



# LEGAL DEFENSE TRUST TRAINING BULLETIN

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## **NINTH CIRCUIT COURT OF APPEALS RULES DEPUTY TRACY WATSON IS ENTITLED TO \$154,000 IN ATTORNEY'S FEES IN CIVIL RIGHTS CASE**

*Preliminary Injunction Barring Department's Use Of Watson Arrest Report In Termination Appeal Is  
Sufficient To Make Watson A "Prevailing Party" For Award Of Fees*

On August 20, 2002, The United States Court of Appeals for the Ninth Circuit upheld U.S. District Court Judge Robert J. Timlin's award of \$154,000 in attorney's fees to Deputy Tracy Watson, to be paid by the County of Riverside. County lawyers failed in their attempt to persuade the appellate court to overturn the award issued by Judge Timlin at the conclusion of Watson's civil rights case in 2001.

Watson sued the County of Riverside, Sheriff Larry D. Smith and a Sheriff's Chief Deputy, Captain, and two Lieutenants for violating his civil rights to due process, by ejecting a lawyer from a room where Watson had been ordered to remain to "write his arrest report" concerning the well-publicized and "live" film-broadcasted use of force and arrest of two undocumented persons at the end of an 80 mile pursuit in South El Monte on April 1, 1996.

Watson and Deputy Kurt Franklin, each in his own Sheriff's unit, pursued a speeding pick-up truck with camper shell, from the Riverside area into Los Angeles County, where the driver ran out of gas and coasted to a stop on SR-60, west of I-605. With news helicopters from Channels 9 and 13 overhead, filming the action in a live broadcast, about 20 suspected illegal immigrants jumped from the cab and bed of the truck, over a guardrail

and ran down a freeway embankment into a private nursery, and fled on foot.

The chase began when the truck ran the Border Patrol checkpoint at Temecula, in southern Riverside County. Federal officers dropped out of the pursuit, northbound on I-15, almost immediately. But a Riverside Sheriff's sergeant picked up the chase shortly afterward, dropping out west of Riverside, as Watson and Franklin took over. The truck drove west on SR-60 at 80 mph or more, and the driver attempted to ram other uninvolved motorists to create a catastrophe that would discourage the deputies from further pursuit. Occupants of the truck bed hurled various missiles at the motorists' cars, and at the deputies' units. In all, the truck driver forced 12 motorists off the freeway, damaging many of the cars by sideswiping them with the side of the truck.

A Highway Patrol officer joined in the chase at I-605, just before the truck coasted to a stop on the north side of the freeway. Franklin and Watson struck two of the fleeing suspects with batons and succeeded, along with the CHP officer, in capturing three persons. The news stations broadcast the "live feed" footage contemporaneously, and particularly the film of the baton swinging by Watson repeatedly over the next three hours between 3:00 and 6:00 pm, igniting a

firestorm of public outrage reminiscent of the inflammatory news manipulation of a few seconds' snippet of the video film of the so-called "Rodney King beating".

All of this spelled certain trouble for Tracy Watson, who believed he had used appropriate and approved force by striking the suspects with his "FX" baton until they complied with orders to "prone" with hands behind the back.

Sure enough, shortly after Watson started on his trip back to Riverside with one prisoner, he was ordered to transfer the prisoner to other deputies for medical treatment, and report at once to Riverside Station. There, a Sheriff's lieutenant directed him to an isolated, locked office to "immediately write his report, including all details of his use of force." The telephone was removed from the office, and Watson was not permitted to contact anyone, "until you (Watson) are done writing your report." However, a Riverside Sheriffs' Association lawyer, Karen Cote, who had arrived to counsel Watson, was let into the office by an investigator, and she began to speak with Watson about the events, which by now, had become the focus of criminal investigations by the FBI and Los Angeles County Sheriff, and administrative investigation by Riverside Sheriff's Administrative Investigations Unit (internal affairs).

The lieutenant came to the office door, and heard talking from within. He entered, and found the lawyer with Watson. Visibly upset, he demanded to know from Cote, "How did you get in here?" He ordered her to leave, and said that *Watson had no right to speak with a lawyer until he was done writing his report*. Unknown to Watson, Sheriff's officials were assembled and poised outside to immediately relieve Watson of duty, gun and badge as soon as he "finished his report."

Watson needed the advice of counsel because whatever he wrote in the report would be admissible against him in subsequent proceedings, and he was *not permitted to see the video film of the arrest*, although it was being shown in on-coming shift roll-call briefings, to alert the deputies to possible civil unrest.

His lawyer permanently removed from his presence, Watson completed his report and turned it over to the lieutenant, whereupon he was promptly relieved of duty, never to return to work.

The report was prejudicial to Watson, because it contained predictable inaccuracies when compared with the "blow-by-blow" video film which was withheld from Watson's use as an aid in completing his "detailed account of his use of force".<sup>1</sup> The purpose was to trap Watson into writing admissions of conduct that would eventually be characterized as criminal. By this time, officials had no intention of prosecuting the suspects – now indeed, they were "victims of police brutality."

Within days, supported by PORAC Legal Defense Fund (LDF) and The Riverside Sheriffs' Association Legal Defense Trust (LDT), lawyers Michael P. Stone, Muna Busailah and Larry J. Roberts filed a federal civil rights lawsuit for Watson in the United States District Court, Central District of California, alleging, *inter alia*, violation of Watson's 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to due process, for the deprivation of the right to counsel at a "critical stage" of the proceedings, seeking an

<sup>1</sup> Having been through years of litigation in the so-called "Rodney King trials" as the defense attorneys for Officer Laurence Powell, Michael Stone and Muna Busailah know well that officers' reports will always vary significantly from a filmed use of force event like this one. This phenomenon is to be expected, and has nothing to do with attempts by the officers to "shade" or "falsify" their reports. It is plainly unconscionable to force a deputy like Watson, to write such a report, and not permit him to review film of the incident readily available.

injunction barring the Department from making use of the report in any official proceedings connected with the events of the April 1, 1996 use of force and arrest of the suspects. County lawyers opposed the relief sought, contending that Watson's report was not compelled, and that he had "no right to counsel before completing his report"; hence, it was permissible for the lieutenant to eject Watson's lawyer from the room where Watson was isolated *incommunicado*, until he finished writing the report, according to the County's legal analysis.

Since Watson was already the focus of criminal and administrative investigations,<sup>2</sup> his lawyer argued in a motion for a preliminary injunction that Watson was entitled to counsel *while he wrote the report*. The ACLU and the United States Attorney's Office filed motions to intervene in the lawsuit, to join with the County in defeating Watson's claims. However, U.S. District Judge Robert J. Timlin agreed with Watson that his civil rights were violated, and granted the injunction barring official use of Watson's report, under 42 USC §1983. The Court also rejected the ACLU and government motions to intervene, which were appealed in petitions to the Ninth Circuit, but also rejected there. Throughout all of this legal maneuvering, Watson's lawyers successfully fought off the combined efforts of Riverside County, the US Attorney, and the ACLU to derail Watson's lawsuit.

Watson appealed the subsequent discharge in an arbitration under the MOU, before arbitrator Alexander "Buddy" Cohn, who unfortunately abused his discretion, and sided with the Sheriff in upholding Watson's discharge. The federal injunction prevented the Department from using

the report in the arbitration, but Cohn erroneously relied almost entirely on the video film to rule Watson was properly fired. Cohn's unsupported decision was appealed by Watson's lawyers in a separate writ proceeding before Superior Court Judge E. Michael Kaiser, who reversed the termination finding Cohn's decision was "a manifest abuse of discretion". The County refused to comply with the Superior Court order, and appealed to the Court of Appeal, Fourth Appellate District, which affirmed Judge Kaiser's order, holding that Watson could only be suspended for a maximum of 80 hours (ten days) for the use of excessive force. Recently, the County finally capitulated, and reinstated Watson with backpay and interest from 1997 to 2002, unreduced by alternative employment earnings. Watson, now a successful private investigator, will not return to duty with the Department.

Because Watson succeeded in obtaining an important victory in gaining the injunction,<sup>3</sup> he was entitled to an award of attorney's fees and costs as a "prevailing plaintiff" under 42 USC §1988. Judge Timlin so found and ordered the County to pay Watson's lawyers \$154,000.

Not to be stuck with paying Watson's legal expenses, the County again appealed, contending that Watson was not a "prevailing party" since he obtained only a preliminary injunction on his due

<sup>2</sup> Sheriffs' officials had already determined from viewing the film that Watson's use of force was unjustified, excessive and out-of-policy.

<sup>3</sup> When it issued the injunction, the Court published its decision in the official reports, entitled *Watson v. County of Riverside*, 976 F. Supp. 951 (C.D. Cal. 1997). The case established important rights for peace officers throughout the country by holding that an officer is entitled to counsel before writing a report when there is a risk of self-incrimination posed by completing the report. This is the first decision of its kind in the Nation, and should be understood by any law enforcement officer who faces circumstances similar to Watson's. The rule of the case was explored in a previous training bulletin Vol. No. II, Issue No. 4 (1999), "Consult With A Lawyer Before Writing A Report? In Some Cases You Should!"

process claims, and his 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Amendment claims, and Bill of Rights Act (*Government Code* §§3300, *et. seq.*) claims were dismissed. The lawsuit and preliminary injunction were voluntarily dismissed by Watson after the arbitration was concluded as *moot*, since the injunction had done its job. So, said the County, Watson was not a "prevailing party" entitled to an award of fees, under a then-new U.S. Supreme Court decision, *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health*, 532 U.S. 598 (2001). The Ninth Circuit disagreed, holding that it was not necessary for Watson to either obtain a final judgment that his rights were violated, or to "prevail" on all of his claims, in order to win fees under §1988. In a published decision filed August 20, 2002, the Ninth Circuit declared,

*We hold today that a plaintiff who succeeds in obtaining a preliminary injunction can be deemed a "prevailing party" for purposes of 42 USC §1988, even though he did not recover other relief sought in the lawsuit.*

*See: Watson v. County of Riverside*, Nos. 01-56214 and 01-56298, \_\_\_F. 3d\_\_\_, before Hall, Silverman and Rawlinson, Circuit Judges, opinion by Judge Silverman, reported at 2002 D.J.D.A.R. 9523, August 21, 2002.

Thus ends fully six years of state and federal court litigation brought with the full support of LDF, LDT and the Riverside Sheriffs' Association. Through all of these years, Tracy Watson was represented by his legal team of Michael P. Stone, Muna Busailah, Larry J. Roberts and former Senior Field Representative, now RSA Executive Director, Darryl F. Drott. Tracy Watson and RSA President Pat McNamara join in thanking LDF and LDT for their continuing support throughout the

years. LDF and LDT will be reimbursed for their expenses out of the fee award paid by the County.

In speaking of the litigation results, RSA President Pat McNamara noted that, "All of this litigation was the result of a single and seemingly mindless act of County officials to deprive our member Tracy Watson of a basic constitutional right, afforded to any citizen who is under investigation or accused of a crime: the right to counsel. Then the County compounded that wrong by ignoring its own disciplinary policies, and fired Tracy Watson, which Superior Court Judge E. Michael Kaiser and the Fourth District Court of Appeal termed a "manifest abuse of discretion."

"There are no winners here. Tracy Watson's career was unnecessarily destroyed; his basic, individual civil rights under our Constitution were violated by his employer; and the County's taxpayers have had to pay, and are still paying, hundreds of thousands of dollars in legal fees to attempt to defend the actions of Department and County officials, who instead of recognizing their wrongs and doing something to correct the situation to avoid wasting all of this public money, and six years of peoples' lives, hunkered down behind their lawyers' legal maneuvering, and tried to avoid responsibility for their errors. As custodians of the public trust and taxpayers' dollars, Department and County managers ought to be held accountable for their blunders which have cost the citizens so much money."

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