwide. When you have departments that hire a mass hiring within the years, the cycle comes around and they have mass firings.

Q I don't disagree with you. What I'm trying to figure out is what cycle we're in at Memphis, and I want to basically start with the premise that we're talking about. We may have had some situations where we had a lot of people and we hired too many people. We may be feeling some of the repercussions of it now. Is that a fair statement?

A Yes, sir, we've hit that, yes, sir.

Q So we have a situation where, you know, you have somebody -- I'm going to use your example and obviously the numbers aren't right. We need 500 officers. We've got 400 that we're happy with. We might have 100 that may not have passed the test you'd like to apply, okay?

A Correct. (Tow, 38-39).

Based on this testimony, it is clear that the MPD is experiencing serious problems with its officers based on the failure to ensure that all officers hired had the necessary integrity and qualities to perform their important duties as law enforcement officers.

Early warning systems are essential to the proper operation of police department. An early warning system is designed to identify officers whose behavior has established a pattern or trend of problem behavior and to identify officers whose conduct needs to be to be scrutinized to determine if they need any intervention to ensure that their behavior conforms to their constitutional duties and obligations. If officers are provided an intervention, the intervention needs to be documented and the effect of the intervention needs to be evaluated. Further, in order to establish consistency within the department, any early warning system must be supported by proper written policy that covers the essential elements of the early warning system which includes: 1) the selection criteria

for flagging officers; 2) the notification of officers; 3) intervention; and 4) evaluation of the intervention.

The early warning system at the MPD is run entirely by Betty Winters who operates without any formal written policy guidance. The lack of written policy in the early warning system fosters inconsistency and confusion regarding the structure and function of the early warning system from officers and supervisors alike. Without proper written policies, the early warning system cannot function in a predictable or systematic fashion and amounts to a hodge-podge of goals and ideals without any effective mechanism to ensure that the goals of an early warning system are met. Without proper policy, the early warning system run by the MPD fails to properly meet national standards and the goals of a properly functioning early warning system.

Prior to Betty Winters taking control of the early warning system, the MPD appeared to have tracked six behaviors: 1) personal conduct; 2) duty performance; 3) use of force; 4) use of equipment; 5) reports and communications; and 6) dependability. Inexplicably, when Betty Winters took over operating the early warning system, she reduced the criteria to be evaluated by the early warning system to reviewing only instances of personal conduct and excessive force. Proper early warning systems track multiple indicators of officer behavior and the net cast by the MPD is too limited. Further, it appears that this change to track fewer officer behaviors was a result of the MPD's inability to link the previous data set together with the current system which is inexcusable. In modern day policing, the trend is to track more aspects of officer behavior with early warning systems, not to reduce the points that are analyzed as has occurred in the MPD.

Further, one of the most important aspects of early warning systems is the notification of officers that they have been identified by the early warning system. The notification of officers that they have been identified by the early warning system serves as a deterrent to improper behavior. Without notification, this important deterrent effect of the early warning system is lost. In the MPD's early warning system, there is no requirement that an officer be notified that he/she has been flagged by the early warning system and, therefore, the deterrent effects of the program are lost.

Given the lack of written policy in the early warning program, there are no written policies concerning the range of interventions to be provided to officers or the evaluation of the intervention which is another systematic failure of the MPD's early warning system.

Finally, Betty Winters testified that officers flagged by the early warning system are discussed at quarterly meetings with the command staff. However, Betty Winters was instructed that no notes of these meetings should be taken (Winters, 3/3/08, pp 141-144). These are not the actions of a department concerned with providing assistance to officers and ferreting out bad officers. Police departments should evaluate their officer's conduct with transparency to ensure consistent and thorough evaluations. Without documentation of the officers who were flagged, the specific interventions performed and an evaluation

of the specific interventions, the MPD's early warning system fails to meet acceptable police standards. Further, without proper documentation of the early warning meetings, there is no way to effectively evaluate the MPD's early warning process.

Based on Betty Winter's own testimony, the creation of a properly functioning early warning system is essential to the operation of a police department. Despite Ms. Winters' basic understanding of the requirements of a proper early warning system, it is clear that the MPD does not have a properly functioning early warning system based on acceptable police standards. Betty Winters testified that the majority of her work revolved around the completion of disciplinary charts for use after a Statement of Charges has been brought against an officer for the purpose of a disciplinary action. This is not a function of an early warning system, but a disciplinary matter. Therefore, by her own admission, the majority of Betty Winters' work is not devoted to the early warning system. Finally, based on Betty Winters own testimony, it is clear that she did not have the resources or staffing to properly run an effective early warning system.

In addition to properly recruiting officers and properly monitoring officers, a department must thoroughly investigate all allegations of misconduct to prevent and deter police misconduct. However, it is clear that the investigative process utilized by the MPD is designed to favor the police officer and not seek the truth. The Standard Operation Procedures of the MPD Inspectional Services Bureau is deficient based on the following:

1. ISB does not investigate anonymous complaints. In order for an investigation to be commenced, it must be initiated by a citizen who must be physically present to sign a sworn complaint or the complaint must be initiated administratively.
2. The complainant is not allowed to have an attorney present during an interview. However, the officers are allowed to have a union representative present during all questioning, whether being investigated as a witness or principal. Many times all officers involved in an investigation are represented by the same union representative.
3. The investigators do not review the officer's prior disciplinary record when investigating a complaint. However, the investigators are entitled to review the complainant's prior record during their investigation.
4. The principal officer being investigated is allowed to give his statement after all the other statements have been completed.
5. There is no official burden or proof necessary to sustain a complaint. This has resulted in a finding that a complaint is not sustained whenever the investigation is based solely on the testimony of the complainant versus the officer.

This method of investigating complaints heavily favors the officer's testimony and is not designed to find the truth. Most responsible law enforcement departments allow complaints to be filed in any form or fashion and do not require a complainant to file a complaint in person without any assistance of counsel. This factor heavily discourages the filing of complaints against officers and the search for the truth about police

misconduct within any agency. . A proper policy concerning the manner in which complaints should be taken and investigations carried out is set forth in the U.S. Department of Justice's, Principles for Promoting Police Integrity, Examples of Promising Police Practices and Policies, January 2001 which was attached as Exhibit 35 to Director Godwin's deposition. This systematic defect in the investigative process only leads to further police misconduct as fewer complaints are investigated and sustained which sends a message to police officers that such conduct is both protected and tolerated which was acknowledged by corporate representatives of the MPD as follows:

Q And when you're training people that way, if the department does not give significant discipline to officers who are guilty of corruption or untruthfulness, what does that instill in the officers?

A It opens the door for many things.

Q Just tell me some of them. It's kind of an open-ended question.

A Well, if the department doesn't deal with their ethics issues then the ethics issues are going to continue to get worse.

Q So it creates a negative culture within the department?

A That's a fair statement.

Q Okay. And this negative culture is what you try to dispel with proper training, correct?

A Yes, sir.

Q. Proper discipline, correct?

A Yes, sir.

Q Proper policies?

A Yes, sir.

Q And without this kind of whole aspect of training, accountability, policies, you have to keep that all functioning and working together, otherwise a negative culture can grow within a department, would you agree?

A I believe that's a fair statement. (Tow, p. 35-36)

Q And the department itself has to have systems in place that will evaluate officer conduct and mete out appropriate discipline or investigations in order to not let any type of that corruption or quote, unquote, code of silence, you know, grow in the department, correct?

MR. KLEIN: Object to the form of the question.

A Yes, sir, that's a fair statement.

Q And if the department isn't doing its job in investigating officer misconduct, a negative culture can grow within the department, correct?

MR. KLEIN: Objection. Asked and answered.

A I believe so, yes, sir. (Tow, 48-49).

Colonel Williams also testified:

Q. Now, when you had any issues or learned anything about the code of silence, did you also understand that Security -- ISB in order to effectively ferret out, they had to do prompt, thorough and fair investigations?

- A. Correct.
- Q. And when you got there in 2005, there was this backlog, right?
- A. Correct.
- Q. And what does that have to do with respect to -- I mean, does that have any impact on officer conduct in your opinion?
- A. When you say conduct, what do you mean?
- Q. Well, you know, what happens if we don't investigate things and hold officers accountable to to complying with the policy?
- A. Well, I would say definitely it would have an effect, not all officers, I would say, like an officer that has caused some problems, I mean, while being investigated might continue with that type of action. I would say that.
- Q. I'm having a bad time asking the right question. But if we don't properly hold them accountable to their policies and investigate them thoroughly and discipline them appropriately, that does not rule out the bad behavior, would you agree with that?
- A. I agree.
- Q. And it allows bad behavior if it has started to continue, right?
- A. Correct.
- Q. And what we are trying to do with our investigations is to ferret out that conduct and appropriately discipline the officer so that they know there are going to be ramifications for misconduct, right?
- A. Correct. (Williams, pp. 64-65).

As acknowledged by the City of Memphis' corporate representatives, proper investigations of complaints are necessary to discourage and ferret out police misconduct. The investigations must not favor either the officers or complainant, but must be a search for the truth. The investigations must be performed in a timely manner. However, it is clear that the MPD does not have proper policies in place guide the investigators search for the truth. Further, it is also clear that the MPD had failed to perform its investigations in a timely manner that only fosters police misconduct. The official ISB policy requires investigations to be completed within 45 days. However, it is clear that ISB lacks the manpower and resources to comply with this policy and routinely takes much longer than ~~ISB around 2005~~ ^{in 2005}. Colonel Williams noted: 1) When he took over ISB there was a serious backlog of cases (over 200) (p. 61); 2) Despite the backlog, the MPD did not hire additional investigators although "he wished" they did (p. 61) and although he would have liked to have more investigators (p. 69); and 3) As a result of the backlog, he made personnel changes and tried to bring in more experienced investigators (30% to 40% of the Internal Affairs investigators were changed) (p. 61-64, 67-68).

The systematic problems with the ISB policies and the failure to promptly investigate complaints further leads to officer misconduct as it sends a message to officers that misconduct is not taken seriously. It clear that the MPD has failed to place a high priority on police misconduct which has allowed it to thrive and created a negative culture and custom and practice of tolerating police misconduct. This is especially problematic given that the MPD has been experiencing a serious problem with police corruption as acknowledged by Colonel Williams as follows:

Q. Now, you talked about in the last three or four years there seems to be more police corruption, correct?

A. Correct.

Q. Has it been more pervasive in your opinion? I mean, do you know -- wasn't Deputy Chief Bobby Todd indicted?

A. Yes, uh-huh.

Q. And he's in the -- was he under Director Godwin?

A. Yes. (Williams, pp. 75-76).

My review of numerous ISB files over the years and for this case, leads me to the conclusion that the MPD has a practice and custom of not seriously investigating misconduct against officers that has led to the establishment of a culture of misconduct which is tolerated by the MPD.

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Further, ISB has produced a spreadsheet that sets forth the number of use of force complaints against the MPD over the past five years. During that period of time, the chart contains 449 excessive force complaints. Of those complaints with results, the complaint was ~~not~~ sustained in 14 cases. Therefore, the percentage of excessive force complaints that have been sustained by the MPD over the five years covered by the chart is approximately 3%. This percentage of sustained use of force complaints from the MPD is far below the national average as compiled by the U.S. Department of Justice. According to Department of Justice statistics, the national average percentage of sustained complaints for use of force for large police departments such as the MPD was 6% to 8%. Therefore, it is clear that the MPD rate of sustained complaints for use of excessive force was far below the national average which can be traced to the systematic deficiencies with the ISB's SOP which heavily favors the officers version of events.

When officers arrive at a scene, they should always be required to complete reports of their participation in and observation of the events. As noted previously, the numerous officers who arrived on the scene failed did not complete reports of their participation and observations other than Officer Peacock and Officer Kellum. The failure to require or ensure that all officers prepare reports of their participation and involvement in an incident deprives the department of critical information and documentation of officer conduct.

Further, properly functioning police departments that are interested in ensuring that their officer's use of force is in compliance with policy require that whenever an officer uses force, a separate Use of Force Report is completed and then analyzed by the department to hold officers accountable for misconduct and to ensure that the police department is acting according to constitutional standards. Based on the testimony, the MPD did not start utilizing Use of Force Reports until 2005. Further, the deposition testimony has indicated that the MPD has not been able to properly analyze the data contained in the Use of Force Reports. Therefore, while the City of Memphis has recently required its officers to complete Use of Force Reports, it has been unable to use the information in these reports to come to any conclusions regarding the MPD's use of force practices. It is

significant to note that Officer Kellum admittedly used a baton against Mr. Bland which would require the completion of a Use of Force Report. However, the ISB investigation did not find a Use of Force Report completed by Officer Kellum in this incident and he received no discipline. Therefore, even though the MPD requires officers to complete Use of Force Reports by policy, it is unclear whether the officers in the field are properly completing these forms for analysis.

It is well known in police work that officers are reluctant to report misconduct of fellow officers. This has been extensively documented and discussed in the police literature and has been referred to as the "code of silence" or the "thin blue wall." This has been defined as an unwritten code that officers shall not provide information concerning other officer's misconduct. Any responsible department should recognize the existence of this police subculture and take affirmative steps to remove it. While many officers, including Director Godwin, testified that they have never heard of the "code of silence," other officers candidly acknowledged that it exists at the MPD. The fact that Director Godwin and other officers testified that they have no knowledge of the "code of silence" and/or its existence at the MPD shows either: 1) a complete lack of proper training or understanding of issues of police management; or 2) evidence that the "code of silence" exists at the City of Memphis in the highest levels of management.

Finally, the City of Memphis had information pertaining to the principal officers (Officers Peacock and Kellum) involved that should have placed them on notice misconduct was foreseeable. In particular, Officer Peacock's disciplinary chart noted that he was previously charged with the following violations: -106

Date	Charge	SOC #	Action
4/4/98	DR 101 - Compliance with Regulations; DR - 104 - Personal Conduct; DR - 120 - Neglect of Duty	I067-98	Not Sustained
2/27/99	DR-400 - Firearms	S00-99	Justified
7/1/04	DR 1106 - Sick Abuse Policy	SOC04-0701	Oral Reprimand
10/2/05	DR 120 - Neglect of Duty; DR 104 - Personal Conduct	I178-05	Not Sustained
3/31/06	DR 1106 - Sick Abuse Policy	SOC06-0313	1 Day Suspension

Further, Officer Peacock was relieved of duty pending a fitness for duty evaluation on December 7, 2005. Officer Peacock testified that at this time he was going through a divorce and attempted to "self-medicate" himself with some Jack Daniels and he did not wake up to go to work. As a result of this incident, Officer Peacock was off work for about one week and was required to visit with MPD psychiatrist and then put back on duty. Consideration of charges for violation of a sick abuse policy and being relieved of duty are two important factors to consider in predicting problems with the proper supervision of officers. Prior to this incident, Officer Peacock was not informed that he was flagged by early warning. While Officer Peacock did not meet the criteria for being flagged by the early warning system prior to this incident, Betty Winters testified that he

was discussed at quarterly meetings, but there is no record of any interventions or follow up by the MPD to address any potential problems that Officer Peacock was experiencing other than the initial referral to the police psychologist/psychiatrist, Dr. Turner. (Winters, 3/3/08, pp. 83-84)

Officer Kellum's disciplinary chart reveals the following violations

Date	Charge	SOC #	Action
10/24/98	DR - 104 - Personal Conduct; DR - 120 - Neglect of Duty	I229-98	Not Sustained
12/8/98	DR- 104 - Personal Conduct	MI 129-98	Sent to Precinct
12/10/99	DR 800 - Uniforms and Equipment		Counseling at Precinct
1/14/00	DR 107 - Courtesy	MI 005-00	Not Sustained
7/4/00	DR 101 - Compliance with Regulations; DR 104 - Personal Conduct	I096-00	Not Sustained
7/22/00	DR 301 - Excessive Force; DR 101 - Compliance with Regulations	I036-01	Not Sustained
3/10/01	DR 104 - Personal Conduct	I047-01	Not Sustained
4/2/01	DR 104 - Personal Conduct; DR 301 - Excessive Force	I069-01	Not Sustained
10/20/01	DR 402 - Careless Handling of Firearms	S044-01	Written Reprimand Firearm Training
12/4/01	DR 104 - Personal Conduct; DR 101 - Compliance with Regulations; DR 134 - Intimidation	I268-01	Not Sustained
10/21/02	DR 104 - Personal Conduct; DR 301 - Excessive Force	I223-02	Not Sustained
11/19/02	DR 104 - Personal Conduct; DR 301 - Excessive Force	I273-02	Not Sustained
6/22/03	DR 404 - Discharging Firearms	S029-03	Justified
4/7/04	DR 101 - Compliance with Regulations	S016-04	Justified
5/20/04	DR 101 - Compliance with Regulations	Soc04-0552	Dismissed 6/8/07

Based on Officer Kellum's disciplinary chart, Betty Winters testified that she could have used his disciplinary chart in training to show officers an example of an unacceptable disciplinary chart. (Winters, 3/3/08, pp. 161-163). As a proper functioning early warning system is designed to predict and foresee problem officers to provide intervention, this statement by Betty Winters is compelling evidence regarding the foreseeability of future misconduct by Officer Kellum.

CONCLUSION

After review of the materials set forth in Exhibit G, I have formulated the following opinions that have been more thoroughly explained herein. It is my opinion that Officers Peacock and Kellum used excessive and unreasonable force against Mr. Bland. Based on the totality of the circumstances, I have formulated the opinion that the MPD has, by custom and practice, created an atmosphere where improper conduct of police officers is foreseeable, condoned and tolerated by the MPD. In formulating this opinion, I have considered the following:

1. The leadership of the MPD has serious issues with integrity as Director Godwin has been found guilty of untruthfulness in his official capacity as an officer of the MPD. Further, members of the command staff have been placed on probation for Destruction and Tampering with Evidence.
2. The U.S. Attorney's Office has indicted numerous officers (30-45 officers) for official misconduct during the course of their official duties with the MPD. This number of indictments of officers is unprecedented and illustrates that a negative culture of corruption has taken root in the MPD.
3. An effective early warning system is essential to a properly functioning police department to predict improper behavior and address officer conduct before it becomes a problem. The MPD does not have a properly functioning early warning system. The MPD's early warning system does not even have any written policies or standards. The failure to have a properly functioning early warning system has resulted in the failure of the MPD to address problem officers and behaviors before they become problematic which has led to the continuation of improper conduct by MPD officers.
4. A properly functioning police department must have a mechanism for promptly and thoroughly investigating complaints of police misconduct. The Inspectional Services Bureau is charged with this function. ISB's standard operating procedures are flawed in that they discourage the filing of complaints by citizens and heavily favor the officer's version of events. As a result, most citizen complaints are not sustained which sends a message to officers that their misconduct is accepted at the MPD and leads to the continuation of improper conduct by officers.
5. The MPD has failed to require its officers to complete formal reports of all officer's participation in and observations on calls. As a result, the MPD does ^{not} have sufficient documentation of officer actions in subsequent investigations. Further, while the MPD has recently required officers to complete separate Use of Force Reports, it cannot be determined whether the officers are properly completing these forms when force is used as Officer Kellum was not disciplined for failing to complete a Use of Force Report in this incident. At the present time, the information gathered from the Use of Force Reports has not enabled the MPD to do any analysis regarding its officers' use of force.

6. It is my opinion that the "code of silence" exists among officers at the MPD whereby officers have created a subculture where reporting fellow officer misconduct is discouraged which was acknowledged by many officers who testified in this action. However, the fact that many officers did not even understand the concept of "code of silence" shows a lack of understanding of proper police management at best and is compelling evidence of the existence of the "code of silence" at the MPD. The failure to understand and take steps to combat the "code of silence" at the MPD directly results in the continuation of improper behavior among MP officers.
7. The MPD had sufficient knowledge and information concerning Officers Peacock and Kellum to make their misconduct in this matter foreseeable.

Based on the totality of the information available to me, it is my opinion that the conduct of Officers Peacock and Kellum was foreseeable and proximately caused by the policies, practices and customs of the MPD set forth herein.


Geoffrey P. Alpert.

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July 2008

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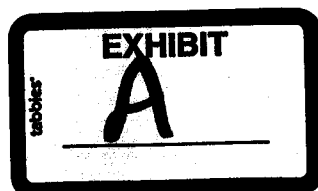
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The Impact of Mariels and other Entrants on South Florida. Final Report of the Grand Jury, Dade County, Florida (Spring 1982).

BOOK REVIEWS:

American Journal of Police
Criminology
Criminal Justice Review
Journal of Criminal Law and Criminology
Sociology: Reviews of New Books

EDITORIAL EXPERIENCE:

Editorial Board, <u>The Justice System Journal</u>	1994 - 1998
Associate Editorial Consultant, <u>Journal of Criminal Law and Criminology</u>	1990 - 1998
Editorial Board, <u>American Journal of Criminal Justice</u> .	1989 - 1998
Contributing Editor, <u>Criminal Law Bulletin</u> .	1987 - 1995
Board of Editors, <u>Sociological Inquiry</u> .	1987 - 1998
Associate Editor, <u>Criminology</u> .	1980 - 1984.
Advisory Board, <u>Police Liability Review</u> .	1989 - 1998.
Advisory Board, <u>Annual Editions: Criminal Justice (Dushkin)</u> .	1988 - 1994.
Editor, <u>Georgia Journal of Corrections</u> .	1971 - 1972.
Editor, <u>American Journal of Police</u>	1995 - 1997.
Associate Editor, <u>Justice Quarterly</u>	1995 - 1998.
Editor, <u>Policing: An International Journal of Police Strategies and Management</u>	1997 - 1999.
Associate Editor, <u>Justice Research and Policy</u>	1998 - 2001
Editorial Board, <u>Encyclopedia of Law Enforcement</u>	2004 - 2005.
Executive Board, <u>Journal of Crime and Delinquency</u>	2000 -
	present.
Series Editor, Wadsworth Publishing	2000- 2007.

Special Reader:

<u>American Journal of Criminal Justice</u>	<u>Police Quarterly</u>
<u>American Journal of Police</u>	<u>Law and Society Review</u>
<u>American Journal of Sociology</u>	<u>Sociological Inquiry</u>
<u>American Sociological Review</u>	<u>Sociological Focus</u>
<u>Crime & Public Policy</u>	<u>Social Problems</u>
<u>Criminal Justice and Behavior</u>	<u>Social Science Quarterly</u>
<u>Criminology: An International Journal</u>	Cambridge University Press
<u>Journal of Crime and Delinquency</u>	McGraw Hill Publishing Company
<u>Journal of Criminal Justice</u>	Praeger Press
<u>Journal of Justice Issues</u>	Sage Publications
<u>Journal of Research in Crime and Delinquency</u>	Wadsworth Publishing
<u>Journal of Quantitative Criminology</u>	West Publications
<u>Judicature</u>	
<u>Justice Quarterly</u>	

Justice System Journal
Law and Human Behavior

SELECTED PROFESSIONAL ACTIVITIES:

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2008.

Member, International Association of Chiefs of Police, Committee on Use of Force. 2008 – present.

Member, California POST Study Group on Driver Training. 2008 – present.

Presenter, Suing and Defending the Police. Annual Meeting of the Police Executive Research Forum. Miami, April 2008.

Keynote Speaker, Seattle Police Department. Investigating and Evaluating a Police Pursuit: Reducing Exposure and Liability. Seattle, WA. February 2008.

Keynote Speaker, Washington State Criminal Justice Training Commission. Offender Pursuit Seminar. Bothell, WA. February 2008.

Presenter, Charleston Police Department. Seminar for Pursuit Management. Charleston, SC. February 2008.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. December 2007.

Presenter, The Charleston Area Crime Summit. North Charleston, SC. November 2007.

Presenter, To Protect and to Serve ... Police and Policing in an Age of Terrorism and Beyond. Ministry of Public Security and National Institute of Justice. Jerusalem, Israel. October 2007.

Presenter, Police Driver Trainers' Seminar. Peel Regional Police, Brampton, Ontario Canada. August 2007.

Presenter, Major Cities Chiefs of Police Task Force on Internal Affairs. Dallas, TX. May 2007.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2007.

Presenter, Scott v Harris: The Supreme Court revisits police use of deadly force. Annual Meeting of the Police Executive Research Forum. Chicago. April 2007.

Consultant, Advisory Committee on Police Standards (Racial Profiling). State of New Jersey. January, 2007.

Member, Research Advisory Committee, Police Foundation. Washington, DC. 2007 – present.

Invited Participant, Workshop on Policing Research. National Institute of Justice. Washington, DC. November 2006.

Presenter, New Developments in Criminal Justice and Crime Prevention Conference, University of Shanghai, Shanghai, China. October, 2006.

Instructor, Early Identification Systems. International Association of Chiefs of Police. Maple Grove, MN. September 2006.

Instructor, Police Use of Force and Pursuits. Pharr, TX. Police Department. June, 2006.

Instructor, FBI National Academy. FBI Academy, Quantico, VA. May 2006.

Instructor, National Summit on Police Use of Force. Institute for Law Enforcement Administration. Plano, TX. January 2006.

Invited Participant, Strategies for Resolving Conflict and Minimizing the Use of Force. PERF, San Diego, CA. December 2005.

Senior Advisor, Major Cities Chiefs of Police Task Force on Internal Affairs. Los Angeles, CA. 2005 – 2008.

Invited Participant, Symposium on Conducted Electronic Devices. PERF, Houston, TX. October 2005.

Guest Editor, Police Quarterly. Vol. 8 Number 3, September 2005.

Invited Participant, 14th World Congress of Criminology. University of Pennsylvania. Philadelphia, PA. August 2005.

Invited Participant, Less-Lethal Technology Symposium. U.S. Department of Justice. Washington, DC. April 2005.

Member, South Carolina Law Enforcement Training Advisory Council. Department of Public Safety. Columbia, South Carolina. 2005 – 2006.

Invited Participant, Best Practices in Managing Police Use of Force. Los Angeles Police Department. Los Angeles, CA. March 2005.

Presenter, Early Identification Systems: A Changing Paradigm. Internal Affairs. Institute for Law Enforcement Administration. Plano, TX. November 2004.

Presenter, By the Numbers: How to Analyze Race Data from Vehicle Stops. Kansas City, Police Executive Research Forum. August 2004.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. Washington, DC.

July 2004.

Presenter, Pursuit Driving, Executive Management Program. Northwestern University Center for Public Safety. May 2004.

Consultant, Coroner's Office. Inquest on Police Pursuit Driving. Quebec, Canada. 2004.

Presenter, Western Regional Racially Biased Policing Summit. Sacramento Police Department. Sacramento, CA. February 2004.

Panelist, Pursuit Driving Training Symposium. Federal Law Enforcement Training Center. Glynco, GA. (Sites throughout the United States) 2002 - 2004.

Consultant, Citizen Advisory Panel on Pursuit Policy. Orlando Police Department. Orlando, FL. December 2003.

Presenter, Enrichment Retreat. Royal Bahamas Police Force. Nassau. November 2003.

Presenter, The Annual Conference on Racial Profiling. Northwestern University. Chicago. November 2003.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. Washington, DC. July 2003.

Invited Participant, Minority Trust and Confidence in the Police. National Institute of Justice. Washington, DC. July 2003.

Presenter, Community Oriented Police Services Annual Meeting. Washington, DC: June 2003.

Presenter, Promoting Cooperative Strategies to Prevent Racial Profiling. Sacramento Police Department. Sacramento, CA. June 2003.

Presenter, Confronting Racial Profiling in the 21st. Century: New Challenges and Implications for Racial Justice. Northeastern University. Boston, MA. March 2003.

Moderator and Panel Member, Racial Profiling Conference, The Foley Institute for Public Policy and Public Service. Washington State University. February 2003.

Presenter, Pursuit Driving. Rocky Mountain Criminal Justice Conference. Gatlinburg, TN. November 2002.

Invited Participant, Minority Trust and Confidence in the Police. National Institute of Justice. Washington, DC. October 2002.

Panelist, Racial Profiling. Smith College, Northhampton, MA. September 2002.

Presenter, State Bar of Texas Suing and Defending Governmental Entities Course. Galveston, TX. August 2002.

Panelist, Excessive Force Demonstration. State Bar of Texas Suing and Defending Governmental Entities Course. Galveston, TX. August 2002.

Presenter, Annual Convention of the Association of Trial Lawyers of America. Atlanta, GA. August 2002.

Presenter, Committee to Review Research on Police Policy and Practices. National Research Council. Washington, DC. April 2002.

Presenter, Racial Profiling: Setting the Research Agenda. Center for Studies in Criminology and Law. University of Florida. October 2001.

Presenter, Racial Profiling, Bureau of Justice Statistics/Justice Research & Statistics Association Annual Meeting. New Orleans, LA October 2001.

Presenter, Early Warning Systems and the Police. Pasadena, California Police Department, October 2001.

Presenter, "Pursuit Driving - Dynamics and Liability." High Liability Trainers' Conference. Florida Department of Law Enforcement. Orlando, FL. August 2001.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. Washington, D.C. July 2001.

Academic Community Liaison, National Commission on Law Enforcement Integrity. 2001 - 2005.

Invited Participant, Ethics and Integrity Curriculum Development. Office of Community Oriented Policing Services. Washington, DC: May 2001.

Presenter, Early Warning Systems and the Police. School of Professional Studies, Johns Hopkins University. Baltimore, MD. April 2001.

Panelist, Pursuit Driver Training Symposium. Federal Law Enforcement Training Center. Glynco, GA. March 2001.

Presenter, Speed Enforcement/Aggressive Driving Conference. Institute of Police Technology and Management. Orlando, FL. March 2001.

Invited Participant: Early Warning System Curricula Development Meeting. Regional Community Policing Institute for New England. Boston Police Department. Boston, MA: January 2001.

Presenter, Working Session on Police Practices. Department of Justice. Washington, DC: November 2000.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 2000.

Invited Participant: Police Pursuit Issues for Managers and Supervisors: Curriculum Development Conference. Federal Law Enforcement Training Center. Glynco, GA. May 2000.

Presenter, Police Use of Force in Miami-Dade County, Florida. Miami-Dade County Criminal Justice Council. Miami, FL: November 1999.

Presenter and Moderator, Building Accountability into Police Operations. Department of Justice. Washington, DC: November 1999.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 1999.

Invited Participant: Homicide Clearance Rate Project. Implementation Group Meeting. Justice Research and Statistics Association. Washington, DC. May 1999.

Presenter, Less than Lethal Force: A Safe and Reasonable Response to Suspect Resistance, Law Enforcement Applications of Non-Lethal Weapons. Quantico, VA. May 1999.

Presenter, Measuring Police Use of Force Relative to Suspect Resistance. International Association of Chiefs of Police Annual Conference. Salt Lake City, October 1998.

Presenter, The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. July 1998.

Keynote Speaker, Seminar on Risk Management: Police Use of Deadly Force and Pursuit Driving. Southwestern Law Enforcement Institute. Dallas, Texas. November 1995, May 1996, May 1998.

Presenter, Locally Initiated Research Partnership Program Conference. National Institute of Justice. February 1998.

Presenter, Pursuit Policy and Practice. International Association of Women Police Conference. Dallas, November 1997.

Presenter, Meeting the Challenges of Crime and Justice: The Annual Conference on Criminal Justice Research and Evaluation. Office of Justice Programs, Department of Justice. Washington, DC: July 1997.

Presenter, Locally Initiated Research Partnership Program Conference. National Institute of Justice. January 1997.

Faculty, Southwestern Law Enforcement Institute Management College. Dallas, Texas. January 1977.

Presenter, State and Local Partnership Training for Criminal Justice. Bureau of Justice Assistance. January 1997.

Presenter, Lessons Learned from the 1996 Olympic Games. Special Events Planning and Management Symposium. Metro-Dade Police Department. September 1996.

Member, National Criminal Justice Network Consumer Advisory Network. 1996.

Presenter, and Workshop Director, Building a Safer Society: The Annual Conference on Criminal Justice Research and Evaluation. Office of Justice Programs, Department of Justice. Washington, DC: August 1996.

Police in Pursuit: Policy and Practice. Research in Progress Series (Video). National Institute of Justice. July 1996.

Presenter, Use-of-Force Cluster Conference. National Institute of Justice. Washington, DC: April 1996.

Discussant, Measuring What Matters, National Institute of Justice. Washington, DC: November 1995, May 1996.

Presenter, Police Pursuits and the Use of Force: Recognizing and Managing "the Pucker Factor." The Annual Conference on Criminal Justice Research and Evaluation. National Institute of Justice. Washington, DC. July 1995.

Invited Participant, Police Use of Force Focus Group. National Institute of Justice/Bureau of Justice Statistics. Washington, DC: May 1995.

Presenter, Hi-Risk Police Activities and Managing Their Risks. South Carolina Sheriff's Association. May 1995.

Presenter, Police Pursuits. Making Policy Decisions. Transportation Research Board. Washington, DC. January 1995.

Invited Participant, Strategic Planning Workshop: Developing a Police Research and Evaluation Agenda. National Institute of Justice. December 1994.

Presenter, Special Events Planning and Management Symposium. Metropolitan Police Institute. Miami, October 1994.

Invited Participant, Justice Research & Statistics Association Annual Meeting. Atlanta, October 1994.

Pursuit Driving and Risk Assessment Seminar. Indiana Police Chiefs Association. Anderson, IN. September 1994.

Principal Evaluator, State Evaluation Capacity Building Program. National Institute of Justice. 1992-Present.

Invited Participant, Focus Groups Sessions on Community Policing and the Crime Bill. National Institute of Justice, Washington, DC. July - August 1994.

Presenter, Use of Force and Pursuit Risks, Southeastern Campus Safety Institute. Long Beach, Mississippi, August 1994.

Invited Speaker, South Carolina City and County Management Association Annual Meeting, Hilton Head, July 1994.

Member, Pursuit Guidelines Development Advisory Committee, California Peace Officer Standards and Training, 1994.

Facilitator, Pursuit Policy Workshop. Criminal Justice Institute, St. Petersburg Community College. February 1994.

Presenter, Frontiers of Legal Thought Conference. Duke Law School. Durham, North Carolina. January 1994.

Keynote Speaker, Seminar on Risk Management: Police Use of Deadly Force and Pursuit Driving. Southwestern Law Enforcement Institute. Dallas, Texas. May 1993.

Keynote Address, Police Vehicle Pursuits: Policy Implications and Liability. Illinois State University and the Traffic Institute, Northwestern University. Normal, IL. April 1993.

Invited Lecturer, Institute of Criminology, Cambridge University. Cambridge, England. March 1993.

Presenter, Reducing the Risk of Emergency Vehicle Operations, Risk Management Services, South Carolina Budget and Control Board. Columbia, South Carolina. December 1992.

Invited Participant, Bureau of Justice Statistics/ Justice Research and Statistics Association 1992 Annual Conference. New Orleans, September 1992.

Testimony on police pursuit to United States House of Representatives, Committee on Government Operations Sub-Committee on Government Information Justice and Agriculture. July 1992.

Faculty, Graduate Course on Victimology. The Free University. Amsterdam, July 1992.

Invited Participant, Annual Conference on Evaluating Drug Initiatives. Washington, DC. July 1992.

Curriculum Development for the Bachelor's Degree in Law Enforcement. State of Minnesota 1992.

Testimony on police pursuit to the House Safety Committee, State of Massachusetts, March 1992.

Developing a Decentralized Police Department from a National Police Force. Presented to Bundeskriminalamt Wiesbaden, Germany. March 1992.

Managing a Community-Oriented Police Department. Presentation to the Wiesbaden Police. March 1992.

Testimony on police pursuit to the Senate Transportation Committee, State of Pennsylvania. February 1992.

Pursuit Driving Policy Development Seminar. Texas Commission on Peace Officer Standards and Training. Austin, TX. May and November 1991.

Keynote Speaker, Risk Management and Pursuit Driving. Texas Municipal League. Arlington, Texas. August 1991.

Invited Participant, National Field Study on Gangs and Gang Violence. U.S. Department of Justice. Dallas, June 1991.

The Importance of Data Quality for Practice and Research. National Conference on Improving the Quality of Criminal History Records. Washington, DC. June 1991.

Keynote Speaker, Training Versus Education in Law Enforcement. Virginia Criminal Justice Educators Annual Conference. Leesburg, VA. May 1991.

Pursuit Driving and Risk Assessment Seminar. Indiana Police Chiefs Association. Jasper, IN. April 1991.

Invited Participant, Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties. Washington, DC. March 1991.

Matching Structure to Objective. Law Enforcement Management Institute of The Texas Commission on Law Enforcement Officer Standards and Education. San Antonio, Texas. February 1991.

Managing Risk: The Case of Pursuit Driving. National A.L.E.R.T. Conference. Columbia, SC. February 1991.

Invited Speaker, Risk Assessment, Pursuit Driving and Police Use of Deadly Force. South Carolina Association of Counties. Columbia, December 1990.

Invited Speaker, Pursuit Driving: Analyzing Risk. National Municipal Lawyers Organization. Boston, September 1990.

Keynote Speaker, Police Pursuit Driving. Texas Municipal League. San Antonio, TX. July 1990.

Consultant, Monroe County (Florida) Sheriff's Department, Key West, FL. June - July 1990.

Keynote Speaker, Seminars on Pursuit Driving. Southwestern Law Enforcement Institute. 1989 - 1990.

Commencement Speaker, Charleston County Police Academy, Charleston, SC. September 1989.

Consultant, Duval County (FL) Grand Jury. April - July 1989.

Invited Speaker, Civil Disorders and Police Use of Deadly Force, Southwestern Law Enforcement Institute, Dallas, Texas, March 1989.

Invited Participant, Cross-Gender Supervision, National Academy of Corrections, Boulder. December 1988.

Invited Participant, Workshop on Communities and Crime Control, National Research Council, Miami. January 1988.

Conferencier, La Maison des Sciences de L'Homme, Paris. December 1987.

Invited Speaker, Criminal Law Section, Annual Meeting of the Oregon State Bar. Seaside, Oregon. September 1987.

Board of Directors, Adolescent Chemical Dependency Program. Dade County, Florida. 1987 - 1988.

Keynote Speaker, Sports and Violence. The American College of Sports Medicine. Las Vegas. May 1987.

Keynote Research Address, Police Pursuit Seminar. Empirical Determinants of Police Pursuits. The Police Foundation. Los Angeles. March 1987.

Educational Consultant, G. Gordon Liddy Institute of Corporate Security and Private Investigation. Miami, Florida. 1986.

Consultant, Dade County (Florida) Grand Jury. February, 1982 - August 1986.

Board of Directors, Citizens' Crime Commission. Miami, Florida. March 1985 - August 1988.

Member, Dade County Community Task Force on Jury Selection. May 1984 - December 1984.

Member, Dade County Mayor's Committee to Develop an Action Plan for Social and Economic

Development for the Black Community. May 1983 - January 1984.

Member, City of Miami Blue-Ribbon Committee to Study Racial Unrest. Jan. 1983 - July 1984.

Invited Speaker, John Jay College of Criminal Justice. New York. Police Use of Deadly Force in Miami. April 1984.

Consultant, Florida Department of Corrections, Tallahassee, Florida. January 1982 - June 1984.

Consultant and Trainer, National Street Law Institute, Georgetown University Law Center, Washington, DC. 1982 - 1984.

Member, Dallas Criminal Justice Task Force, Dallas, TX. October 1975 - December 1977.

COURSES TAUGHT:

Graduate

Criminal Justice
Social Control
Criminology
Formal Organizations
Juvenile Delinquency
Law and Society
Policing in America
Research Methods
Politics of Crime

Undergraduate

Criminal Justice
Corrections
Criminology
Juvenile Delinquency
Law and Society
Police and the Community
Social problems
Sociology of Organizations
Survey Research Methods

Law Enforcement

Accountability Systems
Police Use of Force
Police Use of Deadly Force
Performance Measures
Pursuit Driving Decisions
Report Writing
Ethics and Integrity

PROFESSIONAL ASSOCIATIONS:

Academy of Criminal Justice Sciences

American Bar Association

Committee on Corrections

1980

American Sociological Association

American Society of Criminology

Student Affairs Committee

1989-1990

Publications Committee	1985-1986
Site Selection Committee	1984-1985
Chair, Site Selection Committee	1983-1984
Chair, Local Arrangements Committee	1978
Committee on Criminal Justice Education	1977-1978
Membership Committee	1975-1977
Program Committee	1995-1997
Statewide Policy Committee	1995- 1997
National Policy Committee	1996- 1998
International Association of Chiefs of Police	
Ethics Training Sub-Committee	1997-1999
Justice Research and Statistics Association	
Board of Directors	2004-2005
Western Society of Criminology	
Vice-President	1979-1980
Executive Secretary	1977-1978
Chair, Program Committee	1976-1977

**Prior Testimony of Geoffrey Alpert
(2005 - 2008):**

Petraski v Thedos et al. (Emergency Response, Deposition, February 2005, Trial May 2006).
Attorney: Francis Murphy, Chicago, IL.

Parsons v Tishomingo, Co. (Pursuit, Deposition, February 2005). Attorney: Drayton Berkeley.
Memphis, TN.

Huang v City of Chicago (Pursuit, Deposition, May 2005, Trial, October 2005). Attorney:
Michael Baird. Chicago, IL.

Isham v City of Ft. Lauderdale (Pursuit, Deposition, September 2005). Attorney: W. Clay
Mitchell. Orlando, FL.

Sheets v Piecre Co. (Pursuit, Deposition, October 2005). Attorney: Rogers Wilson. Tacoma,
WA.

Villalta v Waller et al. (Use of Force, Trial, November 2005). Attorney: Tom Mumgaard, City
Attorney's Office, Omaha, NE.

Ruch v City of Normal (Pursuit, Use of Deadly Force, Deposition, January 2006). Attorney:
David Doris, Normal, IL.

Scarborough v Pima County (Pursuit, Deposition, February 2006). Attorney: Elliot Glicksman,
Tucson, AZ.

Best v Cobb County (Pursuit, Deposition, April 2006). Attorney: George Shingler, Atlanta, GA.

Harris v City of Circleville (Use of Force, Deposition, July 2006). Attorney: Charles H. Cooper,
Jr., Columbus, OH.

Johnson v District of Columbia (Pursuit, Deposition, August 2006). Attorney: Melissa Rhea,
Washington, DC.

Monroy v Los Angeles Police Department (Response to Call for Service, Deposition, September
2006). Attorney: R. Rex Parris, Lancaster, CA.

Cepulionis v Village of Blue Island Police Department (Pursuit, Deposition, November 2006).
Attorney: Thomas F. Boleky, Chicago, IL.



Timberlake v Dugger et al. (Pursuit, Deposition, December 2006). Attorney: Rebecca Royals, Richmond, VA.

Kingdom v City of Riviera Beach (Pursuit, Deposition, February 2007). Attorney: Andrea McMillan, Palm Beach, FL.

Parker v Stanhope (Deadly Force, Deposition, February 2007). Attorney: Jeffrey Boyd Jackson, TN.

Sharp v Fischer et al., (Pursuit, Deadly Force Deposition, February 2007). Attorney: Henry Garrard, Athens, GA.

Hobley v Burge et al., (Use of Force, Deposition, April 2007). Attorney: Dan Noland, Chicago, IL.

Fox v Goodwine et al.(Pursuit, Deposition, May 2007). Attorney, Arthur Blue, Carthage, NC.

Baker v Ross Township Police Department (Pursuit, Deposition, July, 2007). Attorney: Marc Mezibov, Cincinnati, OH.

McCants v Georgetown (Police Procedure, Deposition, August, 2007). Attorney: Tom Nelson, Mt. Pleasant, SC.

Wilson v City of College Park (Pursuit, Deposition, September 2007). Attorney: William C. Lanham, Atlanta, GA.

Wolfanger v Laurel County (Deadly Force, Deposition, October 2007). Attorney: Jack Ruzicho, Lexington, KY.

Terranova v New York State Police (Roadblock, Deposition, October 2007). Attorney: Michael Grace, Yorktown Heights, NY.

Smith v Clayton County Police Department (Pursuit, Deposition, April 2008). Attorney: Richard Hendrix, Atlanta, GA.

Geoffrey P. Alpert

1905 Salem Church Rd. Irmo, South Carolina 29063-8543

Telephone: (803) 446.4139 Fax: (803) 777-7319

Contract and Fee Schedule for Consulting and Expert Services

My fees include a non-refundable retainer of \$5000 for case review. I charge for all time spent on a case, including research, reading documents, preparing affidavits, reports, consultations and travel from door-to-door at a rate of \$275 per hour. During travel, I charge for all expenses incurred including air fare, hotel, meals, and parking and other miscellaneous expenses. All air travel will be first class. My other customary fees include a \$2500 charge for deposition or trial testimony that lasts four hours or less. There is an additional \$2500 fee for each additional four hour (or less) block of deposition or trial testimony. Travel expenses and deposition and trial testimony fees are to be paid before the beginning of any testimony. No amendment to this agreement or change in the aforementioned rates or charges shall be enforceable unless it is expressly agreed to by the parties, reduced to writing and signed by all parties.

Invoices will be sent periodically and prompt payment will be made within 30 calendar days from the day the bill was sent. After 30 days, interest will be added at the rate of 1 ½% per month, compounded monthly, on the outstanding balance, computed on the date of the invoice. The contacting attorney expressly states that he is an authorized agent to enter into this agreement on behalf of his/her firm and his/her client(s). The contracting attorney, individually and as an authorized agent for the contracting attorney's firm and client(s), agrees to obligate him/her, his/her firm and his/her client(s) for payment of all fees and expenses billed for the consulting and expert services of Geoffrey P. Alpert. It is expressly understood that the prompt payment of bills for the fees and expenses by Geoffrey P. Alpert is in no way contingent on the agreement or arrangement between the contracting attorney, his/her firm and his/her client. Further, it is expressly understood that the prompt payment of all fees and expenses billed by Geoffrey P. Alpert is in no way contingent on the ability to pay of the client of the contacting attorney and his/her firm. Accordingly, by entering into this agreement, the contracting attorney expressly obligates himself/herself and his/her firm to promptly pay all bills for fees and expenses of Dr. Alpert.

By entering into this agreement, the contracting attorney, his/her firm and his/her client(s) expressly agree to the jurisdiction of the courts in Columbia, South Carolina. Should it become necessary for Geoffrey P. Alpert to institute an action to collect money due under this agreement, the contracting attorney, his/her firm and his/her client(s) agree that the courts in Columbia, South Carolina shall have exclusive jurisdiction over such action and the interpretation and enforcement of this agreement. Further, the contracting attorney, his/her firm and his/her client(s) agree that they will be responsible for all expenses and attorney fees associated with any action brought by Geoffrey P. Alpert to collect money due under this agreement or to enforce this agreement.

Entered into this the ____ day of _____, 2008, by:

Contracting Attorney, Individually

Contracting Attorney, As Authorized Agent for Firm

Contracting Attorney, As Authorized Agent for Client(s)



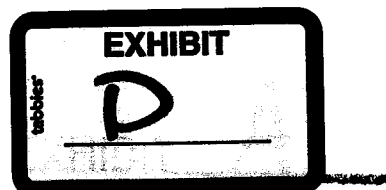
Alpert/
Boyd

PRELIMINARY EXPERT REPORT

MATERIALS REVIEWED

Depositions of the following persons:

B. Bland;
J. Boyd (2 volumes);
W. Cleveland;
S. Hanscom;
M. Hill;
W. Oldham;
M. Jones;
J. Krepela;
R. Moore;
L. Nelson;
C. Robertson;
J. Ruff;
B. Schultz;
L. Skaggs;
C. Spragins;
G. Taylor;
R. Tidwell;
B. Townsend;
D. Wheeler;
J. Willis;
W. Winfree;
(*Pollow case*);
M. Balee;
J. Bolden;
M. Burgess;
C. Cochran;
R. Collins;
J. Dwyer;
G. Leverne;
L. Goodwin;
W. Merritt;
B. Townsend;
C. Williams (2 volumes); and
W. Winfrey



Security Squad Files

T. Allbright;
R. Boyd;
H. Curtis;
A. Pollow; and
A. Reed.

Reginald Boyd Autopsy Report

County Medical Examiner's Report on R. Boyd

Selected Memphis Police Department Policies and Procedures

MPD In-Custody Death Files (San Diego Study)

Krosch, C., V. Brinker and B. Blackourne. Final Report of the Custody Death Task Force. San Diego Police Department and County Medical Examiner's Office. 1992.

Notes from those meeting.

International Association of Chief's of Police. Model Policy - Transportation of Prisoners - Issues and Concepts. National Law Enforcement Policy Center. 1990.

International Association of Chief's of Police 1990 Training Key 412 (Transportation of Prisoners) and 1992 Training Key 429 (In Custody Deaths).

National Law Enforcement Technology Center, Positional Asphyxia - Sudden Death. National Institute of Justice. June 1995.

Ray, Donald, John Howard, Corrin Fligner and R.J. Ward, Effects of Positional Restraint on Oxygen Saturation and Heart Rate Following Exercise. 9 American Journal of Forensic Medical Pathology 16-18 (1988).

Reay, Donald, Corrin Fligner, A. Stilwell and John Arnold. Positional Asphyxia During Law Enforcement Transport. 13 American Journal of Forensic Medical Pathology 90-97 (1992).

Reay, Donald T. Hog-Tied Restraint and Sudden Death. F.B.I. Law Enforcement Bulletin forthcoming).

Metro-Dade Training Tape concerning Hog Tying (1992)

Metro-Dade Police Study on In-Custody Deaths

FACTS:

On January 1, 1994, at approximately 10 PM, officers Barry Schultz and Larry Skaggs received a call from dispatch to go to 207 Winchester Rd.. where Mrs. Boyd had called and complained that her son, Reginald was creating a disturbance and refusing to leave. Upon arriving at the scene, Ms. Boyd informed the officers that her son had been smoking crack cocaine and was creating a disturbance. She also stated that he was scaring the children in the house, taking their toys and turning on the gas stove without lighting it. While Ms. Boyd was

telling the officers of her concerns, Mr. Boyd came part way down the stairs. The officers informed Mr. Boyd that his mother wanted him out of the house. At that time, Mr. Boyd became upset and stated he wasn't leaving. The officers informed him that if he did not leave voluntarily, that they would arrest him. He stated that he wasn't going to leave and the officers told him that he was under arrest. At that time, he turned and started going up the stairs. The officers followed and grabbed him as he was approaching the top of the stairs. A struggle ensued.

After he was controlled and handcuffed, Mr. Boyd was taken to the patrol car and placed in the back seat. As he sat in the back seat of the car, he began yelling, screaming, kicking the windows, banging his head and generally thrashing around. At that time, The Crisis Intervention Team (CIT) was called and officer Cleveland arrived. Officer Cleveland sprayed him with pepper gas, which calmed him down only for a short time. After he continued to act out and kick the inside of the patrol car, he was removed and hog-tied and placed back in the patrol car on his stomach. He was then transported to the jail.

OPINIONS

First, although the Memphis Police Department had no formal policy concerning the "hog-tie," it was a common practice of restraint that was used by members of the Memphis Police Department. In fact, the Security Squad had reviewed incidents wherein the hog-tie procedure was used but no officer was disciplined (Hanscom deposition; Nelson deposition; Willis deposition; and Hill, deposition). Due to the fact that the hog-tie procedure was used and not condemned by the Memphis Police Department, a custom and practice of the hog-tie procedure was thus created (Winfrey deposition; Kreppela deposition; Leverne deposition;

Dywer deposition; Jones deposition; and Skaggs deposition).

Second, the need for training on the proper use of restraints such as the hog-tie was so obvious that the failure to train amounts to deliberate indifference to the welfare and safety of those who are restrained. It is an expected and anticipated police function to have to secure, control and transport violent prisoners. Indeed, the Memphis Police Department equipped some of its officers (those on the Crisis Intervention Team) with leg restraints in 1991 (Jones deposition and Krepela deposition). This action demonstrated the obvious and foreseeable use of restraints on suspects and prisoners.

Third, it was well-known to police departments around the country and it was either well-known or it should have been well known that hog-tying posed unreasonable risks of positional asphyxia. There are several levels of notice that should have made the police department aware of the problems associated with hogtying (Collins deposition; Dywer deposition; and Jones deposition). First, there has been an on-going concern within the law enforcement community and in professional law enforcement, forensic and medical literature. Second, several incidents concerning the "hog-tie" procedure occurred, putting the department on notice that the hog-tie procedure is extremely dangerous. These incidents included Reed (1989). Pollow (1/1993) and Albright (6/1993). Third, the Memphis Police Department participated in the classic study conducted on in-custody deaths by the San Diego Police Department (Dywer deposition; Collins deposition). The Memphis questionnaire was sent to San Diego in March 1992 and the results of the survey were returned to the Memphis Police Department (Dywer deposition; Collins deposition). Fourth, Walter Winfrey, prior to the Boyd incident, and while Deputy Chief over uniform patrol, attended a seminar in Washington, DC (July 1992) wherein the dangers

associated with the hog-tie procedure were discussed. After returning from that seminar, and as a result of the information he received, he briefed Deputy Director Eddie Adair. He informed Deputy Director Adair that the department needed to prohibit the use of the hog tie procedure (Winfrey deposition).

Finally, the investigation of the Boyd case was untimely and incomplete. First, Sgt. Hanscom was told by Lt. Townsend to wait until the next day to interview officers Skaggs and Schultz (Hanscom deposition), however they were not interviewed until much later. Officer Skaggs was not interviewed until January 11, 1994, Officer Schultz was not interviewed until January 14, 1994, Officer Cleveland was not interviewed until January 11, 1994 and Lt. Krepela was not interviewed until January 6, 1994. Incredibly, hog-tying was not a concern of the investigation (Hanscom, deposition; Nelson, Deposition). Further, the restraints used were not even tagged as evidence (Willis deposition). Finally, the injuries sustained by Mr. Boyd were not investigated with information from the Medical Examiners Office (Hanscom deposition; and Robinson, deposition).

Qualifications and Fees:

See attached vita. Hourly fees are \$150. Per hour, and deposition and testimony fees include a \$1,000. fee for up to four hours and \$1,000 for every additional four hours or portion of a four hour session.

Prior Testimony:

Although I do not keep records, I have tried to create an accurate list from memory, which follows:

Trial Testimony

There were several trials in Miami in which I testified for the City of Miami Police Department and Metro-Dade Police Department. These cases involved shootings, chases, excessive force, hiring, training, policies and procedures.

Clotfelter v Nevada Highway Patrol - a pursuit case.
Miami - several cases involving crime statistics
U. S. Border Patrol pursuit cases in Southern California
Ludlum v Busbee an excessive force claim in Ga.
Birmingham, AL - several excessive force cases
Long Island, New York - a chase case
Watt v Chicago a pursuit case
Hildebrandt v City of Fairbanks, Alaska - a pursuit case
a pursuit case in Alabama

DEPOSITION TESTIMONY

I also testified in Dallas for the Dallas Police Department concerning the use of force, hiring, retention and training.

James v Chester an excessive force case in South Carolina
Schultz v Long, St. Louis Co. a case involving the shooting of a mentally ill suspect
Michigan - a pursuit case
Ohio - a pursuit case
Georgia - a pursuit case
Bass v District of Columbia - an excessive force case
Hughes v Cobb County - a failure to protect case.(Atlanta)
Los Angeles PD - a pursuit case/Los Angeles Sheriff's Department - a pursuit case
Brown v Cafino an excessive force case in South Carolina
Morales v Arizona a pursuit case
Glendale, Arizona - a pursuit case

Tennessee (Brunson) - a hogtie case
Knoxville, TN. A pursuit case
Tempkin v ??? in Maryland. - a pursuit case
Texas - there have been several pursuit cases in Texas (Austin & Houston).
Charleston, SC - several cases including excessive force, pursuit, private security and
employment policies
Erwin v Rose (5932 Circuit Ct. Of Maury Co., Tn)
New Jersey - several pursuit cases
Columbia, SC several cases involving excessive force and policy issues
Houston, TX - several pursuit cases
Martinez\Lopez v City of Miami - hiring and training issues
Sanders v City of Chicago emergency response case
Dayton, Ohio - a pursuit case
Westcott v City of Omaha - a shooting case

Keith P. Apur

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

TOMMIE HAMPTON

PLAINTIFF

VS.

NO. 04-2537

CITY OF MEMPHIS, TENNESSEE,

**L. McNair, Individually, and in His Official Capacity
as a police officer with the City of Memphis Police Department,**

**C. Teeters, Individually, and in His Official Capacity
as a police officer with the City of Memphis Police Department,**

**B. Holland, Individually, and in His Official Capacity
as a police officer with the City of Memphis Police Department,**

**F. Boyce, Individually, and in His Official Capacity
as a police officer with the City of Memphis Police Department**

DEFENDANTS

AFFIDAVIT

I, Geoffrey Alpert, being first duly sworn state:

1. I am a Professor of Criminology and Criminal Justice at the University of South Carolina, and I have been retained by Tommie Hampton to provide my expert opinion in the above-captioned case.

2. I have a Ph.D. in sociology from Washington State University, and have conducted research on police policies and customs for the past twenty years.

3. I have published extensively in the area of criminal justice, including scholarly articles concerning pursuit driving and the use of force and deadly force.

4. I have worked with numerous police agencies to develop policies, conduct training, and provide them with other consulting services.

5. I am familiar with police operating procedures as well as the customs developed by practice.



6. I base the statements contained herein on my education, research, work experience, knowledge of police policies and customs, as well as my review of the following documents pertaining to this case:

Master File 0307007198ME
Recorded statement of Robert Riggs
Interview with Robert Riggs
Tape of Interview with Jeffrey Madden
Statement of Officer Lucas McNair
Summary of Deposition of Officer Lucas McNair
Statement of Officer Charles Teeters
Summary of Deposition of Officer Charles Teeters
Statement of Officer Felipe Boyce
Summary of Deposition of Officer Felipe Boyce
Summary of Deposition of Officer Bradley Holland
Summary of Deposition of Officer Communications Supervisor Roosevelt Coleman
Summary of Deposition of Police Training Instructor Vincent Beasley
Summary of Deposition of Police Commander Gloria Crenshaw
Summary of Deposition of Police Dispatcher Elayne Calhoun
Police Reports
Dispatch Logs
Pictures of the Accident Scene
Memphis Vehicle Operation/Pursuit Policy
Hayes v. Hamilton County
Tenn. Statutes § 55-8-108, 55-10-205, 55-8-152
Answer of Defendant City of Memphis to Plaintiff's Complaint
Answer of Defendant City of Memphis to Plaintiff's Complaint
Answer of Defendant City of Memphis to Plaintiff's First Set of Interrogatories and Request for Production of Documents

7. On July 16, 2003, at approximately 8:14 a.m., an automobile accident occurred on the exit ramp of I-240 at its intersection with Warford in Memphis, Tennessee between a vehicle being driven by Jeffrey Madden, which was being pursued by Officers McNair, Teeters, Holland, and Boyce, and a vehicle being driven by Tommie Hampton. See Deposition of Lucas McNair ("Depo. of McNair") at 17-46; Deposition of Charles Teeters ("Depo. of Teeters") at 30-60.

8. Prior to this automobile collision, at approximately 8:06 a.m., Officers McNair and Teeters were operating an unmarked police car at or near the Wal-Mart store at 3950 Austin Peay when they observed a man run from the Wal-Mart store followed by an employee of Wal-Mart yelling for him to stop. The fleeing man entered a Ford Explorer, exited the parking lot on to Austin Peay, and began to travel southbound on Austin Peay. Officers McNair and Teeters followed the Ford Explorer southbound on Austin Peay to southbound Old Austin Peay, then westbound on Stage, then southbound on Jackson, then westbound on I-240. During the pursuit, Officers McNair and Teeters radioed for assistance, and Officers Holland and Boyce joined the chase in marked police cars. Whereupon, the Ford Explorer being driven by Jeffrey Madden entered the exit ramp of I-240 approaching Warford Street when Madden did a u-turn to avoid the pursuit and proceeded eastbound on the westbound ramp. The Ford Explorer driven by Madden continued the wrong way on the exit ramp as officers Holland and Boyce began to turn around to continue the chase when Madden's vehicle, going at a high rate of speed, struck Hampton's vehicle head on. See Depo. of McNair at 17-46; Depo. of Teeters at 30-60.

9. Officers McNair, Teeters, Boyce, and Holland did not engage their blue lights or sirens at any time in the pursuit prior to turning around and beginning to travel the wrong way on the exit ramp. See Depo. of McNair at 14; Depo. of Teeters at 26, 33; Deposition of Felipe Boyce ("Depo. of Boyce") at 29; Deposition of Bradley Holland ("Depo. of Holland") at 24.

10. At all times in question on July 16, 2003, Officers McNair, Teeters, Boyce, and Holland were acting under the color of law and by virtue of their authority as law enforcement officials of the City of Memphis, Tennessee. See Answer of Defendant City of Memphis to Plaintiff's Complaint ¶¶ 4-7; Answer of Defendant Officers McNair, Teeters, Holland, and Boyce to Plaintiff's Complaint ¶¶ 4-7.

11. Based upon my review of the aforementioned documents, I have reason to believe that Officers McNair and Teeters pursued the Ford Explorer in an unmarked police car at a high rate of speed and/or without due regard for the safety of all persons, thus triggering Memphis Vehicle Operation/Pursuit Policy. See Memphis Vehicle Operation/Pursuit Policy I; Tape of Interview with Jeffrey Madden.

12. In pursuing the Ford Explorer, Officers McNair and Teeters violated the Memphis Vehicle Operation/Pursuit Policy in numerous ways, including:

a. Initiating the pursuit without probable cause to believe that one or more occupants of the Ford Explorer had committed a violent felony at any time during their pursuit. See Memphis Vehicle Operation/Pursuit Policy IV.A.; Depo. of McNair at 18, 21, 24; Depo. of Teeters at 33, 37, 34, 71.

b. Pursuing the Ford Explorer without using a blue light or siren. See Memphis Vehicle Operation/Pursuit Policy V.A.4.; Depo. of McNair at 14; Depo. of Teeters at 26, 33.

c. Pursuing the Ford Explorer without authorization from a supervising officer. See Memphis Vehicle Operation/Pursuit Policy IV.B.; Depo. of McNair at 58; Depo. of Teeters at 71-72.

13. Based upon my review of the aforementioned documents, I have reason to believe that Officer Boyce pursued the Ford Explorer at a high rate of speed and/or without due regard for the safety of all persons, thus triggering Memphis Vehicle Operation/Pursuit Policy. See Memphis Vehicle Operation/Pursuit Policy I; Recorded Statement of Robert Riggs.

14. In pursuing the Ford Explorer, Officer Boyce violated the Memphis Vehicle Operation/Pursuit Policy in numerous ways, including:

a. Initiating the pursuit without probable cause to believe that one or more occupants of the Ford Explorer had committed a violent felony at any time during their pursuit. See Memphis Vehicle Operation/Pursuit Policy IV.A.; Depo. of Boyce at 44.

b. Pursuing the Ford Explorer without using a blue light or siren. See Memphis Vehicle Operation/Pursuit Policy V.A.4.; Depo. of Boyce at 29.

c. Pursuing the Ford Explorer without authorization from a supervising officer. See Memphis Vehicle Operation/Pursuit Policy IV.B.; Depo. of Boyce at 44.

15. Based upon my review of the aforementioned documents, I have reason to believe that Officer Holland pursued the Ford Explorer at a high rate of speed and/or without due regard for the safety of all persons, thus triggering Memphis Vehicle Operation/Pursuit Policy. See Memphis Vehicle Operation/Pursuit Policy I; Recorded Statement of Robert Riggs.

16. In pursuing the Ford Explorer, Officer Holland violated the Memphis Vehicle Operation/Pursuit Policy in numerous ways, including:

a. Initiating the pursuit without probable cause to believe that one or more occupants of the Ford Explorer had committed a violent felony at any time during their pursuit. See Memphis Vehicle Operation/Pursuit Policy IV.A.; Depo. of Holland at 29.

b. Pursuing the Ford Explorer without using a blue light or siren. See Memphis Vehicle Operation/Pursuit Policy V.A.4.; Depo. of Holland at 24.

c. Pursuing the Ford Explorer without authorization from a supervising officer. See Memphis Vehicle Operation/Pursuit Policy IV.B.

17. By pursuing the Ford Explorer in blatant disregard of the Memphis Vehicle Operation/Pursuit Policy, Officers McNair, Teeters, Boyce, and Holland engaged in conduct that evince a lack of due regard for the safety of all persons and “shocks the conscience.”

18. The unlawful pursuit by Officers McNair, Teeters, Boyce, and Holland and the corresponding automobile accident are directly attributable to a custom or policy of the City of Memphis.

19. The City of Memphis created policies or customs by failing (1) to adequately train and educate its officers in the instigation, continuation, and termination of high speed pursuits; (2) to adequately monitor and evaluate the performance of its officers and their high speed pursuit applications; (3) to maintain adequate records of its officers pursuit applications; (4) to enforce high speed pursuit policies to avoid foreseeable injuries to innocent third parties; and (5) to adequately investigate citizen complaints, officer misconduct, and compliance with the Memphis Vehicle Operation/Pursuit Policy.

20. Officer McNair has received a total of 8 hours of training on pursuit procedures and the Memphis Vehicle Operation/Pursuit Policy. Officer McNair's training took place in 1998, and he has not had any follow-up training on pursuit procedures since then. See Depo of McNair at 66; Deposition of Vincent Beasley ("Depo. of Beasley") at 25.

21. Officer Teeters has received a total of 8 hours of training on pursuit procedures and the Memphis Vehicle Operation/Pursuit Policy. Officer Teeters' training took place in 2001, and he has not had any follow-up training on pursuit procedures since then. See Depo of Teeters at 11; Depo. of Beasley at 29.

22. Officer Boyce has received a total of 8 hours of training on pursuit procedures and the Memphis Vehicle Operation/Pursuit Policy. Officer Boyce's training took place in 1995, and does not appear to have had any follow-up training on pursuit procedures since then. See Depo of Boyce at 51-52; Depo. of Beasley at 33-35, 38.

23. Officer Holland appears to have received a total of 8 hours of training on pursuit procedures and the Memphis Vehicle Operation/Pursuit Policy when he joined the Memphis police force in 1990, and does not appear to have had any follow-up training on pursuit procedures since then. See Depo of Holland at 8; Depo. of Beasley at 42.

24. Officers McNair, Teeters, Boyce, and Holland do not appear to have been monitored or evaluated on pursuit procedures in general or on the Memphis Vehicle Operation/Pursuit Policy. See Depo. of Beasley at 27, 31, 36, 43.

25. The City of Memphis failed to adequately investigate the pursuit in question and discipline Officers McNair, Teeters, Boyce, and Holland for violations the Memphis Vehicle Operation/Pursuit Policy. See Depo. of McNair at 64; Depo. of Teeters at 75; Depo. of Boyce at 46-47.

26. The City of Memphis fails to maintain any records of police pursuits, citizen complaints of improper pursuits, or compliance with the Memphis Vehicle Operation/Pursuit Policy. See Answer of Defendant City of Memphis to Plaintiff's First Set of Interrogatories and Request for Production of Documents, Interrogatory 10 and 11, Request for Production 8 and 9; Deposition of Gloria Crenshaw ("Depo. of Crenshaw") at 22.

27. The City of Memphis fails to adequately investigate alleged violations of the Memphis Vehicle Operation/Pursuit Policy and properly discipline its officers for violations of the policy. See Answer of Defendant City of Memphis to Plaintiff's First Set of Interrogatories and Request for Production of Documents, Interrogatory 12, Request for Production 10.

28. The City of Memphis' failure to adequately train its officers, evaluate their performance, maintain proper records, investigate violations, and enforce its polices concerning high speed pursuits and the Memphis Vehicle Operation/Pursuit Policy evinces a deliberate

indifference to the rights of persons with whom the police come into contact that amounts to a policy or custom of the city and was the moving force behind the illegal pursuit, and the corresponding automobile accident, in this case.

Further affiant sayeth not.

Geoffrey Alpert

SUBSCRIBED AND SWORN TO before me this ____ day of October, 2005.

Notary Public

My Commission Expires:

Geoffrey P. Alpert

97 Muskrat Run, Irmo, South Carolina 29063
Telephone: (803) 732-1336 Fax: (803) 777-7319

November, 19 2004

PRELIMINARY REPORT

RE: Buckley v City of Memphis

I, Geoffrey P. Alpert, declare that the following statements reflect objective truth as extracted from records provided to me by Mr. Tommy Parker or represent my expert opinion, to the highest degree of professional certainty. If called to testify in this matter, I will express the opinions contained in this report unless provided with materials that change my opinions.

1. I have a Ph.D. in Sociology from Washington State University and have been conducting research on police and law enforcement agencies for the past twenty years. I have been awarded federal, state and local grants to investigate various aspects of police work. I have been awarded several fellowships to investigate police activities and I have been asked by numerous police agencies to write policies for them, conduct training and to consult with them on various issues. I have written more than 100 publications on criminal justice, many of which deal with police policies, customs and practices. I have written articles dealing specifically with pursuit driving and the use of force and deadly force. I am familiar with police operating procedures as well as the customs developed by practice. My current position is Professor of Criminology and Criminal Justice at the University of South Carolina. I have attached a copy of my curriculum vitae.

2. The following materials have been reviewed:

Complaints

Answers

Inspectional Services Bureau Report (internal affairs)

Discovery Responses which include reference to training materials

Autopsy Report and Photographs

Crime Scene Photographs

EMS Report

Excerpts from the MPD Policy and Procedures Manual re: Restraint

Baton Training Curricula (1987, 2003)

Restraint Training Curricula

1



Crisis Intervention Team Training
In-Custody Death Investigations
Statement Barbara Avery
Statement Mr. Leroy Hanley
Statement - Jason Berry
Statement Lt. Landrum
Statement Officer Schilk
Statement Earlene Morgan
Statement Wilbur Smith
Statement Eugene Walls
Statement Sandra Stone
Statement Franklin Watson
Statement Jimmy Stone
Statement Leroy Hanley
Statement Bertha Miller
Statement Lottie Buckley
Statement Valoria Dortch
Statement Erica Dortch
Statement Salisa Avery
Statement Jason Berry
Statement Isaac Head
Statement Jim Gaither
Statement Officer Schaefer
Statement Lt. Rosser
Statement Major Charles Cochran
Case Summary
Autopsy
Deposition Kurtis Schilk
Deposition of Robert Tebbitts
Deposition Victoria Johnson
Deposition David Linville
Deposition Phillip Penny

Deposition Anthony Rosser
Deposition David Linville
Deposition Phillip Penny
Deposition Anthony Rosser
Deposition Johnny Schafer
Deposition of Victoria Johnson with the personnel files of the officers
Affidavit Kurtis Schlik
Affidavit Barbara Avery
Affidavit Leroy Hanley
Affidavit Bertha Miller
Affidavit Sandra Stone
Affidavit Franklin Watson

3. Facts:

April 19, 2003 at approximately 4:30 pm, several 911 calls were made from friends and neighbors of Denvey Buckley. The calls, which occurred within minutes of each other, served to advise representatives of the MPD that Mr. Buckley, an individual with a mental illness had injured himself by cutting his wrists. Mr. Buckley's friends and neighbors had contacted 911 and/or the MPD in an effort to secure treatment for Mr. Buckley. Mr. Buckley was at his home, at 1115 South Rembert, in Memphis, at the time of these events and by the time the police arrived, Mr. Buckley's friends and neighbors had calmed him down to the point where Mr. Buckley was sitting outside on his porch, with towels wrapped around his wrists. He was unarmed and no longer posed any immediate danger to himself or anyone else.

The initial call alerting the Memphis Police Department concerning Mr. Buckley, a mentally challenged individual, was made at 4:30 p.m. However, no request was made by the MPD dispatcher for CIT officer assistance until 4:47 p.m.(17 minutes). At 4:48 p.m. the unit in which CIT Officer Schafer had been assigned that day was reported as being "CIT equipped" and he was sent to the scene. Officer Schafer was supposed to have with him when responding to this call a non-lethal SL-6 - which is a tool to fill in the gaps between pepper spray and/or a nightstick . It is used to temporarily, without serious injury, incapacitate a violent or an uncontrollable individual. According to the MPD, CIT officers responding to calls such as the Buckley case are to have the SL-6 device with them and available for use. Unfortunately, Officer Schafer did not have his SL-6 with him on the call to Mr. Buckley.

Officers Phillips and Tebbetts arrived first, followed by Officers Penny and Schilk. There was radio traffic that a CIT officer was on his way. After a few minutes, Officer Johnny Schafer, who was a trained CIT officer arrived on the scene. All the officers were aware that Mr. Buckley was mentally challenged.

By the time officers arrived, Mr. Buckley had been calmed down by his friends and neighbors and was on his porch, with his wrists wrapped in towels. There were no weapons in sight. Officers Phillips and Tebbetts were standing on or near the porch when Officers Penny and Schilk arrived. There are various versions of what happened once the officers arrived. For example, Officer Tebbetts testified that officers Schilk and Tebbetts walked to back of the house. There was some testimony about the officers gathering behind a police car and putting on latex gloves and deciding to let Mr. Buckley back in his house. Unfortunately, there is not a lot of consistency among the versions of what happened and it is not possible to determine exactly what transpired at Mr. Buckley's house.

Similarly, once Mr. Buckley got up from his chair and was apparently attempting to re-enter his house, the versions of what happened vary significantly between the officers and the civilian witnesses. In fact, if the officers' versions are to be believed, it may be that the only policy they violated was the use of force policy, in that they did not attempt to use control Mr. Buckley with their hands before using a baton. They all testified that no one hit Mr. Buckley on the head and that all force used was necessary to control Mr. Buckley. There was testimony that Mr. Buckley was violent, attacked them and threw a chair at them, that he ran away but fell in the street due to his pants falling around his ankles, and that the officers only controlled Mr. Buckley with reasonable force. They also testified that when on the ground, officers did not beat him, they did not choke him and they got off of him once he was under control. Officer Schafer stated that he used a pepper spray on Mr. Buckley several times but it did not work to subdue him or allow the officers to control him. Officer Schilk testified that he used his baton on Mr. Buckley's shoulders to help control him.

The officers' version of the events is in stark contrast to that presented by the civilian witnesses. For example, Barbara Avery witnessed the police officers arrive and go to the porch. She reported that the officers congregated around one of the police cars and handed out gloves. She also stated that when the officers began to approach Mr. Buckley, and he realized that they were planning on surrounding him and not letting him go back inside, he got up and went toward the door. At that time, she said, the officers grabbed him and began hitting him with night sticks. He got up and ran toward the street where he fell and the officers jumped on top of him, were hitting him, and Officer Schilk had a stick under his neck and applied pressure upwards, and another officer used spray on him. She stated, in contradiction to the officers statements, that Mr. Buckley never called the officers "M-Fers," never threw a chair at the officers, was only trying to get away from the officers and never attacked the officers. She also stated that Mr. Buckley was kept face down, under control for several minutes before he quit breathing, never saw him do a "push-up," and stated that the officers did not step away from Buckley until after he had quit breathing.

Mr. Leroy Hanley observed Mr. Buckley calmly sitting on his porch talking to two officers and it seemed that he was willing to go to the hospital. When the other officers arrived, they approached him and when he attempted to go back in his house, one officer grabbed his shirt, and the others began beating him with their batons. As he ran down his steps, the officers chased him and one officer hit him in the back of his head with a baton, which caused him to fall. Mr. Hanley saw an officer place a baton under Mr. Buckley's chin and pull up while another sprayed him. Ms. Bertha Miller saw officers hit with batons after he was hand cuffed. She saw

an officer put nightstick on his neck and put pressure on it. Ms. Sandra Stone saw officers hit him in the head with their night sticks and saw one officer put baton across his neck and press down on it. Mr. Franklin Watson saw officers hit Mr. Buckley on the head with a nightstick and saw one officer place a nightstick on his neck and pushed down with pressure.

In response to the 911 calls, at least two units from the City of Memphis' Fire Division Emergency Medical Technician Service (EMTs) came to the scene. One unit stopped and three EMTs from the unit, who were all trained to administer medical care, watched the incident unfold. They do not interfere until requested by the police. Mr. Jason Berry who was a paramedic saw police beat Mr. Buckley on the porch and on the street. He saw hits to the back and head with night stick. He saw Mr. Buckley try to resist defensively not aggressively. Mr. Jim Gaither, who was riding with the EMS stated that the blows with batons did not affect suspect and he did not see hits to head and did not see spray being used. After several minutes of fighting, Mr. Buckley became unresponsive and the EMTs examined him.

4. Conclusions:

Depending on which version of the "facts" is believed, determines which policies the police officers violated. If the civilian witnesses are to be believed, then the officers are in violation of a number of policies, proper police procedures and customary police practice. The ability of the Memphis Police Department to identify potentially problem officers under what is commonly known as an Early Warning System, is unclear at this time. This report might be supplemented if sufficient information is learned about this process during discovery. Clearly, the Memphis Police Department took the civilians' statements seriously and disciplined the officers as follows:

Sustained Violations:

Kurtis Schilk - Personal Conduct, Excessive Force (profanity, derogatory comments) Baton strikes were not in areas taught for compliance)

Johnny Schafer - Neglect of Duty - not having CIT equipment

Robert Tebbetts - Excessive Force (Baton strikes were not in areas taught for compliance)

Philip Penny - Excessive Force (Baton strikes were not in areas taught for compliance)

An analysis of this event must be taken in stages. First, the officers' approach to the situation must be considered. Second, how the officers responded to Mr. Buckley on the porch, and third, the actions that were taken to control Mr. Buckley on the street need to be assessed.

First, the approach by the officers should have considered that a CIT officer, one who is trained in the handling of mentally challenged suspects was on the way. The officers on the scene should have attempted to keep Mr. Buckley calm and not stated in a voice loud enough for him to hear, that he was not being allowed back in his house. Officer Penny, who had experience with the mentally challenged was doing a good job keeping Mr. Buckley calm until Officer Phillips walked in front of them and Officer Schilk loudly announced that Mr. Buckley was not

going to be allowed back in his house.

Second, when Mr. Buckley attempted to go back in his house, the officers should have followed their own use of force continuum and national police standards, and used their hands and wrestled Mr. Buckley away from the door before resorting to the higher level of force, the use of a baton. Reasonably well-trained officers would have increased the use of force minimally to control Mr. Buckley. An objectively reasonable analysis reveals that the officers should have wrestled with Mr. Buckley before striking him with their intermediate weapons - the batons. In addition, Officer Schafer was to have as part of his equipment an SL-6, which is a defensive "weapon" designed to control mentally challenged individuals and also used in crowd control. He testified that he observed officers Schilk., Penny & Tebbetts striking Mr. Buckley with batons at which time he released the chemical spray. He further testified that the spray worsened the situation, and Mr. Buckley charged the officers. Perhaps the use of an SL-6 would have brought the situation under control. In any case, there were five officers on the scene. Normally, that is sufficient manpower to control a man, even one that is the size of Mr. Buckley, at approximately 240 pounds. If the use of physical force was not sufficient, then the use of a chemical spray would be justified and finally, the use of an intermediate weapon, such as a baton could be used. The officers testified they never hit Mr. Buckley in the back or head, a fact that is disputed by the medical evidence and civilian eye witness testimony.

Third, once Mr. Buckley was taken to the ground, either by falling, or as a result of a baton strike, the officers should have been able to control and handcuff him without the use of a baton on his shoulders, on his neck or under his neck. The use of a baton for the purposes of choking or restraining by placing it on or under the neck of an individual is not an appropriate use of the weapon. A reasonably prudent officer would not use a baton in such a manner, except in a deadly force situation. It is objectively unreasonable to use a police tool in such an improper way that is close to a deadly force application under this set of facts. The presence of five officers should be sufficient to control and handcuff Mr. Buckley. Once Mr. Buckley is under control, a reasonably well-trained officer would not stay on top of him or in any way interfere with him. They must make sure he is conscious and breathing. This is critically important after the officers have been in a physical altercation with the prisoner, who, like Mr. Buckley, fits the profile of a person who is susceptible to positional or compression asphyxia. An objective analysis indicated that sitting on top of a controlled suspect after a fight is unreasonable and extremely dangerous.

The officers involved in this interaction with Mr. Buckley all claimed to be poorly trained in the use of a baton, and the training officer, Lt. Rosser, stated that batons are authorized when empty hand force is ineffective and that officers are taught to hit three areas on the leg, and that a baton is not to be used as a restraining device. Interestingly, in his deposition, Lt. Rosser testified that strikes to any other place may be permissible but not taught. He left open the possibility that the strike of a baton to other areas of the body would be appropriate according to City of Memphis Police training. If this is true, and officers are trained to believe that strikes to other parts of the body, including the groin, are permissible, then the training is below well recognized national standards and needs to be overhauled.

Scott R. Ap

Geoffrey P. Alpert

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April 1, 2005

SUPPLEMENTAL REPORT

Buckley v City of Memphis

Documents Reviewed

Deposition James Bolden
Deposition Charles Cochran
Deposition Albert DeWitt
Deposition Alfred Gray
Deposition Raymond Hopkins
Deposition Douglas Phillips
Deposition Janice Pilot
Deposition Anthony Rosser
Deposition Ray Schwill
Deposition Ann Taylor
Deposition Betty Winter Vol. I and II
Expert Report - Dr. Neuman
Expert Report - Lou Reiter

Conclusions

By 2003, the City of Memphis was clearly aware of the problems with in-custody deaths. In fact, the City of Memphis has been involved in prior litigation concerning the hog-tie, and has outlawed its use due to the known risks.

After review of the above-listed documents, there are two conclusions to add to my Preliminary Report. First, the training materials provided by the City are appropriate and complete. However, there is compelling evidence provided in the depositions of officers that they were not provided with this material. In other words, the City has failed to effectively disseminate the training materials concerning positional or compression asphyxia.

Second, the Early Intervention Program, as described by Dr. Winter, is too limited to identify problem officers as it relies solely on complaints of excessive force. Early Warning or Early Identification Systems need to include as criteria, multiple indicators of officer behavior. Many systems incorporate multiple measures of behavior to determine which officers need a further review.

Bland v. Memphis
Documents Review

Pleadings:

Complaint

Answers

Rule 26(a) Disclosures

Memphis - Answers to Interrogatories and Requests for Production of Documents

Officers – Answers to Interrogatories and Requests for Production of Documents

Answers to Request for Admission

Bland – Answers to Interrogatories and Requests for Production of Documents

Depositions with All Exhibits:

David Bland

Officer Peacock

Officer Kellum

Officer Lewis

Officer Renfroe

Officer Ngein

Officer Sloan

Officer Stone

Malessa Jones

Sheryl Stanback

Betty Winters (12/5/07; 3/3/08; 8/19/08)

Todd Mullen

Adrienne Dobbins

Michael Rallings

Jeff Tow

Joe Stark

Larry Godwin

Glenn Williams

Brian McNamee

Other Evidence:

Dispatch Tape with partial transcription

Memphis Towers Video

Chart of Police Misconduct Articles

Chart of Godwin Statements to the Press



ISB Files:

ISB Files Table

ISB # 1075-06

ISB # 1025-03

ISB # 1030-99

ISB # 1036-01

ISB # 1036-02

ISB # 1047-01

ISB # 1048-04

ISB # 1052-05

ISB # 1055-98

ISB # 1061-07

ISB # 1067-98

ISB # 1075-06

ISB # 1075-07

ISB # 1077-04

ISB # 1093-03

ISB # 1096-00

ISB # 1098-98

ISB # 1104-99

ISB # 1112-97

ISB # 1115-99

ISB # 1129-99

ISB # 1155-02

ISB # 1178-05

ISB # 1186-03

ISB # 1192-97

ISB # 1221-98

ISB # 1223-02

ISB # 1226-97

ISB # 1229-98

ISB # 1245-98

ISB # 1273-02

ISB # S06-057

ISB # S06-057

ISB # MI022-97

ISB # MI029-97

ISB # MI041-02

ISB # MI047-98

AEO File # 015-02

ISB # S00-010

ISB # S02-078

ISB # S03-018

ISB # S06-016

ISB # S016-04

ISB # S025-97

ISB # S029-03

ISB # S038-03

ISB # S045-02

ISB # S045-03

ISB # S047-97

ISB # S99-085

Fortner v. Memphis
Documents Review

Pleadings:

Complaint

Answers

Rule 26(a) Disclosures

Memphis - Answers to Interrogatories and Requests for Production of Documents

Officers – Answers to Interrogatories and Requests for Production of Documents

Answers to Request for Admission

Fortner - Answers to Interrogatories and Requests for Production of Documents

Depositions with All Exhibits:

Timothy Goodwin

Chris Moffat

Walker Kay

Joshua Leslie

Malessa Jones

Sheryl Stanback

Betty Winters (12/5/07; 3/3/08; 8/19/08)

Todd Mullen

Adrienne Dobbins

Michael Rallings

Jeff Tow

Joe Stark

Larry Godwin

Glenn Williams

Brian McNamee

Other Evidence:

Chart of Police Misconduct Articles

Chart of Godwin Statements to the Press

Selected Medical Records from EMS, Delta Medical Center and LeBonhuer Hospital

Autopsy Report

Statement of Jerome Fortner

Statement of Erica Sheffa

Disciplinary Charts of Supervisors and Officers on the Scene

Affidavit of Kris Sperry

Material Listed in Expert Report – Bland v. Memphis

ISB Files:

ISB Files Table

ISB # I075-06

ISB # I025-03

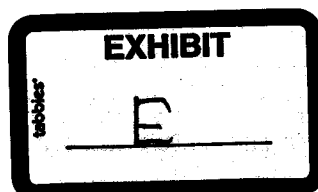
ISB # I030-99

ISB # I036-01

ISB # I036-02

ISB # I047-01

ISB # I048-04



ISB # I052-05
ISB # I055-98
ISB # I061-07
ISB # I067-98
ISB # I075-06
ISB # I075-07
ISB # I077-04
ISB # I093-03
ISB # I096-00
ISB # I098-98
ISB # I104-99
ISB # I112-97
ISB # I115-99
ISB # I129-99
ISB # I155-02
ISB # I178-05
ISB # I186-03
ISB # I192-97
ISB # I221-98
ISB # I223-02
ISB # I226-97
ISB # I229-98
ISB # I245-98
ISB # I273-02
ISB # S06-057
ISB # S06-057
ISB # MI022-97
ISB # MI029-97
ISB # MI041-02
ISB # MI047-98
AEO File # 015-02
ISB # S00-010
ISB # S02-078
ISB # S03-018
ISB # S06-016
ISB # S016-04
ISB # S025-97
ISB # S029-03
ISB # S038-03
ISB # S045-02
ISB # S045-03
ISB # S047-97
ISB # S99-085