

Toni,

I have enclosed a copy of the appellant brief that I have written for the Court of Appeal, as I mentioned in one of my emails to you. The brief provides some background that is relevant to my appeal for the release of the BWC footage. I am hoping that my brief will be considered alongside my letter in the hearing with the Rules Committee that is scheduled for January 22nd, 2020. The letter that I submitted to you and the Open Government Manager is included in my brief as Exhibit C, as I would like the Court of Appeal to know that I have requested the chance to review the footage.

As for my brief itself, I would ask that the Rules Committee pay especial attention to Sections 4, 6, 7, 11, and 12, which sections cover 4th Amendment violations, procedural errors, verbal abuse, 14th Amendment violations, and open file discovery. It is my opinion that a close consideration of the BWC footage would show that the confiscation of my firearms was illegal. I am requesting that the Rules Comm. Hec agree to its release in the interest of justice.

I pray you are having a pleasant holiday season.

Respectfully,

[Redacted Signature]

1 Andrew Huey Hicks

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 COURT NAME

6 COURT OF APPEAL, SIXTH APPELLATE DISTRICT

7 JURISDICTION

8 SAN JOSE, CA

9 PLAINTIFF/RESPONDENT'S NAME,

Case No.: H047370

10 CITY OF SAN JOSE

11 vs.

APPELLANT BRIEF FOR CITY OF SAN JOSE VS.
ANDREW HICKS

12 DEFENDANT/APPELLANT'S NAME,

13 Andrew Huey Hicks

14
15
16 1. INTRODUCTION & PROCEDURAL HISTORY

17 THE CITY OF SAN JOSE FILED A PETITION FOR THE DISPOSITION OF FOUR OF MY FIREARMS ON MARCH
18 14TH, 2019. AFTER I FILED A RESPONSE TO THIS PETITION WITH THE COURT, AS WELL AS A SEPARATE LEGAL BRIEFING ON
19 SOME OF THE ISSUES INVOLVED, A SPECIAL SET HEARING WAS HELD ON AUGUST 30TH, 2019, IN FRONT OF JUDGE MARY S.
20 ARAND, OF DEPARTMENT 9 OF THE SANTA CLARA COUNTY SUPERIOR COURT. I BELIEVE THAT SEVERAL CONSTITUTIONAL
21 VIOLATIONS ON THE PART OF THE SJPD WERE OVERLOOKED BY THE COURT, WHICH LEGAL ERRORS PREJUDICED THE
22 PROCEEDINGS AND THEREBY INFLUENCED THE OUTCOME OF THE CASE. A JUDGEMENT FOR THIS CASE WAS FILED ON
23 SEPTEMBER 23RD, 2019, AND DELIVERED TO ME ON SEPTEMBER 25TH, 2019. I MAILED A NOTICE OF APPEAL TO BOTH THE
24 CITY ATTORNEY'S OFFICE AND THE CIVIL CLERKS OFFICE A COUPLE OF DAYS LATER, ON SEPTEMBER 27TH, 2019. I HAVE
25 WRITTEN ONE RESPONSE AND ONE LEGAL BRIEFING ALREADY FOR THIS CASE, BOTH OF WHICH WERE FAIRLY LONG-
26 WINDED. I DON'T SEEM TO HAVE GOTTEN MY POINT ACROSS CLEARLY. IN THIS APPELLANT BRIEF I WILL BE AS CONCISE
27 AS POSSIBLE IN EXPLAINING WHY THE CONDUCT OF THE SJPD OFFICERS ON THE NIGHT OF FEBRUARY 14TH, 2019 WAS
28 ILLEGAL, IN SEVERAL WAYS, AND WHY THIS PETITION SHOULD NOT HAVE BEEN SUBMITTED TO THE COURTS IN THE FIRST
PLACE. I HOPE IN THE COURSE OF THIS APPELLANT BRIEF TO CONVINCED THE COURT OF APPEAL THAT THE DECISION OF
THE SANTA CLARA SUPERIOR COURT SHOULD BE REVERSED, AND THAT MY BELONGINGS SHOULD BE RETURNED TO ME.

2. ON BEING THREATENED BY GANGS AND DISARMED BY POLICE

IT IS TRUE THAT SOMETIMES TRUTH IS STRANGER THAN FICTION. I KNOW THE TRUTH ABOUT WHAT
HAPPENED TO ME EARLY IN 2019, BUT AT TIMES I WILL ADMIT THAT EVEN FOR ME IT IS HARD TO BE FULLY CONVINCED OF
THE PLOT'S VERACITY. I CALLED TO SPEAK WITH THE SJPD PRIMARILY BECAUSE I REALIZED THAT I WAS BEING CLOSELY
WATCHED BY GANG MEMBERS. I AM AWARE THAT THAT SOUNDS ABSURD. I DO NOT KNOW WHY ANYONE WOULD PAY
APPELLANT BRIEF - 1

1 CLOSE ATTENTION TO ANYTHING THAT I DO, OR WHY I WOULD BE OF ANY PARTICULAR INTEREST. I AM NOT SURE WHY
2 EXACTLY I ATTRACTED SUCH ATTENTION, AND I AM GUESSING THAT I WILL NEVER KNOW. I CANNOT PROVE
3 DEFINITELY ANY OF MY HUNCHES. I AM HOPING THAT THE FOLLOWING POINTS WILL PROVIDE SOME INDICATION TO
4 THE COURT THAT I WAS NOT, AS THE SJPD'S OFFICERS HAVE CLAIMED, ENTIRELY OUT OF TOUCH WITH REALITY, BUT
5 RATHER THAT I WAS SIMPLY PICKING UP ON SOME CLUES THAT ARE TOO SUBTLE FOR THEIR ANTENNAE. WHILE I CANNOT
6 AS I SAID ABOVE, CONCRETELY PROVE ANYTHING, I BELIEVE THE FOLLOWING POINTS LEND THEMSELVES READILY TO
7 THE CONCLUSION THAT I WAS CORRECT IN MY THINKING:

8 1.) FIRST AND FOREMOST IS THE POST I SAW ON FACEBOOK. I HAVE INCLUDED A SCREENSHOT OF THIS
9 POST IN THE LEGAL BRIEFING I WROTE FOR THE SANTA CLARA COUNTY SUPERIOR COURT, AND I WOULD REFER THE
10 COURT OF APPEAL TO THAT DOCUMENT OF MINE, WHICH SHOULD HAVE BEEN HANDED DOWN FROM THE SUPERIOR
11 COURT AS PART OF THE DESIGNATION PROCESS. THE POST WAS UNDOUBTEDLY REFERRING TO ME, AND IMPLIED THAT I
12 WAS UNDER A RIDICULOUS AMOUNT OF SURVEILLANCE AND WAS BEING WATCHED BY GANGS.

13 2.) SECONDLY, SEVERAL WEEKS AFTER SEEING THIS POST, I WAS NEARLY BACKED OVER BY A CAR IN
14 FRONT OF MY HOUSE. THE TWO GALS DRIVING THE VEHICLE STATED THAT IT WAS AN ACCIDENT, THAT ONE OF THEM WAS
15 LEARNING TO DRIVE. COMING SHORTLY AFTER I HAD SEEN THE POST ON FACEBOOK, I AM NOT CONVINCED THAT IT WAS
16 AN ACCIDENT. I BELIEVE IT WAS ATTEMPTED MURDER. IT HAPPENED SHORTLY AFTER I HAD SEEN THE POST ONLINE, FOR
17 STARTERS. OTHER THAN THAT, THE TIMING JUST SEEMS TOO PERFECT FOR IT TO HAVE BEEN AN ACCIDENT. I HAD JUST
18 STEPPED ONTO THE TOP OF MY GREEN WASTE PILE OUT IN THE STREET, FOR THE PURPOSE OF TAMPING IT DOWN A BIT,
19 WHEN A CAR IDLING IN FRONT OF THE PILE HIT THE ACCELERATOR HARD IN REVERSE. I WAS ABLE TO SKIP UP ONTO THE
20 CURB AND AVOID THE CAR, BUT WITH ONLY ABOUT A FOOT OR SO TO SPARE. COMING SHORTLY AFTER SEEING THE POST
21 ONLINE, AND CONSIDERING THE TIMING OF THE "ACCIDENT", THAT THE CAR ACCELERATED IN REVERSE AT JUST THE
22 TIME THAT I WAS ON TOP OF THE GREEN WASTE PILE, IN MY MOST VULNERABLE MOMENT (BECAUSE OF THE CHALLENGE
23 OF UNTANGLING MYSELF FROM THE GREENERY), I CANNOT BELIEVE THAT IT WAS TRULY AN ACCIDENT RATHER THAN AN
24 ATTEMPT TO HARM OR KILL ME.

25 3.) THIRDLY, THERE WERE SEVERAL MOST POLITE GENTLEMEN IN EPS WITH ME WHO SEEMED
26 UNUSUALLY INTERESTED IN MY PRESENCE THERE. JUDGING BY TATTOOS AND SOME OF THE CLOTHING WORN BY THESE
27 FINE YOUNG MEN, I CAN SAY WITH CONFIDENCE THAT AT LEAST TWO, AND POSSIBLY THREE, OF THEM WERE LIKELY
28 GANG MEMBERS. ONE OF THEM KEPT CALLING ME "MAYONNAISE" FOR SOME REASON, WHILE A SECOND INDICATED A
DESIRE TO WRAP ME IN A TOWEL AND TOSS ME IN THE TRASH BIN. PLEASANT FOLKS, THEY WERE. NOT ONLY DID THE
POLICE NOT TAKE MY CONCERNS SERIOUSLY, BUT THEY DISARMED ME AND THEN KEPT ME COOPED UP FOR TWO DAYS
WITH SOME OF THE VERY PEOPLE I HAD CALLED THEM TO HELP ME AVOID.

4.) FOURTH, A COUPLE OF WEEKS AFTER RETURNING HOME FROM EPS, I NOTICED THAT THE
GENTLEMAN LIVING ACROSS THE STREET TO THE WEST OF MY HOUSE WAS OUTSIDE IN THE FRONT YARD WATERING HIS
PLANTS AND ALSO "FLAMING UP", WEARING TWO ARTICLES OF RED CLOTHING THAT, AS I UNDERSTAND IT, IS A NOTED
MODUS OPERANDI OF THE CITY'S TRASHY CRIMINALS. I SPOKE WITH THIS GENTLEMAN SEVERAL TIMES, BEFORE HE
MOVED, AND I NEVER HAD ANY ALTERCATIONS WITH HIM. IT REMAINS MY OPINION THAT HE WAS ALSO A GANG MEMBER.
HE STATED AT ONE POINT THAT HE HOPED I HAD LEARNED SOME LESSONS FROM THIS WHOLE DRAMA, AND I GOT THE
IMPRESSION THAT HE KNEW MORE OF MY STORY THAT HE LEGITIMATELY SHOULD HAVE KNOWN. I HAVE A HUNCH THAT
HE HAD RENTED THAT HOUSE IN AN EFFORT TO INTIMIDATE ME. WHILE I DO WISH HIM WELL, I AM GRATEFUL THAT HE
HAS MOVED, AND ALSO GRATEFUL THAT NO HARM CAME TO ME OR MY MOTHER. HE LEFT BEHIND TWO VASES OF RED
FLOWERS ON THE CURB THE DAY OF THE MOVE, WHICH I HAVE WONDERED ABOUT. WAS IT ANOTHER SUBTLE HINT? IN
ANY CASE, THE HOUSE IS NOW OCCUPIED BY A FAMILY THAT DOES NOT STRIKE ME AS HAVING ANY CRIMINAL
CONNECTIONS, SO I FEEL MUCH BETTER.

5.) FIFTH, I HAVE TALKED SEVERAL TIMES WITH A YOUNG MAN, MARK, DURING MY YARD WORK OUT
IN FRONT OF MY HOUSE. I KNOW LITTLE ABOUT HIM OTHER THAN THAT HE IS AN EX-GOGLER WHO FINALLY
DISCOVERED THAT GOOGLE IS LITTLE MORE THAN AN OVERLY GLORIFIED CULT (HIS WORDS, NOT MINE, BUT I CONCUR).
WE CHATTED SEVERAL TIMES, ON DAYS WHEN HE WALKED BY WHEN I WAS OUTSIDE WORKING. HE CORROBORATED

1 SOME OF THE ABOVE SUSPICIONS FOR ME WHEN HE LET ME KNOW THAT I HAD BEEN "DOXED". BY THE TIME HE LET ME
2 KNOW, I WAS ALREADY WELL AWARE OF THE FACT, BUT HAVING HUNCHES CORROBORATED IS ALWAYS HELPFUL.

3 AGAIN, AS I STATED AT THE BEGINNING OF THIS SECTION, I HAVE NO WAY OF ABSOLUTELY PROVING
4 MY THEORIES. THIS IS LIFE, NOT MATHEMATICS, BUT I DO BELIEVE THAT THE FIVE POINTS I LISTED ABOVE SHOULD HELP
5 THE COURT OF APPEAL TO REACH THE CONCLUSION THAT I WAS, IN FACT, BEING HARASSED ONLINE BY GANG MEMBERS,
6 THAT MY LIFE MAY HAVE BEEN THREATENED FOR A PERIOD OF TIME, AND THAT THE SJPD DID ME WRONG BY SWEEPING
7 MY CONCERNS UNDER THE RUG, STEALING MY BELONGINGS, AND LEAVING ME DEFENSELESS. I HAVE MY FIREARMS FOR
8 SELF-DEFENSE, NOT FOR ASSAULT, AND THEY NEVER WOULD HAVE BEEN USED IN ANY CRIMINAL MANNER. MY OPINION
9 IS THAT THE OFFICERS ERRONEOUSLY BELIEVED THAT I WAS OUT OF TOUCH WITH REALITY, CARELESSLY BRUSHED MY
10 WORRIES ASIDE WHEN I LET THEM KNOW THAT FOR SOME REASON I MAY HAVE BEEN TARGETED, AND LEFT ME IN A
11 POSITION MORE DANGEROUS THAN WHAT I STARTED FROM, SINCE THEY REMOVED MY PRIMARY MEANS OF SELF-
12 DEFENSE. I DON'T FEEL THAT THIS CAN BE CALLED SENSIBLE POLICE WORK BY ANY STRETCH OF ANYONE'S
13 IMAGINATION.

14 3. ON THE ILLEGALITY OF THE 5150 HOLD

15 I SHOULD NEVER HAVE BEEN PLACED ON A 5150 HOLD. I CALLED THE POLICE TO SHARE SOME
16 INFORMATION WITH THEM. I DID NOT HAVE ANY INTENTION OF HARMING ANYONE, NOR OF HARMING MYSELF. TO SPELL
17 IT OUT CONCISELY:

18 A.) - MY 5150 ADMISSION FORM STATED THAT I DID NOT FEEL SAFE. THAT WAS TRUE, BUT IS NOT
19 SUFFICIENT FOR A 5150 HOLD. THE ACTIONS OF THE SJPD MADE ME LESS SAFE THAN I WAS BEFORE I CALLED THEM, AS
20 THEY REMOVED AT LEAST FOUR OF MY MEANS OF SELF-DEFENSE. I WOULD HAVE BEEN MORE SECURE IF I HAD NEVER
21 REACHED OUT TO THEM.

22 B.) - MY 5150 ADMISSION, OR 'INVOLUNTARY PATIENT ADVISEMENT' FORM, INCLUDED IN THIS BRIEF AS
23 EXHIBIT A, STATED THAT I WANTED A SHOOT-OUT WITH POLICE. THIS IS A BUNCH OF BUNCOMBE. COMMON SENSE WOULD
24 CLEARLY INDICATE THAT THIS SHOULDN'T HAVE BEEN INCLUDED ON THE 5150 FORM. I CALLED THE OFFICERS TO MY
25 HOUSE TO HAVE A CONVERSATION WITH THEM. IN THE TRANSCRIPT OF THE CONVERSATION WITH MY MOTHER, SHE
26 STATED THAT I WOULD "FIGHT BACK" AGAINST POLICE. NOTHING IN MY ACTIONS INDICATED AN INCLINATION TO DO SO,
27 NOR DID SHE SAY ANYTHING ABOUT A "SHOOT-OUT". THIS TRANSLATION THAT OCCURRED BETWEEN THE TRANSCRIPT
28 AND MY 5150 FORM, ALTHOUGH A SEEMINGLY SLIGHT MODIFICATION, SHOULD GIVE THE COURT SOME HINT THAT THE
SJPD AND CITY ATTORNEY'S OFFICE ARE MANIPULATING SOME OF THE FACTS OF THE CASE. AT THE VERY LEAST, THEY
ARE CLEARLY MAKING EVERY EFFORT TO PRESENT ME IN THE WORST POSSIBLE LIGHT, TO JUSTIFY THE CONFISCATION
OF MY FIREARMS. WHILE I DO VERY MUCH QUESTION THE JUDGMENT OF THE OFFICERS I ENCOUNTERED, I STILL
CONSIDER THEM MY BROTHERS IN BLUE, AND WOULD NOT HAVE DONE ANYTHING TO HURT THEM. THEY SAY THAT I
WANTED A SHOOT-OUT, BUT YET I CAME OUT OF THE HOUSE UNARMED TO SPEAK WITH THEM. THE STORY THEY TELL
DOES NOT COHERE WHEN EXAMINED CLOSELY.

C.) - IN MR. PRITCHARD'S PETITION TO STRIKE MY ANSWER, HE MENTIONED A SUICIDE THREAT. THIS IS
A FABRICATION. I WAS NEVER SUICIDAL. WHEN ASKED IF I WAS FEELING SUICIDAL THAT EVENING, MY MOTHER
RESPONDED, "NO, NO". SHE HAD, EARLIER IN THE CONVERSATION, ALSO STATED THAT "HE HAS NOT MENTIONED HE WAS
WORRIED ABOUT WANTING TO KILL HIMSELF." I NEVER MADE ANY SUICIDE THREATS, AND FOR MR. PRITCHARD TO
CLAIM SO IS PERJURY. ONE OF THE OFFICERS, OUT IN THE STREET IN FRONT OF MY HOUSE, AND WHILE SHINING A
FLASHLIGHT DIRECTLY INTO MY FACE, ASKED ME IF I WAS SUICIDAL, AND I SPECIFICALLY TOLD HIM THAT I WAS NOT,
THAT THAT WAS NOT WHY I CALLED THEM.

TO BE FAIR, MY MOTHER DID ALSO STATE THAT "HE HAS IN THE PAST". I DON'T REMEMBER EVER
STATING THAT I WAS TIRED OF LIVING IN THE PAST, BUT IF I HAVE, IT WAS PROBABLY WHILE FILLING OUT DIVORCE
PAPERWORK, AND SHOULD NOT BE TAKEN AS A CREDIBLE THREAT, BUT RATHER SIMPLE EXASPERATION. IT IS TRULY
IRRELEVANT WHAT I MAY OR MAY NOT HAVE SAID IN THE PAST, IN ANY CASE, BECAUSE YOU CANNOT PLACE SOMEONE
APPELLANT BRIEF - 3

1 ON A 5150 HOLD BECAUSE OF WHAT THEY'VE SAID IN THE PAST. ALSO, I AM A FATHER TO A 12 YEAR-OLD TADPOLE, MY
2 SON, SO I FIGURE THAT I HAVE A RESPONSIBILITY TO TAKE CARE OF MYSELF AND CONTINUE LIVING.

3 D.) - THE FACT THAT I HAD FIREARMS OUT IN MY ROOM DID NOT MAKE ME A 5150 PATIENT, EITHER.
4 MUCH IS MADE IN THE POLICE REPORT OF MY HAVING THREE LOADED FIREARMS IN MY ROOM AT THE TIME, YET TO
5 PLACE ME ON A 5150 HOLD BECAUSE OF SUCH A THING GOES AGAINST DECISIONS MADE BY THE COURTS IN *DISTRICT OF*
6 *COLUMBIA VS. HELLER (2008)* AND *MCDONALD VS. CITY OF CHICAGO (2010)*. BOTH PISTOLS WERE HOLSTERED AND IN MY
7 ROOM, WHERE NOBODY ELSE WOULD BE HANDLING THEM. WHILE THE SHOTGUN MAY HAVE BEEN LOADED, IT WAS A
8 COLD WEAPON IN THE SENSE THAT A ROUND WAS NOT CHAMBERED. ALL OF THE FIREARMS WERE, AT THE TIME, IN A
9 SAFE CONDITION UNLESS SOMEONE HAD ILLEGALLY TRESPASSED INTO MY HOME. I AM AWARE THAT, TO QUOTE FROM
10 *PEOPLE VS. JASON K. (2010)*, THE RIGHT TO KEEP AND BEAR ARMS IS NOT "A RIGHT TO KEEP AND CARRY ANY WEAPON
11 WHATSOEVER IN ANY MANNER WHATSOEVER AND FOR WHATEVER PURPOSE". I HAVE A PERMIT TO CARRY TWO OF THE
12 PISTOLS ILLEGITIMATELY REMOVED FROM MY HOME, WHICH PERMIT I HAVE INCLUDED AS EXHIBIT E, AND EVEN IF I
13 DIDN'T IT WAS CLEARLY ESTABLISHED IN *HELLER* THAT FIREARMS MAY BE STORED UNLOCKED IN THE HOME AS LONG AS
14 THEY ARE ONLY HANDLED FOR THE "CORE LAWFUL PURPOSE OF SELF-DEFENSE". ALL OF MY FIREARMS ARE LEGALLY
15 OWNED, AND I WOULD NOT HAVE ALLOWED THEM TO BE USED FOR ANY UNTOWARD OR MALICIOUS PURPOSE. I DO,
16 AFTER ALL, HAVE A GOOD CONSCIENCE.

17 E.) - I WILL NEED TO RECEIVE A COPY OF BODY CAM FOOTAGE TO VERIFY THIS, BUT MY INTUITION
18 TELLS ME THAT MUCH OF THAT CONVERSATION WITH MY MOTHER TOOK PLACE AFTER I HAD ALREADY BEEN CARTED
19 OFF TO EPS. I WOULD LIKE TO SEE A COPY OF THE BODY CAM FOOTAGE THAT INCLUDES TIMESTAMPS. NOTHING IN THE
20 TRANSCRIPT FROM THE FOOTAGE VALIDATES A 5150 HOLD, IN MY OPINION, BUT I BELIEVE IT WAS USED AFTER-THE-FACT
21 IN AN ATTEMPT TO JUSTIFY THE CONFISCATION OF MY BELONGINGS. MY HUNCH IS THAT I HAD ALREADY BEEN
22 TRANSPORTED OFF TO EPS BY THE TIME THE OFFICERS WERE TELLING MY MOTHER THAT THEY NEEDED TO "BE ABLE TO
23 MAKE A DECISION HERE WHETHER HE'S GOING TO NEED TO GO TO EPS TONIGHT" AND, LATER ON IN THE CONVERSATION,
24 THAT "THEY DON'T KNOW YET". MY OPINION IS THAT THE COURT OF APPEAL SHOULD REVIEW THE BWC FOOTAGE TO
25 DETERMINE WHETHER OR NOT THE OFFICERS WERE BEING HONEST WITH MY MOTHER. ONE THING I DO KNOW, FROM
26 CONVERSATION WITH MY MOTHER AFTER THE NIGHT IN QUESTION, IS THAT MY ROOM WAS ALREADY BEING SEARCHED
27 BY THE TIME THE OFFICERS UTTERED THE QUOTATIONS ABOVE, WHICH WOULD MEAN THAT THEY WERE ILLEGALLY
28 PERFORMING A SEARCH BEFORE EVEN OFFICIALLY PLACING ME ON A HOLD. IF THAT WOULDN'T PROVE TO THE COURT
THAT THE 5150 HOLD AND CONFISCATION OF MY BELONGINGS WAS CARRIED OUT IN AN ILLEGAL MANNER, THEN I
SUPPOSE THAT NO AMOUNT OF SAVVY LEGAL REASONING WILL ACHIEVE SUCH AN END. NONETHELESS, I CONTINUE.

21 4. ON 4TH AMENDMENT VIOLATIONS

22 AFTER CONVERSATIONS WITH MY MOTHER ABOUT THE NIGHT IN QUESTION, IT IS MY
23 UNDERSTANDING THAT OFFICERS WERE SEARCHING MY ROOM BEFORE HAVING MUCH OF A CONVERSATION WITH MY
24 MOTHER. THIS IS AN ABUSE OF THE 4TH AMENDMENT TO THE CONSTITUTION, WHICH PROTECTS CITIZENS IN THEIR
25 PERSONS AGAINST UNREASONABLE SEARCHES AND SEIZURES. IN MY OPINION, THE OFFICERS DID NOT EVEN HAVE
26 JUSTIFICATION FOR PLACING ME IN HANDCUFFS AND SEARCHING MY POCKETS. IN THE POLICE REPORT THE OFFICERS
27 STATE THAT THEY ENTERED MY HOUSE TO CHECK ON THE SAFETY OF MY MOTHER. THIS WAS UNNECESSARY, BUT
28 HONORABLE, AND I BELIEVE PERMITTED BY THE COMMUNITY CARETAKING EXCEPTION TO THE 4TH AMENDMENT. AFTER
FINDING MY MOTHER ASLEEP IN BED, I DO NOT BELIEVE, HOWEVER, THAT THE OFFICERS HAD THE RIGHT TO THEN
SEARCH MY ROOM AND INTERROGATE MY MOTHER FOR SEVERAL HOURS.

FROM *PEOPLE VS. RAY (1999)*, WE HAVE THAT THE "PRIVILEGE TO ENTER TO RENDER AID DOES NOT, OF
COURSE, JUSTIFY A SEARCH OF THE PREMISES FOR OTHER PURPOSES. TO THE CONTRARY, THE WARRANTLESS SEARCH OF
A DWELLING MUST BE SUITABLY CIRCUMSCRIBED TO THE EXIGENCY WHICH PROMPTED IT." FOR A QUICK CHECK ON THE
WELLBEING OF MY MOTHER TO HAVE DEVOLVED INTO A FULL SEARCH OF THE HOUSE ADDS A "SINISTER COLORATION TO
PROCEDURES WHICH ARE BASICALLY REASONABLE", TO TAKE ANOTHER QUOTE FROM *PEOPLE VS. RAY*.

1 I DON'T BELIEVE THAT I MYSELF DID ANYTHING IN MY INTERACTION WITH THE OFFICERS TO JUSTIFY
2 A 5150 HOLD WHEN GREETING THEM OUTSIDE OF MY HOME. EVEN IF I HAD, WHICH I DIDN'T, A WARRANTLESS SEARCH OF
3 MY HOME WOULD STILL NOT HAVE BEEN PERMITTED. FROM *PEOPLE VS. SWEIG (2008)*, WE CAN READ THAT "SECTION 8102
4 DOES NOT FALL WITHIN THE LIMITED GROUNDS SET FORTH IN PENAL CODE SECTION 1524 FOR THE ISSUANCE OF SEARCH
5 WARRANTS", AND THAT THE COURTS HAVE "NO POWER TO REWRITE STATUTE SO AS TO MAKE IT CONFORM TO A
6 PRESUMED INTENTION WHICH IS NOT EXPRESSED". IT WOULD NOT WORK TO CLAIM THAT I VOLUNTARILY CONSENTED
7 TO ANY SEARCH, AS I WAS DETAINED AND IN HANDCUFFS. IN THE *SWEIG* CASE, OFFICERS CLAIMED THAT SWEIG HAD
8 VOLUNTARILY CONSENTED TO A SEARCH BUT IT WAS FOUND THAT HE HAD "SIMPLY ACQUIESCED IN WHAT HE
9 UNDERSTOOD TO BE AN ENTRY OVER WHICH HE HAD NO CONTROL AND, THUS, HE DID NOT VOLUNTARILY CONSENT". I
10 DID NOT CONSENT TO A SEARCH, BUT IF THE CITY ATTORNEYS CLAIM THAT I DID, SOMETHING SIMILAR COULD BE SAID
11 OF MY SITUATION. EVEN THOUGH SWEIG WAS IN POSSESSION OF AN ILLEGAL ASSAULT RIFLE, THE COURT STILL FOUND
12 THAT SEIZURE WAS NOT JUSTIFIED BY THE COMMUNITY CARETAKING EXCEPTION TO THE 4TH AMENDMENT. IN MY CASE,
13 MY FIREARMS WERE ALL LEGALLY OWNED, AND I HAVE A PERMIT TO CARRY TWO OF THEM, SO IT IS HARD TO FATHOM
14 HOW THE COMMUNITY CARETAKING EXCEPTION COULD BE USED TO JUSTIFY THE FORFEITURE OF MY BELONGINGS.

15 WHILE THE COMMUNITY CARETAKING EXCEPTION MAY HAVE EXCUSED THE ENTRY TO CHECK ON MY
16 MOTHER, I DO NOT BELIEVE THAT IT PROVIDED GROUNDS FOR HER LENGTHY INTERROGATION BY THE OFFICERS. IF THE
17 ENTRY AND SEARCH IS HELD, AS IT SHOULD BE, TO BE A VIOLATION OF THE 4TH AMENDMENT, THEN THE HEARSAY
18 GATHERED FROM MY MOTHER SHOULD BE CONSIDERED EVIDENCE IMPROPERLY OBTAINED. FROM *MAPP VS. OHIO (1961)*,
19 WE CAN READ THAT COURTS HAVE NO BASIS FOR CONSIDERING "EVIDENCE THAT LAW ENFORCEMENT SECURED DURING
20 A SEARCH THAT WAS UNCONSTITUTIONAL UNDER THE 4TH AMENDMENT".

21 SEEING AS HOW THE PETITION FILED BY THE CITY OF SAN JOSE REPRESENTS A SERIOUS RISK TO MY
22 CONSTITUTIONALLY PROTECTED RIGHTS, MY OPINION IS THAT THE COURT SHOULD WEIGH MY LEGAL ANALYSIS
23 CAREFULLY, AND KEEP IN MIND ONE OF THE DICTUMS FOUND IN *BARRON VS. BALTIMORE (1833)*, THAT THE "COURTS MUST
24 BE ESPECIALLY VIGILANT IN GUARDING AGAINST SUBTERFUGE, THAT IS, A FALSE RELIANCE UPON THE PERSONAL
25 SAFETY OR PROPERTY PROTECTION RATIONALE WHEN THE REAL PURPOSE WAS TO SEEK OUT EVIDENCE OF CRIME".
26 REGARDLESS OF HOW THE COURT FEELS ABOUT THE MATTER, MY PERSONAL OPINION WILL ALWAYS REMAIN THAT MY
27 4TH AMENDMENT RIGHTS WERE VIOLATED THE NIGHT THAT MY ROOM WAS UNNECESSARILY SEARCHED.

18 19 5. ON ENDANGERMENT

20 THESE MIGHT SEEM LIKE SMALL ISSUES TO NOTE IN COMPARISON WITH SOME OF THE OTHER THINGS I
21 HAVE MENTIONED, BUT I WOULD LIKE TO MENTION ONCE AGAIN THAT I FOUND IT UNPROFESSIONAL THAT THE OFFICERS
22 DID NOT ANNOUNCE THEMSELVES AS POLICE. HOLDING ME IN A SPOTLIGHT, AND NOT REVEALING THEIR IDENTITY, EVEN
23 WHILE THEY KNEW I WAS SOMEWHAT PARANOID WHEN PLACING MY CALL, WAS UNPROFESSIONAL AND IN SOME WAYS
24 DANGEROUS. THEY COULD HAVE REASSURED ME BY LETTING ME KNOW WHO THEY WERE. ALSO, I DO FEEL THAT IT WAS
25 UNPROFESSIONAL TO PARADE MY SPEED LOADER AND PILL BOTTLES OUT IN THE STREET. NEITHER OF THESE THINGS
26 WERE ILLEGAL, AND TO SO BLATANTLY DISPLAY THEM OUT IN THE OPEN COULD IN SOME WAYS BE CONSIDERED
27 ENDANGERING SIMPLY THROUGH A TYPE OF STIGMATIZING AND DEFAMING REPUTATIONAL DAMAGE. THE OFFICERS
28 TREATED SOME OF MY OLD EMPTY PRESCRIPTION BOTTLES LIKE CRITICAL EVIDENCE, WHICH THEY WERE NOT.
WATCHING ONE OF THE OFFICERS CROSS THE STREET TO THE PATROL VEHICLE, CASUALLY SWINGING MY OLD
PRESCRIPTION BOTTLES AROUND IN A PLASTIC BAG MADE ME CRINGE. IT HAD AN AIR OF THEATRE ABOUT IT, AS IF THE
WHOLE THING WERE A SHOW PUT ON BY THE OFFICERS TO SOMEHOW JUSTIFY TRANSPORTING ME TO EPS. IT DID NOT
JUSTIFY THIS DECISION, AND PARADING MY OLD MEDICATION BOTTLES AROUND, FOR WHICH MEDICATION I HAD A VALID
PRESCRIPTION, COULD IN SOME WAYS BE CONSIDERED A HIPAA VIOLATION AS WELL.

6. ON BASIC PROCEDURAL ERRORS

1 THE 5150 HOLD I WAS PLACED ON WAS ILLEGAL, AND THE SAME CAN BE SAID OF THE WAY IN WHICH IT
2 WAS CARRIED OUT, FOR THE FOLLOWING REASONS:

3 A.) SECTION 5150(G)(1) WAS NOT FOLLOWED, SINCE I WAS TOLD BEFORE BEING CARTED OFF TO EPS
4 THAT I HAD "LOST ALL OF MY RIGHTS". THIS IS NOT A TRUE STATEMENT, AND NOT IN ACCORD WITH SECTION 5150(G)(1).
5 THE FACT THAT THE STATEMENT WAS WARPED IN THIS WAY COULD BE CONSIDERED SOMETHING OF A CRUEL AND
6 UNUSUAL PUNISHMENT, GIVEN THE CIRCUMSTANCES.

7 B.) SECTION 5150(G)(2) WAS NOT FOLLOWED. I WAS NOT OFFERED THE CHANCE TO BRING ANY
8 PERSONAL BELONGINGS WITH ME. I MENTIONED IN MY PREVIOUS LEGAL BRIEFING THAT I WOULD HAVE BROUGHT THE
9 FIREARMS. AND A TOOTHBRUSH, OF COURSE.

10 C.) SECTION 8102(B)(1) WAS NOT FOLLOWED. BY SECTION 33800 OF THE CA PENAL CODE, A RECEIPT
11 SHOULD HAVE BEEN PROVIDED TO ME. I RECEIVED NO RECEIPT, AND WAS NOT AWARE THAT MY FIREARMS HAD BEEN
12 STOLEN UNTIL I RETURNED HOME FROM EPS.

13 D.) SECTION 8102(B)(2) WAS NOT FOLLOWED. I RECEIVED NO NOTICE OF ANY KIND FROM EPS ON THE
14 CONFISCATION OF MY FIREARMS.

15 E.) SECTION 8102(B)(3) WAS NOT FOLLOWED. I WAS NOT PROVIDED WITH ANY INFORMATION ON HOW
16 TO GO ABOUT SECURING THE RETURN OF MY BELONGINGS. I WAS NOT EVEN REFERRED TO THE DOJ'S FIREARMS
17 RELEASE FORM UNTIL I HEARD ABOUT IT FROM A GENTLEMAN I SPOKE TO AT THE PROPERTY DIVISION. THIS WAS
18 SEVERAL MONTHS AFTER MY BELONGINGS HAD BEEN TAKEN.

19 THE FACT THAT THE PROPER PROCEDURES WERE NOT FOLLOWED FOR A 5150 HOLD, IN MY HUMBLE
20 OPINION, IS YET ONE MORE PIECE OF EVIDENCE THAT CALLS THE WHOLE CHARADE INTO QUESTION. IF THE OFFICERS
21 COULD NOT HAVE FOLLOWED SOME OF THE BASIC PROCEDURAL DETAILS OUTLINED ABOVE, SHOULD THIS MAKE ME
22 FEEL CONFIDENT THAT THEY WERE CORRECT IN THEIR INITIAL JUDGMENT OF PLACING ME ON A HOLD? IT DOES NOT
23 MAKE ME FEEL ANY SUCH CONFIDENCE, NOR SHOULD IT MAKE THE COURT FEEL CONFIDENT THAT THIS HOLD, AND THE
24 ATTENDANT CONFISCATION AND FORFEITURE OF MY FIREARMS, HAS BEEN ADEQUATELY JUSTIFIED.

25 7. ON VERBAL ABUSE, A COLLECTIVE MENS REA, AND A HINT OF RACISM

26 I REMEMBER SEVERAL STATEMENTS FROM OFFICERS ON THE NIGHT OF FEBRUARY 14TH, 2019 THAT
27 PROVIDE AMPLE, IF SUBTLE, EVIDENCE OF A COLLECTIVE *MENS REA*. I HAVE NO EVIDENCE OF THESE STATEMENTS OTHER
28 THAN THE TESTIMONY OF MY OWN MEMORY. I AM VERY CURIOUS TO SEE IF ANY OF THESE SMALL GEMS WERE
PRESERVED BY THE BWC FOOTAGE:

A.) AS I WAS BEING BUCKLED INTO THE BACK SEAT OF THE PATROL VEHICLE, I WAS TOLD BY THE
OFFICER THAT "SOME PEOPLE DIE IN CUSTODY". I CONSIDER THIS A CLEAR EFFORT TO INTIMIDATE ME, AND SEEMS THAT
IT COULD SERVE AS AN INDICATION THAT THE OFFICERS KNEW THEY MAY BE AFFIRMATIVELY PLACING ME IN DANGER.
GIVEN THAT I WAS HANDCUFFED AND BUCKLED INTO A PATROL VEHICLE, I CONSIDER THIS CRUEL AND UNUSUAL
PUNISHMENT, AND PARTICULARLY DERANGED SEEING AS HOW IT WAS UTTERED IN THE MOMENTS THAT I WAS TAKEN
INTO CUSTODY. TO QUOTE *WOOD VS. OSTRANDER (1989)*, THE "AFFIRMATIVE DUTY TO PROTECT ARISES FROM [THE]
LIMITATION WHICH IT HAS IMPOSED ON [MY] FREEDOM". I HEARD THIS OFFICER'S STATEMENT AT THE MOMENT WHEN A
'SPECIAL RELATIONSHIP' WAS ESTABLISHED. FROM *BALISTRERI VS. PACIFICA POLICE DEPT (1988)*, WE CAN READ THAT
"WHEN THE STATE TAKES A PERSON INTO ITS CUSTODY AND HOLDS HIM THERE AGAINST HIS WILL, THE CONSTITUTION
IMPOSES UPON IT A CORRESPONDING DUTY TO ASSUME RESPONSIBILITY FOR HIS SAFETY AND GENERAL WELL-BEING".

IN MY OPINION, THE UTTERANCE IS EVIDENCE OF A *MENS REA*, A DELIBERATE INDIFFERENCE TO
WHETHER OR NOT I WOULD BE HARMED BY THE EFFECTS OF THEIR ACTIONS, MAKING THEM, TO AGAIN QUOTE FROM
THE *WOOD* CASE, "AS MUCH AN ACTIVE TORTFEASOR AS IF [THEY] HAD THROWN [ME] INTO A SNAKE PIT". THE WORDS
ALSO MAKE A MOCKERY OF ANY CLAIM THE SJPD MIGHT MAKE ABOUT HOW THEY WERE RESPONSIBLY LOOKING AFTER
MY SAFETY.

1 B.) AFTER STATING THAT I WAS QUEER (I HAVE SINCE CHANGED MY MIND ABOUT THIS), THE OFFICERS
2 OF COURSE COULD NOT HELP BUT SUGGEST THAT I GET MORE COMFORTABLE WITH THE HANDCUFFS ON IN THE BACK
3 SEAT OF THE PATROL CAR BY BENDING FORWARD. I THINK IT WILL BE A HARD SELL TO CLAIM THAT THIS WAS NOT A
4 SUBTLE INSULT.

5 C.) I FOUND IT INAPPROPRIATE THAT THE OFFICERS STANDING AROUND THE PATROL VEHICLE BEFORE I
6 WAS TRANSPORTED MADE A POINT OF SAYING TO THE ONE HISPANIC OFFICER PRESENT THAT "I THINK YOU GET TO
7 HANDLE THIS GUY", WHICH OFFICER THEN CAME TO THE WINDOW OF THE PATROL VEHICLE AND UTTERED THE
8 STATEMENT DETAILED ABOVE IN SECTION 6A OF MY BRIEF, SOMEWHAT OUT OF STEP WITH THE 5150(G)(1) STANDARD. I
9 WILL NEVER UNDERSTAND WHAT I DID TO MAKE THE OFFICERS PRESENT THAT NIGHT THINK THAT I WAS RACIST. THIS IS
10 SOMETHING I PUZZLED OVER IN MY PREVIOUS LEGAL BRIEFING, AND WAS NOT ABLE TO REACH ANY CONCLUSIONS ON.
11 MY GUESS IS THAT THIS WILL HAVE DISAPPEARED FROM THE BWC FOOTAGE. THIS CASE WILL BE PARTIALLY A TEST OF
12 THE POLICE DEPARTMENT'S HONESTY. IF THE SJPD WAS JUST SUCH AN HONEST DEPARTMENT, THEN THEY WOULD
13 OPENLY APOLOGIZE FOR THE CONDUCT MENTIONED ABOVE, AND ALSO OPENLY ACKNOWLEDGE THAT LEAVING IT TO
14 THE HISPANIC OFFICERS TO DISARM THE PEACEFUL REDNECKS IS A PARTICULARLY DERANGED FORM OF AFFIRMATIVE
15 ACTION, AND ALSO A VIOLATION OF THE 14TH AMENDMENT'S EQUAL PROTECTION CLAUSE.

16 D.) UPON ARRIVAL AT EPS, ONE OF THE OFFICERS TOLD ME THAT "IT DIDN'T WORK OUT FOR [ME]". I
17 JUST DIDN'T GET THE IMPRESSION THAT THIS WAS THE TYPE OF STATEMENT THAT WOULD BE MADE BY AN OFFICER WHO
18 WAS MAKING AN HONEST EFFORT TO HELP ME. RATHER, IT GAVE ME THE IMPRESSION THAT THE OFFICERS WERE
19 PUNISHING ME, AND PUSHING FORWARD WITH THEIR GOAL OF INTIMIDATING ME AS MUCH AS POSSIBLE IN THE LIMITED
20 TIME AVAILABLE TO THEM. I AM NOT SURE WHAT EXACTLY THEY FELT THEY WERE PUNISHING ME FOR. MAYBE I DIDN'T
21 BEND FAR ENOUGH FORWARD IN THE BACKSEAT FOR THEIR KINKY TASTES.

22 8. ON MEDICAL MALPRACTICE

23 I AM INCLUDING AN ACCUSATION SUBMITTED BY THE MEDICAL BOARD OF CALIFORNIA ON MY
24 BEHALF. IT IS ATTACHED AS EXHIBIT B. I AM PATIENT B MENTIONED IN THAT ACCUSATION. THE MEDICAL TREATMENT I
25 RECEIVED FROM THE DR. SOLIMAN MENTIONED IN THAT ACCUSATION COULD EQUALLY WELL APPLY TO THE TREATMENT
26 I RECEIVED AT EPS, AND THEN SOME. I WENT COLD TURKEY OFF OF LORAZEPAM AFTER RETURNING FROM EPS, AFTER
27 BEING PLACED ON AN ILLEGAL 5150 HOLD AND COOPED UP IN A ROOM FULL OF DELINQUENTS WHO WOULD HAVE BEEN
28 HAPPY TO DO ME HARM. THIS COULD, IN MY OPINION, BE CONSIDERED STATE-CREATED HARM THAT GOES BEYOND
ANYTHING I SUFFERED AT THE HANDS OF DR. SOLIMAN'S MEDICAL PRACTICE. IF I ACTED BIZARRELY THE NIGHT I
INTERACTED WITH THE SJPD, IT MAY HAVE BEEN IN PART BECAUSE AT THE TIME I DIDN'T HAVE THE SUPPORT FROM THE
HEALTHCARE INDUSTRY THAT I SHOULD HAVE HAD IN TAPERING OFF OF LORAZEPAM. THE ANXIETY OF THE
WITHDRAWAL SYMPTOMS WAS OF COURSE MADE WORSE BY THE ONLINE HARASSMENT I PERCEIVED, AND NEARLY
BEING RUN OVER IN FRONT OF MY HOUSE. MR. SOLIMAN'S MEDICAL MALPRACTICE IS SMALL CHANGE WHEN PLACED
ALONGSIDE THAT OF THE SJPD AND THE EPS FACILITY.

THE SJPD AND CITY ATTORNEY'S OFFICE HAVE MADE MUCH OF THE TRANSCRIPT OF THE
CONVERSATION BETWEEN MY MOTHER AND THE OFFICERS, WITHOUT SEEMING TO RECOGNIZE THAT THERE ARE SOME
POTENTIAL SNARES FOR THEM IN SAID TRANSCRIPT. MY MOTHER MADE IT PERFECTLY CLEAR TO THE OFFICERS THAT I
HAD BEEN TAKING LORAZEPAM FOR MANY YEARS, AND WAS STRUGGLING TO CHANGE THIS MEDICATION REGIME AFTER
BEING HANDLED INEPTLY BY ONE MEMBER OF THE MEDICAL PROFESSION. THE NEGLIGENT ACTS AND UNPROFESSIONAL
CONDUCT MENTIONED IN THE ACCUSATION FROM THE MEDICAL BOARD OF CALIFORNIA WERE TAKEN TO A NEW LEVEL
BY THE SJPD AND MEDICAL STAFF AT EPS. I CALLED THE SJPD BECAUSE I BELIEVED THAT I WAS BEING HARASSED BY
GANG MEMBERS. AFTER BEING DISARMED, AND THEREBY LEFT IN A POSITION MORE DANGEROUS THAN WHERE I
STARTED FROM, EPS HELPED TO RUB SALT IN MY WOUNDS BY CONCURRENTLY FORCING ME TO GO COLD TURKEY OFF OF
LORAZEPAM. I WASN'T ABLE TO SLEEP FOR TWO WEEKS AFTER RETURNING FROM THEIR CHARMING FACILITY. THEY DID,
TO BE FAIR, PROVIDE ME WITH A BENADRYL WHILE I WAS IN CUSTODY. CURING LORAZEPAM WITHDRAWALS WITH A
APPELLANT BRIEF - 7

1 BENADRYL IS PROBABLY ABOUT AS EFFECTIVE AS TELLING A PATIENT THAT "THERE IS NOTHING LIKE A GOOD FUCKING"
2 IN ORDER TO HELP WITH SMOKING CESSATION, WHICH "MORAL TURPITUDE" FEATURED PROMINENTLY IN THE *SHEA VS.*
3 *BOARD OF MEDICAL EXAMINERS (1978)* CASE MENTIONED IN THE MBC ACCUSATION.

4 AGAIN LOOKING TO THE *SHEA* CASE, WE CAN READ THAT THERE IS "NO OTHER PROFESSION IN WHICH
5 ONE PASSES SO COMPLETELY WITHIN THE POWER AND CONTROL OF ANOTHER AS DOES THE MEDICAL PATIENT". OF
6 COURSE, THIS IMPLIES THAT MEDICAL PATIENTS MUST HAVE A GREAT DEAL OF TRUST IN THEIR MEDICAL PROVIDERS,
7 WHICH NEED FOR TRUST IS MAGNIFIED SEVERAL TIMES OVER WHEN A 'MEDICAL PATIENT' IS TAKEN AGAINST HIS OR HER
8 WILL. I TRUSTED THE POLICE ENOUGH TO CALL THEM TO REPORT BEING HARASSED ONLINE BY GANG MEMBERS, AND
9 THEY PROCEEDED TO PROVE MY TRUST FOOLISH BY FORCING ME TO GO COLD TURKEY OFF OF A MEDICATION I HAD
10 BEEN TAKING FOR SIX YEARS, AND ALSO DISARMING ME AND LEAVING ME WITH A GREATLY REDUCED ABILITY TO
11 DEFEND MYSELF IF THE NEED EVER AROSE. FROM *ROBINSON VS. CALIFORNIA (1962)*, WE CAN READ THAT THE "IDEA OF
12 BASING TREATMENT FOR DISEASE ON PURGATORIAL ACTS AND ORDEALS IS AN ANCIENT ONE IN MEDICINE", AND IT
13 SEEMS THAT THE SJPD AND EPS FACILITY HAVE ADOPTED JUST SUCH ANTIQUARIANISM. WHILE I ADMIRE MEDIEVAL
14 POETRY, MY ENTHUSIASM DOES NOT EXTEND TO THE MEDICAL PRACTICES OF THAT ERA. IT REMAINS MY OPINION THAT
15 THE SJPD ENTIRELY BOTCHED THE 'SPECIAL RELATIONSHIP' THAT THEY ESTABLISHED WITH ME UPON TAKING ME INTO
16 CUSTODY. FROM *WOOD VS. OSTRANDER (1989)*, WE CAN READ THAT "WHEN THE STATE TAKES A PERSON INTO ITS CUSTODY
17 AND HOLDS HIM THERE AGAINST HIS WILL, THE CONSTITUTION IMPOSES UPON IT A CORRESPONDING DUTY TO ASSUME
18 RESPONSIBILITY FOR HIS SAFETY AND GENERAL WELL-BEING". I CALLED THE SJPD TO LET THEM KNOW THAT I HAD BEEN
19 THREATENED ONLINE BY GANG MEMBERS, AND THAT IT MAY BE SOMEHOW CONNECTED TO MY NEARLY BEING RUN
20 OVER IN FRONT OF MY HOUSE. NOT ONLY DID THEY ENTIRELY BRUSH OFF MY CONCERNS, BUT THEY ALSO PUT ME IN A
21 POSITION WHERE I WAS FORCED TO GO THROUGH LORAZEPAM WITHDRAWALS WITHOUT ANY SUPPORT FROM THE
22 HEALTHCARE INDUSTRY, AND ALSO LEFT ME DISARMED IN A HOUSE THAT HAS BEEN BROKEN INTO SEVERAL TIMES OVER
23 THE YEARS, AND IN A NEIGHBORHOOD THAT THEY SHOULD KNOW FULL WELL HAS SEEN PREVIOUS GANG ACTIVITY.
24 BETWEEN THE ACTIONS OF THE SJPD AND THE EPS FACILITY, IT IS MY HUMBLE OPINION THAT THE CITY OF SAN JOSE AND
25 ITS COHORTS HAVE GONE STRAIGHT PAST MEDICAL MALPRACTICE AND LANDED ON SOMETHING CLOSER AKIN TO
26 OUTRIGHT STATE-CREATED DANGER.

27 THOUGH THIS PARAGRAPH MAY NOT FALL ENTIRELY NEATLY UNDER THE ABOVE HEADING, MY
28 UNDERSTANDING OF 8102 PROCEEDINGS IS THAT COURTS MAY CONSIDER WHETHER OR NOT THE CIRCUMSTANCES
WHICH LED TO THE ORIGINAL 5150 HOLD HAVE CHANGED. MY FEELING IS THAT THEY HAVE CHANGED. I AM NOT FACING
LORAZEPAM WITHDRAWALS AT THIS POINT, WHICH IS A CRITICAL DIFFERENCE. THE ONLINE HARRASSMENT BY CREEPY
CRIMINALS SEEMS TO HAVE CEASED, AND THERE HAVE BEEN NO OTHER INSTANCES OF QUESTIONABLE 'ACCIDENTS'
AROUND MY HOME. I NO LONGER USE CANNABIS, OR DO SO VERY INFREQUENTLY AND USE MINIMAL QUANTITIES. I AM
NOT PARANOID THE WAY THAT I WAS BACK IN FEBRUARY, THOUGH I WILL ADMIT THAT I AM CREEPED OUT BY THE
AGGRESSIVENESS AND SENSE OF LEGAL ETHICS OF THE CITY ATTORNEY'S OFFICE.

23 9. ON LEGAL OVERREACH

24 MR. PRITCHARD, IN HIS 'PETITION TO STRIKE ANSWER AND VACATE HEARING', ATTEMPTED TO USE
25 SECTION 8103 TO BAR MY SECOND AMENDMENT RIGHTS FOR A PERIOD OF FIVE YEARS. I BELIEVE AFTER DISCUSSIONS ON
26 THE PHONE WITH ME THAT HE KNEW THIS SECTION SHOULD NOT APPLY TO THE HEARING. TO HAVE ATTEMPTED TO USE
27 THE SECTION WITHOUT BOTHERING TO CHECK ON ITS VALIDITY IN MY CASE WAS, I BELIEVE, EITHER A MALICIOUS
28 ATTEMPT AT SUBTERFUGE OR CALLOUS GROSS NEGLIGENCE. ADD THIS TO THE COLLECTION OF MR. PRITCHARD'S OTHER
LEGALLY DUBIOUS ACTS, SUCH AS MAKING THE CASE FOR THE CITY IN *HERNANDEZ VS. CITY OF SAN JOSE*, OR TELLING ME
BY PHONE THAT I AM A "DECENT PERSON" ONE MOMENT, AND THEN THE NEXT MOMENT DESCRIBING ME AS "WILDLY
DANGEROUS" IN HIS PETITION TO THE COURT. SECTION 8102 IS SUPPOSED TO PROVIDE ME WITH A FAIR CHANCE TO BE
HEARD FOR THE PURPOSE OF BEING ALLOWED TO REPOSSESS MY BELONGINGS, NOT TO STRETCH THE LAW AS FAR AS
POSSIBLE, FOR THE SAKE OF ERODING MY RIGHTS AS MUCH AS POSSIBLE. AS FOR FIREARM SAFETY, AS A FORMER
APPELLANT BRIEF - 8

1 FIREARMS INSTRUCTOR AND RANGE SAFETY OFFICER, I SUSPECT THAT I COULD TEACH THE DARLING MR. PRITCHARD A
2 THING OR TWO ABOUT SAFE HANDLING AND STANDARD OPERATING PROCEDURES FOR A RANGE.

3
4 10. ON THE INADMISSIBILITY OF HEARSAY UNDER SECTION 8102, AND OTHERWISE

5 JUDGE ARAND ADMITTED THE HEARSAY GATHERED FROM MY MOTHER INTO THE COURT
6 DELIBERATIONS ON AUGUST 30TH, 2019, WHICH IS IMPERMISSIBLE. WHILE 5150.05 DOES PROVIDE FOR THE GATHERING OF
7 HEARSAY, SECTION 8102 DOES NOT PROVIDE FOR ITS PRESENTATION TO THE COURTS, AND SUCH HEARSAY SHOULD
8 THEREFORE NOT HAVE BEEN CONSIDERED IN THE DELIBERATIONS. SECTION 8103 WOULD HAVE PERMITTED THE
9 ADMISSION OF THIS EVIDENCE, BUT THIS SECTION IS NOT APPLICABLE SINCE I WAS NOT COMMITTED. I MYSELF DID
10 NOTHING ON THE NIGHT OF MY INTERACTION WITH THE SJPD OFFICERS TO JUSTIFY BEING PLACED ON A HOLD, AS I HAVE
11 ATTEMPTED TO ILLUSTRATE ABOVE, AND THE HEARSAY WHICH WAS ADMITTED AS EVIDENCE TO THE COURT SHOULD BE
12 CONSIDERED IRRELEVANT (BECAUSE DIRECTLY CONTRADICTED BY MY OWN ACTIONS THAT NIGHT), INADMISSIBLE
13 UNDER SECTION 8102, AND ALSO INELIGIBLE FOR CONSIDERATION BECAUSE THE HEARSAY WAS OBTAINED IN A SEARCH
14 AND INTERROGATION THAT VIOLATED THE 4TH AMENDMENT. ANOTHER ISSUE I COULD RAISE HERE IS THAT SECTION 8102
15 APPLIES TO THOSE "APPROPRIATELY DETAINED". I HAVE TRIED TO DEMONSTRATE ABOVE THAT THE 5150 HOLD ITSELF
16 SHOULD BE CALLED INTO QUESTION, WHICH WOULD THEN NULLIFY REFERENCES TO SECTION 8102 ENTIRELY.

17 APART FROM LEGAL ISSUES WITH THE VIOLATION OF THE 4TH AMENDMENT AND THE STRICTURES OF
18 8102, THERE IS AT THIS POINT A VAST OVER-RELIANCE IN THIS PROCEEDING ON HEARSAY GATHERED FROM MY MOTHER.
19 WHILE 5150.05 MAY PERMIT THE CONSIDERATION OF HEARSAY IN PLACING SOMEONE ON A HOLD, I DON'T BELIEVE THAT
20 THE INTENT OF THAT SECTION OF THE LAW WAS TO PROVIDE FOR THE JUSTIFICATION OF MEDICAL HOLDS ON THE
21 GROUNDS OF HEARSAY ALONE. IT COULD ALSO BE CONSIDERED INCOMPETENT HEARSAY, IN MANY WAYS. IN THE
22 TRANSCRIPT THAT WAS PROVIDED TO THE COURTS FROM THE BWC FOOTAGE, SHE CLEARLY STATES THAT SHE WAS NOT
23 INFORMED FULLY ON WHAT HAD BEEN GOING ON THE EVENING OF MY CALL. THIS SHOULD HEAVILY DISCOUNT HER
24 STATEMENTS. HER WORDS SHOULD NOT BE MADE TO SPEAK LOUDER THAN MY OWN ACTIONS ON THAT NIGHT. SHE ALSO
25 MADE SOME INDICATION THAT IF THE FIREARMS MAKE ME FEEL SAFER, THEN MAYBE THEY SHOULD BE LEFT WITH ME,
26 AND THAT IT WAS PROBABLY NOT NECESSARY TO TAKE ME AGAINST MY WILL TO A TREATMENT FACILITY. IN SPITE OF
27 HAVING SEVERAL FIREARMS IN MY ROOM, MY MOTHER KNEW THAT I WAS AT NO POINT NEARLY AS "WILDLY
28 DANGEROUS" AS MR. PRITCHARD REPRESENTED ME AS BEING IN HIS 'PETITION TO STRIKE ANSWER AND VACATE
HEARING'. IN THE TRANSCRIPT THE OFFICERS JOKE THAT THEY WOULDN'T BE KIDNAPPING ME, BUT IN SOME WAYS THEY
DID JUST THAT, AND ARE NOW HOLDING MY FIREARMS HOSTAGE.

FROM *RUPF VS. YAN (2000)*, WE CAN READ THAT "IN JUDICIAL PROCEEDINGS, RULE IS WELL
ESTABLISHED THAT INCOMPETENT HEARSAY ADMITTED WITHOUT OBJECTION IS SUFFICIENT TO SUSTAIN A FINDING". I
DON'T BELIEVE MY MOTHER TRULY SAID ANYTHING TO JUSTIFY A HOLD, BUT EVEN IF SHE DID I FEEL THAT THE
HEARSAY SHOULD BE CONSIDERED INCOMPETENT GIVEN THAT SHE DIDN'T REALLY HAVE A GRASP OF THE SITUATION.
THE COURT CAN CONSIDER THE SENTENCES ABOVE AN OBJECTION TO THE ACCEPTANCE OF THIS HEARSAY, CASTING
MORE DOUBT ON THE DECISION TO PLACE ME ON A 5150 HOLD.

25
26 11. ON VIOLATIONS OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT

27 THERE ARE NUMEROUS DUE PROCESS ISSUES THAT I WILL RAISE HERE. TO BE HONEST, THERE ARE SO
28 MANY DUE PROCESS ISSUES IN THIS CASE THAT I CAN ONLY DESCRIBE THIS WHOLE LEGAL SHOW AS A BUNCH OF
'ARGLE-BARGLE', WITH MAYBE EVEN SOME 'JIGGERY-POKERY' TO GO ALONG WITH IT. FROM THE CONFISCATION, TO THE
QUESTIONING OF MY MOTHER, TO THE WAY THE PETITION PROCESS HAS BEEN HANDLED BY THE CITY ATTORNEY'S
OFFICE AND THE COURTS, THERE HAS BEEN SO LITTLE RESPECT FOR DUE PROCESS THAT I NEEDED TO FIND THE ABOVE
TWO SOPHISTICATED LEGAL TERMS IN ORDER TO DESCRIBE IT ADEQUATELY. .

APPELLANT BRIEF - 9

1 TO CONNECT THIS SECTION ON DUE PROCESS ISSUES WITH MY SECTION 7 ABOVE, I WOULD LIKE TO
2 INCLUDE HERE SOME MENTION OF A COUPLE OF OTHER CASES THAT I HAVE UNEARTHED IN MY PROCESS OF LEGAL
3 RESEARCH. SECTION 7 OF THIS BRIEF DISCUSSED SOME OF THE STATEMENTS MADE BY THE SJPD'S OFFICERS, THAT I FEEL
4 WERE SOMEWHAT ABUSIVE. SOME OF THEIR STATEMENTS REMIND ME OF THE "GRATUITOUSLY VIOLENT SHOVE", UPON
5 WHICH SHOVE THE OUTCOME OF THE *SAUCIER VS. KATZ (2001)* CASE PARTIALLY REVOLVED. I LIKEN THE STATEMENT OF
6 ONE OF THE OFFICERS THAT I MIGHT DIE IN CUSTODY, UTTERED WHILE I WAS IN HANDCUFFS IN THE BACK OF THE
7 PATROL VEHICLE, AS JUST SUCH A VERBAL SHOVE. WHILE SUCH A STATEMENT IS NOT PHYSICALLY ABUSIVE, I BELIEVE
8 THAT THE OFFICER WHO UTTERED SUCH WORDS SHOULD HAVE KNOWN THAT THIS WOULD BE PSYCHOLOGICALLY
9 DISTURBING TO ME AT THE TIME, GIVEN THE CIRCUMSTANCES. FROM *WHITE VS. ROCHFORD (1979)*, WE CAN READ THAT
10 THE "PROTECTIONS OF THE DUE PROCESS CLAUSE AGAINST ARBITRARY INTRUSIONS ON PERSONAL SECURITY INCLUDES
11 BOTH PHYSICAL AND EMOTIONAL WELL-BEING", AND THAT THIS CLAUSE ALSO PROTECTS AN INDIVIDUAL'S INTEREST IN
12 THEIR "FEELING OF JUST TREATMENT". ANYONE WHO HEARS STATEMENTS FROM OFFICERS THAT ARE IN ANY WAY
13 SIMILAR TO THOSE I MENTIONED IN SECTION 7 ABOVE WOULD LIKELY NOT FEEL THAT THEY HAD BEEN TREATED JUSTLY.
14 I BELIEVE I AM JUSTIFIED IN FEELING THAT I WAS NOT TREATED JUSTLY, WHICH FEELING IN AND OF ITSELF SHOULD
15 INDICATE THAT THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT HAS BEEN BREACHED.

16 MOVING ON TO ANOTHER ASPECT OF THE EGREGIOUS DUE PROCESS VIOLATIONS, I WOULD ALSO LIKE
17 TO NOTE THAT IT SHOULD TECHNICALLY BE CONSIDERED A VIOLATION OF DUE PROCESS TO HAVE ENTERED MY HOME
18 WITHOUT A WARRANT, UNDER THE PRETENSE OF CHECKING ON MY MOTHER, AND TO THEN HAVE QUARANTINED HER
19 FOR QUESTIONING. AS MENTIONED ABOVE, I WOULD AGREE THAT ENTERING THE HOUSE TO CHECK ON HER SAFETY MAY
20 HAVE BEEN PERMITTED BY THE COMMUNITY CARETAKING EXCEPTION TO THE 4TH AMENDMENT, BUT THE SEARCH OF
21 THE HOUSE AND HER INTERROGATION ARE NOT INCLUDED UNDER THIS UMBRELLA. STATEMENTS FROM MY MOTHER
22 WERE OBTAINED ONLY BY TRAMPLING ON BOTH THE 4TH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE 14TH
23 AMENDMENT. AS I SEE IT, HER QUESTIONING SHOULD BE CONSIDERED AN EXAMPLE OF "IMPROPER QUESTIONING
24 WITHOUT COUNSEL", A DUE PROCESS ISSUE THAT WAS ADDRESSED IN THE *HOWELL VS. CATALDI (1972)* CASE. FROM
25 *PEOPLE VS. WILLIAMS (1984)*, WE CAN READ THAT DUE PROCESS ISSUES ARISE IN CASES OF "SUSTAINED INTERROGATION"
26 IN A "TINY ROOM" THAT IS "LITERALLY FILLED WITH POLICE OFFICERS", WHICH SOUNDS EERILY REMINISCENT OF THE
27 SWARM OF SJPD OFFICERS THAT WERE TASKED WITH THE JOB OF INTERROGATING MY DEAR OLD MUM.

28 I HAVE MENTIONED ABOVE SOME DUE PROCESS ISSUES THAT I SEE WITH THE WAY THAT I WAS
TREATED, AND ALSO WITH THE WAY THAT MY MOTHER WAS INTERROGATED. THE ABOVE ISSUES CONCERN THE INITIAL
CONFISCATION OF MY BELONGINGS. I WILL MOVE ON BELOW TO DUE PROCESS ISSUES THAT I SEE WITH THE PROCEDURE
CONCERNING NOT THE CONFISCATION BUT THE PROPOSED PERMANENT FORFEITURE OF MY BELONGINGS. OF COURSE,
THIS MAY BE UNNECESSARY TO DRAW THE ANALYSIS OUT IN THIS WAY. IF THE INITIAL CONFISCATION WAS ILLEGAL,
THEN IT FOLLOWS QUITE NATURALLY THAT THE FORFEITURE WOULD ONLY BE EVEN MORE ILLEGAL. BEFORE SO
MOVING ON TO A CONSIDERATION OF THESE LATTER ISSUES, I WOULD LIKE TO REMIND THE COURT OF APPEAL OF THE
KIMBROUGH VS. O'NEIL (1976) CASE, WHERE WE CAN READ THAT ANY OFFICER WHO USES THE POWER OF STATE TO
"LAWLESSLY CONFISCATE . . . PROPERTY OF ANOTHER DEPRIVES THAT PERSON OF DUE PROCESS REGARDLESS OF ANY
CONSIDERATION CONCERNING HEARINGS." IN MY OPINION, PLENTY OF LEGAL BLUNDERS HAVE BEEN MADE HERE, BOTH
BEFORE AND AFTER THE FILING OF THE PETITION AGAINST ME. I DO FEEL THAT IN THIS CURRENT SITUATION WE ARE WAY
BEYOND THE POINT WHERE THE CITY CAN BE SAID, IN ANY WAY, TO BE RESPECTING THE FUNDAMENTAL PRINCIPLES OF
DUE PROCESS.

MOVING ON NOW TO DUE PROCESS ISSUES WITH THE PETITION PROCESS ITSELF, I CAN SAFELY SAY
THAT THE LAWYERS IN THE CITY ATTORNEY'S OFFICE DO NOT UNDERSTAND THE MEANING OF THE TERM 'DUE PROCESS'
OR, IF THEY DO, THEN ARE SO HIGHLY TRAINED IN DISSIMULATION AS TO BE ABLE TO SIDESTEP IT ENTIRELY. IN
RESPONSE TO MY INITIAL LEGAL BRIEFING, THE CITY ATTORNEY'S OFFICE SUBMITTED A 'PETITION TO STRIKE ANSWER
AND VACATE HEARING'. IN RESPONSE TO MY NOTICE OF APPEAL, THE CITY ATTORNEY'S OFFICE CALLED ME AND LET ME
KNOW THAT THEY WOULD ATTEMPT TO CLASSIFY ME AS "VEXATIOUS" FOR REQUESTING AN APPEAL. I AM NOT A
LAWYER, BUT MY OPINION IS THAT BOTH OF THESE ACTIONS CONSTITUTE A VIOLATION OF THE DUE PROCESS CLAUSE OF
THE 14TH AMENDMENT. THEY ARE NOT THE ACTIONS OF AN UNBIASED INSTITUTION THAT IS GIVING ME A FAIR CHANCE
APPELLANT BRIEF - 10

1 TO BE HEARD. FROM *PARRATT VS. TAYLOR (1981)*, WE CAN READ THAT THE "FUNDAMENTAL REQUIREMENT OF DUE
2 PROCESS IS THE OPPORTUNITY TO BE HEARD AND IT IS AN OPPORTUNITY WHICH MUST BE GRANTED AT A MEANINGFUL
3 TIME AND IN A MEANINGFUL MANNER", AND THAT "PROCESS WHICH IS A MERE GESTURE IS NOT DUE PROCESS". I DO NOT
4 AGREE WITH THE JUDGMENT SUBMITTED ON SEPTEMBER 23RD, 2019 THAT I AM INCAPABLE OF HANDLING FIREARMS IN A
5 SAFE AND LEGAL MANNER, AND I HAVE A RIGHT TO APPEAL THIS JUDGMENT, AND SHARE MY THOUGHTS ON THE CASE.
6 THE CITY ATTORNEY'S OFFICE VIOLATES THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT WHEN THEY CALL TO
7 THREATEN ME WITH BEING DECLARED "VEXATIOUS" AND HAVING THE LEGAL FEES ASSOCIATED WITH THE APPEALS
8 PROCESS IMPOSED UPON ME. THAT WOULD NOT ONLY BE A VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH
9 AMENDMENT, BUT COULD ALSO POTENTIALLY BE CONSIDERED A CRUEL AND UNUSUAL PUNISHMENT, A VIOLATION OF
10 THE 8TH AMENDMENT, AS WELL.

11 MOVING ON TO ANOTHER PROCEDURAL DUE PROCESS ISSUE, THIS ONE SOMEWHAT MORE
12 THEORETICAL THAN THE LAST, WE REACH THE SO-CALLED 'PREPONDERANCE OF THE EVIDENCE' STANDARD INVOKED
13 BY THE CITY ATTORNEY'S OFFICE. IT IS MY OPINION THAT THE EVIDENCE THE OFFICE HAS SO FAR PRESENTED DOES NOT
14 EVEN JUSTIFY THE INITIAL 5150 HOLD, LET ALONE JUSTIFY THE PERMANENT DISPOSITION OF MY BELONGINGS. IT IS MY
15 OPINION THAT A HIGHER STANDARD OF EVIDENCE SHOULD BE USED BY THE COURT, TO COMPEL THE CITY ATTORNEY'S
16 OFFICE TO EXPLAIN IN MUCH GREATER DEPTH THEIR REASONS FOR THINKING THAT I CANNOT HANDLE MY FIREARMS IN
17 A SAFE AND LEGAL MANNER. IF THE COURT HONESTLY CONSIDERS THE POSSIBILITY THAT THE ORIGINAL 5150 HOLD MAY
18 NOT ITSELF HAVE BEEN JUSTIFIED, THEN THE STRETCHING OF THE EVIDENCE TO TAKE THE CITY ATTORNEY'S OFFICE ALL
19 THE WAY THROUGH SECTION 8102 PROCEEDINGS SHOULD BECOME ENTIRELY UNTENABLE. IT IS CLEARLY STATED IN
20 *MCDONALD VS. CITY OF CHICAGO (2010)*, THAT THE RIGHT TO KEEP AND BEAR ARMS IS PROTECTED BY THE PRIVILEGES
21 AND IMMUNITIES CLAUSE OF THE 14TH AMENDMENT, AND THAT THE SECOND AMENDMENT IS ALSO INCORPORATED BY
22 THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT. TO USE THE LANGUAGE OF *MCDONALD*, THE SECOND AMENDMENT
23 IS A RIGHT FUNDAMENTAL TO THE "NATION'S SCHEME OF ORDERED LIBERTY" AND "DEEPLY ROOTED IN THIS NATION'S
24 HISTORY AND TRADITION", AND IN CIRCUMSTANCES AS QUESTIONABLE AS THE CURRENT PROCEEDINGS, I BELIEVE THAT
25 THE CITY ATTORNEYS SHOULD BE HELD TO A HIGHER STANDARD OF SCRUTINY. FROM *OLYMPIC ARMS VS. MAGAW (2000)*,
26 WE CAN READ THAT WHEN A "STATUTE OR ORDINANCE UNIQUELY IMPACTS ADVERSELY A SUSPECT CLASS OR INVADES A
27 FUNDAMENTAL RIGHT, THE RIGOROUS STRICT SCRUTINY STANDARD WILL APPLY". I DON'T BELIEVE THE CITY
28 ATTORNEYS HAVE PROVEN ANYTHING AT THIS POINT BY THE PREPONDERANCE OF THE EVIDENCE. THAT IS MY OPINION.
THEY WOULD BE ABLE TO PROVE MUCH MUCH LESS UNDER A HIGHER STANDARD OF PROOF. THAT IS A FACT. BY MY
READING OF OLD CASE LAW, I BELIEVE THAT THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT SHOULD REQUIRE
THE USE OF THE RIGOROUS STRICT SCRUTINY STANDARD, AS THIS CASE, IF FINALLY RESOLVED IN FAVOR OF THE CITY
ATTORNEY'S OFFICE, WILL DO IRREPARABLE DAMAGE TO MY RIGHT TO SELF-DEFENSE, A RIGHT WHICH BLACKSTONE
DESCRIBED AS THE "PRIMARY LAW OF NATURE", NOT TO BE ERODED OR WITHDRAWN BY ANY LAW OF SOCIETY.

MOVING ONE STEP FURTHER ALONG IN POINTING OUT PROCEDURAL DUE PROCESS ISSUES, THERE ARE
OF COURSE MUCH LARGER QUESTIONS HERE OF WHETHER THIS REQUIREMENT OF THE 14TH AMENDMENT CAN EVEN BE
ADEQUATELY SATISFIED BY INSTITUTIONS WHICH ARE CLEARLY BIASED. WHAT I MEAN IS THAT, EVEN IN THE CASE THAT
I AM PERMITTED A CHANCE TO TELL, ONCE AGAIN AND WITH THE UTMOST PATIENCE, MY SIDE OF THE STORY, NOW TO
THE COURT OF APPEAL RATHER THAN THE SUPERIOR COURT, MY OPINION IS THAT THIS PROCESS MAY NOT SATISFY THE
DUE PROCESS CLAUSE OF THE 14TH AMENDMENT BECAUSE OF THE FACT THAT, ONCE AGAIN QUOTING FROM *PARRATT VS.*
TAYLOR, THE "REMEDY BEFORE TRIBUNALS OF THE SAME AUTHORITY THAT, THROUGH ITS EMPLOYEES, DELIBERATELY
INFLECTED THE HARM COMPLAINED OF, MIGHT WELL NOT PROVIDE THE DUE PROCESS OF WHICH THE 14TH AMENDMENT
SPEAKS." THE WAY THAT THE CASE IS BEING HANDLED BY THE CITY ATTORNEY'S OFFICE HAS CAUSED ME
CONSIDERABLE DISTRESS, AND I WOULD REMIND THEM THAT, TO QUOTE FROM *JAMES VS. BOARD OF SCHOOL*
COMMISSIONERS OF MOBILE COUNTY, ALABAMA (1979), "MENTAL DISTRESS CAUSED BY A DENIAL OF PROCEDURAL DUE
PROCESS IS COMPENSABLE UNDER [SECTION] 1983", A USEFUL THING TO KEEP IN MIND IN THE CASE THAT MY
BELONGINGS ARE NOT RETURNED TO ME BY THE COURT OF APPEAL.

IF NONE OF THE ABOVE IS SUFFICIENT TO CONVINCING THE HONORABLE JUDGES OF THE COURT OF
APPEAL THAT THERE HAVE BEEN SOME DUE PROCESS VIOLATIONS IN THIS CASE, THEN I WOULD ENCOURAGE SUCH
APPELLANT BRIEF - 11

1 READERS TO CONSIDER AGAIN ALL OF THE ABOVE WHILE RECALLING THE *BRYTE VS. CITY OF LA MESA (1989)* CASE. IT WAS
2 ESTABLISHED IN THIS CASE THAT SECTION 8102 ITSELF IS FACIALLY UNCONSTITUTIONAL, AS THE STATUTE HAS BEEN
3 FOUND WANTING IN DUE PROCESS REQUIREMENTS, BECAUSE OF ITS LACK OF A PROVISION FOR ADMINISTRATIVE
4 REVIEW. FROM THIS CASE WE CAN READ THAT "THE IMPOSITION OF A REQUIREMENT OF AFFIRMATIVE ACTION BY THE
5 PROPERTY OWNER, INCLUDING THE PREPARATION OF FORMAL PLEADINGS, THE PAYMENT OF A FILING FEE, AND
6 SUBSEQUENT PARTICIPATION IN ALL THE FORMAL PROCEDURES OF A SUPERIOR COURT ACTION, MUST BE DEEMED
7 UNREASONABLE". I AGREE, AND I WOULD ADD THAT IT IS ALSO UNREASONABLE FOR SELF-REPRESENTED GUN OWNERS
8 TO BE BASICALLY PLACED IN THE POSITION OF NEEDING TO BECOME LAWYERS IN ORDER TO DEFEND THEIR SECOND
9 AMENDMENT RIGHTS. THIS IS, TO USE MY NEWLY ACQUIRED LEGALESE, NOT EVEN WITHIN THE REALM OF BEING
10 'REASONABLY UNREASONABLE'. BUT THE DUE PROCESS ISSUES RUN DEEPER HERE, AS NOT ONLY IS THE PROCESS
11 ONEROUS AND THE SECTION ITSELF FACIALLY UNCONSTITUTIONAL, BUT ADDED TO THAT, I CAN SAY THAT I HAVE BEEN
12 DELIBERATELY OPPOSED AT EVERY SINGLE STEP, RATHER THAN BEING GIVEN A FAIR CHANCE TO RETAKE POSSESSION OF
13 MY BELONGINGS. IF THIS SOUNDS FAMILIAR, IT IS POSSIBLY BECAUSE THIS DESCRIPTION BEARS A STRIKING
14 RESEMBLANCE TO WHAT IS INCLUDED IN FOOTNOTE 5 OF THE *BRYTE* CASE, WHERE WE CAN READ THAT "EVEN THOUGH
15 THE CITY AND ITS POLICE WERE ADVISED SHORTLY AFTER HER DETENTION THAT BRYTE POSED NO DANGER TO HERSELF
16 OR OTHER PERSONS, SHE WAS OPPOSED AT EVERY STEP IN ATTEMPTING TO RECOVER HER WEAPONS". ANOTHER
17 INTERESTING PARALLEL WHICH I CAN DRAW BETWEEN MY CASE AND THAT OF *BRYTE*, THIS BEING SOMETHING OF AN
18 ASIDE TO THE MAIN THREAD OF THIS PARAGRAPH, IS THAT THE TOTAL VALUE OF THE FIREARMS CONFISCATED WAS
19 NEARLY THE SAME. BRYTE HAD \$2700 OF FIREARMS CONFISCATED, PROBABLY ONLY SLIGHTLY MORE THAN WHAT MY
20 FOUR ARE WORTH. IT IS ACKNOWLEDGED IN THE REVIEW OF THE *BRYTE* CASE THAT "THE VALUE OF HER CONFISCATED
21 PROPERTY MAY BE ASSUMED TO BE GREATER THAN THE TYPICAL VALUE OF "WEAPONS" IN THE POSSESSION OF A PERSON
22 DETAINED FOR MENTAL OBSERVATION." I DRAW THIS ONE LAST PARALLEL WITH THE *BRYTE* CASE, ON THE MONETARY
23 VALUE OF THE PROPERTY INVOLVED, AS ONE MORE ARGUMENT TO SUPPORT THE POSITION I HAVE OUTLINED ABOVE
24 REGARDING THE STANDARD OF REVIEW APPLIED TO THE CASE. GIVEN THAT THE VALUE OF MY PROPERTY IS NOT
25 TRIVIAL, AND THIS PETITION IS IMPACTING A FUNDAMENTAL RIGHT OF MINE, NOT TO MENTION THAT SECTION 8102 HAS
26 BEEN DECLARED FACIALLY UNCONSTITUTIONAL, IT WOULD MAKE SENSE TO EXPECT A HIGHER STANDARD OF PROOF
27 FROM THE CITY ATTORNEY'S OFFICE.

18 IF THE COURT CARES A JOT THAT THE TERMS 'LIFE, LIBERTY, AND PROPERTY' HAVE ANY MEANING OR
19 CONTENT WHATSOEVER, OR THAT THE 'FUNDAMENTAL FAIRNESS' REQUIREMENT OF THE DUE PROCESS CLAUSE OF THE
20 14TH AMENDMENT BE UPHELD, THEN IT SHOULD VERY CAREFULLY CONSIDER MY SCRIBBLINGS ABOVE.

21 12. ON INFORMATION DISCLOSURE, SUCCESSES AND FAILURES

22 I HAVE TOUCHED BRIEFLY IN PREVIOUS SECTIONS ON ISSUES WITH THE WAY THAT THE TRANSCRIPT
23 WAS PRESENTED TO THE SUPERIOR COURT, AND I WILL ELABORATE SOMEWHAT ON THAT HERE, ALONG WITH
24 MENTIONING A COUPLE OF OTHER ISSUES WITH INFORMATION SHARING. I HAVE MENTIONED ABOVE HOW THE OFFICERS
25 PRACTICED THEIR CREATIVE WRITING SKILLS, OR TOOK POETIC LICENSE WITH, THE PHRASE "FIGHT BACK", TURNING IT
26 INTO THE "SHOOT-OUT" MENTIONED IN THE POLICE REPORT AND ON MY 5150 FORM. IT SHOULD BE OBVIOUS THAT SOME
27 OF THIS INFORMATION HAS BEEN DELIBERATELY MANIPULATED. I HAVE MADE THE POINT ABOVE THAT THE HEARSAY
28 FROM MY MOTHER SHOULD NOT HAVE BEEN CONSIDERED BY THE COURT, AND THAT ANALYSIS HOLDS HERE. IT SHOULD
ALSO NOT HAVE BEEN CONSIDERED BY THE COURT BECAUSE IT WAS ONLY SUBMITTED TO ME AND THE COURT ON
AUGUST 28TH, 2019, A MERE TWO DAYS BEFORE THE AUGUST 30TH HEARING, AND EIGHT DAYS AFTER THE LEGAL BRIEFS
THAT HAD BEEN SUBMITTED BY BOTH SIDES ON AUGUST 20TH. THIS DID NOT GIVE ME MUCH OF A CHANCE TO CONSIDER
MY RESPONSE TO THE PRESENTATION OF THIS CONVERSATION TO THE COURT. THE TRANSCRIPT HAS BEEN REDACTED,
INDICATING FURTHER MANIPULATION OF INFORMATION. THE SJPD HAS ALSO TURNED DOWN MY REQUEST FOR THE BWC
FOOTAGE, WHICH DECISION I HAVE APPEALED TO THE CITY CLERK AND THE OPEN GOVERNMENT MANAGER, AS SHOWN
BY THE LETTER I AM INCLUDING HERE AS EXHIBIT C. MY LETTER WILL BE CONSIDERED BY THE RULES COMMITTEE ON
APPELLANT BRIEF - 12

1 JANUARY 22ND, 2020, ALONG WITH THIS BRIEF. IN EXHIBIT D IS A SHORT LETTER FROM MY MOTHER, WHERE SHE AGREES
2 WITH ME THAT IT WOULD BE FAIR FOR THE FOOTAGE TO BE RELEASED IN ITS ENTIRETY. THE CITY ATTORNEY'S OFFICE IS
3 PRESENTING THE TRANSCRIPT TO MAKE IT LOOK LIKE MY MOTHER IS TESTIFYING AGAINST ME, BUT THIS WAS NEVER
4 HER INTENT. I WILL ADMIT THAT THE CITY HAS SUCCEEDED IN ONE THING, AT LEAST. IF I WAS RIGHT IN MY THINKING
5 THAT I HAD, IN EARLY 2019, BEEN THREATENED BY GANG MEMBERS, THEN THE CITY HAS NOW SUCCESSFULLY
6 PUBLICIZED THE FACT THAT I AM UNARMED, AS THE DETAILS OF THE PETITION PROCESS ARE POSTED ONLINE. AS FAR AS
7 INFORMATION DISCLOSURE IS CONCERNED, IT SEEMS THAT THE CITY IS PREPARED TO SKIRT THE PRECEPTS OF OPEN FILE
8 DISCOVERY LAWS, KEEPING TO ITSELF ANYTHING THAT MAY HELP MY CASE, BUT YET AT THE SAME TIME BE PERFECTLY
9 WILLING TO ADVERTISE ME AS BEING UNARMED AND VULNERABLE, THANKS TO THE SEMI-PUBLIC NATURE OF THEIR
10 CURRENT THEATRICAL PETITION PROCESS.

11 13. ON THE SAFE (MIS)HANDLING OF FIREARMS, AN ASIDE

12 I DO NOT BELIEVE THAT THE CITY OF SAN JOSE CAN DEMONSTRATE IN ANY MEANINGFUL WAY THAT I
13 CANNOT HANDLE FIREARMS IN A SAFE AND LEGAL MANNER. I DON'T BELIEVE THAT I DID ANYTHING IN MY
14 INTERACTION WITH OFFICERS ON THE NIGHT OF FEBRUARY 14TH, 2019 THAT LENDS ITSELF TO THAT CONCLUSION. SINCE
15 I AM TAKING THE TIME TO WRITE UP ALL OF THESE LEGAL BRIEFINGS, I WOULD LIKE TO HERE NOTE AN INCIDENT THAT
16 OCCURRED ON THE NIGHT OF NOVEMBER 1ST, 2014. I WAS WORKING AS A SECURITY GUARD AT THE EL RANCHO VERDE
17 APARTMENT COMPLEX AT THE TIME. I HAD JUST SHOWN UP FOR WORK ON THAT NIGHT AND I FOUND MYSELF
18 SURROUNDED BY POLICE. I DO NOT KNOW WHY THIS HAPPENED, OR HOW THIS WAS ARRANGED. WHAT I DO KNOW IS
19 THAT UPON SURRENDERING THE FIREARMS I WAS CARRYING, THE OFFICERS STRUGGLED TO OPEN THE SMITH AND
20 WESSON BODYGUARD 38, ONE OF THE FIREARMS THAT WAS SUBSEQUENTLY CONFISCATED BY OFFICERS ON FEBRUARY
21 14TH, 2019. UPON FINALLY GETTING THE THING OPEN, THEY PROCEEDED TO ACCIDENTALLY DUMP ALL OF THE .38 SPL
22 CARTRIDGES STRAIGHT ONTO THE GROUND, SINCE THEY HAD THE REVOLVER POINTED UPWARDS AT THE TIME. I SHOULD
23 LET THIS STORY SPEAK FOR ITSELF. I FEEL INCLINED TO SHARE IT SINCE THE CITY OF SAN JOSE SEEMS UTTERLY
24 DETERMINED TO REPRESENT ME AS BEING INCOMPETENT. APPLYING THE PREPONDERANCE OF THE EVIDENCE STANDARD
25 TO THIS STORY, I CAN SAFELY SAY THAT I FEEL UNSURE ABOUT WHETHER OR NOT MY FIREARMS HANDLING SKILLS AND
26 UNDERSTANDING OF THE LEGAL USE OF FIREARMS ARE BEING EVALUATED BY THE CORRECT PEOPLE. I WAS NEVER A
27 DANGER TO ANYONE, NEVER HAD ANY INTENTION TO HARM MYSELF OR ANYONE ELSE, AND I HAVE ALSO NEVER
28 UNLOADED A REVOLVER STRAIGHT ONTO THE PAVEMENT, AS THE SJPD'S OFFICERS SEEM TO HAVE BEEN TRAINED TO DO.
THE EVIDENCE, AS I SEE IT, SUPPORTS THE CONCLUSION THAT NOT ONLY CAN I HANDLE MY BELONGINGS SAFELY, BUT
THAT I COULD EVEN BE USEFUL IN PROVIDING REMEDIAL FIREARMS TRAINING TO THE SJPD.

29 14. ON THE MISUNDERSTANDING OF LEGAL PRECEDENT

30 MR. PRITCHARD, THROUGH REFERENCE TO *CITY OF SAN DIEGO VS. BOGGESS (2013)*, SEEMS TO BE
31 COMPARING A 31 YEAR-OLD CCW PERMIT HOLDER TO A 72 YEAR-OLD GAL WHO DIDN'T HAVE ANY AMMUNITION OR THE
32 KNOWLEDGE OF HOW TO LOAD A FIREARM. THERE ARE MASSIVE DISSIMILARITIES BETWEEN MY CASE AND THAT OF
33 BOGGESS. I NEVER MADE ANY SUICIDE THREAT, AS BOGGESS DID. I WAS NOT ADMITTED, AS BOGGESS WAS. I HAVE
34 PRESENTED A REASONABLY SOPHISTICATED LEGAL ARGUMENT, WHEREAS THE COURT FOUND BOGGESS'S ANSWERS TO
35 BE "NON-RESPONSIVE" AND "RAMBLING". IF THE COURT FEELS THAT I HAVE ALSO BEEN NON-RESPONSIVE OR RAMBLING,
36 I WOULD REMIND THE COURT OF *HOWELL VS. CATALDI (1972)*, WHERE WE CAN READ THAT PRO SE PROCEEDINGS SHOULD
37 BE HELD "TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS DRAFTED BY LAWYERS". I WOULD NOT SO MUCH
38 HAVE CONTESTED A COMPARISON TO SWEIG, AS I GREATLY RESPECT THE LEGAL ARGUMENT THAT HE MADE IN THE
PEOPLE VS. SWEIG CASE, MENTIONED EARLIER IN THIS BRIEF. IF MY APPELLANT BRIEF IS STILL DEEMED INSUFFICIENT,
AND I AM SCOLDED FOR MY LACK OF LAWYERLY POLISH, THEN I WOULD ALSO REMIND THOSE CONSIDERING MY WORDS
APPELLANT BRIEF - 13

1 TO CALL TO THEIR MEMORY A CHOICE GEM FROM *INGRAHAM VS. WRIGHT (1977)*, WHERE WE CAN READ THAT PADDLING
2 HAS LONG SINCE BEEN DEEMED "DEGRADING TO THE PUNISHER AND PUNISHED ALIKE".

3
4 15. A BRIEF NOTE ON THE TEMPERANCE OF MY LEGAL ANALYSIS

5 I VOWED WHILE WRITING THIS BRIEF TO BE AS DIGNIFIED AND POLITE AS POSSIBLE. I WOULD LIKE IT
6 TO BE NOTED THAT I HAVE REFRAINED FROM DESCRIBING SJPD OFFICERS AS BEING UNUSUALLY OATMEAL-MINDED, OR
7 SUGGESTING THAT THEIR COMMON SENSE IS AKIN TO ROCKING HORSE DROPPINGS. SUCH STATEMENTS WOULD HAVE
8 BEEN REDUNDANT, AS THE ABOVE HAS BEEN MORE OR LESS OPENLY STATED IN *BIVENS VS. SIX UNKNOWN FEDERAL*
9 *NARCOTICS AGENTS (1971)*, WHERE WE CAN READ THAT "POLICEMEN DO NOT HAVE THE TIME, INCLINATION, OR TRAINING
10 TO READ AND GRASP THE NUANCES OF THE APPELLATE OPINIONS THAT ULTIMATELY DEFINE THE STANDARDS OF
11 CONDUCT THEY ARE TO FOLLOW." THE OFFICERS OF THE SJPD HAVE PROVEN THAT IN THIS CASE, AS I HAVE ATTEMPTED
12 TO PROVE ABOVE. IF OFFICERS DO NOT UNDERSTAND THE LAWS THEY ARE TO ENFORCE, DOESN'T IT MAKE YOU WONDER
13 WHY THEY ARE OUT ON THE STREETS FOR US? I HAVE REFRAINED AS WELL FROM SUGGESTING THAT THE CITY
14 ATTORNEYS DEFENDING THE DEPARTMENT WOULD BENEFIT FROM REMEDIAL COURSES IN LEGAL ETHICS. THOUGH I
15 MAY HAVE HARBORED SUCH THOUGHTS MANY TIMES IN THE COURSE OF MY RESEARCH AND WRITING, BECAUSE OF MY
16 EXASPERATION WITH THE CURRENT PROCEEDINGS, I HAVE KEPT SUCH THOUGHTS TO MYSELF FOR THE ENTIRETY OF
17 THIS POLISHED APPELLANT BRIEF. IN THIS BRIEF IT HAS BEEN MY INTENTION TO BE NOTHING OTHER THAN A
18 GENTLEMAN, AND TO PEN ONLY THE MOST FINELY WROUGHT AND DIPLOMATIC OF PRO SE, IN FORMA PAUPERIS
19 LEGALESE OF WHICH I AM CAPABLE. I HOPE THAT THE COURT GIVES ME SOME CREDIT FOR SO DOING. I DESERVE SOME
20 CREDIT AS WELL FOR THE NON-TRIVIAL RESEARCH EFFORT THAT HAS GONE INTO THE PRODUCTION OF THIS BRIEFING.

21
22 16. CONCLUSION

23 TO CONCLUDE, I DON'T BELIEVE THAT I SHOULD HAVE BEEN PLACED ON A 5150 HOLD, AND I WILL
24 CONTINUE TO STAND BY THAT ASSERTION. I HAD GOOD REASON TO SPEAK WITH OFFICERS, IN MY OPINION, AS I
25 ATTEMPTED TO DEMONSTRATE IN MY PREVIOUS LEGAL BRIEFING, SUBMITTED FOR THE AUGUST 30TH, 2019 HEARING. I
26 DID NOT CALL THEM SO THAT THEY COULD ILLEGALLY SEARCH MY HOUSE AND SNATCH MY FIREARMS. I BELIEVE I HAVE
27 POINTED OUT A SUFFICIENT NUMBER OF LEGAL PROBLEMS WITH THE ACTIONS OF THE SJPD'S OFFICERS THAT I SHOULD
28 BE EXONERATED, AND THE PETITION FOR THE DISPOSITION OF MY FIREARMS EITHER BE WITHDRAWN FROM THE COURT
SYSTEM, OR THE DECISION OF THE SUPERIOR COURT BE REVERSED. I DON'T BELIEVE THE CITY ATTORNEYS CAN POINT
OUT AS MANY ERRORS IN MY OWN CONDUCT AS I HAVE POINTED OUT IN THE WAY MY CALL WAS HANDLED.

I APOLOGIZE FOR SUBMITTING AN APPEALS NOTICE TO THE COURT, BUT MY SECOND AMENDMENT
RIGHTS ARE IMPORTANT TO ME, AND I DON'T FEEL THERE ARE GROUNDS TO WITHHOLD SUCH RIGHTS FROM ME.
WORKING IN FORMA PAUPERIS, I MAKE THE BEST OF THE SCANT KNOWLEDGE I HAVE, AND PRAY THAT I WILL BE
GRANTED A FAIR HEARING. I RESPECTFULLY ASK THAT THE COURT OF APPEAL KINDLY RECONSIDER THIS CASE BECAUSE
OF LEGAL BLUNDERS MADE BY THE SJPD, THE CITY ATTORNEY'S OFFICE, AND THE SANTA CLARA COUNTY SUPERIOR
COURT.

29
30 17. PRAYER

31 AS A LAST REMINDER, I WOULD LIKE TO REMIND THE COURT THAT, QUOTING ONCE AGAIN FROM
32 *HOWELL VS. CATALDI (1972)*, THERE IS "NO SAFETY FOR THE CITIZEN EXCEPT IN THE PROTECTION OF THE JUDICIAL
33 TRIBUNALS FOR RIGHTS WHICH HAVE BEEN INVADDED BY THE OFFICERS OF THE GOVERNMENT". TO BORROW WORDS
34 FROM HENRY JAMES, LET US SAY THAT I AT THIS POINT LOOK TO THE COURTS IN THE HOPE OF "KNOCKING TOGETHER A
35 APPELLANT BRIEF - 14

1 SHELTER WITH THE SMALL SALVAGE OF THE WRECK." I HAVE PUT THOUGHT AND TIME INTO THIS APPELLANT BRIEF, AND
2 PRAY IT WILL BE TREATED KINDLY BY ITS READERS.

3
4
5
6
7
8 _____
Andrew Hicks

Exhibit A

**Redacted pursuant to W&I Code Section 5328 and
HIPAA Privacy Rule 45 C.F.R. Section 164.508
(Confidential Patient Information)**

Exhibit B

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 JASON J. AHN
Deputy Attorney General
4 State Bar No. 253172
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9433
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 4 2019
BY SARA FORD ANALYST

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2016-023446

14 **Hisham H. Soliman, M.D.**
15 **P.O. Box 6180**
16 **Folsom, CA 95763**

ACCUSATION

17 **Physician's and Surgeon's Certificate**
18 **No. A 75977,**

Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about July 25, 2001, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 75977 to Hisham H. Soliman, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on November 30, 2020, unless renewed.

JURISDICTION

3. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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4. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“... ”

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“... ”

5. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

6. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 7. Respondent has subjected his Physician's and Surgeon's Certificate No. A 75977 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of
5 the Code, in that he committed repeated negligent acts in his care and treatment of Patients A¹, B,
6 and C, as more particularly alleged herein:

7 **Patient A**

8 8. On or about August 21, 2015, Patient A presented to Respondent. Prior to and/or
9 during Patient A's visit, Patient A's mother attempted to provide Respondent with information
10 related to Patient A's prior psychiatric history, including, but not limited to, involuntary
11 hospitalization(s), medication history, and any diagnosis of psychosis, etc. (collateral
12 information). Respondent failed to review and/or consider collateral information from Patient
13 A's mother. Respondent failed to review and/or failed to document having reviewed Patient A's
14 prior psychiatric records.

15 9. Regarding Respondent's documentation of Patient A's August 21, 2015 visit,
16 Respondent made a presumptive diagnosis of Obsessive Compulsive Disorder, but this
17 conclusion is not supported by Respondent's documentation of this visit. Moreover,
18 Respondent's notes, among other things, described symptoms of mood disorders such as lack of
19 energy, depressed mood, sad demeanor, anxiety, social withdrawal, and insomnia, without
20 sufficient details to determine whether Patient A meets the diagnostic criteria for a major
21 depressive episode.

22 ///

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28 ¹ References to Patients A, B, and C are used to protect patient privacy.

1 **Patient B**

2 10. On or about September 13, 2017, Patient B presented to Respondent after his
3 psychiatrist had retired. Patient B reported a history of anxiety and requested a refill of a
4 prescription for Lorazepam,² the medication he has been taking while under the care of his former
5 psychiatrist. Respondent refused to refill Patient B's prescription for Lorazepam. Respondent
6 stated that Patient B should seek another medical provider. Respondent failed to discuss and/or
7 failed to document having discussed with Patient B, options other than Lorazepam, including, but
8 not limited to, Clonazepam³ with a slow taper.

9 **Patient C**

10 11. On or about November 15, 2017, Patient C presented to Respondent. Respondent
11 diagnosed Patient C with schizophrenia and prescribed Risperidone,⁴ at a dose of 2 mg, twice a
12 day. The manufacturer's recommendation for the starting dose of Risperidone for psychosis in
13 adults is between 1 to 2 mg per day, with a target dose of 4 to 8 mg daily, and a maximum dose of
14 16 mg daily. Respondent failed to adequately explain and/or failed to document having
15 adequately explained possible side effects of Risperidone. The medical records Respondent
16 created for this encounter was inadequate and/or inaccurate, including, but not limited to, the
17 contradiction between the "History" section and the "Exam" section of the records.

18 12. On or about November 15, 2017, after Patient C consumed one dose of Risperidone,
19 2 mg, Patient C began experiencing tremors, "black vision, lots of burping, and a racing heart."

20 ///

21

22 ² Ativan® (lorazepam), a benzodiazepine, is a centrally acting hypnotic-sedative that is a
23 Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision
24 (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When
25 properly prescribed and indicated, it is used for the management of anxiety disorders or for the
26 short term relief of anxiety or anxiety associated with depressive symptoms. Concomitant use of
27 Ativan® with opioids "may result in profound sedation, respiratory depression, coma, and death."
28 The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Ativan®,
as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2011 Edition), at p. 53.)

³ Clonazepam is an anti-anxiety medication, a benzodiazepine, which can be used to treat
anxiety.

⁴ Risperidone is an antipsychotic, which can be used to treat schizophrenia, bipolar
disorder, and irritability caused by autism.

1 13. On or about November 18, 2017, due to the side effects Patient C was experiencing
2 from taking Risperidone, Patient C and/or Patient C's family attempted to make an appointment
3 for Patient C to be seen by Respondent. However, Respondent's staff informed Patient C and/or
4 Patient C's family that the earliest available appointment was November 29, 2017.

5 14. On or about November 28, 2017, Respondent's staff contacted Patient C and/or
6 Patient C's family indicating that the November 29, 2017 appointment for Patient C has now been
7 rescheduled to December 6, 2017.

8 15. On or about December 6, 2017, after Patient C had refused to go to his appointment
9 with Respondent, Patient C's wife appeared on his behalf, with a release of medical information
10 signed by Patient C. When Patient C's wife requested to see Respondent, she was refused by
11 Respondent's staff, who among other things, threatened to call the police if Patient C's wife did
12 not leave the premises. Respondent himself had refused to see and/or discuss Patient C's care
13 with Patient C's wife, even though she had a release of medical information signed by Patient C.
14 Respondent failed to timely and/or adequately conduct a clinical assessment of any side effects
15 Patient C was experiencing from consuming Risperidone.

16 16. Respondent committed repeated negligent acts in his care and treatment of Patients A,
17 B, and C, which included, but was not limited to, the following:

18 (a) Paragraphs 7 through 15, above, are hereby incorporated by reference and
19 realleged as if fully set forth herein;

20 (b) Respondent failed to review and/or failed to document having reviewed Patient
21 A's prior psychiatric records and/or failed to consider collateral information from Patient
22 A's mother;

23 (c) Respondent did not adequately document his August 21, 2015 encounter with
24 Patient A;

25 (d) Respondent failed to discuss and/or failed to document having discussed with
26 Patient B options other than Lorazepam for the treatment of his anxiety;

27 ///

28 ///

1 (e) Respondent refused any contact with Patient C's wife even though she
2 presented with a signed release of medical information from Patient C;

3 (f) Respondent prescribed Risperidone at a dose higher than the manufacturer's
4 recommendation and/or without adequate explanation of possible side effects;

5 (g) Respondent failed to timely and/or adequately conduct a clinical assessment of
6 any side effects Patient C was experiencing from consuming Risperidone; and

7 (h) Respondent's documentation of his November 15, 2017 encounter with Patient
8 C was inadequate and/or inaccurate.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Adequate and Accurate Records)**

11 17. Respondent has further subjected his Physician's and Surgeon's Certificate No.
12 A 75977 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
13 Code, in that Respondent failed to maintain adequate and accurate records regarding his care and
14 treatment of Patients A, B, and C, as more particularly alleged in paragraphs 7 through 16, above,
15 which are hereby incorporated by reference and realleged as if fully set forth herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(General Unprofessional Conduct)**

18 18. Respondent has further subjected his Physician's and Surgeon's Certificate
19 No. A 75977 to disciplinary action under sections 2227 and 2234 of the Code, in that he has
20 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
21 which is unbecoming to a member in good standing of the medical profession, and which
22 demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 7
23 through 17, above, which are hereby incorporated by reference as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:


1. Revoking or suspending Physician's and Surgeon's Certificate No. A 75977, issued to Hisham H. Soliman, M.D.;

2. Revoking, suspending or denying approval of Hisham H. Soliman, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Hisham H. Soliman, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED:
June 4, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SA2019102292
82193765.docx

Exhibit C

Andrew Hicks


October 31st, 2019

Appeal for Release of BWC Footage
SJPD Case #19-045-0879
BWC #19-712

Dear City Clerk/Open Government Manager,

I am writing this letter to appeal the decision made by the San Jose Police Department's Body-Worn Camera Administrative Unit, denying my request for the release of body-worn camera (BWC) footage. I received an email on October 16th, 2019 from one Mayra Sosa, of the administrative unit mentioned above. In this email, Ms. Sosa makes reference to the CA Public Records Act, CA Government Code Section 6254(f), CA Evidence Code Section 1040, and CA Government Code Section 6254(k). In my scribbling below I will make an effort to demonstrate that these sections of the law, far from supporting the decision to refuse or delay disclosure, in fact support the disclosure of such video in the interest of justice. I will devote a brief paragraph to each section below in an effort to make this self-evident.

Considering CA Evidence Code Section 1040 first, I am not convinced that this section is relevant to the BWC footage in this situation. Section 1040 applies specifically to official information that has been acquired in confidence by a public employee. I am primarily interested in reviewing BWC footage for details about how my mother was interrogated, and what specifically was said. This hearsay is not being held in confidence, as it is currently being used against me in a petition by the City of San Jose for the disposition of four firearms of mine that were seized. This is Case #19CV344580 in the Santa Clara County Superior Court system, and will be soon considered again as Case #H047370 by the Sixth Appellate District of the Court of Appeal. A redacted transcript from the BWC footage has been previously submitted to the court, so this information should not be considered held in strict confidence at this point. Also, by Section 1040, disclosure may only be refused if forbidden by Congress or if the "necessity of preserving the confidentiality of the information outweighs the necessity for disclosure in the interest of justice". Given that the outcome of the City of San Jose's current petition revolves to a considerable degree around facts that may only be corroborated by disclosure of the BWC footage, considerable weight should be placed on such disclosure in the interest of justice. From that same

paragraph, we also can read, “no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding”. I have discussed this case frequently with my mother, and she agrees with me that if a transcript can be used against me in court, then the corresponding BWC footage from which such transcript is derived should also be presented. She has thus granted her permission. Yet further on in Section 1040, we can read that the “interest of the public entity as a party in the outcome of the proceeding may not be considered”. Given that the BWC footage likely contains, in my opinion, evidence of violations of the 4th and 8th Amendments, along with violations of the Due Process and Equal Protection Clauses of the 14th Amendment, I can understand why the City of San Jose would prefer that it not be released. Such interest may not be considered in refusing to disclose the footage. A consideration of Section 1040 alone thus provides several reasons to disclose the BWC footage, rather than to withhold it.

In taking a quick look at Section 6254(f), I believe we can find further support for the disclosure of the BWC footage. This subsection clearly states that “state and local law enforcement agencies **shall disclose** . . . statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident”. Ms. Sosa has explained that this section applies only to victims of crimes as listed in Section 13951(b), but this section of the law is very vague, and refers only to a crime or public offense that would constitute a misdemeanor or felony if committed in California by a competent adult. Given the potential violations of the Constitution mentioned in the preceding paragraph, I believe we can consider this requirement to have been amply satisfied.

My analysis of Section 6254(k) will be brief indeed. This subsection protects “records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege”. I have sufficiently dissected the relevant portion of the Evidence Code in my writing above, and I will not repeat the analysis here. Simply stated, if CA Evidence Code Section 1040 is not relevant to the prevention or delay of the disclosure of the BWC footage, then Section 6254(k) will also lack such relevance.

To conclude, I will once again state that I do not feel that the Body-Worn Camera Administrative Unit has demonstrated a good reason for withholding the release of the BWC footage. The laws referenced by Ms. Sosa in the denial of my request do not, by my reading of the laws, support this position. Given that the City Attorney’s Office is stubbornly using sections of the video against me in the petition for the disposition of my firearms, I feel that I should be granted the chance to review said footage. And I would like to mention one more thing. In referencing Section 6254, the Body-Worn Camera Administrative Unit conveniently skips over some sections of this law that are, in fact, quite relevant. In Section 6254, we can read that the clear and convincing evidence standard is used for delaying disclosure of BWC footage. This is a stringent standard of proof, and one that I do not believe

the Administrative Unit can satisfy. Elsewhere in Section 6254 we can read that, in the case that footage is redacted or truncated, “the redaction shall not interfere with the viewer’s ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording shall not otherwise be edited or altered”. In the transcript of the BWC footage submitted to the Santa Clara County Superior Court in the ‘Declaration of Keith Neumer in Support of City of San Jose’s Motion to Strike Answer and Vacate Hearing’, the transcription has been sufficiently and suspiciously truncated so as to bring it out of alignment with the choice bit of Section 6254 that I have mentioned directly above. Following some of the legal reasoning of *Anderson vs. Creighton (1987)*, I will admit that the Administrative Unit’s reading of the relevant law is “reasonably unreasonable”. This does not, however, bring such reasoning to the level of “objective legal reasonableness”, the touchstone of *Harlow*. I would appreciate the release of the BWC footage so that I can provide an analysis of its contents to the Court of Appeal. Thank you for reading.

Respectfully,



Andrew Hicks

Exhibit D

To Whom It May Concern,

I am writing this letter on behalf of my son, Andrew Hicks. I have had numerous conversations with him about the current petition by the City of San Jose for the disposition of his firearms that were confiscated on the night of February 14, 2019. I am including a few thoughts for consideration by the Court of Appeal.

I have to say that the officers from the SJPD treated me with respect but were somewhat misleading. They informed me that Andrew was outside in the back of the patrol car, for his safety, during much of our conversation, when in fact it seems Andrew had been transported to the Santa Clara EPS facility. When I asked the officers how Andrew was doing they responded that he had not done anything wrong and was not being arrested. The officers gave me the impression that Andrew had given them permission to take his firearms from the house, which Andrew tells me was not part of their conversation. The officers kept us separated so I have no way of knowing what was discussed between the officers and Andrew.

If any part of the discussion I had with the officers is being used in this case, I feel the entire transcript should be released to both parties for review. An edited transcript can take things out of context and not be an accurate representation of the conversation. I did not realize that my words would be used against Andrew in court.

While I admit that I do not know everything that was going on with Andrew on the night of February 14, 2019, that lead to him calling the police for help, I did not feel threatened by him. In fact, the officers woke me up from a sound sleep.

I am left with a sense of defeat in that when my son reached out to the medical profession and then the police department for help, he was refused help and his possessions were taken from him.

Andrew goes on and on about this case at home, and it is my understanding that he is representing himself in the legal case. My son is not perfect, and certainly was not previously familiar with the legal issues involved in representing himself. I hope that the court reviews his brief with the attention it is due, as he has invested a significant amount of time in trying to learn the law and his rights pertaining to this case.

Thanks,



Ruth Hicks

Exhibit E

LICENSE TO CARRY CONCEALED PISTOL, REVOLVER, OR OTHER FIREARM
WITHIN THE STATE OF CALIFORNIA

ISSUED BY:

Agency: EL DORADO CO SO

Date Issued: 4/17/18

"ORI": CA0090000

Expiration Date: 4/17/20

Local Agency Number: EO1100138

CI#: A031679973

Initial
 Subsequent

[REDACTED] SHERIFF TECH II
Signature and Title of Issuing Officer

SECTION A

Name of Licensee: HICKS, ANDREW HUEY

Residence Address: [REDACTED]

City: [REDACTED]

Zip: [REDACTED]

County: EL DORADO

Bus. Add: 0

Occupation: SECURITY GUARD

Birthdate: [REDACTED]

Hgt: [REDACTED]

Wgt: [REDACTED]

Eyes: [REDACTED]

Hair: [REDACTED]

LICENSE TYPE:

Employee Standard Judicial Reserve Custodial

SECTION B - Description of Weapons

| Manufacturer | Serial Number | Caliber | Model |
|--------------|---------------|---------|--------|
| GLOCK | [REDACTED] | 9MM | S-AUTO |
| S & W | [REDACTED] | 38 | REV |

Right Thumb Print

[REDACTED]



Signature of Licensee

Applicant