



Nevada Commission on Peace Officer
Standards and Training

POST COMMISSION MEETING
10:00 A.M, THURSDAY MAY 5, 2022

NEVADA POST ADMINISTRATIVE OFFICE
CLASSROOM #2
5587 WA PAI SHONE AVE.
CARSON CITY, NV 89701

AGENDA



STATE OF NEVADA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

5587 Wa Pai Shone Avenue
Carson City, Nevada 89701
(775) 687-7678 FAX (775) 687-4911

STEVE SISOLAK
Governor

MICHAEL D. SHERLOCK
Executive Director

NOTICE OF PUBLIC MEETING (NRS 241)

NOTICE IS HEREBY GIVEN THAT STARTING AT **10:00 A.M. ON THURSDAY, MAY 5, 2022**, THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING WILL HOLD A REGULARLY SCHEDULED MEETING AT THE **POST ADMINISTRATIVE OFFICE, CLASSROOM #2, 5587 WA PAI SHONE AVE., CARSON CITY, NV 89701**.

The agenda will include the following items. The Commission, at their discretion, may take items out of order, combine two or more agenda items for consideration, and remove an item from the agenda or delay discussion relating to an item on the agenda at any time. A request to have an item on the agenda heard out of order shall be made to the Commission's secretary prior to the commencement of the meeting. Prior to the commencement or conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the Commission may refuse to consider public comment. See NRS 233B.126.

REGULARLY SCHEDULED MEETING AGENDA ITEMS

1. Call to Order
2. Roll call of Commission Members
3. **DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.**
 - a. Approval of minutes from the February 24, 2022, workshop and regularly scheduled meeting.
4. **INFORMATION** Executive Director's report.
 - a. Training Division
 - b. Standards Division
 - c. Administration – Update on status of rulemaking process for proposed revisions to NAC 289.047 and NAC 289.270 (requirements for executive certificate).

5. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION

Request from the Nye County Sheriff for the Commission to find that its statutes and regulations require the Commission to issue a basic certificate to a person whose peace officer certification is revoked in another state if the Commission finds the person meets the minimum standards for appointment found in NAC 289.110 and the person satisfactorily completes the requirements for certification found in NAC 289.200(1). The Commission may take action to interpret its statutes and regulations regarding issuance of a basic certificate to a person whose peace officer certification is revoked in another state.

6. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

Request from Carson City Sheriff's Office for a 6-month extension pursuant to NRS 289.550 for their employee Deputy Laura Eissingner to meet the certification requirement. (Extension to expire September 5, 2022).

7. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

Request from Clark County Park Police for a 6-month extension pursuant to NRS 289.550 for their employee Officer Jason Hoyos to meet the certification requirement. (Extension to expire November 16, 2022).

8. PUBLIC COMMENTS

The Commission may not take action on any matter considered under this item until the matter is specifically included on an agenda as an action item.

9. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

Schedule upcoming Commission Meeting

10. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

Adjournment.

POSTED AT THE FOLLOWING LOCATIONS:

Commission on POST Administrative Office
Carson City, NV 89701

State Library, Archives and Public Records
100 Stewart Street, Carson City

<http://post.nv.gov>

<http://notice.nv.gov>

<http://leg.state.nv.us>

Pursuant to NRS 241.020(2)(c), a copy of supporting materials for the meeting may be obtained by contacting POST Standards Division, at (775) 687-7678, ext. 3335, Commission on Peace Officer Standards and Training at 5587 Wa Pai Shone Avenue, Carson City, Nevada 89701.

NOTE: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Commission on Peace Officer Standards and Training at 5587 Wa Pai Shone Avenue, Carson City, Nevada 89701 or call Kathy Floyd at (775) 687-7678, Ext. 3335, no later than 2 working days prior to the meeting.

1. Call to Order
2. Roll call of Commission Members

3. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

- a. Approval of minutes from the February 24, 2022, workshop and regularly scheduled meeting.

1 STATE OF NEVADA

2 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

3
4 A Workshop and Regularly Scheduled Meeting of
5 the Commission on Peace Officer Standards and Training was held
6 on Thursday, February 24, 2022, commencing at 2:01 PM at the
7 Pahrump Nugget Hotel/Casino, 681 S. Hwy 160, Pahrump, NV 89048.

8
9
10 COMMISSIONERS:

11 Jason Soto, Chairman

12 Kevin McKinney

13 Russ Niel

14 Michael Allen

15 Tim Shea

16 Tyler Trouten

17 George Togliatti

18
19
20 STAFF:

21 Kathy Floyd, POST

22 Mike Jensen, Attorney General's Office

23 Mike Sherlock, POST

24
25 TRANSCRIBED BY: Marsha Steverman-Meech

	INDEX	
	ITEM:	PAGE:
1		
2	ITEM:	PAGE:
3	WORKSHOP	
4	1. Call to order	5
5	2. Roll call of Commission Members	5
6	3. Workshop on proposed regulation change	6
7	Topic	
8	A. Continued discussion regarding possible revisions to NAC	
9	289.270 to clarify the requirements to qualify for an Executive	
10	Certificate. Discussion on proposed changes may include, but is	
11	not limited to, the following:	
12	1. Removal of/changes to agency position requirements	
13	to qualify for an Executive Certificate.	
14	2. Removal of/changes to minimum requirements for	
15	advanced certificates a peace officer must hold as a	
16	prerequisite for an Executive Certificate.	
17	4. Public Comment	39
18		
19	REGULARLY SCHEDULED MEETING AGENDA ITEMS	
20	1. Approval of minutes from the November 8, 2021,	
21	regularly scheduled POST Commission meeting	66
22	2. Executive Director's Report	67
23	a. Training Division	67
24	b. Standards Division	68
25	c. Administration	69

1 3. The Commission to decide whether to continue the rule
2 making process to revise NAC 289.270 to clarify the
3 requirements to qualify for an Executive Certificate.

4 Discussion on proposed changes may include, but is not
5 limited to, the following: 70

6 Removal of/changes to agency position requirements to
7 qualify for an Executive Certificate.

8 Removal of/changes to minimum requirements for
9 advanced certificates a peace officer must hold as a
10 prerequisite for an Executive Certificate.

11 4. Hearing pursuant to NAC 289.290 (1) (e) on the
12 revocation of Jovan Motley (formerly with the Nevada
13 Department of Corrections) certification based on Gross
14 Misdemeanor convictions.

15 5. Hearing pursuant to NAC 289.290 (1) (e) and (1) (g) on
16 the revocation of Eduardo Bueno (formerly with the Las
17 Vegas Metro Detention Center) certification based on
18 Gross Misdemeanor/Felony convictions.

19 6. Hearing pursuant to NAC 289.290 (1) (e) and (1) (g) on
20 the revocation of Nicolas Diaz (formerly with the Las
21 Vegas Metro Detention Center) certification based on
22 Gross Misdemeanor/Felony convictions.

23 7. Request from the Eureka County Sheriff's Office for a
24 6-month extension pursuant to NRS 289.550 for their

1 employee Deputy Ryan Getzler to meet the certification
2 requirement (Extension to expire August 1, 2022)

3 8. Request from Carlin Police Department for an
4 Executive Certificate for their employee Chief Kevin
5 McKinney.

6 9. Request from Nye County Sheriff's Office for an
7 Executive Certificate for their employee Captain David
8 Boruchowitz.

9 10. Request from Eureka County Sheriff's Office for an
10 Executive Certificate for their employee Undersheriff
11 Tyler Thomas.

12 11. Public Comments

13 12. Schedule upcoming Commission Meeting

14 13. Adjournment

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 SOTO: All right, we're going to go ahead and
3 call this meeting to order. It is February 24th at 1401 hours.
4 I don't have my gavel but we're starting. POST Commission
5 meeting and workshop is called to order for February 24th, 2022.
6 For the record, the time is 1401 hours. I'm going to turn this
7 over to Kathy Floyd for some information on the legal postings
8 and open meeting compliance. I ask everybody cause we're in a
9 larger room today to just speak up a little bit so that
10 everybody can hear you. Thank you, and turn it over to Kathy.

11 FLOYD: The meeting agenda and workshop notice
12 has been posted in compliance with NRS 241.020, and notices were
13 physically posted at the POST Administration Building in Carson
14 City and the Nevada State Library in Carson City. The notices
15 have been electronically sent to POST.NV.GOV, State of Nevada
16 website at notice.NV.gov, and the legislative website at
17 leg.state.NV.gov. They were emailed to all the SPOCs and admins
18 on the POST listserv.

19 SOTO: Okay. Thank you, Kathy. I'm going to
20 move on to roll call. I'll start with myself, Jason Soto, and
21 then I'm going to go Reno PD and I'm just going to move around
22 the table. We'll start back on that side with George.

23 TOGLIATTI: Ready? George Togliatti, Department of
24 Public Safety.

25 MCKINNEY: Kevin McKinney, Carlin Police

1 Department.

2 NIEL: Russ Niel, Nevada Gaming Control Board.

3 TROUTEN: Ty Trouten, Elko PD.

4 ALLEN: Mike Allen, Humboldt County Sheriff's

5 Office.

6 SHEA: Tim Shea, Boulder City Police.

7 SHERLOCK: Mike Sherlock from POST.

8 JENSEN: Mike Jensen, Attorney General's office.

9 FLOYD: Kathy Floyd from POST.

10 SOTO: Okay. We're going to start off today
11 with a workshop and just to kind of give everybody an idea of
12 what this is going to -- how this is going to roll out, since we
13 haven't had a workshop in a while, the purpose of this workshop
14 is to solicit, you know, comments or information from interested
15 persons on the following topic that could be addressed in the
16 future propose regulations, and that this workshop has been
17 previously noticed pursuant to the requirements of NRS Chapter
18 233B. The workshop itself is in reference to NAC 289.270,
19 continued discussion regarding possible revisions to NAC 289.270
20 to clarify the requirements for an executive certificate.
21 Discussion on proposed changes may include, but is not limited
22 to, the following: removal of or changes to agency position
23 requirements to qualify for your Executive -- for the Executive
24 Certificate; removal of changes to the minimum requirements for
25 advanced certificates a peace officer must hold as a

1 prerequisite for an Executive Certificate; and then as I stated,
2 for the workshop really what we want to do is go around the room
3 for those that have input to help us better understand some of
4 the challenges that you may be having in regards to the
5 Executive Certificate. Then once we're done with all of that,
6 so that we have a better understanding of what, you know, you
7 want to bring to this workshop, we'll close the workshop out and
8 then we'll talk as a commission as to giving or not giving some
9 direction as to how we want to move forward. I'm going to turn
10 it over to Mike Sherlock for some background on the subject
11 itself.

12 SHERLOCK: Thank you, Chairman. Mike Sherlock for
13 the record. So as the Commission may recall, we discussed in a
14 previous workshop that we had, the possibility of changing or
15 somehow clarifying the language for the requirements of the
16 Executive Certificate. This is simply a continuation of that
17 discussion. I know that the Sheriffs and Chiefs Association
18 sponsored a meeting to discuss this issue that we attended and I
19 believe several are here to summarize their ideas coming out of
20 that meeting, and after some of those ideas are related, I can
21 address how that affects our current regulation and what we
22 would have to change or how it would affect other regulations
23 related to that. I do have one letter that was sent to us
24 regarding this issue, and I can read it into the record at the
25 end of the public comments at that point. The last thing I

1 would remind the Commission that is -- again, that we are in a
2 workshop and the Commission cannot take action until we are on
3 an action item as part of the agenda of a regular meeting, which
4 does -- it is an agenda item today, and then I just ask if Mr.
5 Jensen has anything to add in terms of the workshop.

6 JENSEN: No, that's perfect.

7 SHERLOCK: All right. And I'll give it back to
8 you, Mr. Chairman.

9 SOTO: Okay. So I guess the way we'll start
10 this today is that I know that there's several of you with us
11 today that want to have -- weigh in on some of your thoughts on
12 the matter, so I'm just going to open it up to the floor, and
13 then after we hear from the floor, we'll probably get some
14 conversation among the Commission the as well and we'll go from
15 there. Looks like Sheriff Furlong wants to kick us off so come
16 on up.

17 FURLONG: Thank you. Sheriff Furlong for the
18 record, Carson City Sheriff's office. It's a cool setup, man.
19 Brought all my shit so that I would look cool. A little bit of
20 background, this agenda item came up at a regular Commission
21 meeting in November, and I spoke to the Commission about it, for
22 lack of a better term, objecting to the issue that was on that
23 agenda item, referencing NAC 289.047, the executive level
24 position for POST certifications, and subsequently, from then we
25 did meet in Reno with a statewide announcement that we were

1 going to meet in somewhat of an informal -- to be legal,
2 informal workshop where we could discuss some of the issues and
3 address some possible outcomes that would be recommended when we
4 came together. Mr. Sherlock did attend that meeting to make
5 sure that we stayed the course correctly. This is a very, very
6 passionate characteristic of the Carson City Sheriff's office.
7 I believe that within our industry, we should be developing the
8 strongest leaders, the strongest professionals possible, people
9 who can take charge of our organizations as we go on into our
10 whatever down the road. I believe very, very strongly that to
11 invest in professionals is to invest in education, it's to
12 invest in career development, it's to invest in experience and
13 qualifications. I have always believed that. Fortunately, I
14 will say, as we shared our commitments at the informal workshop,
15 I've always tried to refer to it that way for you, every agency
16 we found is very, very unique in the way that they're put
17 together and the way that they're built. What is -- what sounds
18 to be equal is not always, and I use the term captain because
19 it's a very, very easy one to use. A captain in one agency may
20 not be the same in all other agencies. A law-enforcement agency
21 has the ability to put itself together as they seem or deem fit
22 for their jurisdiction and the entities that they serve with.
23 It is important that we recognize the differences, and it's a
24 challenge for POST to create a one definition that's going to
25 serve us all, especially when these differences are so vast and

1 just, but I did raise the issue during the November meeting. I
2 did help facilitate the meeting up in Reno, and I'm here to
3 present to you folks today that as a result of that meeting, two
4 things became very, very obvious: one that, yes, the topic was -
5 - we attempted to center the topic on NAC 289.047, the
6 executive-level position, but that you could not address that
7 item without effectively addressing 289.270. They are joined at
8 the hips. They are actually joined at the hips, and so you're
9 going to have some other speakers that are going to address
10 those. Coming out of the workshop, we tried to develop a
11 recommended, suggested verbiage that could be utilized by POST,
12 that may benefit most, if not all, agencies, and I believe that
13 was distributed to this workshop. The verbiage that was
14 suggested was, "Executive level position means a position held
15 by a peace officer in which the peace officer holds a position
16 that is deemed to be in the line of succession of the chief of
17 the agency, whereby that position could be called upon to be in
18 charge of the entity's agency." I think that that definition
19 does hit the target, and the target is that the chiefs of
20 agencies, whether they be a chief of police, a sheriff, or other
21 entities -- I apologize, I will use the word chiefs and sheriffs
22 synonymously to all agency heads, they need a greater role in
23 responding to whether or not an individual is in that line and
24 deserving or appropriate to an executive-level POST certificate.
25 I've been to the Commission several times in my agency, I have

1 the ability to hire by statute six people to assist me in
2 operating my agency, I have two, undersheriff and assistant
3 sheriff. As was presented down in Las Vegas in November, that
4 definition that was presented before this Commission would have
5 restricted one of my assistant sheriffs, that third in command,
6 obviously integral to the agency, from having an executive POST
7 certificate, and in fact, whether we want to call it a joke or
8 not a joke, there was a suggestion that, well, this will just
9 remove everybody else's, we'll just take away their POST
10 certificates because only the two should have them, the sheriff
11 and the undersheriff, or the chief and the next one down. Well,
12 that's not absolutely true at all. In a perfect world, we
13 should be raising our employees to take on greater roles and
14 responsibilities, we should be getting them involved in off-duty
15 education, we should be getting them involved in career
16 development, we should be encouraging and supporting upward
17 mobility movement within our organizations and the state. We
18 want professionals. We don't just call them that, we take an
19 action for it. In some agencies, and I'll just use the word
20 some cause I'm not aware of all, but surely I can say this about
21 the Carson City Sheriff's office, career development POST
22 certificates allow for add-on pays in their contracts. Career
23 development POST certificate off-duty education provide the
24 foundation for advancement in rank, promotions. Career
25 development and educational assistance or educational

1 achievements, these are the men and women who are rising to the
2 levels that you folks sit in today, and they need to be
3 embraced, not fought over. They need to be encouraged, not
4 restricted. POST should not be telling me how I am going to run
5 my agency. POST should not be telling me how I'm going to run
6 my community. I should not have to change the way the rank
7 structure is in my department to meet the whims of POST. We
8 need definitions and defined characteristics that agencies can
9 adopt and embrace, and young people coming into these
10 organizations can see I could be one day, and we as the leaders
11 need to be able to look at these people and see that action that
12 they have taken. I do embrace each one of these POST
13 certificates, I do embrace the notion that, and Mr. Sherlock and
14 I have discussed it, I throw this out as a general term, Mike,
15 that maybe in some cases, such as in basic, okay, you've got
16 your requirements fulfilled, but you don't get awarded that
17 certificate until you're in a position. I -- there is some room
18 there to be worked on, but to tell an agency how and what they
19 will manage their own leadership, POST is not responsible for
20 that. They've taken on a role of authoritarianism, telling me
21 who is going to lead my agency by certification, and I
22 absolutely reject that because my character, my morals, my
23 investment in my agency starts with that basic POST certificate,
24 and I push it all the way. It would be wonderful to see a
25 resume for a man who or woman who wanted to fall into one of my

1 positions to say and I have been awarded an executive-level POST
2 certificate. We need to refine the path to getting them. I
3 spoke at a college class, UNR class, here about two weeks ago.
4 It's amazing that so many agencies are reaching outside of their
5 agencies to hire chiefs and leadership. Why do we have to reach
6 outside? Are we not investing enough within? Are we not
7 creating common-sense paths to achieve these certifications?
8 Are we not telling our employees this is how you can develop in
9 a career and this is the path forward? A college does that to a
10 student. Why are we not with POST? POST is a regulatory
11 agency. They are also a mentoring agency, a training agency.
12 Where we see obstacles, you and I, POST should be seeing
13 solutions. This is an obstacle today, and my solution is that
14 agency heads should take on a greater role in defining who
15 within that agency should be awarded executive POST
16 certificates, not POST telling me who I can and can't have. I'm
17 passionate about it because this strikes to my values. I
18 believe in career development, POST, I appreciate that. I
19 believe in certifications, POST, I appreciate that. I believe
20 in mentoring our people. I believe that my successor should
21 come from within my agency and not brought from another state.
22 If I fail, then the city of Carson City is going to have to look
23 outside. Why? We need to be building leadership from within,
24 and executives of the organizations should be telling POST who
25 is entitled to achieve those certifications. POST should be

1 clearly describing that path in order to achieve it and work
2 with the agencies, not against the agencies, to achieve those
3 goals and those visions. I do support some changes to NAC
4 289.270, the executive certificate requirements, but I do that
5 on a realistic base. Sounds like it's a little bit
6 contradictory to what I've said here just in the last few
7 minutes, but we are bringing on a lot of chiefs, chief officers
8 to agencies from outside of the state, and I've heard the words
9 of the POST folks that suggested that there are paths or these
10 agencies are doing it this way and we want to stay in line.
11 There is no reason for us to stay in line. We are the leaders
12 or we can stand up and be the leaders. We can stand up and say
13 these are the paths for those prospective agency heads that are
14 making applications to becoming chiefs of police or chiefs of
15 agencies or even sheriffs within their state to achieve
16 certification at that POST level. I would ask that we pay very,
17 very close attention. Both of these two NACs are connected at
18 the hip and they cannot be separated, but as an agency head, I
19 believe very strongly that my values are consistent with the
20 mission and goals of POST. Unfortunately, I don't believe that
21 they are following their own values. They need to work with the
22 executives of the agencies and find ways to achieve more
23 positive outcomes. Those positive outcomes are this: these are
24 indicators. These are indicators of a broken system. What I
25 have in my hand is a list of the executive POST certificate

1 employees in this state, and sadly, when I first started, of the
2 36 active executive POST certificates, Carson City has six of
3 them. That's not in balance. That should be something that
4 POST celebrates because surely I support their role in the state
5 but that's not in balance. Why does Carson City have six?
6 Maybe we're losing faith or the process is broken and it needs
7 to be fixed, not based on history, but based on our future.
8 Where do we want to go? Who do we want to lead our
9 organizations down the road? Thank you.

10 SOTO: Thank you. I know we're going to have
11 some more speakers and I'm going to ask Mike, how do we want to
12 do this? Do we want to ask questions as Commissioners, input
13 now so that we don't -- you know.

14 SHERLOCK: You can run it that way, sure.

15 SOTO: I think that's probably the best way
16 moving forward, and I have a couple of questions that just came
17 to me after listening to what you had to say, Sheriff, and that
18 is I know you've been sheriff of Carson City for quite some time
19 now, pretty much as long as I can remember, and I thank you for
20 that. Has this always been a challenge for your agency? Was
21 this a challenge for you when you began your career as sheriff?

22 FURLONG: No.

23 SOTO: I mean, were you -- can you explain that
24 to me? I'm trying to understand why it's here now, and I know
25 the answer to some of that because I've talked with some of the

1 sheriffs and chiefs here, and you touched on it a little bit
2 about people coming in from other states and things of that
3 nature, but I'm talking about specifically your agency,
4 challenges that you're having now that maybe you didn't have 20
5 years ago or maybe you did and it's just --

6 FURLONG: Over the past 20 years, investments are
7 not -- do not result in immediate action, investments have long-
8 term paths to follow. I would suggest to you that I was elected
9 in 2003, and I don't want to use the word easier, but I found it
10 less of a challenge for people to begin that process of
11 certifications and that upward career development back then.
12 Over the years, it has gotten more and more difficult, to the
13 point -- at a point, all of my captains and my two chief
14 executive officers had executive POST certificates. That was
15 not met without severe -- not severe, that was not met without
16 challenge from POST, but I think the last one that we
17 entertained the Commission with was about a year ago, I now
18 have, as a result of attrition, a captain within my department
19 and I -- based on what is currently being held, I see no avenue,
20 no possibility to encourage him to pursue his executive POST
21 certificate at all because I don't believe that I can gather the
22 support from POST to get it. Captains are not just captains
23 from one department to the other or lieutenants or sergeants.
24 It depends on the size of the agency, it depends on the
25 composition and how it is structured. I think that these things

1 need to be changed because over the past I'm going to call it
2 five years, and I reflect back on this chart of executive POST
3 certificates, it's becoming more and more difficult for agencies
4 to understand how to get their chief officers, and I'm referring
5 to the top two executive POST certificates, realistic path and
6 those within the agencies, how to continue that career
7 development. I have openly stated within my own agency, I don't
8 see a path today to achieve what I have in the past. I believe
9 we have hit that point, and when this was addressed in November,
10 that kind of tipped me over the edge. I have one captain who
11 does not have an executive POST certificate.

12 SOTO: I asked that question because I was just
13 trying to get an understanding as to whether or not NRS and NAC
14 has been consistent for, let's just say the 20 years that
15 Furlong's been in office, and if 20 years ago it was easier for
16 you to achieve whatever it was that you were trying to achieve
17 in terms of your personnel and the development of your folks, if
18 it's something that our Commission, as we sit here today, can
19 work towards to make that -- to simplify that somehow, that's
20 why we're here today. That's why we're having a workshop,
21 trying to understand, and I guess that's a question that I have.
22 Has NRS or NAC changed?

23 FURLONG: That question is probably best answered
24 by the folks from POST. What sort of changes have taken place
25 over the last 20 years?

1 SHERLOCK: So Mike Sherlock for the record. So the
2 -- both the definition of what an executive-level position is
3 and the requirements of the executive certificate were -- have
4 been changed many times, but were last changed in December of
5 2010.

6 FURLONG: And that would suggest that we are
7 making it more and more difficult for upcoming leaders to
8 achieve certifications. Again, I want to go back to we need to
9 quit looking back and start looking forward. Who do we want to
10 be? We want to be like everybody else or do we want to set the
11 pace for others to follow? There are tremendous leaders coming
12 into Nevada, tremendous leaders coming into the State of Nevada
13 and occupying executive positions, but they can't get executive
14 POST certificates. There are tremendous leaders inside of our
15 corps and, folks, I apologize for my statement, I apologize for
16 my emotions, but damn it, we need to start investing in our
17 people who are working their entire careers in our law
18 enforcement agencies.

19 SOTO: I don't disagree with you. I think it's
20 great when you invest in your own people. I think it's
21 something that our profession needs, I think it's something,
22 you know, that Nevada specifically is unique in that way, that
23 we've got a lot of generational families in law enforcement, my
24 family included. I just wanted to get an idea, Sheriff, as to
25 what some of the hurdles were for you and for your agency. I

1 don't think anybody on this Commission, and I'll let -- I'll
2 turn it over to them here, but want to get in the way of you
3 running your agency. What I will say is that POST and, you
4 know, the regulations that POST puts forward are done to protect
5 all agencies within our state. There are good reasons for POST,
6 as you know, which you just spoke to during your speech today,
7 but I also understand that sometimes things could be broken and
8 certainly, we're not closed to not taking a look at those, at
9 least I'm not, but I'll turn it over to our Commission and see
10 what their thoughts are, or if they have anything that they want
11 to weigh in or questions that they might have for Sheriff
12 Furlong.

13 TROUTEN: Ty Trouten for the record, and I'd ask
14 Mike Sherlock for more clarification on the changes from 2010
15 because I think one of the areas that our agency has faced has
16 to do with, it seems like there was the addition of the
17 supervisory certificate and then some changes to the management
18 certificate. Is that about that timeframe, Mike?

19 SHERLOCK: Mike Sherlock for the record. Yeah. As
20 you know, there's been changes even after that, but that added
21 the supervisor certificate and the succession of requirements
22 that the Commission put on in terms of those regulations so,
23 yes.

24 TROUTEN: Okay. Thank you. And then specific
25 question: you referenced your captain and not being able to

1 motivate him to see the need for the executive certificate.

2 What is the specific lack there? What is the specific --

3 FURLONG: There's --

4 TROUTEN: -- circumstance?

5 FURLONG: Based on this last I'm going to just
6 call it 18 months just for fun, as a general rule, there's a
7 general kind of a guide. I don't believe that with the changes
8 proposed, which we are here talking about today, that there is
9 any capability of that captain achieving an executive POST
10 unless he was appointed into the top two or was elected. That's
11 ridiculous. He holds a very high position. Statutorily, I have
12 the ability to put six people in those executive positions.
13 It's not for POST to tell me that I only have two. They don't
14 overrule the statute.

15 SHERLOCK: Mike Sherlock for the record. Just
16 clarify for me, Sheriff, so the one we're talking about was a
17 lieutenant, right? Have we ever denied captains?

18 FURLONG: You -- again, your focus -- I got to
19 stop you right there, I apologize, because this goes back to the
20 problem. Captains and lieutenants across agencies are not the
21 same. In some agencies, captains are unclassified employees or
22 lieutenants. In some agencies, they're classified. In my
23 agency, the lieutenant and the captain are synonymous. The POST
24 doesn't recognize that. They're synonymous. They are the same.
25 The only thing that distinguishes a captain from a lieutenant in

1 my agency is his qualifications awarded by POST, and when POST
2 restricts those qualifications, then he has an effect on the
3 contracts that are let in Carson, management to the employees.
4 Again, I'm emotional about it, but POST does not tell me or the
5 City of Carson how to run its law-enforcement agency or to
6 describe who is doing what. You can't say a captain in Elko is
7 the same as a captain in Carson, so we have to take these words
8 and clarify what does the executive of that organization deem,
9 and is that person in that line to manage from an executive
10 point of view for any period of time the running of that agency.
11 Whether he be a sergeant, because we have very small
12 organizations in the state, or a very large metropolitan
13 organization, it's up to the chief executive of that
14 organization. I could not possibly convince today POST how this
15 captain, my one captain, could get an executive POST
16 certificate. It's impossible. So instead of mentoring and
17 encouraging, I'm being regulated.

18 TROUTEN: So if I -- again, Ty Trouten for the
19 record. If I understand correct, the concern you have specific
20 to 289.047 is deemed to be in the line of succession where
21 you're advocating more that it should be based upon the duties
22 and responsibilities of the position, excuse me, no matter what
23 the title may be --

24 FURLONG: Correct.

25 TROUTEN: -- in running that agency.

1 FURLONG: Correct. And, and I will add to you
2 that about 10 years ago, myself and the mayor of Carson City
3 went to the legislature to change the charter because the
4 previous charter for Carson City gave me the authority to
5 appoint up to five at the time executive officers to supervise
6 and assist me in running my organization. The legislature
7 accepted our findings that the word sworn needed to be taken out
8 because I do value civilians as well, so we dropped the word
9 civilians and we increased it to six. The legislature accepted
10 that responsibility, the legislature accepted that request from
11 Carson City and from the organization, and yet POST doesn't.

12 SOTO: I'm just thinking this through. I'm
13 trying to -- one of the things that I would like to see come out
14 of this workshop is I would like to see -- I'd like to see the
15 language of 2010 and the language of today, I'd like to see how
16 that differs, whether or not that created some challenges and
17 I'd also like to look into, for an executive, if he or she
18 decides that somebody may -- you know, may have a career path to
19 go for an executive, I have to understand how that would work
20 out as well and the only reason I say that is not because of
21 you, not because of me, probably not because of anybody in this
22 room, but I think it's important there's language in there that
23 protects the employees of the agency. I don't know if you
24 understand what I'm getting at, but I don't -- what I wouldn't
25 like to see is an agency that doesn't have the protection of

1 language through POST to make sure that all employees have that
2 opportunity to develop, which is what you're bringing up, but
3 that's not always the case, so I'm just trying to understand it
4 as we're going through it all.

5 SHERLOCK: Mike Sherlock for the record. So if I
6 could kind of explain what our process is right now based on the
7 regulation. The regulation right now requires that the agency
8 demonstrate that this person that they're applying for the
9 executive for supervises two or more persons who hold
10 management-level positions and is in charge of an entire agency
11 or a major division or bureau within the agency. So what we do
12 right now is require an org chart and we -- there seems to be
13 this misconception that we're stuck on titles. We don't even
14 look at whether they're lieutenants, that's just easier for us
15 to say it here, or captains or sergeants. If your agency has no
16 lieutenants or captains and that sergeant meets that definition,
17 then they're okay. But the other thing you have to keep in mind
18 is right now that the executive certificate isn't something that
19 occurs in a vacuum. So when we see lieutenants as that level
20 being applied for management certificates, and then lieutenants
21 also being applied -- applying for executive certificates, we
22 get confused frankly because of what the regulation requires.
23 So the regulation requires that whoever -- whatever their rank,
24 their title is to manage or to supervise management-level
25 recipients, right, management-certificate people. So I just

1 want to make sure everyone knows that we don't look at their
2 rank. We never have. It's the org chart that the agency
3 provides us and if that org chart demonstrates what's required
4 by the regulation, we try to ensure that and clearly, if there's
5 different language that the Commission wants us to evaluate, we
6 will.

7 FURLONG: And for the record, Ken Furlong, I agree
8 with you but I'm your customer. That's not what you're telling
9 me. You're telling me why I can't do something. So maybe we
10 should refine the way your message is coming out.

11 SOTO: I guess that's what I'm getting is
12 trying to identify a path forward to where regardless of what
13 your rank is, because I don't have captains, so --

14 FURLONG: Good example.

15 SOTO: -- it doesn't -- you know, I have --
16 it's different, but identify some type of language that could
17 give department heads, chiefs, sheriffs the ability to work
18 within whatever your org chart looks like, and I think we can.
19 I think we can. I think if you have, let's just say, a
20 lieutenant and that's, you know, your position and if that's who
21 you have watching over your city while you're away or whatever
22 and that you give the keys to the city to, because I have watch
23 commanders as well, that you can look at that individual and
24 decide whether or not they're somebody that could qualify for an
25 executive POST. So that's -- again, that's why we're here,

1 that's why we're talking about it and I think that we can
2 achieve some of that. Go ahead.

3 MCKINNEY: I have -- well, I just have a -- I --

4 SOTO: Sure, go ahead.

5 MCKINNEY: -- to further this. I -- my question to
6 Sheriff Furlong is why do you think this captain can't obtain
7 his POST certificate? What is specific about it that makes it
8 unachievable for you?

9 FURLONG: Well, number one, the last three
10 captains that we have recommended for award of an executive POST
11 certificate have been fought by POST to this Commission. I will
12 refresh your memory that I've had to come to the Commission for
13 each one of them and each one of them, Mr. Sherlock has
14 recommended denial of that POST and the Commission has overruled
15 it and awarded those certificates. The last one was Captain
16 Earl Mays (phonetic). He did receive his POST certificate. It
17 was a rather lively meeting.

18 MCKINNEY: Okay. But again, what is -- is there --

19 FURLONG: Since --

20 MCKINNEY: -- part of the statute --

21 FURLONG: Since then, it doesn't appear that POST
22 is going to -- it appears that POST wants to redefine who's
23 going to get it, which would remove this captain completely from
24 any eligibility.

25 MCKINNEY: Okay. Well --

1 FURLONG: I believe very strongly that the org
2 chart needs to be replaced with a letter of recommendation from
3 the chief of an agency, period. The org charts do not describe
4 an agency. Org charts don't describe how the functions within
5 an agency exists, or as you put it, who is in charge when the
6 chief executives or his staff is out of town. It is commonplace
7 that I have captains running my agency when my executive staff
8 is out of town.

9 MCKINNEY: Again, (Inaudible) I, I'm not,
10 I'm not getting what you're trying to describe here. The -- let
11 me -- I'm sorry. Excuse me. NAC 289.047 defines what an
12 executive position is, okay? Does he fit that description?

13 FURLONG: Yes.

14 MCKINNEY: Okay. So he's in an executive-level
15 position?

16 FURLONG: He could be.

17 MCKINNEY: He could be.

18 FURLONG: He could be.

19 MCKINNEY: But he's not or is he?

20 FURLONG: He is not right now today.

21 MCKINNEY: Okay. So -- and, and what part of that
22 statute doesn't -- or that NAC doesn't he fit? Does he run a
23 bureau?

24 FURLONG: Yes.

25 MCKINNEY: Then he fits.

1 FURLONG: No. According to POST, he would have to
2 oversee two.

3 MCKINNEY: I believe --

4 FURLONG: Isn't that correct?

5 MCKINNEY: -- I could be wrong, but I believe it
6 says --

7 UNIDENTIFIED: Or major division.

8 MCKINNEY: -- is in charge of an entire agency or a
9 major division or bureau within an agency.

10 FURLONG: And must supervise or oversee two
11 divisions.

12 SHEA: Two persons.

13 UNIDENTIFIED: Two management-level people.

14 SHEA: Two management level people.

15 SOTO: So that's the language piece, but the
16 other piece that's going through my mind, and I think I'm
17 tracking with what you're saying is --

18 FURLONG: So am I, because I was hung up on
19 exactly those words.

20 SOTO: I have to go back to the -- to when
21 before this Commission, Sheriff, cause I remember at least one
22 that I was sitting in on. You came in front of us and said this
23 is the situation that I'm in, I'm in a pinch because of the
24 dynamics of my organization, and the Commission granted that
25 individual the executive.

1 FURLONG: Correct.

2 SOTO: And I think, and I'd have to double
3 check on this, but I think the Commission in its totality has
4 the ability to grant or deny an executive POST.

5 FURLONG: That is correct.

6 SOTO: I don't know -- I'm not sure how that
7 works with Mike with the -- like, when an executive -- if
8 Furlong says hey, this, whatever, how does that work? How do --
9 what process do you take when it comes to me? How did it get to
10 that point where Furlong's in front of me or in front of the
11 Commission asking about it?

12 SHERLOCK: So, yeah, we are the gatekeeper.
13 There's no doubt about it, and so -- but we cannot deny a
14 certificate, a executive certificate, but to give you, again, if
15 the regulation currently requires that they have a current
16 management certificate, so if the agency applies for an
17 executive and the person does not have a current management
18 certificate, we will kick it back. It is not -- so we're the
19 gatekeeper in terms of the regulation.

20 SOTO: Okay.

21 SHERLOCK: Staff is.

22 SOTO: All right. That what I was trying -- I
23 was trying to understand why even -- it even got to that point
24 to where -- but I think I understand now.

25 FURLONG: Well, I'll go back -- can you further

1 clarify? You said you don't have the ability to deny, but
2 neither do you have the ability to award. Isn't the Commission
3 have the ability to award, not you?

4 SHERLOCK: Solely, they have the --

5 FURLONG: Correct.

6 SHERLOCK: But again --

7 FURLONG: That's how it gets to you.

8 SHERLOCK: -- they have to -- for us to present it,
9 we show that they met the minimum standards to apply, and then
10 the Commission makes the decision on granting it.

11 FURLONG: Yeah.

12 MCKINNEY: To -- even further, so your captain, I
13 just want -- I just want --

14 FURLONG: To that person.

15 MCKINNEY: Yeah. Okay. Your captain, who you said
16 doesn't have an avenue, is it because he doesn't supervise two
17 management positions then?

18 FURLONG: He does not manage -- manage two super -
19 - he does not oversee two divisions. He oversees several units
20 within a division.

21 MCKINNEY: Okay. And does each unit have a
22 manager?

23 FURLONG: No, they have supervisors.

24 MCKINNEY: Okay.

25 SOTO: Yeah. Again, it goes back to -- I think

1 it goes back to maybe some of the language that we're talking
2 about --

3 UNIDENTIFIED: Right.

4 SOTO: -- and it is unique to every agency. It
5 truly is. A manager and a supervisor are two entirely different
6 things as to how I might define it and how Furlong might define
7 it. But again, I think there's language that we can put in
8 there that would protect the agency, that would protect all of
9 its employees, It would protect its department heads. I don't
10 think it's that challenging to do something like that. The
11 bottom line is these executive certificates still come to the
12 Commission --

13 FURLONG: Correct.

14 SOTO: -- and the Commission still has the
15 ability to say if somebody is doing something a little sideways
16 or that we think they frankly don't meet those qualifications,
17 we can deny that executive certificate. At least that's how I'm
18 reading some of this.

19 UNIDENTIFIED: And just add to -- sorry.

20 SHEA: Yeah. I agree with a lot of what you're
21 saying. Again, I can only go back from some of my previous
22 experience. In the Boulder City Police Department, there was no
23 way for people to get these certificates when I got there.
24 There was no way for them to move up any kind of ladder at all,
25 anywhere. There was no way for them to respond to the

1 solicitations I get every day from around the country to apply
2 for police chief jobs. They couldn't compete with their peers.
3 There was no way. In the Sheriff's office I came from, the
4 undersheriff of a 900-person agency would not qualify because he
5 supervised four bureau chiefs. They supervise the bureaus. He
6 didn't. He didn't supervise the agency, the sheriff did. So
7 even though he had hundreds of people below him, he had bureau
8 chiefs, majors, captains, lieutenants, under our definition, he
9 would not qualify if I read this current language right. You
10 have to supervise two management people --

11 FURLONG: Mm-hmm.

12 SHEA: -- and you have to supervise your own or
13 major division. I don't know what a major division is versus a
14 lesser division, but you wouldn't qualify, and the agency I came
15 from, the situation I came from, every lieutenant was required
16 to go to the Executive Command College. Every lieutenant was
17 required to get the Executive Certification so they could move
18 up in the agency or move laterally. We had sergeants who were
19 contract police chiefs in cities, we had contract cities, and
20 sergeants would be assigned as a police chief. They would
21 qualify, the undersheriff would not and this is where the
22 language I think is flawed. When you only have 36 people in an
23 entire state that have this thing, there's -- we had 36 in the
24 Sheriff's office at least that had the certificate, and we were
25 just one agency out of 250. So I'm a little -- I'm -- I see

1 this and I would be curious to see what all these amendments
2 did. This one law, NRS 289.047, was added in 2010. It didn't
3 exist before that, so that definition did not exist before 2010.
4 Then the other section, which is 289.270, was added in 1987. It
5 was then amended four times up to 2010. I'd love to see what
6 the amendments were. What language did we change and why did we
7 change this and feel it was necessary to move this way? Because
8 one of the things I was told is when this was amended in 2010,
9 it was pointed out to one of my predecessor commissioners, you
10 would no longer qualify for this and his answer was I got mine,
11 who cares?

12 FURLONG: Thank you.

13 SHEA: That was his exact answer, and there's
14 someone who could actually testify to that cause he was the
15 person who asked the question and directly got the answer. So I
16 believe that when you have agencies such as the Metropolitan
17 Police Department, one of the largest in the country, and they
18 have half a dozen, with the -- there's an issue. It's not
19 because the sheriff and the people there aren't professional
20 people who want to move ahead and move up in this. We -- if we
21 made it difficult and put impediments in the way, we should be
22 encouraging people and moving them into these things. I can't
23 get an Executive Certificate in this state. I don't know what
24 more I could do. I have people with master's degrees that can't
25 get them and that makes -- it doesn't make much sense to me. If

1 they went to -- if I changed the name of my sergeants to
2 lieutenants, they would qualify --

3 FURLONG: Yeah.

4 SHEA: -- because I can then change a unit to a
5 division, make a sergeant lieutenant, not give them a penny
6 more, and I'll be qualified because I changed their titles.

7 FURLONG: For the record, Ken Furlong. For the
8 record, Ken Furlong. The -- what you have just described is the
9 challenge. POST may not agree with your statement, but we've --
10 at the executive levels, many of our agencies have lost that
11 emphasis for that career development certification process
12 because it's unattainable for people at the top. If it's not
13 attainable for me at the top of an agency, why am I going to
14 push that as a value onto the rest of the agency?

15 SHEA: Yeah. And I don't want -- I (inaudible)
16 want to be argumentative --

17 FURLONG: No, no, what -- I'm, I'm agreeing with
18 you.

19 SHEA: -- but I don't think POST denies it. I
20 think the statute as it sits denies it, and I think if that's
21 where the problem lies, then it behooves us to take a look at
22 the statute --

23 FURLONG: Yes.

24 SHEA: -- because I think POST is regulated by
25 the statute and what we do is we currently try to find ways to

1 grant waivers. And if we have to grant waivers, I think
2 something's wrong with the statute. We shouldn't be granting
3 waivers. We should move the statute to accomplish the things
4 that we as a body of professionals want to accomplish --

5 FURLONG: You and I are saying the same thing.

6 SHEA: -- and not figure a way to get around
7 it.

8 FURLONG: You and I are saying the same thing. We
9 need to be looking --

10 SHEA: Well, now you're in trouble.

11 FURLONG: -- forward. POST is regulatory. POST
12 is regulatory, so they're looking at those statutes as the
13 guideline.

14 SHEA: Right. Right.

15 FURLONG: Okay. But who's -- who is in that
16 position to change those guidelines? POST.

17 SHERLOCK: And let me just -- just to give you a
18 history, I wasn't here in 2010, but my understanding of why it
19 was changed in 2010 is it become a situation where, again, they
20 were subjectively being given, the certificates were, and that's
21 why they came up with that. One thing I would add once again,
22 we do not look at rank. If -- we look at the org chart per the
23 regulation. I think people are getting confused with some
24 proposed language that mentioned rank. Rank is not in the
25 current regulation. We do not use rank in any decision-making

1 at all right now, so I just want to make sure everybody
2 understands that there's no language change because there is no
3 rank in the current regulation.

4 SOTO: That's one of the reasons I would like
5 to look at the 2010 language, and that was what I was getting
6 into. I don't want to create a good-old-boy system where you
7 have a rogue individual that is all authoritarian and, you know,
8 only you people qualified because I say so. I think the
9 qualifications and I think there has to be some standards there,
10 and I don't think anybody in this room would disagree with any
11 of us on that. I know that for the last 25 years, I've been
12 writing contracts and looking at language and trying to find
13 ways creatively not to paint ourselves in corners, because it
14 can be very difficult depending on what something looks like
15 once it's in -- once it's written down on a piece of paper or in
16 a law, so I think, you know, just based off of the conversation
17 that we've had here, a good starting point would be to look at
18 that language to see if there's a way that we could get a little
19 bit more creative to give department heads a little bit more
20 ability to choose who they -- who it is that they see, you know,
21 running their agency when they're not there. The only caution
22 that I have for the group is I don't think it should be
23 something that we just hand out to anybody that wants it and
24 that goes back to the qualification piece, right? I -- and I'm
25 only speaking for larger agencies now because that's where

1 sometimes the difficult dynamics come in for POST because we
2 have agencies that are, you know, less than 10 people and we
3 have agencies that are, you know, several thousand and, you
4 know, it -- there has to be value in an Executive Certificate.
5 There really does. It can't just be something that you just get
6 cause you know somebody. So I think that would be a good place
7 to start based off just, you know, from what we heard from
8 Sheriff Furlong, is to look at that language to see if there's a
9 way that we can give department heads from different
10 departments, different size agencies, more of an ability to
11 promote who they see fit for their communities.

12 ALLEN: Mr. Chair, I have a quick question for
13 Sheriff Furlong. Mike Allen for the record. In your
14 presentation, you indicated I believe there was, like, 36 or 38
15 executive POST certificates and six of those being out of Carson
16 City and that's out of balance. Why is that out of balance?

17 FURLONG: Think about the number of officers here
18 in the state. Carson City is truly a smaller jurisdiction.
19 We're more aligned with the rurals. Some people say that we're
20 kind of on that border or rural versus whatever. Our largest
21 jurisdictional law enforcement agencies are obviously in the
22 Clark County and Washoe County regions. To say that of all of
23 these agencies across the state who would be eligible under the
24 g -- under the proposal of the November meeting, that November
25 meeting was two per, am I correct?

1 SHERLOCK: So that's where the confusion is, I
2 think. The proposal was not two people, two levels.

3 FURLONG: It was just --

4 SHERLOCK: -- and so --

5 FURLONG: -- the chief executive and one down.

6 SHERLOCK: Right.

7 FURLONG: Okay. Which is two in my school that I
8 went to. Okay? Considering all of the agencies, not just
9 police departments and sheriff's offices, but all of the
10 agencies, 36, that number 36 should be a red flag that agencies
11 are not jumping on board and there's something wrong. When you
12 look at the size of Carson City's Sheriff's office, I have 101
13 officers, compared to the number of officers who have peace
14 officer authority across the state, 6 of the 36 are out of one
15 community. There should be another flag. Something is wrong
16 here. Either we as law-enforcement entities are not following
17 in suit with POST or POST is not following suit with us, one of
18 the two, because there's an imbalance here. Metro has the same
19 number as Carson City does. How many officers are down there?

20 SOTO: A lot.

21 UNIDENTIFIED: Thirty-nine hundred.

22 SHEA: It changes every minute I believe.

23 FURLONG: These -- there is value in tracking
24 these numbers. There's value in it. Where is the outcome? The
25 outcome is we want professional leaderships in our communities,

1 in our law enforcement, across the state. If you look at the
2 numbers, that's not consistent. Something is wrong and I think
3 Mr. Soto just pointed that out. Something is wrong here. Is it
4 the verbiage of the statutes? Is it the leaderships? What is
5 wrong? Why is a rural agency, Carson City, have as many as
6 Metro?

7 ALLEN: I would say because you applied.

8 FURLONG: I believe in POST. I believe
9 passionately in POST. Come to my agency, come to the detention
10 center, come to our training center, come to our patrol
11 division. All the way across the wall is the career progression
12 ladder, not by rank, Mr. Sherlock, but by POST certification. I
13 believe in career development. Absolutely. You put concrete
14 under a person's feet and they will thrive. If it's muddy water
15 and they can't see the path, it becomes difficult and
16 disenfranchising.

17 SOTO: Thank you, Sheriff Furlong. Appreciate
18 that.

19 FURLONG: Thank you.

20 SOTO: Anybody else have any questions for him?
21 All right, I'm going to turn it off to (inaudible). Thank you,
22 sir.

23 FURLONG: Thank you.

24 SOTO: Anybody else want to speak on the
25 matter?

1 JOHNSON: Good afternoon, Commission. Aaron
2 Johnson, Commander, Boulder City for the record. Just thank you
3 all for allowing me to speak on this. This has been a sticking
4 point for me being from a smaller agency since the rules changed
5 in 2010 and it was my boss, Tim Shea, or not -- Tim currently.
6 It was my boss at the time, Tom Finn, who came back and I asked
7 him, I said do you realize what you voted on? And he said, why?
8 I said you are no longer eligible for the Executive Certificate
9 that is hanging on your wall because of the rule changes that
10 you made. You have no mid-level manager, you don't supervise
11 divisions, you don't have managers over divisions, you have you
12 and six sergeants. That's it. That's all you have. You are no
13 longer eligible for that certificate. No longer is anybody
14 eligible for the management certificate. All these rule changes
15 that happened in 2010 stripped Boulder City since 12 years ago,
16 and we have not been eligible until -- I have never been
17 eligible until May of 2021, and now I'm the only person by these
18 definitions that is eligible for that certificate in the agency.
19 My boss is not eligible for that certificate because he does not
20 manage two managers. I do, but he doesn't. So that's my
21 sticking point with this and one of the things that I've always
22 been concerned about is the -- and I -- Chief, I understand your
23 thoughts about needing to protect and have that level of --
24 layer of protection over the certificates and the agencies as a
25 whole, but Boulder City, a sovereign in the state, defines what

1 an executive is for the City of Boulder City. It's the chief of
2 police and the commander. Sheriff of Clark County defines his
3 executives for his agency by policy. He has five, the sheriff,
4 the undersheriff, the assistant sheriff, deputy chiefs, and
5 division commanders. He defines what they are. Why does POST
6 need to define what the Sheriff of Clark County has already
7 defined? Now he has many, many layers because he's a large
8 agency. We have very few layers because we're a very small
9 agency, but I look at Sheriff Elgan of Esmeralda, he would never
10 be eligible for this certificate because of the way it's
11 defined. Is he any less of an executive because he comes from
12 Esmeralda County than it is the Sheriff of Clark County? No,
13 he's still an executive, he still should be considered an
14 executive, and he's been the sheriff for 23 years, and he's not
15 considered an executive by this Commission, by this body, and
16 that to me is -- what that begins to do is it begins to exclude
17 your membership by having these rules in place, whatever
18 happened in 2010, for whatever reason, began to exclude people
19 from achieving something that should be -- include all
20 executives in the state, regardless of the size of your agency
21 and that's what it's proposed. And my chief at the time
22 shrugged his shoulders, said I have mine. The other issue, I'm
23 going to leave that because you guys debated that with Sheriff
24 Furlong long enough. I just wanted to reiterate some of those
25 points. I think the agency can define who their executives are.

1 I think they present that stuff to POST, POST can agree based
2 upon a hierarchy, that's fine, but if Sheriff Furlong wants to
3 say that his captain is an executive in his agency, he should be
4 able to regardless of whether he's supervised his now sergeants
5 and they're not managers. Sheriff Elgan should do the same
6 thing. He supervises, he's an executive who manages sergeants
7 and deputies. Extremely small, we know that. Six deputies, I
8 think he has under his watch. He's still an executive all day
9 long in my opinion anyway. So the next thing I want to talk
10 about is NRS 289.270. So this is another thing. This was
11 another change in 2010 that began to strike down the eligibility
12 for executives in my agency. We have not had an internal
13 candidate for a chief of police in Boulder City since, what are
14 we, about '96? About then was the last time we had an internal
15 candidate? We have had sergeants up until April of 2021, is the
16 first time we were able to convince Council that we needed
17 layers of supervision in our agency and it's been a really,
18 really hard push. Then we finally got the classification of
19 lieutenant. That's when my position became eligible for this
20 Executive Certificate. But then we have these other
21 requirements in here that again, don't include, don't allow a
22 reasonable pathway to this Executive Certificate. When I say
23 reasonable pathway, to sit there and say that Chief Shea is
24 going to unplug himself -- Chief Shea, for everybody who's here
25 and didn't know, he's from Washington, right, he's from the

1 State of Washington and, and he came here from a large agency
2 and he's now the, the head of our organization but because he
3 came here from another agency, from an outside agency, he would
4 have to go back and get a first-line supervisor certificate,
5 then go and get a management certificate, and now apply for an
6 Executive Certificate because he is not from the State of
7 Nevada. Even though he has 50 years of law-enforcement
8 experience, he is not eligible for the certificate. Even if you
9 just change the definition of what an executive is, he is not
10 eligible for the certificate, and that bothers me and it doesn't
11 bother him, and he's probably frustrated right now that I'm
12 saying this on -- but I'm saying this on behalf of Boulder City
13 because we might get another executive from outside in. We have
14 identified that we are drawing and attracting executives from
15 outside of the state. We're -- it's happening, and to say that
16 we are not recognizing his experience as a part of a pathway to
17 receive an executive recognition, by the way, of being an
18 executive by this Commission, it to me is offensive. And so to
19 have a linear pathway, one way to get an Executive Certificate,
20 again, excludes during a time when we should be including, when
21 we should be more inclusive. I understand the argument from
22 POST that we need to maintain a level of integrity of this
23 program, but we can't have a singular pathway. It just does not
24 work and it will not continue to work down the road. We --
25 again, my friend from the City of Henderson, Chief Andres, is in

1 the same situation. Willing and able to, he's going to probably
2 beat me up on the way out, to go and get this stuff done, but he
3 comes from the outside in. He has leadership seminars from
4 PERF, from the Police Executive Research Forum, the Senior
5 Management Institute, he has degrees, he has education, he can
6 demonstrate to this Commission that he has supervisor training,
7 management training, and he's an executive of his organization.
8 Why should we say you need to go back to first-line supervision?
9 Oh, by the way, that class that you're going to be sitting in,
10 your subordinates are teaching it. He's going to go to a class
11 that his first-line supervisor is teaching that class. That's
12 what this is telling him he has to do and that doesn't, to me,
13 make any sense. It doesn't. So I'm going to leave this at
14 this, is that let the agencies give definitions of what their
15 executives are, and then secondly, either find a secondary
16 pathway to achieve -- to demonstrate the education requirements
17 that are here or eliminate them altogether. Eliminate them,
18 eliminate that administrative certificate and eliminate the
19 supervisor certificate, eliminate the management certificate.
20 Otherwise, please provide us a secondary way to demonstrate a
21 pathway to achieving the certificate. Because, again, I come --
22 I have a graduate degree. I have a master's degree. To sit
23 there and say I'm going to spend -- ask my boss to spend time
24 out of my day to go back and take classes that I've already
25 taken because it's the only way I can get the certificate makes

1 no sense to me and it would be irresponsible. I feel it'd be
2 irresponsible for me to ask that of my employer, so I leave it
3 at that. I'll open up for questions.

4 SOTO: I don't have any questions. I think it
5 kind of goes back to what I was saying, and that is that, you
6 know, because of the logistics of the State of Nevada, we have
7 so many agencies and there's just such a span of population
8 across the state that it can make it very difficult for agencies
9 that don't fit in the mold of what we're talking about today,
10 and I understand that. That's why we're having this workshop.
11 I also understand and have had conversations with executives and
12 with Mr. Sherlock and even our commissioners about the
13 challenges that we face in law enforcement today when you're
14 looking for an executive and maybe you cannot bring somebody up
15 through the organization, maybe there's nobody that really wants
16 that position and you do have to go outside, and then you do
17 have to find career professionals to come in and take on that
18 responsibility of running an operation or an organization as
19 complex as a police department, and so I do understand the
20 second half of what you're talking about in that, you know, as
21 you stated to this gentleman to my right has got 50 years of
22 law-enforcement experience.

23 SHEA: I started when I was 3.

24 SOTO: It sounds like it. I mean, (inaudible).
25 But so I think you bring up a lot of good points. I think that

1 we started touching on this probably about a year ago, you know,
2 and the pendulum sometimes takes a little bit of time to swing,
3 but I think it's certainly on the minds of all of us and I, and
4 I do think that we'll come up with some creative language to
5 maybe ease some of those restrictions and give a little bit more
6 empowerment to department heads to decide how they want to run
7 their agencies and maybe even we find, like you said, another
8 pathway.

9 JOHNSON: That's really all I'd ask is not
10 necessarily a redefinition of the entire thing, but give an
11 alternative. Give an alternative pathway to success. If this
12 is really -- if this is a valuable certificate, then there needs
13 to be ways for all of our executives to receive it. There needs
14 to be because this is POST recognizing you that you're an
15 executive. Now, he's going to argue that I don't need POST to
16 recognize, my employer does and that's enough for me. I'm not
17 about Chief Shea. This is about others. This is about other
18 people that are rising through the ranks and like Sheriff
19 Furlong said, this should be developmental. This should be a
20 program that is a program that says you are striving for this to
21 prepare you to become an executive. I think that's what college
22 does for us also. It prepares you for these executive-level
23 positions, it prepares you for the financial portions of it, the
24 administration portions of it, and so I just -- all I really ask
25 is a secondary pathway at minimum.

1 SHEA: I hate to throw, throw Chief Andres
2 under the bus here, but I like to use him as an example of kind
3 of what Commander Johnson was speaking about. Chief Andres came
4 to Henderson, which is no small little town. It's one of the
5 largest in the state. His background, his education, his
6 experience is obvious. He has taken a department that was
7 having significant issues and he has completely changed the
8 culture through leadership, through progressive management
9 styles. I live in Henderson. I see every day the differences
10 in the things that he's done. Yet because of a structure, a man
11 of his caliber, his abilities, his background, his successes
12 can't get that Executive Certificate in the State of Nevada and
13 even to get a management certificate is virtually impossible.
14 They put a requirement on the City of Henderson Police Chief
15 doing a nationwide search and one of the requirements was when
16 you come here, you have to have your certificate in a year. I
17 went up there and told them, says it can't happen. You can't
18 put this requirement on people because they cannot accomplish
19 it. It's impossible. But I think it might even still be there
20 because they still didn't understand how could you not get this
21 in a year? If you come to us, you can be the Chief of Police of
22 Dallas Police Department, you can be the Chief of New York City
23 Police Department and come here, you cannot accomplish this.
24 You can have a doctorate degree, be the Chief of the New York
25 City Police Department and you cannot get a certificate in this

1 state. You can't do it. And that's where the problem is. And
2 we also are not preparing our people for the future. We aren't
3 building the leaders of tomorrow, we've got an impediment in the
4 way and they cannot compete with their peers. That's why we're
5 getting people coming from out of state. Our folks can't
6 compete, and I don't know about you all, but I get three or four
7 solicitations a day for police chiefs' jobs around the country.
8 Everywhere you could think of, we get them. Our people can't
9 apply and do it. I can, not because of this state, but because
10 of the state I came from and some of the classes I took with the
11 exact same classes, with the exact same people that are here at
12 this state at the exact same time, the exact same place, and
13 they do not count here because at the time, I was not a Nevada
14 officer and I took the class in Las Vegas. It doesn't count
15 because I wasn't employed here then. And that's the things I
16 think we need to fix, and that's where I think the system is
17 broken. I think the law's broken. POST isn't broken, Mike
18 isn't broken, it's the statutes. It's the way we organized this
19 in the past and I think those are the things we need to fix.
20 These were amended for a reason. Times have changed and we are
21 in a very competitive market and a very competitive environment
22 with significant turnovers. I'm an anomaly. I've been the
23 police chief in Boulder City now for almost six years. During
24 that time, five police chiefs in Henderson, five in North Las
25 Vegas, two in Mesquite, two or three in the school police, UNLV

1 has gone through people, NHP's gone through multiple. We are
2 turning command-level people over quickly and -- quickly. Two-
3 and-a-half years is the average police chief tenure now. Where
4 are those people -- those going to come from? They're not going
5 to come from in-state because they aren't going to be able to
6 qualify under things like what Henderson put out: you got to
7 have that Executive Certificate within a year. You can't do it.
8 The city, when I went there and talked to them, they said, well,
9 you know, what kind of certificates do you have? I showed them.
10 I said, but I don't have anything here in Nevada because it's
11 virtually impossible for me to get them and they accepted it,
12 and that was just fine. But anyway, so that's what Commander
13 Johnson was talking about. I'm sorry about that, Chief, but
14 you're a perfect example of what we have to fix.

15 JOHNSON: So just to kind of wrap up my portion,
16 unless there's any more questions, is this: when I came to
17 Boulder City in 2006, I remember going into one of the
18 sergeant's office and she had on her wall the advanced
19 certificate and a management certificate and I said this is
20 pretty cool, this is something that I can aspire to, this is
21 where I'm going. The chief at the time had his advanced
22 certificate and Executive Certificate, and he came from the
23 State of New Jersey. So this path -- there was a pathway.
24 There was a pathway to these certificates and they had value. I
25 placed value in them, not really knowing anything about these

1 certificates other than the fact that people that were
2 supervising me and in charge of me had these things hanging on
3 the wall, so they must be important. And then the rules changed
4 in 2010 and I began to realize well, the pathway is now over
5 with. What's the point? We send our folks, when they get
6 promoted to sergeant or just before if they're eligible to be
7 sergeant, to the POST First-Line Supervisor Course, preparing
8 them to be supervisors. At that point, it's done. I went to
9 the management course. I went there. I remember sitting there
10 with Captain Chadwick and Captain Hannah (phonetic) from
11 Henderson, and I went to the class and I was there. I was a
12 sergeant, not eligible. I went to it not eligible. I felt that
13 it had value to it but in the end, I received nothing for it.
14 It was like going to college and not getting a degree at the end
15 of the day. The -- so again, I just share with you that we
16 place value on these certificates. I place values on these
17 certificates because they recognize something that you have
18 achieved. But if they're unobtainable, if they're reasonably
19 unobtainable, then it becomes exclusive and you're really not a
20 member of the club, even though you should be. You should be
21 allowed to do this, so I leave it at that if I don't have any
22 questions.

23 TROUTEN: Ty Trouten for the record. I just -- I
24 concur with you on, for lack of a better term, the reciprocity
25 for other states' executive levels. Our former chief, same

1 boat. Had all certificates in California. By the time he
2 retired after six years in the State of Nevada, he was finally
3 eligible for an intermediate certificate --

4 JOHNSON: Mm-hmm.

5 TROUTEN: -- despite education and all the other
6 things. He had no doubt about the fact that he was the
7 executive of our agency. As I look at the current NACs, both of
8 them, you'll notice on 270 where it references subsection 1, and
9 then H, the letter that must come from the head of an agency
10 certifying that this person meets the criteria. Going back to
11 what Kenny said, that should be what carries a great deal of
12 weight. Now, this Board or Commission, I would hope that we're
13 reasonable, rational folks, that as to the reciprocity side, for
14 folks coming in from out of state, whatever state that may be
15 cause there's varying values and standards, that they can
16 present a case that would show that they have comparable, you
17 know, certificates at the supervisory or management levels as
18 well as the leadership cause really that's what we're talking
19 about here is we're not just training people, we're supervisors
20 and want to give them a certificate for the executive or at the
21 management level. Each of those are distinct and different, and
22 you're growing people. You're training them up to become that
23 executive, so it ought to be almost a significant rate on the
24 endorsement of an agency that this person, regardless of rank,
25 regardless of how many people they supervise and how those

1 people are divided below them, are who you depend upon, that you
2 can leave in charge of your agency should something happen to
3 you or you're out of town, whatever it may be, they are truly an
4 executive and have earned that right in the station, and I
5 believe education is part of it. However, the world is replete
6 with educated idiots. It's more about the value of the person,
7 the duties they fulfill, and how well they have fulfilled them
8 and can fulfill them to demonstrate that they're worthy of an
9 Executive Certificate and when you made the statement about the
10 different agencies in there, how they define their executives, I
11 think that's key because that would solve the problem from small
12 agency to the larger agency. So if it's Esmeralda County saying
13 my sergeant is my number 2 and is fully competent and capable of
14 handling the affairs of this agency, that is an executive. They
15 can do the hiring, firing, termination, discipline, you know,
16 budget, all of those things that are below, encompassing
17 everything from the management side and supervisory side and
18 that person (inaudible). So thank you for your comments.

19 JOHNSON: Yes, Chief.

20 SOTO: All right. Thank you.

21 JOHNSON: Thank you, Chief.

22 ANDRES: I'm going to be real brief, I promise
23 you.

24 FURLONG: Oh, come on. (Inaudible.) You put me
25 on that other committee.

1 ANDRES: I'm going to be real brief.

2 UNIDENTIFIED: (Inaudible.)

3 ANDRES: No, you didn't.

4 UNIDENTIFIED: Thank you.

5 ANDRES: Good afternoon. Thedrick Andres with

6 the Henderson Police Department. I just want to address one

7 thing with the Board because I think, you know, Jason, you

8 brought up a great point. We say we don't want to be a good-

9 old-boy network but that's what it seems like because many of

10 you agency chiefs try to apply in another state and, you know,

11 you wanted to use your reciprocity certificates and education,

12 it would be accepted. Yet and still, I come to this state and I

13 gave Mr. Sherlock a copy of my training, all of the hours of

14 training that I received, and I can assure you, it far

15 supersedes the training in this state from major universities.

16 I just came back from the FBI Law Enforcement Executive

17 Development Series, but yet still I'm required to go to a first-

18 line supervisor class. If we're a reciprocity state, I think

19 what the Board and Commission should be doing is looking very

20 intently at that syllabus, making sure that the education that

21 any executive, supervisor, manager that comes to the State of

22 Nevada, it absolutely fits the criteria of the educational

23 standards for our officers. That's it. It is that simple but I

24 refute that I should sit in a supervisory level class and I'm --

25 and here's one of the things and I've talked to Mike, I've

1 talked to Jason, I'm saying this to the Board, I am currently
2 trying to develop more supervisory training in my agency because
3 I don't think it's enough. I think that even our standards can
4 be higher but I left a state as a Master Peace Officer and then
5 before I came to that state, I came from Louisiana there and
6 they accepted every one of my educational certificates and
7 training because it was a reciprocity state, but I get here and
8 I get told now you got to go to supervisor school after you've
9 been to the one -- a first-line supervisors school in three
10 different states, so that means if I applied to go to the
11 University of UNLV to get a master's certificate, they're not
12 going to take any of my credits that are from undergrad, I'm
13 assuming. It wouldn't count, right? I'd have to just go back,
14 do undergrad again. This is simple, ladies and gentlemen.
15 We're professionals. If we have the training, if many of you
16 wanted to apply for a chief's job in another state and you had
17 to have an NA or an SMIP education certificate and training,
18 then how is it any different than if you currently have it here,
19 it's not respected or looked at? That, in law enforcement right
20 now today, absolutely, we should be educating the officers in
21 our state to become future law-enforcement executives. But we
22 also in a state that is a reciprocity state, have a
23 responsibility to recognize the education and training that
24 officers and executives have received in agencies and other
25 states where they came from. That's what I have for the Board.

1 Any questions?

2 SOTO: Not a question, but maybe just a little
3 follow-up on what Chief Andres is talking about. We had a
4 conversation about this (inaudible) but also at a past
5 Commission meeting, and law enforcement in 2022 is such that I
6 believe in developing my people as well and if I can bring
7 somebody up through the ranks and get him or her to where she
8 inspires to be, that's great, but a lot of times we don't have
9 that opportunity or that desire for a lot of different reasons,
10 and I know that I've said at past Commission meetings, and I
11 know that you yourself have had to go outside of your own agency
12 at times. That's the way law enforcement is today. It just is.
13 Chief Shea talked about it, you know, two-and-a-half years is
14 the average now for a chief, it's not even five years anymore.
15 That window is shrinking and we have to make sure that we have
16 an ability to put competent, professional people in positions in
17 which they can run an agency within our state because it's so
18 important to all of us. So I understand some of the
19 frustrations and again, I think that this is a great starting
20 point to find a way to give somebody such as yourself that's
21 deserving of some certificate that certificate. I don't think
22 it's that difficult. I don't think it's going to be that
23 challenging. I do know that there's some things in place that
24 have caused some challenge for us but I will say this: I think
25 it's important cause nobody's brought it up today but I've had

1 many conversations with Mr. Sherlock about wanting to find a way
2 to move forward on this. He understands it too. He doesn't
3 have the ability in his position to do that but we do as a body
4 to take a look at these rules and say -- or these regulations or
5 these laws and say okay, maybe we can, you know -- we can make
6 this better, so I thank you for your insight. I thank you for
7 your service to your community. Anybody have anything for Chief
8 (inaudible)?

9 TOGLIATTI: George Togliatti for the record. I'm
10 just looking, as a person who is not qualified for an executive
11 certificate, but I do teach graduate school.

12 ANDRES: That's right.

13 TOGLIATTI: I obviously support the sheriff and both
14 chiefs, some of the testimony, but looking at .047, I can't help
15 but look at the last paragraph and it says we will consider each
16 applicant individually. Unfortunately, items 1 all the way down
17 to that kind of negates that possibility and I think maybe, as
18 good-hearted and good-natured as everyone was to put something
19 like this together, there may be more concern and emphasis on
20 somebody sneaking through the system as opposed to all those
21 folks that are overlooked that have just tons and tons of
22 qualifications. You can't tell me that you can't be a graduate
23 of a National Academy and what you have to do to go through
24 those hoops, the National Executive Institute, which is a level
25 higher than the FBI offers in various degrees here and there,

1 and then the years of service that you would put in with other
2 agencies can't be overlooked. So I think we should do a better
3 job maybe of taking a look at the statute and saying hey, we
4 have to concentrate more on the individual rather than what we
5 think of the prerequisites. Also, last and final, I think we
6 have to consider the integrity of the agency and the leaders of
7 those agencies when they bring someone forward and say hey, this
8 is somebody who I think is qualified. Thank you.

9 SOTO: I concur with that. That's one of my
10 concerns. Again, it doesn't have to do with anybody in this
11 room, but -- and I want to maintain that integrity. We need to
12 maintain that integrity now as much as ever and that's something
13 that we can do. I think, you know, we've got a good enough
14 working relationship. Shoot, everybody knows everybody in this
15 state, so thank you (inaudible).

16 SHEA: And I'd just like, again, to point out,
17 I'm probably beating a dead horse, but when you have
18 professionals of the caliber of Mr. Togliatti, Chief Andres, and
19 our system precludes them from getting the certification
20 process, that's where I think we definitely have issues. What
21 position is higher in the state than the Head of Department of
22 Public Safety in a state where the agency -- you know, the head
23 of that can't qualify? The head of what's certainly soon going
24 to probably be the largest city in the state cannot qualify, and
25 it's something I think that we need to fix sooner rather than

1 later.

2 ANDRES: And I'll just say this. I've said this.
3 I support the reciprocity process. I think that that's in place
4 for a reason. You know, I've shared with the Board my goal,
5 ultimate goal, is to continue to develop inside the agency but I
6 had to bring in an outside chief and obviously he went through a
7 process, but now with 34 years coming from one of the larger
8 agencies, a tremendous education background, again, as George
9 said, he doesn't qualify. So now he's got to go through this
10 track. So I think that what I would ask the Board is, you know,
11 we need to be considered what every other state that if you went
12 to you'd want your education recognized, right, you'd want your
13 training recognized, and I certainly think it should be a
14 process. It absolutely -- anybody applying for these things
15 should be able to demonstrate that they've had training and
16 courses that meet the standards of the state and I would be glad
17 to show you my syllabus, as probably well as George from his
18 position and Tim, but when we don't even get an opportunity to
19 do that and have the training that you've done throughout your
20 career recognized, that is -- that's a bit of a hard pill to
21 swallow.

22 SHEA: I can certainly tell you when I left the
23 San Diego County Sheriff's Office and moved to Seattle, my
24 training records from California were merged into my Washington
25 State Training Commission training records, and they are part of

1 the 6,000 hours in my computer printout of in-state training
2 from the State of Washington. That includes California, it
3 includes training with the FBI National Academy. It includes
4 the time I spent with New York City Police Department,
5 Philadelphia Police Department, Los Angeles Police Department,
6 and subsequent classes in management, it includes the management
7 courses I went through by the Boeing Corporation, their Senior
8 Executive Training. Washington State included all that stuff in
9 there. Here, not a single hour, except for the FBI Academy, is
10 included and I think that's the things we have to look at
11 fixing.

12 ANDRES: (Inaudible.) Thanks.

13 UNIDENTIFIED: (Inaudible.) To you, Chief, you know,
14 you're a prime example of why I think this -- these NACs need to
15 be overhauled. You know, there's no reason why you shouldn't be
16 eligible for -- I believe personally that you shouldn't be
17 eligible for that certificate, and like Mr. Togliatti here, he
18 should be eligible. I mean, I think it does need to be
19 overhauled. You know, we need to just find the right answers
20 so.

21 ANDRES: Well, I appreciate that and I'll leave
22 this with the Board. I think as the sheriff said, the
23 certificates absolutely mean something to me and that's
24 something that I'm working through my agency, right? Because
25 many of them, oh, why do I need it, and we -- you know,

1 different areas where we've come from, many of us know that
2 those certificates are important, you know. In certain states,
3 it's tied to an increase in salary and pay, it's tied to being
4 able to move up your ranks, and I think that's something we
5 should work on changing. As we continue to look at that as a
6 Commission, we need to bring value back to those things cause I
7 think they -- if you see George or if you see Tim get it, then
8 you go, well, why do I need it, right? And maybe if I'm not in
9 the City of Henderson, I can go to another municipality where
10 it's not recognized and not needed. I think that's an issue.
11 So I appreciate your time. Thank you, you know, for me having
12 the opportunity just to present.

13 SOTO: All right. Do we have anybody else that
14 wants to speak on the matter? I appreciate everything that has
15 been brought forward and, again, that's a big reason that we
16 wanted to have, like, a workshop is to hear some of these
17 stories, some of these examples, some of the complexities that
18 each individual agency is faced against every single day. And
19 I'll just say one more thing on the heels of Chief Andres, as
20 the chief of your department, that's something that you deserve.
21 I mean, that's the bottom line. It's something that you should
22 have. It's something that you've earned. I know how difficult
23 it is for you to run an agency of that size and a city of your
24 size and that's something -- shouldn't be something that you
25 shouldn't be able to achieve. I mean, that's how I feel that as

1 the Commissioner of this Board and I think just knowing Mr.
2 Sherlock and all of my fellow commissioners, I think you've got
3 a good group of people here right now that are looking at ways
4 to make our profession better than it already is and allowing
5 our department heads and our executives the latitude that they
6 need to do their jobs for their communities that they serve, so
7 with that --

8 SHERLOCK: I do have --

9 SOTO: Yeah, go ahead, Mr. Sherlock.

10 SHERLOCK: And so I have to -- I received a letter
11 -- Mike Sherlock for the record -- to include in the workshop.
12 This is from Sheriff Antinoro from Storey County. I am writing
13 in regard to the February 24th, 2022 meeting item number 3,
14 regarding the proposed regulation changes to the Executive
15 Certificate. It is my position that to reduce requirements from
16 where they have historically been cheapens the significance of
17 the Executive Certificate. It is also a slap to those who have
18 worked hard to earn such a certificate in the past. I do not
19 think reducing the standards serves a legitimate purpose as far
20 as the development of professional law enforcement in the State
21 of Nevada. And that was dated February 22nd, 2022, and that is
22 the only correspondence that we received regarding this issue.

23 SOTO: So since -- for the workshop -- oh, go
24 ahead.

25 LININGER: Captain Chris Lininger for the record,

1 Humboldt County. I guess my question is cause if I remember
2 right, I'm sitting here looking through some stuff, Executive
3 Certificate before the change in 2010 was designed for sheriffs
4 and chiefs and department heads only, if I'm right. So I'm
5 looking at other states. I reach out. Have you guys researched
6 other states on the requirements? In 2010, they opened it up
7 for positions, like, undersheriffs, my position as well. Under
8 our structure, I don't qualify but when the sheriff's gone and
9 undersheriff's gone, I run our agency. Just the verbiage,
10 either set a direction that this is going to be strictly for
11 your heads, or if you open it up, clean up the language in there
12 because like Sheriff Furlong said, each department is structured
13 different, so as a captain, I only supervise sergeants, and
14 they're not management level, so I've never went after my -- I
15 have everything that I need to get my certificate, I just never
16 pursued it because I was always told I can't, I don't qualify,
17 and not by the sheriff, just by other people. So that's my two
18 cents. I know you guys heard a lot but it's got to go one
19 direction or the other. If you're going to open it up for upper
20 management, let's make it fair, clean it up for every agency to
21 have a definition so other people can get it or limit it. Keep
22 it to the executive, your sheriffs or chiefs, directors on that
23 point, and that's my advice.

24 MCKINNEY: I can speak on that, Captain Lininger,
25 I'm familiar because I previously worked in that house so I'm

1 familiar with POST, so I actually pulled that up recently and to
2 answer your question, it says, Requirement number 1 to obtain an
3 Executive Certificate in Idaho is you must be employed for a
4 minimum of 3 years as a chief of police, sheriff, director, or
5 chief executive of an agency.

6 LININGER: California's the same way. I just read
7 that one too, but I mean, we're our own state so we can make our
8 own --

9 MCKINNEY: Right.

10 LININGER: -- but back in 2010, wherever this
11 change came from, because I remember talking to actually Sheriff
12 Gene Hill (phonetic) about the Executive Certificate stuff
13 because I'd already progressed to a level, or that was the only
14 certificate I couldn't get, and this was back in 2006 or '09,
15 I've been stuck here, so -- but when that new change came out, I
16 wasn't in a position of command staff that I am now, so that's
17 why I said (inaudible).

18 SHERLOCK: The question is did we survey, and we
19 do. We look at other states when these issues come up and
20 predominantly, it is as Chief McKinney stated that it's either
21 the chief executive or chief executive and undersheriff, as I
22 understand, we were before 2010.

23 LININGER: Yeah.

24 SHERLOCK: Not that we have to do what other states
25 do.

1 LININGER: Right.

2 SHERLOCK: That's just -- that's predominantly what
3 the -- if they have an Executive Certificate in their system,
4 that is predominantly how it's done.

5 SHEA: So if I catch what you're saying is you
6 believe there's either one of two pathways that could be cleaned
7 up: either clean the language up so that chief executives and
8 their immediate second can all qualify; or make it a career-
9 development program that people from layers below those levels
10 can obtain that certification and training levels and all that -
11 -

12 LININGER: Yeah.

13 SHEA: -- so they can move up into those
14 positions with those certificates intact.

15 LININGER: Yes. And then with the recommendation
16 of probably the department head, either the sheriff or the chief
17 that I'm bringing this person before you for his executive
18 certificate.

19 SHEA: Okay.

20 LININGER: So just some thoughts.

21 SHERLOCK: I would -- regardless, I would encourage
22 you to apply it because I think there's some confusion on what
23 the requirements are and what I'm hearing from you is there's a
24 good chance that you would qualify.

25 LININGER: I don't supervise two people with

1 management.

2 SHERLOCK: Do you have lieutenants?

3 LININGER: No.

4 SHERLOCK: Do you have -- but do you have -- so you
5 have none?

6 LININGER: No.

7 SHERLOCK: So the sergeant is also lieutenant, if
8 we're view -- thinking in that perspective?

9 LININGER: I only have three sergeants and they
10 don't meet the definition of management.

11 SHERLOCK: They're both supervisors --

12 LININGER: There's --

13 SHERLOCK: -- (inaudible) first-level management
14 (inaudible) you guys?

15 LININGER: They're first-line supervisors by the
16 statute.

17 SHERLOCK: Right.

18 LININGER: By the definitions. I'm just going
19 strictly off the definitions, what I heard you earlier that you
20 (inaudible).

21 SHERLOCK: (Inaudible) people still confused what
22 the regulation currently says, not that we don't need to change
23 it. I'm just saying what it currently says that you may --

24 LININGER: But --

25 SHERLOCK: -- very well, right --

1 LININGER: -- but by the --

2 SHERLOCK: -- might be eligible.

3 LININGER: -- by the way the definitions are
4 defined in each level --

5 SHERLOCK: You wouldn't be?

6 LININGER: -- I'm not qualified because it says a
7 first-line supervisor supervises the deputies or officers, the
8 management supervises the first-line supervisors, and the
9 executive manages two -- see what I mean?

10 SHERLOCK: Okay. Okay.

11 LININGER: Yeah. I mean, technically, the sheriff
12 is the only one in our agency -- I think he has it but I don't -
13 - is the only one that qualifies for --

14 SHERLOCK: Yeah. Okay.

15 LININGER: -- our -- under the requirements.

16 SOTO: I appreciate that insight. Again, I
17 think, you know, since we're closing up and I think this is our
18 last person with some thoughts on the subject is as we, as
19 commissioners, look through this, understand there's no way to
20 make a one-size-fits-all for this thing. It isn't going to
21 happen. We have to have some parameters as to what those
22 qualifications are going to look like, but all of your input and
23 insight helps us understand that piece of it really and that
24 career path and how, you know, it really comes down to valuing
25 your people and finding a way to develop those people, so we'll

1 work on that but we'll -- we are not going to take any action on
2 the workshop on this piece of it, seeing as though there's -- do
3 we have anybody else that who to speak on the subject? Any
4 commissioners that want to weigh in on anything else before we
5 go to the Commission meeting? Okay. Thank you all for that. I
6 think (inaudible).

7 SHERLOCK: We do. It's item number 3.

8 [end of recording]

9

10

11

MINUTES FOR THE REGULARLY SCHEDULED POST COMMISSION MEETING HELD FEBRUARY 24, 2022

Agenda Item #1 - DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Approval of the minutes from the November 8th, 2021 regularly scheduled POST Commission meeting. No questions or comments from the commission, no public comment.

Motion to approve November minutes made by Sheriff Mike Allen

2nd was made by Chief Tim Shea

Vote was unanimous to approve the November meeting minutes

Agenda item #2- DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Executive Directors Report:

Training

1. Executive Director Mike Sherlock updated the commission on POST activities. Basic Training academy is participating in a national study during this academy, focuses on the delivery and retention of training
2. Scheduling Management, Supervisor and Basic Instructor Classes. Dates/times on the POST website
3. We are developing a Supervisor Leadership class. This is a training class designed to transition the officer from Supervisor to Management. Modeling it after the SLI class from California. We would facilitate learning through small group interaction, participants from all over Nevada. Thinking the format will be something like 2 days a month for 6 months.
4. Training bureau is updating the Background Investigator Training and will release that soon.

Standards

1. Two civilian members to be added to the Commission. One has been appointed, Ms. Tiffany Young from Reno. Unfortunately, she could not attend the meeting today but is planning to be at the next meeting in May. Ms. Young visited the POST Administrative office recently. We have two new Commissioners that were appointed this week, Assistant Chief Robert Straub from Las Vegas DPS and Deputy Chief Jamie Prosser from Las Vegas Metro PD.

Administration

1. Budget concerns, revenue down more than 50%. We have not been able to determine if courts are not transmitting the court assessments, or if traffic enforcement as dropped or a combination of both. A bill was passed in the last session that moves traffic violations into a special category and if someone is unable to pay the fine, they are no longer sentenced to jail time.

Comments:

Chief Soto- Welcome and thank you to the new commissioners.

No other comments

Agenda Item #3 – DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION:

The Commission to decide whether to continue the rulemaking process to revise NAC289.270 to clarify the requirements to qualify for an Executive Certificate. Discussion on proposed changes may include, but is not limited to, the following:

Removal of/changes to agency position requirements to qualify for an Executive Certificate.

Removal of/changes to minimum requirements for advanced certificates a peace officer must hold as a prerequisite for an Executive Certificate.

Discussion was had regarding revision of language pertaining to both NAC 289.270 and NAC 289.047. Agreed by all the definition (289.047) and certificate requirements (289.270) are tied together and if we change one we have to change both.

Commissioner McKinney agrees we need to update the minimum standard, but not to make it so vague that anyone can get one

Commissioner Allen agrees with definition proposed by CCSO during the workshop: “Executive Level Position means a position held by a peace officer in which the peace officer holds a position that is deemed to be in the line of succession for the chief of the agency, whereby that position could be called upon to be in charge of the entire agency.”

Public Comment was made by Captain Chris Lininger (Humboldt Co. SO) to suggest a resume process for qualifying for the Executive Certificate.

Motion was made by Chief Tim Shea to continue the rulemaking process to revise NAC 289.270 to clarify the requirements to qualify for an Executive Certificate.

2nd to the motion was made by Chief Ty Trouten

Vote was unanimous in favor of continuing the rulemaking process to revise NAC 289.270/NAC289.047

Agenda Item #4- DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION:

Hearing pursuant to NAC289.290(1)(e) on the revocation of Jovan Motley (formerly of the Nevada Department of Corrections) certification based on Gross Misdemeanor convictions.

Senior Deputy Attorney General Mike Jensen presented Exhibits A through F for the record.

Exhibit A - Notice of Intent to Revoke – notified Jovan Motley of the Commissions intent to revoke his basic certificate for 2 Gross Misdemeanor Counts pursuant to NAC289.290 (1)(e).

Count 1 – Attempt asking or receiving bribe by public officer (Category D Felony/Gross Misdemeanor NRS197.040, 193.330)

Count 2 – Attempt possession of a portable telecommunication device by a state prisoner (Category E Felony/Gross Misdemeanor NRS212.165(3), 193.330)

Date, time and location of meeting which is being held at the Pahrump Nugget Hotel/Casino, 681 S. Hwy 160, Pahrump NV and will start at 2:00pm on February 24, 2022.

This notice served to notify Mr. Motley he had a right to appear before the Commission to contest the revocation of his basic certificate and needed to provide written notice to the Commission within 15 days of the date of the hearing.

Exhibit B - Proof of Service provided showing Jovan Motley was served the Notice of Intent to Revoke on January 18, 2022, at 8:15am at the address listed but was redacted for privacy.

Exhibit C - Update PAR submitted by Nevada Department of Corrections showing Jovan Motley separated from service effective 06/06/2019.

Exhibit D – Copy of Jovan Motley’s Category III basic certificate

Exhibit E – Criminal Information from the District Court in Clark County, NV. The information explains the details of each Count.

Exhibit F - Guilty Plea Agreement from the District Court in Clark County, NV. The Guilty plea agreement provides the defendant pled guilty to both counts, and details the consequences of the Plea, Waiver of Rights and Voluntariness of Plea.

No public comment was made, Mr. Motley did not appear to contest his revocation.

Motion was made by Chief Kevin McKinney to revoke Jovan Motley’s basic certificate

2nd to the motion was made by Chief Tim Shea

Vote was unanimous to revoke Jovan Motley’s basic certificate

****Senior Deputy Attorney General requested to address Agenda Items #5 and #6 at the same time as these cases were linked and these defendants tried and convicted simultaneously.**

Agenda Item #5 & #6– DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Hearing pursuant to NAC289.290 (1)(e) and (1)(g) on the revocation of Eduardo Bueno and Nicholas Diaz (formerly of the Las Vegas Metro Detention Center) basic certifications based on Gross Misdemeanor/Felony convictions

Senior Deputy Attorney General Mike Jensen presented Exhibits A through F for the record.

Exhibit A - Notice of Intent to Revoke– notified Eduardo Bueno and Nicholas Diaz of the Commissions intent to revoke their basic certificates pursuant to NAC289.290 (1)(e) based on a conviction of, or entry

of a plea of guilty, guilty but mentally ill or nolo contendere to a gross misdemeanor and NAC289.290 (1)(g) based on a conviction of, or entry of a plea of guilty, guilty but mentally ill or nolo contendere to a felony.

Count 1 – Conspiracy to commit oppression under the color of office (Gross Misdemeanor – NRS 197.200;199.480 – NOC 52343)

Count 2 – Oppression under color of office (Category D Felony – NRS 197.200- NOC52313)

Date, time and location of meeting which is being held at the Pahrump Nugget Hotel/Casino, 681 S. Hwy 160, Pahrump NV and will start at 2:00pm on February 24, 2022.

This notice served to notify both Eduardo Bueno and Nicholas Diaz they had a right to appear before the Commission to contest the revocation of his basic certificate and needed to provide written notice to the Commission within 15 days of the date of the hearing.

Exhibit B - Proof of Service provided showing Eduardo Bueno was served the Notice of Intent to Revoke on February 4, 2022, at 10:04 am at the address listed but was redacted for privacy and Nicholas Diaz was served the Notice of Intent to Revoke on February 4, 2022, at 9:20am at the address listed but was redacted for privacy.

Exhibit C - Update PAR submitted by Nevada Department of Corrections showing Eduardo Bueno and Nicholas Diaz were separated from service effective 01/06/2022

Exhibit D – Copies of Eduardo Bueno and Nicholas Diaz’s Category III basic certificates

Exhibit E – Criminal Information from the District Court in Clark County, NV. The information explains the details of each Count.

Exhibit F – Judgment of Conviction (Jury Trial) from the District Court in Clark County, NV. The Judgment of Conviction shows both defendants were found guilty by jury of the 2 counts detailed in the Criminal Information in Exhibit E.

No public comment was made, neither Mr. Bueno nor Mr. Diaz appeared to contest their revocation.

Motion was made by Chief Kevin McKinney to revoke Eduardo Bueno and Nicholas Diaz’s basic certificates

2nd to the motion was made by Chief Ty Trouten

Vote was unanimous to revoke Eduardo Bueno and Nicholas Diaz’s basic certificates

Agenda Item #7 was withdrawn by the Eureka County Sheriff before the meeting started

Agenda Item #8 DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Request from Carlin Police Department for an Executive Certificate for their employee Chief Kevin McKinney

Motion was made by Chief Tim Shea to approve the request

2nd to the motion was made by Chief Ty Trouten

Vote was unanimous to approve the Executive Certificate application for Chief McKinney

Agenda Item #9 DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Request from Nye County Sheriff's Office for an Executive Certificate for their employee Captain David Boruchowitz

Motion was made by Chief Tim Shea to approve the request

2nd to the motion was made by Sheriff Mike Allen

Vote was unanimous to approve the Executive Certificate application for Captain Boruchowitz

Agenda Item #10 DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Request from Eureka County Sheriff's Office for an Executive Certificate for their employee Undersheriff Tyler Thomas

Motion was made by Chief Ty Trouten to approve the request

2nd to the motion was made by Chief Kevin McKinney

Vote was unanimous to approve the Executive Certificate for Undersheriff Thomas

Agenda Item #11 PUBLIC COMMENT

NO PUBLIC COMMENT WAS OFFERED OR PRESENTED

Agenda Item #12 DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Upcoming commission meeting scheduled for May 5th, 10:00am in Carson City. This will be held before the Law Enforcement memorial scheduled for that afternoon

Motion made by Chief Kevin McKinney

2nd to the motion made by Chief Tim Shea

Vote was unanimous

Agenda Item #13 DISCUSSION, PUBLIC COMMENT AND FOR POSSIBLE ACTION

Adjournment

Motion made by Chief Tim Shea

4. **INFORMATION** Executive Director's report.

- a. Training Division
- b. Standards Division
- c. Administration- Update on status of rulemaking process for proposed revisions to NAC 289.047 and NAC 289.270 (requirements for executive certificate)

NAC 289.047 “Executive level position” defined. ([NRS 289.510](#)) “Executive level position” means a position held by a peace officer in which the ~~peace officer supervises two or more persons who hold management level positions and is in charge of an entire agency or a major division or bureau within an agency-~~ chief executive of that agency acknowledges and affirms the position is in direct line and immediately available and authorized to act as the chief executive during the absence of the chief executive. Or;

The Chief Executive/ agency head of the law enforcement agencies

NAC 289.270 Executive certificate. ([NRS 289.510](#))

1. The Commission will grant an executive certificate to an officer upon submission of proof satisfactory to the Commission that the officer meets the following minimum requirements:

- (a) A current basic certificate.
- (b) A current intermediate certificate.
- (c) A current advanced certificate.
- (d) A current supervisor certificate.
- (e) A current management certificate.

(f) Six years of experience as a peace officer, including at least 1 year of experience in an executive level position and a current assignment in an executive level position.

(g) Two hundred hours of training in advanced management in addition to the training completed for the basic, intermediate, advanced, supervisor and management certificates.

(h) The applicant must present proof that the current assignment meets the criteria for an executive level position as set forth in NAC 289.047 by submitting a letter of recommendation with the application which is signed by the administrator of the agency. The letter must include an organizational chart which demonstrates the applicant's position within the agency and must describe the manner in which the applicant's current assignment meets the criteria for an executive level position as set forth in NAC 289.047. OR

2. Where the applicant is eligible for reciprocity and meets sections 1. (f), (g) and (h) above and possesses a basic, intermediate, advanced, supervisor and management certificate from that state or federal agency recognized for reciprocity. Should the reciprocity state not issue such certificates, proof from the applicant that they have the training and experience in that reciprocity state that would meet Nevada POST requirement for such certificate had the applicant been a Nevada peace officer. OR

3. The appointed or elected chief executive who has 5 consecutive years in the position of chief executive in that agency, regardless of above.

4. In making a determination pursuant to subsection 1, the Commission will review and consider each applicant individually.

5. DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.

Request from the Nye County Sheriff for the Commission to find that its statutes and regulations require the Commission to issue a basic certificate to a person whose peace officer certification is revoked in another state if the Commission finds the person meets the minimum standards for appointment found in NAC 289.110 and the person satisfactorily completes the requirements for certification found in NAC 289.200(1). The Commission may take action to interpret its statutes and regulations regarding issuance of a basic certificate to a person whose peace officer certification is revoked in another state.

1 NEVADA COMMISSION ON
2 PEACE OFFICER STANDARDS AND TRAINING

3 IN THE MATTER OF
4 CERTIFICATION OF:

5 MICHAEL S. BURKE AS A PEACE
6 OFFICER IN THE STATE OF
7 NEVADA

NOTICE OF APPEARANCE

8 NOTICE IS HEREBY given that Senior Deputy District Attorney
9 Bradley J. Richardson of the Nye County District Attorney's Office, enters his
10 appearance as attorney of record for the Nye County Sheriff's Office in the
11 above-captioned matter. Please provide a copy of all e-mail, notifications, and
12 any other correspondence in this matter to Bradley J. Richardson.

13 DATED this 28th day of April 2022.

14 By:



15 BRADLEY J. RICHARDSON
16 Senior Deputy District Attorney
17 Nevada Bar No. 1159
18 1520 East Basin Avenue
19 Pahrump, Nevada 89060
20 (775) 751-7080
brichardson@co.nye.nv.us

NEVADA COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING

IN THE MATTER OF CERTIFICATION
OF:

MICHAEL S. BURKE AS A PEACE
OFFICER IN THE STATE OF NEVADA

**REQUEST FOR COMMISSION REVIEW OF STAFF'S POSITION TO
NOT CERTIFY DEPUTY BURKE AND REQUEST FOR COMMISSION
TO FIND THAT STAFF'S RECOMMENDATION IS NOT APPROPRIATE
AND THEN APPROVE THE AWARD OF A BASIC CERTIFICATE TO
DEPUTY MICHAEL BURKE AS A PEACE OFFICER IN THE STATE OF
NEVADA UPON HIS COMPLETION OF THE ACADEMY**

NYE COUNTY SHERIFF'S OFFICE
Sharon Wehrly, Sheriff
1520 E. Basin Avenue
Pahrump, Nevada 89060
sheriff@co.nye.nv.us(775) 751-4234
FAX (775) 751-4321

COMES NOW, Sheriff, SHARON WEHRLY (hereinafter "Sheriff"), as the Elected Sheriff for the NYE COUNTY SHERIFF'S OFFICE (hereinafter "NCSO"), and hereby presents this request for the Commission to review the staff recommendation and find that staff denial of certification of NCSO Deputy Burke is improper and find that NCSO Deputy Burke has/or is anticipated to meet all requirements in the State of Nevada for certification for Peace Officer.

DATED this 27 day of April 2022.



SHARON WEHRLY, Sheriff
Nye County Sheriff's Office
1520 E. Basin Avenue
Pahrump, Nevada 89060

TABLE OF CONTENTS

TABLE OF CONTENTS	3
MEMORANDUM OF POINTS AND AUTHORITIES	4
I. ISSUE: UPON DEPUTY BURKE’S COMPLETION OF HIS ACADEMY, NAC 289.200(1) COMPELS THE AWARD TO HIM OF A BASIC PEACE OFFICER CERTIFICATE	4
II. RULE	6
A. NAC 289.200 Section 1	6
B. NAC 289.110	6
C. NAC 289.200 Section 2	8
D. ORS 181.662	9
III. ANALYSIS AS THE RULE APPLIES TO DEPUTY BURKE	9
A. NAC 289.200 Section 1	9
B. NAC 289.110	10
C. NAC 289.200 Section 2	13
D. ORS 181.662	16
IV. The NCSO is mindful of Staff Concerns.....	17
V. SUMMARY	17
EXHIBITS	19
EXHIBIT 1	20
EXHIBIT 2	21
EXHIBIT 3	22
EXHIBIT 4	23
EXHIBIT 5	24
EXHIBIT 6	25
EXHIBIT 7	26

MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUE: UPON DEPUTY BURKE'S COMPLETION OF HIS ACADEMY, NAC 289.200(1) COMPELS THE AWARD TO HIM OF A BASIC PEACE OFFICER CERTIFICATE

NCSO has hired Deputy Michael Burke as a Deputy Sheriff. NCSO completed an appropriate background regarding Deputy Burke and found him to be a hireable candidate for Deputy Sheriff.

In the investigation, it was determined that Deputy Burke had been a Peace Officer in Oregon. He was terminated from Josephine County Sheriff's Office in 2007. This matter was contested and ultimately landed in front of the Oregon Department of Public Safety Standards and Training for a hearing. Deputy Burke failed to respond to the pleadings, and a ruling was made in favor of the agency due to lack of response.

During the NCSO'S background investigation of Deputy Burke, interviews were conducted with Sgt. Heller, who was the Deputy Burke's partner who was with him during the incident resulting in Deputy Burke's discipline. Sgt. Heller told the NCSO investigator that he didn't recall Deputy Burke making any of the statements alleged against Burke. Sgt. Heller also told the NCSO investigator that the Sheriff and Undersheriff at the time were on a path to "get rid of people they didn't like". Sgt. Heller stated that the Sheriff's Administration had a vendetta against Burke and were going to make sure he didn't stay. See **Exhibit 7**.

The use of force expert, Howard Webb, who had been called by the union to testify regarding the disciplinary process was also interviewed by the NCSO. Webb stated that at the time spit hoods were not popular and Burke had to improvise. Webb said he reviewed the police reports, depositions and determined that Burke's use of force was proper and issued a report to that effect. See **Exhibit 7**.

Burke's alleged victim, who was a juvenile at that time, was interviewed by the NCSO as part of the background investigation and he said that he had no specific recollection of the incident. See **Exhibit 7**.

The Sheriff, David Daniels, from Josephine County Sheriff's Office was also interviewed and he said that he could not release information to me, but simply noted that he was not eligible for re-hire and was not cut out for the job. Sheriff Daniels said he based that solely on the file. See **Exhibit 7**.

Upon completion of the background investigation, NCSO submitted a PAR to Nevada POST as is customary for new hires. Nevada POST staff rejected the PAR refusing to certify Deputy Burke as a Peace Officer. Nevada POST staff then advised Sheriff that the reason for their refusal was based on NAC 289.200 with specific reference to Section 2b. Sheriff had a response drafted and Staff responded advising that Staff would not change their position and NCSO would need to petition the commission for what Staff considers a waiver. See **Exhibit 1**.

The issue in front of the commission is that once Deputy Burke meet the minimum standards of appointment pursuant to NAC 289.200(1) there is no legal authority to consider the requirements for lateral hires under NAC 289.200(2)(b) specifically whether there was a certification revocation in another state and thereby prevent a non-lateral applicant from being awarded a certification. The Sheriff's position is there is no such legal authority.

II. RULE

Deputy Burke has been hired as a full time non-lateral Deputy Sheriff thus the portions of the law pertaining to a reserve are not applicable.

A. NAC 289.200 Section 1

NAC 289.200 requires that the Executive Director "shall award a basic certificate to any peace officer who meets the minimum standards for appointment established pursuant to NAC 289.110" and who meets 3 additional criteria. Nev. Rev. Stat. 289.200(1). The three additional criteria which Deputy Burke has satisfactorily completed are the basic training course, passing the state certification with a score of at least 70% and passing the state physical fitness examination. Nev. Admin. Code 289.200(1)(a-c).

B. NAC 289.110

Deputy Burke has met the requirements of NAC 289.110. NAC 289.110 outlines the minimum standards for appointment:

1. No person may be appointed to perform the duties of a peace officer unless he or she:

(a) Has undergone a complete and documented investigation of his or her background which verifies that the person has good moral character and meets the minimum standards established by the Commission;

(b) Is a citizen of the United States;

(c) Is at least 21 years of age at the time of the appointment;

(d) Has successfully completed the 12th grade or has been certified by an appropriate authority as having an equivalent education; and

(e) Has undergone a medical examination performed by a licensed physician who confirms in writing that no physical condition exists which would adversely affect his or her performance of the duties of a peace officer. The employing agency shall inform the examining physician of the specific functions required by the position to be filled.

2. The investigation of the background of a person required pursuant to subsection 1 must include, without limitation:

(a) An investigation of the current and past employment history of the person, including, without limitation, an examination of the duties that have been assigned to the person and any performance evaluations of the person;

(b) An inquiry into the criminal history of the person in the State of Nevada and in any other state where the person is known to have resided, which must include, without limitation, any warrants issued for the person and the submission of the person's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(c) An inquiry to the Department of Motor Vehicles and the appropriate entity in each other state in which the person is known to have resided regarding any driver's licenses the person has held and the driving record of the person;

(d) A financial history of the person;

(e) The educational background of the person;

(f) The history of any military service of the person;

(g) A history of each physical address where the person has resided;

(h) A drug screening test;

- (i) *A psychological evaluation; and*
- (j) *The use of a lie detector as defined in [NRS 613.440](#) for a peace officer being appointed as a category I, category II or reserve peace officer.*

3. *The investigation of the background of a person required pursuant to subsection 1 may include the use of a lie detector as defined in [NRS 613.440](#) for a peace officer being appointed as a category III peace officer.*

Nev. Admin. Code 289.110(1-3)

NAC 289.110 also outlines the automatic disqualifiers for appointment to the position of Peace Officer and Deputy Burke does not run afoul of any of them

4. *A person may not be appointed to perform the duties of a peace officer if he or she has:*

(a) *Been convicted of a felony in this State or of any offense which would be a felony if committed in this State;*

(b) *Been convicted of an offense involving moral turpitude or the unlawful use, sale or possession of a controlled substance;*

(c) *A documented history of physical violence; or*

(d) *Resigned in lieu of termination or been terminated from any civil service employment for substantiated misconduct involving dishonesty, and has not been reinstated as a result of a judicial action or any available appeal or remedy relating to the resignation or termination, including, without limitation, any civil service appeal, direct administrative appeal or collective bargaining remedy. For purposes of this paragraph, "dishonesty" includes untruthfulness, deception, misrepresentation, falsification, and dishonesty by admission or omission.*

Nev. Admin. Code 289.110(4)

C. [NAC 289.200 Section 2](#)

NAC 289.200 Section 2 does not apply because Deputy Burke is not seeking to skip the requirements of NAC 289.200(1) including skipping an Academy by coming in as a lateral hire. NAC 289.200 Section 2 specifically

addresses lateral applicants wishing to obtain certification in Nevada. The requirements outlined in section 2 are specific to accepting of lateral applicants, and ensuring that their prior certification is not only intact, but recent, and meets the training requirements of Nevada. All of the requirements listed in section 2 identify the elements to be considered in determining if Nevada gives reciprocity for the prior certification.

D. ORS 181.662

Oregon Revised Statute 181.662 provides that:

The Department shall deny or revoke the certification of any public safety officer . . . after written notice and hearing . . . based upon a finding that: . . . (c) The public safety officer or instructor has been discharged for cause from employment as a public safety officer.” Ore. Rev. Stat. 181.662(3)(a). Any Public Safety Officer who is terminated for cause from Oregon is required to have their POST revoked pursuant to Oregon law.

III. ANALYSIS AS THE RULE APPLIES TO DEPUTY BURKE

A. NAC 289.200 Section 1

Deputy Burke’s compliance with NAC 289.110 will be addressed below. As it relates to the three additional criteria Deputy Burke is or will be in compliance prior to certification.

- a. Deputy Burke is currently enrolled in a basic training course approved by Nevada POST and will be graduating satisfactorily within a few weeks.
- b. Deputy Burke upon completion of the academy will be taking the state certification and it is anticipated he will pass the state certification with a score of at least 70%.
- c. Deputy Burke has passed the state physical fitness examination. See **Exhibit 2.**

Deputy Burke is or will be prior to certification, in compliance with the elements required pursuant to NAC 289.200(1).

B. NAC 289.110

Deputy Burke has met the minimum standards for appointment to Peace Officer pursuant to NAC 289.110 and has no automatic disqualifiers. Deputy Burke has met all of the requirements as outlined by NAC 289.110 Section 1.

- a. Deputy Burke has undergone a complete and documented investigation of his background and it has been determined the Deputy Burke meets the good moral character and meets the minimum standards established by the commission. See **Exhibit 3.**
- b. Deputy Burke is a citizen of the United States. See **Exhibit 4.**
- c. Deputy Burke is at least 21 years of age at the time of the appointment; specifically, he is 54 years old. See **Exhibit 4.**

- d. Deputy Burke has successfully completed the 12th grade and successfully received a college degree. See **Exhibit 5**.
- e. Deputy Burke has undergone a medical examination performed by a licensed physician who confirmed in writing that no physical condition exists which would adversely affect his or her performance of the duties of a peace officer. See **Exhibit 6**.

Deputy Burke has met all of the requirements as outlined by NAC 289.110 Section 1.

- a. Deputy Burke's background included an investigation of the current and past employment history of the person, including, without limitation an examination of the duties that have been assigned to the person and any performance evaluations of the person. See **Exhibit 6**.
- b. Deputy Burke's background included an inquiry into the criminal history of the person in the State of Nevada and in any other state where Deputy Burke is known to have resided, and included without limitation any warrants issued and the submission of the person's fingerprints to the Central Repository for Nevada Records of Criminal History. See **Exhibit 6**.
- c. Deputy Burke's background included an inquiry to the Department of Motor Vehicles and the appropriate entity in each other state in which the

person is known to have resided regarding any driver's licenses the person has held and the driving record of Deputy Burke. See **Exhibit 6.**

d. Deputy Burke's background included a financial history of Deputy Burke. See **Exhibit 6.**

e. Deputy Burke's background included the educational background of Deputy Burke. See **Exhibit 6.**

f. Deputy Burke's background included the history of any military service of Deputy Burke. See **Exhibit 6.**

g. Deputy Burke's background included the history of each physical address where the person has resided. See **Exhibit 6.**

h. Deputy Burke's background included a drug screening test. See **Exhibit 6.**

i. Deputy Burke's background included a psychological evaluation. See **Exhibit 6.**

j. Deputy Burke's background included the use of a certified voice stress analyzer, a lie detector test, defined by NRS 613.440. See **Exhibit 6.**

Deputy Burke did not have any automatic disqualifiers for appointment to the position of Peace Officer pursuant to NAC 289.110(4).

a. Deputy Burke has not been convicted of a felony in Nevada or any offense which would be a felony if committed in Nevada. See **Exhibit 6.**

- b. Deputy Burke has not been convicted of an offense involving moral turpitude or the unlawful use, sale or possession of a controlled substance. See **Exhibit 6**.
- c. Deputy Burke does not have a documented history of physical violence. See **Exhibit 6**.
- d. Deputy Burke did not resign in lieu of termination and was not terminated from any civil service employment for substantiated misconduct involving dishonesty, untruthfulness, deception, misrepresentation, falsification or dishonesty by admission or omission.

Deputy Burke is in compliance with the elements for certification required pursuant to NAC 289.110 and has none of the automatic disqualifiers.

C. NAC 289.200 Section 2

Deputy Burke has not applied for certification as a lateral applicant, thus the provisions of NAC 289.200 section 2 are not applicable to him. Although POST Staff has asserted that the provisions of Section 2 are applicable to all applicants that is simply not a reasonable interpretation of the code.

Section 2 specifically addresses qualifications relating to the acceptance of another state's certification. The requirements are:

(a) *The Commission or its designee has determined that the course of training required for the certification was at least equivalent to the basic training course for basic certification;*

(b) *The certification of the peace officer in the other jurisdiction has not been revoked or suspended;*

(c) *Not more than 60 months have lapsed since the peace officer was employed in the other jurisdiction;*

(d) *The peace officer has satisfactorily completed a training course that is approved by the Executive Director which consists of a minimum of 80 hours of training that satisfies the requirements established by the Commission pursuant to subsection 1 of [NAC 289.300](#) in:*

- (1) *Abuse of older persons;*
- (2) *Child abuse and sexual abuse of a child;*
- (3) *Civil liability;*
- (4) *Classification and receiving of offenders;*
- (5) *Constitutional law;*
- (6) *Counter-terrorism and weapons of mass destruction;*
- (7) *Crimes against persons;*
- (8) *Crimes against property;*
- (9) *Cultural awareness;*
- (10) *Domestic violence, stalking and aggravated stalking;*
- (11) *Ethics in law enforcement;*
- (12) *Fire safety and use of emergency equipment;*
- (13) *Games offenders play;*
- (14) *Gangs and cults;*
- (15) *Juvenile law;*
- (16) *Laws relating to arrest;*
- (17) *Laws relating to correctional institutions;*
- (18) *Laws relating to drugs, including, without limitation, current trends in drugs;*
- (19) *Miscellaneous crimes;*
- (20) *Modern correctional philosophy;*
- (21) *Probable cause;*
- (22) *Public and media relations;*
- (23) *Records of offenders in institutions;*
- (24) *Rights of victims;*
- (25) *Search and seizure;*
- (26) *Searches of offender institutions;*
- (27) *Supervision of offenders;*

(28) Training concerning active assailants; and

(29) Use of force;

(e) The peace officer passes the state certification examination with a score of at least 70 percent; and

(f) The peace officer passes the state physical fitness examination for the appropriate category of peace officer as described in [NAC 289.205](#).

Nev. Admin. Code 289.200(2).

Subsection b, states that if your certification has been revoked or suspended you cannot be certified under section 2. In this instance, although Deputy Burke's certification was revoked in Oregon this provision is not applicable as Deputy Burke is not attempting to gain certification as a lateral. This provision is logical that if your certification is suspended or revoked it is not logical that the State of Nevada would consider you a "lateral" applicant.

Staff's position is that this subsection is applicable to the entire provision relating to certification. The remainder of subsection 2 demonstrate this cannot possibly be the case. For instance, sub-subsection c states that another disqualifier pursuant to this subsection is, "Not more than 60 months have lapsed since the peace officer was employed in the other jurisdiction". Nev. Admin. Code 289.200(2)(c). Utilizing the POST Staff's interpretation this would mean that anyone who had allowed their certification to lapse outside the 60 months would also be ineligible to go to an academy and gain certification as a non-lateral. Not only is this illogical but from a practical matter this is not followed. There are applicants all year long who have allowed their certification to expire in other

states. They are disqualified in gaining certification as a lateral through subsection 2, and instead go through an academy and gain certification through subsection 1.

If applicants who are ineligible to gain lateral certification to subsection 2 by virtue of any of the other sub-subsections are allowed to gain certification through subsection 1 by attending an academy and meeting all of the other standards, which they are, then Deputy Burke is eligible to do so as well.

D. ORS 181.662

Oregon Revised Statute 181.662 provides that their Department must revoke the certification of any Public Safety Officer who is discharged for cause from employment in Oregon as long as the process is appropriately given a hearing as required by law. This provision of law does not have specific things that make you eligible for revocation, it is simply that if you are discharged for cause you are decertified.

With Staff's interpretation of Nevada Administrative Code, this Oregon law in essence ensures that any officer from the State of Oregon who is terminated for cause of any sort would be ineligible for employment in the State of Nevada.

Nevada has determined the minimum standards for appointment in Nevada and Deputy Burke meets or will meet upon graduation those standards.

IV. The NCSO is mindful of Staff Concerns

POST Staff's concerns are understood by the NCSO. , However, Nevada POST staff have been asked by the NCSO several times in the past relating to backgrounds and the qualification of candidates and we are repeatedly told that this is the responsibility of the agency doing the backgrounds and the final decision maker, Sheriff.

In this instance a thorough background has been completed vetting the concerns that POST Staff have discussed and it has been determined that the concerns are without merit and Deputy Burke has met the standards of appointment.

The issue in front of the Commission is not whether Deputy Burke's background is sufficient, this is something that Sheriff has an obligation to ensure and certify as is done with all other applicants. The only issue in front of the Commission today is whether Deputy Burke meets the minimum standards of appointment pursuant to NAC 289.200(1).

V. SUMMARY

NAC 289.200(1) states, "The Executive Director shall award a basic certificate to any peace officer who meets the minimum standards for appointment . . .". Nev. Admin. Code 289.200(1). The record reflects an abundance of evidence that Deputy Burke has met, or will meet after graduation, the minimum standards of appointment and thus we would ask the Commission to find that Staff

has erred in refusing to award certification to Deputy Burke and direct Staff that upon completion of the academy, and successful passing of the state test they shall award a basic certificate to Deputy Burke pursuant to NAC 289.200(1)

DATED this 27th day of April 2022.



Sharon Wehrly, Sheriff
Nye County Sheriff's Office
1520 E. Basin Avenue
Pahrump, Nevada 89060

EXHIBITS

EXHIBIT 1
E-mails with POST Staff's position

From: Michael D. Sherlock <msherlock@post.state.nv.us>
Sent: Tuesday, March 29, 2022 1:48 PM
To: Sharon Wehrly <swehrly@co.nye.nv.us>
Cc: David Boruchowitz <dboruchowitz@co.nye.nv.us>; Kathy Floyd <kfloyd@post.state.nv.us>
Subject: Applicant Burke

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Sheriff Werhly,

I am in receipt of Capt. Boruchowitz email on your behalf requesting POST to reconsider the position that we are unable to certify your new hire, Mr. Burke. Based on the information provided by Oregon including the information surrounding the revocation of Mr. Burke's Oregon Basic Peace Officer certificate, POST has concluded we are unable to certify or issue Mr. Burke a POST basic certificate. We provided this information initially to allow for your timely consideration and after review stand by our conclusion. We would encourage you to contact your legal counsel on this issue. Should they have any concerns or new information we would be happy to look at the new information.

In addition, it should be noted that as a regulatory agency, the POST Commission is tasked with ensuring the utmost integrity and professionalism in the hiring and certifying of Nevada peace officers. Both generally and specifically, the Commission interprets their regulations with that very purpose in mind. As such, under NAC 289.370, an agency head may petition the Commission to reconsider their interpretation of the requirements for hire or certification (or other provisions) on behalf of an officer (or in this case a prospective peace officer). The next POST Commission meeting is scheduled for May 5th at 10 am here at the POST campus in Carson City. Should you desire to be added to the agenda for that meeting please advise as soon as possible to ensure you are added to that agenda.

Mike Sherlock
Executive Director
Nevada Commission on Peace Officer Standards and Training
775-687-3318
msherlock@post.state.nv.us

CONFIDENTIALITY NOTICE:

The information contained in this electronic mail message (including any attachments) is confidential information that may be covered by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521, intended only for the use of the individual or entity named above, and may be privileged. If the reader of this message is not the intended recipient, you are hereby

notified that any dissemination, distribution, or copying of this communication, or the taking of any action based on it, is strictly prohibited. If you have received this e-mail in error please notify the sender immediately and delete the original message

From: David Boruchowitz
Sent: Monday, March 28, 2022 11:34 AM
To: msherlock@post.state.nv.us
Cc: Sharon Wehrly <swehrly@co.nye.nv.us>; Michael Eisenloffel <meisenloffel@co.nye.nv.us>
Subject: Revoked Applicant Deputy Burke
Importance: High

Mr. Sherlock,

Sheriff Wehrly has tasked me with looking into our applicant Mr. Burke and responding to your e-mail.

With all due respect I believe your email characterizes the NAC in a way that is not the way it is written.

I agree 100% with your assertion that 289.200 deals with certification in general, however, each individual subsection is not a general provision. I am going to break down each portion of that NAC and identify the issues presented with it and how it applies to Deputy Burke.

1. This subsection of the NAC is a **SHALL** issue directive. This identifies that there are certain things that have to be met and if they are met you **SHALL** issue a certificate to the Peace Officer.
 - a. Satisfactorily complete basic training – Deputy Burke is in the process of that
 - b. Passed state certification test with 70% -- Deputy Burke will take the test after the academy
 - c. Passed state physical fitness test – Deputy Burke has done this
 - d. Meet minimum standards for appointment pursuant to NAC 289.110 – Deputy Burke has done this (Addressed below)
2. This subsection of the NAC is a **MAY** issue directive. This identifies clearly that there are certain times that you **MAY** allow a “lateral” to receive a certificate. The provisions of this subsection are by their nature incapable of being applied to a new hire. They are all very specific language as to a determination as to whether ones prior certification from another agency is sufficient to thwart the need to attend a new academy in Nevada.
 - a. Requires the commission to identify that their prior training is equivalent to Nevada. – Not applicable to Deputy Burke as his prior training is not being used as grounds to avoid an academy
 - b. Certification has not been revoked or suspended. – Not applicable to Deputy Burke as we are not making the argument that his prior certification should allow him to avoid an academy. This language is clearly there to prevent someone who has lost their POST in another state to be able to use that POST to lateral

somewhere else. This is not a "minimum standard of appointment" but instead a determination as to whether they are "currently certified" to be eligible to lateral.

- c. Prior peace officer employment elsewhere must have been within 60 months – Not applicable to Deputy Burke as his prior certification and employment is not being used as grounds to avoid an academy.
 - d. Minimum required reciprocity courses – Not applicable to Deputy Burke as his prior academy is not being used as grounds to avoid an academy and thus no need for reciprocal training.
 - e. Passed state certification test with 70% -- Deputy Burke will take the test after the academy, same requirement as a non-lateral.
 - f. Passed state physical fitness test – Deputy Burke has done this, same requirement as a non-lateral.
 - g. Meet minimum standards for appointment pursuant to NAC 289.110 – this requirement is the same standard for the non-lateral.
3. This subsection of the NAC is a **MAY** issue directive. This is the language regarding minimum standards for a reserve officer and is not applicable as Deputy Burke is not a reserve. This language is separate and pertains to a Reserve and is clearly not intended to be applicable to all applicants.

The remaining portion of the NAC is not applicable to the issue being discussed as it pertains to physical fitness, testing, and hiring after POST training.

You state, "It would not be anticipated that either the applicant had been a peace officer in the past under the usual process or that the hiring agency could choose based on which standard they want to apply."

I am not sure what this statement is intended to address, however, I think it's important to clarify that the NCSO nor Deputy Burke are trying to choose which process to hire him under. Deputy Burke does not qualify for a lateral under any of the subsection and that is why he is going through an academy. Subseciton 2 is solely to determine whether one can skip an academy by doing an in-lieu training and having prior qualifying certification. If your certification is revoked by another jurisdiction clearly you are not eligible for a lateral certification.

You state, "To create a two-tier system where one group cannot have been revoked and another could be revoked is not possible or desirable."

The minimum standards of appointment are required for new hire applicants, lateral applicants and reserve applicants alike. We agree it is a one-tier system. Subsection 2b has nothing to do with minimum standards of appointment and only has to do with whether you qualify to skip an academy. Those listed in subsection 2 still have to meet the minimum standards for appointment established pursuant to NAC 289.110. Your statement we agree with 100% and is further proof that 2b has nothing to do with minimum standards. All sections reference that you must meet standards in NAC 289.110, and that is the

requirement for hire, not 2b. Subsection 2 is clearly ONLY for a lateral applicant, and has nothing to do with setting specific minimum standards for appointment, but solely for evaluating their qualifications compared to Nevada law as evidenced by all the sub sub sections.

You state, "NDI is a system, now embraced nationally, that has the community and industry intent of preventing officers who have sustained incidents of misconduct that resulted in revocation in that state from leaving one state and going to another undetected, or with less chance of a background finding or applying the sustained conduct."

Your statement is accurate and we agree. The system is solely to ensure that wherever the Peace Officer goes that agency knows about their prior sustained conduct and they do not escape through a background without it being known. This is not the case. Deputy Burke didn't fail to disclose his prior termination, in fact he was forthcoming about it. Had he not been, the NDI would have alerted us to it, and he would have been not hired based on his dishonesty during the process. The intention of the NDI system is as an alert to prevent cops deemed "unemployable" by a state from going undetected by simply going across state lines.

There is much controversy in the United States regarding NDI and how to make it work appropriately. A January of 2021 study conducted by University of Chicago identified that there is no consistency state to state in what does or does not get decertified and that is the issue with applying a standard that if someone is in the NDI they cannot be hired. That is not the intention, the intention is to ensure no one slips through the cracks.

In reviewing NAC 289.290 the State of Nevada outlines what conditions are used to revoke, refuse or suspend a certificate of a peace officer in Nevada.

- a. Willful falsification of any information provided to obtain the certificate.
- b. A permanent or chronic physical or mental disability affecting the officer's ability to perform his or her full range of duties.
- c. Chronic drinking or drunkenness on duty.
- d. Addiction to or the unlawful use or possession of narcotics or other drugs.
- e. Conviction of, or entry of a plea of guilty, guilty but mentally ill or nolo contendere to, a gross misdemeanor.
- f. Failure to comply with the standards established in this chapter.
- g. Conviction of, or entry of a plea of guilty, guilty but mentally ill or nolo contendere to, a felony.
- h. Conviction of a misdemeanor.

Deputy Burke was not de-certified in Oregon for any of the conditions that allow a Nevada POST to be revoked. Thus the issue with a "blanket denial". Oregon allows decertification for things that Nevada does not. Thus the decertification is caught by the index, and the background process is utilized to determine if Deputy Burke meets the minimum standards of appointment in Nevada.

NAC 289.110 is where the minimum standards for appointment are located.

Subsection 1 identifies minimum standards:

- a. Has undergone a complete and documented investigation of his or her background which verifies that the person has good moral character and meets the minimum standards established by the Commission; Deputy Burke has met this provision.
- b. Is a citizen of the United States; Deputy Burke is a US citizen
- c. Is at least 21 years of age at the time of the appointment; Deputy Burke is over 21 years of age
- d. Has successfully completed the 12th grade or has been certified by an appropriate authority as having an equivalent education; and Deputy Burke has met this provision
- e. Has undergone a medical examination performed by a licensed physician who confirms in writing that no physical condition exists which would adversely affect his or her performance of the duties of a peace officer. The employing agency shall inform the examining physician of the specific functions required by the position to be filled. Deputy Burke has met this provision.

Subsection 2 continues:

- a. An investigation of the current and past employment history of the person, including, without limitation, an examination of the duties that have been assigned to the person and any performance evaluations of the person; An investigation was conducted on Deputy Burke pursuant to this section.
- b. An inquiry into the criminal history of the person in the State of Nevada and in any other state where the person is known to have resided, which must include, without limitation, any warrants issued for the person and the submission of the person's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; An inquiry was conducted on Deputy Burke pursuant to this section.
- c. An inquiry to the Department of Motor Vehicles and the appropriate entity in each other state in which the person is known to have resided regarding any driver's licenses the person has held and the driving record of the person; An inquiry was conducted on Deputy Burke pursuant to this section.
- d. A financial history of the person; An inquiry was conducted on Deputy Burke pursuant to this section.
- e. The educational background of the person; An inquiry was conducted on Deputy Burke pursuant to this section.
- f. The history of any military service of the person; An inquiry was conducted on Deputy Burke pursuant to this section.
- g. A history of each physical address where the person has resided; An inquiry was conducted on Deputy Burke pursuant to this section.
- h. A drug screening test; A drug screening was conducted on Deputy Burke pursuant to this section.
- i. A psychological evaluation; and An evaluation was conducted on Deputy Burke pursuant to this section.

- j. The use of a lie detector as defined in NRS 613.440 for a peace officer being appointed as a category I, category II or reserve peace officer. **A CVSA was administered to Deputy Burke**

Subsection 4 identifies when a person **MAY NOT** be appointed to the duties of a Peace Officer.

- a. Been convicted of a felony in this State or of any offense which would be a felony if committed in this State; **Deputy Burke has no such conviction.**
- b. Been convicted of an offense involving moral turpitude or the unlawful use, sale or possession of a controlled substance; **Deputy Burke has no such conviction.**
- c. A documented history of physical violence; or **Deputy Burke has no documented history.**
- d. Resigned in lieu of termination or been terminated from any civil service employment for substantiated misconduct involving dishonesty, and has not been reinstated as a result of a judicial action or any available appeal or remedy relating to the resignation or termination, including, without limitation, any civil service appeal, direct administrative appeal or collective bargaining remedy. For purposes of this paragraph, "dishonesty" includes untruthfulness, deception, misrepresentation, falsification, and dishonesty by admission or omission. **Deputy Burke was not terminated from any civil service employment for substantiated misconduct involving dishonesty of any sort.**

Deputy Burke has met the minimum standards for appointment pursuant to NAC 289.110, has passed the state physical fitness test, is in the basic training academy and presumably will pass the state certification test with 70%. In accordance with This subsection of the NAC is a **SHALL** issue directive. This identifies that there are certain things that have to be met and if they are met you **SHALL** issue a certificate to the Peace Officer. When this is completed in accordance with NAC 289.200 thus you, the executive director, shall award a basic certificate to him.

Thus we would expect you to treat him the same as all the other recruits in the Academy at this time.

We are happy to have additional dialogue on this, but the NAC is clear as written. And although you assert the legislative intent to be to something specific, we disagree. The legislature in Nevada has identified what they believe qualifies for decertification. I don't think the State of Nevada is going to allow the legislature in other states to dictate when they can and cannot certify a police officer in this state.

Thanks in advance.

Captain David Boruchowitz



From: Michael D. Sherlock <msherlock@post.state.nv.us>
Sent: Thursday, January 13, 2022 9:43 AM
To: Sharon Wehrly <swehrly@co.nye.nv.us>
Cc: Adam Tippetts <atippetts@co.nye.nv.us>; Michael Eisenloffel <meisenloffel@co.nye.nv.us>;
Kathy Floyd <kfloyd@post.state.nv.us>
Subject: Revoked Applicant

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Morning Sheriff,

I wanted to reach out to you on a particular issue. Sgt. Means has been in contact with our Chief of Standards, Kathy Floyd, regarding an issue related to a proposed new hire. As a matter of policy and regulations, we run each new PAR and each new certificate applicant through the National Decertification Data Base (NDI). As I understand it, we did that recently with a new PAR from Nye County and discovered the applicant had a revoked peace officer basic certificate out of Oregon. As a matter of regulation, policy, and procedure, we then contacted Oregon DPSST to inquire as to the validity of the revocation entry and to ensure the applicant was one and the same. Again, my understanding is we confirmed the revoked individual is the same as the PAR submitted by Nye County. Oregon DPSST indicated to us the applicant's peace officer certification is revoked for life. I believe Chief Floyd notified your department that this individual was revoked in another state and was not eligible for certification here. Since that time, Sgt. Means has contacted Chief Floyd and indicated a belief that the requirement an applicant not be revoked is found in the reciprocity section of the NAC and as such if he is not hired as a reciprocity applicant, the revocation is not a disqualifier.

I am sorry, we are quite sensitive to the difficulty in recruiting. That said 289.200 is about certification. The requirement to not be revoked falls under §2 b where the regulation addresses reciprocity but the entire regulation is about certification. It would not be anticipated that either the applicant had been a peace officer in the past under the usual process or that the hiring agency could choose based on which standard they want to apply. To create a two-tier system where one group cannot have been revoked and another could be revoked is not

possible or desirable. NDI is a system, now embraced nationally, that has the community and industry intent of preventing officers who have sustained incidents of misconduct that resulted in revocation in that state from leaving one state and going to another undetected, or with less chance of a background finding or applying the sustained conduct. You are asking us to certify an officer to be a peace officer in our state knowing he or she could never be an officer in another state. For us to ignore other states findings would undermine the community's and political desire to prevent just such an issue. In regard to Oregon's findings, if they were in error, your applicant would need to correct the record with Oregon. If you have more information for us to consider, please let us know.

If there is anything POST can do to help, please let us know.

Mike Sherlock
Executive Director
Nevada Commission on Peace Officer Standards and Training
775-687-3318
msherlock@post.state.nv.us

CONFIDENTIALITY NOTICE:

The information contained in this electronic mail message (including any attachments) is confidential information that may be covered by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521, intended only for the use of the individual or entity named above, and may be privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or the taking of any action based on it, is strictly prohibited. If you have received this e-mail in error please notify the sender immediately and delete the original message

EXHIBIT 2
Deputy Burke's Physical Fitness Sheet



STATE OF NEVADA
 COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING
 5587 Wa Pal Shone Avenue Carson City, Nevada 89701
 (775) 687-7678 Fax (775) 687-4911

PHYSICAL FITNESS TEST SCORE CARD
 Pursuant to NAC 289.200

Test Date: 12/15/2021 Start Time: 1300 End Time: 1500

Name: Michael Burke Last, First, MI Burke, Michael Last four of SSN or POST ID# 2024

Category for Certification: Category I or Reserve Category II Category III

In order to maintain the integrity and validity of the testing, the battery of tests must be given in accordance to the physical fitness testing procedures.

Event	Standard	Score	Scorer Initials
Vertical Jump	Cat I & Reserve	14 inches reach	*Trial 1 <u>16.5</u>
	Cat II	15 inches reach	*Trial 2 <u>18</u>
	CAT III	15 inches reach	*Trial 3 <u>17</u>
		Max Score	<u>18</u>
*Note: All 3 reach trials must be attempted and recorded.			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>
Agility Run	Cat I & Reserve	19.5 seconds	*Trial 1 <u>18.31</u>
	Cat II	20.7 seconds	*Trial 2 <u>18.16</u>
	CAT III	20.4 seconds	Max Score
		Max Score	<u>18.16</u>
*Note: All 2 run trials must be attempted and recorded.			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>
1 minute Sit Ups	Cat I & Reserve	30	Score <u>33</u>
	Cat II	29	Score
			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>
Push Ups	Cat I & Reserve	23	Score <u>30</u>
	Cat II	15	Score
	CAT III	20	Score
			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>
300 Meter Run	Cat I & Reserve	68 seconds (1:08)	Score <u>56</u>
	Cat II	80 seconds (1:20)	Score
	CAT III	74 seconds (1:14)	Score
			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>
1.5 Mile Run	Cat I & Reserve	16:57 m/s	Score <u>14:25</u>
	Cat II	20:06 m/s	Score
	CAT III	17:37 m/s	Score
			PASS <input checked="" type="checkbox"/> or FAIL: <input type="checkbox"/>

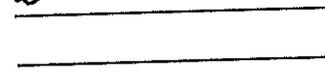
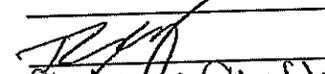
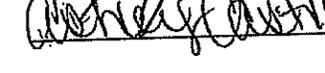
As the administrator of the Physical Fitness Test, I have verified the above scores, analyzed the results, and have indicated the final results of each test by checking PASS or FAIL, as appropriate.

Name of Test Administrator: Ann Horak Certification #: 20-033
 Signature: [Signature]

EXHIBIT 3
Background Signature Sheet

pertaining to their reasons for his ineligibility it is difficult to truly know what did or did not occur. The use of force expert and all witnesses interviewed seem to indicate that Burke would be a good law enforcement officer and the incident is not what the agency is portraying it to be. Those that worked alongside Burke acknowledge that he is a "black and white" kind of guy and rubs people the wrong way but identify that he is a good law enforcement officer. The prior Sheriff who spoke with acknowledged that the incident that he was responsible for involving Burke was a "he said she said" and it could have gone either way but he backed his Lieutenant who did the investigation.

I believe that Burke would be an asset to our agency and therefore M. Burke IS RECOMMENDED FOR HIRE by me.

- | | YES | NO | |
|------------------------------------|-------------------------------------|--------------------------|--|
| Undersheriff Eisenloffel | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Capt. Boruchowitz | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Lt. McRae
Lt. Murphy | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Lt. Williams | <input type="checkbox"/> | <input type="checkbox"/> |  |
| Lt. Tippetts | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Lt. Jordan | <input type="checkbox"/> | <input type="checkbox"/> |  |
| Lt. Klenczar | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Chief Dispatcher Castillo | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |

APPROVED DENIED

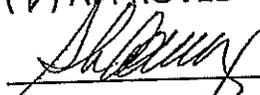

 Sheriff Wehrly 02.06-21

EXHIBIT 4
Birth Certificate (Redacted)

TEXAS DEPARTMENT OF HEALTH SERVICES
VITAL STATISTICS UNIT

071-01-2 071-01

TEXAS DEPARTMENT OF HEALTH
REC'D SEP 23 1968
BUREAU OF VITAL STATISTICS

CERTIFICATE OF BIRTH

BIRTH NO. 142-68-135677

STATE OF TEXAS		1. PLACE OF BIRTH a. COUNTY El Paso		b. USUAL RESIDENCE OF MOTHER (Where does mother live?) a. STATE Texas b. COUNTY El Paso	
c. CITY OR TOWN (If outside city limits, give precinct no.) El Paso		d. CITY OR TOWN (If outside city limits, give precinct no.) El Paso		e. STREET ADDRESS (If rural, give location) 2925 Sacramento	
f. NAME OF (If not in hospital, give street address) HOSPITAL OR INSTITUTION Diablo Hospital		g. IS PLACE OF BIRTH INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		h. IS RESIDENCE INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
i. IS RESIDENCE ON A FARM? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		3. NAME (a) First MICHAEL (b) Middle SHANE (c) Last BURKE		4. DATE OF BIRTH [REDACTED]	
5. SEX Male		6. THIS BIRTH SINGLE <input checked="" type="checkbox"/> TWIN <input type="checkbox"/> TRIPLET <input type="checkbox"/>		7. IF TWIN OR TRIPLET, WAS CHILD BORN 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/>	
8. NAME (a) First Ronald (b) Middle I. (c) Last Burke		9. AGE (At time of this birth) 17 YEARS		10. BIRTHPLACE (State or foreign country) Massachusetts	
11. USUAL OCCUPATION U. S. Army		12. MARRIAGE NAME (a) First Bonita (b) Middle A. (c) Last Cox		13. COLOR OR RACE white	
14. AGE (At time of this birth) 16 YEARS		15. BIRTHPLACE (State or foreign country) Utah		16. CHILDREN PREVIOUSLY BORN TO THIS MOTHER (Do NOT include this child) 0	
17. INFORMANT Doris P. Bray		18. ATTENDANT'S SIGNATURE <i>[Signature]</i>		19. ATTENDANT AT BIRTH M.D. <input checked="" type="checkbox"/> D.O. <input type="checkbox"/> MIDWIFE <input type="checkbox"/> OTHER <input type="checkbox"/>	
18. I hereby certify that this child was born alive on the date stated above at 10:50 P.		19. ATTENDANT'S ADDRESS 9005 Marks, El Paso, Texas 79904		19. DATE SIGNED September 4, 1968	
20. REGISTRAR'S SIGNATURE 05731		20. DATE REC'D BY LOCAL REGISTRAR SEP 6 1968		20. REGISTRAR'S SIGNATURE <i>[Signature]</i>	

Q A 1 3 0 8 9 8 0 9



This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 101.051, Health and Safety Code.

ISSUED AUG 02 2018

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

[Signature]
TARA DAS
STATE REGISTRAR



BON

EXHIBIT 5
College Diploma

American InterContinental University
*The President and the Governing Board
of the American InterContinental University
upon recommendation of the faculty have conferred upon*

Michael Burke

the degree of

**Associate of Business Administration
Business**

Cum Laude

*together with all the rights, honors, privileges and responsibilities to that degree of distinction.
Given this month of February, 2007*



[Signature]
Dr. Colton Summers, President

[Signature]
Richard P. Gray, Chairman, Board of Trustees

American InterContinental University
*The President and the Governing Board
of the American Inter Continental University
upon recommendation of the faculty have conferred upon*

Michael Shane Burke
the degree of

Bachelor of Science in Criminal Justice
Special Population

Summa Cum Laude
*together with all the rights, honors, privileges and responsibilities to that degree appertaining.
Given this month of March, 2008*



Dr. Selma Summers, President

Richard P. [Signature]

EXHIBIT 6

Affidavit from Acting Captain Means regarding
background contents

DECLARATION OF NYE COUNTY ACTING CAPTAIN, HARRY MEANS

I, Harry Means do hereby declare,

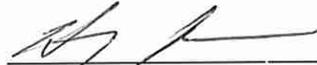
1. I am employed by the Nye County Sheriff's Office and am currently assigned as an Acting Captain.
2. One of my responsibilities is oversight of the backgrounds for new hires in our agency.
3. I am aware of the background investigation conducted by the Nye County Sheriff's Office for Deputy Michael Burke.
4. As part of the background Deputy Burke has undergone a medical examination performed by a licensed physician who confirmed in writing that no physical condition exists which would adversely affect his or her performance of the duties of a peace officer.
5. Deputy Burke's background included an investigation of the current and past employment history of the person, including, without limitation an examination of the duties that have been assigned to the person and any performance evaluations of the person.
6. Deputy Burke's background included an inquiry into the criminal history of the person in the State of Nevada and in any other state where Deputy Burke is known to have resided, and included without limitation any warrants issued and the submission of the person's fingerprints to the Central Repository for Nevada Records of Criminal History.
7. Deputy Burke's background included an inquiry to the Department of Motor Vehicles and the appropriate entity in each other state in which the person is known to have resided regarding any driver's licenses the person has held and the driving record of Deputy Burke.
8. Deputy Burke's background included a financial history of Deputy Burke.
9. Deputy Burke's background included the educational background of Deputy Burke.
10. Deputy Burke's background included the history of any military service of Deputy Burke.
11. Deputy Burke's background included the history of each physical address where the person has resided.
12. Deputy Burke's background included a drug screening test.
13. Deputy Burke's background included a psychological evaluation.
14. Deputy Burke's background included the use of a certified voice stress analyzer, a lie detector test, defined by NRS 613.440.
15. Deputy Burke has not been convicted of a felony in Nevada or any offense which would be a felony if committed in Nevada.
16. Deputy Burke has not been convicted of an offense involving moral turpitude or the unlawful use, sale or possession of a controlled substance.
17. Deputy Burke does not have a documented history of physical violence.
18. Deputy Burke did not resign in lieu of termination and was not terminated from any civil service employment for substantiated misconduct involving dishonesty, untruthfulness, deception, misrepresentation, falsification or dishonesty by admission or omission.

//

//

- 19. Deputy Burke met the minimum standards for appointment pursuant to NAC 289.110.
- 20. Deputy Burke met the requirements in NAC 289.200.
- 21. Deputy Burke did not have any automatic disqualifiers for appointment to the position of Peace Officer pursuant to NAC 289.110(4).

Dated this 27 day of April, 2022.



Harry Means, Acting Captain

State of Nevada

County of Nye

Subscribed and sworn to before me this 27 day of April, 2022.

Notary Seal



Signature of Notary

Notary

NOTARY PUBLIC

My commission expires: May 16, 2023

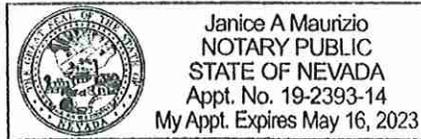


EXHIBIT 7

Affidavit from Captain Boruchowitz regarding
background interviews

DECLARATION OF NYE COUNTY CAPTAIN, DAVID BORUCHOWITZ

I, David Boruchowitz do hereby declare,

1. I am employed by the Nye County Sheriff's Office and am currently assigned as a Captain.
2. I was tasked with assisting in the background investigation of Michael Burke.
3. As part of this investigation, I conducted an interview of Sgt. Heller where he provided information about Deputy Burke and identified that the Sheriff and Undersheriff at the time were on a mission to get rid of everyone who they did not like. He advised that they had a vendetta against Burke and were going to make sure he didn't stay.
4. As part of this investigation, I conducted an interview of Howard Webb. Webb is the executive director of the American Council on Criminal Justice Training. Webb advised that he was the use of force expert hired by the union. He said that he remembered the incident and acknowledged that he had prepared a report about it. He said that he remembered that spit hoods were not popular, and Burke had to improvise. He said he reviewed the police reports, depositions and determined that Burke's use of force was proper and issued a report as to that effect.
5. As part of this investigation, I spoke with Sebastian Glenn, the alleged victim of Deputy Burke. During that conversation Glenn indicated that he no specific recollection of the incident.
6. As part of this investigation, I spoke with the current Sheriff, Sheriff David Daniels, from Josephine County Sheriff's Office. He advised that he could not release information to me except that Deputy Burke was not eligible for re-hire and was not cut out for the job. He stated that this was based on the file that he had reviewed.

Dated this 27th day of April, 2022.



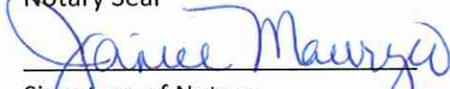
David Boruchowitz, Captain

State of Nevada

County of Nye

Subscribed and sworn to before me this 27 day of April, 2022.

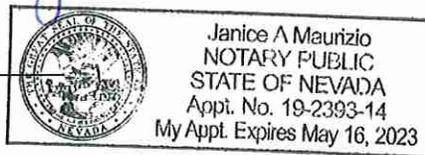
Notary Seal



Signature of Notary

Notary

NOTARY PUBLIC



My commission expires: May 16, 2023

*****The following documents were received from Oregon Department of Public Safety Standards and Training. They reflect the actions and findings of that entity. *****

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING**

In the Matter of the Proposed Revocation of the Basic, Intermediate and Advanced Police Officer Certifications Issued to:)	RULING ON MOTION FOR
)	SUMMARY DETERMINATION AND
)	PROPOSED ORDER
)	
MICHAEL S. BURKE)	OAH Case No.: 800565
DPSST No. 35672)	
)	
Respondent)	

HISTORY OF THE CASE

On October 24, 2007, the Department of Public Safety Standards and Training (DPSST) issued a Contested Case Notice of Intent to Revoke, Opportunity to Heard, and Final Order Revoking Certifications if No Request for Hearing is Received (Notice) revoking Michael S. Burke's (Respondent's) Basic, Intermediate and Advanced Certifications as a Police Officer. (Ex. A 5.) On November 1, 2007, DPSST received Respondent's request for hearing. (Ex. A17.)

On June 5, 2008, DPSST filed a Motion for Ruling on Legal Issues (Summary Determination). (Ex. A18.) A copy of the Motion was mailed to Petitioner on June 4, 2008 with instructions on how to respond to the Motion. On June 6, 2008, DPSST referred the hearing request to the Office of Administrative Hearings (OAH), which assigned the case to Administrative Law Judge (ALJ) Susan E. Teppola.

Pursuant to OAR 137-003-0580, Respondent had 14 days from the date of service of the Motion to file a response with the OAH. Respondent did not file a response and the record closed on June 20, 2008.

ISSUES

1. Whether there is an issue as to any material fact. OAR 137-003-0580.
2. Whether, as a matter of law, Respondent's Basic, Intermediate and Advanced Police Officer Certifications should be revoked because he had been discharged for cause.

EVIDENTIARY RULING

DPSST offered Exhibits A1 through A17. Along with its Motion for Summary Determination, DPSST offered the affidavit of Theresa M. King. The Motion is marked as A18 and the affidavit is A19. The exhibits are admitted into the record without objection.

FINDINGS OF FACT

1. Respondent was initially hired as a reserve deputy on June 3, 1998 and rehired as a deputy by the Josephine County Sheriff's Office (JCSO) on April 13, 1999. (Exs. A1 and A2.)

2. JCSO has a general order stating that deputies shall use only that force that appears reasonably necessary to effectively bring an incident under control. (Ex. A9.) It has a policy requiring deputies to report incidents in which force was used. (Ex. A10.) It has rules of conduct (Ex. A11) and it has a Code of Ethics. (Ex. A12.)

3. Respondent received Basic (2-14-2000), Intermediate (12-17-2004) and Advanced (6-06-2007) certifications from DPSST. (Ex. A2)

4. Respondent signed a DPSST Form F-11, Criminal Justice Code of Ethics, on December 17, 2004. The Code of Ethics, states, in relevant part, "I WILL never act officiously or permit personal feeling, prejudices, animosities or friendships to influence my decisions. Without compromise and with relentlessness, I will uphold the laws affecting the duties of my profession courteously and appropriately without fear favor, malice or ill will, never employing unnecessary force or violence, and never accepting gratuities." (Ex. A3.)

5. On May 12, 2007, JCSO Deputy S. Shaw attempted to make a traffic stop on a reckless driver. The vehicle did not yield and eventually crashed into a ditch. The driver fled the scene on foot. Respondent responded to the scene and pursued the driver, but was not able to apprehend him.

During the approximately 20 minutes that Respondent was gone searching for the driver, other deputies took two passengers out of the vehicle and sat them on the ground. Both passengers were cooperative, neither posed any threat to the deputies and neither posed a risk of flight. They were unarmed. One passenger, [REDACTED], whose date of birth is [REDACTED] was told that he was going to be let go and that he was not under arrest. [REDACTED] records had been checked and he was clear of any warrants and had a valid driver license. He was only wrong in that he was a minor in possession of alcohol and he had committed a seatbelt violation. The deputies did not suspect [REDACTED] or the other passenger of committing any crimes.

When Respondent returned to the scene of the crash, his first statement in an expletive voice was, "So these fucking lying pieces of shit say they don't know [who the driver was] huh?" Respondent instructed [REDACTED] to get up. [REDACTED] began to push himself up from the pavement, but before he could do so, Respondent grabbed [REDACTED] arm and applied a variation of the bent-arm lock to lift him up. Respondent then twisted [REDACTED] arm behind his back. Respondent arrested

██████████ and pushed him up against the car trunk while bending his thumb, all the time asking ██████████ who drove the car. Respondent then put ██████████ in the back of Respondent's patrol car. At first, ██████████ only wanted to know why he was being arrested and why Respondent was being so mean. But, ██████████ became profane and abusive in response to Respondent's treatment of him.

Respondent called ██████████ as an "asshole," a "liar," a "jackass" and threatened to break ██████████ finger if he did not identify the driver, even though Respondent thought he knew who the driver was. Respondent referred to ██████████ as "Chubby" and told the other deputies that he, "Love[d] being an asshole to these kids." Respondent threatened to pull out his gun and give the passengers one second to tell him the name of the missing driver.

While ██████████ was awaiting transport to the location where he was eventually was released, which Respondent referred to as a "courtesy transport", Respondent called ██████████ a "piss head," a "piss ant," a "pussy," "little fat butt," a "chicken," and a "nasty mother f * * *." Respondent repeatedly taunted ██████████ and threatened to fight him either on or off duty.

Before leaving the scene, Respondent disarmed the in-car video. Twice during the transport Respondent slammed on the brakes and stopped the patrol car. During the first stop, Respondent violently pulled ██████████ shirt over his head and forced ██████████ had down between his knees in a manner that injured ██████████ ear. The transport resumed, but ██████████ shirt came off his head and again Respondent slammed on the brakes. Since ██████████ shirt was then torn, Respondent got ahold of ██████████ head and again physically pushed his head down between his knees and began to bounce up and down on ██████████. The second episode was more physical than the first.

Eventually, Respondent reached the Town & County Market, where ██████████ was released. ██████████ had been in handcuffs for over an hour. Respondent admitted to the deputy who rode with him during the transport that he had gone too far and had been unprofessional. Respondent did not report his use of force. (Exs. A7 and A8.)

6. On May 16, 2007, ██████████ filed a complaint against Respondent. An internal investigation by the JCSOffice ensued. After numerous interviews, the above facts were found to be true by the investigator and ultimately by the sheriff. (Ex. A7.)

7. An independent expert witness reviewed the investigation and found that Respondent's explanations for his behavior, *i.e.* that ██████████ spat on him or was about to kick, were not credible. The reviewer found that Respondent had used excessive force. (Ex. A8.)

8. On August 28, 2007, Respondent was terminated by the JCSO for the unreasonable use of force, (Use of Force 05.01 Section E, 2 – three counts), for violating procedures by failing to document the use of force (Reporting Use of Force 05.33 Section A, 2), and for improper and inappropriate conduct (Rules of Conduct 02.02 Sections B, 7(a), Section D, 29(c) and Section C, 1(b)). (Ex. A6.)

CONCLUSIONS OF LAW

1. There is no genuine issue as to any material fact.
2. As a matter of law, Respondent's Basic, Intermediate and Advanced Police Officer Certifications should be revoked because he was discharged for cause.

OPINION

Pursuant to OAR 137-003-0580(6), an ALJ is authorized to grant a motion for summary determination if:

- (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
- (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

In analyzing the motion, "The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or the non-moving agency. OAR 137-003-0580(7).

DPSST contends that no genuine question of material fact exists in this case and it is required to revoke Respondent's certifications because Respondent was discharged for cause. For the following reasons, I agree.

ORS 181.662(4) provides:

The department shall deny, suspend or revoke the certification of any public safety officer or instructor, except a youth correction officer, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been discharged for cause from employment as a public safety officer.

OAR 259-008-0070(2)(A) gives the mandatory grounds for revoking an officer's certification, including what constitutes "discharge for cause."

For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons:

- (i) Gross Negligence: means the public safety professional's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of

care that a reasonable public safety professional would observe in a similar circumstance;

(ii) Insubordination: means a refusal by a public safety professional to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the public or private safety agency and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties; or

(iii) Incompetence or Gross Misconduct: in determining what constitutes "incompetence or gross misconduct," sources the Department may take into account include but are not limited to practices generally followed in the profession, current teaching at public safety training facilities, and technical reports and literature relevant to the fields of law enforcement, telecommunications, or emergency medical dispatch.

The undisputed evidence provided by DPSST in this matter has shown that Respondent was discharged for cause. He violated the written policies of his department. Looking at the evidence in the light most favorable to Respondent, his behavior was, at the very least, grossly negligent. A further review of the evidence here would serve no purpose. The facts set forth above speak for themselves.

For the above reasons, I propose the Department of Public Safety Standards and Training issue the following

ORDER

1. DPSST's Motion for Summary Determination is granted.
2. Respondent's Basic, Intermediate and Advanced certifications as a Police Officer shall be revoked.

Susan E. Teppola

Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: June 27, 2008

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Oregon Department of Public Safety Standards and Training (Department). If you disagree with any part of this recommendation, you may make written objections, called "exceptions," to the recommendation and present written argument in support of your exceptions. Exceptions and argument must be filed with the Department of Public Safety Standards and Training not later than fourteen (14) days following the date of mailing of the proposed order at the following address:

Director
DPSST
4190 Aumsville Hwy SE
Salem, Oregon 97317

FINAL ORDER

After considering all the evidence, the proposed order, and the timely filed exceptions, if any, the Department will issue the final order in this case. The final order may adopt the proposed order prepared by the Administrative Law Judge as the final order or modify the proposed order and issue the modified order as the final order (*see* OAR 173-003-0665).

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within sixty (60) days after the final order is served upon you. See ORS 183.480 et seq.

1
2 DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

3 STATE OF OREGON

4 In the Matter of the Proposed Revocation
5 of the Basic, Intermediate and Advanced
6 Police Certifications Issued to:7 **FINAL ORDER**8 **MICHAEL S. BURKE**
9 DPSST No.: 3567210 On October 24, 2007, the Department of Public Safety Standards and Training (DPSST or
11 Department) issued to Michael Burke (Petitioner), a Contested Case Notice of Intent to Revoke,
12 Opportunity to be Heard, and Final Order Revoking Certification if no Request for Hearing is
13 Received (Notice). The Notice was based on DPSST finding that Pctitioner had been discharged
14 for cause, thereby requiring DPSST to revoke Petitioner's Certification(s) as a Police Officer
15 pursuant to ORS 181.662(4) and OAR 259-008-0070(2). Petitioner made a timely request for
16 hearing. On June 5, 2008, DPSST filed a Motion for Ruling on Legal Issues (Summary
17 Determination) along with a supporting affidavit and documentation. A copy of the Motion was
18 mailed to Petitioner, allowing 14 days to respond to the Motion. Petitioner did not file a response
19 and the record closed on June 20, 2008. On June 27, 2008, ALJ Susan Teppola issued a Ruling on
20 Motion for Summary Determination and Proposed Order, proposing that Pctitioner's
21 Certification(s) be revoked, and allowed 14 days for exceptions or arguments to be filed on the
22 Ruling and Proposed Order. No Exceptions or arguments to the Proposed Order were filed.
23 DPSST adopts the Proposed Order in its entirety. A copy of the Ruling on Motion for Summary
Determination and Proposed Order is attached to this Final Order and incorporated by this reference
as if fully set forth herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CONCLUSIONS OF LAW

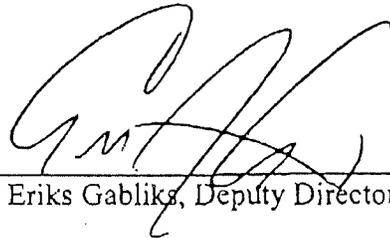
DPSST properly revoked Petitioner's Basic, Intermediate and Advanced Police Certifications under ORS 181.662(4) and OAR 259-008-0070(2), following Petitioner's discharge for cause.

ORDER

DPSST hereby revokes Petitioner's Basic, Intermediate and Advanced Police Certifications.

DATED this 14TH day of JULY, 2008.

DEPARTMENT OF PUBLIC SAFETY
STANDARDS AND TRAINING

By: 
Eriks Gabliks, Deputy Director

NOTICE OF RIGHT TO APPEAL. You are entitled to seek judicial review of this order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within sixty (60) days from the service of the final order. Judicial review is pursuant to the provisions of ORS 183.482.



BULLARD LAW

BULLARD SMITH JERNSTEDT WILSON

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

May 5, 2008

1000 SW Broadway
Suite 1900
Portland, Oregon 97205
503.248.1134
Toll Free: 866.551.6939
Fax: 503.224.8851
bullardlaw.com

Theresa King
Professional Standards Coordinator
DPSST
4190 Aumsville Highway SE
Salem, OR 97317

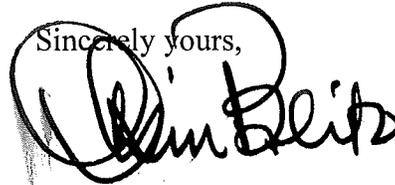
**Re: Former Josephine County Deputy Sheriff
Michael Burke; DPSST No. 35672**

Dear Ms. King:

At the request of Sheriff Gil Gilbertson, Sheriff of Josephine County, I forward herewith a copy of the County's exhibits prepared for presentation in the arbitration concerning Michael Burke's discharge from employment. The Union ultimately determined, based on its investigation and a review of Hillsboro Police Sgt. Craig Allen's expert evaluation and conclusions that the Union could not overcome the County's showing of just cause. Accordingly, the arbitration proceedings was canceled. The discharge decision taken by Sheriff Gilbertson is final.

Your attention is invited to Craig Allen's report, Exhibit 33. It is the single-most comprehensive fact document, other than statements offered by deputies who witnessed Burke's misconduct, and includes a transcript of the in-car video.

If I can provide further assistance to DPSST on behalf of Josephine County with respect to our obligations to furnish this information to you, please do not hesitate to contact me.

Sincerely yours,


C. Akin Blitz

CAB/mw
Enclosures

cc: Gil Gilbertson, Sheriff (w/o encs)
Sara Moye (w/o encs)

- Richard J. Alli, Jr.
- Daniel R. Barnhart*§
- Francis T. Barnwell
- Akin Blitz*
- Barbara A. Bloom
- Jennifer L. Bouman-Stegall*
- Lisa C. Brown
- Garry R. Bullard
- Adam S. Collier§
- Jacqueline M. Damm†
- Devra S. Hermosilla**°
- Kathryn M. Hindman*
- Kenneth E. Jernstedt*
- Thomas I. Kramer
- Alan M. Lee
- Robert J. Lee
- Michael G. McClory*
- Jennifer A. Owen§
- J. Kent Pearson, Jr.
- Kirk S. Peterson*
- David J. Riewald**°§‡
- Emily Q. Shults ‡
- Lester V. Smith †
- David M. Thompson
- David H. Wilson
- Maryann Yelnosky*

All attorneys active in Oregon. The symbols denote additional active admissions.

- California † Illinois
- * Washington ‡ Michigan
- ° Idaho
- § Utah

King Theresa

From: Wendy Herman [WHERMAN@co.josephine.or.us]
Sent: Wednesday, May 07, 2008 10:43 AM
To: King Theresa
Subject: Fwd: FW: Josephine County; Burke Arbitration

Wendy Herman
Administrative Assistant
Josephine County Sheriff's Office
601 NW 5th Street
Grants Pass OR 97526
(541)474-5120
wherman@co.josephine.or.us

>>> "Attorney David A. Snyder" <dsnyder@snyderandhoagllc.com> 5/1/2008 8:00 AM >>>
Jim Mason asked that I forward this to you in response to your request for confirmation that the hearing is cancelled.

David A. Snyder
Snyder & Hoag, LLC

503.222.9290

FAX 503.226.9525

From: Attorney David A. Snyder [<mailto:dsnyder@snyderandhoagllc.com>]
Sent: Wednesday, April 30, 2008 2:53 PM
To: Michael Beck
Cc: Akin Blitz
Subject: Josephine County; Burke Arbitration

Arbitrator Beck-

I'm writing to confirm the parties' request that the arbitration hearing scheduled for May 4 and 5 in Grants Pass be cancelled. I appreciate your extraordinary courtesy in agreeing to schedule this hearing on short notice, and to conduct a hearing on a Saturday. The parties have agreed to split your fees and costs, please forward your invoice to Attorney Akin Blitz and the undersigned.

Attorney Blitz and I have been meeting, conferring by telephone and otherwise working to exchange exhibits, discuss objections, and schedule witnesses so that the hearing could proceed in as orderly and expeditious a fashion as possible. This morning the County provided its expert witness' report. Consideration of that report, and information highlighted in that report, forced me to re-evaluate the

A13

grievance and the reasonableness of proceeding with the hearing. I discussed my concerns with the grievant and the Association. Ultimately I recommended that the Association withdraw the grievance. The Association has accepted my recommendation.

Again, thank you for your courtesies in this matter. I'll look forward to working with you in the future.

David A. Snyder
Snyder & Hoag, LLC

503.222.9290

FAX 503.226.9525

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.6/1407 - Release Date: 4/30/2008 11:35 AM

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.6/1407 - Release Date: 4/30/2008 11:35 AM

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MICHAEL SHANE BURKE,
Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING,
Respondent.

Department of Public Safety Standards and Training No. 38672

Court of Appeals No. A139853

ORDER OF DISMISSAL AND APPELLATE JUDGMENT

On September 10, 2008, petitioner was directed to: (1) pay the \$212.00 filing fee; (2) provide a certificate of service of the petition for judicial review on the Attorney General; (3) provide a copy of the order being appealed; (4) provide an original signature on the petition for judicial review; and (5) complete, serve and return the documents in a *pro se* packet to the court. Petitioner was informed that failing to comply with the request would result in the judicial review being dismissed pursuant to ORAP 1.20(4). As of this date, petitioner has neither complied with the request, nor shown good cause why the case should not be dismissed. Therefore, the court on its own motion dismisses the judicial review for want of prosecution.

Petition dismissed.

NOV 10 2008

DATE



APPELLATE COMMISSIONER

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[X] No costs allowed

ORDER OF DISMISSAL AND APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

RECEIVED
NOV 10 2008
APPELLATE DIVISION
SALEM, OR 97301

MONEY AWARD*

Judgment #1

Creditor(s): STATE OF OREGON, JUDICIAL DEPARTMENT

Debtor(s): Michael Shane Burke, 636 SW Larch Rd, Grants Pass, OR 97526

Unpaid filing fees: \$212.00

**Judgment for unpaid filing fees. ORS 21.692.*

Appellate Judgment Effective Date: **NOV 10 2008**

COURT OF APPEALS

c: Mary H Williams —
Michael Shane Burke
Department of Public Safety Standards
Josephine County Trial Court Administrator

mpA139853odsc081027

RECEIVED
NOV 10 2008

ORDER OF DISMISSAL AND APPELLATE JUDGMENT

APPELLATE DIVISION
SALEM, OR 97301

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Notice of Adverse Action – Discipline and Discharge

Deputy Michael Burke

Page 3

ALLEGATION: Courtesy

SUSTAINED

Throughout this incident, you continually used coarse and profane language. Documentation from your car video and statements made by other deputies clearly demonstrate repeated violations of inappropriate behavior. This is a violation of General Order 02.01 Rules of Conduct, dated 09-05-02, Section C, 1, (b), which states:

"Members are expected to be tactful in the performance of their duties, control their tempers, exercise the utmost patience and discretion and not engage in argumentative discussion even in the face of provocation."

Your actions during the arrest of Sebastian Glenn were unprofessional and, at times, bordered on criminal conduct. Based on the findings of this investigation and the seriousness of the sustained allegations, your continued employment with this agency would be classified as "Negative Retention" and creates extreme liability for the Sheriff's Office and Josephine County. Your termination would be in the best interest of this agency and the county.

In accordance with the Sheriff's Association Collective Bargaining Agreement, dated 06-30-07, you have the right to appeal this discipline to the Sheriff's Office. Section 15.3, Notice of Discipline and Discharge states:

"Should the Sheriff be contemplating reducing the employee's pay, suspending the employee without pay or terminating the employee, the employee shall receive written notice of the charges against the employee, which shall include the considered disciplinary sanction and copies of all information that exists surrounding the allegations of misconduct. The employee shall have (14) fourteen calendar days from the receipt of said notice to respond to the allegations, either in person or in writing, before said proposed penalty shall take effect."

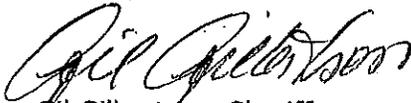
A failure to submit said appeal to the Sheriff's Office within (14) calendar days, August 20, 2007, by 1700 hours, after the receipt of this notice shall result in the waiver of your right to appeal and the forfeiture of all your rights to a grievance and arbitration procedure.

Effective this date, 08-06-07, you are being placed on administrative re-assignment pending your appeal. While on re-assignment, you are subject to the direction of the sheriff and must remain at your residence during the following periods:

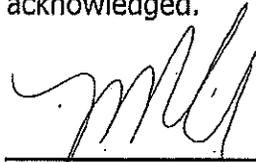
Monday thru Friday: 0800-1600 hours.

Notice of Adverse Action – Discipline and Discharge
Deputy Michael Burke
Page 4

During the aforementioned time period, you must notify this office any time you are going to leave the county limits. You are here by ordered to turn your Sheriff Office issued star, issued gate card and identification card. You are to park your marked patrol vehicle at the court house. You are reminded that during this appeal process you DO NOT have police powers.

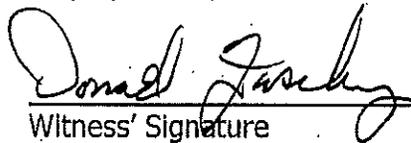

Gil Gilbertson, Sheriff

This Notice of Adverse Action was handed to me in the presence of Undersheriff Donald Fasching on August 6, 2007. I have been given full explanation as to my right to appeal and instructions on how to proceed. Receipt of the notice is acknowledged.



Employee's Signature

080607
Date



Witness' Signature

08-06-07
Date.

Michael S. Burke,
Employee,

And

Josephine County Sherriff's Association
Employer.

Interim Report of Expert Witness Craig T. Allen

Introduction and Qualifications

My name is Sergeant Craig Allen and I have been Police Officer in Oregon for 16 years, 15 of which have been with the Hillsboro Police Department. I have been Sergeant with Hillsboro police for five years and currently supervise and manage our agency's Training Division. I hold certifications as a Field Training Officer, Firearms Instructor, Confrontational Simulations Instructor, Taser Instructor, Less-Lethal Munitions Instructor, Diversionary Devise Instructor, Patrol Tactics Instructor, Use of Force Instructor and an adjunct instructor with our agencies Defensive Tactics program.

I am a member of the International Association of Law Enforcement Educators and Trainers Association, the International Association of Law Enforcement Firearms Instructors, the National Tactical Officers Association, the Police Policy Studies Council and the Force Science Research Center.

I was assigned to our agency's Tactical Services Unit, (SWAT) for 11 years and the Washington County Interagency Tactical Negotiations Team, (SWAT) for 8 years, and served as assistant team leader. I am a former (part-time) certified instructor at DPSST, instructing in the areas of building search, survival skills, and high risk vehicle stops.

I developed our agency's Force and Tactics instructor program and continue to teach, supervise and manage this program. I developed and currently oversee our agency's Force Response Review Board. I am routinely consulted within our agency on matters pertaining to use of force including all related discipline and the factors associated with risk management. I currently chair our agency's Safety Committee, reporting to city hall on police safety related matters. I have drafted our police department policy revisions and updates with respect to use of force and firearms. I have been consulted both by our City Attorney's office and the Washington County District Attorney's Office pertaining to police use of force matters and have testified as an expert in criminal proceedings pertaining to use of force application and justification.

I have provided instruction on the justification and application of police use of force to our agency and other law enforcement agencies in Washington County. I have instructed use of force at the Oregon Police Canine Association yearly conference. I have assisted with curriculum development with respect to our agency's Tactical Communication and Crisis Intervention training modules. I have been consulted by Ret. Chief Ron Louie regarding his use of force curriculum as part of his accredited Crisis Intervention class that he teaches at

Portland State University. I have been asked by Ret. Chief Louie to co-instruct the use of force portion during the upcoming summer 2008 term.

I have an Associates of Arts Degree from Portland Community College in Criminal Justice, and 86 credit hours of upper division course work at Portland State University in the Administration of Justice program. I currently possess a police Mid-Management Certificate from the Department of Public Safety Standards and Training and have approximately 3600 hours of formal police training.

I have been asked by Attorney Akin Blitz, *(with the law firm of Bullard, Smith, Jernstedt, and Wilson)* who is representing Josephine County to offer an opinion as to the reasonableness of the force used by Deputy Michael Burke in the aforementioned case, and my observations based upon my review of the record. Based on my training, experience and qualifications, I consider myself well qualified to offer an opinion as to the reasonableness of the force used in this matter which I regard as within the scope of my responsibility at the Hillsboro Police Department.

In forming my opinions in this case, I have reviewed in its entirety all accompanying documents associated with the Employer's Exhibit List, specifically exhibits 1 through 52 and the dash mounted video/audio from Dep. Burke patrol vehicle. I have studied and considered materials that are specific to this case as well as material of general circulation. I have also drawn on the totality of the materials I have read, studied, and examined, as well as the experiences and instruction I have had and/or provided to law enforcement over my career.

Based on the information and material supplied to me, it is my opinion that Deputy Burke used excessive force during the unlawful detention and arrest of Sebastian Glenn, violated department policy, and did not act in a manner which duty requires of him. I reserve the option to modify, amend, and change any opinion expressed in this document should additional information be provided affecting my understanding of the fact pattern in this case.

Incident brief

On May 12th, 2007 at approximately 0300 hours deputies from the Josephine County Sherriff's Office attempted to initiate a traffic stop on a reckless driver. The driver failed to stop and led deputies on a short pursuit culminating in the vehicle crashing into a ditch. The driver immediately fled on foot with Deputy Burke in foot pursuit. Additional officers on scene ordered the two backseat passengers, Richard Dammeier and Sebastian Glenn out of the vehicle and sat them on the pavement. After approximately 20 minutes Deputy Burke arrived back at the accident location unable to locate the driver. While at the accident scene Deputy Burke arrested both Glenn and Dammeier. Deputy Burke transported Glenn to a convenience store outside Grants Pass where he cited and released him for two violations. During the course of the detention and arrest of Sebastian Glenn, allegations of excessive force were brought forward by the Josephine County Sherriff's Office with respects to Deputy Burke actions.

Transcription of audio at accident location

After careful review, I have been able to determine that the in-car recording system captured the following:

3:01:37 [Stop initiated]

[Deputies Burke, Iles and Shaw arrive at accident scene resulting in termination of pursuit]

3:02:22

Shaw has Glenn and Dammeier sit down on the pavement in front of his patrol car.

[Not observed in video, Burke chases (on foot) the driver of the wrecked vehicle]

3:02:55

[Iles leaves scene in attempt to locate Burke]

3:03:45

[Shaw conducts records check through dispatch on Glenn. Glenn returns clear no wants and valid ODL]

3:10:06

[Records check is conducted on Dammeier. Dispatch advised no wants, DWSV]

3:18:15

[Burke arrives back at the patrol car and rejoins Iles. Shortly thereafter they leave en-route back to the accident scene]

3:18:49

[CAD printout to include dispatch advise units the driver of the suspect vehicle is William Robert Murphy, 102487 – suspended DWSV. Unknown how this determined]

3:19:03

[Burke advises dispatch via radio that William Murphy is the driver and says he got a good look at him and provides a clothing description].

3:19:45

Burke [Arrives on scene].

3:19:50 [Casual laughter between officers on scene]

Burke "So these fucking lying pieces of shit say they don't know huh?"

3:19:55

Burke "Oh, you know who he is!... Stop lying!. You dishonor your mother and father by lying!"

3:19:59

Glenn "OK, Bub... (undeterminable)... do you mind not screaming in my ear."

3:20:01

[Burke at this point is approximately 5 feet from Glenn, who is sitting down on the pavement un-handcuffed. Burke begins to walk in a more assertive manner towards Glenn]

3:20:03

Burke "Stand up!"

[Burke takes a couple of steps towards Glenn and proceeds to reach for his arm]

3:20:05

Glenn "Alright"

3:20:05

Burke "Stand up". "Do it now"

[Glenn has already agreed to stand up, however Burke does not allow Glenn the opportunity to comply before he physically pulls Glenn to his feet]

3:20:07

Burke "Put your hands behind your back."

Glenn [undeterminable]

3:20:07

[Burke moves Glenn forward and pushes him against the wrecked car]

3:20:09

Glenn "Why you being so mean dude?"

3:20:10

Burke "Because you're an asshole."

Glenn "Alright"

Burke "Alright?"

Glenn "Dude I..."

3:20:14

Burke "Shut up, shut up your mouth now."

Glenn [undeterminable]

3:20:18

Burke "Relax your shoulders."

3:20:20

Glenn "Damn" [calm voice – appears astonished by the circumstances as they are unfolding]

3:20:21

Burke "You have the right to remain silent, just not the ability."

3:20:24 - 26

Glenn "Oh, alright. Your being a jerk about it."

3:20:27

Burke "Well you're the jerk... that you're lying"

Glenn "Ok..." [undeterminable]

3:20:30

[Custodial detention begins]

3:20:34

Burke "Shut up... shut up, you do not ... shut up... shut up"

[Beginning at this point Burke escorts Glenn to a patrol car – It appears that Glenn tries to talk to Burke in a calm voice, however once Glenn tries to talk he is interrupted by Burke telling him to shut up.]

3:20:50

Getting into car [undeterminable]

3:20:50

Burke "You say what... what'd you say"

Glenn "Nothing dude"

Burke "Apologize"

Glenn "Sorry sir"

3:20:58

Burke "Who was driving?"

Glenn "I do not... I have not a clue, I'm not, dude I have not a clue"

Burke "You're a liar"

Glenn "No I'm not"

Burke "Get in the car"

3:21:08

Glenn "Dude I'm not... Oh, my God". [Door slams]

3:21:21 - 24

Burke "Who was driving? Stand up".

[Burke, while walking back towards Dammeier, who was still sitting on the asphalt in a tank top, states the above]

3:21:24

[Burke takes physical custody Dammeier by reaching down, grabbing his left arm and pulling him to his feet. Burke did not break stride while he approached Dammeier and gave no opportunity to Dammeier to comply with his directives. In fact the video shows that Dammeier began to put his left hand towards the ground in efforts to comply and start to push himself up to his feet. Burke however forcefully picks up Dammeier and moves Dammeier towards the wrecked vehicle. At no time did during this episode did Dammeier raise his voice, physically or verbally indicate any resistance and Dammeier continued to talk in a calm voice]

3:21:28 - 38

Burke "You gonna be a liar and dishonor your mother and father... shut up you...you gonna go to jail too? Stop being a jack ass." ... [undeterminable]

3:21:53

Burke [Appears to talk to his Sgt, while walking Dammeier to a patrol car, stating...]
"Walk. No, he's just stupid... and he's a liar."

3:21:52

Burke "Get in the car dumb ass"

3:22:01 - 3:25:19

[Conversation between officers regarding pursuit, (intermittent laughing). Conversation of where the driver possibly ran. Burke indicates that he may know the identity of the driver. Other officer makes mention of contacting probation officer]

3:25:19

Burke "Well... still got them in handcuffs... I was just trying to get something out of them but their both gonna stick it... but he's drunk... I don't know. How old is he? Do we know?"

3:25:25

Officer "They are both under age"

3:25:26

Burke "So pop him for the MIP alcohol and dump them at the high school"

3:20:30

Officer "Chubby thinks it's a big game... oh, yea... we were thinking Walgreens and dump them there"

3:20:37

Burke "Alright"

3:25:45

Burke "Dump them off... Drop them off at uh Murphy Slick and is... so important (undeterminable) public phone there"

3:25:50

Officer "That's across the street from the high school... question... quite an... odd place"

3:25:53

Burke "Terrific" [laughter from Burke]

3:26:07 - 3:26:30

[Burke is describing his observations of driver – more discussion between officers]

3:26:37

Officer "What a trash heap" Burke, "ah hu" [in agreement].

3:26:40 - 3:26:46

Burke "I love being an asshole to these kids" [casual conversation]

[Burke adds, "sitting there lying... Another officer comments, "It's not like they don't deserve it, you know what I am saying"]

3:26:47

Officer "Hell I thought we had open containers in..., I was just juice that chubby had."

3:28:18

Burke "You want to try and work these kids again Chevy... hey, your buddy coughs it up were going to cut him loose. You either verify what he says or... You want to try?"

3:29:40

[Conversation of tires on car bald, front wheel drive, custom wheels]

3:30:12

Burke "See if we can work these guys?" [Burke and lles walk back to interview Glenn and Dammeier]

3:30:21

Burke [Talking to Dammeier] "What's your name hero? [Dammeier identifies himself] How old are you?"

3:30:21 - 3:31:34

[Burke interviews Dammeier]

Burke asks Dammeier who the driver is. Dammeier states he does not know. Burke states that Dammeier can walk out of here with a \$1000 dollar ticket and continues to inquire about the identity of the driver and how Dammeier became associated with the vehicle. Dammeier continues to state he does not know the driver (calm voice tone). Burke says,

"So you're going to take a ticket for this low life". Burke states he can smell alcohol on his breath; Dammeier states he was not drinking.

3:30:30 - 3:31:30

[Iles interviews Glenn] Glenn asks Iles, "What's the arresting officer's name?" Iles says, "Dep. Burke". Glenn sounds agitated at the treatment he received from Burke. Iles attempts to calm Glenn down, eventually building a rapport and having a conversation about who the driver was. Glenn becomes agitated when he repeats the story about Burke threatening to break his finger if he doesn't tell who the driver was. Iles tries to redirect the conversation back towards who was driving the car. Glenn apologizes to Iles for rambling on about Burke then begins to describe how he became associated with the car. Identifies the driver as "John" and states he does not know John's last name.

3:31:30

[Burke contacts Glenn]

[Initially the contact turns argumentative as Burke explains his conversation with Dammeier. Burke states that Dammeier came clean and asks Glenn who the driver was. At the onset of this, Burke and Glenn are talking over each other and Glenn expresses agitation over his finger being bent]

3:31:46 - 3:31:52

Burke "So you're going to be the one that goes down for everything... and your buddies are going to walk free."

Glenn "No... No... I don't know him" [expressing this as a statement of not knowing who the driver is]

Burke "That's what you're going to do..."

3:31:56

Glenn "No..., I don't know. Look, you try and break my finger cause..."

3:31:57

Burke "That's because you were going to be a jack ass... Alright if you want to sit there..., and run and fight and be..."

3:32:01

Glenn "I didn't run!"

[Argument is intensifying between Burke and Glenn and the remainder of the dialog is unrecognizable]

3:32:03 - 3:32:12

Burke and Glenn Finish argument with Glenn stating, "Fine take me to jail punk", with Burke replying, "...Keep running your mouth." Burke discontinues the conversation by shutting the door.

[Burke return to where the other officers are standing by the wrecked vehicle. Continues general conversation]

3:32:33 - 3:34:34

[Iles attempts a re-interview with Glenn regarding the driver of the suspect vehicle; Glenn continues to be argumentative – no information obtained]

3:34:34 - 3:34:52

[Iles walks back up to where Burke and the other officers are standing]

3:34:54

Officer "...first name and then Officer in mimic fashion goes, uh, uh, uuuhh I think his name is John... John..."

3:35:05 - 3:35:17

Officer "...give me a first name, you know give me something to tell him so, hey listen... your not snitching on anybody, you just give me a first name..." mimics Glenn's response by saying uh, uh, uh..."

3:35:17

Burke [In background] "Oh, man I pull my gun out ... you guys have exactly one second to tell me that guys name! [emphatically saying these remark]

3:25:21

Several Officers "Ahhhhhh..." [Laughter]

3:25:25

Burke [Mimicking; answering in response to his statement about using his weapon] "Well, were just trying to get a ride from the party...", "Bullshit!".

3:25:29

Officer "Yea, that's what he said... there were only two cars left up there..." [Dialog continues with unrecognizable conversation; laughter].

3:35:39

Burke "I'll run him out to Williams, drop him off in Williams"

3:35:43

Officer "Oh, no, no, nooo"

3:35:52

Burke "...yea right by the boarder... there's a bus station..." [laughter]

3:36:09

Burke "I'm going to shove you in California ... (undeterminable) use my flashlight..."

3:36:15

Burke "All right well see you, it's been kind of fun out here..." [Burke discontinues his conversation with the officers as the tow truck arrives and walks back to his car]

3:36:30

[Burke gets inside his vehicle. Quite in vehicle – no conversation]

3:37:10

[Burke turns around and waits for Iles to find his cell phone]

3:37:32

Glenn "...had to go through driving school to get this job..."

3:37:37

Glenn "...I'm going to be a cop too, man."

3:37:40

Burke "...you can't bein' a liar."

3:37:41

Glenn "...no, I'm not a liar"

3:37:44

Glenn "...funny thing is..."

3:37:54

Glenn "...made of drive"

3:37:58

Glenn "...I ride back from cleaning' up, it's not what I recall" (mumbling)

3:38:03

Burke "Everything that comes out of your mouth is a lie so just shut up, we getcha tickets and you can walk outta here"

3:38:07

Glenn "...yea, I know, you're crooked."

3:38:18

Glenn "...Burke the crooked cop."

3:38:21

Glenn "I'll break your thumb (mockingly)"

3:38:23

Glenn "I'll bend your thumb if you say another word you freaking' (piss head or piss ant, or pussy) (mockingly)"

3:38:28

[Door slams]

3:38:29

Glenn "worthless piece of shit cop right there man. All right! You're supposed to be a real cop."

3:38:34

Glenn "...had to go through training man."

3:38:36

Burke "...We caught your sorry little fat butt didn't we?"

3:38:38

Glenn "Yea, cause I sat there and friggin' didn't run..."

3:38:41

Burke "Because you're to chicken to run....it's because you're to chicken to run. (Cutting in)"

3:38:43

Glenn "...to chicken to run? I have nothing' now, I have, uh, (???) didn't even know the guy - tell him he got to stop....Shut up!"

3:38:45

Burke "...yup, well, you're under age an you're drinking, that's a thousand dollar ticket (cutting in)."

3:38:49

Glenn "Good, I'm taking' you to court bub."

3:38:51

Burke "(laughs) By all means, I get paid overtime, so...."

3:38:54

Glenn "Boy, I'm sure you do...See I wont win down the stair went the spiderman (in a funny voice)...freaking' worth this (???)"

3:39:02

Glenn "Every other cop is cool but you."

3:39:04

Burke "Yup, yea, you're a big man with handcuffs on, aren't you?"

3:39:06

Glenn "...yep (pause) sitting' there, like, the ground and you come up an fucking twist my arms around like you're real tuff, huh?"

3:39:13

Burke "...wouldn't a tightened up on me, that's what happens."

3:39:14

Glenn "Yea, shut up."

3:39:15

Burke "...you deal with it man."

3:39:16

Glenn "Punk-ass"

3:39:18

Burke "...you nasty mother f..."

3:39:19

Glenn "Tackle me huh?"

3:39:21

Burke "...how 'bout we get you out of handcuffs, I'll see how bad you are."

3:39:21

Glenn "Put a Taser on me, (pause) yea put a Taser on me huh? Wouldn't you get in trouble?! Wouldn't even get in trouble if you took (???) handcuffs off me and fought me. (???) you wouldn't even get in trouble, huh? You're a piece of shit!"

3:39:30

Burke "...nope (pause) nope, cause you're a pussy that's why."

3:39:32

Glenn "you're a piece of shit."

3:39:33

Burke "you're a pussy"

3:39:34

Glenn "Yea, you'd fight me, fucking' just cause huh? You're a piece of shit."

3:39:36

Burke "I...I...I'd take all my shit off and fight you man to man (???)"

3:39:38

Glenn "Yea! All right, let's do it then."

3:39:40

Burke "Wh...When you want to meet? You tell me that."

3:39:41

Glenn "Right here"

3:39:42

Burke "When an' where?"

3:39:43

Glenn "Is this on tape right now?"

3:39:44

Burke "yea, wh...wh...when and where?"

3:39:45

Glenn "Is this on tape right now?"

3:39:46

Burke "See, you're a chicken shit that's why."

3:39:47

Glenn "Fucking' put that on tape bitch!"

3:39:49

Burke "It is on A tape."

3:39:50

Glenn "Ahh right."

3:39:51

Burke "You're a big man with handcuffs on aren't you?"

3:39:52

Glenn "Ahh right Burke."

3:39:53

Burke "We'll take 'em off in a little bit and you'll get your chance. We'll see how big and bad you are."

3:39:54

Glenn [talking over Burke] "I want another (???) with you man."

3:39:56

Burke "That's right you don't want to mess with me cause you aint..."

3:39:58

Glenn "This is on tape huh? I guarantee that (pause) guarantee you just said what you said, you're fucking' going' to jail."

3:40:04

Burke: "Uh, huh."

3:40:05

Glenn "not jail right, you're freaking'...."

3:40:06

Burke "Yeaaa, that's what I thought."

3:40:08

Glenn "Shiiiiit."

3:40:08

Burke "Keep on drinking'...liquid courage."

3:40:11

Glenn "Yup"

3:40:13

Glenn "You're real tough."

3:40:15

Burke "I'm tougher than you and that's all I need to have power."

3:40:19

Glenn "...Everything I have right? I get out fucking' a norm."

3:40:21

Burke "Uh huh."

3:40:23

Glenn "Sitting' here with the guy who tweaked me around, didn't do nothing' wrong
(pause) tell the guy to stop..."

3:40:28

Burke "Go back to the valley and what ever rock you came out under."

3:40:31

Glenn "Shaaa, sure. I aint from the valley punk."

3:40:41

Glenn "You're the biggest piece a shit cop I've ever seen in my life."

3:40:45

Burke "See, that's all ya got."

3:40:46

Glenn "Just threw me down outside this car, just screwed with my arm."

3:40:50

Burke "Small mind, small everything – just belly."

3:40:53

Glenn "Eat shit (???) (pause) (???) grabbed me started banging' thumb, I'm going to a physician for this I think my thumb's..."

3:41:00

Burke "Go ahead, you tightened up – that's, that's called digital control, you tried running'."

3:41:04

Glenn "What I do?! Was I resisting? Oh, I, OK! Shut up, you're a fag, you suck dick."

3:41:05

Burke "You tightened up, you tightened up."

3:42:11

Burke [Still parked at accident scene] "...and you're going to cover for him and you're going to go down for it"

3:42:13

Glenn "Okay"

3:42:22

Glenn "Going down for fucking sitting in the passenger..."

03:43:10

Glenn "Put this on tape man, record it. Record it Burke, record this big boy."

03:43:21

Glenn "Fucking' record it dude for the courts."

03:43:29

Burke "Lets go, fat boys' got some issues."

[Burke and Glenn continue to chastise each other; calm but sarcastic voice tones]

3:43:30

Burke [Illes returns to car. Burke states] "Let's go, fat boy has some issues"

3:44:00

[Burke begins transport. Custodial arrest begins]

3:44:05

Glenn "What I am I criminal for?" [agitated]

3:44:06

Burke "Everything man"

3:44:07

Glenn "What did I do? Sat on the ground. Hand my hands...[unrecognizable] telling the guy to stop.

3:44:13 - 3:44:21

[Continue to argue. Glenn tells Burke] "Fuck you... Quit talking, you're a piece of shit"

3:44:21

[Burke turns off in-car video discontinuing audio]

3:55:03 CAD

[Burke and Iles arrive at the Town/County market]

4:23:00 CAD

[Burke advises Iles to remove the handcuffs., Glenn is issued two citations, one for MIP and a second for failure to wear seatbelt; both violations. Glenn is released from police custody and walks away]

Bases of force analysis:

When evaluating the reasonableness of any police use of force, great care should be applied when analyzing the facts presented, (*totality of the circumstances*) to evaluate whether or not the force applied comports with the 4th Amendment to the U.S. Constitution. Since the USSC case of *Graham v. Conner* (1989), courts have routinely applied the objective reasonableness inquiry into the evaluation of force by police, deadly or not.

In part *Graham's* three-part reasonableness test considers (1) the severity of the offense suspected; (2) whether the suspect poses an immediate threat to the officer or others; and (3) whether the suspect was actively resisting or attempting to evade arrest by flight. These criteria are not merely answered in a vacuum by either *yes* or *no* but rather within a range depending on immediacy and severity.

In addition to the above mentioned criteria, other factors included within the totality of circumstances need to be weighed and evaluated. Force by its very nature, when applied, infringes on a persons 4th Amendment right to free from unreasonable seizure. It is the responsibility of police to explain, (oath or affirmation) their actions to justify a particular type of seizure, (i.e. the force used).

The balancing analysis looks at what type of force was used, how the force was applied, and to what degree was the force was maintained, (nature and quality of intrusion on the persons constitutional rights) weighed against the legitimacy and/or the actions of the police to enforce the law, (against the governmental interests at stake). This balancing test was again reiterated in USSC *Scott v. Harris* (2007).

Graham provides allowances (latitude) in determining reasonableness with respects to the officers force employment in those circumstances that are tense, uncertain and rapidly evolving. The officer's force does not have to be exact or perfect, just objectively reasonable.

Graham also prescribes the force be evaluated from an objective point of view not the officer's subjective opinion. Basically, would another officer with similar training and experience act in a similar way faced with similar circumstances (reasonable officer standard). Hindsight is also prohibited (i.e., applying what you learn after the event into the reasonableness inquiry pertaining to the use force).

In conjunction with Deputy Burke's use of force in this case we are also confronted with several issues regarding the requirements of lawful stops, detentions and arrests to include perceived officer safety issues. It should be noted that these encounters must also comport with the provisions of the 4th Amendment. It cannot be stressed enough that a

person's individual liberty, as guaranteed to them by the 4th Amendment, is held to highest regard. The USSC case of Florida v. JL (2000) reiterates this.

Terry v Ohio USSC (1968) is the main contextual source that addresses law enforcement's right to stop and/or detain individuals who are suspected of committing and/or about to commit a crime. Additionally, officers may subsequently frisk individuals for officer safety if additional requirements are met. In *Terry* the Court held that police may briefly detain a person if they have a reasonable suspicion that the person has committed, is committing, or is about to commit a crime. For their own protection, police (in-part) may perform a quick surface search of the person's outer clothing for weapons if they have reasonable suspicion that the person stopped is armed. This reasonable suspicion must be based on "specific and articulable facts" and not merely upon an officer's hunch.

Additionally, stops and detentions that start out as reasonable may violate the 4th Amendment by virtue of their intolerable intensity and scope. Meaning the scope and reason for the seizure must be justified by the circumstances that led the police to undertake it in the first place. Likewise the length (time) of the seizure may violate the 4th Amendment if substantive details are not corroborated and the initial suspected reason for the seizure dissipates. Both *Terry v. Ohio* and *Graham v. Conner* and their requirements are taught at the Oregon Police Academy (DPSST) and by certified use of force instructors all over the state.

In Oregon, police officers are required to have ethics training and to subscribe to the Law Enforcement Code of Ethics. Deputy Burke signed, there by acknowledging, the Oregon Criminal Justice Code of Ethics, dated 12/17/04, and at the time of attendance at the Oregon Police Academy. [This also is required at the time of application for every level of DPSST certification Burke has attained]. The last sentence of the first paragraph mandates that all officers, "... respect the Constitutional rights of all people to liberty, equality and justice. Officers in Oregon are also required to give an oath of office upon employment whereby (in-part) swearing to uphold the Constitution of the United States. There are additional sections of the Code of Ethics implicated by Deputy Burke's conduct which I noted, though commenting on them is outside the scope of this report.

Initial contact with Glenn

At the accident scene, Deputy Shaw was the first to have contact with both Glenn and Dammeier. The unidentified driver fled on foot with Burke initiating a solo foot pursuit. Glenn and Dammeier were indentified as passengers in the vehicle during the pursuit, culminating in a modified high risk traffic stop set in motion by the accident. The original traffic stop was based upon excessive speed, a stop sign violation, nonfunctioning taillights and reckless driving.

Deputy Shaw ordered Glenn and Dammeier out of the vehicle [weapon drawn] and had them sit behind their vehicle on the asphalt roadway. Deputy Shaw states he conducted a cursory pat down for weapons, however no weapons were found on either Glenn or Dammeier. Deputy Shaw then conducted a records check via radio inquiring about their status. Both subjects came back clear. Dep. Shaw attempted to interview them as to the identity of the driver; however both Glenn and Dammeier stated they did know the driver.

Reserve Deputy Iles got into Burke's vehicle and drove down the road in an attempt to locate Burke who had run after the driver into the woods.

Shortly after Iles departure, Deputy Hubbard and Sgt Heller arrived on scene. Shaw apprised both Hubbard and Heller of the situation. Both Glenn and Dammeier were cooperative still sitting un-handcuffed on the ground. Dep. Shaw writes in his report that *basically* both Glenn and Dammeier were free to go as they committed no crime and he did not express interest in pursuing an alleged minor in possession charge. Dep. Shaw said he never expressed verbally to either Glenn or Dammeier that they were free to go.

Dep. Shaw made no mention that Glenn or Dammeier were uncooperative, argumentative, obnoxious or threatening in anyway. In reviewing the video when Dep. Shaw initially contacted Glenn and Dammeier, they also appear calm. In the video Dep. Shaw also portrays a rather casual demeanor when dealing with Glenn and Dammeier. It would be reasonable to infer from the actions of Dep. Shaw, Glenn and Dammeier posed little if any immediate threat towards the officers on scene.

(Approximately 18 minutes later Burke and Iles arrive back at the accident scene. Glenn and Dammeier are sitting calmly on the ground with the other three deputies standing around visiting engaged in general conversation. One of the officers is observed casually smoking a cigarette. As Burke approaches you can hear some conversational laughing, however the atmosphere certainly seems calm).

As Burke walks up to where the other three deputies are standing, Burke's first statement in an expletive voice is, "So these fucking lying pieces of shit say they don't know huh." Burke adds to this by saying the kids are lying etc., when Glenn in a calm voice tone replies back, "Okay bub." This appears to almost immediately incite Burke as he starts to walk towards Glenn, and in a loud voice tells him to get up. Glenn replies, "all right" but almost immediately Burke reaches down grabs Glenn's arm and forcefully picks him up to his feet.

In reviewing that tape, and the reports from the officers on scene, Burke gave no chance for Glenn to comply with his directive to stand; rather it appears out of frustration or anger or malice Burke decides to apply the force to jerk Glenn up.

Within seconds of when Burke lifts Glenn to his feet and subsequently pushes him against the car, Glenn asks *(in a conversational tone)*, "Why do you have to be so mean?" Burke replies back, "Because you're an asshole". Certainly the video does not indicate nor do the other officers on scene report Glenn as being sarcastic, uncooperative, chastising or otherwise problematic in any way at any time prior to Burke's chastising behavior and inappropriate language. It certainly appears that Burke's treatment of Glenn escalated and provoked a significant change in Glenn's behavior toward Burke and incited what could best be described as a casual benign contact up to the point of Burke's arrival.

Burke's detention of Glenn

Burke states upon his return to the accident scene, (prior to initially contacting Glenn) he noticed that Glenn and Dammeier were not handcuffed. He states in oral deposition that

Graham v. Conner reinforces this by stating, "The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

In evaluating the totality of the circumstancing facing Dep. Burke when he initially contacts Glenn sitting on the pavement, there is no justifiable need to grab Glenn and forcefully pick him up, physically force Glenn towards the car, twist his arm behind his back and place him handcuffs. At no time did Burke allow Glenn an opportunity to comply with his commands.

There was no crime at issue with respect to Glenn's being as passenger in a vehicle that was involved in a pursuit. Glenn posed no immediate threat to Burke or the other officers on scene; Glenn posed no flight risk as he had been sitting on the ground for 18 minutes, making no attempts to flee prior to Burke's arrival. Finally Glenn offered little if any resistance to being picked up, forced towards the car and ultimately being placed in handcuffs. In fact, the other deputies observing this transaction describe Glenn as offering no resistance and to the contrary Burke's behavior was dramatic and forceful. Black's Law Dictionary defines excessive force as: Force which is not justified in light of all the circumstances is thereby excessive.

Dep. Burke claims Glenn became tense in the shoulders during the handcuffing portion. The record clearly shows that when Dep. Burke initially contacts Glenn he was derogatory, intimidating in his mannerisms and utilized no effective communication skills when addressing Glenn. He treated Glenn disrespectfully, with contempt and aggressive in his actions.

Dep. Burke yells at Glenn regarding an apparent belief that Glenn is being untruthful as Glenn replies casually, "Okay bub". Immediately after Glenn's comment, Burke begins to walk quickly towards Glenn from approximately 8-10 feet away. During this time Burke says nothing. Burke then comes upon Glenn and reaches down towards Glenn arm as he tells him to stand up, while making contact with Glenn's arm. Burke then forcefully picks Glenn up and pushes him to the car while calling him an asshole. Burke continues to tell Glenn to stop lying during the handcuff procedure.

Based on my personal experience, training and instruction I have received in the area of human physiology with respects to police/suspect contacts in confrontations, to include the biomechanical aspects of officers involved in force situations, it would be a reasonable to infer that the described tenseness in Glenn's shoulders, [as described by Burke] would most closely resemble a sympathetic nervous system reaction to a rapidly evolving, intimidating situation that Glenn is now involved in. This may [in part] explain the tenseness reaction exhibited by Glenn which would differ from an intentional act of resistance exhibited by a suspect.

With respect to the use of handcuffs, it should be recognized that courts have consistently held that handcuffing is a use of force and as such must meet the reasonableness requirements of Graham v. Connor. In the 2007 9th Circuit case of McIntyre v. City of San Jose the court ruled that a jury could have concluded that the level of force used was

excessive with respects to an officer allegedly applying a pain compliance control hold on the arrestee, shoving her outside, and slamming her against a car when she was calm, sober, an compliant. See also *Fakorzi v. Dillard's Inc*, S. Dist. Iowa 2003.

Based on my review of the record, I am agreement with Sheriff Gil Gilbertson's conclusion that Dep. Burke used unreasonable (excessive) force against Mr. Glenn in count (1) of the allegation as described in Sheriff Gilbertson's memorandum to Dep. Burke dated August 28, 2007.

I do however conclude that Dep. Burke committed additional violations of General Order 05.01, Use of Force, dated 2/4/03, section E2 in his handling and unlawful detention of Richard Dammeier.

Determination to provide courtesy transport

Police can become responsible to provide reasonable care for persons that police create the situation for (duty to care doctrine), however when that duty arises, it does not reduce the individual liberties of free citizens, which cannot be overstated. Glenn at this point is technically a free citizen. Officers need only take reasonable steps to ensure the safety of the persons they release in remote and/or unfamiliar areas, (i.e. phone call, wait for ride, or offer transport).

It was never explained to Glenn why he was restrained or detained and when and if he was free to leave, [except at the Town and County Market]. Glenn needed to be given the opportunity to walk if he so desired. If the determination to transport is mutually agreed upon then [per policy] handcuffs are not required as Burke states in the record. It is striking that Burke claims that he was providing a courtesy transport and in the course of doing so, behaved toward his guest passenger as Burke did with both verbal abuse and physical violence. At no time does the tape reveal that Burke tried to calm Glenn, explain, apologize or reduce the tensions that he caused.

Excessive force claim / Contact with Glenn in vehicle

Prior to leaving the accident scene, while still discussing the event with fellow deputies, Dep. Burke determines he is going to transport Glenn to back to Grants Pass. This was disused amongst the deputies prior to leaving and they agreed they would transport to Walgreens then issue citations for the violations. (There is some discrepancy in the record if the transport would conclude at the Town & Country Market or at Walgreens). This determination however was never clearly explained to Glenn.

More importantly, Glenn indicates by his conversation with Burke that he is confused with what he is being arrested for. It is reasonable to assume that Glenn felt he was not free to leave based on the circumstances.

While in the vehicle prior to leaving Glenn says: [Glenn] "What I am I criminal for?" [Burke] "Everything man" [Glenn] "What did I do? Sat on the ground, hand my hands...[unrecognizable] telling the guy to stop.

Just prior to the transport, Glenn and Burke become involved in an argument inside the patrol car. The majority of this argument centers around Glenn calling Burke a crooked cop, and Burke challenging Glenn to fight. Shortly thereafter Burke begins to drive away from the accident scene and he turns off the in car video disabling the audio recording. Burke states in oral interview he did this to save tape.

In reviewing the record, this act alone calls into question the veracity and reliability of Burke's statements in his written/audio statements from this point forward. Understanding the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See *Scott v. United States* (1978).

Burke has subjected Glenn to a barrage of derogatory statements, used profane language, repeatedly threatens Glenn with physical harm, makes reference to use his handgun to compel statements from Glenn, and lastly the excessive force applied to Glenn to include the illegal detention, which now [based on Glenn's reasonable belief that he is not free to leave] moved this detention into a de facto arrest situation.

I find difficulty in concluding that Burke feels he should turn the tape off in efforts to save tape. As a certified DRE, an 8 year police officer with an advanced police certificate, this situation certainly signifies itself as an important incident to fully capture on video; if not for defense of the officer against misconduct but even more importantly because Burke contends this was a courtesy transport to a free citizen.

Dep. Burke along with Dep. Iles leave the accident scene and begin their transport of Glenn into town. Glenn is seated in the [backseat] left rear passenger side un-seat belted and in handcuffs. The protective screen in the car is part plexi-glass and part metal grate with the plexi-glass on the side behind the driver [Burke]. Burke claims he does not use the seatbelt because the cars are only equipped with two point restraints and this provides little restrictive safety measures to the occupants. Glenn claims the lap belt only protects the officers if a prisoner is attempting the kick at officers.

Burke alleges that while Glenn was yelling at him, spit began to fly through the grate and enter the front compartment resulting in some landing on his arm. Burke says he then stops the car and walks around to confront Glenn.

Dep. Iles states that after Burke turned off the video recorder, (this was shortly after they left the accident scene) they continued to drive for approximately one minute during which time Glenn was still swearing at Burke. Dep. Iles states that all of sudden Burke slams on the breaks then quickly exits the patrol car. Dep. Iles makes no mention of seeing any spit fly through the cage and does not remember Burke making any comments about being spat upon prior to stopping the car. It would seem reasonable that Iles would have some perceptual indication and/or witnessing of the spit come through the cage. This could be either actually seeing the act or by the reactions of Burke either verbally acknowledging the action of being spat upon or physical gestures to indicate this act occurred.

Burke describes in oral interview that Glenn's actions were not an intentional "lugy" or spitting action but rather Glenn was just yelling so loud that "stuff" and "spittle" came out of his mouth landing on arm. However Burke writes in his rebuttal that while Glenn was

screaming, "A large amount of spit came flying through the grate towards me". A discrepancy exists as to whether Burke was spat upon or spat towards. A discrepancy exists as to whether Glenn's spittle was intentional or inadvertent. It is reasonable to assume that a veteran officer could distinguish as this was the precipitous act resulting in Burke re-contacting Glenn physically.

After stopping the vehicle Burke says he opens the rear door and notices that Glenn's is leaning to his left raising his right foot in preparation to kick. Burke said he reacts in a purely defensive manner whereby reaching in, grabbing Glenn and pulling him towards him, while further bending him over at the waist towards his right knee. Burke says he then grabs the back of Glenn's shirt, pulls it over his head in attempt to utilize it as an improvised spit shield. Burke states he had no other options available to him other than what was utilized and that his action were more of a reaction to Glenn's alleged actions and to prevent him from spitting.

Although the action of pulling a shirt over a person's head in efforts to protect against being spat upon may certainly be reasonable depending on the circumstances, I do find the circumstances articulated by Burke, both in writing and in verbal testimony, to be in contradiction to one another making it difficult to establish the core transaction from which the force emanated whereby justifying the action.

Dep. Iles who is standing outside the car at this point observed the interaction between Burke and Iles. Iles states that Burke immediately reached in and violently pulled Glenn's shirt over his head while physically forcing his head down between his [Glenn] knees.

Although the record of Burke's and Iles recollection of this incident differ, [with respect to the physical force applied] the aggravating factor as described above, whereby the video was turned off, deteriorates at the credibility of Burke's testimony of the events portrayed. The circumstances and the video certainly suggest that Burke's act in turning off the video when he did was a decision based on bad motive which affects significantly the credibility I can give Burke. For purposes of evaluating this use of force, I will rely on the circumstances outlined in Dep. Iles report as to the reasonableness of this action.

Burke states he has right to protect himself against being spat upon and being kicked. The only articulation in Burke's report alleging the possible kick was, "as I opened the door Glenn leaned to his left and raised his right foot and prepared to kick me." Burke concludes the totality of these circumstances [as to state] that he reacted in a purely defensive manner. I find little evidence in the written record, verbal interview with Burke along with witnessing observations by Dep. Iles that the alleged kick mannerisms and/or even the described spitting occurred.

Due to the fact that Glenn is a free citizen at this point [as determined by Burke's belief], although still detained in a *de facto* arrest situation, the justification of Burke's physical force also falls within common law relating to the provisions set forth in ORS 161.205(5), stating that a person may use physical force upon another in self-defense... so long as the degree of force employed is reasonable under the facts of the case. However the analysis of reasonableness is still evaluated through Graham. Burke's actions were objectively unreasonable and not lawful under Oregon laws relating to physical force, arrest and detention.

In evaluating the totality of the circumstances surrounding this encounter, weighing the governmental interests at stake against Glenn's presumptive right to be free from unreasonable seizure, [i.e. force]; Burke used unreasonable force by forcefully grabbing Glenn's head, manipulating Glenn's body towards him, violently pulling his shirt over his head, forcing Glenn's head towards and/or between his legs, and applying unnecessary pressure to his upper torso by "*jumping up and down on him*" as described by Iles.

Burke states he reacts in this manner, purely defensively, based on the unarticulated assumption that Glenn may kick or be spat upon. [During this encounter, Glenn describes Burke as grabbing and pulling at his ear, which apparently became swollen the next morning.] Burke acknowledges that he reached around Glenn's head to wrap him up and in the process may have touched his ear. However this force is not justifiable as a defensive measure under the circumstances.

Dep. Iles states [in-part] that during the struggle it appeared that Glenn was trying to pull away from Burke while Glenn was yelling for Burke to get away from him and to leave him alone. [Glenn] also described he was afraid of being hurt again so he wedged his feet under the front seat, (it is assumed Glenn did this to prevent being pulled from the car). It should be noted that while Burke was applying physical force to Glenn, Burke was yelling profanities at Glenn stating he did not have to put up with his shit... When the circumstances are considered from Glenn's perspective in that time and place, his fear of what Burke would do next is understandable, since Burke had inflicted pain on him before, and because he stopped the car by slamming on the brakes and coming into the prisoner cage at a dark and remote location in an unpopulated part of the County.

In applying Graham's reasonableness test, Glenn at this point has committed no crime or suspected of any crimes, [based on Burke's substantive determination]. Glenn has been searched for weapons, placed in handcuffs, secured in the back of the sterile patrol car and poses no immediate threat to Burke or Iles. Iles also states that Glenn was not physically assaultive or threatening in any way. Glenn is not under arrest, so the inquiry into his resistance to arrest is a *moot* point. Glenn has also made no attempts to escape; although this too would be a *moot* point as I must presume that Burke would say that Glenn was not under arrest.

The violation citations should have been provided to Glenn at the scene and the inquiring into whether or not Glenn would like a courtesy transport, or phone call, would be left to Glenn's discretion. It is important to stress that Burke's application of force, in his encounter, is against a [free citizen] who has not been charged with or suspected of committing any crimes. In evaluating the totality of the circumstances facing Burke at the moment the force was used, it is clear that Burke used unreasonable [excessive] force in his contact with a handcuffed [free person] in back of his police car.

With respects to the potential kick that Burke describes: If [in fact] Glenn did raise his foot in attempts to kick at Burke, the positioning of Glenn's body as described by Burke, taking into consideration Glenn's physical stature, (5'07", 250 lbs), the probability that Glenn could produce a threatening kick towards Burke from this position is unlikely. If this were the case, Burke's attempts to grab at Glenn from the front would create the circumstances where possibly injury could occur, when other reasonable methods were available. It would be reasonable to expect Burke to use consideration of forethought and utilize other

available options, mainly Iles assistance, if in fact an extraction or other procedure needed to be conducted. Glenn does not adequately substantiate the claim for the need of force based on self defense, and neither does Iles. There were two deputies with access to Glenn from both sides of the police car. There was no need whatsoever for Burke to risk injury to himself or Glenn in the manner he did. His tactics were improper; and the force was not justified.

At the conclusion of this episode, with Glenn's shirt pulled over his head, Burke slammed the door and returned to driving into town.

Based on my review of the record, I am agreement with Sheriff Gil Gilbertson's conclusion that Dep. Burke used unreasonable (excessive) force against Mr. Glenn in count (2) of the allegation as described in Sheriff Gilbertson's memorandum to Dep. Burke dated August 28, 2007.

Excessive force claim / Second contact with Glenn in vehicle

Burke describes after he started to drive, Glenn's shirt came off his head and the argument continued. [This second incident almost mirrors the above described incident]. Burke states that he drove approximately 100 yards then Glenn came back up the screen and spit started to fly into the front compartment, some of which landed on his arm, (unknown which).

Iles states that Burke drove approximately 100 feet then slammed on the breaks putting the car into park.

Glenn states after they started driving, Burke made a comment to him stating that he will meet him anywhere off duty to kick his fat ass. As the record indicates, Burke makes mention several times throughout about fighting with Glenn, either on or off duty. Glenn admits to using profanity towards Burke during this transaction.

Burke states that after he stopped the car he went around the passenger side, opened Glenn's door and observed Glenn in the same position as described above, [leaning over on his left side with his right foot up as if he was going to kick at him]. Burke states he immediately wrapped Glenn around his shoulders near his neck and restrained him by holding his upper body over his knees. Burke makes mention that he notices his shirt was ripped so he determines that it would be useless to use it again as an improvised spit shield. Burke says he applies a tactic taught to him in his first year, which resulted in him lying on top of Glenn yelling at him to quit. I am not aware of this specific tactic.

Dep. Iles states when Burke got out of the vehicle, he also exited and watched the transaction between he and Glenn near his door. Iles described Burke as struggling with Glenn while Burke was grabbing at Glenn's head. Iles also adds that Glenn was trying to physically push away from Burke during this initial encounter. Iles said Burke was able to get a hold of Glenn and again physically pushed Glenn's head down between his knees. Iles said that Burke then began to bounce up and down on Glenn.

Dep. Iles states this second episode appeared to be more physical in nature with respects to Burke's overall application of force; describing Burke as having to enter the car more to

get a hold on Glenn because Glenn was doing everything in his power to scoot away from Burke. Burke stated he did not specifically see if Burke grabbed Glenn by the neck or throat. Iles added that Burke was continuing to yell profanities at Glenn during this encounter, but never did he see and/or perceive that Glenn was about to kick at Burke.

Dep. Iles makes mention he became confused on exactly what to do in terms of intervening and states he began devising a plan if Burke started to throw punches at Glenn. Shortly after this Burke released Glenn, came out of the car and slammed the door. Both he and Burke then resumed driving to the Town and County Market. Iles also makes mention that Glenn asked for his name because he witnessed this abuse and called Burke a crooked cop.

Glenn states when they started driving again, both he and Burke continued to yell profanities at each other. Glenn states that when Burke opened the door he immediately reached in and pulled his shirt over his head a second time, then began to slap him on the head. Glenn states that he told Burke several times to quit hitting him.

In my review of the incident, Dep. Burke is the only one that suggests Glenn is spitting. If this were the case [to have occurred], it would seem reasonable that Dep. Iles, [who would have been sitting a foot away from Burke] would have felt some spit land on his arm, or observed spit coming into the front drivers area or perceived some physical response actions by Burke once this alleged conduct occurred.

Dep. Iles states once he and Burke reached the Town and County Market, Burke wanted to talk to him [Iles] outside the car. Upon doing so Burke said, "Go ahead and chew my ass. I can see it in your eyes. You think I went too far. You think I crossed the line." Iles said he paused and replied, "Yeah I do." Iles said Burke replied back, "Yeah you're probably right. I lost my cool; I was pretty unprofessional."

Deputy Burke then radioed Sgt. Heller and requested he meet at the market. Hearing this request over the radio, Dep. Hubbard responded to the market as well.

In applying Graham's reasonableness test, Glenn at this point has committed no crime and is not suspected of any crimes, [based on Burke's substantive determination]. Glenn has been searched for weapons, placed in handcuffs, secured in the back of the sterile patrol car and poses no immediate threat to Burke or Iles. Iles also states that Glenn was not physically threatening. Glenn is not under arrest, so the inquiry into his resistance to arrest is a *moot* point. Glenn has also made no attempts to escape; although this would be a *moot* point as Glenn is not under arrest. In evaluating the totality of the circumstances facing Burke at the moment the force was used, it is clear that Burke used unreasonable [excessive] force in his contact with a handcuffed [free person] in back of his car.

In reviewing the record it could be described [at the very least] as blatantly obvious that an officer facing these circumstances, i.e. giving a courtesy transport to a free citizen who is physically restrained in handcuffs, and already having a physical altercation with including the multitude of threats being leveled by both parties involved and the propensity for this to continue; it would certainly seem reasonable that Burke would have captured these transactions on tape.

Based on my review of the record, I am in agreement with Sheriff Gil Gilbertson's conclusion that Dep. Burke used unreasonable (excessive) force against Mr. Glenn in count (3) of the allegation as described in Sheriff Gilbertson's memorandum to Dep. Burke dated August 28, 2007.

Length of time in handcuffs:

As stated above, the courts have held the use of handcuffs may be deemed excessive force based [in part] on either misapplication or for an extended period of time absent diligent investigation or lacking probable cause to arrest, (*Meredith v. Erath*, 9th Cir 2003).

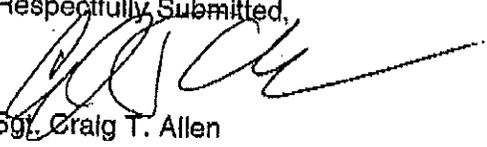
In this case, Glenn was in handcuffs for over an hour. Burke does not articulate any reasonable cause for the handcuffs to be applied. It can only be [inferred] that Burke initially handcuffed Glenn for officer safety, but as outlined above this scope of this detention quickly lapsed. There were no articulatable facts presented that indicated an investigation was undertaken. Burke's claim that Glenn needed to be kept in handcuffs due to the courtesy transport [which was unknown to Glenn] is incorrect; however, this is not required by policy.

Separate from the excessive force used on Glenn, the length of detention for a violation is clearly excessive. The laws and statutes governing this type of detention and arrest are well established. Taking into account Burke's training and experience, [certainly his experience as a DRE, understanding even more so the contours of stops, detentions, reasonable suspicion, probable cause and arrests; including how a contact moves through these requirements] it would certainly be reasonable to infer that Burke understood his actions and the clear infringements he caused on Glenn's 4th Amendment rights. Comparatively, Deputy Shaw very soon into this stop realized and concluded that Glenn and Dammeier were free to go, [although not expressing this].

Conclusion

It is my expert opinion in evaluating the force used under the totality of the circumstances that Deputy Burke clearly used [unreasonable] excessive force in his handling of Sebastian Glenn in the various ways described in this report.

Respectfully Submitted,


Sgt. Craig T. Allen

Date: 4/30/08

Appeal to Proposed Termination

Deputy Michael S. Burke
Josephine County Sheriff's Office

In accordance with the rights as a Deputy Sheriff under the collective bargaining agreement, I submit the following appeal to the erroneous investigation by Undersheriff Donald Fasching which resulted in the proposed termination of my employment with the Josephine County Sheriff's Office.

The following charges were introduced against me based on a false complaint filed by Sebastian Glenn. The investigator took this false complaint and brought forward the following charges:

- General order 05.01 (E.2) Use of Force
- General order 05.01 (E.2) Use of Force
- General order 05.01 (E.2) Use of Force
- General order 05.33 (A.2) Reporting Use of Force
- General order 02.02 (B.7) Rules of conduct
- General order 02.01 (D.29) Rules of conduct
- General order 02.01 (C.1) Rules of conduct

With this rebuttal, I intend to show many facts were ignored or left out of this incident, which prove I am innocent of the allegations made by the investigator and Sebastian Glenn.

Allegation: Excessive Use of Force

Upon ordering Glenn to stand up, I took hold of his left arm to control him once he stood up. This hold is referred to as an "escort hold" and is taught in all defensive tactics classes by DPSST as well as the Josephine County Sheriff's Office. In all of the training I have received by DPSST and this office, as well as the previous 9 years of experience as a peace officer, this is not a Use of Force as depicted by the investigator.

Upon standing I placed Glenn's left hand behind his back, as is normal procedure for handcuffing a subject. He started to turn around, which every police officer will tell you is a possible threat. I reached around and took hold of his other arm to place it behind his back. As I placed him into handcuffs, I had to ask him to relax his shoulders because he was tensed up. This was another indication of possible resistance.

Based on Glenn's verbal abuse and attempt to turn around, I applied a restraint hold utilizing his thumb to prevent him from turning around as I searched him for weapons. This was done to be able to control him if he decided to resist. This is standard and is used daily by deputies with the Josephine County Sheriff's Office. This hold was taught to me by defensive tactics instructors of the Josephine County Sheriff's Office, and I was instructed this was not a use of force but a control hold. I re-contacted a defensive tactics instructor and was told again this was not a use of force.

This incident was witnessed by ~~four other deputies~~ as well as an ~~independent~~ ~~civilian~~. Deputy Shaw and Reserve Deputy Iles both made false statements regarding this part of this incident (see exhibit 2 and 3), whereas Sgt. Heller, Deputy Hubbard and Mr. Young all stated I did NOT use excessive force at any time. Deputy Shaw had no possible view of this incident, as he was on the other side of the suspect vehicle speaking to Sgt. Heller and could not have seen this interaction.

Glenn at no time cried out in pain or stated I hurt him until after placed into the patrol vehicle. He first claimed I hurt his arm, then claimed I threatened to break his thumb. This is proof positive he was already fabricating a story. Glenn's complaint is a completely false statement, showing he was untruthful with his complaint and his interview with the investigator. Glenn's memory recall of this incident was deeply affected by his highly intoxicated state as well as indicators he was under the influence of a CNS stimulant. He knew he was in trouble for being a minor in possession of an alcoholic beverage and created his false statement to try and get out of trouble.

Allegation: Excessive Use of Force

The first stop I made with Glenn was in response to him leaning forward and placing his face next to the protective grate. He was screaming about sodomizing my wife and children and being verbally abusive. I repeatedly told him to sit back and he refused. He screamed so forcefully, a large amount of spit came flying through the grate toward me.

I stopped the vehicle and walked around to the passenger side. As I opened the door Glenn leaned to his left and raised his right foot and prepared to kick me. ~~As a purely defensive action, I pulled him over his right knee to place his balance on his right side so as to prevent injury to me, as well as prevent him from spitting on me again.~~ As I had no other option to prevent him from contaminating me with his bodily fluids, I pulled his shirt over his head to contain his bodily fluids to himself. This has always been acceptable in this office and I have seen other deputies use this tactic on countless other occasions.

As a deputy sheriff, I have the solemn right to protect myself from being exposed to the bodily fluids of any other person. These fluids are known to carry virus and bacteria such as Hepatitis, Influenza, Streptococcus, and many others. Additionally, when Glenn leaned back to kick me both of my knees were possible targets and this could have resulted in serious injury to my knees. My other option was to pull Glenn out of the vehicle by his feet and allow him to impact the ground and cause him injury. I did not want to injure him and chose the most minor action I could to protect myself as well as Glenn.

In the investigator's report, he mentions Glenn had a discrepancy in his recall of the incident by saying I pulled his shirt over his head while stopped at the Town and Country Market. The pulling of the shirt over his head to prevent him from spraying his bodily fluids on me was done shortly after we left the scene and prior to passing Hidden Valley High School on Murphy Creek Road. Another perfect example of Glenn failing to tell the truth or accurately recall what happened. (See exhibit 1)

In the investigator's conclusions, he claims Iles said Glenn was not a "physical threat". Reserve Deputy Iles was not in a position to evaluate the threat to my safety and his erroneous assumption cannot be used to form any kind of conclusion. The investigator also claims I "over-reacted" and my "level of force" was "unreasonable." I never over-reacted, injured or abused Glenn in any way. **The investigator's conclusions are based completely on false statements made by Glenn and Iles.** (See exhibit 1 and 2)

All of my actions in this incident are **NOT** considered a use of force. They fall into the category of a "**restraint**", the same as holding someone on the ground, against a wall, or holding someone bent over the patrol vehicle as you search them. At **NO** time did I punch, slap, pinch, hit, impact, taze or pepper spray Glenn or use any kind of force as shown by the training in this department or my experience as a peace officer.

NEED
POLICE

Allegation: Excessive Use of Force

As I re-entered my patrol vehicle and proceeded, we made it approximately 100 yards and Glenn was back up at the screen and spitting at me again. I noted his shirt had come off his head and spit had landed on my arm as he was screaming. I also saw more spit flying through the grate and in my direction. I stopped the vehicle and again went around to Glenn's door to pull his shirt back over his head.

As I opened the door Glenn was already leaning to his left and raising his foot to kick me. I immediately wrapped him around his shoulders near his neck area and restrained him by holding his upper body over his knees. I saw his shirt was ripped and knew it would be useless to use it as protection from his spit. I used a tactic taught during my first year in this department and raised my voice and ordered Glenn to stop. All I did was lean over him to restrain him and instructed him to stop.

At this point I was a little irritated at being spit at, and I used profanity by telling Glenn to "stop acting like a fucking punk." I abhor using profanity, but I did this night to my shame and regret. I also told Glenn to sit back, be quiet and he would be released with his citations as soon as we arrived in town near a telephone. I told him to stop spitting through the grate and he apologized for spitting on me. He stopped being verbally abusive for the moment, so I allowed him to sit up and he again began being verbally abusive, but made no other attempts to kick me.

I shut the door and began driving toward town again. Glenn continued to be verbally abusive toward me, but stayed away from the grate and did not spit at me again. I continued driving and decided to stop at the Town and Country Market instead of Walgreen's, as they had a telephone for Glenn's use.

In the investigator's conclusions he stated Iles reported me "bouncing up and down" on Glenn. This is a completely inaccurate statement, and Iles has made numerous false statements to discolor this incident and paint me in a false light. (See exhibit 2) As Iles has no credibility and a history of making false statements on this and other incidents in this office, his inaccurate recall should not be used to relay information in this incident. Glenn also has proven himself to be untruthful (See exhibit 1) and cannot accurately recall this incident due to his high intoxication and intent to lie about this incident.

The investigator's conclusion in this incident is based on false and inaccurate information received from Glenn and Iles. Glenn was a threat to me which culminated in my actions. My actions in this incident again fall into the realm of "restraint" to prevent injury to myself and was not a use of force according to my training and experience in this office.

Allegation: Procedure

The investigator states I used "different levels of force" to control Glenn. He makes this conclusion based on inaccurate and intentional false statements by Iles, Glenn and Shaw. (see exhibits 1, 2 and 3) Sgt. Heller, Deputy Hubbard and Mr. Young all stated I did not use any force during this incident. The investigator failed to credit the majority of witnesses and relied on false statements to make his conclusion.

My action in the first incident was an "escort hold" not a "bent-arm lock" as alleged by the investigator. A bent arm lock is completely different from the escort hold I used. Additionally, the restraint hold I used while holding Glenn's thumb is a "restraint" in case of resistance. Defensive tactics instructors told me this was not a use of force before this incident and after this incident.

My actions in the second and third incidents were not uses of force, and therefore not reportable based on my training and experience with this office. By bending Glenn over his knees and restraining him, I was preventing injury to myself as well as to him. This again is a "restraint" and not a use of force. The investigator admits there was a "perceived threat" to me, but denied this in his previous allegations. This is a complete reversal of his stance.

If this department wishes to classify my actions as a "use of force", then the proper avenue is to clearly communicate this in training, which has not been done by this administration. The second thing that should be done is decide if this "alleged" use of force was justified based on the totality of the circumstances. I have seen these exact same methods used countless times by other deputies over the years, and they have never been classified as a use of force. As such, this charge is unsustainable and department wide training should be conducted if this administration wishes to change or correct this.

Allegation: Conduct

This charge was brought based on the investigator crediting Glenn and Iles' statements. Iles and Glenn have been irrefutably discredited and proven to have made false statements. Based on these facts, this charge is not sustainable as alleged in the investigator's report.

The investigator claims I used my position of authority to "punish" Glenn. I am seriously offended by this statement as it has absolutely no validity at all. This conclusion is false as my actions were defensive and preventive in nature.

All of my actions with Glenn were responsive in nature and Glenn precipitated these with his actions. Although my words were out of line with my normal behavior and unprofessional in nature, this does not prove in any way that Glenn was "punished" by me or "abused" by me.

This charge is completely unsustainable in its entirety based on the totality of the TRUE facts.

Allegation: Conduct

Of all my actions in this incident, my error was in my responsive verbiage with Glenn as I responded to his verbal abuse. I was ashamed by my words and knew I had violated policy regarding professional behavior. I not only shamed myself, but I dishonored the principles I have chosen to follow in my life. I knew this and I called Sgt. Heller back to my location to advise him of my inappropriate behavior. I confessed to Iles I was wrong in what I said and I also confessed to Sgt. Heller what I said. I explained everything that happened, and told him I knew this was a violation of policy.

Sgt. Heller agreed and verbally counseled me regarding my behavior. This was perfectly appropriate discipline for a first offense considering all of the circumstances. Under the progressive discipline doctrine governing discipline in all labor forces, a first offense is handled with verbal counseling/reprimand. Any subsequent violations of the same nature are handled with more serious discipline with written documentation in order to correct the behavior.

In my previous 9 years of experience as a peace officer, I never once engaged in this kind of response to verbal abuse. I have learned from this incident and the discipline imposed by my supervisor, and will never again engage in this kind of behavior.

It is very important to understand that police officers are human beings, and as such we are prone to making mistakes like everybody else. One mistake does not define a career, nor discredit an entire department.

Allegation: Courtesy

This allegation is directly related to the above allegation. There should not be 2 separate charges of the same type for the exact same behavior. This is referred to as "stacking" charges with the intent to be inflammatory and bolster the erroneous conclusions of this investigation.

I take exception to the investigator's allegation I was "antagonistic and threatening" toward Glenn. My words were **RESPONSIVE** in nature, not antagonistic or threatening. He also claims I continually used profane language throughout this contact. I did use sporadic profanity of a minor nature, except for the comment telling Glenn to "stop acting like a fucking punk." The comment of "continual" use of profanity is a blatant misrepresentation of the truth in this matter.

Although I agree my responses to Glenn were inappropriate and unprofessional, one mistake does not warrant severe punishment. I have already been counseled regarding this issue by my supervisor. I would respectfully suggest I not be subjected to double jeopardy by being disciplined twice for the exact same infraction. I would also suggest that by severely disciplining me for words alone would be punishment disparate to how other deputies are treated for this exact same type of behavior.

Remedy

There is only one honorable way to solve this entire issue. Look at the facts and use these facts to determine the truth. The facts in this case are proven in the video tape of the incident. Although my bantering with Glenn paints me in a bad light, it also proves the false statements by Glenn, Iles and Shaw. Any review of these facts should look at each allegation independently to determine the truth.

Disregarding 3 credible and objective witnesses (Mr. Young, Deputy Hubbard and Sgt. Heller) and relying on 3 discredited witnesses (Res. Deputy Iles, Deputy Shaw and Sebastian Glenn) to sustain these charges is a violation of the tenets of basic investigative technique. Also, pre-judging this issue before gathering all of the facts is also an injustice that violates fair investigative techniques.

I offer the following irrefutable facts for consideration:

- Deputy Iles and Deputy Shaw made inaccurate and false statements.
- Sebastian Glenn was highly intoxicated and appeared to be under the influence of a CNS stimulant.
- Sebastian Glenn has been completely discredited in his entire complaint.
- The Investigator relied on false statements to credit a false complaint.
- Sgt. Heller, Deputy Hubbard and Mr. Young stated I did not use excessive force or behave inappropriately during my first contact with Glenn.
- All of my actions were not uses of force based on training and experience in this office.
- As no use of force was used, no form was needed to be filled out.
- My responses to Glenn were inappropriate and unprofessional.
- I have already been appropriately disciplined for this violation.

The standard for finding a witness to be credible is very simple: Is their statement true and accurate? Are there inconsistencies in their statement?

Deputy Shaw, Reserve Deputy Iles and Sebastian Glenn did not make only one false statement, but numerous false statements. (See exhibits 1, 2 and 3) Some were inaccurate inflammatory recollections, but most were simply false. Interestingly, some of the completely false statements by Iles and Shaw are remarkably similar, raising the issue of how their statements were similar if they are completely false.

If there are so many false statements in each of their statements, their statements cannot be given any credibility of any kind. Using these discredited statements as an avenue to sustain false allegations is unconscionable and a violation of basic investigative techniques.

Based on the truth in this matter, the only allegation that can be sustained is the unprofessional conduct I exhibited when responding to Glenn's abuse. I know better than to act in the manner I did, and I was disciplined in accordance with existing rules for progressive discipline. I have never had a complaint like this before, and I can assure you I will never have one again.

All of the other allegations should be labeled as "unfounded". However, if this administration wishes to classify these as reportable uses of force in the future, then proper communication and training should be implemented. The next step is to decide if I was justified in protecting myself from spit and from being kicked by Glenn. If I had known or possibly perceived the administration would consider these reportable, I would have complied.

Even so, I reported them to my supervisor the night of this incident and was counseled over my admittedly inappropriate behavior. At no time was I advised or instructed to complete a use of force report by my supervisor or anybody else. This was due to my actions not being a use of force as known or perceived by me, my supervisor or any other deputies in this department.

Respectfully submitted,

Michael S. Burke

CC: David Snyder, attorney at law
Suzanne Chanti, attorney at law



JOSEPHINE COUNTY SHERIFF'S OFFICE

Memorandum

SHERIFF GIL GILBERTSON

Donald L. Fasching, Undersheriff
Robin Ward, Lieutenant
Sue Watkins, Business Manager
500 NW 6th St - Grants Pass OR 97526
(541) 474-5120
FAX (541) 474-5114
E-mail: jocosheriff@co.josephine.or.us

DATE: August 6, 2007
MEMO #: PO-07-012
TO: Gil Gilbertson, Sheriff
FROM: Donald Fasching, Undersheriff
RE: Citizen's Complaint Investigation #07-004

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF
SHERIFF AND/OR THE COUNTY ATTORNEY.

COMPLAINANT: Sebastian C. Glenn DOB: [REDACTED]
[REDACTED] Cave Junction, OR
Home Phone: [REDACTED]
Work Phone: [REDACTED]

SUBJECT DEPUTY: Deputy Michael Burke, ID #35672
Hours: 1700-0300
D/O: TWT

WITNESS DEPUTY(S): Reserve Deputy Jeffery Iles, ID #42802
Reserves
Hours: Varies Shift: Varies

Deputy Keith Hubbard, ID #29699
Hours: 1700-0300
D/O: SSM

Deputy Shawn Shaw, ID #30733
Hours: 1700-0300
D/O: MTW

Sergeant Joel Heller, ID #21820
Hours: 1700-0300
D/O: SMT

CIVILIAN WITNESS: Rick Allen Young DOB: [REDACTED]
[REDACTED]
Grants Pass, OR 97527
Home Phone: [REDACTED]

SUMMARY:

On 05-12-07, at 0300 hours, Deputy S. Shaw attempted to initiate a traffic stop. The driver, failed to stop, lost control of the vehicle and crashed into a ditch. The driver exited the vehicle and fled on foot. Deputy Shaw detained two male passengers while other deputies pursued the driver. The passengers, Sebastian Glenn and Richard Dammeier, were told to sit on the ground next to the wrecked vehicle. Deputy M. Burke later arrived at the crash location and arrested both subjects. Deputy Burke handcuffed Glenn and placed him in the rear seat his patrol car. Burke transported Glenn to the parking lot of the Town and Country Market, 2482 Williams Hwy, Grants Pass. Burke cited Glenn for two offenses and released him. While in custody, Glenn alleges Deputy Burke used excessive force while handcuffing him and assaulted him on two separate occasions while he was seated in the rear seat of the patrol car.

CONCLUSION:

1) Allegation: **FORCE** **SUSTAINED**

Sebastian Glenn had been removed from the suspect vehicle by Deputy Shaw and seated on the ground. He had not been handcuffed, nor was he under arrest. During Shaw's interview, he said that since Glenn had done nothing wrong, he was going to let him go. Deputy Burke approached Glenn and told him to stand up. As Glenn began to move, Burke grabbed Glenn's left arm and applied pressure to lift him up. Glenn said Burke grabbed his arm and twisted it behind his back. Deputy Iles said Glenn was not resisting Burke's command to stand. Deputy Shaw said Glenn was not resisting. When asked about the force used by Burke, Shaw said, "He (Glenn) didn't do anything to warrant that." Deputy Hubbard was asked if he saw Glenn resisting Burke. Hubbard said, "No." I asked Hubbard if the force used by Burke was reasonable. He said, "I don't believe it was excessive, but it's more than I would have used. Sergeant Heller was asked if Glenn was resisting Burke. Heller said, "Glenn was jerking." I asked Heller if the forced used by Burke was reasonable. Heller said, "It was at the upper end of being reasonable."

Based on this investigation, the force used by Deputy Burke was "unreasonable." This is a violation of General Order 05.01, Use of Force, dated 02-04-03, Section B, 2, which states:

"Deputies shall use only the level of force that is reasonable to accomplish the lawful objective. Deputies are authorized and expected to use whatever force is reasonable in protecting themselves or others from bodily harm."

Sebastian Glenn was seated on the ground. He was not under arrest and was not a threat to any of the deputies. Deputy Burke should have used verbal commands and allowed Glenn to stand on his own. It was clear from the video tape and the witness deputies' statements, Deputy Burke applied a control hold to Glenn's arm. During his interview, Burke said Glenn did not resist. This level of force was unreasonable for the level of resistance. The allegation of unreasonable force is **SUSTAINED**.

2) Allegation: **FORCE** **SUSTAINED**

Deputy Burke handcuffed Sebastian Glenn and placed him inside a patrol car. While driving to a pre-determined location, Glenn became verbally abusive towards Burke. Burke drove off of the roadway and stopped the car. Burke exited the patrol car, opened the rear door and grabbed Glenn's shirt. Burke pulled Glenn's shirt over his head and began pushing Glenn's head downward towards his knees.

Investigator's Note: From the time Burke left the crash site to the time Glenn was released, Burke made two stops. This force allegation and the following allegation are based on Deputy Burke's actions during the stops. A discrepancy was noted as to which stop the t-shirt was pulled over Glenn's head. Iles and Burke said it was done during the first stop, Glenn said it occurred during the second stop.

Glenn said Burke grabbed his neck and ears trying to pull him out of the patrol car. Iles said Burke "violently" pulled Glenn's shirt over his head and pushed down on Glenn's head and back. Glenn said he was only verbally abusive towards Burke. Iles said Glenn was not a physical threat to either deputy. Based on this investigation, the force used by Deputy Burke was "unreasonable." This is a violation of General Order 05.01, Use of Force, dated 02-04-03, section E, 2, which states:

"Deputies shall use only the level of force that is reasonable to accomplish the lawful objective. Deputies are authorized and expected to use whatever force is reasonable in protecting themselves or others from bodily harm."

Sebastian Glenn admits to being verbally abusive. However, he was handcuffed and behind a protective screen. He was never a physical threat to either deputy. Deputy Burke overreacted and used a level of force that was unreasonable for the level of resistance. The allegation of unreasonable force is **SUSTAINED**.

3) Allegation: **Force** **SUSTAINED**

After the first stop, Glenn continued his verbal abuse and directed it towards Deputy Burke. In response to Glenn's remarks, Burke stopped the car a second time. Again, Burke opened the rear door and made physical contact with Glenn. Glenn said when the door opened he knew Burke was going to hurt him. Glenn pulled away towards the opposite car door. Burke grabbed Glenn's head and pulled the t-shirt over his head. Glenn said Burke began slapping his head and pushing him down.

Deputy Iles said he saw Burke grab Glenn's head. I asked Iles if he saw Burke slap or hit Glenn. Iles said, "No, there was a lot of struggling, like Glenn was trying to pull away and Burke was pushing him down. I just remember him (Burke) bouncing up and down on him (Glenn). As before, Glenn was verbally abusive. However, during this contact he was never a physical threat to either deputy. Deputy Burke overreacted and used a level of force that was unreasonable for the level of resistance. The allegation of unreasonable force is **SUSTAINED**."

4) Allegation: Procedure SUSTAINED

During the above three incidents, Deputy Burke used different levels of force to control Glenn. At the crash site, he applied a variation of a bent-arm lock and digital control of Glenn's thumb. At each of the two vehicle stops, Burke used control holds and body weight to stop what he perceived as a physical threat from Glenn. Deputy Burke failed to submit the necessary documentation of his use of force. This is a violation of General Order 05.33, Reporting Use of Force, dated 02-04-03, section A, 2, which states:

"Force shall be reported when force is applied through the use of weaponless physical force. A use of force report shall be filled out anytime a defensive tactic is used to forcefully subdue, control or arrest a subject. If force is used, a report shall be completed whether or not a subject was injured."

Deputy Burke's use of physical force should have been reported as required by policy. The allegation of failure to follow procedure is **SUSTAINED**.

5) Allegation: Conduct SUSTAINED

When a person is taken into custody, the deputy has a responsibility to safeguard the person and ensure their rights are protected. During this incident, Deputy Burke used his position of authority to punish Sebastian Glenn. This is a violation of General Order 02.02, Rules of Conduct, dated 09-05-02, Section B, 7, (a), which states:

"Deputy Sheriffs shall use powers of arrest strictly in accordance with law and with due regard for the rights of the citizen concerned. Their office gives them no right to judge the violator nor to mete out punishment for the offense."

Deputy Burke misused his position and applied excessive force to a handcuffed prisoner. Based on the statements made by Reserve Deputy Iles and the complainant, Deputy Burke failed to observe Glenn's right to fair and objective treatment. The allegation of misconduct is **SUSTAINED**.

6) Allegation: Conduct

SUSTAINED

Throughout this incident Deputy Burke demonstrated a pattern of inappropriate conduct. Burke's continued verbal and physical responses to Glenn's verbal abuse were unprofessional and damaged the reputation of this office. When interviewed, Deputy Burke admitted that his treatment of Glenn was "unprofessional." This is a violation of General Order 02.01, Rules of Conduct, dated 09-05-02, Section D, 29, (c), which states:

"Members shall not show a loss of temper, composure or overact to another person's verbal comments, assaults or abuse."

Deputy Burke admitted to unprofessional conduct. The allegation of misconduct is **SUSTAINED**.

7) Allegation: Courtesy

SUSTAINED

Throughout this incident Deputy Burke continually used course and profane language. Documentation from his patrol car video and statements made by other deputies clearly demonstrate a pattern of inappropriate behavior. While seated inside the patrol car, Deputy Burke was extremely argumentative and agreed to fight with Glenn. Deputy Burke told Glenn, "I'll take those handcuffs off and see how bad you are." When Glenn agreed to fight with Burke, Burke said, "I'll take all my shit off and fight you man to man." The use of course or profane language and the threat to fight with a prisoner is a violation of General Order 02.01, Rules of Conduct, dated 09-05-02, Section C, 1, (b), which states:

"Members are expected to be tactful in the performance of their duties, control their tempers, exercise the utmost patience and discretion and not engage in argumentative discussion even in the face of provocation."

Deputy Burke was antagonistic, threatening and extremely unprofessional. His inability to cope with Sebastian Glenn's verbal abuse is a violation of policy and reflects negatively on the deputy and this agency. The allegation of discourtesy is **SUSTAINED**.

DOCUMENTATION:

- 1) Copy of complaint submitted by Sebastian Glenn.
- 2) CAD printout for Incident #2007050503.
- 3) CAD printout for Incident #2007050521.
- 4) Copy of Citation #13536, issued to Sebastian Glenn.
- 5) Reserve Deputy J. Iles' report, dated 06-06-07.
- 6) Deputy S. Shaw's report, dated 06-06-07.
- 7) Video/audio tape from Deputy Burke's car-camera, dated 05-12-07.
- 8) Taped interview with Sebastian Glenn.
- 9) Taped interview with Reserve Deputy J. Iles.

DOCUMENTATION:

- 10) Taped interview with Deputy S. Shaw.
- 11) Taped interview with Deputy K. Hubbard.
- 12) Taped interview with Sergeant J. Heller.
- 13) Taped interview with Sheriff Volunteer Rick Young.
- 14) Taped interview with Deputy M. Burke.

INTERVIEWS: The following interviews are an in essence review of what was said by each person interviewed.

COMPLAINANT: Scott Glenn

On June 4, 2007, at 1216 hours, I interviewed Scott Glenn at the county building in Cave Junction. Prior to asking Mr. Glenn any questions, I let him review his written complaint. On 05-12-07, Glenn was told there was a party somewhere near Spencer Creek. Glenn said he was able to find a ride to the party and was one of three persons in the car. The other passenger was Richard Dammeier and the vehicle driver was a male subject named "John." Glenn said he had never met the driver before. I asked if he had been drinking alcohol that night. He said, "Yes." I asked Glenn if he had any alcohol with him during the stop. He said, "No. I was drinking juice."

Glenn and the other two subjects arrived at the Spencer Creek location at approximately 0107 hours. At approximately 0300 hours, Glenn and the other two subjects left the Spencer Creek area enroute to Grants Pass. The driver turned right onto Murphy Creek Road and was immediately followed by a sheriff's car. The deputy put on his lights and siren. The driver refused to stop. Glenn said he knew it was a deputy and told the driver to stop. The driver lost control and crashed. The driver ran from the car and deputies chased him.

Glenn and Dammeier remained with the car and were contacted first by Deputy Shaw. Shaw ordered Glenn and Dammeier out of the car and made them sit on the ground. Glenn said Sergeant Heller and Deputy Hubbard were the next to arrive at the crash site. Later, Deputies Burke and Iles arrived at the scene. Glenn said Burke walked to him, was yelling something and told him to stand up. Glenn said Burke grabbed his right arm and twisted it behind his back. Burke turned Glenn towards the car and "slammed" him down onto the trunk. Glenn said Burke was bending his thumb and yelling at him to say the name of the driver. Burke told Glenn, "I'm going to break your fucking thumb if you don't tell me who was driving." Glenn said he was in great pain and repeatedly told Burke that he did not know the driver.

Glenn discussed the actions of the other deputies and said that none of them touched him inappropriately. Burke handcuffed Glenn and walked him to his patrol vehicle. Burke placed Glenn in the right rear seat of the patrol car. I asked Glenn if Burke ever advised him he was under arrest. Glenn said, "No." Glenn said he was sitting in the car for about 15 minutes.

Burke and Iles returned to the patrol car. Burke was driving and Iles was seated in the right front seat. Glenn said he was angry at Burke and admitted to cussing at Burke telling him the arrest was "Bullshit." Glenn freely admits he was swearing at Burke and said Burke was swearing at him. Burke became angry at Glenn and pulled to the side of the road and stopped. Burke exited the patrol car, walked to the right rear and opened the door. Glenn said Burke grabbed him by the neck and the ear and tried to pull him from the car. Glenn said he was afraid of being hurt again and wedged his feet under the front seat. I asked Glenn if Burke punched, hit or slapped him. He said, "No." Burke continued to pull on Glenn's neck and ear. I asked Glenn if he tried to hit, punch or kick Deputy Burke. He said, "No." Eventually, Burke stopped, closed the door and returned to the front of the car.

Burke continued to drive towards Grants Pass. Glenn said they began to yell at each other. Burke called Glenn "A low life, who has no job, and is a tweaker." Glenn said he called Burke a bunch of names and did say something about Burke's wife. Glenn said Burke told him that "He would meet him anywhere off duty to kick his fat ass." Burke drove into the parking lot of the Town and Country Market and stopped the car. Burke exited the car and returned to the right rear door. Burke opened the car door, pulled Glenn's shirt over his head and began slapping him in the head. Glenn said he was yelling at Burke to stop hitting. I asked Glenn if Iles hit him or did anything to stop Burke. Glenn said Iles did nothing to him. I asked Glenn if he tried hit, punch or kick Burke. He said, "No."

Burke closed the car door. Sergeant Heller and Hubbard arrived at the market lot. Hubbard walked to the patrol car and made some negative comments about Glenn's brother. Glenn said Heller never spoke to him. Glenn said Burke, Hubbard and Heller remained in the lot talking. I asked Glenn how long the deputies talked. He said 40 minutes. According the CAD printout, Burke arrived at the Town and Country at 0355 hours and cleared at 0423 hours.

Glenn said while seated in the patrol car, he complained about the handcuffs hurting his wrists. None of the deputies responded to his complaint of pain. Burke removed Glenn from the car and did a field test for alcohol. The handcuffs were removed and Glenn was given a citation for riding without a seatbelt and minor in possession of alcohol. After signing the citation, Glenn was released and allowed to walk away. I concluded the interview at 1244 hours.

WITNESS DEPUTY: Jeff Iles

On 06-06-07, Iles submitted a written report concerning this complaint. Iles' report contains his description of Deputy Burke's actions regarding this investigation. The following interview was conducted to clarify a number of issues mentioned in Iles' report. On 06-07-07, at 0813 hours, I interviewed Deputy Iles in the conference room at the Sheriff's Office.

When Iles and Burke returned to the crash site, Heller and Shaw were standing next to the suspect's car talking. Iles walked to their location and joined the conversation.

Burke walked passed the three of them and stopped in front of Glenn. Burke yelled at Glenn, "Who the fuck was driving?" Burke told Glenn to stand up, grabbed his arm and pushed Glenn into the side of the suspect vehicle. Iles said he was 20 to 30 feet from Burke when Burke took control of Glenn. Burke handcuffed Glenn and walked him to the patrol car. Glenn was placed in the rear of the patrol car. Burke returned, handcuffed Dammeier and put him in Hubbard's vehicle. I asked Iles if he saw Glenn offer any level of resistance during the contact with Burke. Iles said Glenn reacted to Burke by trying to turn his body and question Burke's actions. Iles said he never saw Glenn try and resist Burke.

Burke and Iles returned to the patrol car and Burke drove towards Grants Pass. Iles commented on the verbal assaults taking place between Burke and Glenn. (See his report) At a point in time, Burke stopped the car, exited and went to the right rear passenger door. Iles exited the patrol car, turned and was facing Burke and Glenn. Iles said Burke reached in and grabbed Glenn's head. I asked Iles if he saw Burke place his hand(s) on Glenn's neck. Iles said, "I couldn't say for sure." Iles said he saw Burke's hands go towards Glenn's head, but couldn't say for sure how he grabbed Glenn. I asked Iles if he ever saw Burke slap or hit Glenn's face. Iles said, "No, there was a lot of struggling like Glenn was trying to pull away and Burke was pushing him down." "I just remember him (Burke) bouncing up and down on him (Glenn)."

Burke closed the rear door and returned to the driver's seat. Burke started driving and Glenn began yelling and cussing at Burke. Burke stopped the car again and returned to Glenn. Burke opened the door and Glenn "was doing everything in his power to back away and scoot across the seat." Iles said "there was quit a bit more struggle" as Burke leaned further into the car because Glenn was trying to get away." I asked Iles if during the second stop, if he saw Burke grab Glenn by the throat or neck. Iles said, "Not specifically by the neck or ear."

Sergeant Heller arrived at the Town and Country parking lot. Heller spoke to Burke for several minutes. (See Iles report) Iles said he was "a couple of feet" from Heller and Burke during the conversation. Glenn was given a citation and released. I asked Iles if Glenn ever complained about the handcuffs being too tight. Iles said he remembered Glenn complaining about the handcuffs after they were removed.

During the drive back to the office, Burke made a comment about what Iles should do in the event he was questioned regarding the incident with Glenn. Iles attempted to contact Sergeant Heller regarding the incident. Heller never discussed the incident with Iles. I concluded the interview at 0853 hours.

WITNESS DEPUTY: Sean Shaw

On 06-06-07, Deputy Shaw submitted a written report concerning his involvement with this complaint. Shaw's report contains his description of Deputy Burke's actions regarding this investigation. The following interview was conducted to clarify a number of issues mentioned in Shaw's report. On 06-08-07, at 1712 hours, I interviewed Deputy Shaw in the conference room at the Sheriff's Office.

On 05-12-07, Deputy Shaw was one of several deputies sent to investigate the report of a large party being held on Spencer Creek Road. A number of people were located and the party was terminated. During that time, a small white vehicle with several occupants sped by Deputy Shaw almost striking his patrol car. The vehicle was located, but the occupants had fled.

Later that morning, 0300 hours, Deputy Shaw located the same vehicle and attempted to stop the driver. The driver failed to stop, lost control and wrecked off the roadway. The driver fled the scene on foot. Shaw was able to detain the two passengers, Glenn and Dammeier. Deputies Burke and Iles were involved in the pursuit and followed the driver.

Shaw began to question the two subjects and attempted to obtain the name of the driver. Deputy K. Hubbard arrived and began looking for the driver. Sergeant J. Heller arrived began talking to Shaw. In his report, page 4, Shaw comments that since Glenn and Dammeier had not committed a crime and failed to provide any information, Shaw decided the two subjects were free to go.

Within a short time, Iles and Burke returned to the scene of the crash. Burke walked by the other deputies and moved in front of Glenn and Dammeier. Burke began yelling at both subjects and said, "Who the fuck was driving the car." Both subjects denied knowing the driver. Burke said, "Don't fucking lie to me, because when you lie you disrespect your mother."

Burke told Glenn to stand up and grabbed his arm "yanking" Glenn to his feet. Burke shoved Glenn into the side of the suspect car. Burke had control of one of Glenn's arms and was attempting to grab the other hand. Glenn was trying to face Burke and was asking why he was being arrested. I asked Shaw if Glenn was resisting Burke. Shaw said, "There was no resistance. He (Glenn) was only trying to find out why he was being arrested." I asked Shaw if he could explain why Burke told Glenn to stop resisting. Shaw said, "No." I asked Shaw if the force Burke used to shove Glenn against the car was reasonable. Shaw said, "He (Glenn) didn't do anything to warrant that." I asked Shaw to give me the distance he was standing from Burke during the contact with Glenn. Shaw said less than 20 feet. Shaw said his view was unobstructed.

Burke handcuffed Glenn and placed Glenn inside his patrol car. Burke returned to Dammeier, handcuffed him and walked him to Hubbard's patrol car. Shaw remained at the scene waiting for a tow-truck. The other deputies and Sergeant Heller left the scene. After the suspect car was removed, Shaw cleared the scene. On his way to the office, Shaw heard Burke request a meeting with Heller.

As Shaw drove by the Town and Country Market, he saw Burke and Iles standing outside of the patrol car. Shaw returned to the office and ended his shift. Shaw had no direct information regarding the allegations of force that occurred in the market parking lot. I asked Shaw if there had been any contact with Burke since the day of the incident. Shaw said later that night, 05-12-07, at about 1830 or 1900 hours, he spoke to Burke on the telephone. During the conversation they discussed the incident and Burke told Shaw, "I said some things I shouldn't have said. And if I get beefed for it, fine, I'll take my lumps for it." I concluded the interview at 1748 hours.

WITNESS DEPUTY: Keith Hubbard

On June 7, 2007, at 1706 hours, I interviewed Deputy Keith Hubbard in the sheriff's office conference room. Prior to asking Hubbard any questions, I read him the administrative admonishment and ordered him to answer my questions. On 05-12-07, at 0047 hours, deputies were dispatched to the area of 100 Spencer Creek Road for a disturbance call.

Later that morning, at 0300 hours, Deputy S. Shaw attempted to stop a vehicle leaving the scene of the party. The driver failed to stop and Shaw initiated a pursuit. Deputies Iles and Burke were the second sheriff's unit in the pursuit. The driver of the vehicle lost control, left the roadway and crashed into a ditch. The driver exited the vehicle and ran from the scene. Burke and Iles chased the subject on foot. Hubbard arrived at the scene, spoke briefly with Shaw and went to assist with the apprehension of the driver.

Hubbard returned to the crash site and spoke with Shaw. Hubbard said both of the passengers, Glenn and Dammeier, were seated on the ground between the suspect's car and Shaw's marked unit. I asked Hubbard to describe Glenn and Dammeier's behavior. Hubbard said both subjects were quietly sitting on the ground. Neither subject was handcuffed.

Within minutes, Deputies Iles and Burke returned to the scene. I asked Hubbard to describe Burke's actions. Hubbard said Burke walked past the deputies and quickly moved to the subjects on the ground. Burke began yelling at Glenn and ordered him to stand up. Hubbard said Burke was "cussing" at Glenn and grabbed his arm. I asked Hubbard to describe Burke's force. Hubbard said Burke's actions were "dramatic." I asked Burke to describe "dramatic." Hubbard said Burke's actions were forceful, but not excessive. I asked Hubbard if Glenn was threatening or resisting Burke's attempts to control him. Hubbard said "No." I asked Hubbard if the force used by Burke was reasonable under the circumstances. Hubbard said, "I don't believe it was excessive, but it's more than I would have used." I asked Hubbard if he saw Burke shove, push or slam Glenn into the side of the car. Hubbard said he didn't believe Burke slammed Glenn, but forcefully bent him over the car. Hubbard said he was standing 15 to 20 feet from Burke and Glenn.

Burke placed Dammeier in Hubbard's vehicle and Glenn was seated in Burke's vehicle. Hubbard left the scene of the crash and transported Dammeier into Grants Pass. When Hubbard heard Burke ask to meet Sergeant Heller, he turned around and drove to the market. When Hubbard arrived he saw Heller and Burke talking. He was not close enough to hear the conversation. I asked Hubbard if he saw Burke make any physical contact with Glenn while he was seated in the marked car. Hubbard said "No." Both Dammeier and Glenn were removed from the cars and released. I concluded the interview at 1737 hours.

WITNESS DEPUTY: Sergeant Joel Heller

On 06-14-07, at 1622 hours, I interviewed Sergeant Joel Heller in the conference room of the Sheriff's Office. Sergeant Heller was read the Administrative Admonishment and said he understood the order.

On 05-12-07, Sergeant Heller was working uniformed patrol and was the shift supervisor. Shortly after 0100 hours, he arrived at a loud party call on Spencer Creek Road. Upon arrival, he saw a small bon-fire, a number of vehicles and several people. Heller remembered the speeding vehicle and said he attempted to stop the car. Heller said all of the people appeared to be 21 years of age and no one was arrested. Heller cleared the scene at 0124 hours and was going home.

Heller said he heard the radio traffic concerning the pursuit and started driving towards the crash location. Heller arrived at the scene and saw two subjects seated on the ground next to Deputy Shaw's patrol car. I asked Heller if the two subjects were handcuffed. He said, "Yes." Heller walked within 15 feet of Glenn and Dammeier and did not talk to either subject. Heller said he began talking to Shaw about the pursuit. He remembered seeing Hubbard, but could not recall talking to him.

Burke returned to the crash site and approached Glenn. I asked Heller to describe Burke's actions. Heller said Burke "grabbed" Glenn and lifted him up from the ground. Heller said Glenn was "jerking and chipping away" at Burke. I asked Heller if he heard Burke cuss or swear at Glenn. Heller said as Burke was walking Glenn to the patrol car, he heard Burke call Glenn "A piece of shit." Heller said Glenn was "chipping away" at Burke and cussing at him. Heller said he was standing about 30 to 40 feet from Glenn when Burke made contact. Heller said he could not see Burke's hands when he grabbed Glenn. I asked Heller if he saw Burke twist Glenn's arm. He said, "I can't recall." I asked Heller if he heard Glenn complain of pain to his wrist or thumb. He said, "I can't recall." I asked Heller if he saw Burke place, or slam Glenn against the car. He said, "I can't recall." I asked Heller if Glenn was resisting Burke's efforts to control him. Heller said Glenn was "jerking." I asked Heller if he thought the force used by Burke to arrest Glenn was reasonable. Heller said, "The force that I saw was reasonable. It was at the upper end of being reasonable."

Heller remained at the crash site and cleared the scene after Burke and Hubbard left with the prisoners. Heller said as he approached the Town and Country Market, he saw a black and white in the lot. Heller slowed and pulled into the parking lot. Burke and Iles were outside standing next to the patrol car. Burke was standing next to the closed left rear door. Glenn was seated behind the driver. Burke was talking to Glenn. I asked Heller if he saw Burke reach in side the patrol car. Heller said, "I know he opened the door and at one point reached in. I don't know what he (Burke) was doing." Heller was standing 30 feet from the patrol car. I asked if he saw Burke touch Glenn. Heller said he could not see Burke's hands. I asked him if he saw Burke push down on Glenn's head. Heller said, "I could not see that." I asked if he saw Burke try and pull Glenn from the car. Heller said, "I don't recall that."

Burke closed the car door and went to talk to Heller. I asked Heller to repeat the conversation he had with Burke. Burke told Heller that Glenn was cursing and threatened him and his family. Heller did not discuss Burke's use of force or what took place inside the patrol car. Heller said they discussed Burke's language. Burke cited Glenn and released him. Heller, Burke and Iles cleared the parking lot and Heller drove home.

I continued the interview regarding Sergeant Heller's involvement with the complaint investigation. The dialogue pertained to alleged procedural violations committed by Sergeant Heller and had no bearing on this investigation. I concluded the interview at 1702 hours.

CIVILIAN WITNESS: Rick Young

On 06-26-07, at 1004 hours, I interviewed Volunteer Rick Young in the conference room at the Sheriff's Office. On 05-12-07, Young was a ride-along with Deputy Sean Shaw. Young was not in uniform and was seated in the right front seat of the patrol car. Young began the shift with Shaw and was present at the party call on Spencer Creek Road. Young said there was a large party standing around a bon fire. Young remembered the suspect vehicle speeding up the hill from the party.

Young was in the patrol car during the pursuit. Young said the pursuit lasted several minutes and then the driver lost control and crashed. Young remained with Shaw at the crash and Burke and the reserve deputy chased the driver. We discussed the placement of the cars and where Glenn and Dammeier had been seated. Based on the video from Burke's patrol car, Young was standing in front of Glenn and Dammeier. I asked Young to tell me the distance he was standing from Glenn and Dammeier. Young said 5 to 6 feet. Burke returned to the crash site, walked to Glenn and separated him from Dammeier. I asked Young if Burke said anything to either of the two subjects. Young said he remembered hearing Burke tell Glenn he was lying. Young said he did not remember hearing Burke scream or cuss at either Glenn or Dammeier.

Burke spoke to Glenn first. Young said Glenn stood up on his own and was not assisted by Burke or any of the deputies. Burke handcuffed Glenn. I asked Young if Glenn complained about being handcuffed or the arrest.

Young said Glenn did not complain and was laughing. Young said Burke walked Glenn to one of the patrol cars and placed him in the back seat. Burke returned to Dammeier, asked him to stand up and handcuffed him. Burke walked Dammeier to one of the other patrol cars.

I asked Young if he remembered seeing marked patrol cars in the parking lot of a market. He said he could not recall seeing any cars in a parking lot. I asked Young if he had discussed this incident with anyone prior to this interview. He said, "No." I asked Young if he had any final comments. He said he believed Deputy Burke was extremely professional during the contact. He said he was proud to be associated with all of the deputies. I concluded the interview at 1047 hours.

SUBJECT DEPUTY: Michael Burke

On 06-20-07, at 1205 hours, I interviewed Deputy Michael Burke in the conference room at the Sheriff's Office. Also present during the interview was Association Attorney David Snyder and Employee Representative Travis Snyder. Deputy Burke was given an Administrative Admonishment and said he understood the order.

On 05-12-07, at 0103 hours, Deputy Burke arrived in the area of 100 Spencer Creek Road to assist other deputies investigating a loud party call. Burke and Reserve Deputy Jeff Iles were riding together. While at the location, Burke saw a small vehicle, Ford, Festiva, drive by the deputies at a high rate of speed. The car eventually stopped and the occupants exited. Burke said Deputy Iles made contact with several subjects. No arrests were made and Burke and Iles cleared the scene at 0124 hours.

Later that morning, Burke and Iles returned to the intersection of Spencer Creek Road and Murphy Creek Road. Burke, Iles, Deputy Shaw and his ride along, Rick Young, parked in the area waiting for the Ford, Festiva.

At approximately 0300 hours, the vehicle passed through the intersection and continued north on Murphy Creek Road. Deputy Shaw drove behind the vehicle, activated his emergency equipment and attempted to stop the driver. The driver lost control and crashed off of the roadway. The driver ran from the vehicle, the other two passengers remained in the car.

Investigator's Note:

Portions of this incident were recorded on video tape from the camera in Deputy Burke's patrol car. Information from the tape will be interjected into this interview to clarify statements made by Deputy Burke.

At 0301 hours, Deputy Shaw arrived at the crash site and removed the occupants, Glenn and Dammeier. Burke and Iles continued past the scene and attempted to locate the driver. At 0319 hours, Burke and Iles returned to the crash site. Burke approached the group of deputies standing next to the suspect vehicle.

Burke was told the passengers couldn't identify the driver and approached Glenn. Burke said he made a comment to the Sergeant Heller and the deputies about the subjects not providing the name of the driver. While walking up to Glenn, Burke said, "The couple of lying pieces of shit don't know." (Tape: 03.19.47) Burke said Glenn made a "profane comment" and was obviously intoxicated. Burke decided to detain both Glenn and Dammeier and felt both subjects should be handcuffed. Burke moved behind Glenn and told him to stand up. Burke said he was "abrupt" with Glenn. Burke grabbed Glenn's left arm and turned him into the side of the car. Burke told Glenn to relax, handcuffed him and patted him down for weapons.

2 I asked Burke if Glenn resisted his efforts to control him. Burke said he didn't resist. Glenn started to turn and Burke grabbed both of Glenn's hands and applied the handcuffs. I asked Burke if he twisted Glenn's arm or applied pressure to Glenn's thumb. Burke said, "No, not in any way, shape or form."

(Tape: 03.41.01) Glenn complained of pain to his thumb. Burke said, "You tightened up, that's digital control." I asked Burke if he pushed or shoved Glenn into the side of the car. Burke said Glenn may have been next to the car, but he did not push Glenn into the car. While walking Glenn to the patrol car, Burke admitted to calling Glenn a liar and told him to shut-up.

4 During this portion of the interview I asked Burke a number of questions from the written reports of Deputies Iles and Shaw. Burke denied saying the word "fuck" during the initial contact with Glenn and Dammeier. Burke said he had used profanity later in the contact. I asked Burke if he remembered Glenn turning and asking what he was being arrested for. Burke said he couldn't recall what Glenn had said. I asked Burke if he was threatened by Glenn. Burke said anytime they turn around while applying handcuffs is a threat. Burke said there were no verbal threats. Burke said, "Once I grabbed his arm, there was no threat to my safety." When asked about controlling Glenn's thumb, Burke admitted to controlling the thumb.

Burke placed Glenn in the right rear of his patrol car and returned to the other deputies. Burke moved to Dammeier and had him stand up. Burke handcuffed Dammeier and walked him to Deputy Hubbard's patrol car. Burke was talking to Dammeier and at 03.21.05 hours, he told Dammeier to "shut-up and stop being a jackass." I asked Burke to reflect back to his academy training. I asked him to tell me what was appropriate officer conduct when confronted by verbally abusive people? Burke said, "We are supposed to suck it up." I asked if that meant officers are supposed to accept verbal abuse. He said, Yes."

Burke said his plan was to leave the two subjects in the patrol vehicles and let them think about what was happening. After putting Dammeier in the patrol car Burke walked back to the other deputies. As he approached them he said, (Tape: 03.26.40 hours) "I love being an asshole to these kids." At 03.30.15 hours, Burke said to the other deputies, "See if I can work this guy." Burke returned to his patrol car and began talking to Glenn.

I asked Burke if Glenn complained to him about the handcuffs being too tight. Burke said he could not recall Glenn complaining about the handcuffs.

While in the car, Burke and Glenn continued to discuss the incident and arrest. Glenn was verbally abusive towards Burke and was angry about being arrested. Glenn threatened Burke and Burke replied, (03.39.21 hours) "I'll take those handcuffs off and see how bad you are." (03.39.34 hours) Glenn agreed to fight and Burke said, "You're a pussy." Glenn repeated that he would fight Burke. Burke responded back to Glenn saying, (03.039.39 hours) "I'll take all my shit off and fight you man to man." Glenn responded and Burke said, "When and where?" Glenn said he would fight Burke, and Burke told Glenn he was a "Chicken shit." The verbal confrontation continued between Glenn and Burke.

Glenn repeated his threat to fight Burke. Burke replied, (03.39.55 hours) "We'll take them off in a little bit, (the handcuffs) and you'll get your chance." Deputy Iles returned to the patrol car and Burke began driving towards Grants Pass. Burke deactivated the car camera at 03.44.21 hours.

Shortly after the patrol car started moving, Glenn became "belligerent." He moved forward towards the divider screen and was screaming. Burke made a comment that he could see spittle coming from Glenn's mouth. Burke pulled off of the road and stopped. Burke said as he opened the passenger door, Glenn raised his leg as if to kick. Burke reached inside the car, pushed Glenn's head down and pulled Glenn's shirt over his head. Glenn sat back in the seat; Burke shut the car door and started driving. I had Burke refer back to Iles' report. I asked Burke several questions about statements made by Iles. Burke denied using the word "fuck" or telling Glenn he was a piece of shit. Burke denied placing his hands on Glenn's throat or choking Glenn. Burke said he reached around Glenn's head to "wrap" him and may have touched his ear. He then pushed Glenn down to avoid being kicked. Burke said he had placed his arm across Glenn's back and Glenn's head was over his knees. Burke said Glenn became more abusive and felt spittle on his hand. Burke said, "The best thing to do was lay into this kid with some verbiage" and told Glenn to "stop acting like a fucking punk."

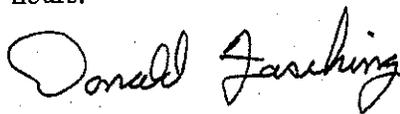
Burke returned to the driver's seat and continued driving. Burke said Glenn continued yelling at him and said he was going to sodomize his wife and children. Burke stopped the vehicle at the Town and Country Market and exited the car. Burke admitted to Iles that he had acted unprofessionally and requested a meet with Sergeant Heller. I continued to read from Iles' report and asked Burke why Iles said Glenn was trying to move away from him inside the car. Burke said Iles made a comment to him about Glenn trying to kick him. Burke said he could not understand why Iles would say Glenn was trying to get away. When asked if he pushed Glenn's head down a second time, Burke said he made contact with Glenn and "leaned on him."

Sergeant Heller arrived and met with Burke. Burke admitted to acting unprofessional and explained his actions to Heller. Burke said he told Heller about reaching inside the car, holding Glenn down and using profanity. Heller remained at the lot for several minutes and drove away.

Glenn was removed from the car and the handcuffs were removed from his wrists. Glenn was issued a citation and released. Burke and Iles got back into the patrol car and cleared the call at 0415 hours.

I gave Burke some force definitions and asked him to describe Glenn's behavior. Burke described Glenn as being "Ominous" in that he tried to kick him. I said if you had to stop Glenn from kicking you by bending him over, that would have been reportable force. Burke said, "The way you describe that, it is reportable."

The association attorney asked for a brief recess. The interview continued and Mr. Snyder requested that I interview Deputy Shaw's ride-along, Rick Young, and review the incident video tape from Burke's patrol car. I concluded the interview at 1256 hours.



Donald Fasching
Undersheriff

On May 11th, 2007, at approximately 1700 hours, I arrived at the Sheriff's Office to do a ride along with Deputy Shaw. I had scheduled this ride along earlier in the week with Deputy Shaw. Deputy Shaw told me that he wasn't sure if he had told one of the volunteers that they could ride that night, or if it was the next night. Deputy Shaw told me to go ahead and show up and even if he had double scheduled a rider, we should still be able to find a seat for me with someone else.

On my way to the Sheriff's Office I was speaking on the phone with Deputy Wallace and we were conversing about me riding that night. Deputy Wallace asked who I was riding with and I told him that hopefully it would be Deputy Shaw. Deputy Wallace jokingly made a statement similar to "You're not going to ride with Burke?" I replied something similar to "I hope not."

While I had never had any real problems with Deputy Burke when riding with him in the past, I had heard other deputies and reserves tell me stories about events that had happened with Burke in the past. These stories had made me somewhat wary of riding with him. I had heard stories of Deputy Burke being too aggressive in giving chase to certain suspects that put him and other deputies in danger. It was for these reasons that I had stopped riding with Deputy Burke some time ago.

When I arrived in the squad room I saw that Deputy Shaw did indeed have a volunteer riding with him (I don't know his name). Deputy Burke asked me "Who are you riding with?" I replied "I was going to be riding with Shaw, but it looks like he double booked." Burke said "You can ride with me." I didn't want to offend Deputy Burke and I agreed to ride with him.

At approximately 0025 hours on May 12th, 2007 we were dispatched to a criminal mischief call on Helms Rd. We had only been on scene there a few minutes when there was a call put out over the radio of a fight between several subjects with bats on Spencer Creek Rd. Deputy Burke gave the victim of the criminal mischief a business card with the case number and we cleared to respond to the fight on Spencer Creek. As we were leaving, the victim of the criminal mischief stated that he thought the suspect vehicle was driving by on Highway 199. Deputy Burke attempted to catch up to the vehicle. The vehicle had a very big lead and Deputy Burke advised over the radio that he had lost sight of the vehicle when we reached the college.

When we were on Highway 238 responding to Spencer Creek I believe that I saw Deputy Shaw behind us. Sgt. Heller was ahead of us and waiting at the bottom of Spencer Creek Rd. When we caught up to Sgt. Heller we all proceeded up Spencer Creek Rd. I noticed a large amount of vehicle traffic coming down Murphy Creek Rd. and Spencer Creek Rd. while enroute. When we came to the first large pull out on Spencer Creek Rd. there were two vehicles parked there. There was also a large bonfire burning. There were three people standing next to the bonfire.

Sgt. Heller had parked off the main roadway on the east side of the road. Deputy Burke had parked on the same side of the road as Sgt. Heller and just north of Sgt. Heller's vehicle.

Deputy Shaw had parked on the roadway just south of Sgt. Heller's vehicle. The roadway was a gravel BLM maintained road. There was ample room to get around Deputy Shaw's vehicle as we had stopped at a very large turnout area.

I contacted the three subjects standing next to the fire and they stated that they didn't know anything about a fight or a party. They stated that they had come up there and just found the bonfire burning with no one around. I checked all of the subjects for wants and they were clear.

Just as we were preparing to leave I could hear the sound of a loud engine coming up Spencer Creek Rd. at a high rate of speed. At first, I believed that it was possibly an ATV or motorcycle due to the loudness of the engine. I began walking back to the patrol unit, as did the other deputies. As the vehicle came into view I could see that it was a small white or grey two door hatchback. There were at least three males in the car and the driver was wearing a black baseball cap and a white T-shirt. The driver's side window was down. Deputy Burke yelled at the vehicle "Stop the car!" as it passed his patrol car. All three subjects in the car turned and looked in Deputy Burke's direction. The driver then accelerated and swerved around Deputy Shaw's vehicle, nearly striking it.

I got into the passenger seat of Deputy Burke's car and he began to try and catch up to the vehicle. There was a lot of dust that was kicked up by the fleeing vehicle and it was very difficult to see more than a few feet in front of the patrol car. After approximately one mile Deputy Burke activated his overhead lights and advised the other units that the vehicle was "definitely running".

Deputy Burke continued to follow the dust trail about another four or five miles without seeing the vehicle. We then came around a corner and saw the vehicle stopped in the middle of the roadway. There was also about another dozen or so vehicles parked in the roadway in front of the suspect vehicle. I watched the driver of the suspect vehicle get out and run on foot up the road and jump into the back of a dark colored truck that was already leaving up the road. The passengers of the hatchback then exited and began running in different directions.

Deputy Burke exited the patrol car and began running on foot in a south westerly direction. I also exited the patrol car and began running up the road where I saw what I believed to be one of the passengers of the suspect vehicle running up the hill into the woods. I yelled at the subject "Sheriff's Office! Come down here now or we'll get the dog up here!" The subject replied "Ok, Ok, don't send the dog." The subject then walked back down the hill with his hands raised.

When he reached the road where I was standing, I did a brief cursory search for weapons and told him to come back over by the other vehicles and to sit down. The subject complied and I asked him if he was in the white hatchback. The subject claimed that he didn't know what

vehicle I was talking about. I shined my flashlight on the vehicle and he said that he had never seen that vehicle before.

I asked him for identification and he said that he did not have any. I then asked him for his name and date of birth, which he provided (**Dammeier, Richard K** [REDACTED]). The subject returned no wants and I believe his license was suspended. The subject asked what he was under arrest for and I explained to him that he was not under arrest at this point and was being detained until this situation could be figured out. I told him that he could possibly be charged with attempting to elude on foot and for minor in possession of alcohol.

Sgt. Heller arrived at our location and decided that it would be best if we left the vehicle up here as the keys were still in the ignition and for us to let the subjects that were there go with a warning. So I told **Mr. Dammeier** that he was free to go with a warning.

I got back into the patrol car with Deputy Burke and we proceeded down Spencer Creek Rd. When we got to the bottom of Spencer Creek Rd. Deputy Burke looked for a place to set up so that we could see the intersection of Spencer Creek Rd. and Murphy Creek Rd. We found a driveway about 100-150 yards west of the intersection on the north side of Murphy Creek Rd. Deputy Burke backed the patrol car into the driveway.

At this point, we sat and watched the intersection for the next several hours. During this time about six to eight vehicles came down Spencer Creek Rd. Most of the vehicles failed to stop at the stop sign at the bottom of Spencer Creek Rd.

At approximately 0250 hours I saw Deputy Shaw's vehicle approach on Murphy Creek Rd. and drive past us. He then turned around and parked in front of us on Murphy Creek Rd. A vehicle was coming down Spencer Creek Rd. at this time and Deputy Burke got on the radio and said "Black out! Black out! Black out!" in an attempt to get Deputy Shaw to turn off his headlights.

The vehicle continued down Murphy Creek Rd. and Deputy Shaw and his rider exited their vehicle and came over to Deputy Burke's vehicle to talk with us. We talked for a few minutes, mostly about Deputy Shaw having to go get a spare vehicle because his vehicle broke down.

Deputy Shaw had only been there a few minutes when we could all hear the sound of the earlier suspect vehicle coming down Spencer Creek Rd. Deputy Shaw and his rider returned to their patrol car. I observed the vehicle come down Spencer Creek Rd. and blow through the stop sign at the bottom of Spencer Creek Rd. at a very high rate of speed. The vehicle almost lost control as it turned onto Murphy Creek Rd. I also observed that the vehicle had no functioning taillights.

Deputy Shaw accelerated after the vehicle and Deputy Burke followed. I believe that Deputy Shaw advised dispatch that we were attempting to catch up to the vehicle. When Deputy Shaw got within about 75 yards of the vehicle he activated his overhead lights and siren. Deputy Burke advised dispatch that we were now in pursuit of the vehicle. I told Deputy Burke that I would call the pursuit so that he could focus on driving.

The vehicle continued at a very high rate of speed for only about a mile or so before I could see smoke in the roadway in front of us and Deputy Shaw swerved to the right. I then saw the suspect vehicle nose into the ditch on the south side of the road. I also observed that there was a 2 mile marker sign across the street from the vehicle. The driver exited the vehicle as we were coming to a stop and began to run south through the front yard of a residence. I advised dispatch that the vehicle had wrecked at milepost 2 of Murphy Creek Rd. and that the driver was fleeing on foot.

Deputy Burke had already exited the vehicle before me and I did not see which direction he ran. I exited the vehicle and saw that Deputy Shaw had the passengers at gunpoint and they were being cooperative. I saw the driver reach the fence at the east side of the residence and was attempting to climb over it. I thought that I might be able to catch him before he got over the fence.

I ran after the driver and yelled at him several times to get on the ground. He looked back at me and then climbed over the fence. I was debating going over the fence after him when I saw in my peripheral vision a person running behind and to my left side with a flashlight. I also heard the jingling of what I thought was a dog chain. I believed that this was Deputy Shaw with K9 Iax. I stopped at the fence and was going to prepare to help Deputy Shaw get Iax over the fence.

When the person that I thought was Deputy Shaw arrived at the fence I realized that it was his rider. I then directed my attention back to the driver that was now running in a southeasterly direction through an open field. I then saw Deputy Burke running behind the suspect about 150 yards behind. I would estimate that Deputy Burke was about 200 yards away from me at this point. I shined my flashlight on the suspect so that Deputy Burke would be able to see him. It should also be noted that the suspect was now wearing a black T-shirt and black baseball cap with blue jeans on.

At one point, the suspect fell to the ground and got back up and continued running in a southeasterly direction. There was a wooded area that the suspect was headed for and he still had about 75 to 100 yard lead on Deputy Burke. I was assuming that Deputy Burke would stop chasing the suspect if he reached the wooded area. Both the suspect and Deputy Burke disappeared into the wooded area.

I went back to the patrol car and saw that Deputy Shaw had the passengers sitting down in front of his patrol car and they appeared to still be cooperative. I was concerned for Deputy Burke's safety so I took his patrol unit and drove east on Murphy Creek Rd. towards the wooded

area while shining the spotlight into the woods. I attempted to contact Deputy Burke on the radio twice to get his status and location. There was no response.

I met Deputy Hubbard as he was coming west on Murphy Creek Rd. I advised him that Deputy Burke had chased the driver on foot into the woods by himself and now I did not know where he was or his status. Deputy Hubbard responded "Dumb, stupid, son of a bitch!" I told him that I was going down to the next residence near the wooded area to attempt to find Deputy Burke. Deputy Hubbard then continued up to Deputy Shaw's location.

I pulled into the next driveway on Murphy Creek Rd. and began to shine my flashlight into the woods looking for Deputy Burke. At this time I heard Deputy Hubbard attempt to contact Deputy Burke by radio. Deputy Burke responded and said that he thinks the suspect went to ground somewhere in the wooded area. Shortly after this I could see Deputy Burke's flashlight about 200 yards south of me.

I heard dogs beginning to bark to the west of my location and I thought that maybe the suspect had doubled back that direction. Deputy Shaw attempted to relay that information to Deputy Burke and I don't remember him responding.

After Deputy Burke was done searching the area for the suspect we got back into his patrol car and he drove back to Deputy Shaw's location. When we got back to Deputy Shaw's location, Deputy Shaw and Sgt. Heller were standing on the east side of the suspect vehicle talking. I approached the two of them and we were making idle chit chat while waiting for the tow truck.

The two passengers of the vehicle were still sitting on the ground, on the west side of the suspect vehicle, and in front of Deputy Shaw's patrol car. I believe that Deputy Hubbard was looking through the suspect vehicle at this time.

I suddenly heard Deputy Burke start yelling at one of the passengers something similar to "~~Tell me who was fucking driving!~~" I think we were all a little startled by this. It has been my observation that Deputy Burke rarely uses foul language. I could not hear the response of the subject that Deputy Burke was talking to. Deputy Burke then said something similar to "~~Shut up! You're fucking lying! When you lie you disrespect your mother!~~" Then Deputy Burke said "Get up!" and ~~grabbed the subject by the arm and pulled him to his feet.~~ When the subject stood up, I recognized him as the subject later identified as **Sebastian Glenn** [REDACTED] ~~He then twisted the subject's arm behind his back and pushed him against the suspect vehicle.~~

I don't remember exactly what the subject was saying but it was similar to "Jeeze man! Take it fucking easy!" ~~Deputy Burke then said "Stop resisting me!"~~ The subject said "I'm not resisting you!" ~~I did not see the subject try to resist Deputy Burke.~~ The subject did attempt to turn his head and look at Deputy Burke, but that was the extent of it.

Deputy Burke then placed the subject in handcuffs and walked him to the back of his patrol car. While walking the subject was saying things like "What the fuck man? What did I do? This is fucked up!" Deputy Burke said things like "Shut up! You're a liar!"

Deputy Burke then walked back to the other subject who was still sitting on the ground. Deputy Burke then said again something similar to "Who was fucking driving?" I could not hear the subject's response. Deputy Burke then said something similar to "You're gonna lie to me too! Then get up!" Deputy Burke grabbed the subject by the arm and pulled him to his feet. I then saw that this subject was Richard Dammeier. Deputy Burke also pushed him up against the suspect vehicle and placed him in handcuffs. This subject also did not resist and I was not able to hear him make any comments when Deputy Burke walked him to Deputy Hubbard's patrol car.

Deputy Burke then walked over to where I was standing with Deputy Shaw and Sgt. Heller. Deputy Burke had a big smile on his face as if he thought what he had just done was funny. Deputy Burke said to me "Let's see if we can play them off each other. You take the one in my patrol car and then we'll switch."

At this point, I didn't really want anything to do with any of the whole situation. I felt that as a reserve who was being trained that I should follow orders. So I went over to Deputy Burke's car and opened the rear passenger side door. **Sebastian** was sitting there and immediately he said something similar to "Fuck you guys! I don't know who was driving! You guys are fucked up! He tried to break my thumb!"

I said "I didn't do anything to you. So why don't you try talking to me?" **Sebastian** then said "You're right. You didn't do anything. But I don't know who was driving." I then said "You're telling me that you got into a car with this guy and you don't even know his name?" **Sebastian** said "Yeah. We were leaving the party and it was the last vehicle up there." I said "And the whole way down the mountain you didn't even bother exchanging first names?" **Sebastian** said "Well, I think his name is John. But that's all I know." He then began to say something similar to "This is so fucked up! I didn't resist! I was just sitting there. Why am I going to jail?" I said "It's not up to me. You'll have to talk to the other deputy when he gets back." **Sebastian** said "Fuck that! I don't want to talk to him. He's fucked up! Just take me to jail." I said "Okay." and shut the door.

I believe that I met with Deputy Burke briefly and relayed to him what **Sebastian** had told me. I then went over to Deputy Hubbard's car and spoke with **Richard**. He basically told me that he didn't know who was driving either. He also told me that it was the last vehicle leaving the party and that he was just getting a ride into town.

I met back with Deputy Burke near the suspect vehicle and we talked about what each had said. Deputy Shaw's rider pulled a car stereo that was sitting in the passenger compartment

of the suspect vehicle out and Deputy Burke told me to run it for wants. I ran the serial number and it came back no wants.

Deputy Burke then came and told me that we were going to take the two passengers down to Town and Country Market on Highway 238 to cite them for MIP-Alcohol. He explained that there was a pay phone there they could use to call a ride.

We walked over to Deputy Burke's patrol car and were preparing to leave when I realized that my cell phone was missing. I had it on my lap when I jumped out of the car to chase the driver. After a few minutes of searching the immediate area with Deputy Shaw, I returned to Deputy Burke's patrol car and found the phone in the map pocket of the passenger door.

We started to drive east down Murphy Creek Rd. I believe that the tow truck was just arriving on scene about this time. **Sebastian** was in the back seat and was yelling all sorts of profanities. Some of the comments that I can remember were similar to "Burke you're so fucked up! You're a homosexual! I bet you like to beat your wife!" and other similar things. After travelling down Murphy Creek Rd. about a mile or so, Sebastian continued to yell profanities and kick the protective cage.

I observed Deputy Burke reach up and push the stop button on his in-car camera. Deputy Burke then began to respond to **Sebastian's** comments by saying things similar to "You're the homosexual. You're nothing but a fucking piece of shit from the Valley!" and other similar comments.

This continued for approximately one minute until suddenly Deputy Burke slammed on the brakes and put the car in park. Deputy Burke then quickly exited the patrol car and walked around to the rear passenger side door. I also exited and stood next to my open door. Deputy Burke opened the rear passenger side door and reached in to grab **Sebastian**.

The rear passenger side door was between Deputy Burke and me. Deputy Burke was standing directly between **Sebastian** and me. I observed Deputy Burke reach into the vehicle and violently pull Sebastian's T-shirt over his head. He also pushed down on Sebastian's back, forcing his head down between his knees. Deputy Burke was screaming things similar to "Shut the fuck up! I don't have to put up with your shit! I am out here every night putting my life on the line to protect pieces of shit like you!"

Sebastian during this time was saying things similar to "Get the fuck off me! Leave me alone! Fuck you!" Deputy Burke then stepped back and slammed the door to the patrol car. I saw the T-shirt slip off **Sebastian's** head almost immediately. Deputy Burke walked back around to the driver's seat and I got back into the passenger seat.

At this point, I wasn't really sure what was going on. At first, I thought maybe Deputy Burke had seen in the rear view mirror that **Sebastian** was about to spit through the cage at us.

~~However, I still thought that it was excessive for Deputy Burke to push down on him and say the things that he did. I wasn't sure as a reserve deputy what or how I should say something to Deputy Burke. I was just hoping that that would be the end of it and we could talk about it later.~~

We began to drive down Murphy Creek Rd. again. We had only traveled maybe 100 feet when **Sebastian** began yelling profanities again. ~~Deputy Burke slammed on the brakes and put the car into park.~~ Again he got out of the patrol car and came around to the rear passenger door. I got out and stood next to my open door. Deputy Burke opened the passenger side rear door and began to struggle with **Sebastian**. ~~Deputy Burke grabbed at Sebastian's head as he was pulling away to try and scoot away from Deputy Burke.~~

~~Deputy Burke got a hold of Sebastian and again pushed his head down between his knees and was pushing up and down.~~ Deputy Burke began yelling some more profanities at **Sebastian**.

I had never been in a situation like this before and I was not sure what I should do. I knew that if this went on much longer or if Deputy Burke started to throw punches or do something to cause physical injury to **Sebastian** that I would have to physically remove Deputy Burke.

Just as I was forming my plan for pulling Deputy Burke off of **Sebastian**. Deputy Burke stopped and slammed the door shut. He walked back around to the driver's seat and I got into the passenger seat.

Deputy Burke then began to drive back into town. **Sebastian** then started saying things similar to "You are so fucked up Burke. You're so fucking crooked!" He also said to me "Hey! What's your name? I want your name too! This is fucked up! You saw what he did to me!" I told him that he could get my name when we got into town.

Once at Town and Country Market, Deputy Burke and I exited the vehicle. We met at the trunk of the vehicle and Deputy Burke said to me "Go ahead and chew my ass." I looked at him and said "What?" He said "I see it in your eyes. You think I went too far. You think I crossed the line." I looked at him for a moment and said "Yeah, I do." ~~He said, "Yeah, you're probably right. I lost my cool. I was pretty unprofessional."~~

Deputy Burke then got on the radio and asked that Sgt. Heller meet us at Town and Country. Sgt. Heller arrived and ~~Deputy Burke told Sgt. Heller that he lost his temper and pulled Sebastian's T-shirt over his head and probably said the F-word a few times.~~ Sgt. Heller said "Okay." ~~I figured that Sgt. Heller didn't want to make a big issue out of this right now, but that later he would want to talk to me about it.~~

Deputy Hubbard arrived and along with Deputy Burke they began to write citations. Deputy Burke could not find **Sebastian's** identification and asked me to look in the patrol car for

the ID. I opened the driver's side door and looked for the card. **Sebastian** said "I want your name. You saw what he did. You're name is Deputy Johnson right?" I said "No." I was confused as to why he would think that my name was Johnson. **Sebastian** said "Burke said your name was Deputy Johnson." I told him that my name was not Deputy Johnson. I could see that **Sebastian** was trying to read my name tag and I shined my light on it for him. He said "Iles". I said "That's right." He said "You saw what he did." I said "I did. I saw him pull your shirt over your head and stuff." He said "That's so fucked up. I'm going to file a complaint." I said "Okay." I did not find the ID card and shut the door.

After Deputy Burke was done writing the citation he asked me to go let **Sebastian** out of the car and handcuffs. I opened the rear passenger door and **Sebastian** got out. ~~I removed the handcuffs which were not double locked.~~ Deputy Burke gave him the citation and told him he was free to go.

Sebastian then began walking north on Highway 238 towards town. He met up with **Richard** at the sidewalk and began yelling back at us "You guys are so fucked up! You guys are crooked!"

I got back into the car with Deputy Burke and we began driving back to the station. We stopped at the Pacific Pride on Fruitdale Dr. Deputy Burke and I continued to discuss the incident. Deputy Burke continued to tell me why he did what he did. For the most part, I just listened while he talked. Although, I can't really remember what he said. I think this was because my mind was racing about what I should do about the situation.

At one point, I did tell Deputy Burke that I was glad that he said something to Sgt. Heller about it. I also said that I was pretty sure that **Sebastian** was going to complain. ~~Deputy Burke said something similar to "Nah, he won't file a complaint. He's just Valley trash." He also said something similar to "If you're a witness of this, just make yourself scarce."~~ I told him that I couldn't do that and that I would have to tell them what I saw. Deputy Burke dropped me off in the back parking lot at the station.

Later that day, May 12th, 2007, I was really feeling uncomfortable with what had happened the night before so I called into records or dispatch and got ~~Sgt. Heller's home phone number.~~ It was his day off, but I felt that I really needed to pass on to him more of what had occurred. ~~I called his home number and left a message on the answering machine for him to call me as soon as possible. I never received a call from Sgt. Heller.~~

The next day May 13th, 2007, which was Mother's Day, I called Gary Geiger who was at home and had his family over for the holiday. I happened to be just down the street at my parent's house so I asked Gary if I could come over and talk to him. He said that would be okay.

I told Gary what had happened with Deputy Burke and Gary said that he thought that I was doing the right thing by calling Deputy Burke's supervisor. He said that Sgt. Heller knows

about it and if he thinks its worth talking to you about then he'll call you. I asked him if he thought I should go to the Undersheriff on Monday. He said that I should wait a couple more days to see if I hear anything from Sgt. Heller and then go to the Undersheriff if Sgt. Heller didn't contact me. He reminded me that that way I would be following the chain of command.

A few days later I had the opportunity to speak with Cpl. Deubert in the squad room with no one else around. She said that I would probably have to speak with someone soon about the incident with Deputy Burke. She told me that **Sebastian** had filed a complaint. I told her that I did not have a problem speaking with someone about it.

I believe that it was the next day that I received a GroupWise from Cpl. Deubert instructing me to speak with the Undersheriff about the incident. I spoke with the Undersheriff regarding the incident and he ordered me to submit to him, in writing, a narrative of the incident.

Submitted June 6th, 2007.



Reserve Sergeant Jeff Iles

#6



JOSEPHINE COUNTY SHERIFF'S OFFICE

SHERIFF Gil Gilbertson

Donald Fasching, Undersheriff
Robin Ward, Lieutenant
Sue Watkins, Business Manager
500 NW 6th St - Grants Pass, OR 97526
(541) 474-5120
FAX (541) 474-5114
e-mail: jocosheriff@co.josephine.or.us

DATE: 060607

TO: Under-Sheriff D. Fasching

FROM: Dep. S. Shaw

RE: Murphy Creek Rd. Incident 051207
CAD Incident #2007050503
Case #'s 2007-5222 / 2007-5223

Under-Sheriff Fasching, per your request on 053107, the following is a narrative providing basic information leading up to the incident on Murphy Creek Rd., on 051207, and the incident as it happened.

On 051207 at approximately 0043 hrs, I along with Dep. M. Burke, and Sgt. J. Heller were dispatched to a large fight, at a party, involving multiple subjects fighting with baseball bats. The incident was taking place somewhere on Spencer Creek Rd., off of Murphy Creek Rd. Along with the units dispatched there was one reserve deputy and one Sheriff's Office volunteer riding along. Reserve Deputy Jeff Isles was riding along with Dep. Burke and Volunteer Rick Young was riding along with me.

As we arrived in the area of Murphy there was a substantial amount of vehicle traffic all leaving that area and it was assumed that the party / fight was most likely over but we proceeded to the incident location to be sure. When we arrived at the first landing, located just off of the chip seal roadway of Spencer Creek Rd., I observed a couple of vehicles and several subjects standing around a large fire and a stack of wooden pallets. The subjects were contacted by Res. Dep. Isles and Dep. Burke. Sgt. Heller and I maintained a position of cover standing just off to right of the subjects.

The subjects contacted denied having any knowledge of a fight and attempted to shift the spotlight off of them by telling us of other parties that were taking place on the mountain and that we might check these other locations.

As we were talking to these first subjects I heard what I originally thought was a quad ATV coming up the hill at a high rate of speed. As the vehicle came around the corner at our location I observed that it was a white, older model,

(1)

Ford Festiva. The vehicle came through the scene at a high rate of speed nearly striking my patrol car and then continued up the hill on the dirt road.

All of us yelled at the vehicle to stop when it came through the scene and as we yelled I could see that two of the subjects inside the car, I saw three for sure two in the front seats and one seated in the rear, turned their heads towards us. I saw that both of them were young, white male subjects, in their late teens to early twenties. The driver of the vehicle was wearing a white, short sleeved, tee-shirt and had brown hair. The second subject I saw was seated in the rear seat area. He also had brown hair and appeared to be about the same age as the driver. I could not see what the passenger was wearing due to the fact that I was focused on the driver and only looked at the passenger at the last second.

Dep. Burke, Sgt. Heller, and Res. Dep. Isles all went to their respective vehicles and attempted to catch the vehicle as it fled. Due to a mechanical failure with my patrol car I simply drove off the hill and back to Grants Pass in order to obtain a replacement unit from the station. As I was driving back to Grants Pass I listened to the other units chase the vehicle until they were out with it and it was un-occupied. It sounded as though they had chased the vehicle up to another party location and they ran several subjects through dispatch and then left since they were unable to establish who was driving the vehicle or even associated with it.

After replacing my patrol car I drove back out to the area of the Spencer Creek Rd., and Murphy Creek Rd., with the intention of locating the same vehicle leaving the area since it had been over an hour since we first had contact with it. As I came into the area of the intersection I blacked out my patrol car and parked on the roadway and in doing so I observed Dep. Burke's patrol car parked about twenty feet away from me in a driveway entrance. I exited my patrol car and met him at the driver's seat and we chatted for about fifteen minutes reference the earlier chase with the vehicle and other non-essential topics.

After about fifteen to twenty minutes of talking I heard the same engine noise that I had heard earlier when the vehicle was coming up the hill. I told Dep. Burke that I could hear it coming down the hill and he stated that he also heard it. As I entered my patrol car I saw the head lights of the vehicle coming down the hill and I could hear the tires squealing in the corners. When the vehicle came to the intersection of Murphy Creek Rd., and Spencer Creek Rd., it went ~~through the intersection at a high rate of speed almost crashing.~~ It then continued northbound on Murphy Creek Rd. at a high rate of speed.

Dep. Burke advised over the radio that we had located the vehicle that they had chased earlier and that we would be traffic on it shortly possibly in pursuit of it. At that point I activated my emergency overhead lights and siren and the vehicle kept up its original speed and driving behavior. At that point I advised dispatch that we were in pursuit of that same vehicle. The driver of the vehicle was driving in a manner so reckless, cutting corners, high speed, and mostly out of control that I decided to back off of it in order for the driver to calm down

and regain control of his vehicle. At that time the vehicle went into a corner and spun several times and finally went off the roadway, coming to a rest with the front of the car, driver's side front tire in the drainage ditch on the east side of Murphy Creek Rd. at about the two-mile mark.

Due to the fact that I did not have my police service dog with me I decided that I would address the passengers of the vehicle which were closer to me rather than address the driver since I could see that he was exiting the car on the driver's side, furthest away from me. The driver finally made it out of the vehicle and fled on foot headed in a north-easterly direction and Dep. Burke and Res. Dep. Isles both gave chase also on foot. ~~I kept the two passengers at gun point and directed them out of the car one at a time. I performed a cursory search of their person for any weapons and then I set about identifying them.~~ 4-2

The two subjects were identified as Richard Dammeier DOB [REDACTED], who was seated in the rear passenger's seat, and Sebastian Glen DOB [REDACTED] who had been seated in the front passenger's seat. Glen provided me with an Oregon Driver's license identifying him as such. The other subject provided me with his name and date of birth.

I attempted to get both Glen and Dammeier to tell me who was driving the vehicle that they were in and they both told me that they did not know who was driving the vehicle. They both stated that they were merely trying to get a ride home from a party and that the car they were driving in was the last option for them to get a ride. They stated to me several times they did not know the driver and then provided me with several first names but they claimed that they were not exactly sure as to his identity.

While I was attempting to get the identity of the driver I observed Res. Dep. Isles return to the scene and enter Dep. Burke's patrol car. He then drove north on Murphy Creek Rd., and a short time later I saw that he had driven down a driveway about a quarter mile away. I could see that Dep. Burke was working his way towards him but was still quite a ways from his location. At that time I heard several dogs in the neighborhood begin barking behind Dep. Burke in an area to the south of him. The dogs were alerting to something that was obviously moving south since the dogs were progressively alerting from residence to residence. I informed Dep. Burke of this to no response and left it at that.

~~Dep. K. Hubbard eventually arrived on scene and when doing so he walked up to me and asked which of the subjects that I had was the driver. I told him the driver fled to the east through the fields and Dep. Burke went after him. Dep. Hubbard entered the field and walked to the back of the field and returned a short time later.~~

~~Sgt. Heller arrived at the scene just after that and the three of us congregated on the side of the roadway near the driver's side of the suspect vehicle. Dammeier and Glen remained seated on the ground in front of my patrol car on the other side of the suspect vehicle.~~

3

~~Due to the fact that Dar eier and Glen had not committed crime and they had not provided me with any pertinent information, and more importantly weren't going to, I decided that the two of them were basically free to go but had not informed them of that fact.~~

After forming a plan as far as the disposition of the vehicle and attempting to gain suspect information through phone calls from dispatch to the registered owner of the vehicle, Dep. Burke and Res. Dep. Isles drove up in Dep. Burke's patrol car. I am not sure as to who was driving the patrol as I had turned away to ask Sgt. Heller a question. As I turned around to say something to Dep. Burke I saw that he was walking right in front of me and he had a very angry disposition about him. Just as he was passing me he stated to Dammeier and Glen, "who the fuck was driving this car?" Both Glen and Dammeier stated almost in unison that they did not know who was driving the car. Dep. Burke then stated, "Don't fucking lie to me because when you lie you disrespect your mother!"

He went to Glen first and ordered him to stand up and as Glen began to stand up ~~he grabbed his left arm and yanked him the rest of the way to his feet. After getting his feet under him Dep. Burke pushed Glen against the suspect vehicle and ordered him to put his hands behind his back. Glen turned to Dep. Burke and asked "what am I being arrested for?" Dep. Burke shouted at him, "turn around and stop resisting me!" and he pushed him back into the car and then finished placing him into hand cuffs. After being pushed into the side of the car the second time Glen stated to Dep. Burke, "I'm not resisting I just want to know what I'm being arrested for."~~

After taking Glen into physical custody he led him by the arm to his patrol car which was parked in the southbound lane of travel about fifty away from where we were all standing. Dep. Burke told Glen to get into the car and as he did so he again stated, "what am I being arrested for?" Dep. Burke told him to get in the car again and then he slammed the door. Glen was seated in the driver's side rear of the patrol car.

Dep. Burke marched back to the location of Dammeier, who was still seated in his original position in front of my patrol car. ~~Dep. Burke told him to stand up and he did. He grabbed him in the same manner that he grabbed Glen and shoved him against the suspect car and told Dammeier to keep his mouth shut and to not resist him.~~ Dammeier stated that he was not going to resist him nor was he saying anything. After Dammeier was physically detained Dep. Burke escorted him back to Dep. Hubbard's patrol car and told him to have a seat which he did. Dep. Burke then slammed the door and walked back to our location.

While at our location the conversation was about how Dep. Burke was tired of the "punks" from the Illinois Valley always lying to us and that he is sick of risking his life on a nightly basis only to be treated like we had been and lied to.

Dep. Burke decided that he and Res. Dep. Isles would go back to the two patrol cars and work Glen and Dammeier against each other in an effort to get one of

4

Malice

them to slip up and say that the driver's name was. Dep. Burke went to his patrol car and contacted Glen and shortly after opening the door they began yelling at each other. Dep. Burke slammed the door and walked the short distance to Dep. Hubbard's patrol car where he opened the rear driver's side door and began talking to Dammeier. He eventually slammed that door as well and walked over to Res. Dep. Isles who had opened the door and was talking to Glen without yelling or raising his voice. Dep. Burke said something to Res. Dep. Isles and the two of them walked back to our location as the tow truck arrived on the scene for the suspect vehicle.

contrast

While the tow truck driver set about loading the vehicle onto the rollback of the tow truck ~~Dep. Burke and Dep. Hubbard made plans to meet at the parking lot for Walgreens to issue Citations to Appear in Court for MIP and violation citations for fail to where a safety belt.~~ After that Glen and Dammeier were to be released from that location.

Dep. Hubbard left the scene with Dammeier first and then shortly there after Dep. Burke and Res. Dep. Isles left. The latter were delayed because we were looking for Res. Dep. Isles' cell phone which he thought he had lost but was found in the door pocket of the patrol car.

After the tow truck had completed loading the suspect vehicle I drove my patrol car back to Grants Pass. As I passed the Town and Country Market in the 2400 block of Williams Hwy., I observed Dep. Burke's patrol car parked in the lot facing the highway. Dep. Burke was standing at the back driver's side door of the car and looked as though he was about to open it. Res. Dep. Isles was on the passenger's side of the car with his back to the highway. I continued on passed with the assumption in mind that he had decided to issue Glen's citations at that location or maybe I had misunderstood the original plan, either way I continued on to the station to wait for Sgt. Heller. I was going to give him a ride to his residence due to the fact that his patrol car was going to be serviced on that coming Monday.

~~As I pulled into the back lot of the station I heard Dep. Burke on the radio ask Sgt. Heller to come back to his location at the market.~~ I waited at the station for about fifteen minutes for Sgt. Heller to arrive and he eventually did. After he got into my patrol car I drove him to his residence and dropped him off there. When I cleared from his residence I heard Dep. Burke go off duty at his residence and I continued to mine.

As I got to my street I saw that Dammeier was standing on the highway at the end of my street. I chose to drive around for awhile and then come back and Dammeier was still there so I drove around for a short while longer and while doing so I received a call from dispatch. I do not recall who the dispatcher was but she asked me if we had beat Glen up at the scene. I told her that in no way was he beaten up at the scene. The only time that he was touched was when he was physically detained and placed in the back seat of Dep. Burke's patrol car. ~~The dispatcher told me that he was on the phone with 911 stating that his nose had been broken by Dep. Burke.~~ She then told me that they were referring him to our administration during regular business hours if he wanted

5

to file a complaint. I told her that was fine and I was at my home off duty.

After going off duty I called Dep. Burke's Office issued phone and got his voice mail. I relayed the information to him reference the 911 call that Glen had made and I told him that I was just giving him a heads up in the event that a complaint was filed.

6

INTERVIEW: Sergeant Joel Heller
RE: Sebastian Glenn Complaint
Interview Date: 06-14-07
Interview Time: 1622 hours
Location: Sheriff's Office Conference Room

Sergeant Heller was read the Administrative Admonishment and said he understood the order.

Heller was working as a uniformed patrol sergeant on May 12, 07, and was called to assist deputies responding to a loud party on Spencer Creek Road.

Heller discussed the party and his role. Said he saw a small bon-fire, vehicles, several subjects, he said everyone looked like they were over 21 years of age.

He said a vehicle arrived at the party location and was traveling at a high rate of speed. Heller could not ID the vehicle. It was a small vehicle. Only saw a driver.

Heller said he attempted to catch it.

Q Do you recall Dep Burke chasing the vehicle.

A I believe so.

H The vehicle went to another location and the occupants fled on foot.

Q Were any arrests made.

A No we did not make any arrests.

Heller left the scene and was going home.

Heller heard the pursuit and responded to the crash location.

Heller arrived, veh in the ditch, two subjects on the ground in front of Dep. Shaw's vehicle.

Heller could not remember the subject's names.

I mentioned Glenn's name and Heller said he did remember Glenn being there.

Heller said subjects sitting next to the front bumper of Shw's car.

Q Were the two subjects handcuffed?

A Yes.

Q When you arrived at the scene, they were cuffed.

A Yes.

(No)

Heller said he remembered seeing Shaw, and Hubbard, but couldn't say what Hubbard was doing.

Heller did not talk to either subject.

Heller walked within 15 ft. Heller did not talk to subjects. Heller spoke to Shaw and discussed the pursuit. Hubbard returned to the scene.

Q did you have any conversation with Hubbard

A I can't recall.

Iles returned to the scene

Q Did you have any conversation with Iles

A I don't recall.

Q Do you recall Hubbard or Iles having any contact with either subject?

A No

Burke returned to the scene.

Q Did Burke have any contact with the subjects.

A Yes

A Would you describe the contact.

Burke walked Glenn and told him to get up from the ground.

Burke "grabbed" Glenn, lifted him up, the subject was "jerking" and "chipping away."

Q When Burke made verbal contact with Glenn, do you recall him using verbal cuss words and swearing. Specically, "Get up Mother Fucker?"

A I remember him saying get up, I don't remember Mother Fucker.

H As they were going to Burke's vehicle, I heard words exchanged between the two of the them. Glenn was chipping away at Burke.

Q What was he saying?

A He was cussing at Burke?

Q Was burke cussing at Glenn.

A I heard Burke call Glenn a piece of shit.

Q Was it inappropriate?

A I thought so.

Q Read from Glenn's ccf. Asked about Burke's initial grab.

A I didn't see his (Burke) hands, I couldn't say what was being done.

H Said he could not recall Glenn complaining about the pain to his arm or thumb.

H Said he could not recall Burke slamming or placing Glenn onto the car.

Q When Glenn was getting up from the ground, what type of behavior. Was he resisting in any way?

A He was jerking while Burke tried to get him up.

Q Was he jerking because it hurt?

A It's possible.

Q Do you think the force used by Burke was reasonable?

A The force that I saw was reasonable. It was at the "upper end" of being reasonable.

Q So it was close to being unreasonable?

A It was at the upper end of being reasonable.

Q How close were you standing when Burke made contact with Glenn?

A Probably 30 to 40 feet.

Q Was your view unobstructed?

A I didn't have a direct view of him, I could move to one side of the person I was talking too, to see what was going on.

Q Other lighting?

A Lights from the vehicles.

Q Do you recall Burke calling Glenn a "stupid, fat red-neck?"

A No

H Burke placed Glenn in his vehicle. Burke lifted Dammier up from the ground and put him in Hubbard's car.

Q Did you ever hear Burke place the subjects under arrest.

A No

H Said he remembered being told the two subjects were being driven to Walgreens. He was not supposed to meet them.

Heller left the crash site, and was heading to GP.

Q At a point in time did you respond to the Town and County Market?

A Yes.

H Approached market and saw a Blk and Wht in the lot. Drove in and stopped. Burke and iles were standing near the car, Burke was standing next to the closed left rear door. Glenn was seated behind the driver. When H got out of his car, he said Burke was talking to Glenn.

Q Did you ever see Burke reach inside the car?

A I know he opened the door and at one point reached in, I don't know what he was doing.

Q How far were you?

A 30 feet away.

Q Did you see Burke place his hands on Glenn's head or neck?

A I could see him reach in, but I couldn't see where his hands were.

Q Could you see Burke pushing Glenn's head down bet. his knees to his feet?

A I could not see that.

Q Did you see Burke trying to pull Glenn from the car?

A I don't recall that.

H Burke shut the car door and walked to Heller's location.

Q What did he tell you?

A Glenn was hitting his head against the screen; cursing at Burke; threatening Burke and his family.

Q It is clear that Burke told you Glenn was threatening him and his family?

A I believe so. Yes he did say that.

Q Did you discuss Burke's actions concerning the use of force?

A Not use of force. Discussed language, and that Mr. Glenn was not worth getting angry over.

Q What was wrong with Burke's language.

A That while escorting Glenn to the car he called him "A piece of shit."

Q That's the only inappropriate thing you heard Burke say?

A That's all I can recall.

Q Did you and Burke discuss inappropriate use of force?

A No

Q Did you discuss anything else

A No, no final comments.

Heller left the scene and went home.

CCF:

Complaint submitted by Glenn on 05-16, Heller was shown a copy of complaint.
Heller said he received the complaint on 05-17.

Q What is the procedure for investigating a compliant?

A Review the complaint, conduct an investigation and see if the complaint has any merit.

Q Did you conduct an investigation?

A Yes, I spoke to Dep Burke. I spoke to Dep Shaw because he had previous encounters with S. Gleen.

Q What did you ask Dep Burke?

A I don't recall the exact conversation.

Q Were the allegations serious?

A The allegations were serious.

Q Have you investigated citizen complaints before?

A Yes

Q How many?

A I don't recall.

Q More than 10?

A Probably around ten.

Q Wouldn't it be standard to interview the compl first?

A Yes, at some point. If you think there is merit.

Q What did you think of this.

A The complaint was counter to what I had seen at the scene.

Q Two incidents occurred inside Burke's car that you had no way of seeing. Wouldn't it have been important to interview Glenn or Dep. Iles, who was standing there as to what occurred in the car?

A In retrospect, yes.

Q Why didn't you do that?

A I have no excuse.

Q Did you do a formal interview with either Shaw or Burke?

A No I did not.

Q Have you formed an opinion regarding the validity of this complaint?

A Based on what I had seen at the scene, I felt this complaint was "Unfounded."

Q You were going to unfind the complaint without talking to the compl?

A Yes

Ordered not to discuss with anyone other than rep, not Burke, or attorney.

End interview: 1702

Dep. Burke stopped and said Glenn was bashing his head against the screen and he was trying to get him to stop.

#3

1ST INCIDENT

11 7:05 06-06-07
From port: 031

Port number:

Incident number: ~~2007050503~~

Location : ~~REDACTED~~
Apt / lot : ~~REDACTED~~
Building : ~~REDACTED~~
Nature : ~~DISPATCH TO BUREAU~~
Date : 06/12/07 Closed ; 05/12/07 01:24:47
Time : 0
Shift : 3
Phone :
Priority : 2
Grid : 330
Method : 1
Call taker : MPH
Dispatcher : BDM
Disposition 1 : INF
Disposition 2 :
Primary unit : ~~REDACTED~~
Primary officer ... : 21820
Time dispatched ... : 00:45:14
Time arrived : 01:03:18
Time cleared : 01:24:47
Vehicle tag : WVA516 542CEL RWM197
Vehicle state : OR OR OR
Vehicle color :
First up units : K929 ~~REDACTED~~
Backup officers ... : 30733 35672
Time dispatched ... : 00:47:22 00:49:58
Time arrived : 01:07:46 01:03:18
Time cleared : 01:14:43 01:24:47
Complainant name .. : MISTY
Complainant address : ~~REDACTED~~
Complainant phone . : ~~REDACTED~~
Location occurrence :
Suspects name :
Location name :
Location name 2 ... :
Entry made :
Elapsed time :
Suspect description :
Suspect number :
Suspects vehicle .. :
Direction travel .. :
Animals :
Fenced :
Track molest :
Weapons :
Physical/verbal ... :
Intoxicated/drugs .. :
Others :
Bur open/Res home .. :
Number hostages ... :
Valid alarm :
Officers name :

Port number:

Incident number: 2007050503

Description :
exit doors :
Activity :
General Notes :

Notes

ABOUT 100 SUB (MPH)	00:44:44
RECHITING WITH BATS (MPH)	00:44:51
**ALONG SPENCER CREEK (MPH)	00:44:59
IN THE MOUNTAINS (MPH)	00:45:12
P.D. Response area is SO (BDM)	00:45:14
20 VEH(S) (MPH)	00:45:14
BLOCKING EACH OTHER SO NO ONE CAN LEAVE (MPH)	00:45:22
EVERYONE HS BEEN DRINKING (MPH)	00:45:48
DISCONNECTED THE LINE (MPH)	00:46:26
X9 TURNING ONTO MURPHY CRK (BDM)	00:55:43
AND HAVE SEVERAL VEH LEAVING (BDM)	00:55:53
Tag WVA516 OR added to incident. (BDM)	01:02:31
Drivers License: [REDACTED], State: OR (BDM)	01:04:43
CODE 4 (BDM)	01:05:23
Changed Dr License from: [REDACTED], State: OR to 8651660 (BDM)	01:06:40
Drivers License: [REDACTED], State: OR (BDM)	01:06:40
Changed Dr License from: [REDACTED], State: OR to 6712780 (BDM)	01:06:45
Drivers License: [REDACTED], State: OR (BDM)	01:06:45
D. DORFF, AIMEE M [REDACTED] (BDM)	01:06:55
COLE, LARRY W [REDACTED] (BDM)	01:07:04
BROWN, ERNIE D [REDACTED] (BDM)	01:07:14
BON FIRE AT FIRST FORK (BDM)	01:07:28
TRYING TO CATCH VEH THAT DROVE OFF THE MOUNTAIN (BDM)	01:07:42
SOON RUNNING ON FOOT (BDM)	01:11:11
5-6 MILES UP (BDM)	01:11:39
Tag 542CEL OR added to incident. (BDM)	01:13:23
*Tag: 542CEL Previously entered into TOWS file (BDM)	01:13:23
*on 07/11/06 By MILLER, SUE J (BDM)	01:13:23
Tag RW1197 OR added to incident. (BDM)	01:14:01
Tag YPS462 OR added to incident. (BDM)	01:14:07
Tag 595ABF OR added to incident. (BDM)	01:14:13
Tag 787CSJ OR added to incident. (BDM)	01:14:18
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:15:58
Drivers License: [REDACTED], State: OR (BDM)	01:15:58
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:18:42
Drivers License: [REDACTED], State: OR (BDM)	01:18:42
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:19:08
Drivers License: [REDACTED], State: OR (BDM)	01:19:08
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:19:57
Drivers License: [REDACTED], State: OR (BDM)	01:19:57
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:20:01
Drivers License: [REDACTED], State: OR (BDM)	01:20:01
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (BDM)	01:20:06
Drivers License: [REDACTED], State: OR (BDM)	01:20:06
***** (BDM)	01:20:08
I, JEREMY A [REDACTED] (BDM)	01:20:17
G. DRICH, SCOTT J [REDACTED] (BDM)	01:20:25

11 7:05 06-06-07
From port: 031

prt number:

Incident number: 2007050503

DAMMEIER, RICHARD K [REDACTED] (BDM)
MAHANNAH, TIMOTHY J [REDACTED] (BDM)
LEAIR, JUSTIN R [REDACTED] (BDM)
HUFF, LINDSEY N [REDACTED] (BDM)
THOMAS, KASEY A [REDACTED] (BDM)
***** (BDM)
CLEAR THE I/L (BDM)
ID'D EVERYONE THAT STAYED (BDM)
NO FIGHT (BDM)
*Police incident closed (BDM)

01:20:35
01:20:46
01:20:57
01:21:10
01:21:19
01:21:20
01:24:25
01:24:35
01:24:39
01:24:47

2ND INCIDENT

#4

11:43:06-06-07
From port: 031

Page 1

Report number: 2007-~~05222~~ Incident number: 2007050521

Location : ~~MURPHY CREEK RD / SPENCER CREEK RD~~
Apt / lot :
Building :
Nature : T-TRAFFIC STOP
Date : 05/12/07 Closed : 05/12/07 04:23:28
Time : 03:00:43
Shift : 3
Phone :
Priority : 6
Grid : 330
Method :
Call taker :
Dispatcher : MPH
Disposition 1 : RPT
Disposition 2 : TOW
Primary unit : ~~05723~~
Primary officer ... : 35672
Time dispatched ... : 03:00:45
Time arrived : 03:00:45
Time cleared : 03:48:53
Vehicle tag : 542CEL
Vehicle state : OR
Vehicle color :
Backup units : 4L27 1L43 ~~229~~
Backup officers ... : 29699 35672 21820
Time dispatched ... : 03:01:21 03:01:31 03:01:35
Time arrived : 03:04:00 03:01:31 03:13:12
Time cleared : 04:15:36 04:15:39 03:48:44
Complainant name .. :
Complainant address :
Complainant phone . :
Location occurrence :
Suspects name :
Location name :
Location name 2 ... :
Entry made :
Elapsed time :
Suspect description :
Suspect number :
Suspects vehicle .. :
Direction travel .. :
Animals :
Fenced :
Track molest :
Weapons :
Physical/verbal ... :
Intoxicated/drugs . :
Others :
Business/Res home . :
Number hostages ... :
Valid alarm :
Injuries :
Officers name :

11. :43 06-06-07
port: 031

ort number: 2007-05222 Incident number: 2007050521

Description :
exit doors :
Activity :
General Notes :

Notes

!*** Nature changed from CHS *** (MPH)	03:00:57
WARRANTED COURT ORDER (MPH)	03:01:10
ON FOOT (MPH)	03:01:12
DRIVER FLED (MPH)	03:02:31
Drivers License: [REDACTED] State: OR (MPH)	03:03:01
**GREEN SEBASTIAN CREE SOLOMAN [REDACTED] --VALID (MPH)	03:03:30
!*** Nature changed from CHASE *** (MPH)	03:03:45
Priority changed from 2 to 6 (MPH)	03:03:45
Tag 542CEL OR added to incident. (MPH)	03:06:10
*Tag: 542CEL Previously entered into TOWS file (MPH)	03:06:10
*on 07/11/06 By MILLER, SUE J (MPH)	03:06:10
REQ NON PREF (MPH)	03:06:17
AFFORDABLE TOW (MPH)	03:06:46
ETA 20 (MPH)	03:08:24
Charged Dr License from: [REDACTED] State: OR to [REDACTED] (MPH)	03:09:35
Drivers License: [REDACTED] State: OR (MPH)	03:09:35
MMEIER, RICHARD KENTON [REDACTED] --SUSP DWSV (MPH)	03:09:58
(MPH)	03:19:23
DRIVER: MURPHY, WILLIAM ROBERT [REDACTED] --SUSP DWSV (MPH)	03:19:36
BLACK T-SHIRT, BB CAP (MPH)	03:19:46
..... (MPH)	03:28:43
WANTS ON A PIONEER STEREO (MPH)	03:28:54
NM230550000.REUR 3055 NCIC (MPH)	03:29:03
OR0170000 (MPH)	03:29:03
NO RECORD SER-OAN/TLTM017008UC TYP/Y (MPH)	03:29:03
QUERY RUN BY PORT 102 (MPH)	03:29:06
LM230550000.REUR 3055 LEDS (MPH)	03:29:06
QA.OR0170000.TYP/Y.SER/TLTM017008UC (MPH)	03:29:06
NO RECORD SER/TLTM017008UC TYP/Y (MPH)	03:29:06
CHECKING NCIC (MPH)	03:29:06
QUERY RUN BY PORT 102 (MPH)	03:29:06
TOW ON SCENE (MPH)	03:29:55
Unit 4L27 current location: ER WALGREENS PKG LOT (MPH)	03:33:36
AFFORDABLE HAS THE VEH (MPH)	03:48:40
WHI (MPH)	03:48:42
Assigned report number: 2007-05222 (MPH)	03:53:05
UNIT 4L27 CURRENT LOCATION: TOWN/COUNTRY MARKET (MPH) *	03:55:03
Unit 4L27 current location: TOWN/COUNTRY MARKET (MPH)	04:08:02
***** (BDM)	04:15:41
ARRRESTED... [REDACTED] (BDM)	04:17:19
CRAMER [REDACTED] K [REDACTED] (BDM)	04:17:36
CHARGE [REDACTED] (BDM)	04:17:46
DI [REDACTED] CITE TO APPEAR (BDM)	04:17:54
BO... FAILED PORTABLE BREATH TEST (BDM)	04:19:03
***** (BDM)	04:19:04
NO SEATBELT (BDM)	04:19:35
VEH HAVING NO FUNCTIONING SEATBELT (BDM)	04:19:56

11 3:43 06-06-07
From port: 031

Page 3

Port number: 2007-05222 Incident number: 2007050521

Assigned report number: 2007-05223 (BDM)	04:20:33
+++++ (BDM)	04:21:37
CASE MIP 07-5222 (BDM)	04:21:58
CORRECTION CASE TOW 07-5222 (BDM)	04:22:26
+3 (BDM)	04:22:38
+++++ (BDM)	04:22:39
CORRECTION (BDM)	04:22:42
CASE TOW 07-5222 (BDM)	04:23:00
CASE MIP 07-5223 (BDM)	04:23:13
+++++ (BDM)	04:23:14
*Police incident closed (BDM)	04:23:28
LINKED TO POLICE SUB INCIDENT # 2007050529 05/12/07 (MMH)	05:27:25

08:54:55 06-07-07
From port: 505

Page 1

Report number: 2007-05222 Incident number: 2007050521

05223

Location : MURPHY CREEK RD/SPENCER CREEK RD.
Apt / lot :
Building : *MIP*
Nature : ~~T~~ TRAFFIC STOP
Date : 05/12/07 Closed : 05/12/07 04:23:28
Time : 03:00:43
Shift : 3
Phone :
Priority : 6
Grid : 330
Method :
Call taker :
Dispatcher : MPH
Disposition 1 : RPT
Disposition 2 : TOW
Primary unit : 1L43
Primary officer ... : 35672
Time dispatched ... : 03:00:45
Time arrived : 03:00:45
Time cleared : 03:48:53
Vehicle tag : 542CEL
Vehicle state : OR
Vehicle color :
Backup units : 4L27 1L43 X9
Backup officers ... : 29699 35672 21820
Time dispatched ... : 03:01:21 03:01:31 03:01:35
Time arrived : 03:04:00 03:01:31 03:13:12
Time cleared : 04:15:36 04:15:39 03:48:44
Complainant name .. :
Complainant address :
Complainant phone . :
Location occurrence :
Suspects name :
Location name :
Location name 2 ... :
Entry made :
Elapsed time :
Suspect description :
Suspect number :
Suspects vehicle .. :
Direction travel .. :
Animals :
Fenced :
Track molest :
Weapons :
Physical/verbal ... :
Intoxicated/drugs . :
Others :
Bus open/Res home . :
Number hostages ... :
Valid alarm :
Injuries :
Officers name :

Exhibit 28 Page 7

OT

08:54:55 06-07-07
From port: 505

05223

Report number: 2007-05222 Incident number: 2007050521

Description :
exit doors :
Activity :
General Notes :

Notes

*** Nature changed from CHS *** (MPH)	03:00:57
WRECKED OUT ON MP 2 (MPH)	03:01:10
ON FOOT (MPH)	03:01:12
DRIVER FLED (MPH)	03:02:31
Drivers License: [REDACTED], State: OR (MPH)	03:03:01
**GLENN, SEBASTION CREE SOLOMAN [REDACTED]--VALID (MPH)	03:03:30
*** Nature changed from CHASE *** (MPH)	03:03:45
Priority changed from 2 to 6 (MPH)	03:03:45
Tag 542CEL OR added to incident. (MPH)	03:06:10
*Tag: 542CEL Previously entered into TOWS file (MPH)	03:06:10
*cn 07/11/06 By MILLER, SUE J (MPH)	03:06:10
REQ NON PREF (MPH)	03:06:17
AFFORDABLE TOW (MPH)	03:06:46
ETA 20 (MPH)	03:08:24
Changed Dr License from: [REDACTED], State: OR to [REDACTED] (MPH)	03:09:35
Drivers License: [REDACTED], State: OR (MPH)	03:09:35
**DAMMEIER, RICHARD KENTON [REDACTED]--SUSP DWSV (MPH)	03:09:58
... (MPH)	03:19:23
DRIVER: MURPHY, WILLIAM ROBERT [REDACTED]--SUSP DWSV (MPH)	03:19:36
BLACK T-SHIRT, BB CAP (MPH)	03:19:46
..... (MPH)	03:28:43
WANTS ON A PIONEER STEREO (MPH)	03:28:54
NM230550000.REUR 3055 NCIC (MPH)	03:29:03
OR0170000 (MPH)	03:29:03
NO RECORD SER-OAN/TLTM017008UC TYP/Y (MPH)	03:29:03
QUERY RUN BY PORT 102 (MPH)	03:29:06
LM230550000.REUR 3055 LEADS (MPH)	03:29:06
QA.OR0170000.TYP/Y.SER/TLTM017008UC (MPH)	03:29:06
NO RECORD SER/TLTM017008UC TYP/Y (MPH)	03:29:06
CHECKING NCIC. (MPH)	03:29:06
QUERY RUN BY PORT 102 (MPH)	03:29:06
TOW ON SCENE (MPH)	03:29:55
Unit 4L27 current location: ER WALGREENS PKG LOT (MPH)	03:33:36
AFFORDABLE HAS THE VEH (MPH)	03:48:40
WHI (MPH)	03:48:42
Assigned report number: 2007-05222 (MPH)	03:53:05
Unit 1L43 current location: TOWN/COUNRTY MARKET (MPH)	03:55:03
Unit 4L27 current location: TOWN/COUNTRY MARKET (MPH)	04:08:02
***** (BDM)	04:15:41
ARRESTED....GLENN, SEBASTION C [REDACTED] (BDM)	04:17:19
DAMMEIER, RICHARD K [REDACTED] (BDM)	04:17:36
CHARGE.....MIP ALCOHOL (BDM)	04:17:46
DISPO.....CITE TO APPEAR (BDM)	04:17:54
YTH FAILED PORTABLE BREATH TEST (BDM)	04:19:03
***** (BDM)	04:19:04
CITE NO SEATBELT (BDM)	04:19:35
THE VEH HAD NO FUNCTIONING SEATBELT (BDM)	04:19:56

08:54:55 06-07-07
From port: 505

Report number: 2007-05222 Incident number: 2007050521

Assigned report number: 2007-05223 (BDM)	04:20:33
+++++ (BDM)	04:21:37
CASE MIP 07-5222 (BDM)	04:21:58
CORRECTION CASE TOW 07-5222 (BDM)	04:22:26
+3 (BDM)	04:22:38
+++++ (BDM)	04:22:39
CORRECTION (BDM)	04:22:42
CASE TOW 07-5222 (BDM)	04:23:00
CASE MIP 07-5223 (BDM)	04:23:13
+++++ (BDM)	04:23:14
*Police incident closed (BDM)	04:23:28
LINKED TO POLICE SUB INCIDENT # 2007050529 05/12/07 (MMH)	05:27:25

Case Register..... Josephine Co Circuit Court Status Closed
Case#..... 070239V Oregon State Of/Glenn Sebastian Cree Soloma
Offense Violation - Minor Possess/Purchase Li - B/VIO

Case Filed Date..... 5/30/07 Starting Instrument.. Citation
Case Started Date... 5/30/07 Originating From..... Original filing
1st Appearance Date. 5/31/07 Originating Agency... Josephine County Sheriff
Ready for Trial..... Originating Agency#..
First Setting Date.. Previous Court.....
Trial Scheduled Date Previous Court Case#..
Trial Start Date.... Previous Decision...
Length of Trial..... Master Case Number...
Disposition Date.... 5/31/07 Relation to Master...
Final Order Date.... 5/31/07 Termination Stage...
Reinstated Date..... Termination Type.....

Citation in Lieu#... 13535 Judgment Type.....
District Attorney... Judgment Status.....
Booking#..... Judgment Volume/Page.

Certified True Copy Of The Original
Dated This 28 Day Of April, 2008
Trial Court Administrator
By: *[Signature]*



ROLE PLAINTIFF ATTORNEY
1 Plaintiff Oregon State Of

ROLE DEFENDANT
1 Defendant..... Glenn Sebastian Cree Soloman Birth Dt.. ██████████
Sex..... Male Hght/Wght. 507 250
Drivers License..... ██████████ OR Hair..... Black
Phone#..... Eyes..... Brown
Control#..... Race..... Caucasian
Address..... ██████████
CAVE JUNCTION OR 97523

CHARGING INSTRUMENT
Citation Date..... 5/30/07
Status..... Date.....

Count..... 1
1 ORS 4714301 Minor Possess/Purchase Li B/VIO
Status..... Convicted Date..... 5/31/07
Incident Date..... 5/12/07
Date Charged/Issued. 5/12/07 Citation#. 13535
Current Plea..... 5/31/07 Plea Entry No Contest Security..
Disposition..... 5/31/07 Convicted Plate#....
Charging Officer.... Burke Michael Bpst#..... 35672

1 Sentence Date..... 5/31/07
Status..... Date.....
Unitary Assessment.. \$37.00
SC Facility Asmt.... \$6.00 Suspended
County Jail Asmt.... \$22.00 Suspended
LE Medical Asmt.... \$2.00 Suspended
Fine..... \$433.00 Suspended

ROLE OTHER PEOPLE ATTORNEY
1 Clerk LH

ENTER DT FILE DT EVENT/FILING/PROCEEDING SCHED DT TIME ROOM
1 5/30/07 5/30/07 Citation

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		500			
2	5/30/07	5/30/07 Arraignment Scheduled	5/31/07	8:00 AM	TR1
		Cite to Appear			
3	5/31/07	5/31/07 Appearance			TVIO
		DEF 1 Glenn Sebastian Cree So			
		CLK 1 LH			
		JUD 1 Violations Bureau			
4	5/31/07	5/31/07 Plea Entry of No Contest			
		Charge # 1			
5	5/31/07	5/31/07 Convicted			
		Charge # 1			
6	5/31/07	5/31/07 Hearing Victim Pane Scheduled	6/28/07	6:30 PM	MAP
		to suspend fine			
7	5/31/07	5/31/07 Judgment Sentence			
		5/31/07 Signed			
		JUD 1 Violations Bureau			
8	5/31/07	5/31/07 Sentence			
		Charge# 1/Snt# 1			
9	5/31/07	5/31/07 Closed			
10	5/31/07	5/31/07 Case Notes			
		File to Verification			
11	6/04/07	6/04/07 Assessed Payment Sched Asmt			
12	6/04/07	6/04/07 Assessed Collection Ref Asmt			
13	7/09/07	7/09/07 Victim Impact Completion			
		def attended on 062807			
		***** END OF DATA *****			

OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations of Crimes Where Separate Complaint Will Not Be Filed ORS 153.045 or 153.069

CRIME(S) (See A on Back)
 VIOLATION(S) (See B on Back)
 Traffic
 Unlawful
 Wildlife
 Boating
 Commercial Fishing

POLICE RECORDS 13535

STATE OF OREGON
 COUNTY OF JOSEPHINE
 Court: Municipal
 Justice
 Juvenile
 Circuit
 Community

I, THE UNDERSIGNED, CERTIFY AND SAY THAT THE FOLLOWING PERSON:

Name - Last	First	Middle	State	Tel No.
<u>Glenn</u>	<u>Sebastian</u>	<u>Eric</u>	<u>OR</u>	<u>503</u>
Address			License Class	<input type="checkbox"/> Employed to drive
<u>[Redacted]</u>			<u>[Redacted]</u>	<input type="checkbox"/> Passenger
City	State	Zip Code	Def: <input type="checkbox"/> Passenger	<input type="checkbox"/> Other
<u>Coquille</u>	<u>OR</u>	<u>97730</u>	<u>[Redacted]</u>	<u>[Redacted]</u>
Sex	Race	DOB	Height	Weight
<u>M</u>	<u>W</u>	<u>[Redacted]</u>	<u>5'07"</u>	<u>135</u>
			Hair	Eyes
			<u>BRN</u>	<u>BRN</u>

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE MENTIONED STATE AND COUNTY:

Offense Date	Month	Day	Year	Time	<input type="checkbox"/> AM	<input type="checkbox"/> Highway	<input type="checkbox"/> Premises open to public
<u>05/12/07</u>	<u>05</u>	<u>12</u>	<u>07</u>	<u>3:00</u>	<u>PM</u>	<input type="checkbox"/>	<input type="checkbox"/>
At or near Location	<u>Mt. D. Murphy Creek Rd</u>						

INVESTIGATION INVOLVING THE FOLLOWING:

Type	Regs/VINAD No.	State	<input type="checkbox"/> Accident	<input type="checkbox"/> Injury
<u>[Redacted]</u>	<u>[Redacted]</u>	<u>[Redacted]</u>	<input type="checkbox"/> Property Damage	<input type="checkbox"/> Escalator/other
Vehicle year, make, model, type, color, OR Other, describe			<input type="checkbox"/> Driver not Reg. Owner	<input type="checkbox"/> Commercial Veh.
<u>[Redacted]</u>			<input type="checkbox"/>	<input type="checkbox"/>
Other			<input type="checkbox"/>	<input type="checkbox"/>
<u>[Redacted]</u>			<input type="checkbox"/>	<input type="checkbox"/>

I DID THEN AND HERE COMMIT THE FOLLOWING OFFENSE(S):

1. Violated (cite ORS/ORD/rule)	Describe	Alleged Spd	Designated Spd	<input type="checkbox"/> Pwd/Alt Lim	<input type="checkbox"/> Pwd
<u>17A.130</u>	<u>MIP / Alcohol</u>			<input type="checkbox"/> VBR	<input type="checkbox"/> Laser
<input type="checkbox"/> Intentional	<input type="checkbox"/> Knowing	<input type="checkbox"/> Reckless	<input type="checkbox"/> Criminal negligence	<input type="checkbox"/> No culpable mental state	Base Fine: <u>50</u>
2. Violated (cite ORS/ORD/rule) _____ Describe _____ Alleged Spd _____ Designated Spd _____ <input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input type="checkbox"/> No culpable mental state Base Fine: _____					
3. Violated (cite ORS/ORD/rule) _____ Describe _____ Alleged Spd _____ Designated Spd _____ <input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input type="checkbox"/> No culpable mental state Base Fine: _____					

I, the undersigned, certify and say that the above mentioned person committed the above offense(s) and I have served the defendant person with this complaint.

Date Issued	1st Officer Signature	Officer's Agency ID
<u>05/12/07</u>	<u>[Signature]</u>	<u>Shan A</u>
Print 1st Officer Name	2nd Officer ID No.	
<u>M. R. [Redacted]</u>	<u>[Redacted]</u>	
2nd Officer of Arresting Person (if Not Officer)	Signature	Print Name

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE:

Mo/Day/Year	Time	AM	PM	Location	Courthouse
<u>05/31/07</u>	<u>8:00</u>				<u>500 NW 5th Street Grants Pass, OR 97528</u>

#3

1ST INCIDENT

11 7:05 06-06-07
From port: 031

Port number:

Incident number: ~~2007050503~~

Old Doc

Location : ~~10025 SPRING CREEK RD~~
Apt / lot :
Building :
Nature : ~~DISPATCH DISTURBANCE~~
Date : ~~05/12/07~~ Closed : 05/12/07 01:24:47
Time : ~~00:43:54~~
Shift : 3
Phone :
Priority : 2
Grid : 330
Method : 1
Call taker : MPH
Dispatcher : BDM
Disposition 1 : INF
Disposition 2 :
Primary unit : ~~21820~~
Primary officer ... : 21820
Time dispatched ... : 00:45:14
Time arrived : 01:03:18
Time cleared : 01:24:47
Vehicle tag : WVA516 542CEL RWM197
Vehicle state : OR OR OR
Vehicle color :
Support units : K929 ~~11740~~
Support officers ... : 30733 35672
Time dispatched ... : 00:47:22 00:49:58
Time arrived : 01:07:46 01:03:18
Time cleared : 01:14:43 01:24:47
Complainant name .. : MISTY
Complainant address :
Complainant phone .. :
Location occurrence :
Suspects name :
Location name :
Location name 2 ... :
Entry made :
Elapsed time :
Suspect description :
Suspect number :
Suspects vehicle .. :
Direction travel .. :
Animals :
Fenced :
Track molest :
Weapons :
Physical/verbal ... :
Intoxicated/drugs .. :
Others :
Bur open/Res home .. :
Number hostages ... :
Vid alarm :
Injuries :
Officers name :

11):05 06-06-07
From port: 031

Port number:

Incident number: 2007050503

DAMMEIER, RICHARD K [REDACTED] (BDM)	01:20:35
MAHANNAH, TIMOTHY J [REDACTED] (BDM)	01:20:46
LEAIR, JUSTIN R [REDACTED] (BDM)	01:20:57
HUFF, LINDSEY N [REDACTED] (BDM)	01:21:10
THOMAS, KASEY A [REDACTED] (BDM)	01:21:19
***** (BDM)	01:21:20
CLEAR THE I/L (BDM)	01:24:25
ID'D EVERYONE THAT STAYED (BDM)	01:24:35
NO FIGHT (BDM)	01:24:39
*Police incident closed (BDM)	01:24:47

2ND INCIDENT

#4

11 3:43 06-06-07
From port: 031

Port number: 2007-05222 Incident number: 2007050521

Location : ~~MURPHY CREEK RD/SPENCER CREEK RD~~
Apt / lot :
Building :
Nature : T-TRAFFIC STOP
Date : 05/12/07 Closed : 05/12/07 04:23:28
Time : 03:00:43
Shift : 3
Phone :
Priority : 6
Grid : 330
Method :
Call taker :
Dispatcher : MPH
Disposition 1 : RPT
Disposition 2 : TOW
Primary unit : ~~11743~~
Primary officer ... : 35672
Time dispatched ... : 03:00:45
Time arrived : 03:00:45
Time cleared : 03:48:53
Vehicle tag : 542CEL
Vehicle state : OR
Vehicle color :
Sup units : 4L27 1L43 ~~11743~~
Sup officers ... : 29699 35672 21820
Time dispatched ... : 03:01:21 03:01:31 03:01:35
Time arrived : 03:04:00 03:01:31 03:13:12
Time cleared : 04:15:36 04:15:39 03:48:44
Complainant name .. :
Complainant address :
Complainant phone . :
Location occurrence :
Suspects name :
Location name :
Location name 2 ... :
Entry made :
Elapsed time :
Suspect description :
Suspect number :
Suspects vehicle .. :
Direction travel .. :
Animals :
Fenced :
Track molest :
Weapons :
Physical/verbal ... :
Intoxicated/drugs . :
Others :
Bur open/Res home . :
Number hostages ... :
Valid alarm :
Officers :
Officers name :

11 1:43 06-06-07
From port: 031

Port number: 2007-05222 Incident number: 2007050521

Description :
exit doors :
Activity :
General Notes :

Notes

(*** Nature changed from CHS *** (MPH)	03:00:57
WRICKED OUT ON MPA 2 (MPH)	03:01:10
ON FOOT (MPH)	03:01:12
DRIVER FLED (MPH)	03:02:31
Drivers License: [REDACTED] State: OR (MPH)	03:03:01
** CHENN, STEPHEN CREE SOLOMAN [REDACTED] --VALID (MPH)	03:03:30
!*** Nature changed from CHASE *** (MPH)	03:03:45
Priority changed from 2 to 6 (MPH)	03:03:45
Tag 542CEL OR added to incident. (MPH)	03:06:10
*Tag: 542CEL Previously entered into TOWS file (MPH).	03:06:10
*on 07/11/06 By MILLER, SUE J (MPH)	03:06:10
REQ NON PREF (MPH)	03:06:17
AFFORDABLE TOW (MPH)	03:06:46
ETA 20 (MPH)	03:08:24
Charged Dr License from: [REDACTED] State: OR to [REDACTED] (MPH)	03:09:35
Drivers License: [REDACTED] State: OR (MPH)	03:09:35
* AMMEIER, RICHARD KENTON [REDACTED] --SUSP DWSV (MPH)	03:09:58
(MPH)	03:19:23
DRIVER: MURPHY, WILLIAM ROBERT [REDACTED] --SUSP DWSV (MPH)	03:19:36
BLACK T-SHIRT, BB CAP (MPH)	03:19:46
..... (MPH)	03:28:43
WANTS ON A PIONEER STEREO (MPH)	03:28:54
NM230550000.REUR 3055 NCIC (MPH)	03:29:03
OR0170000 (MPH)	03:29:03
NO RECORD SER-OAN/TLTM017008UC TYP/Y (MPH)	03:29:03
QUERY RUN BY PORT 102 (MPH)	03:29:03
LM230550000.REUR 3055 LEDS (MPH)	03:29:06
QA.OR0170000.TYP/Y.SER/TLTM017008UC (MPH)	03:29:06
NO RECORD SER/TLTM017008UC TYP/Y (MPH)	03:29:06
CHECKING NCIC (MPH)	03:29:06
QUERY RUN BY PORT 102 (MPH)	03:29:06
TOW ON SCENE (MPH)	03:29:55
Unit 4L27 current location: ER WALGREENS PKG LOT (MPH)	03:33:36
AFFORDABLE HAS THE VEH (MPH)	03:48:40
WHI (MPH)	03:48:42
Assigned report number: 2007-05222 (MPH)	03:53:05
UNIT 4L27 CURRENT LOCATION: TOWN/COUNTRY MARKET (MPH) *	03:55:03
Unit 4L27 current location: TOWN/COUNTRY MARKET (MPH)	04:08:02
+++++ (BDM)	04:15:41
ARRIVAL... [REDACTED] (BDM)	04:17:19
[REDACTED] (BDM)	04:17:36
[REDACTED] (BDM)	04:17:46
CHARGE... [REDACTED] (BDM)	04:17:54
DI... CITE TO APPEAR (BDM)	04:19:03
BO... FAILED PORTABLE BREATH TEST (BDM)	04:19:04
+++++ (BDM)	04:19:35
NO SEATBELT (BDM)	04:19:56
VEH MADE NO FUNCTIONING SEATBELT (BDM)	

11 3:43 06-06-07
From port: 031

Port number: 2007-05222 Incident number: 2007050521

Assigned report number: 2007-05223 (BDM)	04:20:33
+++++ (BDM)	04:21:37
CASE MIP 07-5222 (BDM)	04:21:58
CORRECTION CASE TOW 07-5222 (BDM)	04:22:26
+3 (BDM)	04:22:38
+++++ (BDM)	04:22:39
CORRECTION (BDM)	04:22:42
CASE TOW 07-5222 (BDM)	04:23:00
CASE MIP 07-5223 (BDM)	04:23:13
+++++ (BDM)	04:23:14
*Police incident closed (BDM)	04:23:28
LINKED TO POLICE SUB INCIDENT # 2007050529 05/12/07 (MMH)	05:27:25



JOSEPHINE COUNTY SHERIFF'S OFFICE
Memorandum

SHERIFF GIL GILBERTSON

Donald L. Fasching, Undersheriff
Robin Ward, Lieutenant
Sue Watkins, Business Manager
601 NW 5th St - Grants Pass OR 97526
(541) 474-5120
FAX (541) 474-5114
E-mail: jocosheriff@co.josephine.or.us

DATE: August 28, 2007

MEMO #:

TO: Michael Burke, Deputy, ID #35672

FROM: Gil Gilbertson, Sheriff

RE: **Notice of Termination**

This memo is being hand delivered to advise you that your employment with the Josephine County Sheriff's Office is being terminated effective August 30, 2007, at 0900 hours.

Prior to making the decision to terminate your employment, you were given written notice of the grounds for this action by Undersheriff Donald Fasching on August 6, 2007. You were provided with information regarding the appeal process and given fourteen days to submit a rebuttal. On August 20, 2007, you submitted a written rebuttal to this office. After careful consideration of the information provided by you, your termination is still recommended.

This recommendation for your termination is based on the following:

1) ALLEGATION: Unreasonable Force SUSTAINED

On 05-12-07, you arrested Sebastian Glenn. Glenn was seated on the ground next to a car. You applied control holds to his left arm and thumb. Based on statements from the complainant and several witness deputies, your use of force was unreasonable and caused injury to Glenn. Glenn was not under arrest at the time you applied the control hold and should have been allowed to stand without using force. Your use of force was a violation of General Order 05.01, Use of Force, dated 02-04-03, Section E, 2, which states:

"Deputies shall use only the level of force that is reasonable to accomplish the lawful objective. Deputies are authorized and expected to use whatever force is reasonable in protecting themselves or others from bodily harm."

2) ALLEGATION: Unreasonable Force SUSTAINED

On 05-12-07, you had placed Glenn under arrest and put him in the backseat of your patrol car. While transporting him; you stopped the car, opened the rear door and made physical contact. Based on statements made by Glenn and Reserve Deputy Iles, you overreacted to Glenn's verbal comments and used unreasonable force while attempting to control him. This is a violation of General Order 05.01, Use of Force, dated 02-04-03, Section E, 2, which states:

"Deputies shall use only the level of force that is reasonable to accomplish the lawful objective."

Glenn was handcuffed and seated behind a security screen. He was verbally abusive, but never presented a physical threat to you or Deputy Iles. The force used during your contact with Glenn in the back of the patrol car was unnecessary and unreasonable.

3) ALLEGATION: Unreasonable Force SUSTAINED

On 05-12-07, you were transporting Sebastian Glenn in your patrol car. While enroute to the Town and Country Market, you stopped a second time and made physical contact with Glenn in the rear seat of your car. Based on statements made by Glenn and Deputy Iles, your actions were unnecessary and unreasonable. The force used to control Glenn violated General Order 05.01, Use of Force, dated 02-04-03, Section E, 2, which states:

"Deputies shall use only the level of force that is reasonable to accomplish the lawful objective."

During your interview you said Glenn's actions represented a physical threat to you. If his actions constituted a threat, he should have been secured after the previous stop. You were unable to provide any objective justification for using force. Your use of force during this stop was unnecessary and unreasonable.

4) ALLEGATION: Procedure SUSTAINED

During the aforementioned incidents, you applied several different levels of force to control Glenn. You failed to submit the necessary reports documenting the use of force. This is a violation of General Order, 05.33, Reporting Use of Force, dated 02-04-03; Section A, 2, which states:

"Force shall be reported when force is applied through the use of weaponless physical force. A use of force report shall be filled out anytime a defensive tactic is used to forcefully subdue, control or arrest a subject. If force is used, a report shall be completed whether or not the subject was injured."

5) ALLEGATION: Conduct

SUSTAINED

When a person is taken into custody, the deputy has a responsibility to safeguard the person and ensure their rights are protected. On three (3) separate occasions, you used your position of authority to punish Glenn for his verbal remarks. This is a violation of General Order 02.02, Rules of Conduct, dated 09-05-02, Section **B, 7, (a)**, which states:

"Deputy Sheriffs shall use powers of arrest strictly in accordance with law and with due regard for the rights of the citizen concerned. Their office gives them no right to neither judge the violator nor mete out punishment for the offense."

6) ALLEGATION: Conduct

SUSTAINED

Throughout this investigation you demonstrated a pattern of inappropriate conduct. Your continued verbal and physical responses to Glenn's verbal comments were unprofessional and damaged the reputation of this office. When interviewed, you admitted that your treatment of Glenn was unprofessional. Your actions were a violation of General Order 02.01, Rules of Conduct, dated 09-05-02, Section D, 29, (c), which states:

"Members shall not show a loss of temper, composure or overreact to another person's verbal comments, assaults or abuse."

7) ALLEGATION: Courtesy

SUSTAINED

Throughout this investigation you continually used coarse and profane language. Documentation from your car video and statements made by other deputies clearly demonstrate repeated violations of inappropriate behavior. This is a violation of General Order 02.01, Rules of Conduct, dated 09-05-02, Section C, 1, (b), which states:

"Members are expected to be tactful in the performance of their duties, control their tempers, exercise the utmost patience and discretion and not engage in argumentative discussion even in the face of provocation."

On 08-20-07, I met with you to discuss your appeal. You provided four documents explaining your justification to overturn the recommendation for termination. You made the following allegations:

- 1) Sebastian Glenn, the complainant, Deputy Shaw and Deputy Iles lied during the investigation.
- 2) You implied that Glenn, Shaw and Iles formed a conspiracy against you.
- 3) Deputy Iles had perjured himself in a previous court case and his statements were not credible.

Notice of Termination
Deputy Michael Burke
Page 4

Your written appeal consisted of personal observations and opinions. Except for the few references to your car video, the majority of your arguments were subjective and unsubstantiated. You have failed to provide any objective evidence that would support overturning the termination.

It is my opinion that the evidence in this investigation supports all of the alleged violations. Your actions during the arrest of Sebastian Glenn were unprofessional and, at times, bordered on criminal conduct. Based on the findings of the investigation and the seriousness of the allegations, your continued employment with this agency creates extreme liability for the Sheriff's Office and Josephine County. Effective this date, August 30, 2007, your employment with the Josephine County Sheriff's office is terminated.

You are to return all issued equipment and property belonging to this agency. I am removing your right as a peace officer to use/carry firearms and to exercise the power to make arrests. You are no longer authorized to take any actions in response to violations of law which would be required of, or authorized by a peace officer.

In accordance with the Sheriff's Association Collective Bargaining Agreement, dated June 30, 2007, you have the right to file a grievance regarding this discipline. Section 17.2, Grievance and Arbitration Procedure, Step IV, states:

"If the grievance remains unresolved seven (7) days after the receipt of the response by the Sheriff or his/her designee, the Association may have the matter arbitrated by a third party jointly agreed upon by the County and the Association."

Your failure to submit a request for arbitration within seven (7) calendar days after the receipt of this notice shall result in the waiver of your right to grieve this discipline and the forfeiture of all your rights to a grievance and arbitration procedure.

Gil Gilbertson, Sheriff

This Notice of Termination was handed to me in the presence of Undersheriff Donald Fasching on August 30, 2007. I have been given a full explanation as to my right to appeal and instructions on how to proceed.

(Employee's Name)

(Date)

(Witness Name)

(Date)

#2

OR SON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed/ORS 153.045 or 153.069

CRIME(S) (See A on Back) **OR** (No Ball) VIOLATION(S) (See B on Back) Traffic Other Wildlife
 Boating Commercial Fishing

STATE OF OREGON Docket No. _____
 CITY/OTHER PUBLIC BODY _____ Court: Municipal Justice
 COUNTY OF JOSEPHINE Juvenile Circuit
 Community

POLICE RECORDS
13536

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:

ID Type <u>DL</u>	ID No. [REDACTED]	State <u>OR</u>	Tel No. _____
Name: Last <u>Glenn</u> First <u>Sebastian</u> MI <u>Cree</u> Surname <u>Solomon</u>			
Address [REDACTED]		License Class [REDACTED]	<input type="checkbox"/> Employed to drive
City <u>Cave Junction, OR</u> State <u>OR</u> Zip Code <u>97503</u>		Def: <input type="checkbox"/> Passenger	
Sex <u>M</u>	Race <u>W</u>	DOB [REDACTED]	Height <u>5'0.7</u> Weight <u>150</u> Hair <u>Blk</u> Eyes <u>Brd</u>

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE MENTIONED STATE AND COUNTY:

Offense Date on or about 05 12 07 Time 3:00 AM PM Highway Premises open to public

At or near Location: mpa Murphy Creek rd

INVOLVING THE FOLLOWING:

Type <u>veh</u>	Reg/VIN/ID No. <u>SFD CCL</u>	State <u>OR</u>	<input type="checkbox"/> Accident <input type="checkbox"/> Injury
Vehicle year, make, model, style, color, OR Other, describe: <u>90 Ford Festive CP</u>			<input type="checkbox"/> Property Damage <input checked="" type="checkbox"/> Endanger others
Other <u>white</u>			<input type="checkbox"/> Driver not Reg. Owner
			<input type="checkbox"/> Commercial Veh. <input type="checkbox"/> Haz Material

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

1. Violated (cite ORS/ORD/rule) <u>211.210</u>	Describe <u>Fail wear seat belt</u>	Alleged Spd _____	Designated Spd _____	<input type="checkbox"/> Posted Limit	<input type="checkbox"/> Radar
				<input type="checkbox"/> VBR	<input type="checkbox"/> Pace
				<input type="checkbox"/> Paid Sch Zn	<input type="checkbox"/> Hwy Wk Zn
				1. Base Fine: <u>57</u>	
<input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input checked="" type="checkbox"/> No culpable mental state					

SOURCES: _____ Expl. _____

I certify under ORS 153.045 and 153.090 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s), and I have served the defendant/person with this complaint.

Date Issued: 05/12/07 1st Officer Signature: [Signature] Officer(s) Agency: [Signature]

Print 1st Officer Name: M. Burke 2nd Officer ID No.: 35600

2nd Officer of Arresting Person (if Not Officer) Signature: _____ Print Name: _____

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE

Mo/Day/Year: 05/31/07 Time: 800 AM PM Location: _____

Courthouse
500 NW 6th Street
Grants Pass, OR 97526

Case Register..... Josephine Co Circuit Court Status Closed
Case#..... 0713536 Oregon State Of/Glenn Sebastian Cree Solomo
Offense Violation - Fail To Use Seat Belts - D/VIO

Case Filed Date..... 5/29/07 Starting Instrument.. Citation
Case Started Date... 5/30/07 Originating From.... Original filing
1st Appearance Date. 5/31/07 Originating Agency... Josephine County Sheri
Ready for Trial..... Originating Agency#..
First Setting Date.. Previous Court.....
Trial Scheduled Date Previous Court Case#.
Trial Start Date.... Previous Decision....
Length of Trial..... Master Case Number...
Disposition Date.... 5/31/07 Relation to Master...
Final Order Date.... 5/31/07 Termination Stage....
Reinstated Date..... Termination Type.....



Certified True Copy Of The Original
Dated This 22 Day Of Apr., 2008
Trial Court Administrator
By: *R. Clough*

Citation in Lieu#... 13536 Judgment Type.....
District Attorney... Judgment Status.....
Booking#..... Judgment Volume/Page.

ROLE PLAINTIFF ATTORNEY
1 Plaintiff Oregon State Of

ROLE DEFENDANT
1 Defendant..... Glenn Sebastian Cree Solomon Birth Dt.. [REDACTED]
Sex..... Male Hght/Wght. 507 250
Drivers License..... [REDACTED] OR Hair..... Black
Phone#..... Eyes..... Brown
Control#..... Race..... Caucasian
Address..... [REDACTED]
CAVE JUNCTION OR 97523

CHARGING INSTRUMENT

Citation Date..... 5/29/07
Status..... Date.....

Count..... 1

1 ORS 811210 Fail To Use Seat Belts D/VIO
Crime Modifier..... Accident
Status..... Convicted Date..... 5/31/07
Incident Date..... 5/12/07
Date Charged/Issued. 5/12/07 Citation#. 13536
Current Plea..... 5/31/07 Plea Entry No Contest Security..
Disposition..... 5/31/07 Convicted Plate#....
Charging Officer.... Burke Michael Bpst#..... 35672

1 Sentence Date..... 5/31/07
Status..... Date.....
Unitary Assessment.. \$37.00
SC Facility Asmt.... \$3.00
County Jail Asmt.... \$11.00
LE Medical Asmt.... \$1.00
Fine..... \$23.00

ROLE OTHER PEOPLE ATTORNEY
1 Clerk LH

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
1	5/30/07	5/29/07 Citation 97			
2	5/30/07	5/30/07 Arraignment Scheduled	5/31/07	8:00 AM	TVIO
3	5/31/07	5/31/07 Appearance DEF 1 Glenn Sebastian Cree So CLK 1 LH JUD 1 Violations Bureau			TVIO
4	5/31/07	5/31/07 Plea Entry of No Contest Charge # 1			
5	5/31/07	5/31/07 Convicted Charge # 1			
6	5/31/07	5/31/07 Judgment Sentence 5/31/07 Signed JUD 1 Violations Bureau			
7	5/31/07	5/31/07 Sentence Charge# 1/Snt# 1			
8	5/31/07	5/31/07 Assessed Payment Sched Asmt			
9	5/31/07	5/31/07 Closed			
10	6/01/07	6/01/07 Driver License Sanction FTC Related event # 11			
11	6/01/07	6/01/07 Notice DMV License Sanction Act			
12	6/01/07	6/01/07 Assessed License Susp Asmt			
13	6/01/07	6/01/07 Assessed Collection Ref Asmt			
14	10/08/07	10/08/07 Driver License Reinstatement Related event # 15			
15	10/08/07	10/08/07 Notice DMV License Sanction Act ***** END OF DATA *****			

Case Register..... Josephine Co Circuit Court Status Lic Sanc
Case#..... 0713537 Oregon State Of/Damneier Richard Keaton
Offense Violation - Fail To Use Seat Belts - D/VIO

Case Filed Date..... 5/29/07 Starting Instrument.. Citation
Case Started Date... 5/30/07 Originating From.... Original filing
1st Appearance Date. Originating Agency... Josephine County Sheri
Ready for Trial..... Originating Agency#..
First Setting Date.. Previous Court.....
Trial Scheduled Date Previous Court Case#.
Trial Start Date.... Previous Decision....
Length of Trial..... Master Case Number...
Disposition Date.... 6/19/07 Relation to Master...
Final Order Date.... 6/19/07 Termination Stage....
Reinstated Date..... Termination Type.....



Certified True Copy Of The Original
Dated This 30 Day Of Apr, 2008
Trial Court Administrator
By: *R. Clough*

Citation in Lieu#... 13537 Judgment Type.....
District Attorney... Judgment Status.....
Booking#..... Judgment Volume/Page.

ROLE PLAINTIFF ATTORNEY
1 Plaintiff Oregon State Of

ROLE DEFENDANT
1 Defendant..... Damneier Richard Keaton Birth Dt.. [REDACTED]
Sex..... Male Hght/Wght. 602 150
Drivers License..... [REDACTED] OR Hair..... Brown
Phone#..... [REDACTED] Eyes..... Hazel
Control#..... Race..... Caucasian
Address..... [REDACTED]
GRANTS PASS OR 97527

CHARGING INSTRUMENT
Citation Date..... 5/29/07
Status..... Date.....

Count..... 1
1 ORS 811210 Fail To Use Seat Belts D/VIO
Crime Modifier..... Accident
Status..... Convicted Date..... 6/19/07
Incident Date..... 3/12/07
Date Charged/Issued. 3/12/07 Citation#. 13537
Current Plea..... Security..
Disposition..... 6/19/07 Convicted Plate#....
Charging Officer.... Burke Michael Bpst#..... 35672

1 Sentence Date..... 6/19/07
Status..... Date.....
Unitary Assessment.. \$37.00
SC Facility Asmt.... \$3.00
County Jail Asmt.... \$11.00
LE Medical Asmt.... \$1.00
Fine..... \$45.00

ENTER DT FILE DT EVENT/FILING/PROCEEDING SCHD DT TIME ROOM
1 5/30/07 5/29/07 Citation

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		97			
2	5/30/07	5/30/07 Arraignment Scheduled	5/31/07	8:00 AM	TVIO
3	6/19/07	6/19/07 Appearance JUD 1 Violations Bureau Failed to Appear			
4	6/19/07	6/19/07 Convicted Charge # 1			
5	6/19/07	6/19/07 Judgment FTA 6/19/07 Signed JUD 1 Violations Bureau			
6	6/19/07	6/19/07 Sentence Charge# 1/Snt# 1			
7	6/19/07	6/19/07 Assessed Payment Sched Asmt			
8	6/19/07	6/19/07 Closed			
9	6/21/07	6/21/07 Driver License Sanction FTA Related event # 10			
10	6/21/07	6/21/07 Notice DMV License Sanction Act			
11	6/21/07	6/21/07 Assessed License Susp Asmt			
12	6/21/07	6/21/07 Assessed Collection Ref Asmt ***** END OF DATA *****			

POLICE RECORDS

13537

OREGON URM CITATION AND COMPLAINT

es for All Violations or Crimes Where Separate Complaint Will Not Be Filed/ORS 153.045 or 153.069

CRIME(S) (See A on Back) VIOLATION(S) (See B on Back)
 Traffic Other Wildlife Boating Commercial Fishing

STATE OF OREGON
 COUNTY OF JOSEPHINE
 Docket No. _____
 Court: Municipal Justice Circuit
 Juvenile Community

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:
 ID Type DL State OR Tel No. _____
 Name: Last Donneier, Richard Kenton MI _____
 Address _____
 City Gaithers Pass OR State OR Zip Code _____
 Sex M DOB 602 Height 150 Weight 150 Hair BLK Eyes BRN
 Offense Date: Month 03 Day 12 Year 07 Time 300 AM PM
 at or near Location: mp 2 Murphy creek rd

IN VIOLATION OF THE FOLLOWING:
 Type veh Regs/VIN/ID No. 542CEL State OR Accident Injury
 Property Damage Endanger others
 Vehicle year, make, model, style, color, OR Other, describe: 90 Ford Festiva of white
 Commercial Veh. Hisz Material

DID THEY AND WERE COMMITTING THE FOLLOWING OFFENSE(S):
 1. Violated (cite ORS/ORD/rule) 511.210 Describe Fail wear seat belt Designated Spd 01 Radar Pictad Limit Radar Pace Laser
 Intentional Reckless Criminal negligence No culpable mental state 1. Base Fine: _____
 1. Violated (cite ORS/ORD/rule) Describe _____ VBR Hwy Wk Zn 1. Base Fine: _____
 Intentional Knowing Reckless Criminal negligence No culpable mental state 1. Base Fine: _____
 1. Violated (cite ORS/ORD/rule) Describe _____ 1. Base Fine: _____
 Intentional Knowing Reckless Criminal negligence No culpable mental state 1. Base Fine: _____

I certify under ORS 153.045 and 153.090 and under other applicable law and penalties for false swearing, do swear/affirm that I have sufficient grounds to believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint.
 Date Issued 05/00/07 1st Officer Signature [Signature] Print Name M. Burke
 1st Officer ID No. 35672 2nd Officer ID No. _____

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE
 Date/Time 05/31/07 800 Location Courthouse 500 NW 8th Street Grants Pass, OR 97526

RESERVED FOR COURT USE

DAMMEIER, Richard Kenton

Officer(s) Agency ID: Steff

#1



JOSEPHINE COUNTY SHERIFF'S OFFICE

Personnel/Policy-Procedure Complaint

SHERIFF GIL GILBERTSON

DATE 5-16-07
07-5222

C. M-F
0730-1630

Report/Cad #

Complainant: Name Sebastian Glenn DOB [REDACTED]

Address: [REDACTED]
Home Phone: [REDACTED] Cell Phone: [REDACTED] Work Phone: [REDACTED]

Received By Det 518.07

How Received: Phone Letter In Person

Complaint: Burk Allegation Inquiry

①

Narrative: I was in a car that I had no clue on who the driver was. The driver ran and I stayed put. An officer told me to sit on the ground which I did on comm. I got out any problems. The other officer began to search for the alias driver, who was giving me a ride into town from a party I of the last 2 cars. The situation was so bad that Hubbard got my juice out of the ~~car~~ and gave it to me. Then Burke pulls up, comes over picks me up slams me on his car twisting one of my arms bending my thumb. He says "I'm going to break your fucking thumb" if you don't tell me wh

Assigned To FASCHINO
Due Date: 06-22-07

Date: 06-01-07

BACK SIDE

Conclusion: Sustained Not Sustained Exonerated Unfounded

See Investigation (attached).

Employee: _____
Undersheriff: _____
Sheriff: _____

Date: _____
Date: _____
Date: _____

Just getting a ride into town. I told the "Alies"
Driver to stop several of times. I wasnt resisting
a rest or anything like that I was just
sitting on the ground when Burk twisted my
~~arm~~ which I ^{me}impaired from being able to work
from 5/14/07 - 5/17/07 due to A tendon pulled.
The doctor gave me a doctors note for
these Absencies from work. My work said they'll
provide a letter insuring that I missed.
Then Burk Butt me in the cop car.
on the way into town Burke called me
a low life, who has no job, at that matter
you probaly dont have a job and didnt
graduate High School "you twaker!" So
then I started to say some things to Burke
R, take then pulls over and starts to pull
me out of the back of the car by my ears which
was ^{bruised} swollen the next day and stretched my
neck in this process, (which I have picture
of all this). Then He gets back in his car
and begins driving. Some more things were
said by me. Then Burke tells me he'll meet
anywhere off dutie to kick my fat Ass.
Then He pulls the car over again and begins to
start ripping me out by my ears and scratching
my neck and then pulls my shirt over my head
ripping it, and my pants in this process ~~of~~
ripping out of the car 2 times in the middle
of nowhere And stops at this little market
and gave a mtd and no seat belt ticket, which I
Had no beer or alcohol in my car. Twice!

I even had a seat belt on. Burke
was the last one on the
- bus, and begins all of this. Then
leaves me at this market 12 or 3 miles
~~out~~^{of} ~~the~~ ~~city~~ to walk to cave junction because
I'm a fat piece of shit and need
to walk Burk said.



JOSEPHINE COUNTY SHERIFF'S OFFICE

#8

Date: 30 August 2007
From: Gil Gilbertson, Sheriff
Complaint: 07-004
Case #: 2007-5222 / 2007-5223
Case #: 2007050503
Re: Deputy Michael Burke

SUMMARY:

12 May 2007, Sebastian C. GLENN was physically taken into custody following a field investigation stemming from a vehicular pursuit. Mr. GLENN was an occupant of that vehicle (not the driver).

Mr. GLENN was later cited and released for:

- (1) ORS 471.130 - Minor in Possession (citation # 13535)
- (2) ORS 811.210 - Seat belt violation (citation # 13536)

Mr. GLENN filed a complaint against the arresting deputy, Michael BURKE on 16 May 2007 (case# 07-5222)

Undersheriff FASCHING, beginning on 06 June 2007, conducted the internal affairs investigation. From this investigation, it was determined that Deputy Michael BURKE violated the following General Orders:

- (1) Use of Force 05.01 Section E, 2. (Three counts)
- (2) Reporting Use of Force 05.33 Section A, 2.
- (3) Rules of Conduct 02.02 Section B, 7(a).
- (4) Rules of Conduct 02.01 Section D, 29(c).
- (5) Rules of Conduct 02.01 Section C, 1(b).

20 June 2007, 1205 PM, Undersheriff FASCHING in the presence of Association Attorney David Snyder and employee representative Travis Snyder interviewed Deputy BURKE. (audio taped)

06 August 2007, the recommendation forwarded to my office included the above-mentioned violations along with a recommendation of termination from employment. Also included were the statements of:

- (1) Sebastian GLENN
- (2) Reserve Deputy Sergeant Jeff ILES
- (3) Deputy Shawn SHAW
- (4) Audio interview of Deputy Keith HUBBARD
- (5) Audio interview of then Sgt. Joel HELLER
- (6) Audio interview of Special Deputy Rick YOUNG

Also reviewed was the video/audio tape from Deputy BURKE's squad car.

06 August 2007, Deputy BURKE was advised by Undersheriff Donald FASCHING in the presence of Sheriff Gil GILBERTSON, that he was under Administrative Suspension, with pay, pending the outcome of this investigation.

13 August 2007, Deputy BURKE scheduled an appointment for 20 August 2007 to present his side of the case.

20 August 2007, Deputy BURKE arrived without accompanying representation. The Pre-Disciplinary meeting was audio tapped in the presence of Kent Granat from the Josephine County Human Resource department, and myself.

Before we began the meeting I asked Deputy BURKE if he wanted anyone with him to witness this meeting, his response was, no. Deputy BURKE advised he simply wanted to represent himself in this case.

I clearly explained to Deputy BURKE this was a pre-disciplinary hearing designed to provide him with the opportunity to provide any and all evidence to support his version of the incident and/or allegations against him – in accordance with the employee's "due process".

I walked him through the previous steps taken by this office. First, he was provided with a notice of the alleged violations and a copy of the supporting facts. Secondly, the potential consequences if the allegations were found true. Finally, he was given this opportunity to be heard and present his supporting facts. BURKE acknowledged these facts.

Deputy BURKE agreed to audio recording of this meeting. The audio tape was converted to disk and is available for review. It is attached to the case file.

Deputy BURKE provided four documents for my review and consideration:

- (1) A written appeal to the proposed termination
- (2) An analysis of what Deputy BURKE claims are false comments from Sebastian Glenn.
- (3) An analysis of what Deputy BURKE claims are false comments from Reserve Deputy Jeff ILES.
- (4) An analysis of what Deputy BURKE claims are false comments from Deputy SHAW.

Deputy BURKE made claims that the statements from GLENN, ILES, and SHAW were lies; eluding to a conspiracy and they were just out to get him. Deputy BURKE claimed that ILES perjured himself earlier in court, and therefore his comments are not credible. Deputy BURKE did not provide proof of that claim.

The documents, provided by Deputy BURKE, reflect his recollection of the incident. The information presents self-serving conclusions based on subjectivity, rather than supporting facts or evidence.

Deputy BURKE, at the end of the hearing asked if he was still fired. I advised him that I had no pre-determined decision. Further, that only after reviewing all the evidence, including his documents, would I render a final decision. I also, advised Deputy BURKE that the reason Undersheriff FASCHING was not a part of this discussion was because it was only his responsibility to collect and investigate the facts; and, make a recommendation. Undersheriff FASCHING's role in this investigation concluded when he turned the report over to me.

CONCLUSION:

On February 21, 2007 you received a written warning for violation of General Order 05.07, Vehicular Pursuits, and General Order 02.01 Conduct. The incident that led to this discipline was disobeying a directive to terminate a pursuit, and then exceeding safe speeds, at one point losing control of your vehicle. Because your actions included disobeying an order, and disregarding safe driving practices, you were directed to "carefully weigh" your decisions, and follow all Sheriff Office policies.

After reviewing the past sustained discipline, and all the available evidence provided for this incident, including the materials and documents provided by you, I have concluded the following.

The evidence supports the allegations of serious misconduct and procedures committed by you.

Physical force was used against Sebastian GLENN. The applied level of force was disproportionate to actions taken by GLENN. The actions taken by you were not in accordance with written policy. You failed to provide a standard of care for the welfare of

GLENN in the subsequent arrest. GLENN complained of pain resulting from the rough conduct by you - his complaint was ignored.

According to others at the scene, Sebastian GLENN offered no resistance; in fact, he remained compliant with deputies. You had no reason for exerting physical force on GLENN without advising GLENN he was under arrest first - as clearly seen (on video). GLENN offered no resistance and was not given the opportunity to stand, on his own, from a seated position.

The derogatory, inflammatory, challenging, and threatening comments made by you demonstrate the absence of objectivity, control, and professional demeanor.

Your subsequent verbal, and physical actions, demonstrated an elevated level of anger and propensity for violence. From the video tape and comments, by fellow deputies, your choice in use of force exacerbated the incident.

You claimed that GLENN (while handcuffed and strapped into the back seat passenger side of the squad car) leaned forward and shouted. Further, that you could see spittle pass through the caged screen - which, accordingly gave you cause to stop the vehicle to protect yourself. Before using physical force on GLENN, you turned off the on-board camera/video recorder. You stated the reason for doing so was to save video tape.

After using physical force against GLENN, you ignored precautionary measures to ensure it would not happen again. You claimed the reason for the second stop was due to GLENN shouting again, which resulted in more spittle being projected through the protective screen. Again, physical force was used against GLENN - which was not recorded due to the camera not being turned back on.

Reserve Deputy Sergeant ILES, stated that if you continued to do what you were doing to GLENN, that he (ILES) would have to physically remove you.

Regarding the evidence submitted by you - you failed to provide objective proof, or evidence, which would deter or alter what I believe, sustains several violations of the Sheriff Office General Orders.

It is my conclusion that you have become a liability, and menace, to this agency and the community we are sworn to protect.

DECISION:

Effective immediately, this date of 30 August, 2007 you are terminated from the Josephine County Sheriff's Office.


Gil Gilbertson, Sheriff

Dated: 30 August 2007

Termination means separation from County service by any means

PART A. TO BE COMPLETED BY DEPARTMENT: Dept # 29 Dept Name: Sheriff's Office

Employee #: 2441 Name: Michael Burke

Terminating employee is: [X] Regular Full-Time [] Regular Part-Time (If employee is Casual/Seasonal, use CS PA form)

Effective Date of Termination (last day on paid status): 08-30-07 Last Day Worked (if different):

Reason for Termination: [] Resignation [] Retirement [] Lay Off [X] Dismissal [] Probationary [] Death

Department/Vehicle Keys Returned? [] Yes [X] No [] NA Other County Property Returned? [] Yes [X] No [] NA

Department Head's Signature [Signature] Date 28 AUG 07

PLEASE HAVE EMPLOYEE COMPLETE PART C. AND RETURN TO PERSONNEL

To Be Completed At Exit Review with Personnel

HEALTH INSURANCE CONTINUATION: You are eligible for continuation of these benefits through self-payment of the monthly premium. You are only eligible to continue those marked with a check.

Medical Coverage Only Medical & Dental Coverage Not Applicable

FLEXIBLE SPENDING: In order for expenses to be eligible, they must be incurred while you are a participant in the FSA Program. If you terminate employment, you may continue to participate by continuing to make contributions to your FSA account(s). You may elect to change your contribution amount; however, you must contribute a minimum of \$25.00 per month to each FSA account that you are continuing. Such contributions would be on an after-tax basis. If you discontinue participation in the Program, expenses incurred after your date of termination are not eligible for reimbursement. You may, however, submit claims until March 31 of the following year for expenses incurred prior to your termination.

Does the employee currently have a flexible spending account? Yes No If yes, Medical Dependent Care

Do you want to continue your flexible spending account through COBRA contributions? Yes No

If yes, for which plan (complete contribution amount on page 1)? Medical Dependent Care

CONTINUATION of COVERAGE: Do you wish to continue this coverage through self-payment of the monthly premiums?

Yes No Undetermined

Medical Premium: \$ Dental Premium: \$ Flexible Spending: \$

Total Monthly Premium: \$

You have 60 days from date of qualifying event to make a determination.

Acknowledged by terminating employee: (initial)

PREPAYMENT OF CONTINUATION COVERAGE: You may prepay premiums through payroll deduction or through flexile spending if you have an existing FSA.

Do you wish to prepay any portion of your premiums? Yes No

If yes, for what period: through In the amount of: \$ Pre Tax / After Tax

Donald L. Fasching
Consultant: Police Use of Force and Police Canine

LAW ENFORCEMENT EXPERIENCE:

Police Officer Fairfax County Police Department
Fairfax, Virginia
5 years 7 months

Police Officer San Diego Police Department
San Diego, California

Patrol Assignments
3 years 5 months

Field Training Administration
2 years 2 months

Police Sergeant Patrol Assignments
4 years 10 months

Training Division
2 years 4 months

Canine Section
6 years 11 months

Internal Affairs Section
2 years

Mounted Enforcement Unit
4 years 5 months

Operational Support
7 months

Retired from San Diego Police Department: 10-14-04

LAW ENFORCEMENT EXPERIENCE:

Undersheriff Josephine County Sheriff Department
 Josephine County, Oregon
 Employed: January 1, 2007, to present.

Administration
1 year 1 month

Total law enforcement experience: 33 years 9 months

TEACHING EXPERIENCE:

I was an instructor at the San Diego Law Enforcement Training Center from 1985 to 2004. I obtained a "lifetime" teaching credential from the San Diego Community College District on July 10, 1987.

I am a certified instructor in the following areas:

- Defensive Tactics
- Firearms
- Impact Weapons: Side-handle baton; straight-handle baton; expandable baton; flashlight.
- Carotid Neck Restraint;
- Non-lethal Chemical agents
- Taser
- Orcutt Police Nunchaku
- Beanbag Impact Rounds
- Counseling for police supervisors
- Post Traumatic Stress
- P.O.S.T police service dog team evaluator
- Police service dog training officer

TRAINING:

I have completed the following courses:

* Patrol Survival Seminar	16 hours
* Firearms Instructor	46 hours
* PR-24 Baton Instructor	32 hours
* Carotid Neck Restraint Instructor	16 hours
* Semi-auto Pistol Update	16 hours
* Chemical Agents Instructor	40 hours
* Neck Restraint Legal Update	8 hours
* Taser Instructor	8 hours
* Defensive Tactics Instructor	80 hours
* Basic OPN Course	16 hours
* OPN Instructor Course	32 hours
* Police liability Issues Seminar	16 hours
* Internal Affairs Seminar	24 hours
* Impact Weapons Update	8 hours
* Officer Involved Shooting Seminar	36 hours
* Ground Fighting Update	4 hours
* Use of Force Legal Update	8 hours
* Basic Canine Academy (handler)	720 hours
* Canine Academy Instructor	440 hours
* POST Canine Evaluator Course	8 hours
* POST Canine Certification	8 hours
* Advanced Handler Seminar	24 hours
* Canine Legal Update	2 hours
* CPOA Canine Management Program	24 hours

TOTAL TRAINING HOURS: 1,672

EDUCATION:

AS Degree in Criminal Justice
BS Degree in Public Administration of Criminal Justice

I have received P.O.S.T. certificates of completion for a wide range of courses structured for "Advanced" and "Supervisory" levels of instruction.

On December 21, 2007, I completed the Oregon Department of Public Standards and Training, "Police Career Officer Development Course." I am now a certified peace officer in the state of Oregon.

AUTHORSHIP:

While assigned to the San Diego Police Department Training Division, I was the coordinator for the defensive tactics program at the law enforcement-training center. I redesigned the program, updated lesson plans, improved testing procedures, initiated field surveys for new equipment and established guidelines for new instructors. I also created and helped produce a number of officer safety videos.

During my assignment with the San Diego Police Canine Section I helped revise the operations manual, updated the department procedure for the use of a police service dog and helped design a physical performance test for new handlers. I was appointed administrative sergeant and training staff member for three San Diego Police Canine Handler Academies. I developed lesson plans for a "canine liability" seminar and provided instruction to basic academies, advanced handler courses, other police agencies and military canine units within San Diego County.

I have been recognized as a "Use of Force Expert" by the San Diego Police Department, the San Diego City Attorneys Office, the San Diego County District Attorneys Office and other agencies within California. I was a member of the San Diego Police Department Use of Force Committee for eight years and assisted with the revision of all department procedures involving the use of force. I was one of six Committee members assigned to the Use of Force Review Board. The Board reviews department investigations concerning use of force and its application in the field. On numerous occasions, I was appointed Review Board Chairperson and drafted the Board's final opinion.

COURT EXPERIENCE:

I have qualified as a "Use of Force" expert in civil service hearings, superior court and federal court. I have qualified as a "Police Service Dog" expert in superior court and federal court. I have assisted the San Diego City Attorney's Office, the San Diego County District Attorney's Office, the Oceanside City Attorney's Office, the Huntington Beach Police Department, the San Diego Police Department Internal Affairs Section and the Police Officer's Association Legal Committee with case reviews concerning use of force investigations.

COURT EXPERIENCE:

The following are the some of the most recent cases in which I testified as an expert witness:

05-21-01	Lee v. Cotellessa, et al.
07-24-02	People v. Michael Burt
06-06-03	People v. Daniel G. Munoz
10-23-03	People v. Nathan M. Winters
02-12-04	Zeman v. The City of San Diego
03-15-04	People v. Youssef Hanafi
04-14-04	People v. John Luecke
05-12-04	People v. Robert Seelig

PROFESSIONAL AFFILIATIONS:

- North America Police Work Dog Association
- United Schutzhund Clubs of America
- United States Police Canine Association
- Oregon State Sheriffs' Association

I have been a member of United Schutzhund Clubs of America since 1989. In 1991, I successfully competed with my police service dog and was awarded Schutzhund I and Schutzhund II titles in same year. I have been actively involved with various schutzhund clubs for twelve years and police canine associations for nine years. I have participated in several police service dog trials as a competitor, evaluator and judge.

Donald L. Fasching
Consultant: Subject Matter Expert:
Police Use of Force and Police Service Dog

CONSULTANT FEES

Court Appearance:	\$350.00 per hour (3 hour minimum)
Depositions:	\$350.00 per hour
Meetings:	\$150.00 per hour
Research:	\$100.00 per hour
Written Reports:	\$150.00 per hour
Document/Tape Review:	\$ 100.00 per hour
Travel Expenses:	\$ 100.00 per hour

Travel expenditures will be calculated portal-to-portal, at \$100.00 per hour.
Hotel, airfare and car rental fees are separate and reimbursable at cost incurred.

STATEMENT

A statement submitted to the client for services rendered is payable upon receipt.

Revised: 03-01-08

SNYDER & HOAG LLC

Kathleen Pearson, Paralegal

October 1, 2007

Wendy L. Greenwald, State Conciliator
Employment Relations Board
Old Garfield School Building
528 Cottage Street NE, Suite 400
Salem, OR 97301-3807

VIA FACSIMILE AND FIRST CLASS MAIL

**RE: Josephine County and Josephine County Sheriffs Association;
Mike Burke Grievance**

Dear Ms. Greenwald:

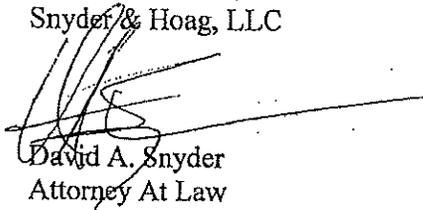
The undersigned represents the Josephine County Sheriffs Association. The Association and Josephine County jointly request a list of seven arbitrators for a grievance arbitration hearing. Please forward the list to the undersigned and the County's representative:

Undersheriff Don Fasching
Josephine County Sheriffs Office
500 NW 6th Street
Grants Pass, Oregon 97526

Thank you for your assistance in this matter. Do not hesitate to call the undersigned or Undersheriff Fasching (541.474.5118) if you have any questions.

Sincerely,

Snyder & Hoag, LLC


David A. Snyder
Attorney At Law

cc: client
Undersheriff Don Fasching

Mail correspondence to: P.O. Box 12737 • Portland, Oregon 97212
(503) 222-9290 • Fax: (503) 226-9525
E-mail - dsnyder@snyderandhoagllc.com
Web Site - www.snyderandhoagllc.com



6. **DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.**

Request from Carson City Sheriff's Office for a 6-month extension pursuant to NRS 289.550 for their employee Deputy Laura Eissinger to meet the certification requirement. (Extension to expire September 5, 2022).



Ken Furlong
Sheriff

911 E. Musser St.
Carson City, NV 89701

775-887-2500
Hearing Impaired: 711
Fax: 775-887-2026

April 04, 2022

Michael Sherlock, Executive Director
Nevada Commission on Peace Officer
Standards and Training
5587 Wa Pai Shone Avenue
Carson City, Nevada 89701

Dear Executive Director Sherlock,

I am requesting to be placed on the upcoming POST Commission meeting agenda for a 6-month extension for the following deputy:

Deputy Lauren Eissinger was unable to attend an academy within the one-year time requirement due to staffing issues. Deputy Eissinger's date of hire is March 05, 2021, and to be granted a 6-month extension would extend her time to September 05, 2022. She will be scheduled to attend the July 2022 POST Academy.

Therefore, I am requesting this extension past the one-year requirement to become POST certified for Deputy Eissinger.

Thank you for your consideration.

Regards,

A handwritten signature in blue ink, appearing to read "Ken Furlong".

Ken Furlong, Sheriff
Carson City Sheriff's Office

7. **DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.**

Request from Clark County Park Police for a 6-month extension pursuant to NRS 289.550 for their employee Officer Jason Hoyos to meet the certification requirement. (Extension to expire November 16, 2022).

CLARK COUNTY PARK POLICE

A Division of the Department of Administrative Services

2901 E Sunset Rd • Las Vegas NV 89120
(702) 455-7532 • Fax (702) 455-3624

James Rogers, Chief

April 8, 2022

Mike Sherlock
Executive Director
Nevada Commission on Peace
Officer Standards and Training
5587 Wa Pai Shone Avenue
Carson City, Nevada 89701

Dear Mr. Sherlock,

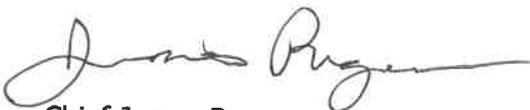
My name is Jim Rogers, I am the current Chief at the Clark County Park Police. Per our telephone conversation, I am writing this letter to make an official request for an extension for Officer Jason Hoyos (POST ID 39234) to successfully complete the POST Physical Fitness Test. Officer Hoyos came to the Park Police after over ten years as a Police Officer in California and has been an outstanding officer since starting in May of 2021.

Officer Hoyos has attempted the POST Physical Fitness Test on several occasions and has been able to pass everything except the mile and a half run. Officer Hoyos is currently recovering from a knee injury he sustained on March 18th while dealing with a Domestic Violence arrest. As a result of the knee injury, he is currently on "light duty" and unable to train for the POST Physical Fitness Test or participate in an upcoming test.

I am respectfully requesting an extension for Officer Hoyos, so he can recover from his knee injury and successfully complete the POST Physical Fitness Test. I would truly hate to lose Officer Hoyos as he is a conscientious and dedicated Police Officer and an asset to the Park Police.

Thank you for your consideration in this matter!

Respectfully,



Chief James Rogers
Clark County Park Police

BOARD OF COUNTY COMMISSIONERS

MARILYN KIRKPATRICK, Chair • LAWRENCE WEEKLY, Vice Chair
LARRY BROWN • JAMES B. GIBSON • JUSTIN C. JONES • MICHAEL NAFT • TICK SEGERBLOM
YOLANDA T. KING, County Manager

8. PUBLIC COMMENTS

The Commission may not take action on any matter considered under this item until the matter is specifically included on an agenda as an action item.

9. **DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.**
Schedule upcoming Commission Meeting

10. **DISCUSSION, PUBLIC COMMENT, AND FOR POSSIBLE ACTION.**
Adjournment.