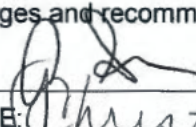
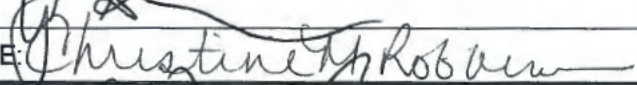
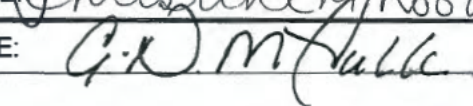
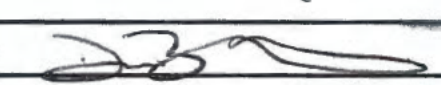
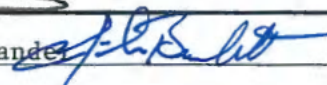
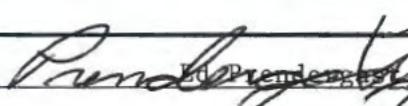
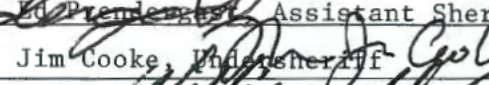
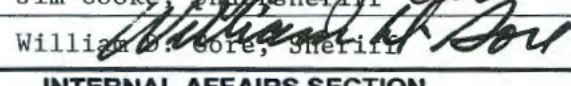
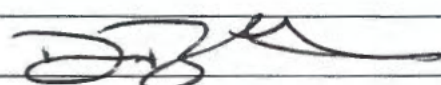


2010-088.1

San Diego County SHERIFF'S DEPARTMENT

NOTICE OF PROPOSED DISCIPLINARY ACTION

TO: William D. Gore, Sheriff		DATE: 08/24/11	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:	Joseph Sherman	TITLE:	Deputy Sheriff
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:	2.4 Unbecoming Conduct	2.46 Truthfulness	
	2.4 Unbecoming Conduct		
	2.6 Conformance to Laws		
RECOMMENDED DISCIPLINE:	Termination		
SECOND LEVEL SUPERVISOR:	Christine M. Robbins, Lieutenant	DATE:	08/24/2011
LIST PRIOR RELATED OFFENSE(S) WITHIN LAST FIVE YEARS WITH DATE & ACTION	None		
I have been advised of the above charges and recommended discipline:			
EMPLOYEE'S SIGNATURE:		DATE:	8-24-11
2 nd LEVEL SUPERVISOR SIGNATURE:		DATE:	8/24/11
3 rd LEVEL SUPERVISOR SIGNATURE:		DATE:	8/25/11
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:		DATE:	9/1/11
4 th LEVEL SUPERVISOR SIGNATURE:	Mike Barletta, Commander 	DATE:	11-4-11
COMMENTS:			
ADDITIONAL REVIEW:	 Ed Pendergast, Assistant Sheriff	DATE:	11/16/11
ADDITIONAL REVIEW:	 Jim Cooke, Undersheriff	DATE:	11/30/11
ADDITIONAL REVIEW:	 William D. Gore, Sheriff	DATE:	11/30/11
INTERNAL AFFAIRS SECTION			
<input type="checkbox"/> WRITTEN REPRIMAND BY:		DATE:	
<input checked="" type="checkbox"/> NOTICE OF INTENT AND CHARGES: 		DATE:	9/12/11
<input checked="" type="checkbox"/> ORDER SERVED: Sergeant E. Berblinger		DATE:	12-01-2011
<input checked="" type="checkbox"/> CIVIL SERVICE NOTIFIED: P. Lorenz, AdminSec II		DATE:	12-12-2011
<input checked="" type="checkbox"/> PAYROLL NOTIFIED: P. Lorenz, AdminSec II		DATE:	12-12-2011
FINAL ACTION TAKEN: Termination		DATE:	11-30-20



William D. Gore, Sheriff

San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



Thomas J. Cooke, Undersheriff

January 26, 2012

Joe Sherman

Re: Resignation Agreement - IA Case #2010-088.1 (Civ. Service appeal filed on December 5, 2011)

Dear Mr. Sherman:

This letter serves to memorialize the resignation agreement between yourself and the San Diego County Sheriff's Department. Specifically, you have agreed to resign, and with your signature hereby do resign, your employment with the San Diego County Sheriff's Department effective December 1, 2011, in lieu of termination.

In exchange for the acceptance of your resignation, you agree to waive, and by your signature below do waive, your right to any further administrative review or appeals, as well as any claims of backpay owed to you by the County of San Diego. Further, you agree to withdraw, and with your signature hereby do withdraw, your pending appeal with the Civil Service Commission. By your signature, you also waive any right to seek judicial review of the process or substance of this resignation agreement. This agreement governs only the above case number, and does not alter or affect any previous discipline imposed. A copy of this agreement may be forwarded to the San Diego County Civil Service Commission.

The Sheriff's Department agrees to amend its personnel records to reflect that your separation from employment was a resignation by mutual consent, and will report same to the County Department of Human Resources. This will be accomplished by revising the "reason" code, as established by the Department of Human Resources from "DAC" (which stands for "Disciplinary Action") to "MUT" (which stands for "Resignation by Mutual Consent"), wherever such information is maintained by the Sheriff's Department and transmitted to the County Department of Human Resources. The Sheriff's Department agrees not to disclose any Internal Affairs reports involving the investigation in the above referenced case, except when presented with a valid waiver executed by you, or when compelled by legal process or court order. Nothing in this agreement shall be construed to require the Sheriff's Department to destroy or seal any documents or records.

"Keeping the Peace Since 1850"

This written agreement represents the complete terms of the agreement between the parties. The party's represent that no other terms of the agreement exist other than those set forth herein. Any alteration or modification of this agreement is void unless agreed by all parties in writing.

The below signature of the Sheriff's representative constitutes an offer to enter into an agreement that may be accepted only by you, Joe Sherman, by signing and returning this document to the Sheriff's representative prior to the close of business on Friday, February 3, 2012.

Sincerely,

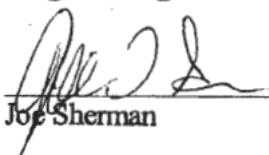
WILLIAM D. GORE, Sheriff



Sanford A. Toyen, Special Assistant
Office of the Sheriff - Legal Affairs Unit

SAT:aeb

I, Joe Sherman, hereby state that I have read and agree to the terms set forth in the above resignation agreement.

 1-31-12
Joe Sherman Date

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

December 12, 2011
IA# 2010-088.1

TO: Civil Service Commission

FROM: Tony Giammarino, Lieutenant
Internal Affairs Unit

ORDER OF TERMINATION AND CHARGES – DEPUTY JOSEPH SHERMAN

The Order of Termination and Charges dated 11-22-2011 filed against Joseph Sherman has been received by the Civil Service Commission on: _____

Date

Commission Response:

- ☐ The above individual **HAS** appealed the Order of Termination and Charges.
- ☐ The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

A. Giammarino, LT.
Tony Giammarino, Lieutenant
Internal Affairs Unit
(858) 974-2065

Attachment



RECEIPT OF MATERIALS

EMPLOYEE: Joseph Sherman #2524 / 016907
IA# 2010-088.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (DATE & INITIAL)	APPOINTING AUTHORITY (Date & Sign)
Notice of Proposed Disciplinary Action to Joseph Sherman, Jr. dated 08-24-2011 <i>Joe</i>	<i>Joe</i>	
Notice of Intent to Terminate and Charges to Joseph Sherman, Jr. dated 08-31-2011 <i>Joe</i>		
Discipline Recommendation & Rationale to Sheriff Gore from Lieutenant Robbins dated 06-24-2011		9/12/11
Investigative Reports by Sergeant J. Maryon dated 04-25-2011 and attachments		
Seven (7) CD-Rs		
Skelly Conference Letter to Joseph Sherman, Jr. <i>Joe</i>		
Order Not to Disclose to Joseph Sherman, Jr. <i>Joe</i>		
Declaration / Acknowledgement of Personal Service		

Released from
I.A. Files
TO: _____



San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

November 22, 2009

Joe Sherman Jr.
[REDACTED]
[REDACTED]

Dear Deputy Joe Sherman Jr.:

ORDER OF TERMINATION AND CHARGES, CASE #2010-088.1

I hereby order that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.6 Conformance to Laws**, in that: On May 9, 2010, during an argument with [REDACTED], you physically assaulted her by slamming her on to a bed and then biting her elbow causing a visible injury. This was in violation of §273.5(a) of the California Penal Code. You were subsequently arrested and later pled guilty to §415(3) of the California Penal Code, which is a misdemeanor. You failed as an employee to obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE II

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.4 Unbecoming Conduct**, in that: On May 9, 2010, during an argument with [REDACTED], you physically assaulted her by slamming her on to a bed and then biting her elbow causing a visible injury. This was in violation of §273.5(a) of the California Penal Code, which is a felony. You were subsequently arrested and later pled guilty to §415(3) of the California Penal Code, which is a misdemeanor. Your actions of physically assaulting [REDACTED] have brought discredit to you and the Sheriff's Department.

"Keeping the Peace Since 1850"



CAUSE III

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.4 Unbecoming Conduct**, in that: On May 9, 2010, while officers from the Chula Vista Police Department were investigating [REDACTED] allegation that you physically assaulted her and bit her you provided false information to them. When you were asked by Officer Davison if you pushed, shoved or had any physical contact with [REDACTED] during an argument you told him, "No." Your statement was later determined to be untruthful. As a deputy sheriff you are expected to conduct yourself in a manner that reflects favorably on you and the Department. Your actions brought discredit to you and the Sheriff's Department and are not consistent with the Department's Core Values and Guiding Principles.

CAUSE IV

You are guilty of dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46 – Truthfulness**, in that: On March 9, 2011 you were ordered to answer questions asked by Internal Affairs investigators truthfully, completely and to the fullest extent of your knowledge. During the aforementioned interview you failed to truthfully tell Sergeant Maryon the facts about how you inflicted corporal injury to [REDACTED] and you lied to Sergeant Maryon when you explained how [REDACTED] was bitten. Deputy Sheriffs occupy positions of trust. Absolute honesty, integrity, and good judgment are fundamental qualities for anyone who possesses the authority of a deputy sheriff. Your failure to provide a truthful statement to Sergeant Maryon is not consistent with the Department's Core Values and Guiding Principles.

CAUSE V

You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the San Diego County Sheriff's Department Executive Order and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Causes I through IV above.

Order of Termination and Charges, IA Case# 2010-088
Deputy Sheriff Joseph Sherman
November 22, 2011

Page 3

Your attention is directed to Sections 904.1, 904.2, 909, 909.1(k), and 910(k) (1) of the Charter of the County of San Diego and Rule VII of the Civil Service Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you. Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) day calendar period. An appeal is not valid unless it is actually received by the Commission within such a ten (10) day period. A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) day calendar period.

Sincerely,



William D. Gore, Sheriff

WDG:pgl

Released from
I.A. Files
TO: 

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

- ☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**
- ☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**
- ☐ **NOTICE OF INTENT OF DEMOTION AND CHARGES**

- ☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **ORDER OF SUSPENSION AND CHARGES**
- ☒ **ORDER OF TERMINATION AND CHARGES**
- ☐ **ORDER OF DEMOTION AND CHARGES**


- ☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

JOE SHERMAN JR. personally at SAN DIEGO on
DECEMBER 1, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1 day of DECEMBER, 2011, at SAN DIEGO, California.



Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 1 day of DECEMBER, 2011.

SIGNED 

IA#2010-088.1

Released from I.A. Files

To: 



San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

August 31, 2011

Joe Sherman Jr.



Dear Deputy Joe Sherman Jr.:

NOTICE OF INTENT TO TERMINATE AND CHARGES, CASE #2010-088.1

Please take notice that it is my intention to recommend to the Sheriff that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.6 Conformance to Laws**, in that: On May 9, 2010, during an argument with [REDACTED], you physically assaulted her by slamming her on to a bed and then biting her arm causing a visible injury. This was in violation of §273.5(a) of the California Penal Code. You were subsequently arrested and later pled guilty to §415(3) of the California Penal Code, which is a misdemeanor. You failed as an employee to obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE II

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.4 Unbecoming Conduct**, in that: On May 9, 2010, during an argument with [REDACTED], you physically assaulted her by slamming her on to a bed and then biting her arm causing a visible injury. This was in violation of §273.5(a) of the California Penal Code, which is a felony. You were subsequently arrested and later pled guilty to §415(3) of the California

"Keeping the Peace Since 1850"



Penal Code, which is a misdemeanor. Your actions of physically assaulting [REDACTED] [REDACTED] have brought discredit to you and the Sheriff's Department.

CAUSE III

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.4 Unbecoming Conduct**, in that: On May 9, 2010, while officers from the Chula Vista Police Department were investigating [REDACTED] allegation that you physically assaulted her and bit her, you provided false information to them. When you were asked by Officer Davison if you pushed, shoved or had any physical contact with [REDACTED] during an argument you told him, "No." Your statement was later determined to be untruthful. As a deputy sheriff you are expected to conduct yourself in a manner that reflects favorably on you and the Department. Your actions brought discredit to you and the Sheriff's Department and are not consistent with the Department's Core Values and Guiding Principles.

CAUSE IV

You are guilty of dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46 – Truthfulness**, in that: On March 9, 2011 you were ordered to answer questions asked by Internal Affairs investigators truthfully, completely and to the fullest extent of your knowledge. During the aforementioned interview you failed to truthfully tell Sergeant Maryon the facts about how you inflicted corporal injury to [REDACTED], and you lied to Sergeant Maryon when you explained how [REDACTED] was bitten. Deputy Sheriffs occupy positions of trust. Absolute honesty, integrity, and good judgment are fundamental qualities for anyone who possesses the authority of a Deputy Sheriff. Your failure to provide a truthful statement to Sergeant Maryon is not consistent with the Department's Core Values and Guiding Principles.

Released from
I.A. Files
TO: [Signature]

CAUSE V

You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Causes I through IV above.

You have **five (5)** regular business days to request a Skelly Conference. You may respond either orally, in writing or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice, you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact Lieutenant Donahue of the Internal Affairs Unit.

You have until 4:30 p.m. on 9/16/11, to contact Internal Affairs at (858) 974-2065 if you wish to respond to the above charges and discipline. Internal Affairs will provide you the name of a Skelly Officer, whom you should contact without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or your response is unsatisfactory, an Order of Termination and Charges will be served upon you and the discipline initiated.

Sincerely,

WILLIAM D. GORE, SHERIFF



G. N. McCalla, Captain
Lemon Grove Station

WDG:GNM:jm



FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**

☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**

☒ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

☐ **NOTICE OF INTENT OF DEMOTION AND CHARGES**

☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**

☐ **ORDER OF SUSPENSION AND CHARGES**

☐ **ORDER OF TERMINATION AND CHARGES**

☐ **ORDER OF DEMOTION AND CHARGES**

☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

JOE
~~SEAN~~ SHEPHERD personally at INTERNAL AFFAIRS on
SEPT 12, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12 day of SEPT., 2011, at SAN DIEGO, California.

[Signature]
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 12 day of SEPT., 2011.

SIGNED [Signature]

IA# 2010-088.1

Released from I.A. Files

To: [Signature]



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

October 28, 2011

TO: William D. Gore, Sheriff

FROM: Duncan B. Fraser, Captain
Sheriff's Communications Center

VIA: Chain of Command

SKELLY HEARING FOR DEPUTY JOE SHERMAN - IA CASE #2010.088.1

COMMAND RECOMMENDATION

Lieutenant Christine Robbins has recommended that Deputy Joe Sherman be terminated from employment with the Sheriff's Department.

SYNOPSIS

This case began when the Chula Vista Police Department was notified of a domestic violence incident after [REDACTED] called 9-1-1 on 05/09/10. The incident took place at the home of Deputy Sherman. Deputy Sherman was subsequently arrested and charged with violations of:

273.5(a) PC Domestic Battery with Injury
236 PC False Imprisonment

The investigation conducted by the Internal Affairs Unit found that Deputy Sherman physically assaulted [REDACTED] and bit her arm during an argument at [REDACTED] in Chula Vista. Deputy Sherman was also found to have provided false information to the Chula Vista police officer who responded and conducted an investigation.

Internal Affairs Sergeant John Maryon completed the Internal Affairs investigation. He determined that Deputy Sherman was in violation of Department Policy Procedure Sections:

2.4 Unbecoming Conduct- as it relates to conducting himself off duty, which would reflect unfavorably on the Sheriff's Department,

2.4 Unbecoming Conduct- as it relates to not providing truthful information to another law enforcement agency.

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I.A. File
TO: [Signature]

SKELLY HEARING FOR DEPUTY JOE SHERMAN - IA CASE #2010.088.1

October 28, 2011

Page 2

2.6 Conformance to Laws- as it relates to Penal Code Section 273.5 Battery Against Spouse.

Lieutenant Christine Robbins, in her disciplinary Rationale and Recommendation, agreed with Sergeant Maryon's findings and conclusions. Lt. Robbins added a sustained finding of a violation of Department Policy and Procedure section 2.46- Truthfulness as it relates to not providing truthful information when asked by the Sheriff, the Sheriff's designee or any supervisor, as it pertained to Deputy Sherman's Internal Affairs interview with Sergeant Maryon.

Lt. Robbins disciplinary recommendation was termination.

CONDUCT OF THE SKELLY HEARING

I received this case for Skelly review on September 15, 2011. The hearing was scheduled for September 29, 2011, at 2:30 p.m. in my office at the Communications Center. Deputy Sherman was present with his attorney, Rick Pinckard, from the Law Offices of Bobbitt, Pinckard and Fields. I recorded the hearing on a digital recorder and a compact disc copy of the original recording is included with this report.


In preparation for the hearing, I read the entire Internal Affairs investigation and listened to the recordings of the interviews. I also reviewed Sergeant Maryon's investigation and Lieutenant Robbins' recommendation.

At the beginning of the conference hearing, I ensured that Deputy Sherman had received copies of the following documents:

- Notice of Disciplinary Action
- Notice of Intent to Terminate
- Disciplinary Recommendation and Rationale
- Investigative Report by Sergeant Maryon (complete IA file)
- Skelly Conference letter
- Order Not to Disclose
- Declaration/Acknowledgement of Personal Service
- Compact Disc of interviews

I also asked Deputy Sherman if he was aware of the recommended action, had reviewed the Internal Affairs investigation, and understood this was his opportunity to respond to the charges and the recommended discipline. Deputy Sherman answered in the affirmative to all the questions. I also asked Deputy Sherman if he had any objections to my being the Skelly Hearing Officer. Deputy Sherman did not have any objections.

Mr. Pinckard began by bringing up the following points as mitigation:

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TO:  2

SKELLY HEARING FOR DEPUTY JOE SHERMAN - IA CASE #2010.088.1

October 28, 2011

Page 3

Mr. Pinckard said this was a very serious recommendation and termination was the administrative equivalent to "capital punishment." This job is Deputy Sherman's livelihood, and he has been a deputy for many years and had never been in trouble. He characterized Deputy Sherman as a "hardworking, outstanding deputy" and that this incident is "not reflective in any way, shape, or form on the performance of his duties as deputy sheriff."

Mr. Pinckard said the nexus between Deputy Sherman's off-duty conduct and position as a deputy is present, but this incident did not arise from the performance of his duties, and does not have any kind of reflection on what kind of deputy he is.

Mr. Pinckard said there were several things he was concerned about related to this investigation. Mr. Pinckard began by saying that our department has a process and protocol pertaining to discipline. The process begins with an investigation conducted by Internal Affairs or the command. The investigator's conclusions are what they are, and are then presented in a report submitted to the command.

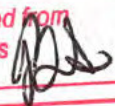
Mr. Pinckard said if the command disagrees with the conclusions, the command has the ability to refer the investigation back to Internal Affairs and request they pay particular attention to certain points. If the evidence supports those points, then the Internal Affairs investigator can make changes, amendments, deletions, and revisions to the investigative conclusions, and then resubmit to the command. Mr. Pinckard said this is the process that is "established by policy and procedure," and this process has been in place for the twenty years he has dealt with this department.

Mr. Pinckard said that, for whatever reason, in this case, that protocol was not adhered to. He said this caused him concern and raises the question about why wasn't the protocol followed? Mr. Pinckard said it was his opinion that this protocol was not followed because the command did not like what Internal Affairs did, and did not like what would, or could, result from the Internal Affairs investigation. Mr. Pinckard said, "It didn't fit commands' agenda, and because of that the command made changes to the investigative finding, essentially by adding charges."

Mr. Pinckard said Lt. Robbins' adding of the truthfulness charge was a "substantial departure from normal protocol, and it begs question about why this would happen."

Mr. Pinckard said Sergeant Maryon was the assigned investigator, and one of the conclusions Sergeant Maryon specifically did not reach was the conclusion, or finding, of truthfulness or dishonesty.

Mr. Pinckard understood that Sergeant Maryon had "grief" while addressing how he believed Deputy Sherman was not forthright and honest when he was dealing with the Chula Vista Police. However, Sergeant Maryon didn't sustain dishonesty against Deputy Sherman because, as

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I.A. Files
TO: 

SKELLY HEARING FOR DEPUTY JOE SHERMAN - IA CASE #2010.088.1

October 28, 2011

Page 4

dishonesty is alleged in the Sheriff's Department, that particular charge is reserved to those instances when the employee deals with a department employee who is specifically empowered by the Sheriff Department, with the authority of supervisor.

Mr. Pinckard said rather than Lt. Robbins sending the investigation back to Internal Affairs for truthfulness to be added, she "jumped" the process and added a conclusion in her report, that Deputy Sherman was dishonest or untruthful when he submitted to his Internal Affairs interview with Sergeant Maryon. Mr. Pinckard said that if Sergeant Maryon believed that Deputy Sherman lied to him, that he (Sergeant Maryon) would have sustained an allegation of untruthfulness.

Mr. Pinckard said what determines if there was a violation of truthfulness is evidence, and because there was an absence of evidence, Sergeant Maryon, in his findings, did not sustain a truthfulness allegation against Deputy Sherman.

Mr. Pinckard asserted that why Lt. Robbins felt compelled to do this was beyond him, and there was no explanation for that. Mr. Pinckard said one could only speculate the reason Lt. Robbins did that was because she, as a lieutenant, knew that if she sustained a charge of untruthfulness or dishonesty, the employee would be fired.

Mr. Pinckard said Lt. Robbins wanted Deputy Sherman fired and Sergeant Maryon did not provide her with what she needed to accomplish that goal. Therefore, Lt. Robbins "jumped the process" and reached her conclusion of truthfulness against Deputy Sherman with no additional evidence to support that conclusion, only that she asserted it as a matter of her opinion. Mr. Pinckard said Lt. Robbins' report "drips" of opinionated conclusions, and everything she raises is her opinion and "her entire justification is dripping with nothing but opinion."

Mr. Pinckard's first and foremost concern was that the foundation for the recommendation of termination, supplied by Lt. Robbins, does not support her opinion, and she is just offering opinion with no new evidence whatsoever.

Mr. Pinckard said beyond this, Lt. Robbins "jumps to a lot of other conclusions and fills her report with a lot of misleading half-truths." Mr. Pinckard further stated, "And it's ironic because, on the one hand, she wants to sustain dishonesty against Joe to support the termination, but she doesn't care how disingenuous she has to be in order to do that. So, in order to make the case for dishonesty against Joe, she is fundamentally being dishonest in her own rationale statement and that's appalling. That should not happen. Either we care and put a premium on honesty, or we don't. But we certainly don't establish a double standard where I, as a lieutenant, can be disingenuous and support a conclusion of dishonesty. Nothing should happen to me, but the employee should be fired for dishonesty. That is a ridiculous double-standard and I know the Sheriff's Department, as an entity, does not support that particular value, but that's what this report, all ten pages of it does. It is disingenuous."

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Mr. Pinckard then relayed what actually occurred the evening Deputy Sherman was arrested. Mr. Pinckard said that essentially they (Deputy Sherman and [REDACTED], [REDACTED]) had a verbal argument, which started at a party. They left the party because of this and went home.

Deputy Sherman was lying on the bed in their bedroom and [REDACTED] was in the bathroom. [REDACTED] was "pissed off" and Deputy Sherman was not happy because of the appearance created at a party. Deputy Sherman was laying on the bed and texting.

Mr. Pinckard said that [REDACTED] was upset that Deputy Sherman was texting and she confronted him about who he was texting. Deputy Sherman did not respond to her because he was irritated with her and she was not happy with that, so she "smacks" him. Mr. Pinckard said that was the first physical contact, she "smacks" him, and she admits to that. Mr. Pinckard said that act made her the "primary aggressor, assuming we are going to look at this as a domestic violence incident," which Mr. Pinckard has concerns about to begin with.

Mr. Pinckard said the first physical contact is her "smacking or slapping him, not the other way around, and that makes her the primary aggressor." Deputy Sherman tried to ignore the poking and prodding, but he finally had enough and "he reaches over and says, 'Knock it off, basically just stop.'" Mr. Pinckard said [REDACTED] did not stop, she continued. Deputy Sherman then rolled over, while both of them are on the bed, and he "straddles her and he tells her to knock it off," and he then lays back on his back.

Mr. Pinckard said Deputy Sherman was on his back and [REDACTED] then "gets pissed and she throws an elbow, hits him in the mouth." With that, Deputy Sherman got up and left, because he knows things are only going to get worse, and for [REDACTED] to calm down or sober up. Deputy Sherman was gone for forty minutes, so [REDACTED] calls him on his cell phone.

By that time Deputy Sherman's brother had already called the parents and Deputy Sherman gave [REDACTED] a response over the cell phone that "pisses her off," by asking her essentially "what difference does it make now?" Mr. Pinckard said that after 40-45 minutes, and after the phone call with her [REDACTED] where Deputy Sherman does not tell [REDACTED] what she wants to hear, [REDACTED] then calls 9-1-1, because she is mad.

Mr. Pinckard said, "She is not mad because he battered her. She is not mad because he threw her against the bed. She is not mad at anything other than the fact that she didn't get the response from him that she wanted, and she called 9-1-1 and the cops come."

Mr. Pinckard said, "The issue that John Maryon seems to get stuck on was at some point Chula Vista PD asked Joe was there any pushing shoving or physical contact and he says 'No.' Well, truth be known, yeah, she's slapping me, she's poking me, she's prodding me, I don't want to get her in trouble. I'm not going to dime her out and have them hook her up and take her off to jail."

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But even more importantly, the mindset is because now the police are involved. He knows that there's been a quote unquote DV report made to the police. And they are asking him in his mind essentially, did you commit a DV crime. His answer is no."

Mr. Pinckard said there were a lot of things going through Deputy Sherman's mind while talking with the police such as; the allegations, the potential for his losing his job and his guns, what [REDACTED] may be alleging, if he has committed a domestic violence crime he is in "big trouble."

Mr. Pinckard said Deputy Sherman knows he did not commit a crime, so he is not listening specifically to the questions. However, what he understands the inquiry to be is whether he committed an act to constitute a crime and his answer was no. Mr. Pinckard said this was not an accurate answer but, "there is a difference between being inaccurate and being dishonest." Mr. Pinckard said it was inaccurate because [REDACTED] was slapping, hitting, and poking him. In addition, when she elbows him, she hits him in the mouth and he bites down.

Mr. Pinckard said Deputy Sherman's explanation about why he bit her was because his mouth was open and her arm was in it. Mr. Pinckard said the word that Deputy Sherman used to explain it was "instinctual," but the word Mr. Pinckard would use to describe it was that it was "a reaction to something foreign flying into his mouth when his mouth was open and he bit down." Mr. Pinckard said there was no broken skin, no blood, just an impression from the teeth from her elbowing him.

Mr. Pinckard said Lt. Robbins believes Deputy Sherman grabbed [REDACTED] arm and bit, but that did not happen. Mr. Pinckard said [REDACTED] bruises easily, [REDACTED]. Mr. Pinckard said if Deputy Sherman forced [REDACTED] by grabbing her arm and biting, there would be bruising due to her being substantially smaller and slighter than Deputy Sherman, and she also bruises easily. Yet, there is no bruising around the arm and around the bite. Mr. Pinckard said that in addition, during [REDACTED] interview with Sergeant Maryon, she admitted to elbowing him in the mouth.

Mr. Pinckard said, "So in spite of the evidence, in spite of the statements, Lt. Robbins says 'I don't want to hear that. That doesn't support my agenda. Don't confuse me with the facts, because my mind is already made up. I don't want to hear that. I believe,' and that's the way she writes it, 'I believe what really happened is when she called 9-1-1 what she said right then and there is more accurate.' You know kind of a spontaneous utterance exception to the hearsay rule because it's more reliable, if I say something in shock spontaneously it's more inherently reliable." Mr. Pinckard said the problem with this is that [REDACTED] waited before calling 9-1-1.

Mr. Pinckard then addressed several other areas of Lt. Robbins' report, contending there were a number of things in her report that were "wrong and disingenuous."

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Mr. Pinckard said one of the things Lt. Robbins supported her recommendation for termination with was the fact that Deputy Sherman was arrested for a felony. Mr. Pinckard said that does not mean a felony actually occurred. Mr. Pinckard said the original charging document charged Deputy Sherman with misdemeanor domestic violence and misdemeanor false imprisonment. Mr. Pinckard said the fact that Deputy Sherman was arrested for a felony "means nothing."

Mr. Pinckard said the only reason Lt. Robbins refers to that is because she knows it will get the reader "spun up" and "we have a felon on our hands. No, we don't." Mr. Pinckard said the final disposition was misdemeanor disturbance of the peace- loud noises.

Mr. Pinckard said Lt. Robbins' referring to Deputy Sherman's arrest as a felony was "disingenuous." Mr. Pinckard was also critical that Lt. Robbins talked to the prosecutor, but not Deputy Sherman's defense attorney. Mr. Pinckard believes Lt. Robbins did not balance this by talking with Deputy Sherman's defense attorney because that did not "support her agenda."

Mr. Pinckard criticized Lt. Robbins reference to there being a "Lautenberg amendment issue to consider" (page three). Mr. Pinckard said, "Well, first of all, that's gibberish. I don't know what the hell she's talking about. Lautenberg amendment issue. There is no such thing as a Lautenberg amendment."

Mr. Pinckard said elsewhere in her report, Lt. Robbins does point out that when she talked to the prosecutor, she was specifically told there is no Lautenberg issue in this case because Deputy Sherman plead guilty to an amended complaint for disturbing the peace, not related to a domestic violence charge.

Mr. Pinckard said, "So even though she knows and presents deep in the report that there is no Lautenberg issue, it doesn't stop her from the introduction, at the front end of this, that there is a Lautenberg issue here. That's disingenuous, there is no Lautenberg issue." Mr. Pinckard said the Sheriff's legal advisor also told Lt. Robbins that there was no Lautenberg issue here.

The next area Mr. Pinckard was critical of was Lt. Robbins reference to this being a "Brady issue." Mr. Pinckard said, "Oh, the magic word. If we can't get you out of the department for dishonesty, we're going to get you out of the department for Brady. That's nonsense too."

Mr. Pinckard said there are presently a number of law enforcement officers whose names exist on the Brady index who are not fired or legally disqualified or disabled from holding position as peace officers, nor are they disabled from testifying. Mr. Pinckard said being on the Brady index for lying would be a problem, but the only reason Deputy Sherman is in the Brady index was because he is on probation.

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Mr. Pinckard said Lt. Robbins, because Deputy Sherman is in the Brady index, "She wants everybody to see that, on page three- very beginning of this, because, again, she wants to foul the water. She wants to make it uncomfortable for somebody to say, 'Why are we firing this guy?' She doesn't want somebody to say that, so she stacks it- 'Well, we got felony arrest, we got a Lautenberg issue, and we got a Brady list.' It's the trifecta. There is no way he can retain his job when we have that trifecta. But she's wrong, dead wrong. And I think she knows it."

Mr. Pinckard referred to the section of Lt. Robbins' report where she writes that she believes Deputy Sherman's ability to ever testify again was in serious question. Mr. Pinckard said, "Well, once again, I believe either she is an idiot or a liar. Because that is an absolute...absolute fabrication. There is no law to support that and she is saying that for the reason of making the reader think, 'Oh yeah, okay, what are we going to do if he can't testify, then what use is he to us? Yeah, she's right, we need to fire him. Yeah, that's the only alternative.' That is a false statement. Whether it is a knowing and intentional false statement on her part, or whether it is simply an ignorant false statement on her part, I don't know."

Mr. Pinckard said the fact Deputy Sherman is in the Brady index is because he is on probation for misdemeanor disturbance of the peace does not in any way call into serious question his ability to testify ever again. Mr. Pinckard said once Deputy Sherman is off probation he will be off the Brady index list.

Mr. Pinckard also said that he did not know how Lt. Robbins based her comment that [REDACTED] called 9-1-1 because she was injured. Mr. Pinckard said that [REDACTED] reported later that she was mad, and the fact was she called 9-1-1 forty to forty-five minutes later. Mr. Pinckard said Lt. Robbins was making a conclusion that [REDACTED] called 9-1-1 because she was injured, and this was an opinion not backed up by facts or evidence, and only what Lt. Robbins believes or thinks.

Mr. Pinckard said that going on through Lt. Robbins report, it is apparent she wants to disregard basically everything that [REDACTED] said to Sergeant Maryon and characterize [REDACTED] as a domestic violence victim recanting her statement because she is fearful, afraid of the offender, coerced or threatened. Mr. Pinckard said Lt. Robbins completely disregards the fact they are in counseling together for over a year, still together, and have worked through this. Mr. Pinckard believes Lt. Robbins does not want to factor that into any of her conclusions, because that is contrary to where she wants to go with her recommendation. Mr. Pinckard said Lt. Robbins has an opinion only, with no evidence that [REDACTED] was coerced or pressured to recant, but that is not enough to fire somebody.

Mr. Pinckard referred to Lt. Robbins reference to her conversation with the prosecutor, where the District Attorney tells her that [REDACTED] was difficult and harassed the District Attorney. Mr. Pinckard said usually a domestic violence victim, who is not cooperative, is uncooperative

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by not communicating and avoiding contact. Mr. Pinckard said in this case, the District Attorney is not saying [REDACTED] was not communicative, he is saying she was basically harassing the District Attorney. Mr. Pinckard said that [REDACTED] was proactively trying to get the District Attorney to drop this case, "Because she knew that she created a problem by lying when she called Chula Vista PD and made her initial statement."

Mr. Pinckard referred to Lt. Robbins' discussion, on page five, about the "hearsay rule." Mr. Pinckard said that Lt. Robbins' discussion regarding the hearsay rule is "gibberish" and she is "dead wrong," the hearsay rule does not promote the failure of criminal cases, particularly in domestic violence incidents. Mr. Pinckard said Lt. Robbins statement that "the hearsay rule promotes the failure of criminal cases" was "nonsense."

Mr. Pinckard also said Lt. Robbins "conveniently left out" pertinent information regarding the fact that Deputy Sherman was relieved of the obligation to continue with the 52 court-ordered counseling sessions because of his efforts and his own personal counseling.

Mr. Pinckard acknowledged that Deputy Sherman used poor judgment in his actions and he should be disciplined. However, Mr. Pinckard said the issues, in their totality, do not support a termination. Deputy Sherman has the attitude that he was a part of this, and he never took the position that he did nothing wrong and should not be disciplined.

Mr. Pinckard said Deputy Sherman knows and accepts responsibility and that he should be disciplined, and held accountable, but he does not want to be fired, "Because this lieutenant, for whatever reason, has the opinion that he is a liar."

Mr. Pinckard said when Lt. Robbins, in her report, questions whether Deputy Sherman accepts responsibility for his actions, can change his behavior, or if his behavior can ever be changed, she makes it sound as though Deputy Sherman has a history of domestic violence. Mr. Pinckard said Deputy Sherman has no history of domestic violence, and no priors.

Mr. Pinckard said when he and Deputy Sherman met with Lt. Robbins, the "air was hostile immediately." It was apparent to Mr. Pinckard that no matter what Deputy Sherman said, Lt. Robbins was going to find against him. However, Mr. Pinckard did not know Lt. Robbins was going to add an additional charge and try to get Deputy Sherman fired.

Mr. Pinckard said, "But we knew from the get-go, that there was a hostile air. And I don't know whether it's a male-female thing. I don't know whether she has ever worked domestic violence. I don't know whether she's been the victim of domestic violence. I don't know. What I do know is that it was very, very apparent that she took a personal offense to this alleged conduct and was unable to separate her personal feelings to her responsibilities as a mid-manager in the Sheriff's Department."

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Referring to Lt. Robbins' report, Mr. Pinckard said he does not know whom Lt. Robbins is referring to when she writes she "believes the evidence in the case was supported by witness statements." Mr. Pinckard said he does not know what witnesses Lt. Robbins is talking about, because the two witnesses who were in the room (Deputy Sherman and [REDACTED]) have both said what happened.

Mr. Pinckard said that Lt. Robbins is going to disregard that and rely on other statements and photographs in her belief that a violent criminal act occurred. Mr. Pinckard asked where are the photographs that support her statement that there was "a violent criminal act."

Mr. Pinckard said, "If Joe was going to be violent with a ninety-nine pound [REDACTED] there is going to be evidence of that." Mr. Pinckard said there is no evidence, and he is not certain what Lt. Robbins is referring to, other than just her opinion. Mr. Pinckard said if there had been a violent criminal act, the District Attorney's Office would not have "pled a felony down to one step above an infraction." Mr. Pinckard said, "So, once again, I don't know what she is referring to other than her emotion and her opinion."


Mr. Pinckard criticized Lt. Robbins' statement that she did not believe Deputy Sherman believed he understood the relationship between "being a private citizen and arrested versus being a sworn law enforcement officer and being arrested." Mr. Pinckard said of course Deputy Sherman understands that, and Deputy Sherman told Lt. Robbins repeatedly in their meeting that he understands that relationship.

Mr. Pinckard referred to Lt. Robbins' statement that "Deputy Sherman thought his actions did not discredit him as an employee or law enforcement officer because of his impeccable employment and his actions were not related his work." Mr. Pinckard said that what Deputy Sherman was communicating to Lt. Robbins in their meeting was that this did not have anything to do with how he did his job, "It wasn't like crashing a car because he was driving too fast."

Mr. Pinckard said, "So, she takes a statement that he makes. She lists it completely out of the context in which that statement was made and throws it down on a bare page to make the reader think, 'Oh this guy doesn't give a shit. That it's got nothing to do with being a deputy, I wasn't standing on duty, wasn't wearing a uniform, wasn't wearing my badge, so I can do anything I want.' That's the impression she wants people to have and that could be no further to the truth."

Mr. Pinckard said Deputy Sherman has tried to make that clear to everybody he has spoken to about this incident, so Mr. Pinckard is not certain why Lt. Robbins is portraying him in this manner.

Mr. Pinckard referred to Lt. Robbins' statement on page ten that, "I believe, from the onset of this incident, from when the police first arrived, Deputy Sherman fully knew of the different law

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violations which he committed, and the different consequences he was going to have to face because of his actions."

Mr. Pickard said, "Again, now she's reading his mind. She's saying that she knows what he knew or what he felt at the time. Once again, that's opinion, conclusion. There's no evidence to support. She's entitled to harbor that feeling, but to use it as part of a justification to support a termination is an entirely different proposition."

Mr. Pinckard referred to the last paragraph, where Lt. Robbins writes, "The most paramount issue in this case is truthfulness and the fact he committed a felony battery." Mr. Pinckard said Deputy Sherman did not commit a felony battery. If he had committed a felony battery, he would have been charged with committing a felony battery and it would have been plead down from that point. Mr. Pinckard said Deputy Sherman was never charged with committing a felony battery, and he ultimately was convicted with disturbing the peace. Mr. Pickard said, "That statement is in there for no reason other than to spin up the reader and to get the reader inflamed to buy into her opinion that he should be fired."

Mr. Pinckard said truthfulness is the paramount issue to a law enforcement officer, and to any law enforcement agency. Mr. Pinckard said, "If I say something that is inaccurate, if I say something that is a miscommunication and it turns out to be inaccurate, that's not lying. That is not being untruthful. That's being caught up in a very, very frantic situation. I've got my parents in my house, I've got the police in my house, I've got my brother in my house, I've got all kind of things going my mind. There is a lot of stuff going on, and my principal focus is to assure the police I haven't committed a crime. If I misspeak under those circumstances, that's not lying. That's not being untruthful. It's not being dishonest. It's not listening carefully to the question and responding in a way that is directly responsive and accurate to the question. But we do that all the time, pretty much most of the conversations that we have with other people. They will walk away with a different concept of what was discussed than I would walk away. That doesn't mean I'm a liar or they're a liar. That's just the nature of human communication. But she wants to say, 'He's untruthful, it was intentional, and, oh yeah, he committed a felony. And there's this Lautenberg thing that I really don't understand hanging out there, but I'll use it because it sounds cool. And then there is this Brady issue. And because of that, the only choice is to fire him.'"

Mr. Pinckard said he could not disagree with Lt. Robbins in any stronger terms, and this was nonsense. Mr. Pinckard believed these cases gain the momentum of a "runaway train" and trying to stop it is a monumental task. Mr. Pickard said someone must sift through the hyperbola and rhetoric that Lt. Robbins has filled her report with to support her decision.

Mr. Pinckard said, "If the department fires Joe, it's not because they have to. That's what Lt. Robbins wants you to believe. You have to do this. That's what Gigi McCalla wants you to believe, you have to do this. In reality, if the department fires Joe, it's because they wanted to,

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plain and simple. And he hasn't done anything in his service history that warrants that kind of approach to this."

Mr. Pinckard repeated that Lt. Robbins sustained everything against Deputy Sherman, even though the evidence does not support it. Mr. Pinckard said, "And then she goes the extra mile and tacks on the dishonesty." Mr. Pinckard said that because Lt. Robbins does not like or agree with Deputy Sherman's explanation, and she cannot place herself in Deputy Sherman's state of mind and "stand in his shoes," he must have lied to Sergeant Maryon. And, Lt. Robbins believes because he lied to Sergeant Maryon, that he needs to be fired. Mr. Pinckard said, "That's what her analysis essentially is. This is a hatchet job, it's an injustice, and unfortunately it's landed on your table

Mr. Pinckard then moved past Lt. Robbins's report. Mr. Pinckard said Sergeant Maryon told Deputy Sherman and [REDACTED] during their interviews that at some point in the contact between Chula Vista Police and Deputy Sherman's family members, [REDACTED] is recorded making a statement that Deputy Sherman had anger management problems or issues. Mr. Pinckard said there was nothing anywhere to support that, and it was not mentioned anywhere in the audio with Mr. Sherman (saying that his son has anger management problems). Mr. Pinckard said when Sergeant Maryon interviewed [REDACTED]; Sergeant Maryon specifically asked [REDACTED] if he said that to the Chula Vista Police. [REDACTED] told Sergeant Maryon he did not say that, but Sergeant Maryon said it in his investigation.

Mr. Pinckard also had issues with how Chula Vista Police handled the criminal investigation. Mr. Pinckard said the Chula Vista Police could have gotten back with [REDACTED] afterward, and before they submitted their report, to determine if her statement was accurate, but they never did that. Mr. Pinckard said this should be standard practice, but this was not done.

Mr. Pinckard said if Chula Vista Police had interviewed [REDACTED] afterward, Lt. Robbins would not be saying [REDACTED] statement to Sergeant Maryon was coerced, or was a "typical DV recant." Mr. Pinckard said because that is missing, it gives Lt. Robbins a platform to say what [REDACTED] said to the police that night is more accurate, and reliable, than what she later said to Sergeant Maryon.

Deputy Sherman then spoke on his behalf. He asked that I consider all of the points that were brought up. Deputy Sherman also said he knows about untruthfulness, and that he understands the importance of telling the truth. Deputy Sherman said he understands that one can get into serious trouble, such as with use of force, but you have to tell the truth.

Deputy Sherman said he does not have anger issues, and he and [REDACTED] are working through their problems because they care about what goes on in their house.

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Deputy Sherman said he is embarrassed by this situation. He said he is proud to be a deputy sheriff, and what happened that evening did not make him proud. Deputy Sherman said this would not happen again, and he will make certain he and [REDACTED] communicate better.

I asked Deputy Sherman about [REDACTED] disclosure to Sergeant Maryon that she was unstable, because of some health issues. Deputy Sherman said he had not heard that on the audio recording, but he acknowledged [REDACTED]

Deputy Sherman confirmed that English is a second language with her and she at times had problems comprehending things. Deputy Sherman said in the report there was a reference to him placing her in a "bear hug," and [REDACTED] did not know what a bear hug was and he had to explain it to her. After Deputy Sherman explained to [REDACTED] what a bear hug was, she said she never told the police that, as she did not even know what a bear hug was.

I told Deputy Sherman I knew from listening to all the interviews that he had been asked several times about why he did not just tell the Chula Vista Police that night what really happened, and that he said he did not know why. I asked Deputy Sherman if he had time to reflect more about why he did not explain to them what really happened. I referred to his later disclosing that [REDACTED] [REDACTED] elbowed him in the face, and she was the primary aggressor, so my question again was why he did not tell this to the police?

Deputy Sherman said when he talked with Sergeant Maryon, during the Internal Affairs interview, he was asked about it and he said he was not the primary aggressor. Deputy Sherman explained that it took a long time for the police to get there; by the time the call was made until they arrived was probably twenty to thirty minutes. Deputy Sherman said his mind was going "a hundred miles an hour," the police are on the way to his home, [REDACTED] was out of her mind, and in his head he didn't do anything wrong. Deputy Sherman said the only thing he did wrong was that he did not leave sooner.

I referred to the point that Mr. Pinckard brought up early in his discussion with me about why Deputy Sherman did not necessarily say anything about [REDACTED] culpability to the police as being that Deputy Sherman did not want [REDACTED] to be arrested. I asked Deputy Sherman if that was going through his mind at the time (that she could be arrested if he told the police what really happened).

Deputy Sherman said, "No, I mean at that, it wasn't that wasn't at the forefront. The forefront, I'm a cop, I'm a big man compared to [REDACTED], and generally, men go to jail. I mean, that's what, unfortunately that's what happens, I mean 99% of the time. And, my thing was, is, I didn't do anything wrong."

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Mr. Pinckard asserted that it was not appropriate for Lt. Robbins to add the charge of truthfulness because doing so was a "substantial departure from the normal protocol." Mr. Pinckard asserts the established "policy and procedure" is that the case must be returned to Internal Affairs and have the charge reviewed. If approved for addition, then that must take place at the hands of Internal Affairs. Mr. Pinckard believes that Sergeant Maryon did not add the charge of truthfulness because he knew there was no truthfulness violation during his Internal Affairs interview with Deputy Sherman.

I am not aware of any established "policy and procedure" which specifically forbids this from occurring, nor of any requirement which states that if the disciplinary officer deems necessary the addition of a sustained finding, the case must first be returned to Internal Affairs for this to occur.

Returning the case to Internal Affairs is clearly an option, but so is the addition of the charge by the discipline officer, Lt. Robbins, as was the case here. I conferred with Sergeant Maryon about this, and learned that Lt. Robbins had discussed with him the addition of a sustained truthfulness violation, which Sergeant Maryon agreed with, and the decision was made that the sustained truthfulness would be added in her recommendation and rationale.

References were made throughout the discussion that Lt. Robbins, to support her agenda, tried to "spin up" the reader. This was done by her trying to force the decision-makers into believing there was no other alternative, other than termination, by including references to Lautenberg, the Brady index, that Deputy Sherman was originally arrested for a felony, and that [REDACTED] recanted because of fear or coercion typical with many victims of domestic violence.

Lt. Robbins' references to Lautenberg and Brady did not "spin me up," nor did it contaminate or cloud my judgment into making Deputy Sherman's offense seem worse by her mere mention of the words Lautenberg, or Brady index. I understood at the onset that Lt. Robbins' discussion of Lautenberg was a non-issue in this rationale. I also understood the significance of her discussion of the Brady index as being a substantial concern, as it relates to Deputy Sherman being on the Brady index for truthfulness.

Had truthfulness not been an issue here, for Deputy Sherman to be on the Brady list for only summary probation for the minor violation of misdemeanor disturbing the peace certainly would not have had the same the negative impact as being on the Brady list for truthfulness. This would NOT be the case with a sustained violation of truthfulness.

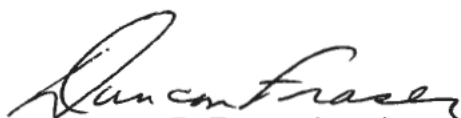
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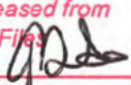
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RECOMMENDATION

I recommend the proposed discipline be imposed.


Duncan B. Fraser, Captain
Sheriff's Communication Center

DBF/dbf

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I then asked Deputy Sherman if he lied to Sergeant Maryon during his Internal Affairs interview and Deputy Sherman said no, he did not and everything he said was the truth.

Prior to the conclusion of the Skelly Conference hearing, Deputy Sherman provided me with two documents listing the times of the cell phone contacts between he and [REDACTED] the night he was arrested, to substantiate she called 9-1-1 about 40 minutes later and after she spoke to Deputy Sherman.

Mr. Pinckard later sent me a copy of a doctor's note that [REDACTED] [REDACTED]. The report was from [REDACTED], M.D. Kaiser Permanente, and stated, "To Whom It May Concern: [REDACTED] Sincerely, [REDACTED], M.D." (All documents are attached to this report.)

DISCUSSION

During the Skelly Hearing, it was evident that Deputy Sherman, expressed chiefly through his legal counsel Mr. Pinckard, was strongly opposed to most of the content contained within Lt. Robbins' rationale and recommendation supporting termination.

Throughout most of the discussion, the focus of this disagreement had to do with his contention that Lt. Robbins resorted to mainly her opinion, not backed by evidence, to reach her conclusion that Deputy Sherman needed to be terminated.

Lt. Robbins was also essentially accused of having an "agenda," wherein she wanted Deputy Sherman terminated despite a lack of evidence, and that she was dishonest in her report. The contention was that because Internal Affairs did not provide her with what she needed to accomplish this goal, she added a truthfulness charge. Lt. Robbins was accused of doing this, despite the fact that Sergeant Maryon did not reach the same conclusion in his findings, although he clearly expressed concern about the veracity of Deputy Sherman's statements to Internal Affairs.

Lt. Robbins' was also accused of adding the truthfulness violation outside of established departmental policy, protocol, or practice. This was Deputy Sherman's first and foremost concern, that Lt. Robbins added the charge of truthfulness outside of this department's normal protocol or policy.

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Toward the conclusion of the Skelly conference, I told Deputy Sherman that Mr. Pinckard had indicated earlier in his discussion the reason why he did not tell Chula Vista Police Officer Davison the truth about what happened (specifically that he did not want to say anything about [REDACTED] culpability) was because he didn't want to see her arrested.

I asked Deputy Sherman if not wanting [REDACTED] to be arrested was going through his mind at the time of his contact with the Chula Vista Police, as he earlier claimed. Deputy Sherman said, "No, I mean at that, it wasn't... that wasn't at the forefront. The forefront, I'm a cop. I'm a big man compared to [REDACTED], and generally, men go to jail. I mean, that's what, unfortunately, that's what happens. I mean 99% of the time. And, my thing was, is, I didn't do anything wrong."

Mr. Pinckard laid a foundation wherein he stated what really happened leading up to Deputy Sherman's arrest. He specifically stated that one of the things going through Deputy Sherman's mind, when telling Chula Vista Police Officer Davison that nothing physical happened, was that Deputy Sherman didn't want to "dime off" [REDACTED] by letting them know she was the primary aggressor, which would result in her being arrested and taken to jail. Yet when I later asked Deputy Sherman if this was the case, and if that was on his mind at the time, he said it was not. This calls into question remaining assertions brought up by Deputy Sherman with regard to what really occurred that evening.

Deputy Sherman's actions at the front end of this call delayed and thwarted the investigation. Relying on his explanation that "nothing happened," that there was no pushing, shoving, or biting; the responding officers literally had to pry the truth from [REDACTED]. Her reluctance to tell the truth resonated throughout the taped encounter, as being that she was afraid Deputy Sherman would be in trouble and she only wanted Deputy Sherman to get help. Never did she say anything to suggest she was covering the truth to protect herself or that she was angry. That was plainly evident throughout the tape-recorded portion of her contact with the Chula Vista Police.

I agree with the findings and conclusions of Sergeant Maryon's investigation, which Lt. Robbins based her recommendation on. I did not find anything biased regarding Sergeant Maryon's investigation. My decision in this case was based chiefly on the investigation by Sergeant Maryon. I agree with his synopsis, analysis, conclusions, and finding. I also agree strongly with Sergeant Maryon's assessment that "Deputy Sherman's notion of instinctually biting [REDACTED] is absurd and implausible. There is nothing instinctual about biting someone especially your spouse. Deputy Sherman has problems controlling his anger, which is what caused him to inflict

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SKELLY HEARING FOR DEPUTY JOE SHERMAN - IA CASE #2010.088.1

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injury upon [REDACTED] and not some purported "instinctual thing." His actions were intentional, willful, and not done in self-defense. Deputy Sherman's actions were in violation of 273.5(a) of the California Penal Code." (Page 4-Synopsis, Analysis, Conclusions, Findings).

There has been no violation of Deputy Sherman's due process rights, and I believe Lieutenant Robbins' recommendation is valid and reasonable under the circumstances. Accordingly, I believe Lieutenant Robbins was correct in her recommendation for termination, which is appropriate for the offense.

During my thirty-year tenure on this department, I have responded to numerous domestic violence incidents as a deputy, sergeant, and lieutenant. I have investigated numerous domestic violence incidents, both as a detective and as a supervisor. My tenure includes my assignment as the unit commander of the Sheriff's Family Protection Detail for over two years, which oversees the Sheriff's Domestic Violence Unit within Sheriff's Central Investigations.

I read every document and report in this investigation, and carefully reviewed every audio file. I listened to [REDACTED] recorded 9-1-1 call to the Chula Vista Police, and to the recorded contact by Chula Vista Police officer who investigated this crime. I reached the same conclusions that the Chula Vista Police and Sergeant Maryon reached regarding [REDACTED] [REDACTED] apparent state of mind and demeanor at the time of this occurrence.

I find it unreasonable to believe Deputy Sherman's account that he really was not lying, but rather being "inaccurate," to the Chula Vista Police when he insisted, more than once, that there was no pushing or shoving, or anything physical. Deputy Sherman established a pattern of untruthfulness at the scene of this offense, which he has not overcome with regard to my decision to uphold the disciplinary recommendation in this case.

Deputy Sherman stated he knows about truthfulness and he knows that one can get into serious trouble on this department but can save their job by telling the truth. Yet, he demonstrates that knowing and doing are two different things. He did not tell Chula Vista Police Officer Davison the truth. Although "technically" this did not fit into our department's rule of conduct definition of truthfulness, it demonstrated Deputy Sherman's propensity to lie.

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ENDORSEMENTS:

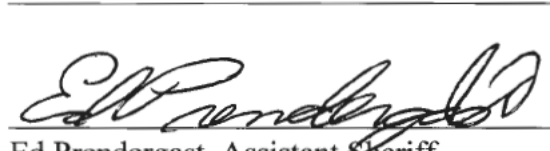


Mike Barletta, Commander
Law Enforcement Services Bureau

☒ Approve ☐ Disapprove

Date: 11-4-11

Comments: _____

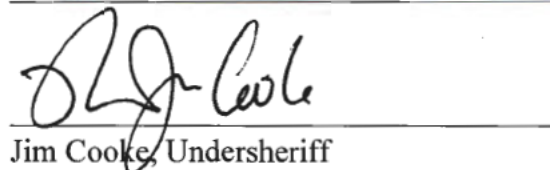


Ed Prendergast, Assistant Sheriff
Law Enforcement Services Bureau

☒ Approve ☐ Disapprove

Date: 11/16/11

Comments: _____

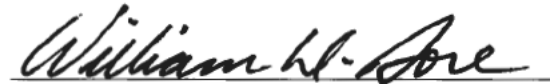


Jim Cooke, Undersheriff

☒ Approve ☐ Disapprove

Date: 11/30/11

Comments: _____

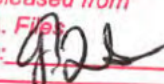


William D. Gore, Sheriff

☒ Approve ☐ Disapprove

Date: 11/30/11

Comments: _____

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TO: 



To Whom It May Concern:

[REDACTED]

Sincerely,

[REDACTED]

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TO:

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- [Home](#)
- [Preferences](#)
- [Account](#)
- [Add-Ons](#)

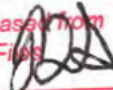
Support
Logout

- [Dashboard](#)
- [Voicemail](#)
- [Call Logs](#)
- ☐ Incoming Calls
- ☐ Outgoing Calls
- ☐ Missed Calls
- [Contacts](#)

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Call Logs

Line	Type	Phone Number	Name	Date	Duration	
						+ Add to Blacklist Contacts Co
	Missed call		CHULA VISTA CIT	May-09 08:01 AM	Missed	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact
						+ Add to Blacklist Contacts Co
	Missed call		WIRELESS CALLER	May-09 01:54 AM	Missed	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact
						+ Add to Blacklist Contacts Co
	Outbound call	911		May-09 01:50 AM	1:47	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact
						+ Add to Blacklist Contacts Co
	Missed call		WIRELESS CALLER	May-08 02:10 PM	Missed	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact
						+ Add to Blacklist Contacts Co
	Missed call		WIRELESS CALLER	May-08 02:05 PM	Missed	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact
						+ Add to Blacklist Contacts Co
	Missed call			May-08 02:03 PM	Missed	<ul style="list-style-type: none"> • Add to Contacts • Add to Existing Contact

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TO: 

5/27/2010

<u>DATE</u> <u>TIME</u>	<u>CALL TO</u>	<u>NUMBER</u>	<u>RATE</u> <u>PERIOD</u>	<u>FEATURE</u> <u>MINUTES</u>
05/09 10:31 AM	INCOMING		NW	1
05/09 10:15 AM	CHULAVISTA		NW	1
05/09 09:51 AM	CHULAVISTA		NW	3
05/09 09:50 AM	SNDG SNDG		NW	1
05/09 08:04 AM	CHULAVISTA		NW	2
05/09 07:10 AM	SNDG SNDG		NW	3
05/09 02:00 AM	SNDG SNDG		NW	1
05/09 01:53 AM	SNDG SNDG		NW	1
05/09 01:45 AM	CHULAVISTA		NW	M2MCNG 2
05/09 01:14 AM	INCOMING		NW	M2MCNG 1
05/09 01:13 AM	INCOMING		NW	M2MCNG 1
05/08 05:15 PM	BLOCKED		NW	1
05/08 04:27 PM	BLOCKED		NW	2
05/08 09:37 AM	BLOCKED		NW	10
05/06 11:04 PM	INCOMING		NW	M2MCNG 7
05/06 06:39 PM	BLOCKED		DT	4
05/06 02:34 PM	CHULAVISTA		DT	2
05/06 02:03 PM	CHULAVISTA		DT	1
05/06 02:01 PM	CHULAVISTA		DT	1
05/05 05:14 PM	CHULAVISTA		DT	2
05/05 05:13 PM	CHULAVISTA		DT	M2MCNG 1
05/05 05:12 PM	CHULAVISTA		DT	1
05/05 01:22 PM	INCOMING		DT	2
05/04 07:15 PM	INCOMING		DT	1
05/04 05:10 PM	INCOMING		DT	16
05/04 05:06 PM	SNDG SNDG		DT	1
05/04 01:55 PM	CHULAVISTA		DT	M2MCNG 3
05/03 03:11 PM	INCOMING		DT	M2MCNG 2
05/03 10:39 AM	CHULAVISTA		DT	2
05/03 05:41 AM	CHULAVISTA		NW	2
05/02 01:54 PM	INCOMING		NW	2
05/02 01:48 PM	CHULAVISTA		NW	M2MCNG 3

From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

Skelly Conference Letter

IA# 2011-088.1

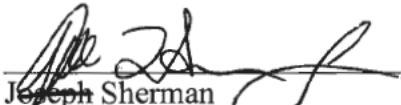
As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.

Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, that may be served upon you, either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape/digital recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.


Joseph Sherman
JOE


Witness
9/12/11
Date

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To: 

00000 From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

ORDER NOT TO DISCLOSE MATERIALS

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.


Joseph Sherman
506

I.A.3 2010-088.1

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SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

Lemon Grove Station

#2010-088.1

ACCUSED EMPLOYEE: Joe Sherman, Deputy Sheriff


COMPLAINANT: SDSO

RECOMMENDING LIEUTENANT: Christine M. Robbins, Lieutenant

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A. E-Mail message, dated May 10, 2010

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TO: 

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

Lemon Grove Station



RECOMMENDATION AND RATIONALE

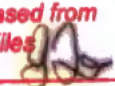
INTERNAL AFFAIRS CASE # 2010-088.1

ACCUSED EMPLOYEE: Joe Sherman, Deputy Sheriff

COMPLAINANT: SDSO

RECOMENDING LIEUTENANT: Christine M. Robbins, Lieutenant

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TO: 



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

June 24, 2011

TO: William D. Gore, Sheriff

FROM: Christine M. Robbins, Lieutenant
Lemon Grove Patrol Station

VIA: Chain of Command

DISCIPLINARY RECOMMENDATION AND RATIONALE FOR DEPUTY JOSEPH SHERMAN #2524 REGARDING INTERNAL AFFAIRS CASE #2010-088.1

RECOMMENDATION

I have read the investigation, reviewed the attachments and listened to the recorded interviews prepared by Sergeant John Maryon of the Internal Affairs Unit. Sergeant Maryon found Deputy Joe Sherman in violation of Department Policy and Procedure sections:

- 2.4 Unbecoming Conduct- as it relates to conducting himself off duty, which would reflect unfavorably on the Sheriff's Department.
- 2.4 Unbecoming Conduct- as it relates to not providing truthful information to another law enforcement agency.
- 2.6 Conformance to Laws; as it relates to: State of California PC 273.5 Battery against spouse, Etc.

I concur with Sergeant Maryon's conclusions and findings. Based on the nature of the incident and after considering all factors, I am adding and sustaining a violation of Department Policy and Procedure section;

- 2.46 Truthfulness- as it relates to not providing truthful information when asked by the Sheriff, the Sheriff's designee or any supervisor.

Based on the conduct involved, and after weighing the factors in aggravation and mitigation, I recommend Deputy Sherman be terminated.



RATIONALE

Sergeant Maryon's investigation was thorough and fair. In reviewing the investigation, I have found no evidence of bias, or ill will by Sergeant Maryon. There is a preponderance of evidence to support Deputy Sherman did inflict corporal injury to [REDACTED] by biting her. I believe the conduct as described by Sergeant Maryon occurred, along with Deputy Sherman's admissions. It does not matter if Deputy Sherman had intended to injure [REDACTED] or not, the fact remains he did inflict corporal injury, which resulted in a traumatic condition, and in him being placed under arrest for a felony.

Furthermore, I am adding and sustaining a violation of Department Policy and Procedure section 2.46 Truthfulness. Truthfulness in this case relates to not providing truthful information when asked by the Sheriff, the Sheriff's designee or any supervisor (Sergeant Maryon).

During Deputy Sherman's Internal Affairs interview, he failed to truthfully tell Sergeant Maryon the facts about how he inflicted corporal injury to [REDACTED]. Deputy Sherman lied to Sergeant Maryon when he explained how [REDACTED] was bitten. The evidence in this case supported by photos of visual injury, does not corroborate Deputy Sherman's version. I believe the initial statement provided to Officer Davison from [REDACTED] is the most reliable.

When [REDACTED] called 9-1-1 she said to the dispatcher *"will you send the police right here right now?"* She continued and told the dispatcher her [REDACTED] *"slammed me against the bed and bit my arm."* [REDACTED] version of events indicates that Deputy Sherman's biting of her was an intentional act by Deputy Sherman, done out of anger during the course of a physical altercation wherein Deputy Sherman was the aggressor. Deputy Sherman's version of the incident portrays [REDACTED] as the aggressor and the bite occurring only as an instinctual response to [REDACTED] elbowing him in the face. These two versions of the same event are inconsistent and I believe the version articulated by [REDACTED] on the night of the incident is the most accurate and reliable.

On June 7, 2011, at 1300 hours, I met with Deputy Sherman and his Attorney Rick Pinkard. Prior to the meeting, I informed Deputy Sherman of the purpose of the meeting and advised him of the right to have representation. Deputy Sherman chose to have his attorney, Rick Pinkard, accompany him during our meeting.

We met in the conference room at the Lemon Grove Sheriff's Station. Prior to the meeting and any discussions, and making my disciplinary recommendation, I provided Deputy Sherman and his attorney with a copy of the investigation to review, including Internal Affairs reports related to this case. They reviewed these documents for about thirty-five minutes in private. I digitally recorded the interview and attached a copy of the CD to this report.

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In reviewing this case, there are a myriad of factors to consider. First, Deputy Sherman was arrested for PC 273.5 willfully inflicting [REDACTED] with corporal injury resulting in a traumatic condition. Under the Penal Code this charge qualifies as domestic violence. Second, because Deputy Sherman was arrested for PC 273.5, which is a domestic violence charge, there is the Lautenberg Amendment issue to consider. Third, as a result of Deputy Sherman being placed on probation for three years, he is now on the "Brady List" which has to be taken into consideration. Fourth and finally, Sergeant Maryon found Deputy Sherman in violation of two counts of Unbecoming Conduct. The first count, as it relates to conducting himself off duty and the second as it relates to not providing truthful information to another law enforcement agency.

Attorney Pinkard made an opening statement and said this incident did not have anything to do with Deputy Sherman's job. It was a private issue. He added, typically, people do not like to air private issues in a public manner, which is what happened.

Mr. Pinkard said what started out as a private argument escalated and became more intense. Deputy Sherman had a desire to contain the incident and keep it private, but the incident intensified when Chula Vista Police arrived at his house. Mr. Pinkard added that in ideal circumstances, holding ourselves to a high standard as law enforcement officers, we should not be doing the same "stupid" things others do, but in reality we are all human beings, have relationships, feelings and still have the same issues that other people have. He continued and said, because we are police officers, everything is so intensively scrutinized by outsiders it creates a dynamic and difficult situation. Mr. Pinkard added in any marriage at some point in time there is going to be an argument and conflict, no matter how solid the relationship is. He also did not feel Chula Vista Police did an accurate job in identifying "what has happened before" when [REDACTED] said to the investigation officer, that this has happened before.

Chula Vista Police were called by [REDACTED] via 9-1-1. This may have started out as a private argument or conflict, however the fact is [REDACTED] called the police for assistance because she was injured. [REDACTED] summoned the police as a victim of Domestic Violence. In fact, Deputy Sherman admitted to closing the bedroom windows so his neighbors would not hear [REDACTED] yelling. This was how Deputy Sherman tried to contain the incident and keep it private.

Second, Mr. Pinkard stated legally, Deputy Sherman did not have the duty to assist Chula Vista Police when they were investigating him for criminal conduct. Mr. Pinkard believes it is Deputy Sherman's constitutional right, his Fifth Amendment Right to remain silent and not assist them.

I agree with Mr. Pinkard's assessment, however Deputy Sherman lied to the responding officer. On two different occasions, Officer Davison asked Deputy Sherman, about the incident. Officer Davison asked Deputy Sherman if there was any pushing, shoving or physical contact during the argument with [REDACTED]. Deputy Sherman's response was "No."



Deputy Sherman has been a detective for several years. He understands his constitutional right and he had the right to remain silent, but he did not, he lied. In Deputy Sherman's Internal Affairs interview the inference is made by Mr. Pinkard that the reason Deputy Sherman was not truthful in his statement was because of his, *"state of mind in answering that question was addressing their primary focus, which was determining whether or not a domestic violence incident had occurred and that's what he answered no to."* When asked, Deputy Sherman said and admitted, his response to Officer Davison was, *"It was inaccurate."*

Third, Mr. Pinkard stated, according to Sergeant Maryon's written interview from [REDACTED] that Deputy Sherman was not the primary aggressor. [REDACTED] started this incident by slapping Deputy Sherman. [REDACTED] continued by slapping and prodding Deputy Sherman before he pushed her back. [REDACTED] then flung her elbow into his face and mouth and when her arm hit his mouth, "he bites." Mr. Pinkard argued, because the bite mark is on the back of [REDACTED] arm, it is consistent with what Deputy Sherman said happened.

However, after reviewing the tapes, including the 9-1-1 call placed by [REDACTED] and the recording from Officer Davison, I believe the initial statements provided to Officer Davison from [REDACTED] were likely to be the most reliable. When [REDACTED] called 9-1-1 she told the dispatcher [REDACTED] "slammed" her on a bed and "bit" her. In fact, according to Officer Davison, he believed [REDACTED] version of what occurred was credible. Officer Davison told Sergeant Maryon, that it took them some time to get the entire story of out [REDACTED] but that was because they believe she was scared.

In further review of Sergeant Maryon's interview with [REDACTED] I have to question if as a domestic violence victim, she was not pressured to recant or alter her initial statement. According to Sergeant Maryon's report, it is believed [REDACTED] provided a less than truthful statement during her Internal Affairs interview. Additionally, when [REDACTED] was informed her entire initial conversation with Officer Davison was recorded and not coinciding with what she was telling Sergeant Maryon, she said she did not recall what she told the officers.

I spoke to Mr. Enrique Camerana the supervisor of the District Attorney's Protection Unit about this case. To support [REDACTED] uncooperativeness during this process, according to Mr. Camerana, [REDACTED] was, *"difficult"* and *"basically harassed the DA."* Mr. Camerana said since [REDACTED] hired her own lawyer they could not discuss the case with her. He added that [REDACTED] called several times and would not come into their office. Additionally, Mr. Camerana told me that even after they told [REDACTED] they were going to subpoena her and if she did not appear in Court a warrant would be issued, she still said she refused to appear.

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I think when a domestic violence victim fails to appear for Court it could be because of a batterer's coercion, fear of the batterer, or the potentially drastic consequences of leaving the batterer. The hearsay rule promotes the failure of criminal cases by excluding the initial report of abuse. In this case the most reliable statement was [REDACTED] 9-1-1 call, where she told the dispatcher "her [REDACTED] bit her" and her unknowing recorded statement to Officer Davison. As a result, failure to appear in Court by the victim results in no charges being filed, dismissal, plea, or an acquittal. This type of outcome is common knowledge by any law enforcement officer and Deputy Sherman having worked for several years in a Detective Unit would have known of this tactic/practice. When you consider this knowledge with the fact [REDACTED] initial statement indicated she did not want her [REDACTED] Deputy Sherman to go to jail, because he would lose his job, it is evident why [REDACTED] was less than cooperative during the interview and investigation process.

Deputy Sherman is an employee who has worked for the department for approximately fifteen years. Deputy Sherman has been assigned to the George Bailey Detention Facility, Encinitas Patrol Station and the Lemon Grove Patrol Station. When this incident occurred, Deputy Sherman was assigned to the Lemon Grove Detective Unit and has been for approximately three years.

During our interview, Deputy Sherman said there have been a lot of positive things, which have surfaced as a result of this arrest. He said, he and [REDACTED] are back on track and his friends and family have been one hundred percent behind them. He has taken positive things out of this incident, such as counseling, which he said, "*Was much needed.*" He is applying what he has learned so this situation does not occur again.

When Deputy Sherman was arrested he said he was embarrassed because he was arrested in front of his mom and dad and on Mother's Day. He told me this incident has, "*really screwed*" with him. After the incident, Deputy Sherman said he sent out an email to the entire station, as he knew he would have to face his peers. Monday after the incident Deputy Sherman arranged for the two of them, to attend marriage counseling which they still attend once per month.

Deputy Sherman pled guilty to PC 415(3), however plans to have his record expunged in October, after one year. Deputy Sherman said this is the first time in thirty-seven years he has ever had any negative contact with law enforcement. Deputy Sherman said this experience, loss of overtime, attorney fees, the overall financial burden and humiliation has humbled him greatly. As far as the department goes, he is, "*not a liability*" he just wants to close this chapter of the book and move on.

In June of 2010, Deputy Sherman enrolled in domestic violence classes on his own. He felt this was how he could take control of this situation instead of waiting for his court case. Once he went to court, he had already been attending the classes for eleven weeks. He was further



ordered to attend a total of fifty-two classes. In June of 2010, [REDACTED] started taking anger management classes and stopped, but they both have continued taking private counseling sessions.

When evaluating this situation, Deputy Sherman added he wants to be viewed as a good employee for the last fifteen years. He believes he has done a good job and he is still a valuable asset to the department and to the Lemon Grove Station. Deputy Sherman said he takes pride in the work he does and he is angry at himself, because he cannot go out and participate in call outs.

Deputy Sherman used poor judgment in his actions and should be disciplined. Discipline is given to change the behavior of the individual. In this case, I have to question if Deputy Sherman is willing to accept responsibility for his actions, change his behavior and if this behavior can be changed.

There are three distinct issues in this case. First, this is clearly a domestic violence case, whereas Deputy Sherman violated PC 273.5.

273.5 (a) PC Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony.

According to Officer Davison, [REDACTED] told Officer Davison and Sergeant Tarr that Deputy Sherman grabbed her in a "bear hug" and put her on a bed. When she got Deputy Sherman off of her, he turned around, grabbed her arm and bit the back of her right arm. [REDACTED] also told Officer Davison she hid Deputy Sherman's guns in the house, but did not say why. [REDACTED] also told Officer Davison, she wanted Deputy Sherman to get help, but she did not want him to go to jail because he would lose his job.

Deputy Sheriffs occupy positions of trust. Absolute honesty, integrity, and good judgment are fundamental qualities for anyone who possesses the authority of a deputy sheriff. Honesty, integrity and good judgment cannot be learned; they are inherent qualities. Deputy Sheriff's are expected to conduct themselves at all times in a manner that reflects favorably on them and the Department. They are placed in a position of trust and expected to perform their duties in a professional manner consistent with the Department Core Values and Guiding Principles. We do what is right, even when no one is looking. Deputy Sherman clearly violated the law and acted in a manner that brought the Sheriff's Department into disrepute.

I believe Deputy Sherman's actions were intentional. In reviewing the facts and photos attached to the crime report, there is clearly a bruise on [REDACTED] arm, which is distinct. The photo, which was taken awhile after, the incident, (within an hour or so) in my opinion, was not from

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TO: 

██████████ elbow hitting Deputy Sherman in the mouth, but from a deliberate act. The inference by the evidence and the initial statement taken from ██████████ is when she pushed Deputy Sherman off of her; he grabbed her right arm and bit her. Deputy Sherman admitted in his Internal Affairs Interview that when he bit ██████████ *"it was just an instinctual thing."* When I asked Deputy Sherman to define, "instinctual" and what it meant to him, Deputy Sherman said, *"Instinct. Just....like a second nature."*

Although the district attorney did not prosecute Deputy Sherman for PC 273.5, he was still arrested for a felony. Deputy Sherman pled guilty to PC 415(3) and was placed on probation for three years.


Second, Mr. Camerana, said regarding the Lautenberg Amendment, since Deputy Sherman pled guilty to PC 415(3) as an amended complaint rather than an LIO (Lesser Included Offence), there is no Lautenberg Amendment issue. Mr. Camerana explained PC 415(3) is not on the list of qualifying convictions for PC12021 or the Lautenberg Amendment. Therefore, there are also no firearm retention issues in this case either. Deputy Sherman confirmed he received all of his firearms back from Chula Vista Police after they were seized under PC 12028.5.

Additionally, according to Mr. Camerana the victim in this case, ██████████ did not request a stay away order. In fact, ██████████ adamantly asked the Judge for no stay away order or a good conduct order. Therefore, Deputy Sherman's probation does not prohibit him from possessing weapons. Therefore, there are no Lautenberg Amendment restrictions, per title 18, United States Code 922(g) (9).

Mr. Camerana told me that it is important to know and understand the conditions of Deputy Sherman's probation are the same as if he would have pled guilty to a misdemeanor domestic violence charge. He also said the no protective order being issued is rare, and added of those cases where no protective order are not issued, they normally involve law enforcement and military personnel cases so they can still possess weapons.

Third, Deputy Sherman was placed on the "Brady List." On June 7, 2011, I spoke to Annette Irving, who oversees the Brady List for the District Attorney's Office. According to Ms. Irving, Deputy Sherman will remain on the Brady List until his probation is complete sometime in October 2013.

When asked about the Brady List, Mr. Pinkard said the worse case is being deemed to be a liar. Case law states there are many reasons for which an officer is subject to Brady disclosure. One of the issues regarding this case is Deputy Sherman will be subject to disclosure because he is on probation. It does not matter what Deputy Sherman is on probation for, it has to be disclosed. Mr. Pinkard confirmed Deputy Sherman will be on the Brady List until the end of his probation or until it is expunged.

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An officer's credibility and its impact on public safety have become a high-profile issue in many agencies. Under the "Brady List" if a request was made to review disciplinary records and court files involving an officer on the "Brady List" the names on the list could reveal a host of issues that could threaten the prosecution of alleged criminals. "Brady Lists" are now present in several prosecuting agencies throughout the country. "Brady cops" are officers who are on the list in their respective jurisdiction for being deemed untrustworthy and frankly, liars, when it comes to objectively and thoroughly investigating crimes. Although these lists are not public record, Deputy Sherman's actions were a serious violation of policy and law whether prosecuted or not by the District Attorney. We as an agency have an expectation our employees will follow the law and policy and procedures. Deputy Sherman has violated this expectation and trust. In addition, with heightened demands on prosecutors to disclose adverse information about prosecution witnesses, Deputy Sherman's ability to ever testify again is in serious question. Additionally, since Deputy Sherman is currently in a detective position, he could be called upon to testify in court, including for a domestic violence case. The fact he is on the Brady List would have to be disclosed to the defense and potentially compromise criminal prosecutions and negating his effectiveness as a detective/investigator.

Finally, the last distinct issue is the unbecoming conduct Deputy Sherman displayed when he told the responding Chula Vista Police Officer two times there was no pushing or shoving "*just arguing.*" Deputy Sherman clearly lied to the responding officer.

Since, Deputy Sherman has been a deputy and a detective for several years, I believe he clearly understood his constitutional right and that he had the right to remain silent. Deputy Sherman was not truthful in his statement and he knew it was "inaccurate". His statement to Officer Davison had nothing to do with his, state of mind or whether or not a domestic violence incident had occurred or not. He knew the minute he bit [REDACTED] what he did and another reason he shut the windows in their bedroom when she started screaming.

When asked about the DV section Deputy Sherman was arrested for, Mr. Pinkard did not feel there was a DV issue even though there were photos to show visible injury. Because [REDACTED] [REDACTED] elbowed Deputy Sherman in the mouth, Mr. Pinkard argued it is a different situation then if they were fighting, and he grabbed a hold of her and took a bite. Mr. Pinkard does not believe Deputy Sherman should be considered the primary aggressor because she elbowed him in the mouth and he believes the DA's office made that distinction.

Additionally, Mr. Pinkard said he does not believe when Deputy Sherman pushed [REDACTED] away because she was shoving and slapping him it was an act of domestic violence. Mr. Pinkard believes all Deputy Sherman was doing was trying to get [REDACTED] away from him. Mr. Pinkard disagrees with Sergeant Maryon's conclusions and added, "Legally he is wrong."



Deputy Sherman clarified a statement he made during his Internal Affairs interview with Sergeant Maryon regarding if his actions brought discredit to him as an employee of the Sheriff's Department. Deputy Sherman said, *"I do believe it reflects badly on the department."* He believes anytime someone gets arrested it puts cops in a bad light and *"it put me in a bad light."* As far as Deputy Sherman taking responsibility, Deputy Sherman said the way he took responsibility was by getting into counseling and by addressing the station in his email. He said these *"were my first steps within the first week."* (See Attachment A) Deputy Sherman believes *"these actions are not to be tolerated"* and this is why he is still in counseling. Deputy Sherman said if he were to be arrested this year, when everything is out in the media, he would be very embarrassed for himself and the department. He did say, *"I contend that this was a private issue between [REDACTED] and I, and it got out of hand. And it's unfortunate that the department had to get involved."* Deputy Sherman said he takes pride in who he is and he is humiliated on how this reflects on him personally and the uniform he wears.

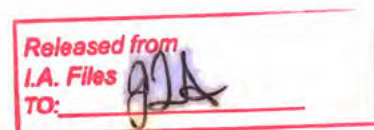
Deputy Sherman clarified an additional statement made during his IA interview in that *"his actions that night weren't actions regarding, had no relation to the Sheriff's Department at all and."* Deputy Sherman said, *"I don't know what context I meant that in. I....I mean clearly, I've, like I said it, it, it reflects on me badly, it reflects on me, it's a stigmata that I will always have."* Deputy Sherman clarified his actions were not a result of what the Sheriff's Department taught him, but his own actions.

I believe the evidence in this case, supported by witness statements and photos support a conclusion of a violent criminal act and lies. The actions by Deputy Sherman are not consistent with the Mission, Vision and Values of the Sheriff's Department. As a tenured employee and an experienced detective, Deputy Sherman knew or should have known his actions would have negative consequences. His actions provided a negative employee and public perception.

As a Department, one of the most important and valuable things we have is our reputation with other employees and the public. How we are perceived has a significant impact on personal relationships, public cooperation and support. As this incident relates to Conformance to Laws and Unbecoming Conduct and Truthfulness, the following points are offered in aggravation:

Deputy Sheriff's are entrusted with a great deal of responsibility and their judgment is critical. Deputy Sherman's gross error in judgment brought his reputation, professionalism and integrity into question and jeopardized both his credibility, as well as, the credibility of the San Diego County Sheriff's Department.

Since the charges are supported by evidence, facts and photographs, the remaining question is the reasonableness of the proposed discipline. I contacted Internal Affairs and found that Deputy Sherman has no other prior discipline since 1996 when he became a Deputy Sheriff.



While I understand Deputy Sherman is embarrassed by his actions, I don't believe he understands the relationship between being a private citizen and arrested verses being a sworn law enforcement officer and being arrested. Deputy Sherman thinks his actions did not discredit him as an employee or law enforcement officer because of his "impeccable" employment and his actions were not related to his work.

Sergeant Tarr and Officer Davison ultimately collected Deputy Sherman's personal firearms. According to Sergeant Tarr, [REDACTED] took Officer Davison and Sergeant Tarr to an upstairs extra bedroom, where from inside a closet, behind some blankets or pillows she had hid the handguns. Sergeant Tarr said he could only assume why [REDACTED] hid the guns and that was because "*she appeared visibly afraid.*"

While Deputy Sherman was signing documents regarding his firearms, he spontaneously told Officer Davison he was never going to get his guns back. Although Deputy Sherman did not elaborate further, Officer Davison interpreted his statement to mean Deputy Sherman knew he was in trouble. I believe, from the onset of this incident, from when the police first arrived, Deputy Sherman fully knew of the different law violations, which he committed, and the different consequences he was going to have to face because of his actions. Therefore, the reason for Deputy Sherman first lying to Officer Davison about what had occurred between Deputy Sherman and [REDACTED] and then continuing to lie to Sergeant Maryon about how [REDACTED] was bitten.

During Officer Davison's initial contact with Deputy Sherman, several times questions were asked about physical contact. Throughout the initial contact, Deputy Sherman told Officer Davison, there was just an argument, nothing really happened and there was no pushing or shoving. Deputy Sherman admitted when [REDACTED] elbow hit him in the mouth he bit down on her arm. However, he denied grabbing her arm, holding it and then biting her arm. The initial statement taken by the 9-1-1 dispatcher, the first responding officers, [REDACTED] initial statement describe a much different environment.

The most paramount issue in this case is truthfulness and the fact he committed a felony battery. Deputy Sherman clearly violated PC 273.5 and Sheriff's Policy and Procedures section 2.46 Truthfulness. Whether the District Attorney prosecuted this case or not is irrelevant. Deputy Sherman is on the Brady List until his probation is complete in 2013, which creates a disclosure issue and Deputy Sherman violated Sheriff's Policy related to Conformance to Laws and Unbecoming Conduct. The recommended discipline of termination is reasonable in this case. I do not believe there are any mitigating circumstances or influencing factors, including Deputy Sherman's experience and maturity level, which would justify a lesser form of discipline.

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I.A. Files
TO: [Signature]

Disciplinary Recommendation and Rationale
Deputy Joe Sherman #2524
Internal Affairs Investigation 2010-088.1

Page 11 of 13

Christine M. Robbins

8/24/11

Christine M. Robbins, Lieutenant
Lemon Grove Patrol Station

Date

CMR:cmr

Released from
I.A. File
TO: [Signature]

ENDORSEMENTS:

G. N. McCalla Date 9/2/11 Approve ✓ Disapprove
Gigi N. McCalla, Captain
Lemon Grove Patrol Station

Comments: _____

_____ Date _____ Approve _____ Disapprove _____
Mike Barletta, Commander
Law Enforcement Services Bureau- Area 3

Comments: _____

Ed Prendergast Date 11/16/11 Approve ✓ Disapprove
Ed Prendergast, Assistant Sheriff
Law Enforcement Services Bureau

Comments: _____

_____ Date _____ Approve _____ Disapprove _____
Jim Cooke, Undersheriff
San Diego Sheriff's Department

Comments: _____


Released from
I.A. File
TO: 9/2/11

Disciplinary Recommendation and Rationale
Deputy Joe Sherman #2524
Internal Affairs Investigation 2010-088.1

Page 13 of 13

_____ Date _____ Approve _____ Disapprove _____
William D. Gore, Sheriff
San Diego Sheriff's Department

Comments: _____

Released from
I.A. Files
TO: 



Robbins, Christine

From: Robbins, Christine
Sent: Tuesday, June 14, 2011 9:34 AM
To: Sherman, Joe
Subject: RE: Email

Thank you.

-----Original Message-----

From: Sherman, Joe
Sent: Tuesday, June 14, 2011 9:29 AM
To: Robbins, Christine
Subject: RE: Email

There you go

Joe

-----Original Message-----

From: Robbins, Christine
Sent: Tuesday, June 14, 2011 9:28 AM
To: Sherman, Joe
Subject: RE: Email

Thanks.

I need the entire email which shows who it was addressed to. The one you sent, does not have who the message was sent to.

-----Original Message-----

From: Sherman, Joe
Sent: Tuesday, June 14, 2011 9:11 AM
To: Robbins, Christine
Subject: RE: Email

I forwarded the email to you. If you need anything else please let me know.

Joe

-----Original Message-----

From: Robbins, Christine
Sent: Tuesday, June 14, 2011 9:01 AM
To: Sherman, Joe
Subject: Email

Deputy Sherman,

During our meeting, you indicated you sent an email to the station, right after you were arrested which were your first steps at taking responsibility. Could you please send me that email?

Thanks,
Lt. Robbins

Released from
I.A. Files
TO: 

Robbins, Christine

From: Sherman, Joe
Sent: Tuesday, June 14, 2011 9:29 AM
To: Robbins, Christine
Subject: FW: Lemon Grove

From: Sherman, Joe

To: Salvatierra, Michael; Acero, Francisco; Akers, Douglas; Allister, Cathy; Arana, Elizabeth; Arend, Joshua; Arroyo, Michael; Bailey, Tony; Barry, Joseph; Bartlett, Crystal; Bier, Anthony; Bunk, William; Bunt, Christopher; Butcher, Brian; Campagna, Alan (Dave); Carrillo, Albert; Carrillo, Pete; Castillo, Cesar; Castro, Henry; Catano, Guadalupe; Chadwick, Mavy; Chambers, Guy; Cornelius, Alton; Cremans, Trina; Cruz, Andrea; Cruz, Michael; Cully, Luke; Da Silveira, Michael; Davis, Garner; Day, Rob; Doherty, Charles; Dolmage, Matthew; Evans, Patrick C.; Feistel, Kenneth; Frailey, Peggy; Garcia, Telly; Gardea, Isaias; Garmo, Marco; Geasland, Josh; Gimeno, Kristyna; Givens, James; Glover, April; Gutierrez, Daniel; Hampton, Greg; Harris, Kamon B.; Haynesworth, Mark; Hettinger, Michael; Hollins, Dustin; Jimenez, Jerry; Jones, Jason; Justice, Shannon; Katrantzis, Nikolaos; Kelley, Mark; Kerr, William; Kuhn, Landon; Lane, Michael; Lee, Scott; Leonhardi, David; Licudine, Christi; Liniewicz Jr, William; Lopatosky, Patrick; Lopez, Andy; Lopez, Miguel; Lorta, Nancy; Martinez, Orlando; Martinez, Pedro; Maxin, Jeffrey; McCoy, Bernard; McCoy, Corey; Cook, Denny; McHorney, Jason; Meharg, Richard; Menzies, Kevin; Moore, Michael; Navarro, Alejandro; Nease, Yancy; O'Boyle, Anthony; Ortiz, Lorenzo; Pata, Michael; Pocklington, David; Poulin, Rich; Rand, Michael; Ray, Anthony; Reed, Bret; Rinder, Clifford; Robbins, Christine; Ruby, Randy; Sanchez, Monica; Santalo Jr., Joaquin; Santiesteban, Felix; Spillman, Daryl; Stranger, Joel; Suenishi, John; Swanegan, Pamela; Tucker, Bryan; Vail, Plutarco; Vianzon Jr., Armin; Villalobos, Michael; Walkup, William; Weber, Jeffrey; Willis, Cleve; Baquiran, Romeo; Cinnamo, Charles; Southcott, Edward; King, Jason; Williams, Helen; Shimmin, Russell; Manrique, Alejandro- DA; [REDACTED]; Palmer, Mark; Faustino, Richard; Wagner, Peter

Sent: Mon May 10 17:13:50 2010

Subject: Lemon Grove

All,

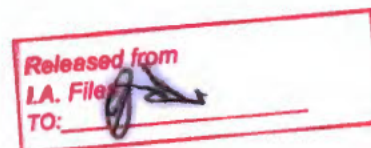
As some of you are aware, in the early morning of May 9, 2010, I was arrested for domestic violence. I understand there may be a lot of questions, comments and concerns; understand that as a Deputy on this department, I am embarrassed at the events and I am looking forward to a speedy return back to full duty. As everyone knows, there are two sides to every story; I hope that everyone will respect my privacy as I resolve this matter. Some of you know me and [REDACTED] on a personal level, all I ask is that everyone be fair and not pass judgment on myself or [REDACTED] as we deal with this situation. This is a Sherman Family situation, one which we will deal with and overcome.

Thank you to everyone for their text messages, phone calls and words of encouragement. When a person is down and out even the smallest encouragement is uplifting.

The Lemon Grove Command gave me a few options for work locations, one of which was to stay here at the station. I will be coming back to work next week in an administrative position. I appreciate the opportunity to continuing working at the Lemon Grove Station with those that know me best as this matter unfolds.

Once again thank you all

Joe Sherman



6/14/2011

Robbins, Christine

From: Sherman, Joe
Sent: Tuesday, June 14, 2011 9:10 AM
To: Robbins, Christine
Subject: FW: Lemon Grove

Sent: Mon May 10 17:13:50 2010
Subject: Lemon Grove
All,

As some of you are aware, in the early morning of May 9, 2010, I was arrested for domestic violence. I understand there may be a lot of questions, comments and concerns; understand that as a Deputy on this department, I am embarrassed at the events and I am looking forward to a speedy return back to full duty. As everyone knows, there are two sides to every story; I hope that everyone will respect my privacy as I resolve this matter. Some of you know me and [REDACTED] on a personal level, all I ask is that everyone be fair and not pass judgment on myself or [REDACTED] as we deal with this situation. This is a Sherman Family situation, one which we will deal with and overcome.

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Once again thank you all

Joe Sherman



6/14/2011

Robbins, Christine

From: Sherman, Joe
To: Robbins, Christine
Sent: Tuesday, June 14, 2011 9:10 AM
Subject: Read: Email

Your message was read on Tuesday, June 14, 2011 9:10:25 AM (GMT-08:00) Pacific Time (US & Canada).

Released from
I.A. Files
TO: 

Robbins, Christine

From: DSDMessagingteam@sdsheriff.org
To: Sherman, Joe
Sent: Tuesday, June 14, 2011 9:01 AM
Subject: Delivered: Email

Your message has been delivered to the following recipients:

[Sherman, Joe](#)

Subject: Email

Sent by Microsoft Exchange Server 2007





San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

September 19, 2011

Law Offices of Bobbitt, Pinckard & Fields
8388 Vickers Street
San Diego, CA 92111

Re: Deputy Joe Sherman, Jr.
IA# 2010-088.1

Dear Mr. Pinckard:

Your discovery request was received in the Internal Affairs Unit on September 16, 2011.

With regard to your discovery request in the matter of Deputy Sherman, Deputy Sherman was provided copies of all materials upon which the proposed action is based, including copies of all audio recordings.

A copy of Sheriff's Policy and Procedure, Section 2 (Rules of Conduct) is enclosed, containing the policy sections charged in this case.

Sincerely,

WILLIAM D. GORE, SHERIFF

William Donahue, Lieutenant
Internal Affairs Unit

WDG:WD:pjl

"Keeping the Peace Since 1850"

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I.A. Files
TO:

BOBBITT PINCKARD & FIELDS

A Professional Corporation
8388 Vickers Street
San Diego, California 92111

RICHARD L. PINCKARD
BRADLEY M. FIELDS

ROBERT W. KRAUSE
CHARLES B. WALKER
PONZIO OLIVERIO

EVERETT L. BOBBITT
(1946 - 2007)

Telephone
(858) 467-1199
Facsimile
(858) 467-1285
www.coplaw.org

ANNETTE BURSTEIN
Legal Administrator

FAX TRANSMISSION

Date: September 12, 2011 September 16, 2011

To: SDSO/IA

From: Annette Burstein

Re: Appeal of Deputy Joe Sherman, Jr.

FAX No. Sending to: (858) 974-2077

FAX No. Sending from: (858) 467-1285

Total number of sheets **including** this page: 3

COMMENTS:☐

Original being mailed via U.S. Mail

☒

Original **NOT** being mailed

☐

Please confirm receipt by calling (858) 467-1199.

WARNING

The information contained in this facsimile message is confidential information (and may be a privileged attorney-client communication) intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of this communication to anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

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TO: _____

BOBBITT PINCKARD & FIELDS

A Professional Corporation
8388 Vickers Street
San Diego, California 92111-2109

RICHARD L. PINCKARD
BRADLEY M. FIELDS

ROBERT W. KRAUSE
CHARLES B. WALKER
PONZIO OLIVERIO

EVERETT L. BOBBITT
(1946-2007)

Telephone
(858) 467-1199
Facsimile
(858) 467-1285
www.coplax.org

ANNETTE BURSTEIN
LEGAL ADMINISTRATOR

September 16, 2011

Sheriff William Gore
San Diego County Sheriff's Department
P.O. Box 939062
San Diego, CA 92193-9062

VIA US MAIL & FACSIMILE
(858) 974-2244

Re: Deputy Joe Sherman, Jr.

Dear Sheriff Gore:

Our office represents Deputy Joe Sherman, Jr. for the purpose of appeal from the advance notice of adverse action served him September 12, 2011. Based on the information available to us at this time, on behalf of our client we deny the allegations on which this action is based and request an opportunity to respond to the allegations at the earliest opportunity. I will serve as Deputy Sherman's representative in this matter. Please contact our office regarding the scheduling of this oral reply at the earliest opportunity either by phone or email to Rick@coplaw.org.

Because our client is a peace officer, he is entitled to the protections afforded under Penal Code section 135.5. Accordingly, prior to any disciplinary proceeding our client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See Evidence Code §§ 210, 780 & 1202). Penal Code § 135.5¹ has expanded the nature of information that must be provided to a public safety officer during any disciplinary proceeding. It is now unlawful to conceal any relevant evidence during the disciplinary process. Concealment would include knowingly not providing any relevant evidence.

I recognize some information that may not be relevant to the appointing authority in order to make a decision regarding discipline of a public safety officer would be relevant to my client to disprove the allegations or mitigate the facts or level of discipline. Therefore, I have provided a list of information that we consider relevant to defending our client from the allegations alleged in the proposed notice of discipline. Relevant evidence also includes evidence, which may assist in mitigation of the level of discipline. Please keep in mind the information we are requesting is in addition to that information that must be provided pursuant to *Skelly v. State Personnel Board*, (1975) 15 Cal. 3d 194.

On behalf of our client, we request the following information:

1. A current copy of all policies and procedures alleged to have been violated by our client.

¹ Penal Code § 135.5 states "Any person who knowingly alters, tampers with, **conceals**, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

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I.A. Files
TO:

2. All written reports (as defined by *San Diego Police Officers Assn. v. City of San Diego*, (2002) 98 Cal. App. 4th 779) prepared as a result of the allegations against our client.
3. All investigator notes.
4. A copy of all radio transmissions related to this investigation.
5. All written or recorded statements of any potential witness.
6. All prior criminal history of any known potential witness related to this investigation.
7. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.
8. All statements or utterances by our client, oral or written, however recorded or preserved, whether or not signed or acknowledged by our client.
9. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.
10. An opportunity to examine all physical evidence obtained in the investigation against our client.
11. All laboratory, technician, and other reports concerning the testing and examination of any physical evidence.
12. All reports of experts made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental or comparisons which relate to the allegations as set forth in the notice of proposed discipline.
13. All photographs, motion pictures, or videotapes taken during the investigation.
14. Any exculpatory or mitigating evidence in the possession of your agency.
15. Any information relevant to the credibility of any witness.
16. Any potential rebuttal evidence in the possession of your agency.
17. Any and all relevant evidence known or in the possession of your agency.
18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.
19. All performance evaluations for the past ten (10) years.
20. Any and all materials reflecting documentation of positive or negative performance maintained in any department files (including Internal Affairs files).
21. Any and all notes, minutes and/or materials from any meetings or discussions involving captains or chiefs in the process of determining the level of discipline to be proposed.
22. Any and all electronically stored data including email and any other computer generated files.
23. Any and all findings of the Citizen's Law Enforcement Review Board relating to this proposed discipline.
24. All discoverable information under Penal Code §1054 as required by *San Diego Police Officers Association v. City of San Diego*, supra, 98 Cal App. 4th 779.

Any information not provided violates Government Code § 3303(g) and subjects your agency to penalty of up to twenty-five thousand dollars plus attorney fees.

Please treat this request as a continuing request until this matter has been settled or adjudicated. Thank you for your anticipated cooperation.

Sincerely,



Richard L. Pinckard

RLP/rab

cc: Internal Affairs

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I.A. Files
TO: _____