



LEGAL DEFENSE TRUST TRAINING BULLETIN

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Vol. VI, Issue No. 3

March 2003

“U.S. Supreme Court Lets Deputy Tracy Watson’s Injunction and Attorney Fee Award Stand”

By Marc J. Berger, Esq.

On March 24, 2003, Tracy Watson arrived at the end of his seven-year legal struggle to establish that his due process rights were violated when the United States Supreme Court turned away Riverside County’s final effort to deprive Watson of the legal victories he achieved along the way. The case began on April 1, 1996, at the end of Deputy Watson’s 80- mile high speed video-taped pursuit and subsequent baton-swinging arrest of illegal immigrants in South El Monte. The basis for Watson’s Civil Rights lawsuit filed two weeks later was that officials of the Riverside Sheriff’s Department, after viewing the “beating” on local television news “live feed” transmission, and witnessing the “public outrage” and negative commentary, compelled Watson to remain alone to complete a report in a locked office, after removing the telephone and ejecting his union lawyer who had come to counsel Watson, in light of the criminal and administrative investigations that were underway by Watson’s department, the FBI and Los Angeles Sheriff’s Department. Watson maintained that it violated his First, Fifth and Fourteenth Amendment rights to deprive him of counsel during this stage of the proceedings, and to force him to write a potentially incriminating report without the assistance of counsel.

The Sheriff’s Department maintained it could require Watson to complete his report including all the details of his use of force and remove his lawyer from his presence until he did so.

Watson was told, “You (Watson) may well need a lawyer later, but you don’t need a lawyer now”. Watson was fired for using excessive force, based almost entirely upon a subjective view of the videotaped incident.

After Watson’s firing, U.S. District Judge Robert J. Timlin issued an injunction prohibiting the Department from making any official use of the report on the ground that it was obtained in violation of Watson’s due process rights, including in Watson’s upcoming arbitration and appeal of his discharge.

Meanwhile, Watson’s lawyers pursued a peremptory writ in superior court to overturn the Sheriff’s decision to terminate Watson, which was granted by Judge E. Michael Kaiser, Riverside Superior Court. The County appealed that decision as well, but the Fourth Appellate District upheld Judge Kaiser, and ruled that Watson’s termination was “a manifest abuse of discretion.” Watson was ultimately ordered reinstated with backpay and interest.

Back in the U.S. District Court, on motion of Watson’s lawyers for an order requiring the County to pay all of Watson’s attorneys fees and costs, Judge Timlin granted the request for all time spent by Watson’s lawyers in obtaining the injunction and defending its issuance in the Ninth Circuit Court of Appeal. Not to be put off, the County appealed *that* decision to the Ninth Circuit, as well. That Court issued a published decision

upholding Watson's award of attorneys fees based on Watson's success in the District Court, as further described in Judge Timlin's published decision granting the injunction. That decision established the right of an officer or deputy to consult with an attorney when there is a danger of self-incrimination in completing a compelled report.

In seeking a writ of certiorari in the United States Supreme Court, the County of Riverside claimed Watson wasn't a "prevailing party" in the District Court because the injunction was preliminary, and the County portrayed the Ninth Circuit's decision as being in conflict with United States Supreme Court precedent in *Buckhannon Board and Care Home Inc. V. West Virginia Dept. of Health and Human Services*, 532 U.S. 598 (2001) and the decision of every other federal circuit court that has addressed the issue. However, the Ninth Circuit held that the issuance of the injunction was a sufficient "judicial imprimatur" of the merits of Watson's case because it altered the legal relationship of the parties, in that the injunction barred the County from using Watson's compelled report for any purpose in all official proceedings including his arbitration appeal of his termination. The result was not altered by the fact that the injunction became moot once all proceedings against Watson were concluded. Thus, the *Watson* case generated two excellent published decisions for police civil rights litigators.¹

Marc J. Berger has been associated with Michael P. Stone over the years since 1986. Mr. Berger, of Michael P. Stone, P.C., Lawyers, is a civil litigation, writs and appeals specialist and together with lead counsel Michael P. Stone, Muna Busailah and Larry J. Roberts, handled the Watson case from 1996 forward. Litigation support funding was provided by PORAC Legal Defense Fund and Riverside Sheriffs' Association Legal Defense Trust.

¹ *Watson v. County of Riverside* 976 F.Supp 951 (C.D. Cal. 1997) and *Watson v. County of Riverside* 300 F.3d 1092 (9th Cir. 2002)