



LEGAL DEFENSE TRUST TRAINING BULLETIN

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Vol. V, Issue No. 2

FEBRUARY 2002

DEPUTY TRACY WATSON'S LONG ROAD TO REINSTATEMENT—THE LESSONS LEARNED ALONG THE WAY.

*COURT OF APPEAL AFFIRMS TRIAL COURT'S RULING TO OVERTURN
WATSON'S 1997 FIRING ARISING FROM NEWS VIDEO-TAPED "BEATING" OF
ILLEGAL IMMIGRANTS FOLLOWING 80-MILE PURSUIT.*

April 1, 1996—A pickup with camper shell, loaded with more than 20 illegal immigrants, runs the U.S. Border Patrol checkpoint at Temecula in San Diego County, racing northbound on Interstate 15, driven by the smuggler "coyote".

Shortly thereafter, the Border Patrol chase car drops out, apparently in obedience to a policy to not pursue vehicles wanted for alien smuggling, when it appears the smuggler-driver is wilfully reckless and creating danger to others.

As the truck sped northward, a Temecula Station, Riverside County Sheriff's sergeant picked up the chase, shortly joined by other Temecula cars.

The smuggler, aware that police may discontinue a pursuit when it becomes too dangerous to innocent persons, apparently decided to make this one as dangerous as possible.

The pickup swerved back and forth across freeway lanes, clearly attempting to ram or sideswipe other motorists' cars, with some success. Several were forced off the freeway at high speeds. In all, approximately 12 other cars were hit. The "passengers" in the bed lifted up the rear window-gate and began heaving a variety of missiles, from chunks of wood to grapefruits at the pursuing police cars.

When they ran out of things to throw, they tore apart the camper shell, broke it apart, and threw all the pieces at the deputies and others. This behavior of the smuggler and passengers continued as the pickup drove on at speeds of 80 mph and more north on I-215 toward Riverside, and then west on SR-60 toward Los Angeles.

Tracy Watson, a Riverside deputy assigned to the Norco area was about to leave his car on Code-7 in Norco, when he heard the Temecula cars heading north on I-15 and I-215. He decided to wait to see if the pursuit headed

west on the 60, near where he was situated. He heard the sergeant describe the smuggler's reckless driving behaviors.

Sure enough, the smuggler headed west from Riverside, toward the SR-60 and I-15 junction, a few miles north of where Watson waited and listened.

He decided lunch could wait, and off he went northbound on I-15 to intercept.

Meanwhile, the sergeant was requesting that Riverside area cars take over, because the Temecula cars were too far out of their area.

Watson answered up at SR-60 and I-15. He was designated to fall in the secondary position as the caravan speeded westbound on the 60. Deputy Kurt Franklin, the Pedley car, had already been designated as primary, in place of the Temecula sergeant. As the smuggler's and Franklin's vehicles raced by, Watson fell into secondary. A Riverside Sheriff's airship, STAR-80, was overhead.

The pursuit continued westbound, through Ontario, Chino, Pomona, and Diamond Bar, now in Los Angeles County. Repeated calls for assistance from other agencies along the way were not respected. The resulting investigation and litigation didn't explain why other agencies did not join in, to help these two deputies who were now, out of Riverside County radio

Watson ran around the left side and front of the pickup to try to apprehend, at least, the smuggler-driver. With his baton drawn, he yelled, "Manos arribas!" (hands up!). All but two had run away. Watson confronted the two, yelling repeatedly, "Get down, get down, get on the ground!" He was ignored, so he swung his baton at them both, while continually yelling "Get down, get on the ground!" Finally, they did. Deputy Franklin arrived to take care of one, and Watson focused his attention on the other. This suspect, thought to be the "coyote", refused to pull his hands out from under his body as he

frequency range. They could not talk to their own dispatchers. They could not talk to each other. There was no one there to help.

Then, it got worse. STAR-80 was low on fuel, and had no maps nor familiarity with Los Angeles County roads and freeways. It returned to Riverside County.

On they went, through Walnut, Hacienda Heights, and Industry, toward the I-605 junction with SR-60.

CHP Officer Marco DeGenarro heard the pursuit was approaching, and met it at the 605 junction, and moved into a position as primary as the pickup slowed and coasted to a stop close to the guardrail on the westbound 60, west of the 605, in South El Monte.

As the truck came to a stop, more than 20 illegal immigrants immediately jumped out the right side and back of the truck bed, vaulted the guardrail, and ran down the steep, loose dirt embankment, into a large, dense nursery. Officer DeGenarro leaped over the guardrail and chased them down the embankment.

There were at least four persons in the front seat. Their escape was slowed because the passenger door was pinned shut against the guardrail. Watson saw them climbing over one another to get out through the passenger window.

lay at Watson's feet. Watson struck him on the arms, yelling, "Manos aqui!" (hands here!) as he tapped his hand in the small of the suspect's back. Both were handcuffed and put in the cars.

Los Angeles Television channels 9 and 13 had news helicopters overhead, filming a "live feed" over hundreds of thousands of television sets throughout Southern California. The "caught-in-the-act beating" of these "unarmed, undocumented immigrants", aired repeatedly throughout the afternoon, replete with inflammatory commentary from persons without

a clue to what had precipitated the use of force, whipped up a firestorm of controversy within a couple of hours.

Before long, there were many people looking for Franklin's and Watson's heads. Watson was ordered to transfer custody of his prisoners to other deputies, and hightail-it back to Riverside station. Once there, he was ordered to write a report about what he had done. He was placed in a small, locked to the outside, office to complete his "detailed report". His Riverside Sheriff's Association attorney arrived to counsel him, and was admitted to the office where Watson was sweating his "report"—he knew he was in trouble. When he arrived in the Riverside station lot, a passing sergeant said, "I hope you've got an attorney, you're gonna need one!".

Shortly after his attorney arrived, she was ordered out of the office. He was told by a supervisor, "You don't have the right to talk to a lawyer until you have finished your report." The telephone in the office was removed. Watson produced his report. He was relieved of his gun, badge and identification and placed on administrative leave, never to return to duty.

He was terminated in 1997. A "joint criminal investigation" of the LASD and FBI, and protracted federal grand jury investigation failed to yield an indictment; however, his termination was affirmed by arbitrator Alexander "Buddy" Cohn in 1998.

From about April 3, 1996 forward, Watson was represented by LDF panel lawyers Michael P. Stone and Muna Busailah, and Riverside Sheriff's Association Senior Field Representative Darryl Drott.

At his appeal hearing, Watson's trainer, Investigator Greg Colyer, testified that Watson's use of the baton was as trained, in policy, and

"objectively reasonable".¹ Use of force expert, retired Sergeant Charlie Duke, LAPD, and reconstruction expert, retired LAPD Lieutenant Chuck Higbie also testified that Watson's use of force was reasonable under all the circumstances. Arbitrator Cohen was unmoved, preferring to "rely on the video".

Watson's treatment by Sheriff's officials resulted in a civil rights action filed in United States District Court, and an injunction barring use of the "report" in any proceedings arising out of the termination, including the arbitration. Federal Judge Robert Timlin ruled that tossing Watson's lawyer out of the office deprived Watson of due process under the 14th Amendment.²

Arbitrator Cohn's decision upholding Watson's firing resulted in a petition for writ of mandate in Riverside County Superior Court. Judge E. Michael Kaiser, after reviewing all of the evidence and testimony at the arbitration, overturned Watson's dismissal, finding that the decision constituted a manifest abuse of discretion.

Riverside County appealed the Superior Court ruling. Recently, after a full review of the entire case, including the videos, a three-justice panel of the Court of Appeal for the Fourth Appellate District affirmed the trial court decision, finding that under the policies of the Sheriff's Department, Watson could be

¹That testimony got Colyer administratively transferred from his position as the primary Department use of force trainer, to an investigative position, resulting in an LDF-sponsored First Amendment federal civil rights suit. *Colyer v. Smith*, (C.D. Cal. 1998) USDC No. EDCV 98-101 RT, filed by Michael P. Stone and Muna Busailah.

²*See: Watson v. County of Riverside* (C.D. Cal. 1997) 976 F. Supp. 951. Later, Judge Timlin awarded Watson \$ 153,988.41 in attorney's fees and costs.

suspended for no more than 80 hours for the finding of excessive force.³

The County has apparently decided that further appeals will be fruitless, and has agreed to reinstate Watson with backpay and interest for nearly six years, less earnings he made over that period.

Tracy Watson and Greg Colyer have asked to publicly acknowledge and thank PORAC-LDF, the Riverside Sheriff's Association Legal Defense Trust (LDT) and Mr. Darryl Drott for their steadfast support throughout Watson's administrative proceedings, his federal civil rights suit, and his superior court lawsuit, all of which ultimately had outcomes favorable to Tracy Watson, and Colyer's First Amendment retaliation lawsuit presently underway.

WHAT WE CAN LEARN FROM THIS CASE.

1. Especially in use of force cases, it is absolutely necessary to establish, at the evidentiary appeal hearing, the specifics of the training that the officer or deputy employed in the case. If possible, have the trainer testify that the officer or deputy (1) was trained to use the force he did; (2) applied the training properly in the context of the case; (3) used the force within the policies of the department; and (4) acted in an "objectively reasonable"⁴ manner in using force, consistent with the Fourth Amendment.

2. Expert testimony will be required since police use of force is beyond the common experience of lay jurors, judges, arbitrators, and hearing officers. Comprehensive force event and scene reconstruction are mostly necessary.

³See: *Watson v. County of Riverside*, 4th Civ. No. E027603 (2002).

⁴See: *Graham v. Connor*, 490 U.S. 386 (1989).

3. Making a good and complete record in the evidentiary hearing will, as it did in Watson's case, oftentimes reverse or mitigate a finding of excessive force, or forestall, again as it did in Watson's case, a grand jury indictment or criminal complaint.

4. If there is a real potential for criminal accusation and prosecution, as in the Watson case, the officer or deputy should invoke his or her right against self-incrimination and obtain a lawyer at once. If ordered to write a report or answer questions, be sure to document the assertion (invocation) of Fifth Amendment rights to silence and to counsel, and the order compelling the report or answers, in a side memo to the supervisor. Follow the procedures in Training Bulletin, Vol. II, Issue No. 4, "Consult With A Lawyer Before Writing A Police Report? In Some Cases You Should!", Michael P. Stone, P.C., Lawyers.

5. Favorable testimony for the accused by an agency member which results in punitive action, retaliatory transfer or other disadvantage or hardship, may constitute unconstitutional retaliation for protected speech under the First Amendment. If this happens, consult a knowledgeable lawyer at once.

6. For further information or assistance, contact Michael P. Stone, Esq. at mppspc@ix.netcom.com.

Stay safe!
-Michael P. Stone-