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MICHAEL P. STONE, GENERAL COUNSEL

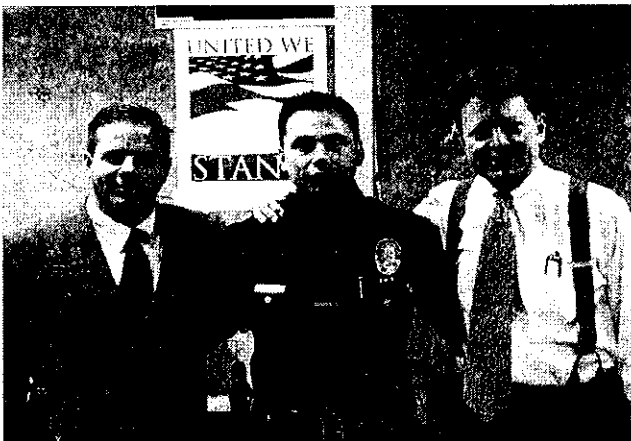
6215 River Crest Drive, Suite A, Riverside, CA 92507
Phone (909) 653-0130 Fax (909) 656-0854

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LAPD OFFICER ACQUITTED OF CHARGES IN SHOOTING DEATH OF HOMELESS WOMAN

*Officer Edward Larrigan Cleared By Federal and County Grand Juries, As Well As Of
Department Charges In "Margaret Mitchell Case"*



Officer Larrigan with his team; left to right Sgt. Gary Fredo, Larrigan, defense lawyer Michael P. Stone, after decision was announced.

LAPD Officer Edward Larrigan has been cleared of criminal charges by federal and county grand juries, and of the two remaining counts of administrative misconduct arising out of the May 21, 1999 fatal shooting of Margaret Mitchell, who attacked the officer with a long screwdriver as he and his partner officer attempted to detain her for investigation of the theft of a shopping cart, on La Brea south of Fourth Street. Michael P. Stone, his attorney throughout all of these proceedings announced that a 12-day trial before a Los Angeles Police Department Board of Rights panel, ended in "not guilty" findings for Larrigan on both counts.

Larrigan and Officer Kathy Clark were assigned to bike patrol in Wilshire Division when they attempted to investigate Mitchell's possession of a shopping cart containing her personal belongings. A significant part of Wilshire bike officers' duties is focused on the community problems associated with homeless transients. Margaret Mitchell had a history of contacts with Wilshire officers. She was presumed to be mentally ill, as well as homeless, and had exhibited paranoid behaviors when contacted by officers in the past.

On this occasion, the officers saw Mitchell pushing the cart south on La Brea. As Larrigan paralleled her travel southbound, he noticed the screwdriver handle protruding from a bundle of clothes inside the cart. He alerted Clark to the presence of the screwdriver as he attempted to verbalize with Mitchell in an effort to get her to stop long enough for a field interview and investigation. These efforts were met by Mitchell's irrational outburst of threats to kill the officers and profanity. Larrigan persisted in his efforts to calm Mitchell, and persuade her to submit peacefully to a brief investigatory interview.

The officers were able to temporarily contain Mitchell at the corner of La Brea and Fourth Street.

They dismounted and continued to try to calm the woman down. But, as Larrigan stepped off his bicycle, Mitchell forcefully rammed the cart at the officer. He blocked the blow with his foot. Mitchell pulled the screwdriver from the cart, and threatened and menaced the officer with slashing and stabbing motions. Meanwhile, the officers drew their pistols. Larrigan alerted Clark that he would "attempt OC". As he began to ease his oleoresin capsicum ("pepper spray" or "OC") canister out of the holster, a citizen motorist waiting at the intersection began honking his car horn frantically and yelling, "Don't shoot her! Don't shoot her!" The motorist alighted from his car and rushed to where Mitchell was backed up against a planter, effectively contained by the officers. As the motorist approached within ten feet of Mitchell, she slashed and jabbed the screwdriver toward him.

Fearing that the motorist might be injured, Larrigan reholstered his OC, approached the motorist, took him by the arm and assisted him back to his car. But the momentary distraction permitted Mitchell to slip out of the containment. She picked up speed walking briskly south, with the officers following on foot.

Suddenly, Mitchell whirled around and lunged toward Larrigan thrusting the screwdriver toward his throat. Officer Larrigan stepped to the left and back, when his left foot slipped off the curb. He involuntarily dropped to one knee and simultaneously raised his weapon and fired one round into Mitchell's chest. Her sudden charge brought her nearly within arm's reach of Larrigan. Mitchell collapsed, and died a short time later at the hospital.

The spectre of two young, white, fit and able armed officers involved in a street confrontation with a mentally ill, homeless black woman who weighed barely 100 pounds, which resulted in her death by police gunfire, unleashed a groundswell of protest.

Predictably, charges that the shooting was motivated by racial animus, or at least resulted from callous indifference based on Ms. Mitchell's race, quickly followed. Criminal federal and county grand jury investigations were commenced, and ran simultaneously for months. Meanwhile, the Department initiated the customary Use Of Force Review Board (UOFRB) process. The decedent's survivors brought a civil rights action against the officers and the City, filed by civil rights attorney Leo Terrell, known for his bombastic and combative style of litigating "police brutality" cases against Los Angeles area departments.

After thorough investigation by the Robbery-Homicide Division's Officer-Involved Shooting (RHD-OIS) Section team led by the very able Detective III Raul Reyna, the *Mitchell* case followed the typical course. Officer-involved shooting cases in the LAPD are typically analyzed in the five-member Review Board process along three independent lines: (1) drawing and exhibiting the weapon; (2) tactics; and (3) shooting. The Board in this case recommended to Chief Bernard Parks that the drawing be found "in policy", the tactics be found "out of policy-training", and the shooting be found "in policy". The lone dissenter, Deputy Chief Moore, recommended that the tactics be ruled "out of policy--administrative disapproval". Parks adopted the dissenter's view. The final say, however, rested with the Police Commission.

The *Mitchell* case set up one of the very rare conflicts between the Chief of Police and the Police Commission over the findings. In fact, the last occasion in this writer's memory was the feud between the Commission and Chief Daryl F. Gates, over yet another fatal shooting by two white LAPD officers in 1979 of a mentally ill black woman,

named Eula Love,¹ armed with a kitchen knife. There as here, non-police government officials, lay persons, media and others not familiar with police use of lethal force could not comprehend how a single, mentally ill female armed with "only" a knife or a screwdriver could present a sufficiently credible threat to justify the use of lethal force, *even* if the woman did attack.

By the time the *Mitchell* case arrived in the Police Commission, the relatively new office of the Inspector General ("IG") had developed into a politically-influential investigatory arm of the Commission. IG staffers went to work, led by Inspector General Jeffrey Eglash, to "reinvestigate" the RHD-OIS and UOFRB determinations. That process in turn resulted in the Commission voting 3-2 to find *both Officer Larrigan's tactics and the shooting out of policy*. The vote was 5-0 finding Larrigan's *drawing* in policy (although even the drawing of his weapon was not without controversy -- Commission Executive Director Joe Gunn opined the drawing was "out of policy" [premature] but the shooting was "in policy"!)

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See: Hopson v. City of Los Angeles (1983) 139 Cal.App.3d 347 -- Hopson and O'Callahan, the officers who shot Eula Love, were "disciplined" by the Commission, which insisted, over Chief Gates' refusal to condemn the shooting, in placing the Commission report on the shooting, which was highly critical of the officers, in their personnel records. The *Hopson and O'Callahan* case featured an unusually open and notorious political shoot-out between Gates and the liberal-leaning Commission over who has the final policymaking say over discipline in the LAPD. In this case, the officers were aligned with their Chief, against the Commission. Strange bedfellows, some might say. But those were interesting times, and the author was privileged to play a small role in the litigation as a new member of George Franscell's law firm in Los Angeles, under lead counsel for the officers, Steven Lincoln Paine, one of the most impressive lawyers in the business.

City Charter § 1070 clearly provides that the Chief of Police shall be the final decisionmaker in matters of police discipline. But, the Commission has the final say in whether a shooting is within policy. So, we are set to replay the Eula Love controversy unless the Commission reconsiders its decision in light of the "not guilty" findings at the Board of Rights.

Because the Commission "overruled" Chief Parks in part, Larrigan was charged and ordered to a Board of Rights. Larrigan's counsel delayed the Board however, due to the on-going civil action and the federal and state grand jury proceedings. First, the civil action settled for a substantial sum in favor of Ms. Mitchell's brother who came from somewhere to collect damages for the admittedly tragic death of his *homeless* sister. Then, the Los Angeles District Attorney wrapped up his grand jury with an *excellent* and comprehensive analysis of the varying accounts of the shooting, including that of a motorcycle officer who was across La Brea on a traffic stop, and later called the shooting "unnecessary" -- he also claimed to be represented by (you got it) Leo Terrell. Finally, the Department of Justice closed the federal grand jury investigation with no indictment.

The way cleared for the Board of Rights, hearings got underway in early 2002, and continued for 12 days throughout the rest of the year and into 2003. In May, the Board announced its findings that Officer Larrigan is not guilty of either the "out of policy shooting" of Ms. Mitchell, or the charge of deficient tactics. Probably the two primary factual issues that were litigated and were pivotal in the Board's rejection of *all* of the previous reviewers' findings were (1) whether Larrigan's tactics were deficient such that he unnecessarily made himself vulnerable to attack by Ms. Mitchell; and (2) whether at the time Larrigan shot, Mitchell in fact "lunged" at his throat with the screwdriver. As to those critics who claimed Larrigan missed a "golden opportunity" to disarm Mitchell when she rammed the cart at him at Fourth and La Brea as he dismounted, the Board found that *Mitchell did not release her grip on the cart*. Had Larrigan tried to wrestle the cart away from her, Mitchell could have easily attacked him with the screwdriver then. The Board found that the "good Samaritan" citizen motorist did unwittingly interfere, permitting Mitchell to escape the containment, where she otherwise could have been kept immobile until the arrival of more officers. The

Board also found that Mitchell's attack was sudden and unprovoked, and clearly presented a serious threat to Larrigan, justifying the use of lethal force.

Learning Points

Like almost every major dynamic use of force event, the *Mitchell* shooting can be instructive on a couple of points. But before getting on to them, let us stress that none of the extra precautions would necessarily have been outcome determinative. What effect, if any, would have resulted from the application of one or more of them is pure speculation or the equally unhelpful "shoulda, coulda, woulda."

1. Radio communications -- the first notification by either officer to dispatch occurred when Larrigan called in to request additional help one to two seconds before Mitchell attacked the officer. You can hear her yelling and cursing as Larrigan opened his portable radio mike attached to his shirt. He barely gave his call sign and began to ask for additional help when the transmission abruptly cuts off, as Mitchell charges and Larrigan shoots. Within five seconds, Larrigan is back calling for "units for crowd control, a supervisor and an R.A." In fact, it may have been Larrigan's call for help, heard by Mitchell which caused her to suddenly whirl around and charge at Larrigan. The various reviewers criticized the officers for not "going Code Six at Fourth and La Brea" (stopped for investigation) earlier. However, analysis of the Wilshire frequency tapes by the defense revealed that a lengthy crime broadcast with suspect and vehicle description was being issued by another Wilshire field unit which was more than long enough to cover the period it took for Mitchell to slip out of the containment, head south for about one-third block, and attack Larrigan. Indeed, Larrigan's broadcast begins precisely at the end of the crime broadcast, lending more support to the suggestion that the officers called as soon as they could, *and* that the act of calling for help may have been the catalyst that prompted Mitchell to attack.

The Board of Rights visited the scene with the parties and the court reporter near the same time of day and took note of the heavy traffic and volume of pedestrian movement, as well as the other numerous persons present (in and around a large new car dealership which runs the entire block from Fourth Street south of La Brea to the point the shooting occurred. There were several "eyewitnesses" in and around the dealership. The Board members asked Larrigan to "walk-through" the event with the Board observing, noting, listening, measuring and timing. Everyone was amazed at how quickly the event unfolded.

2. Dealing With The Mentally Ill -- Despite the officers' early recognition that Ms. Mitchell was probably mentally ill, and even with Larrigan's calm, reassuring approach, this tactic did not result in a successful conclusion -- whether and how this event might have been handled better in view of Mitchell's obvious impairment is better answered by professionals in that specialty. Beyond doubt however, encounters with mentally ill persons are frequent, and training should emphasize alternative methods to defuse a volatile encounter *when* the obvious methods (such as, getting more help) do not work or are unavailable.

3. Critical Reconstruction and Review -- any lethal force case, but particularly one like this where the use of force is clearly controversial, needs to be as carefully reconstructed in the same way as a major criminal homicide. Every physical, factual, evidentiary, time and sight/view variable must be analyzed to determine whether each variable played a role in the outcome. Walk-throughs at the scene with the participant officers, close in time to the event is an *absolute* must.

4. Defensive Tactics -- Training, training, training. What more needs to be said? Again, no amount of training may have avoided the unhappy outcome in this case, because the officers' movements,

verbalization, planning and communication were tactically sound, as was noted by Chairperson Captain Richard Wemmer, himself an officer safety and tactics expert and trainer. Officer Larrigan's training and quick reaction may have saved him from serious injury or death. Regardless, training reduces officer and suspect injuries and deaths.

The rationale for the not guilty findings announced by Chairman Wemmer was thoughtful and thorough. Some passages follow below.

**THE BOARD OF RIGHTS
LOS ANGELES POLICE DEPARTMENT**

<i>In the Matter of,</i>)	
)	No. B.F. 18879
EDWARD LARRIGAN,)	(CF 00-0149)
No. 30834.)	
)	RATIONALE ON
ACCUSED.)	FINDINGS
_____)	

MONDAY, MAY 12, 2003

BEFORE: CAPTAIN RICHARD C. WEMMER, CHAIRMAN
CAPTAIN JOHN E. EGAN, ASSOCIATE
MR. DAVID B. SHAPIRO, ESQ., ASSOCIATE

CAPTAIN WEMMER: After evaluating the exhibits and the witnesses' testimony, this Board has reached unanimous decision for Counts 1 and 2. These findings are based on the evaluation of 13 witnesses and the review of 49 exhibits.

Starting June 17th of 2002, the Board members were present while the advocate, Sergeant Vito Palazzolo, and Officer Edward Larrigan's representatives, Attorney Michael Stone and Sergeant Gary Fredo, questioned witnesses and identified exhibits

for submission. This Board then met on 11 additional occasions: June 17th, June 19th, June 20th, September 18th, October 18th, and December 19th of 2002; and January 6th, January 31st, February 5th, February 12th, and February 18th of 2003.

The February 5th date involved a visit to the scene, where the Board was accompanied by the associate advocate, the defense attorney and representative, the accused, and the court reporter.

On Thursday, May 8th, only the Board members met to determine findings. On this occasion, the Board reviewed 49 exhibits – 11 from the defense, 21 from the Department, and 17 joint exhibits – and the witnesses' testimony.

Consequently, today, May 12th, 2003, the Board will report our findings. Regarding Count 1, "On or about May 21, 1999, you, while on duty, utilized deficient tactics prior to and leading up to an officer-involved-shooting incident, resulting in an administrative disapproval," this Board finds you not guilty.

In making this decision, the Board considered a variety of different factors. These factors included the exhibits produced by the Department and the defense, our experiences, and the testimony of all witnesses, especially Officer Larrigan and Officer Clark, who were found to be credible and convincing.

Before I continue, it is important to note that Officer Clark's name has changed since the incident. Her new name is Roditas. However, throughout these findings she will be referred to as Officer Clark.

The Board recognizes that tactical situations are dynamic and ever-changing. Tactical situations require that officers are properly trained, aware of their surroundings, and responsible for making critical and split-second decisions that will impact the involved parties and officers forever. That's the case in this incident.

This incident started at Third Street and La Brea Avenue as the type of pedestrian stop that the involved officers had experienced before. That being said, quote, "routine," end quote, is not a word that can ever be part of a police officer's vocabulary. That was also true in this incident.

The involved officers, Larrigan and Clark, were assigned partners on the bicycle detail with specific missions. One of these missions was the enforcement of the Business and Professions Code related to stolen shopping carts.

Testimony from the involved officers indicated that the contact with Ms. Mitchell started off in a nonconfrontational way. Unfortunately, at Ms. Mitchell's choosing, it did not stay that way long. The officers utilized appropriate tactics in their initial contact. Larrigan was the contact officer, and Clark was the cover officer. They followed their general plan that they had previously discussed as to how they would handle their investigative stops.

Once Ms. Mitchell did not comply with their lawful and proper directions and questions, the situation began to change. Larrigan noticed that Ms. Mitchell had a screwdriver and communicated this to Clark. However, Ms. Mitchell began to act in an irrational manner. Thus, the officers realized they needed to detain Ms. Mitchell for further investigation. But Ms. Mitchell continued to walk away from the officers, continuing southbound on La Brea.

At the corner of Fourth Street and La Brea, Ms. Mitchell stopped in front of a car dealership. The officers dismounted their bicycles and approached Ms. Mitchell. Ms. Mitchell pushed the shopping cart at Larrigan. Larrigan reacted while dismounting his bicycle and kicked the cart back with his foot.

However, Ms. Mitchell never released the shopping cart and withdrew a 12-inch screwdriver from the cart, waving the screwdriver at the officers in a threatening manner. All the while Ms. Mitchell was shouting obscenities and threats at the officers.

The officers deployed on Ms. Mitchell and had her contained, using a triangle deployment. Officer Larrigan testified that they had her, quote, "corralled," end quote, with her back against a large planter. While the situation was very charged, the officers were in a position to control Mitchell's movements and minimize the threat that she posed to community members and the officers.

It is at this moment in time that a single important event occurs that changes the entire dynamic of the officers' contact with Ms. Mitchell. A quote, "good Samaritan," end quote, interjects himself into the situation. Consequently, the officers are immediately forced to deal not only with an obviously distraught woman waving a screwdriver and shouting obscenities, but also a possible victim.

The only ones at risk prior to the good Samaritan's involvement were the two officers. With the best of intentions, the good Samaritan placed himself into the middle of this crisis. Unfortunately, he talked to Ms. Mitchell and the officers and approached Ms. Mitchell. The officers are now faced with dealing with Ms. Mitchell's threats and the good Samaritan's distractions. Their attention is split between these responsibilities

Just prior to the good Samaritan's involvement, Officer Larrigan was preparing to deploy his chemical agent, oleoresin capsicum. Instead, Larrigan must now abort the deployment of chemical agent and remove the good Samaritan from harm's way.

While the two officers were distracted by the good Samaritan, Ms. Mitchell used this opportunity to slip away from the two officers and headed south on La Brea. This is the tipping point in this contact. The threat that was contained is now no longer contained and is loose in the community.

Recognizing the importance of understanding and viewing the physical space and time involved in this incident, the Board conducted a site visit on

February 5, 2003. This visit allowed us to see firsthand where the incident occurred and, more importantly, where the individuals were at different points in time.

This visit helped solidify the testimony heard by the Board and enabled us to resolve the timeline of events that began when the officers were dismounting their bicycles at the corner of Fourth and La Brea through the moment that the use of deadly force occurred.

It further allowed the Board to walk the same sidewalk that the involved parties did, providing a sense of how quickly the events unfolded once Ms. Mitchell was no longer contained. The Board members walked this sidewalk and estimated it took from 20 to 30 seconds, if not shorter, from the time that Ms. Mitchell escaped the containment and the officer-involved shooting occurred.

That period of time is less than the time it took to read the last several sentences. Thus, the site visit allowed the Board to experience firsthand how quickly this event unfolded and, as Officer Larrigan testified, quote, "went sideways," end quote.

It also allowed the Board to witness the traffic flow, to hear the noise present, to note the lack of available cover; all of which impacted the tactics used by the officer.

Another issue that bears discussion deals with the witnesses. The Board had the opportunity to hear from a number of the involved witnesses, including Officers Larrigan and Clark. The Board questioned those witnesses and asked for clarification on a variety of points.

The Board was then tasked with taking that testimony and utilizing their 50 years of collective police experience, coupled with the perspective of our community member, who has 20 years experience with the justice system, to come to the conclusions today. Unfortunately, the Use of Force Review Board and the

Board of Police Commissioners did not have the luxury of personally listening to the witnesses.

The Board also recognized that the ultimate responsibility for making tactical decisions rests with the involved officers in the context in which these actions occurred. They are the ones who experience firsthand the facts available which determine what tactics to use in a given situation. Those tactical decisions are based in large part on the actions of the suspect.

In this incident, like most tactical situations, there may have been other options available to the officers. One can only speculate as to what might have happened differently if the involved officers had responded differently.

It is important to note that the Board of Rights manual specifically cautions against the use of speculation and conjecture in reaching a finding. It is the finding of this Board that while things could have been done differently, Officer Larrigan's actions and tactical decisions did not rise to the level of misconduct. Any issues associated with Officers Larrigan and Clark's tactics should be addressed via training.

As to Count 2, that, "On or about May 21, 1999, you, while on duty, were involved in an out-of-policy shooting, resulting in administrative disapproval," this Board finds you not guilty.

The Department's policy authorizes the use of deadly force when it reasonably appears necessary to protect the officer or others from an immediate threat of death or serious bodily injury. Department Manual volume 1/556.40, titled "The Use of Deadly Force," as consistently applied, limits deadly force to a last resort. This policy demands objective evidence of likely serious bodily injury or death as the alternatives to the use of deadly force.

Always, the policy regards the sanctity of human life as the paramount good, and no officer may

use deadly force except where, on balance, no other or better choice is available. In most if not all cases, the person against whom an officer uses deadly force has dictated the course of events.

However, when an officer is considering the use of force, the officer must take every available precaution – dictated by their experience, knowledge, skills, and training – to prevent the emergence of those circumstances which necessitate deadly force. But when, notwithstanding those precautions, those circumstances prevail, then policy permits the use of deadly force.

Finally, an officer's use of deadly force is judged not in hindsight and not upon information gained later in clinical or forensic investigation. It is weighed in the light of the information known to the officer at the time.

Here, the evidence presented to the Board showed that Ms. Mitchell's body was facing Officer Larrigan at a distance of one to six feet from the barrel of Officer Larrigan's firearm when the single round was fired. In the instant before that firing, according to Officers Larrigan and Clark and to the best situated remaining witnesses, Ms. Mitchell moved or lunged toward Officer Larrigan.

In doing so, Ms. Mitchell pointed or stabbed an edged weapon, a 12-inch screwdriver, toward Officer Larrigan's head and neck. Ms. Mitchell moved so suddenly that she denied Officer Larrigan the time to utilize other reasonable options.

More circumstances than these confronted Officer Larrigan. Ms. Mitchell's assault with a deadly weapon followed a sustained, if brief, effort to escape. She exhibited a continuous and irrational refusal to follow officers' repeated commands and requests and refused to recognize the uniformed officers as peace officers. Ms. Mitchell's actions were accompanied by a stream of profanity and yelling.

Not in a vacuum, but in this context, did Ms. Mitchell confront Officer Larrigan. Officer Larrigan's response was defensive. It was reactive. It was his last, indeed his only, resort to prevent serious bodily injury or death to himself. And it was compelled in the end by the actions of the victim.

In evaluating this use of force, it is the Board's solemn responsibility to ask the question whether Officer Larrigan's actions violated the Department's use of deadly force policy. The Board finds that it does not.

For every speculation about what effects alternative decisions by Officer Larrigan that may have caused, the one constant that remains is Ms. Mitchell's threats. These threats endangered not only Officer Larrigan and his partner, they presented increased and endangerment to any community member whom the frenzied and irrational Ms. Mitchell may have confronted if left to leave.

Sworn to protect and serve, Officer Larrigan did not have the luxury to let her go. Rather, he went in harm's way and, consistent with policy, acted in defense of life.

The incident involving the Los Angeles Police Department and Ms. Margaret Mitchell was a tragedy for everyone involved. Fortunately, many people have reviewed the circumstances and actions of those involved. This review included the Los Angeles Police Department, the Los Angeles Police Commission's Inspector General and Commissioners, the district attorney for the County of Los Angeles, the Los Angeles County Grand Jury, the Federal Bureau of Investigation, the U.S. Department of Justice, the media, community members, and the family and friends of the people involved.

Consequently, there were differences of opinions followed by a number of suggestions that resulted in significant changes within the Los Angeles Police Department and throughout the law enforcement profession. Thus, peace officers are better prepared to

deal with people whose mental illness may erupt into a violent confrontation with community members, law enforcement, officers or both.

This Board has carefully and thoroughly examined all the information that was presented. The Board members deeply appreciated the professionalism displayed by Sergeant Palazzolo, Mr. Stone, and Sergeant Fredo and thank them for their efforts in presenting and clarifying information.

Captain Egan or Mr. Shapiro, do you have any comments?

CAPTAIN EGAN: No.

MR. SHAPIRO: No, sir. Thank you.

CAPTAIN WEMMER: This concludes the hearing involving Officer Larrigan.

STAY SAFE!

MICHAEL P. STONE