LEGAL DEFENSE TRUST TRAINING BULLETIN

MICHAEL P. STONE, GENERAL COUNSEL

6215 River Crest Drive, Suite A, Riverside, CA 92507
Phone (909) 653-5152 Fax (909) 656-0854

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SUPREME COURT HEARS ARGUMENTS IN RIVERSIDE COUNTY V. SUPERIOR COURT (MADRIGAL)

On January 7, 2002, on behalf of Xavier Martin Madrigal and the Legal Defense Trust of the Riverside Sheriffs' Association, Michael P. Stone argued for affirmance of the trial court's and the Court of Appeal's (Fourth Appellate District, Div. 3) decisions permitting discharged deputy Madrigal to view certain portions of his so-called "background investigation" file, notwithstanding purported "waivers" he signed before he was sworn in as a deputy. The Court of Appeal published its decision in the Official Reports at 86 Cal. App. 4th 211, 103 Cal. Rptr. 2d 62.

On petition of the County, the Supreme Court granted review. Martin Madrigal has enjoyed the commitment and support of the PORAC Legal Defense Fund (LDF) and the Riverside Sheriffs' Association, Legal Defense Trust (LDT), since his case first began in November 1996. Madrigal has been represented by LDT General Counsel Michael P. Stone and LDT Assistant General Counsel Muna Busailah, and LDT Senior Field Representative Darryl Drott (Executive Director), since 1996.

The case before the Supreme Court consists of, among other important issues, the extent to which pre-employment "waivers" of the right to view "confidential" background investigation files, can operate to eviscerate the rights of inspection and comment in the *Public Safety Officers' Procedural Bill of Rights Act* ("POBRA") at *Government Code* §§ 3305 and 3306.

The Court of Appeal held that the purported "waivers", insofar as they are construed to prohibit Madrigal from inspecting the so-called background file, are *void* as against public policy. It reasoned that, according to well-established law and precedent decisions, a statute's protections which were established for a public purpose, cannot be "waived" by private agreement (here, the waivers). Since Madrigal was an employed deputy, appointed pursuant to *Penal Code* § 830.1, he was protected under the Act in November 1996 when he was summarily and suddenly discharged from his job in that he "failed to make probation" (i.e., no explanation whatsoever). Madrigal's requests for an "explanation", a review, and a hearing were denied on the basis that his probationary termination could be accomplished *without cause*, and that therefore, since "no cause" was required, no explanation need be given. This is not an unfamiliar situation. Chiefs and Sheriffs are increasingly loathe to provide discharged probationers with any statement of cause, usually based upon faulty legal advice or myopic management policy. Oftentimes, as in Madrigal, there is alleged "cause", but department managers, thinking it "the safest way to go", pretend

and deny that there is any cause. This works a terrible injustice to officers and deputies who are discharged for documented reasons, "kept secret" from them, especially when background investigators for "new" agencies view the adverse records, which the subject officer or deputy has never seen, and cannot account for.

This is the advice managers are getting from their lawyers, and because *Government Code* § 3304 (b) was amended a couple of years ago to provide that the right to administrative appeal was limited to peace officers who had passed the "probationary period".

Well, this amendment was passed *after* the Madrigal situation, so it is inapplicable to his case. He had already been denied the clear right to administrative appeal. Secondly, he was entitled to a 14th Amendment due process, name-clearing hearing because the circumstances of his dismissal stigmatized his good name and professional reputation, and have prevented him from regaining his law enforcement career.

It developed that Madrigal was appointed as a full-time deputy as a result of the "merger" with Perris Police Department in April 1996. His appointment was "provisional" in the sense that his background ("BI") was not completed before appointment. His duties were not restricted in any way, and at the time he was fired, he was operating as a "solo" unit in a Riverside area "beat". Moreover, the Bill of Rights Act does not recognize or distinguish "provisional" appointments. He was a fully-employed "peace officer" per § 831.1, albeit probationary.

At some point after the merger, an in-progress, incomplete internal investigation by Perris was passed over to the *new* Perris Station commander, apart from Madrigal's personnel records which had been transmitted earlier. Riverside Sheriff's Department became the custodian of Perris personnel records at the time of the merger. Hence, whatever duties and obligations Perris owed to Madrigal, a tenured Perris officer, Riverside Sheriff's Department also owed to Madrigal *after* the merger. Riverside Sheriff's Department management did not treat the Perris internal as an RSD internal. Instead, RSD management deigned to treat the Perris internal as "part of the BI"–and based on the waivers, Madrigal was "not entitled" to any disclosure. This is clearly contrary to *Government Code* § 3305, 3306 and 3309.5.

The Court of Appeal so ruled. But, the Supreme Court decided to review the matter, probably based on the County's "sky is falling" plea that the ruling would forever destroy law enforcement agencies' ability to conduct confidential BI protocols in the future.

The single point that the County failed to engage that changes the complexion of this case is that Madrigal was <u>not</u> an applicant, he was a fully-employed, peace officer under § 830.1, and was thus entitled to *all* of the Bill of Rights Act protections. RSD accorded him none of these; even after demand therefor.

So, this is the legal landscape in which the Supreme Court is now operating, in considering this important-to-all-peace-officers case.

It seems probable that the Justices will hold that Bill of Rights Act protections *cannot be waived.* However, the Justices have a lot of maneuvering room to distinguish Madrigal's case either way, for or against. Oral argument went well, and from our perspective, the tough questions all went to the County's appellate lawyers. Although all of our time in argument was taken up with their questions, most of the Justices' inquiries seemed not to be

challenges, but rather they sought clarification of our position.

We were joined in this appeal by *amicus curiae* ("friend of the court") briefs by PORAC-LDF, written by Allison Berry Wilkinson, of Rains, Lucia, and Wilkinson, Association of Los Angeles Deputy Sheriff's (ALADS) by Green and Shinee, and Helen L. Schwab, and the Los Angeles Police Protective League (LAPPL) by Diane Marchant, Staff Counsel. Our thanks to all of them for the abundant and persuasive briefs in support. Our thanks also to RSA-LDT and PORAC-LDF for their unwavering support over the past five years. We will keep you posted.

Stay safe!
-Michael P. Stone-