

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN C. MULLIGAN,

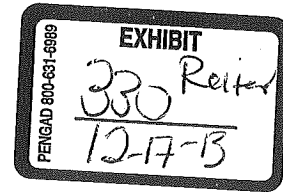
Plaintiff,

v.

JAMES NICHOLS, an individual; JOHN MILLER, an individual;
THE CITY OF LOS ANGELES, an entity; TYLER IZEN, an individual;
LOS ANGELES POLICE PROTECTIVE LEAGUE, a corporation;
and DOES 1-10, inclusive,

Defendants.

CASE NO. 2:13-cv-00836-RGK (VBKx)



EXPERT WITNESS REPORT OF LOU REITER

November 15, 2013

EXPERT WITNESS REPORT OF LOU REITER

I. Background and Qualifications

1. My name is Lou Reiter. I have worked in law enforcement since 1961. I was an active police officer for 20 years. I retired from active police duty in 1981 as Deputy Chief of the Los Angeles Police Department.

2. At the LAPD, I was involved in training police officers, reviewing police discipline, and investigating allegations of police misconduct, among other things. I was Chairman of the Use of Force Review Board and a member of the Unusual Occurrence Command Post Cadre. I researched and wrote the chapters on internal discipline, training, and management/employee relations for the Police Task Force Report of the National Advisory Commission on Criminal Justice Standards and Goals.

3. Since 1981, I have worked as a private police consultant. I spend most of my time training officers in police departments. I have worked with both large and small departments. I train in numerous subjects, including citizen complaint systems, investigative procedures, supervisory techniques, and police officer discipline. Those subjects include use of force investigations and internal affairs investigations. A more detailed list of the subjects I have consulted on appears in my *curriculum vitae* ("CV"), which is attached to this report as Exhibit 1.

4. I have conducted audits for many police departments. Those audits have focused on the handling of citizen complaints, police officer discipline, internal affairs procedures, personnel practices, and investigatory practices, among other things. A more detailed list of the areas I have audited for police departments appears in the attached CV.

5. I have also been retained as an expert witness in police-related litigation. Since 1983, I have been retained in more than 1,100 such cases, working with the plaintiff in roughly two-thirds of the cases and the defense in one-third of the cases. I have provided case analysis, case development, and expert witness testimony in those cases. I have been qualified to testify in both state and federal courts and on numerous topics, including (but not limited to): (1) supervision of police officers; (2) investigative procedures; (3) standards of police misconduct

investigations, including use of force investigations and internal affairs investigations; (4) police management and personnel practices; and (5) investigation of citizen complaints and discipline.

6. I also have extensive experience studying, writing, and speaking about the "Code of Silence." The Code of Silence is an unwritten policy that discourages police from attacking, or sharing negative information about, their colleagues. It permeates many police departments. The Code of Silence occurs, is allowed, and is followed in police departments because of the paramilitary nature of most modern police departments, especially metropolitan police departments like the LAPD. My experience is that the Code of Silence impedes effective policing. Thus, I have made combatting the Code of Silence an integral part of my law enforcement training. I have written extensively about it, including in publications for the United States Department of Justice. I have testified about the Code of Silence in litigation in both state and federal courts.

7. My experience, training, and background are described more fully in the attached CV. I have also attached a list of the cases I have provided testimony in during the past four years. That list is attached as Exhibit 2.

8. I was retained by Plaintiff Brian C. Mulligan to provide an expert opinion on the following topics: (1) the adequacy of the LAPD's investigation of sexual assault complaints made against Officer James Nichols prior to May 15, 2012; (2) the adequacy of the LAPD's investigation of the May 15-16, 2012 encounter between Mulligan and Officers Nichols and John Miller; and (3) the Code of Silence.

9. I reviewed the materials listed in Exhibit 3 in rendering this opinion. Given the extensive amount of information I reviewed and relied on, I have not provided a detailed factual narrative in this report.

10. It is my understanding that additional materials may be in process of being produced or may be requested later. I would request that this report be considered a preliminary report. Should any subsequent information be produced and materially affect or alter any of these opinions, I will either submit a supplemental response or be prepared to discuss them during any scheduled deposition.

11. At this point in the development of this case I do not know whether I will be using any demonstrative aids during my testimony. Should I decide to use any such tool, I will assure that they are made available for review, if requested, prior to their use.

12. My fees for this professional service are a flat Case Development Fee of \$9500 and a fee of \$2500 for a deposition in the Atlanta area or \$2500 per day plus expenses for services away from the Atlanta area including depositions and trial appearances.

OPINIONS

II. The Nichols Investigation Violated Accepted Police Policies and Procedures.

13. In my opinion, based on my extensive experience in police practices, there were significant and gross deficiencies in the way the LAPD responded to the sexual assault allegations against Officer Nichols.

14. At least five women have alleged that they were sexually assaulted by Officer Nichols between 2005 and 2011, while he was working in the LAPD's Hollywood Division. As of May 15, 2012, the LAPD knew about at least three of those women. The LAPD knew or should have known about the other two victims as well.

15. In response to one of the sexual assault complaints, supervisors in Hollywood transferred Nichols from working undercover narcotics to patrol, where he would interact with more people, be dressed in uniform, exercise police authority, and interact with the public. That was not proper. Sexual assault is a serious crime. It is not just a sex crime. It is a crime of power, domination, anger and control. A police officer – particularly a patrol officer – has the ability to exercise great power in the field. It was inconsistent with accepted police policies and procedures to simply move Nichols from undercover narcotics to patrol while the LAPD investigated him for this misconduct.

16. Despite knowing about the assault complaints, the LAPD allowed Officer Nichols to transfer from Hollywood to the Northeast Division in February 2011. That was not proper. First, it is inconsistent with accepted police policies and procedures to transfer an officer accused of sexual misconduct while the investigation is pending. Second, no supervising officers had to approve, or even review, Nichols's transfer from Hollywood to Northeast in 2011. The transfer was approved in 2003/2004 and was processed automatically by Position Control unit after Nichols removed the hold he had placed on it. That is a major flaw in the LAPD's personnel practices. It is inconsistent with accepted police policies and procedures and represents a significant departure therefrom.

17. Sexual assault is a crime of power, domination, anger and control. After the LAPD received a sexual assault complaint about Officer Nichols, there was only one proper way

to handle the investigation: take Nichols off patrol while it investigated the complaint. The LAPD's failure to take Officer Nichols off patrol prior to May 15, 2012 was inconsistent with accepted police policies and procedures and represented a significant departure therefrom.

18. At least three sexual assault complaints had been made against Nichols by the time he transferred from Hollywood to Northeast. However, Hollywood Captain Beatrice Girmala did not tell the Northeast captain, or anybody else in Northeast, about the complaints. That was inconsistent with accepted police policies and procedures and represented a significant departure from these accepted police personnel practices. Internal Affairs did not tell the Northeast captain, or anybody else in Northeast, about the complaints. That was inconsistent with accepted police policies and procedures and represented a significant departure from these accepted police personnel practices .

19. As of May 15, 2012, it was foreseeable that Officer Nichols would commit acts of misconduct, including assault, battery and false imprisonment, against both men and women. That is why the LAPD should have taken Officer Nichols off patrol prior to May 15, 2012. Its failure to do that was inconsistent with accepted police policies and procedures and represented a significant departure from these accepted police personnel practices and was a choice to continue the known threat to public safety.

III. The FID's Mulligan Investigation Violated Accepted Police Policies and Procedures.

20. In my opinion, based on my extensive experience in police practices, there were significant and gross deficiencies in the way the LAPD investigated the use of force incident involving Mulligan.

21. The use of force against Mulligan occurred at roughly 1:00 a.m. on May 16, 2012. Mulligan was hospitalized after having suffered serious injuries including injuries to his head. However, the LAPD did not designate the incident as a categorical use of force ("CUOF") until five hours later, at roughly 6:00 a.m. That was inconsistent with accepted police policies and procedures. The seriousness of Mulligan's injuries should have caused the LAPD to designate the incident as a CUOF immediately. Officers Nichols and Miller should have been separated immediately. Failing to designate the Mulligan incident as a CUOF before 6 am gave Officers

Nichols and Miller time to develop their “story” – they wrote the arrest report together between 1 am and 6 am – and tainted the entire investigation of the Mulligan incident.

22. The LAPD’s Force Investigative Division (“FID”) investigation of the Mulligan incident failed to follow accepted policies and procedures for such investigations. There were numerous deficiencies in the FID investigation. For example:

- a. Detective Kirk Kelley, the lead FID investigator, never examined the batons that Officers Nichols and Miller were carrying on May 15-16, 2012. Given the severity and location of the injuries Mulligan suffered that should have been done.
- b. Detective Kelley did not examine Officer Nichols’s or Officer Miller’s hands. Detective Kelley did not ask whether Officers Nichols or Miller were wearing gloves on May 15-16, 2012. Given the severity and location of the injuries Mulligan suffered, and the officers’ claim that Mulligan attacked them, those things should have been done.
- c. Detective Kelley did not ask any doctors about Mulligan’s injuries, to test whether the officers’ explanation of the incident was true. Given the severity of Mulligan’s injuries, that should have been done.
- d. Detective Kelley did not interview Mulligan. Given the severity of Mulligan’s injuries, that should have been done. In fact, a proper use of force investigation cannot be completed until, and unless, the victim, or his representative, is interviewed.
- e. Detective Kelley did not ask whether Officers Nichols or Miller were under internal affairs investigation for other alleged misconduct. It is important for an investigator to know about other allegations of misconduct when reviewing an officer’s use of force, even if those allegations have not been resolved.

- f. The FID investigation did not delve into the unusual aspects of the Mulligan detention including the two hours of the initial encounter and the decision to force him to stay at a motel known to be a location of persons with criminal histories.

23. I believe that Detective Kelley failed to consider the possibility that Officers Nichols and Miller were lying about the Mulligan incident. Detective Kelley simply accepted the officers' version of the incident. That was inconsistent with accepted police policies and procedures and represented a significant departure therefrom.

24. The deficiencies in the FID investigation continued while Detective Kelley was writing his report.

25. In September 2012, FID obtained a recording of a May 13, 2012 conversation between Mulligan and a Glendale police officer. The Glendale recording fell within Rule 405 of the LAPD's Manual because it was part of the FID investigation.¹ However, the LAPD gave a copy of the recording to Assistant City Attorney Cory Brente. Brente gave the recording to the president of the police union, Tyler Izen, to use in a negative press release against Mulligan. That was not proper. The LAPD's release of the Glendale recording, and City Attorney Brente giving it to the PPL/Izen, was a circumvention and violation of Rule 405, and it was inconsistent with accepted police policies and procedures for FID investigations.

26. Detective Kelley read a January 3, 2013 *Los Angeles Times* article about Nichols. That article explained that the LAPD had executed a search warrant on Nichols, had suspended him, and was continuing to investigate the sexual assault complaints. The article mentioned Nichols's involvement in the Mulligan incident. Detective Kelley had not finished his report at that time. But he testified that he did not consider the *Times* article to be relevant to FID's Mulligan investigation. That conclusion was unreasonable and inconsistent with accepted police

¹ Rule 405 provides, in part: "All official files, documents, records, reports, and information held by the Department or in the custody or control of an employee of the Department shall be regarded as confidential. Employees shall not disclose or permit the disclosure or use of such files, documents, reports, records, or information except as required in the performance of their official duties. The unauthorized use of information obtained through employment with the Los Angeles Police Department can subject the employee to possible disciplinary action and/or criminal prosecution. This includes information obtained from manually stored records, as well as information obtained from automated records."

policies and procedures. Officer Nichols's assault on Mulligan was similar to the sexual assaults that were described in the *Times* – acts of power, domination and control exercised by a police officer over a vulnerable person. The assaults followed prolonged detentions. At minimum, the *Times* article undermined Officer Nichols's credibility. Detective Kelley should have followed up and focused on Nichols after reading that report. Doing nothing was inconsistent with accepted police policies and procedures and represented a significant departure therefrom.

27. Detective Kelley sent his final FID report to the Use of Force Review Board in late January 2012. The Use of Force Review Board is not supposed to rubber stamp such reports. They are supposed to review the incident and the investigation to determine whether there were any flaws in the investigation. They are supposed to consider new facts to determine whether the investigation should be reopened. I do not believe that the Use of Force Review Board did those things. They simply accepted the story that Officers Nichols and Miller told about the Mulligan incident. That was inconsistent with accepted police policies and procedures and represented a significant departure therefrom.

28. The Police Commission makes the final decision about disciplining officers involved in a use of force. It is made up of people from outside the law enforcement community. It reports to the Mayor, not to the police chief. Thus, the Police Commission plays an important independent role in reviewing categorical uses of force. (In my opinion) the Police Commission did not fulfill that responsibility with the Mulligan incident. It, too, simply accepted the Nichols/Miller "story," and it did so even after Mulligan's attorney sent the Commission a letter requesting further review.

IV. The Code of Silence.

29. The Code of Silence is an unwritten policy that discourages police from attacking, or sharing negative information about, their colleagues. The concept exists to varying degrees in all walks of life but it is especially prevalent in major metropolitan police departments. The Code of Silence is particularly strong within the LAPD.

30. The "Blue Shield" is related to the Code of Silence. It consists of actions that insulate and protect an agency's employees from accountability and criticism. For example, the

Blue Shield includes, among other things: (1) an inadequate administrative investigation; (2) an unreasonable delay in an administrative investigation; (3) a failure to discipline an officer; (4) a cover up of misconduct; and (5) retaliation against an individual who accuses a police officer of misconduct.

31. Based on the documents I reviewed, the following actions were part of the Code of Silence and/or Blue Shield:

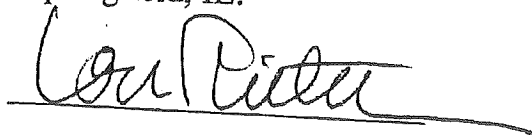
- a. The inadequate FID investigation of the Mulligan incident.
- b. The leak of the Mulligan arrest report to the web site TMZ.com on or before August 12, 2012.
- c. The leak of the Mulligan arrest report to CBS News in August 2012.
- d. The release of the Glendale recording from FID to union president Tyler Izen.
- e. The October 15, 2012 PPL press release, which accused Mulligan of trying to "Shake Down" the LAPD, identified Mulligan's employer (Deutsche Bank), accused Mulligan of causing the financial crisis, called Mulligan a delusional drug addict and liar, and claimed that Nichols/Miller would be exonerated in the FID investigation.
- f. The PPL's public release of the Glendale recording.
- g. The LAPD's investigation of the Glendale recording leak, which was closed for "lack of evidence."
- h. The LAPD's second request that the City Attorney consider bringing criminal charges against Mulligan.
- i. The LAPD's failure to revisit the Mulligan FID investigation after Nichols was suspended.

32. The entire FID Mulligan investigation was tainted by the Code of Silence and by the Blue Shield. The Code of Silence dictated that FID, the Use of Force Review Board, and the Police Commission believe, and accept, whatever Officers Nichols and Miller told them about the Mulligan incident. The Code of Silence discouraged them from questioning the officers. All simply accepted the officers' account and then closed ranks around them and the police department.

33. The media campaign that was directed against Mulligan in 2012 is a particularly good example of the Code of Silence/Blue Shield in action. The media campaign started in August 2012 with leaks of the Nichols/Miller arrest report. It peaked in the October 15, 2012 PPL press release and the release of the confidential Glendale recording. The PPL press release called Mulligan a drug-addicted liar who attacked the police and got the beating he deserved. It vilified the victim. The release of the confidential Glendale recording did the same thing. City Attorney Brente, Izen, and Eric Rose made statements during the media campaign that showed they wanted to discredit Mulligan. According to City Attorney Brente, one of their goals was to "sink his case and his reputation." Those are textbook examples of the Code of Silence/Blue Shield in operation.

34. I have written extensively about the Code of Silence/Blue Shield. I have seen both in action. The media campaign directed against Mulligan is one of the most extreme examples of the Code of Silence/Blue Shield that I have seen.

This report is signed under penalty of perjury, under the laws of the United States of America, on this 14th day of November, 2013, in Springfield, IL.



Lou Reiter