



# PORAC Law Enforcement

APRIL 2012

NEWS



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# PORAC Law Enforcement

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NEWS

The following directors are responsible for the operation of PORAC. Your local director or Executive Committee representative may be contacted if you have any questions concerning PORAC. For a director's phone number, call 1-800-937-6722.

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# President's Message

RON COTTINGHAM PORAC President



For all you procrastinators out there waiting until April 17 to file your income taxes — you still have time to consider a donation to the California Peace Officers' Memorial Foundation (CPOMF) Fund by using the tax check-off when filing your yearly tax returns. Getting a refund? This is a quick and easy way to donate. CPOMF is a bona fide charity (a 501(c)(3), charitable, nonprofit organization), so this contribution will be deductible on next year's taxes. The line to use for this purpose has been moved and may be harder to locate. Page 17 of the *PORAC Law Enforcement News* has a sample of the tax form to better assist you in making a donation. The money donated is strictly used to aid the immediate families of fallen officers with financial assistance and scholarships and to conduct the memorial ceremony each year in Sacramento. Currently, there are over 1,600 names of California peace officers who have paid the ultimate price and sacrificed their lives for the citizens of California. As stated in previous articles, the CPOMF executive director does not take a salary and each member of the Board of Directors pays for their own travel and lodging so the donated funds will be used for the intended purpose.

## Tribute to the Oakland Four

If you want to know why the California Peace Officers' Memorial Foundation was formed, this should provide the answer: March 21 was the three-year anniversary of the brutal killing of four Oakland police officers. Officer John Hege, Sergeant Mark Dunakin, Sergeant Daniel Sakai and Sergeant Ervin Romans gave their lives to the citizens of Oakland and California doing what they loved and doing what they were sworn to do — protecting the citizens of their city and state. On that fateful day in 2009, they confronted a parolee-at-large who had been on a violent crime spree. Each of them was maliciously gunned down at the hands of the parolee-at-large. Renee Hassna, Executive Director of the Oakland POA, put together a tribute to the fallen ([www.youtube.com/watch?v=a\\_B--xdgheE&feature=share](http://www.youtube.com/watch?v=a_B--xdgheE&feature=share)). The poem reprinted here was imbedded in the message.

### *Somebody Killed a Policeman Today* (Author Unknown)

*Somebody killed a policeman today,  
and a part of America died.*

*A piece of our country he swore to protect  
will be buried with him at his side.*

*The beat that he walked was a battlefield too,  
just as if he'd gone off to war.*

*Yes, somebody killed a policeman today,  
in your town or mine.*

*While we slept in comfort behind our locked doors,  
a cop put his life on the line.*

*Now his ghost walks a beat on a dark city street,  
and he stands at each new rookie's side.*

*He answered the call, of himself gave his all,  
and a part of America died.*

*Say thank you to a cop today!*

Every year in California, we bury too many peace officers who have paid the ultimate price and laid down their lives to protect the citizens of this state. Every year in Sacramento, there is a ceremony to honor these fallen heroes. Every year, we hope there will be no more names to put on the monument. We know all too well that can never be. As long as we have men and women who are courageous enough to put on a uniform, pin on a badge and strap on a sidearm, we will have peace officers who pay the ultimate price. The California Peace Officers' Memorial Foundation is there to take care of the families.

## Federal Lobbying

In March, the PORAC Executive Committee traveled to Washington, D.C., to lobby on issues and legislation relevant to California law enforcement. Yes, approximately 12 years ago PORAC took the bold step of becoming our own federal lobbying group. Every year, we send the PORAC Executive Committee to D.C. to lobby on federal issues relevant to our California members. As usual, our lobbying firm, Patton Boggs, fully prepared the Committee before they embarked on a vigorous lobbying agenda, which included Congressional visits, Senate committee meetings and House committee meetings. Patton Boggs also arranged for VP Mike Durant to testify at the House Appropriations Subcommittee on Commerce. VP Durant testified on the importance of Community Oriented Policing Services grants and Byrne Justice Assistance Grants to California law enforcement. These grants are extremely important to California and have helped fund many jobs, rehire peace officers who have been laid off and fund multijurisdictional task forces. PORAC is there working to bring vital funding to California law enforcement.

Stay Safe. ✨



# Vice President's Report

**MIKE DURANT** PORAC Vice President



Last month, members of the PORAC Executive Committee traveled to Washington, D.C., for our annual meeting with many of our federal legislators and key members from select agencies to discuss policies and current federal legislation affecting law enforcement. Once again, we worked closely with our federal advocates from Patton Boggs to arrange each of these meetings.

Many of our members arrived early on the East Coast, which provided several of us with the opportunity to travel to New York City and pay our respects at the newly opened 9/11 Memorial. During our visit to the memorial, I overheard many of those present comment on the tremendous sacrifice that each of our first responders gave on that fateful day in 2001. It was a rare opportunity for each of us to be able to pay our respects to all the heroes of 9/11.

One of our first meetings was with Director Bernard Melekian from the Department of Justice's Community Oriented Policing Services (COPS) programs. Director Melekian is a former Chief of Police from Pasadena Police Department and a strong supporter of law enforcement. When we met with him and several of his staff members, he was very interested to hear from PORAC representatives from around the state about how best to implement the various federal funds for law enforcement. Each of our members present gave the director many suggestions, as well as listened to several ideas he and his staff had recently developed. One of the most productive aspects of this particular meeting was his willingness to listen to our members and give consideration on how best to utilize the funds that have been allotted for our COPS programs.

Along with meeting Senator Barbara Boxer and senior staff from Senator Diane Feinstein's office, PORAC had the opportunity to meet with other key federal legislators to discuss several pieces of legislation, including the Violence Against Women Reauthorization Act of 2011. During these meetings, our PORAC contingency was able to influence Senator Heller from Nevada to become the 60th co-sponsor of that legislation.

Later in the week, PORAC met with Alan Hoffman, the Deputy Chief of Staff to Vice President Joe Biden. Mr. Hoffman reiterated the vice president's strong support for law



*From left, Treasurer Marcelo Blanco, Secretary Mike Sobek, National Law Enforcement Officers Memorial Fund (NLEOMF) Executive Director Craig Floyd and Vice President Mike Durant met at the NLEOMF office to update PORAC on the progress of the National Law Enforcement Museum.*

enforcement and his willingness to continue to do whatever possible to assist public safety through the federal process. During this meeting, Mr. Hoffman also wanted to hear from our PORAC representatives from around the state about what is assisting local law enforcement, as well as what is needed for us to better serve our communities. After the meeting, Mr. Hoffman approached me and told me how impressed he was with PORAC and the members in Washington, D.C., representing each of you.

At the beginning of this month, many of us will be in Southern California attending our PORAC Training Symposium. During this training session, PORAC will be addressing many training needs for our members, including the initiative known as the "Corporate Power Grab." It will be essential for us to reach out to our members in an effort to educate them on the strong importance of defeating this initiative. Over the coming months, PORAC will be discussing in more detail the ramifications to each of us and our local organizations should this initiative not be defeated. ✨



# Treasurer's Message



**MARCELO BLANCO** PORAC Treasurer

## Fiscal Accuracy vs. Fiscal Deception

In case you didn't realize it, the 2011-2012 fiscal year is winding down. Your association needs to be actively involved in the economic developments of your city or county, especially if you are at the table or getting ready to sit at the table. Remember the rhetoric being disseminated to our local governments by the League of Cities, and that is not to miss the opportunity to capitalize on a good crisis. Fortunately for us, the light at the end of the tunnel is starting to flicker, making cities and counties fearful they will not be able to use the economy in their favor. In preparing for the table, your association should be hypersensitive to the fiscal information being brought to the table by your government representatives.

We need to heed caution and learn from what is happening in the City of San Jose and their "potential" fiscal crisis. I commend the work of their association in not taking the City's information at face value. Their mayor took a bit of information, twisted it to favor his agenda and ran with it, trying to cripple the bargaining power of the association. San Jose's mayor took exaggerated pension liability numbers and addressed every forum possible with his message of impending doom. **Wow.** I think we have seen this tactic before, especially from most of the individuals out there screaming of the top of their lungs that the Great Recession was caused by government workers or that we are to blame for the lack of recovery. San Jose POA was steadfast in their approach and the truth was finally revealed. The numbers being spewed by the mayor were overly exaggerated. In reality, their unfunded pension liability was half of what he was stating.

This tactic and other similar ones are being utilized on a regular basis by city leaders to try to strong-arm their employees into making concessions. It's unfortunate negotiations can't be in good faith. Most cities and counties will quickly extend their hands and ask for help from employees when times are grim; however, they forget to reciprocate when their economic picture improves. As we continue to navigate through these tough times, we need to be vigilant of how our cities and counties are spending their monies. Are city and county leaders asking for concessions and at the same time using the savings to spend on frivolous gimmicks or defend themselves from poor decision making? We need to stay informed and educate our family and friends as to these and other emerging tactics being used by our local governments to erode what has taken years of bargaining to achieve.

Let's shift gears and look at the national economic picture. I recently reviewed an old article that discussed the ever-changing mood on Wall Street based on the headlines of the day. At that point, the market was reacting to unrest in the Middle East. Well, not a whole lot has changed in the last year. Again we find the market fluctuating based on unrest in the Middle East, this time from Iran's reluctance to allow United Nations inspectors to affirm they are not trying to manufacture nuclear weapons. However, it is not all bad



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*Continued on page 38*



# Executive Committee Meeting

**MIKE SOBEK** PORAC Secretary

The PORAC Executive Committee met at the Washington Court Hotel in Washington, D.C., on March 19, 2012. The Executive Committee had made its yearly pilgrimage to the nation's capital for a week of lobbying Congressional members and meetings with various Senate and House committees, as well as the Federal Communications Commission. The State of Nevada chapter (PORAN) joined the committee for this lobbying trip. Unfortunately, due to the business at hand in Sacramento, President Ron Cottingham could not make this trip. The Executive Committee was well taken care of with Vice President Mike Durant.

## Roll Call

Roll call was conducted and all were present with the exception of President Cottingham, who, as mentioned, stayed back in Sacramento; Shaun DuFosee from Region 1; and Randy Beintema from Region 2. Region 2 Director Beintema designated Chapter Director David Winters to represent Region 2 at this meeting.

Director David Winters led the Pledge of Allegiance. VP Durant asked for a moment of silence for all officers who have been killed in the line of duty this past year and for all the men and women who have served the country in the line of duty.

Vice President Durant talked about the agenda for the week. Besides all the Senate and House meetings, the Executive Committee attended a dinner hosted by the National Law Enforcement Officers Memorial Fund/Museum. Director Craig Floyd hosted the Executive Committee and PORAN on March 19, 2012. The Executive Committee and PORAN also met with the vice president's chief of staff and several Congressional members throughout the week. Another part of the trip was a private after-hours tour of the nation's Capitol Building. This was one of the highlights of the trip and was done by San Diego Congressman Brian Bilbray. Mr. Bilbray is a great historian of the Capitol and does a wonderful job with this. The PORAC E-Committee and PORAN thank Mr. Bilbray for his support and efforts. The Washington, D.C., trip is typically a very busy week with meetings scheduled throughout each day, and this trip was no different.

## Approval of Minutes

The January Executive Committee meeting minutes will be approved at the April meeting.

## Approval of Membership

No new members to report. Director Watkins, with a second by Director Parks, made a motion to approve the L.A. city detention officers for PORAC. The motion passed.

## President's Report

President Cottingham did not submit a report to the Executive Committee; however, VP Durant provided an update on a video project to assist in fighting the "Stop Special Interest Money Now" initiative.

*Continued on page 38*

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APRIL 2012

7



# Are You Watching?

**RACHEL HOOPER AND  
CHELSEA IRVINE**

Vice President and Account Manager  
*Marketplace Communications*

## PORAC TV Features Interview with CASE Act Sponsors

We are very excited to announce the latest version of PORAC TV, featuring an interview with PORAC President Ron Cottingham and the sponsors of the Californians Against Sexual Exploitation (CASE) Act, Daphne Phung and Chris Kelly.

In California, thousands of vulnerable women and young girls are held against their wills and forced into prostitution for the financial gain of human traffickers. The victims are often children. The CASE Act will deter sex traffickers, mandate training for law enforcement officers, require convicted sex traffickers to register as sex offenders, require all sex offenders to disclose Internet accounts and protect victims in court proceedings.

On this episode of PORAC TV, PORAC President Ron Cottingham discusses the CASE Act and what it will do to prevent this kind of dangerous and potentially deadly human trafficking. Daphne Phung, the head of Californians Against Slavery, a nonprofit human rights organization dedicated to ending human trafficking, and Chris Kelly, former Facebook Chief Privacy Officer and head of the Safer California Foundation, which is dedicated to supporting efforts to protect Californians from criminal exploitation, offer real stories of lives affected by trafficking and why this issue is so critical to public safety in California.

“Each day, thousands of women and children in California are at risk,” explains Phung. “California harbors three of the FBI’s



high-intensity child prostitution areas in the nation: **San Diego, Los Angeles and San Francisco.** Women and children are sexually exploited every day in every county of the state. This is not a political issue, nor is it a debatable issue. It’s a human rights issue.”

“Sex trafficking, exploitation and slavery are bigger problems in California than most would believe,” said President Cottingham. “We recently found a functioning sweatshop right in California’s Los Angeles area complete with razor wire facing into the facility to trap victims in. Thankfully, a passerby noticed the razor wire and alerted the authorities, but it is hard to say just how long the facility had been functioning.

“In my history as a Lieutenant with the San Diego Deputy Sheriff’s Department, I have helped women whose stories will stay with me throughout my lifetime. It’s time we stand together to make punishments tougher for these criminals.”

“Victims need to know that every California voter is standing with them,” said Kelly. “The CASE Act is our opportunity to protect the people of this state against sexual exploitation on our streets and on the Internet.”

## How Can You Get Involved? *Watch*

Watch the full interview at [www.PORAC.org](http://www.PORAC.org), [www.YouTube.com/PORACalifornia](http://www.YouTube.com/PORACalifornia) and [www.Facebook.com/PORAC](http://www.Facebook.com/PORAC).

## *Learn and Sign*

Learn more about the CASE Act and sign the petition at [www.CASEAct.org](http://www.CASEAct.org) or [www.Facebook.com/CASJustice](http://www.Facebook.com/CASJustice) or use the hashtag #humantrafficking.

If you ever have questions, please don’t hesitate to contact us at (916) 448-3444 or [Rachel@MarketplaceCommunications.com](mailto:Rachel@MarketplaceCommunications.com) and [Chelsea@MarketplaceCommunications.com](mailto:Chelsea@MarketplaceCommunications.com). ☆



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### Day 2

9:00 a.m - 4:00 p.m.

Peace Officers Bill of Rights  
Critical Incidents  
Brady Material  
Fitness for Duty Exams



## RETIREE REPORT

# Pension Reform and Retirees' Right to Carry Concealed Weapons

**ROBERT GALLARDO**  
Chairman  
*Retired Associate Member Committee*

You may have read that the California Pension Reform group has suspended their operations for now. They apparently have had problems generating support for their initiative in order to qualify for the ballot in 2012. There have been complaints voiced about the manner in which the attorney

general has written and summarized the title/summary of that initiative. If it qualified, there would have been sweeping changes to pensions/retirement benefits. While there can always be a review and revision of current benefits, negotiations should start/end at the bargaining table, where the process originates.

I recently received an interesting article submitted by Labor Representative Tim Cantillon (Goyette & Associates), who provided information surrounding retirees and the HR 218/CCW issue.

*Can a police chief/sheriff precondition*

*or otherwise restrict the issuance of a CCW endorsement to a retired peace officer?*

*The law in the State of California is very clear. The California Penal Code says in Section 26300, "(a) Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in Section 25470. (b) Any peace officer employed by an agency and listed in Section 830.1 or 830.2 or subdivision (c)*

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## BREAKING NEWS: LOCAL OFFICER SAVES HUNDREDS

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of Section 830.5 who retired after January 1, 1981, **shall have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.** (c) Any peace officer not listed in subdivision (a) or (b) who was authorized to, and did, carry a firearm during the course and scope of employment as a peace officer shall have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm."

A California CCW endorsement can be withheld from an honorably (not for being psychologically unfit) retiring peace officer if, after a hearing by a three-member panel, the panel rules there is **just cause** to withhold it. California Penal Code Sections 26305 through 26325 detail specific criteria and the process by which you can be denied, but it also lays out very precise guidelines for the process, as well as timelines.

It seems the problem arose as a result of HR 218 (federal law). **HR 218 requires annual qualification if the retired peace officer wants an ID with a CCW endorsement which would allow them to legally carry the weapon across state lines.**

Any honorably retiring California peace officer, at the time of the ID being issued, needs to make an election as to which of the two (2) types of ID and CCW endorsement they want. If the HR 218 ID is selected, they must qualify annually and the ID is good for only one (1) year.


If they choose the ID called for under P.C. 26300, it is good for five years. At the end of the five years, they must petition for a new ID. Again, they can only be denied for just cause with the process as outlined in Sections 26305 through 26325, which most likely means all they will have to do is re-qualify to show their proficiency.

I want to thank Tim for providing the above information, but with any statutory issues check with your legal representative for any possible changes in the law. As a reminder for those who happened to be previous PORAC/LDF members, the retiree CCW program has a 10-day window to contest a CCW denial. Please check the LDF/CCW policy for details which can be found on links from the PORAC website ([www.porac.org](http://www.porac.org)).

The State Conference Committee for pension reform continues their work. It is comprised of three members each of the Assembly and Senate. They have been meeting on a regular basis in an effort to make changes and compromises to the many pension reform bills that were previously placed on hold. According to Assembly Member Furutani, their first meeting reviewed the current pension system. Subsequent hearings centered on Governor Brown's "12-Point Pension Reform Plan," hybrid pension plans and the impact of raising the retirement age (67 years old).

Initially, a draft report will be issued in March or April, and then additional hearings will be scheduled for public comment. At the conclusion, they will issue a final report and recommendation to the state Legislature. There will be more details forthcoming when the report has been publicly presented. Any resulting changes to pensions/retirements could be implemented by January 2013.

The law enforcement community sometimes appears as a distant voice when speaking about pensions/retirements. The reports about the minority who retire with generous payouts abound. PORAC is active in informing the public and legislators about the facts, which includes using social media forums. Law enforcement has not abandoned service to the public. In the final analysis, I don't believe the public will abandon law enforcement. ☆



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# Endorsements

## RON DREHER

Government Affairs Director  
Peace Officers Research  
Association of Nevada

Happy Easter to everyone! And happy Spring Break for those of you who get a Spring Break!

OK, here we go again! This past month (March), PORAN has been very busy getting ready for next year's (2013) Nevada legislative session. We began the month of February by joining our southern Nevada

law enforcement association brothers and sisters in continuing our joint coalition to ensure uniformity in our statewide endorsement process.

On February 7, 2012, the Southern Nevada Conference of Police and Sheriffs (SNCOPS), headed by Director of Government Affairs Michelle Jotz, held the coalition meeting at the Las Vegas Police Protective Association (LVPPA) office in Las Vegas. Attending were PORAN representatives, SNCOPS representatives and a representative of the Retired Public Employees Network. At the request of Reno Police Protective Association Political Action Director

Paul Villa, we named our coalition the Silver State Law Enforcement Coalition.

Our next order of business was to determine our course of action for the 2012 endorsement process and to recommend endorsements in certain races. Listed below are the incumbent Nevada Supreme Court and Nevada Assembly and Senate candidates that we recommended for endorsements. The groups were to take these recommendations back to their associations and determine if all our associations would support the recommendations. PORAN's associations were given until Monday, February 27, 2012, to accept, reject or abstain from endorsing.

Based on the response from PORAN's directors (each PORAN association gets one vote), we had a unanimous vote to endorse all the listed candidates. We are notifying each of them of our endorsement and are also providing the Assembly and Senate endorsed candidates with campaign contributions.

### Nevada Supreme Court

Justice Michael Cherry, Justice Michael Douglas and Justice Nancy Saitta

### State Senate

Dave Parks (D), Clark District 7

### State Assembly

Marilyn Kirkpatrick (D), AD 1

— Las Vegas

Peggy Pierce (D), AD 3 — Las Vegas

Marilyn Dondero Loop (D), AD 5

— Las Vegas

Harvey Munford (D), AD 6

— Las Vegas

Dina Neal (D), AD 7 — Las Vegas

Jason Frierson (D), AD 8 — Las Vegas

Joe Hogan (D), AD 10 — Las Vegas

Olivia Diaz (D), AD 11 — Las Vegas



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James Ohrenschall (D), AD 12  
 — Las Vegas  
 Maggie Carlton (D), AD 14  
 — Las Vegas  
 Elliot Anderson (D), AD 15  
 — Las Vegas  
 Richard Carillo (D), AD 18  
 — Las Vegas  
 Lucy Flores (D), AD 28 — Las Vegas  
 April Mastroluca (D), AD 29  
 — Las Vegas  
 William Horne (D), AD 34 — Las Vegas  
 Marcus Conklin (D), AD 37  
 — Las Vegas  
 Paul Aizley (D), AD 41 — Las Vegas  
 Irene Bustamante Adams (D), AD 42  
 — Las Vegas  
 David Bobzien (D), AD 24 — Reno  
 Teresa Benitez-Thompson (D), AD 27  
 — Reno  
 Debbie Smith (D), AD 30 — Sparks  
 Skip Daly (D), AD 31 — Sparks

The coalition decided that we would begin non-incumbent interviews after the March 16, 2012, filing period closed. Here is the schedule that we will be following:

First scheduled interview dates  
 — southern Nevada

Las Vegas: LVPPA Office; Tuesday, March 27; Wednesday, March 28; and Thursday, March 29, 2012; 8 a.m. to 5 p.m.

First scheduled interview dates  
 — northern Nevada

Reno: Location to be announced; Wednesday, April 4, and Thursday, April 5, 2012

Endorsements finalized Monday, April 16, 2012

Primary election: May 26, 2012, to June 8, 2012 (early voting)

June 12, 2012 — voting ends

Second scheduled candidate interview dates — southern Nevada

Las Vegas: LVPPA Office; Tuesday, June 19, and Wednesday, June 20, 2012

Second scheduled candidate interview date — northern Nevada

Reno: Location to be announced; Tuesday, June 26, 2012

Endorsements finalized Monday, July 9, 2012

All other district races — Congressional, Senate, State Senate and State Assembly — will be given an opportunity for an interview in southern or northern Nevada on the dates listed above.

As for local races, the coalition will endorse only those candidates endorsed

by the local associations. It is our goal not to have contradictory endorsements. Filing for local candidates in Washoe County occurs between May 1 and May 15. I would recommend that all local associations conduct interviews for the city council, county commission and judicial races as these candidates will be seeking our endorsements. PORAN voted in 2010 to assist in those local interviews. If you would like us to be part of that process, please let me know.

All candidates will receive a list of questions in advance of the interview so that they can prepare. We will send out the questions as well for all associations to review.

PORAN held its February Board of Directors meeting at the South Point Hotel and Spa in Las Vegas. PORAN Vice President Axel James hosted this event.

During late February 2012 we attended fundraisers for our endorsed candidates, Teresa Benitez Thompson and Skip Daly. We also have been asked to be very active in the initiative process to help ease the economic conditions

that have not been addressed through the legislative process. More on this next month.

During the week of March 26 through March 30, PORAN's federal coalition, together with PORAC's federal coalition, went to Washington, D.C., to lobby our congressional representatives on federal issues. (See Patton Boggs' report in this magazine for specific legislation that we support or oppose.) We will address them next month.

Update on SB 98 and the Employee-Management Relations Board (EMRB) Declaratory Relief Petition filed by the City of Reno: As of the date of this article, the EMRB has not made a decision on the Petition. The City of Reno Petition to the EMRB in brief is to have the EMRB interpret the meaning of SB 98 as it pertains to supervisory personnel being allowed to collectively bargain. More on this next month as this huge issue continues through this administrative process.

Our April Board of Directors meeting will take place in Reno on Friday, April 13, 2012, at 11:30 a.m. Please attend if you can.

Stay safe and wear your vest! ☆



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## Consider Switching to Generic Lipitor

### Get the Most from Your Medicine — and Your Money

There is good news for the millions of Americans struggling to keep their cholesterol low. We're making a change to our prescription drug coverage benefits to help you save money on your prescription drug costs. The generic for brand-name Lipitor, atorvastatin, is now available and is covered by your drug benefit plan.

In some cases, there are multiple drugs available and clinically equal to treat the same condition or symptoms. Often,

the cost among these options varies greatly. This is the case for brand-name Lipitor and the newly available generic atorvastatin.

Atorvastatin is just as safe and effective for treating your condition as Lipitor and it costs less. This change means you can save money on your prescription drug costs without giving up quality.

If you begin using Lipitor on or after April 1, 2012, step therapy will be required. New users should use the generic atorvastatin before requesting brand-name Lipitor.

### What Is a Generic Drug?

Generics are copies of brand-name drugs. Brand and generic drugs have the same active ingredients, strength and dose. And the Food and Drug Administration requires generic drugs to meet the same high standards for purity, quality, safety and strength.

### Generics May Look Different, but They Work Just as Well

Even though the active ingredients of a generic drug are identical to the brand version, manufacturers may use different inactive ingredients. This could change the color, shape and size. But because generics must meet the same standards as brand drugs, you can be sure the generic is just as safe and works just as well.

### To Help Make Sure You Save the Most Money and Get the Right Medicine, Speak to Your Doctor

Only you and your doctor can decide which drugs are right for you. So ask your doctor about switching to atorvastatin. And check your plan benefits to see your specific drug coverage. ☆

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# EXECUTIVE COMMITTEE MAKES ANNUAL FEDERAL LOBBYING TRIP

The PORAC Executive Committee, along with members of PORAN's federal coalition, traveled to Washington, D.C., last month to meet with several players on the national level and discuss key legislation for law enforcement. For highlights from the trip, check out the Vice President's Report on page 5, Executive Committee Meeting on page 7 and Federal Legislation on page 22.



PORAC members pay their respects at the 9/11 Memorial site. The members are in front of Pool #1, located at the footprint of World Trade Center Tower #1. In the background is the progress of the new Liberty Tower.



The majority of the Washington, D.C., legislative team gathers around Vice President Biden's desk at the Eisenhower Executive Office Building within the White House compound. The building houses the staff and offices of Vice President Biden.



The PORAC legislative group waits in the President's Room at the Capitol to meet with the state senator. ☆

Photos by Marcelo Blanco

**\*\* IMPORTANT TAX INFORMATION \*\***

## California's Professional Peace Officers

# WE TAKE CARE OF OUR OWN

**Always Have. Always Will.**



The beautiful bronze and granite California Peace Officers' Memorial located on State Capitol grounds in Sacramento contains the names of more than 1,600 courageous peace officers who have laid down their lives in the line of duty protecting and serving their fellow Californians. Tragically, every year more names are added.

**You can help** the Memorial Foundation in our mission to underwrite the annual California Peace Officers' Memorial Ceremony, maintain the monument, and support the families of our fallen heroes through our educational grant and financial assistance programs.

California law allows taxpayers to make voluntary tax-free contributions on their personal state income tax returns to the "California Peace Officers' Memorial Foundation Fund". Simply indicate the amount to be donated where instructed on the tax return form. Importantly, the law requires that all contributions be used to maintain the California Peace Officers' Memorial and for activities in support of the surviving families of our brave men and women peace officers who have made the ultimate sacrifice. We urge the more than 100,000 peace officers serving California to help us **Take Care of Our Own.**

### California Resident Income Tax Return 2011

FORM  
540

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110 Add code 400 through code 419. This is your total contribution..	• 110	00

✓ California Peace Officer Memorial Foundation Fund.....	\$10.00
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# The CASE Act:

## JOIN OUR FIGHT AGAINST HUMAN TRAFFICKING



### CHRIS KELLY

Founder, Safer California Foundation, and Former Chief Privacy Officer, Facebook

We share a dedication to public safety and to protecting the lives of those who are the most vulnerable in our community. We also share a common belief that tougher laws in California are needed to fight human trafficking, online predators and sexual slavery.

**That's why I'm asking for your support for the Californians Against Sexual Exploitation (CASE) Act.**

Slated for the November 2012 ballot once qualified, the CASE Act will update California's laws to confront the growing and underreported problem of human trafficking and sexual exploitation of women and children within the state.

This initiative will increase penalties against human traffickers, require human traffickers to pay for services for their victims, require convicted sex traffickers to register as sex offenders and require all registered sex offenders to disclose their Internet accounts.

By strengthening these laws, the initiative will help the law enforcement community crack down on these horrific crimes.

We are proud to count many law enforcement organizations — including PORAC — among our endorsers.

### WHAT IS HUMAN TRAFFICKING?

According to the **Trafficking Victims Protection Act of 2000**, the term "severe forms of trafficking in persons" is defined as:

- ✓ "[trafficking] in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- ✓ the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery."<sup>1</sup>

It's time for the people of California to take a stand for tougher laws and stronger enforcement to fight human trafficking, sexual exploitation and sexual predators.

In California, thousands of vulnerable women and young girls are held against their wills and forced to sell their bodies. The victims are often girls as young as 12 who are sexually exploited for the financial gain of human traffickers. They are afraid for their lives and abused — sexually, physically and mentally.

Human trafficking is said to be one of the fastest growing criminal enterprises in the world. And as many of you know from protecting our communities, it is taking place right here in our own backyard.

California has three metropolitan areas that the FBI has identified as among the highest child prostitution areas in the nation. The state also recently received an F grade on laws to protect children against sex trafficking.

It's clear that California's current laws do not provide many of you in law enforcement with all the tools needed to confront the problem. We can do better, and you can help us change things today by supporting the CASE Act.

**That's why we are asking for you to help raise awareness of this important initiative. Then spread the word to your family, friends and colleagues. Help us pass this ballot initiative in November.**

<sup>1</sup> *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106-386, 106<sup>th</sup> Cong. (October 28, 2000), Section 103.



## WHY CALIFORNIA IS A HOT SPOT

- ✓ Large population
- ✓ Metropolitan regions
- ✓ Large economy
- ✓ International borders
- ✓ Extensive ports <sup>1</sup>

The CASE Act will also take the fight against human trafficking to the Internet, taking a stand against sex offenders who are lurking in the digital shadows online.

I've seen firsthand the explosion in the use of the Internet to identify and traffic women and children from the time I spent as Chief Privacy Officer at Facebook. I have worked with many of you on commonsense reforms in the Legislature, and now we want to go one step further.

The CASE Act will update Megan's Law and require that all registered sex offenders disclose their online accounts. Our children will be safer online when sex offenders disclose their e-mail addresses, instant messenger names and Twitter and Facebook information.

At the kickoff event for the CASE Act campaign, I listened to Leah Albright-Byrd, a human trafficking survivor, speak about her personal experiences. When Leah talks about what she endured, she asks each of us

to imagine being 11 years old and having your body used and abused for the sake of someone else's monetary gain.

You and I know that no one should have to endure this brutality, especially not a child. That's why we need to pass the CASE Act in November.

By voting yes on the CASE Act, Californians will make a statement that we will not tolerate the sexual abuse of our children and that we stand with the victims of these horrible crimes. **Join us in this fight today by visiting [www.caseact.org](http://www.caseact.org).**

Also check out the PORAC News Roundup on page 8 and read about the latest version of PORAC TV, featuring an interview with the CASE Act sponsors. ☆

## WHAT CAN YOU DO?

Visit [www.caseact.org](http://www.caseact.org) and endorse the **Californians Against Sexual Exploitation Act**.

- 1 Californians Against Sexual Exploitation, California Against Slavery and Safer California Foundation, *What Is Human Trafficking?*, [www.caseact.org](http://www.caseact.org) (accessed March 2, 2012).
- 2 *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106-386, 106<sup>th</sup> Cong. (October 28, 2000), Section 102.
- 3 Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children*, May 2009, [www.sharedhope.org/Resources/TheNationalReport.aspx](http://www.sharedhope.org/Resources/TheNationalReport.aspx) (accessed March 2, 2012).
- 4 Ibid.
- 5 Ibid.
- 6 U.S. Department of State, *Trafficking in Persons Report 2010*, June 2010, [www.state.gov/j/tip/rls/tiprpt/2010/index.htm](http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm) (accessed March 2, 2012).
- 7 U.S. Department of Health and Human Services, *The Campaign to Rescue and Restore Victims of Human Trafficking, Fact Sheet: Human Trafficking*, June 28, 2011, [www.acf.hhs.gov/trafficking/about/fact\\_human.html](http://www.acf.hhs.gov/trafficking/about/fact_human.html) (accessed March 2, 2012).
- 8 Ibid.
- 9 U.S. Department of State, *Trafficking in Persons Report 2010*, June 2010, [www.state.gov/j/tip/rls/tiprpt/2010/index.htm](http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm) (accessed March 2, 2012).

# BY THE NUMBERS

## 50,000

The number of women and children trafficked into the United States each year. <sup>2</sup>

## 6,000

Buyers by whom a sex trafficking victim may be raped over the course of his or her victimization. <sup>3</sup>

## 12-14

Average entry age of American minors into the sex trade. <sup>4</sup>

## 10-15

Typical quota of buyers per night given to children exploited through prostitution. <sup>5</sup>

## 8.5

The average number of convicted offenders for every 100 victims identified. <sup>6</sup>

## 2

Human trafficking's position as the second largest criminal industry in the world — tied with the illegal arms industry and exceeded only by drug trafficking. <sup>7</sup>

## 1

Human trafficking is the fastest growing criminal industry in the world. <sup>8</sup>

## 0.4%

Percentage of victims identified. <sup>9</sup>



# PORAC's Legislative Package Hits the Ground Running

**AARON READ AND RANDY PERRY**  
PORAC Legislative Advocates  
*Aaron Read & Associates, LLC*

The year is barely three months in, yet things are already heating up at the Capitol. As we are sure many of you heard on the news, there was a scuffle between Occupy protesters and another group of protesters of the “white genocide” in South Africa. The clash ended with two police officers in the hospital and protesters arrested.

Although the primary election isn't until June, Assembly and Senate races are also heating up. With open primaries and redistricting, the political landscape is changing on a near-daily basis.

There are nearly 70 initiatives currently in circulation, with issues varying from ending the death penalty and cutting public employee pensions to legalizing marijuana and labeling genetically modified foods. Also on the table are numerous tax measures which seek to ease California's continuous budget deficit. Governor Brown has his plan, which we have discussed before, that would raise taxes incrementally on those making over \$250,000 per year, as well as increase the sales tax by 1 cent. Another competing initiative, called the “Millionaire's Tax,” aims to quell the deficit on the backs of California's super rich. Another initiative being pushed by millionaire Molly Munger would increase state income taxes for most Californians for the next 12 years unless voters reauthorize it, earmarking the funds for public schools and early childhood development. Though Governor Brown has pleaded with the proponents of the measure to drop their measure, hoping that voters will band together in support of his plan, so far they have yet to yield to his calls.

On the legislative front, the deadline for

lawmakers to introduce new bills was Friday, February 24. This year saw the same influx of new bills that we see every year. Here is a look, by the numbers, at how it ended up:

- The last Thursday of bill introductions saw 392 new bills introduced.
- Friday deadline introductions: 693 new bills introduced
- Total bill introductions in the last two days: 1,085
- Total bills in the two-year session for the Assembly: 2,662
- Total bills in the Senate for the two-year session: 1,573

Of course, this means our team at Aaron Read & Associates, as well as many members of PORAC's Executive Committee, had a mindboggling amount of legislation to review in the last few weeks. We look forward to another year working on behalf of PORAC's men and women in law enforcement and doing what we can to keep your work environment safe as you keep California's families safe.

## PORAC-Sponsored Legislation

Although PORAC has a huge year coming up with critical legislative races and potentially devastating initiative fights, PORAC's Board of Directors also approved numerous legislative proposals to run this year. Following is a brief recap of legislation that PORAC is sponsoring this session. We will continue to keep you up to date as these bills make their way through the legislative process.

### **AB 1527 by Assembly Member Anthony Portantino (D-Pasadena)**

This bill bans the open carry of long guns. In response to last year's AB 144, which banned the open carry of handguns in public places, many officers have seen members of the open carry movement

begin to openly display rifles and other long guns. Of course, this is as dangerous of a situation, if not more dangerous, as it was before. We are working with various law enforcement agencies to see this reasonable legislation written into law.

### **AB 1606 by Assembly Member Henry Perea (D-Fresno)**

This bill addresses the issues raised after the passage of AB 646 (Atkins) in 2011, which provided for fact-finding for all public employees covered by the Brown Act, unless they have binding arbitration. This bill states that if the mediator is unable to effect a settlement within 30 days **or if a mediator is not selected within 30 days of the declaration of impasse**, the employee organization may request that the parties' differences be submitted to a fact-finding panel.

### **AB 2368 by Assembly Member Block (D-San Diego)**

This legislation cleans up language in Education Code 38000 by removing “police or,” thereby clarifying a conflict in the language. As currently written, this sentence is contrary to Penal Code Section 830.32, which allows school peace officers full peace officer powers.

### **AB 2465 by Assembly Member Nora Campos (D-San Jose)**

In an effort to aid law enforcement in responding to incidents involving medical marijuana users and provide uniformity, this bill requires medical marijuana users to register with the Department of Health and Human Services for a medical marijuana card. Furthermore, it requires cooperatives to keep copies of the medical marijuana cards of all medical marijuana users for which they are growing marijuana on the premises.

<i>Bill No.</i>	<i>Author</i>	<i>Subject of Legislation</i>	<i>Position</i>	<i>Present Location</i>
AB 308	Ammiano (D-San Francisco)	Criminal investigations: eyewitness identification: lineups	Active Oppose	Senate Appropriations Suspense
AB 324	Buchanan (D-San Ramon)	Juvenile offenders: recall of commitment	Active Support	Chapered
AB 1208	Calderon (D-Whittier)	Trial courts: administration	Active Support	Senate Rules
AB 1280	Hill (D-South San Francisco)	Ephedrine: retail sale	Active Support	Senate Appropriations Suspense
AB 1527	Portantino (D-Pasadena)	Firearms	Co-Sponsor	Assembly Public Safety
AB 1551	Torres (D-Pomona)	Insurance: public safety employees: accidents	Active Support	Assembly Insurance
AB 1606	Perea (D-Fresno)	Local public employee organizations: impasse procedures	Co-Sponsor	Assembly P.E., R. & S.S.
AB 2368	Block (D-San Diego)	School security: security departments	Sponsor	In Print
AB 2465	Campos (D-San Jose)	Medical marijuana: identification cards	Sponsor	In Print
AB 2549	Hall (D-Los Angeles)	Firearms: possession of assault weapons: law enforcement officers	Sponsor	In Print
AB 2660	Solorio (D-Santa Ana)	Vehicles: peace officer vehicles: window tinting or glazing	Sponsor	In Print
ACA 4	Blumenfield (D-Van Nuys)	Local government financing: voter approval	Active Support	Assembly Floor
ACA 18	Swanson (D-Oakland)	Taxation: parcel tax	Active Support	Assembly Local Government
SB 9	Yee (D-San Francisco)	Sentencing	Active Oppose	Assembly Floor
SB 490	Hancock (D-Berkeley)	Death penalty	Active Oppose	Assembly Appropriations Suspense
SCA 13	Cannella (R-Ceres)	Public employees' retirement	Active Oppose	In Print

**AB 2549 by Assembly Member Isadore Hall (D-Los Angeles)**

This legislation was drafted in response to then-Attorney General Jerry Brown's opinion released on December 31, 2010, stating that retired peace officers in possession of assault weapons legally purchased during employment were in violation of the law after retiring. This

bill allows officers who purchased assault weapons using the "letterhead method" prior to Attorney General Brown's opinion to keep the assault weapons if they re-register with the Department of Justice (DOJ) a "Change of Status" stating they honorably retired. It allows officers to maintain possession of only one assault weapon and requires that the DOJ develop

the "Change of Status" document and allows them to charge a fee to cover the cost of the program.

**AB 2660 by Assembly Member Jose Solorio (D-Santa Ana)**

This bill would exempt law enforcement vehicles from the ban on window tinting. ☆



## FEDERAL LEGISLATION

# Roadmap for PORAC's Annual Lobbying Trip to Washington, D.C.

**ANDREA B. WOLF AND  
SCOTT C. THOMPSON**  
Associates  
*Patton Boggs LLP*

At press time, the PORAC Executive Board had not come to Washington for its annual lobbying trip from March 19 to 23. The following section outlines PORAC's meetings and agenda on that trip. Patton Boggs will report on the outcome of those meetings in the next report. During the visit, Patton Boggs accompanied the Board to meetings with key players in the Obama administration, Congress and other influential figures in Washington. These meetings focused on the most important legislative issues facing PORAC today, such as continued law enforcement grant funding via the Department of Justice (DOJ) and Congressional appropriations, state and federal pension concerns and legislation pertaining to other law enforcement matters.

After Patton Boggs discussed lobbying priorities with the PORAC and PORAN leadership, the trip focused on the following pieces of pending legislation: The Violence Against Women Reauthorization Act of 2011 (S 1925), the National Right-to-Carry Reciprocity Act (HR 822), the Criminal Code Modernization and Simplification Act (HR 1823), the State and Local Law Enforcement Discipline, Accountability and Due Process Act (HR 1789), the National Blue Alert Act (S 657 and HR 365), the Local Courthouse Safety Act (S 2076), the Social Security Fairness Act (S 2010 and HR 1332) and the Shield Our Streets Act (HR 4098). The meetings gave Executive Board members an opportunity to voice their concerns on behalf of the PORAC and PORAN membership with leading federal

policymakers. The meetings also provided the Executive Board with the opportunity to hear Washington insiders' perspectives on the issues that matter most to PORAC.

In the Senate, Patton Boggs arranged for meetings with the offices of Senator Dianne Feinstein (D-CA), Senator Barbara Boxer (D-CA), Senator Harry Reid (D-NV) and Senator Dean Heller (R-NV). These meetings were an opportunity for PORAC and PORAN to reaffirm and strengthen their relationships with these influential officeholders. Patton Boggs also arranged for meetings with the Senate Judiciary Subcommittee on Crime, Terrorism and Homeland Security to discuss pending law enforcement legislation and continued law enforcement grant funding and with the Senate Finance Committee to lobby on the issue of pension reform for public employees and to hear about recent pension reform efforts.

In the House of Representatives, PORAC and PORAN arranged for meetings with the California and Nevada delegations. Patton Boggs set up meetings with the House Judiciary Committee to discuss continued law enforcement grant funding and pending law enforcement legislation and with the House Ways and Means Committee to discuss pension reform concerns.

In the Executive Branch, Patton Boggs requested meetings with the Office of the Vice President in the White House, the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA) in the Department of Commerce. The FCC and NTIA meetings were scheduled to focus on implementation of the D-Block spectrum-based broadband network for public safety and to discuss how PORAC can remain involved in that implementation. Patton Boggs also worked to arrange a meeting for PORAC at the Department of Homeland Security to discuss concerns in that arena.

As in previous years, Patton Boggs worked to set up meetings in the DOJ's Office of Justice Programs, which manages the Byrne/JAG grant program, and in the Community Oriented Policing Services (COPS) office, which oversees COPS grant funding implementation.

Patton Boggs also arranged meetings with influential academics in some of the largest and most-respected think tanks in Washington. Specifically, meetings with Dr. Andrew Biggs at the American Enterprise Institute and with Mr. William Gale at the Brookings Institute were beneficial for PORAC and its understanding of the current pension reform efforts.

Finally, PORAC met with the chairman of Patton Boggs, Mr. Thomas Boggs. Mr. Boggs brings unparalleled experience and expertise to the lobbying scene. Last year, PORAC enjoyed a very productive and convivial meeting with Mr. Boggs. This year, PORAC met with Mr. Boggs and other Patton Boggs attorneys at the end of its lobbying week to hear their thoughts on pension reform, D-Block implementation, law enforcement grant funding and the general political atmosphere in Washington and nationally.

## **House Subcommittee on Crime, Terrorism and Homeland Security Hearing on the DOJ's COPS Office**

On February 29, the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on the DOJ's COPS office. Bernard K. Melekian, Director of the COPS office and former Pasadena Police Chief, was the only witness. The subcommittee held the hearing 15 days after the Obama administration's release of its FY 2013 budget proposal. The administration's proposed budget allots \$290 million for COPS funding, a 46% increase over the Obama administration's FY 2012

budget. This proposed increase has led subcommittee Democrats to rally behind the COPS program as a job-booster and crime-reducer, while many Republicans question whether it is wasteful spending. The Obama administration has justified its proposal as a way to increase hiring, especially for veterans returning from Afghanistan and Iraq.

Congressman Jim Sensenbrenner (R-WI), Chair of the subcommittee, did not attend the hearing, but his written statement classified the COPS program as “bloated” and claimed that the purpose of the program shifted from addressing violent crime across the country to a way to subsidize the budgets of state and local law enforcement agencies. Chairman Sensenbrenner stressed that funding state and local law enforcement should remain squarely in the domain of state and local governments. Congressman Sensenbrenner said that the COPS program began in the 1990s as an answer to an acute crime problem that no longer exists. Now, he claims, the COPS program just “bail[s] out state and local governments that made fiscally irresponsible decisions.” According to Congressman Sensenbrenner, the COPS program is “simply not a good return on our investment.”

In contrast, Democrats such as Congressman John Conyers (D-MI), the Ranking Member on the House Judiciary Committee, said that the COPS program “was one of the most successful programs” that the DOJ ever created. He credited the COPS program with creating jobs while making the entire nation safer. Congressman Conyers addressed the partisan divide over continued funding for the COPS program. “The COPS program has previously enjoyed bipartisan support and should be above politics,” he said. “The COPS program has proven its value at reducing crime by putting more officers on the streets and providing additional training in effective community-policing techniques.”

Director Melekian stressed the importance of continuing COPS program funding. He credited the program with massive crime reduction nationwide. Melekian explained that the key to violence reduction is having officers on the beat who have positive relationships with individuals in high-risk communities so the officers can establish trust and gather critical information in crime investigations. It is only through COPS grants, explained Melekian, that the three components to violence reduction are

possible: 1. prevention through after-school programs, 2. intervention for first-time offenders to prevent them from becoming more serious criminals and 3. enforcement focusing on individuals and not communities at large. To provide an example of an area that has greatly benefited from COPS funding, Melekian discussed the No More Dead Children program in Pasadena. By using COPS grants, the Pasadena community police helped to reduce homicides from about 20-25 per year to zero for over 30 months.

Republicans such as Congresswoman Sandy Adams (R-FL) expressed concern about the lack of quantifiable metrics for COPS grants. Melekian admitted that the COPS office is still working to create more quantifiable metrics of the COPS program’s success. Melekian said that COPS money must be used to tackle single, identifiable problems but did not provide further specifics on how the COPS office would provide quantifiable metrics to measure results. Melekian did say that COPS is aware of the cost concerns in the current fiscal environment and is doing everything possible to minimize operational and training costs.

*Continued on page 40*



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# Shafter Officer Acquitted of Assault with a Deadly Weapon

**PETER J. HORTON**  
Associate  
*Lackie, Dammeier & McGill*

Shafter Police Officer Matthew Shelton was working routine patrol the night of January 30, 2009. In the early morning hours, Shelton responded to an alarm call at a local elementary school. He was the first officer to arrive. While investigating the call, Shelton came into contact with a suspect holding bolt cutters. The suspect had just removed a pane of glass from a classroom window while attempting to burglarize the school.

After the suspect ignored Shelton's commands to get on the ground, Shelton armed his X-26 Taser, which was equipped with an infrared camera. Once Shelton armed his Taser, the attached camera began recording. The video subsequently shows Shelton approach the suspect while repeatedly ordering him to get down. At that point, the suspect slowly starts to move into a starting-block position. The video shows the suspect still failing to get on the ground as Shelton approaches. As the camera comes into focus, the suspect is seen facedown, but the lower half of his right arm is seen moving into a push-up position. At the same time, the suspect shifts his left hand in three separate

furtive movements toward his waistband.

Shelton uses his baton to make contact with the suspect's left forearm each time the suspect moves his left hand toward his waistband. The three separate baton contacts take place within 2.7 seconds. The video ends after another Shafter officer arrives and Shelton is able to holster his Taser and baton and take the suspect into custody. The suspect is then charged with several felony counts, ultimately pleading guilty to felony vandalism.

Months later, the infrared camera recording of the incident was found when Shelton's Taser was audited. The Shafter Police Department interviewed the suspect while he was serving his sentence in county jail and, for the first time, the suspect indicated that he was struck in the head by Officer Shelton's baton. The Shafter Police Department then forwarded the video and the suspect's statement to the Kern County District Attorney's (D.A.) Office for investigation.

The D.A. charged Shelton with assault with a deadly weapon — to wit, a baton (Penal Code § 245(a)1), assault under color of authority (Penal Code § 149) and filing a false police report (Penal Code § 118.1). The D.A. contended that Shelton struck the suspect in

the head with his baton when he initially approached the suspect, causing him great bodily injury. The basis for the D.A.'s belief was unsubstantiated noises on the video that the D.A. alleged to have been baton strikes.

The D.A. further argued that a 3-centimeter laceration on the suspect's head was caused by the alleged baton strike. The D.A.'s argument lacked merit for a variety of reasons. Most prominently, the suspect never told any of the medical providers who treated him that he was struck in the head with a baton by Officer Shelton. The medical records indicated that the suspect's injuries were extremely minor. In fact, when the treating ER doctor was asked why he hadn't ordered an X-ray he seemed perplexed and questioned which body part would have needed that procedure.

The case appeared to turn on the testimony of the defense experts. When it was initially determined that the infrared video in this case had to be broken down frame by frame, we contacted Michael Schott. Schott was able to enhance the video, explain the way the infrared camera gathers light and, most importantly, orient the jury and identify for them what each frame showed.

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The opinions expressed in this LDF section are those of the authors and do not necessarily reflect those of PORAC. The LDF trustees are open to your suggestions regarding the operation of the Legal Defense Fund and questions concerning articles appearing in this section. You can reach them at the phone numbers listed below:

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# The Saga of Oakland Police Sergeant Derwin Longmire, Part One

## MIKE RAINS

Principal and Founding Member  
*Rains Lucia Stern, PC*

I write this article with the satisfaction that Derwin Longmire proudly wears the uniform of an Oakland Police Sergeant. But it wasn't that long ago that he came close to going from exalted and legendary Homicide Investigator to disgraced and unemployed ex-cop. This is a saga which could take many chapters to adequately explain, but I'll try to be brief.

## The Murder of Journalist Chauncey Bailey — the Investigation Begins

On the morning of August 2, 2007, I turned on the local news and saw an announcement of breaking news in the City of Oakland. A prominent Oakland resident had been repeatedly shot by a masked man with a shotgun in downtown Oakland, not far from the courthouse. The news reported that the victim had died from his wounds. That individual, as it turned out, was Chauncey Bailey, Editor of the *Oakland Post* newspaper. Mr. Bailey had been working on a story describing acts of criminality by members of Your Black Muslim Bakery in Oakland when he was killed.

The head of the bakery was Yusef Bey IV who, with some of his bakery followers, was well-known to the Oakland Police Department (OPD) for involvement in a slew of recent crimes involving everything from the vandalism of local liquor stores to kidnapping and murder.

In fact, the OPD had planned to serve a search warrant at the bakery on August 1 and to arrest Bey and some of his followers, but the service of the search warrant was delayed to August 3 in order to allow the Department's SWAT team commander to return from a backpacking trip. Although the OPD clearly had no reason to know that Bey IV was going to orchestrate the murder of Chauncey Bailey on the morning of August 2, the

former police chief and the current police chief both insisted — falsely — to members of the local and national media that there had not been a plan to serve the search warrant at the bakery the day before Bailey's murder.

As I looked at the news on the morning of August 2, I saw several members of the OPD and the Alameda County District Attorney's Office at the murder scene whom I recognized. Notably, Sergeant Derwin Longmire was at the scene, and I thought to myself that Lieutenant Ersie Joyner, the Commander of the OPD Homicide Section, had assigned his "A Team" to this case.

On August 2, 2007, Sergeant Derwin Longmire had been a member of the OPD for over 21 years and had an unblemished, discipline-free record. He had served his last 10 years in a variety of investigative positions, much of it in the Homicide Section, where OPD sent its best, brightest, most capable and hardest working investigators. Derwin had received countless accolades and commendations from district attorneys for his investigative work and his testimony at trials. In 1999, the *Oakland Tribune* commended him in an editorial for solving a high-profile murder case. He was highly regarded for his ability to solve cases by developing information through interviews of witnesses and suspects who were otherwise unwilling to talk to other police officers. Part of that highly regarded skill was due to the fact that Derwin treated everyone — including the most hardened criminal suspects — with decency, dignity and respect.

On August 2, 2007, Derwin Longmire had considerable knowledge about Your Black Muslim Bakery and its current leader, Yusef Bey IV. He had first gone into the bakery in 1991 working as a beat cop and assigned to the beat where the bakery was located. He met Mustafa Bey, the bakery's counter man at that time, and would pay occasional visits to the bakery and discuss with Bey his perceptions of the distrust

between members of the bakery and the police. Even after Derwin's assignment to that beat ended, he would occasionally run into Bey in the community and would shake his hand and say hello.

In Derwin's earlier dealings with the bakery, he, like many others in the community, regarded the bakery as a successful, legitimate and law-abiding Oakland business. But after Yusef Bey, Sr. passed away and bakery leadership was turned over to his son, Antar, the bakery evolved into more of a criminal enterprise than a legitimate business.

In 2002, Derwin had been assigned to the OPD Intelligence Unit and, upon his arrival, talked to one of the Unit's members who had devoted considerable time to intelligence gathering concerning the bakery and its members. Derwin learned that the bakery was involved in conduct involving fraud. He sought a commitment from the police chief at the time to obtain assistance from the FBI to conduct an extensive surveillance and investigation of the bakery as a criminal enterprise. His efforts resulted in a single FBI agent working with members of the Intelligence Unit on surveillance activities which lasted until the agent was transferred.

On August 2, 2007, when journalist Chauncey Bailey was murdered, Sergeant Derwin Longmire was a member of the Homicide Section's "A Team" and was particularly well-situated to investigate the murder. Yet I would later learn that he came to be on call for Homicide on August 2 because his boss, Lieutenant Joyner, had been aware of the planned execution of the search warrant at the bakery on the preceding day, and Joyner did not want Longmire involved in any aspect of the execution of the search warrant. Later, in an investigation conducted by the State Department of Justice (DOJ), Lieutenant Joyner explained that he was aware that many individuals in the OPD were

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**HORTON***Continued from page 24*

Don Cameron, a use-of-force expert with over 30 years of experience, was also invaluable. Cameron's testimony dispelled the D.A.'s argument that a prone subject was not a threat to an officer. Cameron stated that Shelton was unaware of whether or not the suspect was armed. Cameron testified that an officer confronted with this set of facts would be forced to assume that the suspect was armed. And even though the suspect was facedown on the ground, his repeated movements toward his waistband, coupled with his attempts to push himself up, would be alarming to an officer. Specifically, Cameron demonstrated that a prone suspect

could access a firearm and shoot an officer in less than three-fourths of a second.

In the end, it was Officer Shelton's own testimony that put his contact with the suspect into context. The D.A. had focused solely on the time period in the video. The D.A. failed to acknowledge what happened before the recording started and after the recording ended. Shelton was able to explain the numerous commands given to the suspect before arming his Taser. He was also able to explain that the suspect attempted to flee after Shelton had holstered his Taser and baton and had to be pulled to the ground, causing the 3-centimeter laceration on the suspect's head.

At the conclusion of the trial, the jury acquitted Shelton of the Penal Code § 245(a)1

charge and was hung on the Penal Code § 149 and Penal Code § 118.1 charges. The jury also found that Shelton was not guilty of the great bodily injury enhancement to the Penal Code § 245(a)1 charge.

Officer Shelton was pleased with the jury's verdict and was grateful to have the opportunity to spend the holidays with his wife and young son. Officer Shelton would like to extend his deepest thanks to PORAC/LDF for its support through these difficult times. Without the support of PORAC/LDF to provide the attorneys and experts needed to win, this case would not have had the correct outcome. As of the writing of this article, it appears the D.A. will not be retrying the hung verdicts and Shelton will be able to move on with his life. ☆

**RAINS***Continued from page 25*

"suspicious" that Derwin Longmire had some kind of bond or friendship with Yusef Bey IV or other members of the bakery. This "suspicion" had undoubtedly arisen because Derwin did not display overt contempt and hostility when he would see Bey or other members of the bakery around town. Ironically, since Joyner intended to involve all the investigators of the Homicide Section during the service of the search warrant at the Bakery on August 1 with the exception of Longmire, he had placed Longmire on standby for any Homicide callouts on August 2. Thus, in many respects, and unbeknownst to me as I watched the news footage that morning, Derwin Longmire was standing in the 200 block of 14<sup>th</sup> Street inside the crime scene by both accident and assignment.

Even though Derwin had become the lead investigator in the Chauncey Bailey murder investigation by accident, Lieutenant Joyner and others familiar with his abilities still knew he was the best investigator for that case. Indeed, in the aftermath of the initial murder Lieutenant Joyner, Department leaders, representatives of the District Attorney's Office, the State DOJ and the FBI all knew of Derwin's assignment to the case.

Once he became involved in the investigation on August 2, Derwin wasted little time trying to solve the murder. In

light of the murder, Longmire interviewed Bakery member Devaughndre Broussard, who admitted to killing Bailey. However, he denied that he acted at the direction of Yusef Bey IV, who was unhappy about Bailey's impending article critical of the bakery and Bey's leadership. In light of Broussard's claim that he acted alone, there was initially very little evidence directly linking Bey IV to the murder, as no one had seen him at the location where Bailey had been gunned down by Broussard. Derwin continued to try to develop enough evidence to convince District Attorney Tom Orloff to charge Bey IV, but in an article in the *San Francisco Recorder* (legal newspaper) dated July 2, 2008, Orloff claimed that he did not presently intend to charge Bey with the murder. Longmire continued to work to develop additional evidence.

But Derwin Longmire's investigation of this murder came to a crashing halt shortly after a front-page story initially appeared on October 26, 2008, in newspapers in the Bay Area entitled "Evidence Ignored in the Chauncey Bailey Case." The story began with the following statement: "The lead detective assigned to investigate journalist Chauncey Bailey's killing ignored evidence linking Yusef Bey IV, former leader of your Black Muslim Bakery, to a role in the killing, and interfered in two other unrelated felony cases involving Bey IV."

The article accused Longmire of engaging in a series of actions and/or omissions to ensure that Bey IV, with whom Longmire

allegedly sympathized, would never be charged. This article, which included a large photograph of Derwin, was written by several Bay Area journalists who had founded the Chauncey Bailey Project. As one of the stated objectives, the project was "to expand upon Bailey's work, probe the circumstances of his death and its investigation by the police." The article, citing Longmire's rapport with Bey IV and other bakery members, accused him of bungling the interview with Broussard which led to his confession by failing to record it, failing to include "tracker" information from Bey's vehicle in his report and failing to include in the report potentially incriminating statements made by Bey IV to other bakery members while they were in custody.

The front-page, critical, inflammatory and entirely misleading newspaper article spurred the Department management to initiate a formal investigation of Derwin. About the same time, he was transferred from Homicide to Patrol, with Department management stating that he had served the maximum amount of 10 years in investigative assignments and was required by Department policy to return to a Patrol assignment.

In the following months, the Chauncey Bailey Project reporters and others following in their tracks continued to snipe at Longmire and his "friendship" with Bey IV, and often rehashed earlier stories which had falsely described Derwin's efforts to ensure that

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**RAINS***Continued from page 26*

his friend did not get criminally charged or prosecuted. The acting police chief, who had attended a number of high-level meetings with Lieutenant Joyner and other law enforcement officers concerning the Bailey murder investigation, had seemingly embraced Derwin's assigned role until the wave of publicity. Then, he was quoted as saying that "putting Longmire on the Bailey case was a mistake."

It wasn't long before Derwin and I talked, shortly after we learned he was under investigation for "compromising" the investigation of the murder of Chauncey Bailey. As we would later discover, the OPD, at first, assigned the Internal Affairs (IA) investigation of this case to one of its IA sergeants. After several months of investigative work (which we obtained as part of a *Skelly* package), I was advised that the OPD was bringing in an "outside" investigator by the name of Wendell "Pete" France to conduct the investigation. Thereafter, inexplicably, we were told that the Department was going to use investigators from the State DOJ to conduct the internal investigation of Sergeant Longmire's alleged misconduct.

Eventually, two assigned DOJ investigators contacted me and arranged to interview Lieutenant Joyner and, thereafter, Sergeant Longmire. Lieutenant Joyner's interview lasted a little over three hours, while Sergeant Longmire's interview lasted approximately six. After the interviews had been completed, I was confident that, despite the continuing attempts of the Bailey Project media misrepresenters to tarnish Derwin and his investigation of this murder, the Department would see the light, do the right thing and determine that Derwin Longmire had done nothing whatsoever to "compromise" the murder investigation relating to Chauncey Bailey. As it turned out, I was horribly wrong

### **Longmire Receives the Notice Recommending His Termination**

In a letter dated May 1, 2009, the Police Department's acting chief (and its current chief) proposed to terminate Derwin Longmire for "compromising" the criminal investigation of the Chauncey

Bailey murder and for allegedly failing to obey an order by Lieutenant Joyner to maintain notes of conversations he had with Bey IV.

Shortly before receiving this Notice of Proposed Termination, Sergeant Longmire was advised that he was the subject of a second investigation initiated by the newly assigned Homicide Section lieutenant (Joyner having been transferred to Patrol) alleging a failure to complete certain investigative steps/procedures on several homicide cases which had been assigned to Derwin before being transferred from the Homicide Section. I represented Derwin in the interview concerning that complaint, and what became crystal clear during that investigation was the fact that Sergeant Longmire was literally the first OPD Homicide Sergeant who had not been allowed to complete investigative steps on open cases after being reassigned from the Unit to other duties. Some former Homicide investigators had taken up to a year to complete these additional investigative steps on their homicide cases after being reassigned to other duties, but Sergeant Longmire's request to complete some of these activities and steps had been denied before he became the subject of the complaint and ensuing investigation.

After receiving the Department's May 1, 2009, Notice of Intent to Terminate Derwin, I requested and obtained a copy of the DOJ report, together with the Preliminary Investigative Report prepared by the IA sergeant who had initially been assigned to the investigation. Much to my surprise, even the Department's supposed "outside" investigator, Pete France, had completed a report, which was very cursory, superficial and appeared to have been largely disregarded by Department management in making the recommendation to terminate Derwin's employment.

*Look for part two of this article in the May issue of the PORAC Law Enforcement News.*

### **About the Author**

*Mike Rains is a Principal and Founding Member of Rains Lucia Stern. He heads the firm's Criminal Defense and Legal Defense of Peace Officers Practice Groups. Mike is one of California's top trial attorneys. He has over 25 years of experience representing peace officers and other high-profile clients in civil and criminal litigation. ☆*



## **LDF Trustee Meetings**

**April 27-28**  
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**July 6-7**  
Santa Rosa

**August 3-4**  
San Diego

**September 7-8**  
Redding

**October 19-20**  
Seattle, WA

**November 13-14**  
Anaheim



## FROM THE COURTS

# Fired King City POA President Reinstated After Police Chief's Retaliation

### RUSSELL PERRY

Associate

Lackie, Dammeier & McGill APC

During the summer of 2010, the King City Police Officers Association (KCPOA), led by President Chris Craig, issued a vote of no confidence in King City Police Chief Nick Baldiviez. The no-confidence vote was a formal response by the KCPOA to allegations that the chief had responded to crime scenes intoxicated on more than one

occasion, implemented an unlawful weight loss program and released a probationary officer under suspicious circumstances and replaced the officer with one of his friends. After the KCPOA discovered that the investigation into the chief was going to be conducted by the city manager, the KCPOA objected and insisted that an outside, independent agency conduct the investigation. The no-confidence vote received extensive coverage by the local media. Ultimately, the chief was placed on administrative leave for approximately six weeks and within two weeks of his return, the KCPOA president, vice president

and treasurer all found themselves under investigation. Chief Baldiviez also issued a no-contact order for the vice president in an unlawful attempt to interfere with POA activities.

While the chief was out on administrative leave, Sergeants Baker and Hunter spoke out in defense of the chief at a City Council meeting, demonstrating their loyalty. It wasn't a coincidence that they also were the ones who aggressively pursued the Internal Affairs (IA) investigations into the KCPOA Board members.

The IA initiated by Sergeant Baker against Officer Craig alleged that he took 20 minutes longer to book a subject into County jail. When questioned by Sergeant Baker as to why it took longer than usual, Officer Craig indicated that he'd assisted a California Highway Patrol officer with booking a subject into jail. Unfortunately for Officer Craig, he did not mention that he also stopped by the store for a couple minutes to purchase some candy for the dispatchers. Based on this omission, Sergeant Baker seized on the opportunity to build a mountain out of a molehill. Sergeant Baker made sure he notified the chief of his request for a formal investigation right after the incident.

The second IA arose nine days later. Officer Craig had some reports kicked back from acting Sergeant Hunter and Officer Craig discussed the reports with Sergeant Hunter. After Officer Craig walked into the office with the reports in his hand, he calmly stated, "What the f--- is up with this s---?" After Officer Craig saw that Sergeant Hunter was offended, Officer Craig apologized and indicated that he had not slept well the night before. Instead of letting this incident go as a minor use of profanity, Sergeant Hunter immediately typed out a long e-mail to the chief summarizing the incident. As patrol officers, acting Sergeant

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Hunter and Officer Craig regularly used profanity in conversation without taking offense.

Earlier that same day, acting Sergeant Hunter had used profanity with Officer Craig when he found out the KCPOA was not going to let him rejoin the union as a voting member due to his new status as acting sergeant. When Hunter was originally assigned to an acting sergeant position, he hastily resigned from the KCPOA, and when the supervisor union did not accept him as a member due to his acting status, Hunter demanded that he be reinstated.

In an effort to insulate him from anticipated claims of retaliation, the chief enlisted the help of a neighboring law enforcement agency to conduct the investigation of Officer Craig. At the conclusion of the investigation, Chief Baldiviez decided not to issue any discipline to Officer Craig; however, Chief Baldiviez thought instead that an intrusive psychological Fitness for Duty Exam (FFDE) was appropriate for taking too long to book a suspect and minor use of profanity with an acting sergeant.

When it became obvious that the KCPOA was the target of retaliation by the chief, the KCPOA obtained PORAC membership and hired this firm to intervene. The leadership of PORAC was very helpful in assisting this small association through the minefield of issues that arise when taking on your own police chief.

Prior to the FFDE, Chief Baldiviez had a telephone conversation with the City-paid psychologist, Dr. Myrna Glick, Ph.D., and sent her a referral memo. In the memo, the chief complained that Officer Craig ignored the chain of command and went over his head to City Council. Clearly, this statement referred to the vote of no confidence that was delivered to the City Council. The chief's memo also inappropriately listed several suspect psychological diagnoses by the chief, as if he were inviting Dr. Glick to pick from the list he submitted. It was apparent to Officer Craig that the chief was not seeking an independent evaluation from Dr. Glick.

In fact, this wasn't the first time Chief Baldiviez had used Dr. Glick to get rid of an unwanted employee. A few years earlier, a different King City police officer won reinstatement in arbitration only to be declared unfit by Dr. Glick, effectively blocking his reinstatement. That case

eventually settled and the officer eventually found employment with a different law enforcement agency after passing a pre-employment evaluation completed by an unbiased psychologist. Unfortunately for Officer Craig, Chief Baldiviez apparently learned that he could count on Dr. Glick to assist him in getting rid of problem employees.

Prior to his FFDE by Dr. Glick, I had Officer Craig undergo an FFDE by a different psychologist. This neutral psychologist was not tainted by Chief Baldiviez's retaliatory motives and anti-union animus. After a thorough examination, Officer Craig was found to be fit for duty.

The next week, Officer Craig underwent the examination by Dr. Glick and, not surprisingly, he was found unfit for duty. Dr. Glick ignored the fact that Officer Craig did not consent to the release of his private medical information and she released the protected information to the City anyway. In fact, Dr. Glick improperly used the fact that Officer Craig would not release his private medical information as evidence of poor judgment.

Of course, once Chief Baldiviez received the finding of unfitness by Dr.

Glick he quickly terminated Officer Craig. Furthermore, he declined to review a report by the psychologist who found Officer Craig fit for duty the week before Dr. Glick. Chief Baldiviez was clearly looking for a reason to fire Officer Craig and once he found it, nothing was going to change his mind.

After receiving his notice of termination, I had Officer Craig participate in another rigorous FFDE by a different neutral psychologist and, once again, he was found to be fit for duty. Furthermore, this psychologist indicated that the objective evidence cited by Dr. Glick did not support her conclusion that Officer Craig was unfit.

The arbitrator heard all the evidence and issued a scathing opinion, finding that Chief Baldiviez unlawfully used the FFDE as a means to retaliate against Officer Craig for the vote of no confidence. Officer Craig was ordered to be reinstated with back pay.

It is becoming more common for police departments to use FFDEs as a means to get rid of unwanted officers. In the event that you are sent for a FFDE by your agency, you should contact legal counsel immediately as there are steps that can be taken to help preserve your rights. ☆

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## TAX TALK

# This Tax Season Brings Confusion About Short Sales and Foreclosures

**TIMOTHY E. KELLY, ESQ.  
AND KEVIN W. REGO, ESQ., LLM**  
Certified Specialists, Taxation Law  
*Tim Kelly & Associates*

One of the most alarming trends we are seeing this year is the mishandling of real estate dispositions which occur as the result of a short sale or a foreclosure. The enormous complexity of these issues, which involve the interaction of California civil law and federal tax law, has proven to be too much for many tax preparers who lack the sophistication to correctly analyze and interpret a given situation so as to reduce or eliminate pain to their tax preparation clients.

We understand the natural loyalty developed over the years to a certain tax preparer, but we want to discuss what we have actually seen, as well as the actual and potential harm the situation has caused. Driving this problem is the refusal by many tax preparers to admit they are in over their heads in this area. To do so would cost them income they have come to depend on from selling their services, since some clients would

have to be directed to a tax professional more knowledgeable about the subject.

The problems generally fall into one of two categories as defined by result. In either case, the analysis completed by the preparer, if it is completed at all, is very superficial. The first category is where the preparer might ask a few questions to sound like they know the area and then, regardless of the reality of their clients' position, simply complete an IRS Form 982 reporting any canceled debt as covered by one of the many exceptions in the Internal Revenue Code. These exceptions, all of which apply under narrow circumstances, all of which must be coordinated in a particular order and all of which have specific consequences, allow canceled debt income to be excluded from a taxpayer's gross income in part or in whole. What these preparers do without their clients' knowledge is brush off the issue by completing the form whether it applies or not. The bottom line here is that if there is never an IRS examination of such a tax return, there will never be a problem and the taxpayer will be blissfully unaware of the potential disaster contained in the tax return documents.

While in the previous example the taxpayer never knows how poorly they were

served, in the other category is a situation which definitely commands attention. This is where the tax preparer, through an incorrect application of law, informs the taxpayer they have some huge tax liability as a result of a real estate transaction. We have seen this over and over when desperate taxpayers are seeking a second opinion. Taxpayers who are already in dire straits financially are told, incorrectly, that they owe tens of thousands of dollars in taxes because of a real estate transaction.

Our advice, therefore, is that if you have experienced this scenario of a staggering tax liability and your tax professional is not a skilled enrolled agent, CPA or attorney, seek a second opinion to verify whether the liability for canceled debt really exists as you have been told. As with our clients, this could save you both money and peace of mind.

### **About the Authors**

*Tim Kelly is an attorney certified as a Specialist in Taxation Law by the Board of Legal Specialization of the State Bar of California, a distinction held by less than 500 of the state's 200,000 attorneys. He is a retired Police Sergeant with 27 years of experience and an honors graduate of the McGeorge School of Law.*

*Kevin W. Rego is also an attorney certified as a Specialist in Taxation Law by the Board of Legal Specialization of the State Bar of California and is admitted to practice before the IRS and all California courts. He is an active Police Officer with over 20 years of experience and a graduate of the Santa Clara School of Law. Kevin also holds a graduate law degree (LLM) in taxation from the University of Alabama. Tim and Kevin practice in the area of tax litigation, appearing on a regular basis before the IRS, the U.S. Tax Court and federal district courts in California and throughout the nation. ☆*

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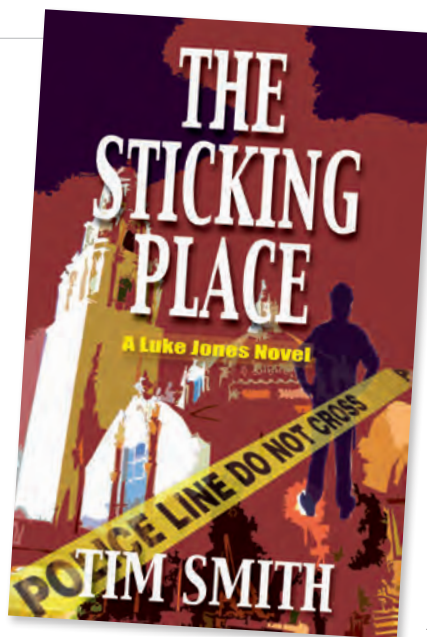
*The Sticking Place*, the debut novel from T.B. Smith, a retired San Diego-area Lieutenant and Ashland resident, features a brash, Shakespeare-spouting rookie cop and is an Amazon bestseller! It's set in San Diego's Historic Gaslamp Quarter in the late 1970s and reflects the author's semi-autobiographical experiences during those turbulent times.

*The Los Angeles Times* says, "[It] has a high-minded protagonist, rookie [cop] Luke Jones, who is slowly coming to terms with the fact that law enforcement is a blunt instrument not altogether suited to fixing society's deeper problems." San Diego's mayor and former police chief says it's "a must read for ... anyone with an appreciation for realistic literature that depicts what it will always mean to be a cop." According to the *San Diego Union-Tribune*, "[The] Bard visits San Diego's

mean streets," and an *Oregonian* police reporter says it "has all the elements of a Shakespearean play: political intrigue, betrayal, comic relief and an understanding of the dark parts of the soul."

During April 2012, Mr. Smith will be donating 10% of the sales from his website ([www.lukejonesnovels.com](http://www.lukejonesnovels.com)) to POREF. In addition, the author has offered to donate 10% of **all** sales (regardless of where they originate) from his second novel in the Luke Jones series, *A Fellow of Infinite Jest*, in April 2013!

He's also soliciting ideas for other worthy causes, since he'll be partnering with a different charity each month for



the remainder of this year and throughout next year.

Mr. Smith offers signed first editions from his site, and inspired by the huge success of an Amazon sale late last year, he offers

e-book versions for \$2.99. Compare that e-book price to Barnes and Noble's \$10.16 and Amazon's current price of \$8.99 and you'll see what a great deal it is! Look for *A Fellow of Infinite Jest* from Hellgate Press, to be released January 2013.

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**FINANCIAL ADVISOR**

# Investing in the U.S. Health Care System Overhaul

**MARK K. SIKORSKI**  
 Vice President, Investments  
 UBS Financial Services Inc.

*This article has been written and provided by UBS Financial Services Inc. for use by its Financial Advisors.*

The growth of personalized medicine, technological breakthroughs and new health care reform laws — all brought on by the rising cost of health care and quality-control issues — are creating new opportunities in the health care space for long-term investors, according to research released by UBS Wealth Management Research as part of its *Decade Ahead* report.

The success of companies specializing in health care delivery, systems and technology will be largely dependent on the companies' ability to provide a cheaper and more efficient health care experience for doctors and patients, according to the *Decade Ahead* chapter "Health care: from healing to fixing."

With that in mind, companies that, among other things, promote better coordination among health care providers, cost-saving health care delivery methods

and innovative medical treatments will be well-positioned over the next decade to benefit from both private and government support for such initiatives.

"Reducing costs and improving the quality of care provide much of the motivation for health care innovation," says Jerry Brimeyer, an Analyst with UBS Wealth Management Research. "We expect considerable technological innovation this decade to better coordinate our fragmented health care system and apply our knowledge of the human genome to personalize medicine."

A health care-themed chapter of the *Decade Ahead* report outlines the factors contributing to the reshaping of the U.S. health care system, including behavioral changes that could lead to less discretionary health care consumption and enhanced price shopping. Such behavioral shifts, the report says, could reduce the number of unnecessary tests and procedures that often increase health costs.

To meet the demands for greater efficiency in health care, managed care organizations will be tapped in the coming years to implement new payment schemes and vertically integrated health care delivery paradigms, presenting investors with new

opportunities in companies that provide such services.

Technological innovation will also play a large role in the future of health care. For instance, at the behest of the U.S. government electronic recordkeeping will be used more prominently by 2020, potentially leading to processing improvements and fewer medical errors. Other technological innovations cited in the *Decade Ahead* report include robotics and enhanced medical devices.

The next decade is also expected to feature new opportunities in companies specializing in genetic research, which could enable doctors to provide more targeted and effective treatments to patients for many conditions, including cancer, Alzheimer's and heart disease.

There are several ways to incorporate health care investments into your portfolio. For example, one method involves investing in equity funds that are concentrated in health care stocks.

Given that many of the companies and medical subsectors that stand to benefit from the health care system overhaul are not yet well-established, a professional portfolio manager could be helpful in providing recommendations on such niche markets.

For more information about health care investing, contact your financial advisor.

*The information contained in this article is based on sources believed to be reliable, but its accuracy cannot be guaranteed. This article is for informational and educational purposes only and should not be relied upon as the basis for an investment decision. Consult your financial advisor, as well as your tax and/or legal advisors, regarding your personal circumstances before making investment decisions.*

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# Did San Jose Police Sergeant Scott Castruita Earn a Fair Pension

By **SCOTT CASTRUITA** | Retired Sergeant, San Jose Police Department, and President, Fugitive Watch Productions  
This article originally appeared on [www.fugitive.com](http://www.fugitive.com) on December 12, 2011.

I am writing this article because I recently had a Christmas party with some close friends whom I care about very much, and I know they feel the same about me. However, there is always one common theme that seems to come up in our conversations and that is my retirement from the San Jose Police Department. In August 2011, I retired after a 28-year career as a Police Officer, ending the last 12 years as a Patrol Sergeant. I was very proud of my career choice, and I could not imagine taking any other path.

This article is only to share my thoughts and is not in any way, shape or form a complaint or attempt to gain sympathy from the reader. The economy has made it tough on all of us. Police officers, firefighters and civilians alike are all feeling the effects of our current economic downturn. However, San Jose Mayor Chuck Reed has managed to take this worldwide economic downturn as an opportunity to demonize his police officers and firefighters in an attempt to cover up his and other City representatives' inability to properly manage the City or just plain do their jobs.

It is unfortunate that many of my friends and people I consider family have been tainted by Mayor Reed's lies and now have negative opinions that are based on ignorance of the facts. Many of the people



who used to tell me, "You don't get paid enough for your job" or "I wouldn't do your job for a million dollars" now accuse me of gorging myself at the public trough. I can't blame them completely for their mistaken conclusions. Because everyone is busy in their day-to-day lives just trying to keep their own boats afloat, they don't have time to do a true examination of the facts, so they rely on a media that loves controversy that sells newspapers. They also rely on an elected leader — Mayor Reed — who has an unscrupulous hidden agenda and flat-out lies to his citizens.

For this reason, I ended my career quietly, with no fanfare and no party; in fact, I even skipped out on my last briefing because it was too difficult for me to say goodbye to my friends and police family. I was heartsick feeling they were stuck on

a sinking ship, and it was our own mayor who fired the torpedoes. His torpedoes have completely demoralized us and are rapidly destroying the finest, most highly educated and dedicated police department in the nation.

I am proud to have worked with these officers and leaders. I am saddened because every officer I talk to now has lost their enthusiasm, feels stuck in their job and is unsure of their future. Thanks to Mayor Reed, there are no winners in his plan, and the citizens of the City will suffer the most as the crime rate rises. When his term is over, Mayor Reed will move on and leave San Jose smoldering in ashes.

Now for the question: Did retired San Jose Police Sergeant Scott Castruita earn a fair pension?

I would like to answer this question by giving a few examples of my personal experience as a police officer, and I ask you to compare these experiences to your own career before you judge me.

- ▶ Giving CPR to a woman's father I knew was dead because his small grandchildren were begging me to help him and the crowd of onlookers surrounding us expected me to help him.
- ▶ Being the first on the scene after a young mother called 911. When I arrived, she handed me her obviously dead 9-month-old baby as if I was

going to run for a touchdown, crying, "Please help me; please save my baby." I did CPR on this baby for what seemed like the longest five minutes of my life.

- Leading an investigation into the death of a 9-month-old baby. The horrible feelings I had because I had to interrogate a grieving mother as a possible suspect to be sure about how her baby had died. Collecting evidence at the scene and taking photos of the dead baby only to be told later it was most likely a case of Sudden Infant Dead Syndrome.
- Never being able to erase that experience from my mind or sleep through the night because I had a 9-month-old son of my own at home. I was always waking up to check and be sure he was breathing. Because of this experience, when my daughter was born I moved her into my room at night for the same reason.
- Having to administer CPR two more times to dead victims because the victims' families, friends and bystanders were expecting me to save their lives. I just couldn't perform the miracle they wanted from me.
- Holding a 17-year-old boy's hand and telling him, "Everything is going to be OK; we are going to get this car off of you." Watching his life slip away, all the time knowing the truth: There was nothing I could do to save his life. When the family showed up, I lied to them. I told them, "Your son didn't suffer; it was over fast for him." The rest of the night on patrol was a long, lonely night for me.
- Seeing terrible car accidents I was on where I saw badly hurt people, including dead children and the elderly. No matter the conditions or if there was freezing, wet or hot weather, the conditions were never right to deal with this type of experience.
- Responding to an emergency call for help from a brother officer only to arrive and see him lifeless between two parked cars after he was shot by a crazed gunman. Watching as another brother officer, critically wounded in the same gun battle, was loaded into an ambulance and then later hearing the news that he died from his gunshot wounds. That officer was one of my recruiters when I was hired as a police officer.
- Being down the street on another day when another brother officer was shot to death with his own gun while processing a drunk driver.
- Responding to the countless numbers of suicides and attempted suicides — the man who blew his own head off with a shotgun. The man who drank a gallon of pool acid. The 16-year-old boy who stole his dad's gun and shot himself in the head after he texted his friends goodbye. The man who soaked his sleeping bag in gasoline, then got in and set it on fire. The man who took a butcher knife and cut his stomach open, and having to talk to him as his guts lay beside him. The person who rammed their car into a tree after leaving a very touching letter behind. There are so many more that still haunt me and make me wonder, "Why?"
- Remembering the many brother and sister officers, some who were close friends and took their own lives. The lingering thoughts and feelings, wondering, "Should I have seen that coming?"
- Thinking of the times I fought with a suspect who was trying to take my gun and kill me with it. I live with lingering thoughts of what he would have done to me if I lost the fight. Wanting to hear the sound of the sirens telling me my brother and sister officers were on the way to help me. I thank God for my brother and sister officers who showed up to help. One of those times they even had to return my gun to me because it ended up in the middle of the street during the fight. That's when I decided to buy a backup gun with my own money, and I carried it hidden on me for the rest of my career.
- Winning fights with suspects did not always mean I walked away without injuries. I have had my kneecap knocked off, several eye injuries and two shoulder surgeries; a disk in my back is compressed; all the bones in one hand have been broken. The list goes on, but so do I.
- Having many things thrown at me over the years. Rocks, bottles, sticks — you name it and it's been thrown, and sometimes they hit me. I have been bitten, punched, kicked, hit with cars, spit at and called every name in the book. But I have also been thanked and had my hand shaken many times by grateful citizens.
- Setting up funeral home arrangements for grieving families. I have checked on mothers, fathers and other family members because relatives had not heard from them, only to find them dead and

have to tell the caller that their loved one is gone. I have had to deliver the worst news to families about their dead child or mother or father. Don't think that officers just go back into service and never shed a tear. There were times I could barely get around the corner without my tears making it too blurry for me to drive. That's when you call your family just to say hi, and they don't have a clue what you are feeling. This is one of those jobs that won't allow you to just go home at the end of the day and forget about it.

- Missing my kid's events and the holidays while on patrol. Someone has to work those holidays. Not myself anymore, and I am thankful to be able to spend that time with them now and with my family and friends. I don't have to get those calls at work from my family about how much they miss me because I am not there with them.

OK, I think you get the picture. But this is not just my story, this is almost every police officer's story. Just change the names and the faces. Police officers have all the same day-to-day stresses that everyone else has in dealing with life. We are also part of that 99%. Yet because we drive those black-and-white cars, we end up being the most visible symbol of government and the target of some people's frustrations with government. We go to work and sometimes have to make split-second decisions that will affect our lives as well as others', all at the same time we are thinking about our kids and other loved ones.

I feel I earned my pension. I paid into my pension my whole career. I am not getting a free pension. In fact, when I retired the City was still taking almost 22% of my pay for my pension. During my career, we were asked many times by the City to sacrifice a pay raise because of City budget problems. The City told us that if we agreed not to take a pay raise, then they would increase our pensions. We made a good faith agreement with the City. Now the City wants to break their end of the agreement. It would be no different than you making all your house payments, and then the bank shows up and says, "It's your fault we are having money issues; we need to take your house." Really? I don't think so. I will continue to produce [www.fugitive.com](http://www.fugitive.com) and help the City catch bad guys because catching bad guys is what I do best. I refuse to waste the time and money that the citizens of San Jose invested in me. ☆



# *Duty to All, Duty to None*

**STEVE PAPENFUHS  
AND ERIC P. DAIGLE**

*The following article originally appeared on **PoliceOne.com**, the online resource for law enforcement, and is reprinted by permission of the PoliceOne editorial team. Visit PoliceOne to access articles, information and resources that help officers across the United States protect their communities and stay safe on the streets.*

The Public Duty Doctrine provides that “absent a special relationship between the governmental entity and the injured individual, the governmental entity will not be liable for injury to an individual. ... The governmental entity owes a duty to the public in general. The doctrine has been commonly described by the oxymoron ‘Duty to all, duty to none.’”<sup>1</sup>

The concept of duty establishes a great moral obligation in those who have taken an oath to serve and to protect the public. Officers are instilled with the principles of honor, integrity and selflessness. As a result of these basic principles, officers often feel required to take action in certain situations when taking no action may actually be the best course of action. Often, officers believe

that they have a legal obligation to act above and beyond what is actually required of them.

Law enforcement professionals’ lack of understanding of the legal principles of the Public Duty Doctrine often leads to inappropriate actions on the part of the officer. In addition, the fear of liability for failure to act and the personal code of honor that many sworn public servants hold influence their decision to take action at all costs to protect and defend life and property. While this desire to serve the public is commendable, police officers must understand that they have no obligation to protect any one individual unless a special relationship exists. Rather, an officer’s sworn duty is to the general public.

As a general rule, an individual has no duty to come to the aid of another. A person who has not created, by his words or deeds, a danger to another is not liable for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act.<sup>2</sup> The application of these general principles in the area of law enforcement and other police activities has produced some confusion and conflict. The

confusion is further exacerbated by widely held misconceptions concerning the duty owed by police to individual members of the general public.<sup>3</sup>

By becoming a police officer, an individual does not give up his right to the protection of these general principles. A police officer does not “assume any greater obligation to others individually. The only additional duty undertaken by accepting employment as a police officer is the duty owed to the public at large.”<sup>4</sup> Following these general principles, “California courts have found no duty of care and have denied liability ‘for injuries caused by the failure of police personnel to respond to requests for assistance, the failure to investigate properly or the failure to investigate at all, where the police had not induced reliance on a promise, express or implied, that they would provide protection.’”<sup>5</sup>

The concept of a lack of any special duty owed to any individual member of society who is in need of assistance often flies in the face of law enforcement professionals who have taken an oath of office to protect and defend. The oath of office for law enforcement officers, however, as required by the California Constitution, does not

1 Glover, D., “Public Duty Doctrine in State Tort Claims Act Cases, Teague & Glover, P.A., 2006, [www.teagueandgloverlaw.com/media/Public\\_Duty\\_Doctrine\\_State\\_Tort\\_Claims\\_Act\\_cases.pdf](http://www.teagueandgloverlaw.com/media/Public_Duty_Doctrine_State_Tort_Claims_Act_cases.pdf) (accessed March 20, 2011).

2 Rest.2d Torts, § 314; 4 Witkin, Summary of Cal.Law (8<sup>th</sup> ed.) Torts, § 554, p. 2821.

3 *Williams v. State of California*, 34 Cal.3d 18 (1983).

4 *Id.*

5 *Id.*

mandate duty to an individual.<sup>6</sup> Rather, the oath cites the support and defense of the Constitution of the United States and the constitution of California “against all enemies foreign and domestic.”<sup>7</sup>

While neither the California Constitution’s oath of office nor the International Association of Chiefs of Police’s model oath of honor<sup>8</sup> suggests that officers have duties other than the support and defense of the Constitution and the maintenance of character, integrity and public trust, no officer wants to see innocent individuals victimized or suffer harm of any sort.

One duty-dilemma issue, for example, may be the concern of contracting a fatal disease from performing CPR on a subject. Indeed, this is a real concern as just this past March a deputy in Florida died five years after having contracted a virus while conducting CPR on an infant.<sup>9</sup> Officers must discern the pros and cons of taking action in such a case to balance this unlikely tragic outcome against the more likely heartbreaking consequence of failing to act in a timely manner.

An officer’s misconception of his duty owed to the individual, however, may cause that officer to believe he has no choice but to provide assistance in the matter. While the officer is under no legal obligation to render aid to any one individual, once that officer decides to render aid to a victim, a special relationship may be established that produces a duty to an individual. Federal and state case law provide, for example: A police officer’s failure upon stopping an

automobile to advise the passenger to leave the vehicle and find other transportation was not an actionable breach of duty to the passenger;<sup>10</sup> an officer owed no duty of care to a tow truck driver struck by a passing vehicle while working an accident scene because the officer did not create or increase the risk of harm that led to the injuries;<sup>11</sup> no duty existed where a police officer, upon responding to a disturbance, confiscated a gun that was later returned to the individual through department procedure and was used sometime thereafter to shoot the complainant because the initial seizure of the weapon did not establish a special relationship with the complainant that would continue indefinitely;<sup>12</sup> a police officer owed no duty to order an accident victim who had sustained a spinal injury not to leave the scene;<sup>13</sup> police officers who recognized an assailant as a likely perpetrator of a prior assault and conducted surveillance of the assailant in a laundromat in which the victim was present did not establish a special relationship between the officers and the victim to impose a duty on the officers to protect the victim from the assailant;<sup>14</sup> a police officer who stopped a motorcyclist for speeding but did not perform a field sobriety test had no legal duty to use due care to recognize signs of intoxication and prevent the motorcyclist from continuing to drive and, therefore, was not liable when the driver was involved in an accident 10 minutes later.<sup>15</sup>

Courts typically find that no duty has been established and deny recovery for “injuries caused by the failure of police personnel

to respond to requests for assistance, the failure to investigate properly or the failure to investigate at all, where the police had not induced reliance on a promise, express or implied, that they would provide protection.”<sup>16</sup> For example, a plaintiff was unable to establish a duty on behalf of police when police failed to respond to a plea for assistance 45 minutes before a homicide.<sup>17</sup>

The courts, however, have found that police officers may create a special relationship with individuals in certain circumstances, thereby establishing a duty of care to that individual. This special relationship may be created when an officer performs an affirmative act which places a person in peril or increases the risk of harm. For example, an officer who investigated an accident and instructed an individual to follow him to the middle of the intersection, where the individual was hit by another car, established a duty of care for that person;<sup>18</sup> a highway patrol officer established a duty to an individual when he parked his vehicle with lights engaged behind the stalled motorist, but later left the scene without warning the motorist, who had relied upon his protection and was struck by another car.<sup>19</sup>

Some departments have internal policies that stipulate the circumstances in which a special relationship may exist. The San Jose Police Department’s policy for rendering first aid, for example, states that officers who have begun rendering aid have created a special relationship with a victim and

*Continued on page 43*

6 California Constitution, Article XX, § 3, provides, in pertinent part: “I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

7 Id.

8 The International Association of Chiefs of Police’s oath of honor format provides: “On my honor, I will never betray my badge, my integrity, my character or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution, my community and the agency I serve.” [www.theiacp.org/PoliceServices/ExecutiveServices/ProfessionalAssistance/Ethics/WhatistheLawEnforcementOathofHonor/tabid/150/Default.aspx](http://www.theiacp.org/PoliceServices/ExecutiveServices/ProfessionalAssistance/Ethics/WhatistheLawEnforcementOathofHonor/tabid/150/Default.aspx).

9 Weiner, J., “Orange County deputy dies from illness he caught trying to save infant, Sheriff’s Office says,” *The Palm Beach Post News*, 2011, [www.palmbeachpost.com/news/orange-county-deputy-dies-from-illness-he-caught-1327335.html?sort=desc](http://www.palmbeachpost.com/news/orange-county-deputy-dies-from-illness-he-caught-1327335.html?sort=desc) (accessed March 20, 2011).

10 *City of Sunnyvale v. Superior Court*, 203 Cal.App.3d 839 (1988).

11 *Minch v. California Highway Patrol*, 140 Cal.App.4th 895 (2006).

12 *Baker v. City of Los Angeles*, 188 Cal.App.3d 902 (1986).

13 *Camp v. State of California*, 184 Cal.App.4th 967 (2010).

14 *Davidson v. City of Westminster*, 649 P.2d 894 (1982).

15 *Hucko v. City of San Diego*, 179 Cal.App.3d 520 (1986).

16 *Williams v. State of California*, 34 Cal.3d at 25.

17 *Hartzler v. City of San Jose*, 46 Cal.App.3d 872 (1975).

18 *McCorkle v. Los Angeles*, 449 P.2d 453 (1969).

19 *Mann v. State*, 70 Cal.App.3d 773 (1977).

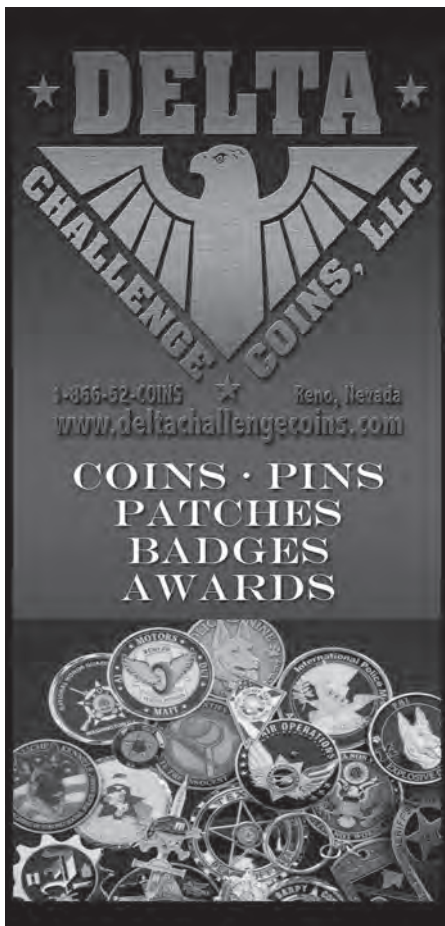
## TREASURER'S MESSAGE

*Continued from page 6*

news emanating from Wall Street. Just last month, the Dow Jones Industrial Average broke the 13,000 plane. Some believe it's just a psychological barrier and we should not put a great deal of our reliance on how the market is doing by breaking the plane. At the same time, maybe it's that psychological push investors need to get back in the game. Fortunately for PORAC, we have our own investment genius, Mark Sikorski with UBS, who helps guide us through the uncertainty and vagaries of Wall Street. Mark has stated over and over again that he is available to assist PORAC associations with their investment needs. Do not hesitate to contact Mark if your association needs some sound guidance.

Remember to attend your chapter meetings since they are the premier source of information as to what is happening at the national, state and local level that is affecting our profession and working conditions.

Be safe and have fun. ☆



## EXECUTIVE COMMITTEE MEETING

*Continued from page 7*

VP Durant discussed the video project President Cottingham coordinated with the Alliance for a Better California. The video is being produced by Firestar Productions in collaboration with PORAC, California Professional Firefighters and several law enforcement associations throughout the state. This is an informational video to explain to PORAC's members the importance of defeating "Stop Special Interest Money Now" at the ballot box. This initiative will be one of the most serious issues facing PORAC members in the November 2012 election.

Sadly, most members do not understand the ramifications of this initiative if it were to pass. Chapter directors are being asked to relay the proper information to members to help educate them regarding this dangerous bill.

### Vice President's Report

VP Durant talked about the importance of associations getting their dues to state on time. Several associations are delinquent. The online membership program is a month behind due to the importance of other programs needing priority. The membership will be notified as soon as this program is up and running. Once everything is up and running, it will modernize the whole system. Many associations are asking to become members of PORAC, and VP Durant said he is actively working with them.

VP Durant talked about a meeting on March 18, 2012, with Bruce Calvechio from the Kairos Group. This is an independent company that works with pharmaceutical companies that are interested in PORAC's support to get doctors to prescribe nongeneric medicine. Discussions will continue regarding a possible partnership with this group.

### Labor Consultant's Report

VP Durant commented that the PERS assumption rate did in fact get lowered from 7.75% to 7.5%. This will raise safety rates to cities and counties by 3% to 5%. CalPERS has indicated it will phase the rates in over two years.

## Treasurer's Report

Treasurer Blanco gave his report. He said PORAC's investments are doing well.

### Legal Defense Fund

Legal Defense Trustee and Executive Committee Director Bill Abernathie said LDF has 92,000 members and \$7.6 million in reserves. He said the new computer system is up and running and doing well. There are 50 active criminal cases to date involving LDF members.

### Insurance and Benefits

I & B Trustee and Executive Committee Director Jacky Parks provided an update on I & B's insurance products and activities.

### Legislative Report

VP Durant talked about Governor Brown's pension initiative and how much work PORAC is doing with his office regarding this initiative.

### PAC

#### AB 1995 — Huber

A motion was made by Treasurer Blanco, with a second by Director Abernathie, to actively support this bill. The motion passed.

#### AB 2310 — Morrell

A motion was made by Director Watkins, with a second by Treasurer Blanco, to actively oppose this bill. The motion passed.

#### SB 1141 — Walters

A motion was made by Secretary Sobek, with a second by Treasurer Blanco, to actively oppose this bill. The motion passed.

#### SB 1142 — Walters

A motion was made by Director Abernathie, with a second by Director Magor, to actively oppose this bill. The motion passed.

A motion to make a primary-only dual endorsement of Cathleen Galgiani (D) and Bill Berryhill (R) for Senate District 5 was made by Treasurer Blanco, with a second by Director Parks. The motion passed. Treasurer Blanco, with a second by Director Abernathie, made a motion to make a PAC contribution to each campaign. A motion was made to table this motion until the April 2, 2012, meeting by Director Watkins, with a second by Director Magor. The motion passed.

Director Parks talked about supporting AB 493 (Perea). This bill would prohibit

registered sex offenders from working in any licensed children's facilities throughout the state. Several issues came up and it was requested that these talks be continued at the Executive Committee meeting in April.

The PAC minutes will be approved at the April Executive Committee meeting at Symposium.

A motion was made by Treasurer Blanco, with a second by Director Watkins, to support the Speaker's Cup. The motion passed. A motion was made by Treasurer Blanco, with a second by Secretary Sobek, to support the Pro-Tem Cup. The motion passed.

Director Flannagan gave a report on the Assembly race in District 49. He mentioned that candidate Luis Ayala has removed himself from the race. Dr. Lynn is now the only candidate.

### RAM Report

Bob Gallardo spoke about the issue of officers who go to other agencies when they retire that will offer them their CCW permits when they fully retire. Also, the 960-hour employees are concerned about their respective status when it comes to

them working part time. Mr. Gallardo and Secretary Sobek also discussed the situation in San Jose and their pension issues with the committee.

### Specialized Law Enforcement Report

SPAC President Jesus Montana spoke about the Twin Rivers School Police and is working on several local issues.

### Executive Session

At 9:13 a.m., Secretary Sobek made a motion, with a second by Treasurer Blanco, to enter executive session. At 9:14 a.m., a motion by Treasurer Blanco, with a second by Director Watkins, was made to come out of executive session.

### New Business

Scott Thompson, Andrea Wolf and Jennifer Cetta from PORAC's lobbying firm, Patton Boggs, addressed the Executive Committee's lobbying agenda, Congressional visits, Senate committee meetings and House committee meetings for the week. Patton Boggs also arranged for VP Durant to testify at the House Appropriations

Subcommittee on Commerce, Justice, Science and Related Agencies. VP Durant testified on the importance of Community Oriented Policing Services grants and Byrne Justice Assistance Grants to California law enforcement.

### Old Business

None.

### Adjournment

Vice President Durant adjourned the meeting at 10 a.m. ☆

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**FEDERAL LEGISLATION**  
*Continued from page 23*

**Congressman John Conyers (D-MI) Introduced the Shield Our Streets Act (HR 4098)**

On February 28, 2012, Ranking Member Conyers introduced the Shield Our Streets Act of 2012 (HR 4098). The bill was referred to the House Judiciary Committee. Currently, the bill has eight co-sponsors, including Congresswomen Judy Chu (D-CA) and Maxine Waters (D-CA). The bill proposes to authorize the attorney general to create a program within the DOJ COPS office that awards grants to eligible law enforcement agencies to help them hire and rehire career law enforcement officers. The bill also authorizes \$100 million from FY 2013 through FY 2018 to fund this grant program.

Even though the Shield grants are from the DOJ COPS office, they are more specific and targeted than the COPS grants. Under HR 4098, a law enforcement agency is considered "eligible" if it is an "elevated need locality." Elevated need localities are counties, or other units of local

government, that have violent crime rates at or above the national average (according to the FBI) and have experienced budget reductions during the most recent five-year period. Eligible law enforcement agencies would not be required to provide any portion of the costs for the activities conducted with the grant money.

This bill will likely face Republican opposition because, in addition to authorizing the attorney general to create new Shield grants, it also authorizes \$100 million for such grants in each year of FY 2013-2018 which, if enacted, likely would come out of the overall COPS budget. Though HR 4098 is far from passage, PORAC was advised to consider expressing its support for the bill during its lobbying trip. Patton Boggs will keep PORAC updated of all significant developments on HR 4098.

**Passage of D-Block Legislation and Implementation of the Public Safety Long Term Evolution Network**

On February 17, 2012, both chambers of Congress passed the payroll-tax legislation to reallocate the 700 MHz

D-Block spectrum for public safety. On February 22, 2012, President Obama signed this legislation into law. The legislation provides \$7 billion in federal grant money for the deployment of a nationwide Long Term Evolution (LTE) broadband network; \$2 billion of these funds will be available before any auction proceeds are realized.

This new law will make more airwaves available to commercial wireless operators via FCC auctions, which are expected to be a significant revenue source for the bill. Between the new law's allocation of the D-Block to public safety and the 10 MHz swath of spectrum adjacent to the airwaves licensed to the Public Safety Spectrum Trust (PSST), public safety officers will have 20 MHz of contiguous spectrum on which to deploy the proposed LTE network.

Many critics question whether \$7 billion is sufficient to fund public safety LTE deployment, especially in rural areas. When Senator Jay Rockefeller (D-WV) originally proposed the legislation, his bill allocated \$11 billion for the build-out — and even that was seen as insufficient by some advocates. However, recently



2012 Southern California  
**Peace Officer  
Memorial Caravan**

Sunday May 6 – Candlelight Vigil  
Monday May 7 – Enrollment Ceremony

Please join the Santa Monica Police Officers' Association, with the support of the Santa Monica Police Department, for the 2012 caravan to the California Peace Officers' Memorial in Sacramento. This annual event is our opportunity to remember our fallen brothers and sisters in law enforcement.

In 2011, California law enforcement agencies lost eight officers in the line of duty. These officers, along with officers from previous years, will be honored on Sunday, May 6<sup>th</sup>, in a *Candlelight Vigil* and on Monday, May 7<sup>th</sup>, in the *Enrollment Ceremony*.

This is one event every member of law enforcement should witness at least once in his/her career.

We will meet at 0900 hours in the parking lot of the Red Lobster restaurant located at:  
**27524 The Old Road, in Valencia, CA.**  
Red Lobster staff volunteers will host a continental breakfast from 0900 to 0930 hours. The caravan will leave at 0945 sharp & continue on to Sacramento.

For further details regarding the caravan, please contact: Detective Gladden at 310-458-8931 / [lloyd.gladden@smgov.net](mailto:lloyd.gladden@smgov.net) or Officer Ortiz at [michael.ortiz@smgov.net](mailto:michael.ortiz@smgov.net)

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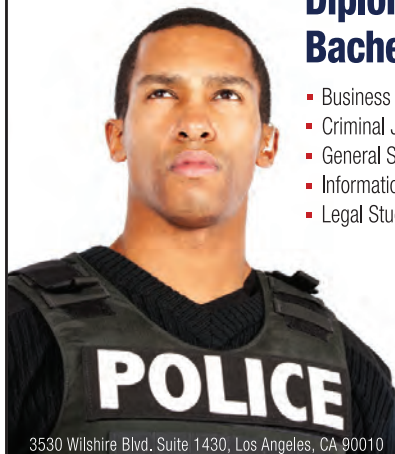
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Senator Rockefeller expressed confidence that the included funding will have a significant impact, including by spurring additional funding later. "When you put \$7 billion into a build-out of something of this nature, the public — if not the whole country — instantly and absolutely understands what is going on, so you can't stop it," Senator Rockefeller said during a press conference. "The point was to start it to the extent that you couldn't stop it. And we did that."

In addition to the \$7 billion for deployment of the nationwide LTE network, the bill includes other funding, such as \$250 million for next-generation 911 deployments, \$100 million for the First Responder Network Authority (FirstNet) administration and \$300 million for research and development of public safety broadband technology.

The legislation also shifts the license to the 10 MHz of broadband spectrum in the 700 MHz band from the PSST to FirstNet. FirstNet is an independent authority within the NTIA.

On February 28, 2012, the FCC released a public notice that the Public Safety and Homeland Security Bureau of the FCC sought nominations for membership on the Technical Advisory Board for First Responder Interoperability (Interoperability Board).<sup>1</sup> The D-Block legislation established the Interoperability Board as part of the FCC to "develop recommended minimum technical requirements to ensure a nationwide level of interoperability for the nationwide public safety broadband network." Following guidance from the new law, the FCC appointed 14 voting members to the Interoperability Board by March 23, 2012. Four of those 14 members are from public safety entities. Of those four, at least one member represents management-level employees of public safety entities and another represents employees of public safety entities. Patton Boggs will provide further specifics about the Interoperability Board and its membership in next month's report. ☆

<sup>1</sup> As mentioned previously, at the time this article was drafted the nominations had not yet been submitted and the Interoperability Board had not been chosen. Patton Boggs will report on all relevant updates in the coming months.



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## Political Action/PAC Management — Two Days

JUNE 19-20, 2012

Tuesday/Wednesday

Sacramento — PORAC Headquarters

## Association Leadership — Two Days

JULY 10-11, 2012

Tuesday/Wednesday

Reno — Silver Legacy

(800) 687-8733

Room rate \$59 (until June 16, 2012).

Use code "PORAC7."

## Advanced Collective Bargaining — Three Days

(Prerequisite:

PORAC Basic Collective Bargaining)

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Tuesday/Wednesday/Thursday

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Region III  
Tri-Counties Chapter  
Paso Robles POA

## APRIL 2012 CALENDAR OF EVENTS

- April 2:** Executive Committee Meeting, La Quinta
- April 3-4:** PORAC Symposium 2012, La Quinta
- April 5:** San Diego/Imperial Chapter Meeting, Coco's Restaurant, La Mesa, 5:30 p.m.
- April 6:** PORAC Board Meeting, Reno, Nevada, 11:30 a.m.
- April 8:** Easter
- April 10:** Bay Area Chapter Meeting, Concord POA, Concord  
L.A. North Chapter Meeting, San Gabriel Valley
- April 12:** Valley Chapter Meeting, Twin Rivers POA
- April 17:** Central California Chapter Meeting, Madera POA
- April 18:** Central Coast Chapter Meeting, Marie Callender's, Morgan Hill, 7 p.m.
- April 19:** L.A. South Chapter Meeting, Embassy Suites, El Segundo, 10 a.m.  
Inland Chapter Meeting, Castaway Restaurant, San Bernardino, 6 p.m.
- April 24:** I & B Trust Meeting, PORAC HQ
- April 27-28:** LDF Meeting, Arizona

## DUTY TO ALL, DUTY TO NONE

*Continued from page 37*

now have a duty to continue providing care unless one or more of the following conditions are present:

1. The scene becomes unsafe.
2. The officer is too physically exhausted to continue.
3. The officer is relieved by someone of the same or higher medical authority.
4. The victim revives.<sup>20</sup>

A source of confusion for some officers may be that while federal law is clear that there is no liability for failure to act when no special relationship exists between law enforcement and an individual, some liability may exist in certain situations where the state legislature enacts laws mandating an officer's duty to take action.<sup>21</sup> One such state-mandated duty to an individual arises in the area of domestic violence. Throughout the country for many years, officers failed to take seriously the dangers of family violence. As a result, states enacted legislation mandating special provisions and protections for victims of child and spousal abuse.<sup>22</sup> As further documented in the California Commission

on Peace Officer Standards and Training domestic violence workbook,<sup>23</sup> these requirements include that officers **shall** make every reasonable effort to identify the "dominant aggressor," **shall** complete a report in all domestic violence cases and **shall** take custody of any firearm or deadly weapon in plain sight.

While legislated exceptions to the Public Duty Doctrine exist, the officer must still understand that in only certain circumstances will he be exposed to liability for failure to act. This misunderstanding can lead an officer to take inappropriate action which violates an individual's constitutional rights and could ultimately lead to litigation against the officer and the department.

Law enforcement personnel are moral and honorable public servants. Most sworn officers take their oaths of office as a solemn pledge, a pledge to safeguard

life and property. Officers lose their lives every day attempting to fulfill this oath. Officers, however, often put themselves at risk because they incorrectly believe that they have a duty to act when, in fact, no such duty exists. Officers must balance the pros and cons of taking action against the rights, responsibilities and the limitations of the profession imposed upon them by the Constitution, statute and case law.

Proper training on the principles of the Public Duty Doctrine and how it applies to police officers is essential to avoid liability on the part of the department and officers. The training should include a full and comprehensive review of the exceptions to this doctrine and any statutory requirements to act or protect individuals, as well as those situations which, through an officer's actions or omissions, create a special relationship resulting in a duty to persons. ✨

20 San Jose Police Department (2008), *Peace officer first aid & CPR guide* (San Jose, California).

21 Cal. Gov. Code § 815.6 ("Mandatory Duty of Public Entity to Protect Against Particular Kinds of Injuries"); see also Avery, M., Rudovsky, D., Blum, K. (2008), *Police misconduct law and litigation* (3<sup>rd</sup> ed.) (Eagan, Minnesota: Thompson Reuters/West).

22 Cal. Penal Code § 11166(k).

23 California Commission on Peace Officer Standards and Training (2006), *Domestic violence* (5.2 ed.) (Sacramento, California).

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Deadline for classified ads in the May 2012 issue is April 10, 2012.

# ★ ★ ★ In Remembrance 2011 ★ ★ ★

## **Officer Thomas Adams**

California Highway Patrol Garberville

EOW: February 15, 2011

## **Officer Daniel R. Ackerman**

Buena Park Police Department

EOW: July 30, 2011

## **Officer Jermaine A. Gibson**

Cathedral City Police Department

EOW: March 18, 2011

## **Officer Jeremy Henwood**

San Diego Police Department

EOW: August 7, 2011

## **Officer Andrew Garton**

Hawthorne Police Department

EOW: May 26, 2011

## **Officer James Capoot**

Vallejo Police Department

EOW: November 17, 2011

## **Officer Ryan Stringer**

Alhambra Police Department

EOW: July 10, 2011

## **Officer Anthony A. Giniewicz**

Signal Hill Police Department

EOW: December 7, 2011

## **2012 CALIFORNIA PEACE OFFICERS' MEMORIAL CEREMONY**

Candlelight Vigil: Sunday, May 6, 2012 – dusk

Enrollment Ceremony: Monday, May 7, 2012 – 10:30 a.m.

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### SACRAMENTO

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