ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1;
POST Administrative Manual, Procedure D-13

Mandatory On-The-Job Training For Peace Officers Working Alone

(00-TC-19, 02-TC-06)

County of Los Angeles and Santa Monica Community College District, Claimants

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EXECUTIVE SUMMARY

Background

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13 establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties.

As indicated in the staff analysis, staff finds that POST's field training program is required only if the local agency or school district employer elects to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Conclusion

Staff concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- State law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts.
- State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis and deny this consolidated test claim.

STAFF ANALYSIS

Claimants

County of Los Angeles and Santa Monica Community College District

Chronology

06/29/01	County of Los Angeles files test claim, *Mandatory On-The-Job Training for Peace Officers Working Alone* (00-TC-19)
07/09/01	Test claim (00-TC-19) deemed complete
07/16/01	Commission on Peace Officer Standards and Training (POST) files comments on test claim (00-TC-19)
08/08/01	Department of Finance files comments on test claim (00-TC-19)
08/31/01	Claimant requests an extension of time to file rebuttal
09/04/01	Claimant's request for an extension of time is granted
10/23/01	Claimant files rebuttal to state agency comments
07/19/02	Request from SixTen and Associates to include school districts in test claim (00-TC-19)
09/13/02	Santa Monica Community College District files test claim, *Peace Officers Working Alone (K-14)* (02-TC-06)
09/19/02	Test claim (02-TC-06) deemed complete
10/21/02	POST files comments on test claim (02-TC-06)
10/22/02	Department of Finance files comments on test claim (02-TC-06)
05/12/04	Test claims, 00-TC-19 and 02-TC-06, are consolidated
06/03/04	Draft staff analysis on consolidated test claim is issued
06/18/04	County of Los Angeles files comments on draft staff analysis
06/21/04	Department of Finance requests an extension of time, until July 23, 2004, to file comments on the draft staff analysis
06/23/04	Santa Monica Community College District files comments on draft staff analysis

Background

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13, establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties. The claimants contend that the POST bulletin and manual constitute an executive order that requires reimbursement pursuant to article XIII B, section 6 of the California Constitution.

The POST bulletin, which was issued on January 9, 1998, states in pertinent part the following:

> Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission

Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.
- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.
- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing authority has obtained a waiver as provided in PAM section D-13 as described below.
- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.
- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999, and as soon as all POST program requirements are in place (e.g., agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.
- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)
4. Copy of the POST Field Training Guide 1997

Effective January 1, 1999, section 1005 of the POST regulations was amended to provide for the field training program.[1] As amended, section 1005, subdivision (a)(2), stated in relevant part that "[e]very regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM [POST Administrative Manual] section D-13."

On July 1, 2004, further amendments to POST's regulations and administrative manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." In addition, some of the required activities for the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual were placed in section 1004 of the POST regulations.[2]

The field training activities provided in the POST Administrative Manual and in POST regulations include the following:

- Any department that employs peace officers and/or Level I Reserve peace officers shall have a POST-approved field training program. Requests for approval of the program shall be submitted on form 2-229, signed by the department head.
- The field training program shall be delivered over a minimum of 10 weeks and based upon the structured learning content specified in the POST Administrative Manual section D-13 and the POST Field Training Program Guide.[3]
- The trainee shall have successfully completed the Regular Basic Course before participating in the field training program.
- The field training program shall have a training supervisor/administrator/coordinator that has been awarded or is eligible for the award of a POST Supervisory Certificate, and meets specified POST requirements, including completion of a POST-certified Field Training Supervisor/Administrator/Coordinator Course.
- The field training program shall have field training officers that meet specified POST requirements, including completion of a POST-certified Field Training Officer Course.

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[1] California Code of Regulations, title 11, section 1005.

[2] See exhibit I, Bates pages 481 et seq., for POST's notice of rulemaking. In addition, on July 1, 2004, the field training program content and course curricula was updated to include specific components of leadership, ethics, and community oriented policing.

[3] The POST Field Training Program Guide is attached as Exhibit I, Bates pages 374 et seq.

- A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer. A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.
- Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of daily evaluations and/or completing weekly written summaries of performance that are reviewed by the trainee.
- Each field training officer shall be evaluated by the trainee and supervisor/administrator at the end of the program.[4]

Claimants' Positions

Both claimants contend that POST Bulletin 98-1 and Administrative Manual Procedure D-13 constitute a reimbursable state-mandated program. The County of Los Angeles is requesting reimbursement for the following activities:

- One-time cost to design and develop a ten-week on-the-job training program, including course content and evaluation procedures to comply with the subject law.[5]
- One-time cost to meet and confer with training experts on curriculum development.[6]
- One-time cost to design training materials including, but not limited to, training videos and audio visual aids.[7]
- One-time cost to comply with POST application process for POST approval of county field training program.[8]
- Continuing cost for instructor time to prepare and teach ten-week training classes.[9]

  This includes the following instructor and administrator training:

  - 40-hour POST field training officer course in accordance with POST procedure, D-13-5;[10]

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[4] Exhibit A (Bates pp. 169-175) and Exhibit I (Bates p. 481), POST Administrative Manual, Procedure D-13, and section 1004 of the POST regulations, effective July 1, 2004.

[5] Declaration of Lieutenant Bruce Fogarty, Los Angeles County Sheriff's Department, dated June 21, 2001. Staff notes that the County of Los Angeles' field training program is 28 weeks of training. (See Exhibit A, Bates p. 194, for the County of Los Angeles Field Training Program Manual.)

[6] *Ibid.*

[7] *Ibid.*

[8] Exhibit A, Test Claim, Bates pages 113-115.

[9] Declaration of Lt. Bruce Fogarty.

- 24-hour POST field training administrator course, POST procedure D-13-6;[11] and
- 24- hour field training officer's update, POST procedure D-13-7.[12]

- Continuing cost for trainee time to attend the ten-week training class.[13]
- Continuing cost to review and evaluate trainees to ensure that each phase is successfully completed.[14]

Santa Monica Community College District requests reimbursement for the following activities:

- Develop and implement policies and procedures, with periodic updates.
- Develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates in the field training program.
- Pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of field training officers and law enforcement officers attending the training.
- Plan, develop and implement a field training program and submit an application for approval of the field training program.
- Apply for a waiver of the field training requirements when unable to comply due to either financial hardship or lack of availability of personnel who qualify as field training officers.[15]

Position of the Department of Finance

The Department of Finance filed comments on both test claims arguing that the test claim should be denied for the following reasons:

- Local law enforcement agency participation in POST programs is optional. Local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code sections 13522 and 13510. Therefore, any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
- Local agency participation in the training is optional because local entities can request a waiver exempting them from the training.[16]

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[10] Exhibit A, Test Claim, pages 116 and 121.

[11] *Id.* at page 122.

[12] *Ibid.*

[13] Declaration of Lt. Bruce Fogarty.

[14] *Ibid.*

[15] See declaration of Eileen Miller, Chief of Police of the Santa Monica Community College District, and declaration from Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District (Exhibit B).

[16] Exhibit C.

Position of POST

POST filed comments on the County of Los Angeles test claim as follows:

> The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program. This new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies. There was no statutory enactment by the Legislature compelling adoption of Field Training program regulations.
>
> Local entities, such as the County of Los Angeles, participate in the POST program on a voluntary basis. The County has passed an ordinance under the terms of which it agrees to abide by current and future employment and training standards enacted by the POST Commission.
>
> The Commission's regulations include a waiver provision for participating agencies unable to comply due to significant financial constraints.[17]

POST also filed comments on the Santa Monica Community College test claim, which further alleges that agencies choosing to participate in the POST program should budget annually for anticipated costs. POST also states that participants in the POST program are reimbursed for travel, per diem, and tuition associated with attendance at field training officer courses.[18]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[21] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[17] Exhibit D.

[18] *Ibid.*

[19] Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[20] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

[21] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

task.[22] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[23]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[24] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[25] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[26]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[27] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[28]

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[22] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at p. 754.)

[23] *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

[24] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[25] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[26] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[27] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[28] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280.

Issue I: Are the documents issued by POST, Bulletin 98-1 and POST Administrative Manual Procedure D-13, subject to article XIII B, section 6 of the California Constitution?

A. State law does not require school districts and community college districts to employ peace officers and, thus, the field training requirements do not impose a state mandate on school districts and community college districts.

Santa Monica Community College District contends that the documents issued by POST constitute executive orders that impose a mandate on school districts and community college districts to provide the required field training to their officers. Staff disagrees. For the reasons described below, staff finds that the documents issued by POST are not subject to article XIII B, section 6 of the California Constitution because they do not impose a mandate on school districts and community college districts. School districts and community college districts are not required by state law to employ peace officers.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[29] Although the Legislature is permitted to authorize school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[30] the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools. However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves. [31]

In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision of the California Constitution as declaring only a general right *without* specifying any rules for its enforcement.[32] The claimant argues that the Commission should ignore the portion of the court's ruling that the safe schools provision does not specify any rules because the *Leger* case is a tort case where the plaintiff was seeking monetary damages for the alleged negligent actions of the school district. The claimant further argues that the Commission should follow the *Leger* court's statements that "all branches of government are required to comply with constitutional directives," such as providing a safe school through police services.[33]

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[29] California Constitution, article IX, section 1.

[30] California Constitution, article IX, section 14.

[31] Article I, section 28, subdivision (c) of the California Constitution provides "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are *safe*, secure and peaceful." (Emphasis added.)

[32] *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455. (Exhibit K, Bates p. 643.)

[33] Exhibit K, Bates pages 598-601.

But, the claimant is mischaracterizing the court's holding. When interpreting the safe schools provision of the Constitution, the court was applying rules of constitutional interpretation. The court stated the following:

> The following rule has been consistently applied in California to determine whether a constitutional provision is self-executing in the sense of providing a specific method for its enforcement: " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and *it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.*'" [Citations omitted.] (Emphasis added.)[34]

The court further held that the safe schools provision of the Constitution is not self-executing because it does not lay down rules that are given the force of law.

> [H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, "it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." [Citation omitted.][35]

Furthermore, the court reviewed the ballot materials for the safe schools provision and found that the provision was intended to be implemented through reforms in criminal laws.[36] For example, the court noted in footnote 3 of the decision that the Legislature implemented the safe schools provision by establishing procedures in the Penal Code by which non-students can gain access to school grounds and providing punishments for violations. The Legislature also enacted the "Interagency School Safety Demonstration Act of 1985" to encourage school districts, county offices of education, and law enforcement to develop and implement interagency strategies, programs, and activities to improve school attendance and reduce the rates of school crime and vandalism.[37] But, as shown below, the Legislature has not implemented the safe schools provision by requiring school districts to employ peace officers.

Accordingly, the California Constitution does not require or mandate school districts, through the safe schools provision, to employ peace officers.

Finally, although the Legislature authorizes school districts and community college districts to employ peace officers, the Legislature does not require school districts and community college

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[34] *Leger v. Stockton Unified School District, supra,* 202 Cal.App.3d at page 1455.

[35] *Ibid.*

[36] *Id.* at page 1456.

[37] *Id.* at page 1456, footnote 3.

districts to employ peace officers. Pursuant to Education Code section 38000:[38]

> [t]he governing board of any school district may establish a security department ... or a police department ...[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. "The governing board of a community college district may establish a community college police department ... [and] may employ personnel as necessary to enforce the law on or near the campus. ... This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

In 2003, the California Supreme Court decided *Department of Finance v. Commission on State Mandates* and found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."[39] The court further stated, on page 731 of the decision, that:

> [*W]e reject claimants' assertion that they have been legally compelled to incur* notice and agenda *costs,* and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Pursuant to state law, school districts and community college districts are not required by the state to have a police department and employ peace officers. That decision is a local decision.[40] Thus, the field training duties imposed by the POST documents that follow

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[38] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[39] *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 743. (Emphasis added.)

[40] Santa Monica Community College District admits that the decision to have a police department and employ peace officers is a local decision. On page 25 of its comments to the draft staff analysis (Exhibit K, Bates p. 621), the claimant states the following:

> The people and the legislature has [sic] not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who [sic] have first hand knowledge of what is necessary for their respective communities. It is a local decision.

from the discretionary decision to employ peace officers do not impose a reimbursable state mandate.

In response to the draft staff analysis, Santa Monica Community College District contends that staff has misconstrued the *Department of Finance* case. The claimant alleges that the controlling authority on the subject of legal compulsion of a state statute is *City of Sacramento v. State of California*.[41, 42] The claimant, however, is mischaracterizing the Supreme Court's holding in *Department of Finance.*

In *Department of Finance*, the school districts argued that the definition of a state mandate should not be limited to circumstances of strict legal compulsion, but, instead, should be controlled by the court's broader definition of a federal mandate in the *City of Sacramento* case.[43] In *City of Sacramento*, the court analyzed the definition of a federal mandate and determined that because the financial consequences to the state and its residents for failing to participate in the federal plan were so onerous and punitive, and the consequences amounted to "certain and severe federal penalties" including "double taxation" and other "draconian" measures, the state was mandated by federal law to participate in the plan, even the federal legislation did not legally compel the participation.[44]

The Supreme Court in *Department of Finance*, however, found it "unnecessary to resolve whether [its] reasoning in *City of Sacramento* [citation omitted] applies with regard to the proper interpretation of the term 'state mandate' in section 6 of article XIII B."[45] Although the school districts argued that they had no true choice but to participate in the school site council programs, the court stated that, assuming for purposes of analysis only, the *City of Sacramento* case applies to the definition of a state mandate, the school districts did not face "certain and severe penalties" such as "double taxation" and other "draconian" consequences."[46]

Here, even assuming that the *City of Sacramento* case applies, there is no evidence in the law or in the record that school districts would face "certain and severe" penalties" such as "double taxation" or other "draconian" consequences if they don't employ peace officers.

Finally, the claimant argues that the staff analysis is arbitrary and unreasonable since it is not consistent with the Commission's prior decisions approving school district peace officer cases, such as the *Peace Officer Procedural Bill of Rights* (CSM 4499).[47] The claimant acknowledges the California Supreme Court's decision in *Weiss v. State Board of Education*, which held that the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process as long as the action is not arbitrary or unreasonable.[48] But, the claimant states that "staff has

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[41] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

[42] Exhibit K, Bates pages 626-630.

[43] *Department of Finance, supra*, 30 Cal.4th at pp. 749-751.

[44] *City of Sacramento, supra,* 50 Cal.3d at pages 73-76.

[45] *Id.* at page 751.

[46] *Id.* at pages 751-752.

[47] Exhibit K, Bates pages 623-626.

[48] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777.

offered no compelling reason ... why mandated activities of district peace officers were reimbursable in previous rulings and now activities of district peace officers are not reimbursable, other than what appears to be a whim or current fancy."[49]

As explained above, the compelling reason is the California Supreme Court's decision in *Department of Finance*, which affirmed the 1984 decision of *City of Merced*, and requires the Commission to determine whether the claimant's participation in the underlying program is voluntary or compelled. All of the previous Commission decisions cited by the claimant were decided before the Supreme Court issued the *Department of Finance* decision.[50]

Therefore, the POST documents are not subject to article XIII B, section 6 of the California Constitution with respect to school districts because they do not impose a mandate on school districts and community college districts.

B. State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Assuming for the sake of argument only that school districts are required to employ peace officers, staff finds that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a state-mandated program on either school districts or local agencies. Thus, the POST documents are not subject to article XIII B, section 6 of the California Constitution. As more fully described below, participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state. Furthermore, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants.

Participation in POST is voluntary

As described by POST in their comments to the test claims, the ten-week field training program was enacted by POST under their authority to set standards for employment and training of peace officers employed by agencies that participate in the POST program.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers ..." (Pen. Code, § 13510.) To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and to the training of peace officers. But, these rules apply only to those cities, counties, and school districts that participate in the POST program and receive state aid. Penal Code section 13510, subdivision (a), expressly states that "[t]hese rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter ..."[51]

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[49] Exhibit K, Bates page 626.

[50] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 was a case brought by the city seeking reimbursement for eminent domain statutes under the former Senate Bill 90, Revenue and Taxation Code, provisions. The claim was not brought pursuant to article XIII B, section 6 of the California Constitution.

[51] Penal Code section 13507, subdivision (e) and (f), defines "district" to include school districts and community college districts.

The state aid is provided in Penal Code section 13520, which states the following: "There is hereby created in the State Treasury a Peace Officers' Training Fund, which is hereby appropriated, without regard to fiscal years, exclusively for costs of administration and for grants to local governments and districts pursuant to this chapter."

Penal Code section 13552 further provides that any local agency or school district may apply for the state aid by filing an application with POST, accompanied by an ordinance or resolution from the governing body stating that the agency will adhere to the standards for recruitment and training established by POST. Penal Code section 13552 states the following:

> Any city, city and county, or district which desires to receive state aid pursuant to this chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an ordinance, or ... a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, or district will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

Penal Code section 13523 provides that "[i]n no event shall any allocation be made to any city, county, or district which is not adhering to the standards established by the commission as applicable to such city, county, or district."

In the *Department of Finance* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.[52] As the court stated,

> [T]he core point ... is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.][53]

Here, participation in the underlying POST program is voluntary. The plain language of Penal Code section 13522 authorizes the governing body of local agencies and school districts to decide whether to apply for state aid through POST. If the local entity decides to file an application, the entity must adopt an ordinance or regulation agreeing to abide by POST rules and regulations as a condition of applying for state aid. Not all local agencies and school districts have applied for POST membership.[54]

In response to the draft staff analysis, the County of Los Angeles filed documents from the websites of cities that are listed by POST as non-participating agencies. These documents show

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[52] *Department of Finance, supra*, 30 Cal.4th at page 731.

[53] *Department of Finance, supra*, 30 Cal.4th at page 742.

[54] See Exhibit I, Bates pages 469-480, for POST's list of law enforcement agencies, with several agencies, as of March 11, 2004, noted as not a POST participating agency.

that the nonparticipating cities contract their police services with agencies that do participate in the POST program.[55] But, the fact remains that there is no state statute, or other state law, that requires local agencies and school districts to participate in the POST program. The decision to participate is a local decision.

Thus, like the school districts in the *Department of Finance* case, local agencies and school districts here are free to decide whether to 1) continue to participate and receive POST funding, even though they must also incur program-related costs associated with the field training program, or 2) decline to participate in the POST program.[56] Therefore, local agencies and school districts are not mandated by the state to provide field training to their officers.

Finally, the field training program at issue in this case is not like other legislatively-mandated training programs imposed on law enforcement agencies, as asserted by the County of Los Angeles. The County argues that the Commission's analysis of this claim should be the same as its analysis and findings of state-mandated programs in *Sexual Harassment Training in the Law Enforcement Workplace* (CSM 97-TC-07, adopted September 28, 2000) and *Domestic Violence Training* (CSM 96-362-01, adopted February 26, 1998).[57] But, the test claims on the Sexual Harassment and Domestic Violence Training involved Penal Code statutes (Pen. Code, §§ 13519.7 and 13519) that required POST to develop the training courses and required local law enforcement agencies to provide the POST-developed training courses to their officers.[58] Here, the Legislature has not enacted a statute compelling POST to develop a field training course and has not compelled local agencies and school districts to provide a field training program for their officers. Thus, the same rationale does not apply. Instead, local agencies and school districts are not mandated by the state, as described above, to provide field training to their officers.

Accordingly, staff finds that participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state.

POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status

The claimants allege that the field training program for officers working alone is part of the basic training requirement imposed by the state on all officers to obtain peace officer status. Thus, the claimants argue that field training is not voluntary. Staff disagrees.

It is true, as argued by the claimants, that officers are required to complete a basic course of training prescribed by POST before they can exercise the powers of a peace officer, and must obtain the basic certificate issued by POST within 18 months of employment in order to continue to exercise the powers of a peace officer.[59] If the officer fails to complete the POST basic

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[55] Exhibit J.

[56] *Department of Finance, supra,* 30 Cal.4th at page 753.

[57] Exhibit A, County of Los Angeles test claim, Bates pages 149-151.

[58] The Commission ultimately denied the test claim on Domestic Violence Training because there was no evidence that the state mandated local agencies to incur increased costs mandated by the state. The Second District Court of Appeal upheld the Commission's decision. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.)

[59] Penal Code sections 832, 832.3, subdivision (a), and 832.4.

training or obtain the basic certificate, the officer may exercise only non-peace officer powers; for example, the officer may not exercise the powers of arrest, serve warrants, or carry a concealed weapon without a permit.[60] The basic training and certificate is mandated by statute, and applies to all officers, whether or not their employers are POST members.[61]

But, based on the plain language of Bulletin 98-1, POST Regulations, the POST Administrative Manual, and the comments filed by POST on these test claims, the field training program is not part of the legislatively-mandated basic training requirement imposed on all officers. Field training is required only if the local agency or school district employer has elected to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Page two of the POST Bulletin 98:1 expressly states that the "requirements for the POST regular Basic Certificate are *not* affected by the field training requirement." (Emphasis added.) Page two of the bulletin also describes those agencies affected by the new requirements as "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies *in the POST program*..." (Emphasis added.) Thus, agencies that decide not to participate in the POST program are not affected by the field training requirement.

In addition, section 1005, subdivision (a)(1), of the POST regulations, as amended in January 1999, provided that "[a]n officer as described in Penal Code section 832.2 (a) [a peace officer, first employed after January 1, 1975, that successfully completes the basic training course prescribed by POST] *is authorized to exercise peace officer powers while engaged in a field training program* ..." (Emphasis added.) Section 1005, subdivision (a)(2), further provided that "[e]very regular officer, *following completion of the Regular Basic Course* and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13." (Emphasis added.)[62] Thus, unlike the statutory requirement to successfully complete the basic training course before exercising the powers of a peace officer, an officer is not required to complete the field training program before he or she has the powers of a peace officer to make arrests, serve warrants, and carry a concealed weapon. Therefore, the field training program is not part of the basic training program.

Moreover, on July 1, 2004, further amendments to POST's regulations and the POST Administrative Manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." The plain language of section 1005, as amended, indicates that the field training program is not part of the basic training program. Section 1005, as amended, provides as follows:

(a) Minimum Entry-Level Training Standards (Required).

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[60] 80 Opinions of the California Attorney General 293, 297 (1997).

[61] 55 Opinions of the California Attorney General 373, 375 (1972).

[62] See also, POST Administrative Manual Procedure D-13-3.

(1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) ..., and 1005(a)(4) ..., *shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers.* Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5(below), *following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision,* shall complete a POST-approved Field Training Program as set forth in PAM section D-13. (Emphasis added.)

The statutory authority and reference listed for section 1005 of the POST regulations includes Penal Code section 832 and 832.3, the statutes that require the successful completion of a basic course of training prescribed by POST before a person can exercise the powers of a peace officer. [63]

In addition, the activities required to be performed by POST participating agencies under the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual was placed in section 1004 of the POST regulations on July 1, 2004. The statutory authority and reference for section 1004 of the POST regulations are Penal Code 13503, 13506, 13510, and 13510.5, the statutes that authorize POST to set standards for employment and training of peace officers employed by agencies that participate in POST.[64]

In addition to the plain language of the regulations and the POST Administrative Manual, the comments filed by POST on these test claims indicate that the field training program adopted by POST was meant only for POST participating agencies. POST states that the "new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers *employed by participating agencies*."[65] POST's interpretation of their regulations and Administrative Manual, is entitled to great weight and the courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.[66, 67]

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[63] See exhibit I, POST's notice of rulemaking; California Code of Regulations, title 11, sections 1004 and 1005 (eff. 7/1/04).

[64] *Ibid.*

[65] Exhibit D, emphasis added.

[66] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11. (Exhibit I, Bates p. 549.)

[67] In response to the draft staff analysis, Santa Monica Community College District contends that the *Yamaha* case supports the conclusion that POST's interpretation of its own regulations and rules is not entitled to deference by the Commission because POST's interpretation is a quasi-judicial interpretation of a statute. (Exhibit K, Bates pp. 634-635.) Staff disagrees. As indicated in the analysis, the state has *not* enacted a statute compelling POST to develop a field training

Accordingly, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants. Rather, the field training program is imposed only on POST participating agencies.

Conclusion

Staff concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- State law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts.
- State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis and deny this consolidated test claim.

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course. Thus, POST was not exercising a quasi-judicial function to interpret a state statute. Rather, POST's field training course was adopted as a quasi-legislative action and, thus, under *Yamaha,* POST's interpretation of its own regulations and rules is entitled to great weight. (*Yamaha, supra*, 19 Cal.4th at pp. 10-11.)

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EXHIBIT A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

June 25, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-The- Job Training for Peace Officers Working Alone

The County of Los Angeles submits and encloses herewith a test claim to obtain timely and complete reimbursement for the State-mandated local program, in the captioned law.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

For J. Tyler McCauley
Auditor-Controller

JTM:JN:LK-HY
Enclosures

County of Los Angeles Test Claim
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State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916)323-3562
CSM 1 (12/89)

TEST CLAIM FORM

For Official Use Only
RECEIVED JUN 29 2001 COMMISSION ON STATE MANDATES 10:15 am
Claim No. 00-TC-19

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person	**Telephone No.**
Leonard Kaye	(213) 974-8564

Address
500 West Temple Street, Room 603
Los Angeles, CA 90012

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of " costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	**Telephone No.**
J. Tyler McCauley Auditor-Controller	(213) 974-8301
Signature of Authorized Representative	**Date**
For J.T. McCauley	6/27/01

County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-The- Job Training for Peace Officers Working Alone

Notice of Filing

The County of Los Angeles filed the reference test claim on June 27, 2001 with the Commission on State Mandates of the State of California at the Commission's Office, 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-the- Job Training for Peace Officers Working Alone

Brief

The Commission on Peace Officer Standards and Training (POST) has mandated that the County of Los Angeles [County] Sheriff's Department and other local law enforcement agencies provide on-the-job [OJT] training as set forth in POST Bulletin 98-1. Such training is now necessary for peace officers to work in a solo capacity.

Before POST Bulletin: 98-1 was issued on January 9, 1998, OJT was not State mandated and the County could freely assign peace officers to work alone without providing the subject State-mandated training.

The County's OJT training program has required the County to dedicate trainee and trainer time, as well as provide associated training materials, for the sole purpose of complying with POST Bulletin 98-1.

The County's OJT training program meets, and exceeds, POST's minimum "field training program" requirement that it "... be delivered over a minimum of 10 weeks" as well as the requirement that it "be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics".

Accordingly, the County is required to provide OJT training as set forth herein and perform duties that are reasonably necessary in ensuring full compliance with the test claim law. In so doing, the County has incurred costs in excess of $200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Scope of POST Bulletin: 98-1

POST BULLETIN: 98-1, entitled "MANDATORY FIELD TRAINING PROGRAM", is attached as Exhibit C, was introduced as a mandatory program for certain peace officers, as noted on page 1:

"[The] Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies.

Significant changes in regulation include:

All regular officers, appointed after January 1, 1999 completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics.

Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing agency has obtained a waiver as provided in PAM section D-13 and as described below.

A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.

Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999 and as soon as all POST program requirements are in place (e.g. agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date."

Importance

The importance of POST's new State mandated OJT requirements, affecting all law enforcement agencies in the State, is underscored by Kathleen Connell, State Controller, as quoted in an article [attached as Exhibit D] in the Los Angeles Times, December 13, 2000, page B3. Ms. Connell states "I think it is fair to assume the vast majority of officers are doing their job ... [w]hat they are lacking is adequate supervision in the field and the kind of support system they need to be effective".

We agree. POST's new OJT requirement helps meet that need.

OJT Approval Requirements

On page 2 of Bulletin 98-1, those agencies affected by the new requirements are specified as "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST". These specified law enforcement agencies were required to review and comply with additional requirements set forth in attachments to Bulletin 98-1, listed on page 2, as follows:

"Description of the program approval process.

Copies of the Commission Regulations which are effective January 1, 1999.

Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97).

Copy of the POST Field Training Program Guide 1997."

Staff of police departments, sheriff's departments, school/campus police departments, and selected other agencies in the POST, were instructed on page 2 of the 98-1 Bulletin that specific questions "... about requirements or assistance in the preparation of field training program plans should be directed to POST Area Consultants in the Training Delivery and Compliance Bureau at (916) 227-4862. Application packages for program approval should be mailed to Commission on Peace Officer Standards and Training, Basic Training Bureau, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083.

OJT POST Approval Process

The County's State-mandated OJT program, like those for other law enforcement agencies specified above, had to undergo a POST application process and costs were unavoidably incurred in meeting the following requirements set forth on page 3 of POST Bulletin 98-1:

> "Agencies seeking approval must submit a completed Application for POST-Approved Field Training Program (POST 2-229) which is included. Signature of the agency head is required attesting to continued adherence to the field training program submitted for approval. Requests for approval of changes in previously approved programs shall be submitted in writing. An approved field training program WILL remain in place indefinitely unless there is a modification to the field training program by the agency. Once an agency field training program is modified in any way that impacts meeting POST's requirements, a new POST approval will be required for the modified program.
>
> Even though an agency may already have a POST-approved (after academy) field training program, it must reapply because the previous voluntary program has been replaced with the above described mandatory program with changed requirements.

The following requirements set forth on page 3 of POST Bulletin 98-1 specify the substantial detail that must be provided POST in order to obtain approval, including preparation of a "Field Training Program plan that shall minimally include:

> " (1) a description of the selection process for field training officers,
>
> (2) an outline of the training proposed for agency trainees,
>
> (3) a description of the evaluation process for trainees and field training officers, and
>
> (4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms. If an agency's field training guide contains this information, it shall be considered a Field Training Program plan.

POST Bulletin 98-1, also requires, on page 3, that "if an agency elects to use a locally developed field training guide, instead of the POST Field Training Program Guide, the guide must minimally include the following topics":

"Agency Orientation
Patrol Vehicle Operations
Officer Safety
Report Writing
California Codes
(Penal, W&I, Etc.)
Department Policies
Patrol Procedures (including
Pedestrian and Vehicle Stops)
Tactical Communication/
Management Resolution
Unlisted, Agency Specific Topics Traffic
(including DUI)
Use of Force
Search and Seizure
Radio Communications
Self Initiated Activity
Investigations/Evidence

Community Relations/
Professional Demeanor"

OJT Trainer Requirements

OJT requirements for trainers or "field training officers" are set forth on page 4 of POST Bulletin 98-1 as follows:

> "Field Training Officers must complete or have already completed a 40-hour POST Field Training Officer Course. Minimum curriculum requirements have been established for this course that impacts the 23 existing course presenters. Agencies that find these course presentations too distant, are invited to contact their POST Area Consultant to determine if this course can be presented more conveniently."

Minimum POST OJT Standards

Minimum POST standards for OJT training are set forth in POST's Procedure D-13, attached to POST Bulletin 98-1, included here in Exhibit C. On page 8, the POST notes that the purpose is to implement the "minimum standards/requirements for field training programs ...".

General types of requirements for OJT training are initially set forth in D 13-2 as follows:

> "Requirements for Field Training: The minimum content and approval requirements for field training programs are specified in section 13-3. The minimum content for collaborative courses is described in section 13-5, Field Training Officer Course; section 13-6, Field Training Administrator's Course; and section 13-7, Field Training Officer's Update Course. Requirements for certification and presentation of these collaborative courses are specified in Regulations 1051-1056. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course. "

OJT training approval requirements are set forth in D 13-3 as follows:

> "13-3. Field Training Program Description and Approval Requirements: Regulations 1005(a)(1) and (a)(2) specify the basic training requirements for regular officers as successful completion of the Regular Basic Course and a Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of law enforcement services. Field Training programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course.
>
> This field training does not extend to persons serving in ride-along, observer capacities.
>
> Any agency which employs regular officers shall seek approval of their Field Training Program by submitting a field training program plan along with an Application For POST Approved Field Training Program, POST 2-229 (Rev. 12/97). An approved Field Training Program remains in force until modified, at which time a new approval is required. Prior to the submission of an application, a comparison should be made of the agency's present policies and practices versus POST's minimum standards/requirements for an approved Field Training Program. Where needed, the agency shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application is received. If an agency's Field Training Program is disapproved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

POST specifies the content of a "Field Training Program plan" submission,

on page 9, and requires that it "shall minimally include":

> "(1) a description of the selection process for field training officers, and
>
> (2) an outline of the training proposed for agency trainees, and
>
> (3) a description of the evaluation process for trainees and field training officers, and
>
> (4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms)."

The law enforcement agency must, as a condition of approval for their OJT program, attest to meeting POST form 229 requirements, as stated on page 9 of POST Bulletin 98-1:

> "(1) The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which shall minimally include the following topics:
>
> Agency Orientation
> Patrol Vehicle Operations
> Officer Safety
> Report Writing
> California Codes and Law
> Department Policies
> Patrol Procedures (including
> Pedestrian and Vehicle
> Stops)
> Control of Persons,
> Prisoners, and
> Mentally Ill
> Tactical Communication/

Management Resolution
Unlisted, Agency Specific
Topics Traffic (including DUI)
Use of Force
Search and Seizure
Radio Communications
Self Initiated Activity
Investigations / Evidence
Community Relations /
Professional Demeanor

(2) The field training program's emphasis shall be on both training and evaluation of trainees.

(3) A trainee shall have satisfactorily completed the Regular Basic Course before participating in the Field Training Program.

(4) The field training program shall have a field training administrator/supervisor who: has been awarded or is eligible for the award of a POST Supervisory Certificate or has been selected based on the agency head's (or his/her designate's) nomination or appointment. Recommended training is the Field Training Officer Course and/or Field Training Administrator's Course.

(5) Trainees shall be supervised depending upon their assignment:

(A) A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

(B) A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/ dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.

(6) Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of the daily evaluations and/or by completing weekly written summaries of performance that are reviewed with the trainee.

(7) A field training officer shall have: (1) been awarded a POST Basic Certificate; (2) successfully completed the POST-certified Field Training Officer Course; (3) one year patrol experience; (4) a supervisor's recommendation based upon the officer's desire to be a field training officer and their ability to be a positive role model; and (5) been selected based upon an agency specific selection process.

(8) Each field training officer shall be evaluated by the trainee and a field training administrator/supervisor. The trainee shall complete and submit a confidential evaluation to a field training administrator at the end of the field training program. A field training administrator/supervisor shall provide a detailed evaluation to each field training officer on his or her performance as a field training officer.

(9) Documentation of trainee performance shall be maintained by the agency. The field training officer's attestation of each trainee's successful completion of the field training program and a statement that releases the trainee from the program, along with the signed concurrence of the agency/department head or his/her designate, shall be retained in agency records. Retention length shall be based upon agency record policies.

In addition to the initial approval process, agency head signature is required "attesting to continued adherence to the field training program which is

submitted for approval ... [such as] approval of changes in previously approved programs ... "

OJT Field Officer Training

In addition, POST Procedure 13-5 requires Field Training Officer's Course to include the following topics:

"Introduction/Orientation
Standardized Curricula & Performance Objectives
Field Training Program History & the Need for Standardization
Field Training Program Management
Legal Issues for the FTO
Key Elements of a Successful Field Training Program
The Professional Relationship Between the Field Training Officer and the Trainee
Cultural Diversity in Field Training Programs
Override/Intervention/Remediation Methodologies & Strategies
Adult Learning Theory
Officer Safety in the Field
Field Training Program Goals and Objectives
Supervisory Skills for the FTO
Ethics
Scenario Facilitation & Grading
Role Modeling
Teaching Skills Demonstration
Expectations of/for Field Training Officers
Review of Regular Basic Course Training
Competency Expectations / Evaluations / Documentation"

OJT Field Training Administrator

A Field Training Administrator's Course is required in POST's Procedure Section 13-6 to administer the OJT program as follows:

> "Presentation of a Field Training Administrator's Course requires POST certification (refer to Regulations 1051-1056). The Field Training Administrator's Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Administrator's Course shall minimally include the following topics:

Field Training Program Management
Review of Regular Basic Course Training
Adult Learning
POST Field Training Program & Objectives
Oversight of Tests/Scenarios
Development & Update System for Field Training Manual
Documentation & EvaluationsAgency Responsibilities
Review of FTO Course Training
History of Field Training Programs
Competency Evaluation
Supervisory Procedures
FTO Selection Process
FTO Training & Certification
Conduct of FTO's, Trainees, & FTO Administrators

OJT Field Training Officer's Update

POST Procedure 13-7 requires an OJT Field Training Officer's Update Course as follows:

> "Presentation of a Field Training Officer's Update Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Update Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Officer Update Course Curriculum shall minimally include the following topics:
>
> Review of Academy Training
> Legal Update
> Adult Learning Theory Update
> Scenario Facilitation & EvaluationRemediation
> Methodologies
> & Strategies
> Skill Building Training
> Ethics
> Teaching Skills
> Update/Demonstration"

The County's POST Bulletin 98-1 OJT Program

The County's POST Bulletin 98-1 OJT Program is described in the declaration of Bruce Fogarty, a Lieutenant with the Los Angles County Sheriff's Department, at Exhibit A. Lieutenant Fogarty is responsible for implementing a mandatory POST approved Field Training Program for County's Peace officers pursuant to the subject law.

POST Bulletin 98-1, [attached as Exhibit C], issued on January 9, 1998, requires On-The-Job [OJT] training for "[a]ll regular officers, appointed after January 1, 1999, prior to working alone in general law enforcement patrol assignments".

Before POST Bulletin: 98-1 was issued, OJT training was not required and the County could assign peace officers to work alone without such training.

According to Lieutenant Fogarty, the ability to assign peace officers to work alone is a necessity.

As required by POST, the County's OJT trainees are under "the direct and immediate supervision (physical presence) of a qualified field training officer".

The County's OJT training program meets, and exceeds, "the field training program" requirement that it "... be delivered over a minimum of 10 weeks" as well as the requirement that it "be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics".

The County's OJT training program has required the County to dedicate trainee and trainer time, as well as provide associated training materials, for the training set forth in County's OJT manual, excerpted and attached as Exhibit D.

The trainee, trainer, evaluation and administrative duties set forth in County's OJT manual are reasonably necessary in meeting POST's OJT requirements and cost the County of Los Angeles in excess of $200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

It should be noted that the County's OJT program represents a particular approach in meeting POST's OJT requirements, other jurisdictions may have other approaches.

Types of reimbursable costs described in Lieutenant Fogarty's declaration are illustrative of the types of costs claimed herein. Such costs include:

<u>One-time-Cost</u>

> The design and development of a 10 week on the job training program pursuant to POST Bulletin 98-1, including course content, evaluation procedures to comply with the subject law.

Meet and confer with training experts on curriculum development.

Design training materials including, but not limited to training videos and audio visual aids.

Continuing Cost

Instructor time to prepare and teach 10 week training classes on POST Bulletin 98-1.

Trainee time to attend the 10 week training class.

Review and evaluation of OJT trainees to ensure that each phase is successfully completed.

In addition, other types of costs claimed herein include costs to implement the required OJT field training officer school.

OJT requirements for trainers or "field training officers" are set forth on page 4 of POST Bulletin 98-1 as follows:

> "Field Training Officers must complete or have already completed a 40-hour POST Field Training Officer Course. Minimum curriculum requirements have been established for this course that impacts the 23 existing course presenters. Agencies that find these course presentations too distant, are invited to contact their POST Area Consultant to determine if this course can be presented more conveniently."

The County's 40-hour POST Field Training Officer Course, specified above, is taught on a regular basis. The schedule of a December 4-8, 2000 session is provided on the following page.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
FIELD OPERATIONS TRAINING UNIT
FIELD TRAINING OFFICER SCHOOL

Coordinator: Dep. Rock Wagner

Room: F - 104 Phone: 562-946-7861

Monday 12/04/00	Tuesday 12/05/00	Wednesday 12/06/00	Thursday 12/07/00	Friday 12/08/00
0700-0800 Introduction/Orientation Dep. Tino Calderon	**0700-0900** Adult Learning Dep. Brian Muller	**0700-0900** Situational Planning. Sgt. Paul Pietrantoni	**0700-0900** FTO Role/Expectation Leadership Sgt Jeff Adams	**0700-0900** Legal/Liability Issues Police Misconduct Lt. Ross Rudin
0800-1100 FTP Goals & Objectives Elements FTP Managment Dep. Rock Wagner	**0900-1100** Adult Learning Dep. Brian Muller	**0900-1100** FTO Role/Expectation Trainee Stress Dr. Mike Yachnik	**0900-1100** FTO Role/Expectation Leadership Sgt Jeff Adams	**0900-1100** Legal/Liability Issues Police Misconduct Lt. Ross Rudin
Lunch 1100-1200	Lunch 1100-1200	Lunch 1100-1200	Lunch 1100-1200	Lunch 1100-1200
1200-1400 Documentation and Evaluation Dep. Mike Mangen	**1200-1400** Teacher/Training Techniques Dep. Brian Muller	**1200-1400** Override/Intervention Dep Tino Calderon	**1200-1300** Domestic Violence Dep. Ruth Sauls **1300-1400** Force Policy Review Sgt. Rich Fortelny	**1200-1400** FTO Role/Expectation D/E Learning Activity Dep. Rock Wagner
1400-1600 Documentation and Evaluation Dep. Mike Mangen	**1400-1600** Teacher/Training Techniques Dep. Brian Muller	**1400-1600** Remediation Methods Dep Mike Mangen	**1400-1500** FTO Role/Expectation Dep Rock Wagner **1500-1600** Required TSD Dep. Rock Wagner	**1400-1500** FTO Role//Expectation Chief William T Sams **1500-1600** Exam Dep. Rock Wagner

County's OJT Manual

The County's OJT manual, used by the County's OJT field training officers, in meeting POST's 98-1 OJT requirements is excerpted and attached in Exhibit C. This manual covers the following topics, as noted on the "Table of Contents" page:

Section A. MANAGEMENT OF THE FIELD TRAINING PROGRAM

- Training Responsibilities of the Field Training Program

Section B. INTRODUCTION TO PHASE TRAINING

- Introduction
- Overview of Phase Training

Section C. PHASE TRAINING EVALUATION AND RATING

- Evaluation and Rating
- Overview: Section and Standard Checklists
- Overview: Daily Observation Reports
- End of Phase Evaluation

Section D. PHASE TRAINING REMEDIAL PROGRAM

- Trainees with Performance and/or Learning Deficiencies

Section E. APPENDIX

1. Field Operations Directive 93-4, Field Training Officer School...Mandatory Requirements
2. Field Operations Directive 91-3, Training Officer/Trainee Standards of Conduct
3. Field Training Officer Guidelines
4. Field Operations Directive 95-2, Supervision of Field Training Officers--First Six Month Training Experience
5. Daily Observation Report
6. End of Phase Evaluation
7. End of Field Training Program Evaluation
8. Field Operations Trainee Informational Handout

PHASES I through VI

- Checklists
- Tests and Exams

Purpose

The purpose of the County's OJT program generally, and specifically, in meeting POST's OJT requirements, is set forth on page v of the County's manual as follows:

The purpose of the Los Angeles County Sheriff's Department's Field Training Program is to assist Department training managers, supervisors, and Field Training Officers (FTOs) in the initial orientation and field training of deputies newly assigned to the Field Operations Regions. The goal of the Field Training Program is to produce a competently trained deputy sheriff who is capable of performing the requisite duties in a "solo"capacity. The Field Training Program is a systematic and progressive approach to the successful transition from the Custody and Court Services Divisions while learning the skills and knowledge necessary to function in the patrol environment.

Recently, The Commission on Peace Officer Standards and Training (POST) adopted new regulations which require that all peace officers participate in a mandatory, POST approved Field Training Program. We, as a Department, far exceeded the new Field Training Program guidelines, but were impacted, however, in that the new regulations require "Daily Observation Reports"(DORs), i.e., daily evaluations. To improve upon our existing program and maintain compliance with the POST mandates, our program was redesigned to a "Phase Training Program," which incorporates the daily observation reports. Each "phase" will essentially be one month, as was our former program. Within each phase, specific skills and knowledge concepts have been identified in which the trainee must show competence.

Field Training Officers and station training managers should not be unduly alarmed at the concept of daily evaluations, as the new Field Training Program was designed to be extremely user friendly. Field Training Officers will be required to complete a DOR, to be initialed by a shift field sergeant or shift training sergeant, then turned in weekly to the station training sergeant/supervisor. Specified learning areas within the phase are listed on the DOR, and need only be addressed by a quick rating scale. Any comments, positive or negative, will be recorded each day instead of being recounted monthly, as was the former program. It will prove to be much easier to document the daily training incidents instead of trying to recall them at the end of each month. As a result, the End of Phase Evaluation is less repetitive and condensed.

A significant component of the new program is to identify learning/performance deficiencies early and to begin immediate informal remediation. For example, an area in which a trainee is not competent may be documented and carried into the next phase. Concerted effort will be given to immediately remediate trainees. Once the training deficiency has been rectified, the trainee may continue the FTP. If, after being extended to a second phase and the deficiency isn't corrected, a formal remedial program will begin. The key to the program will be early identification and documentation of training deficiencies.

In summary, the major changes for the Field Training Officer will be:

- Phase training with identified learning goals
- Daily evaluations
- Immediate informal remediation
- Early formal remedial programs

The Los Angeles County Sheriff's Department is proud to present its new Field Training Program Manual. Its introduction reinforces the Department's commitment to developing and training professional law enforcement officers and ensuring our place as a world leader in law enforcement.

Management of County's OJT Program

The management of the County's OJT program is described on pages A-1 through A-6 in the County's OJT manual as follows:

MANAGEMENT OF THE FIELD TRAINING PROGRAM

The purpose of the Field Training Program (FTP) is to create a standardized program throughout the Department in patrol orientation, field training and trainee performance evaluation. Deputies newly assigned to patrol often experience difficulty in making the transition from what they learned in the academy and time spent in the custody and/or court services environments, to performing general law enforcement patrol duties competently.

The development of the FTP curriculum was based in part on the POST Field Training Program Guide, but more importantly, from input received directly from field personnel. The FTP is a systematic process by which a patrol trainee may make a successful transition into the patrol environment and become a competent "solo" patrol deputy. For the purposes of this Field Training Manual, a competent field deputy is defined as follows:

A competent field deputy is one who demonstrates professional behavior, skills, and knowledge consistent with the Department's Mission, Standards, and Core Values. One who can perform safely and effectively in a solo capacity, making sound decisions without immediate or direct supervision.

The Field Training Program is designed to achieve the following goals:

To provide standardized training to all newly assigned patrol deputies in the practical application of required information, skills, and knowledge.

To provide clear standards for rating and evaluation which gives all trainees every reasonable opportunity to succeed.

To enhance the professionalism, job skills and ethical standards of the Los Angeles County Sheriff's Department Members.

To produce a competent patrol deputy, capable of working a one person car assignment in a safe, skillful, productive and professional manner.

It is the intention of the FTO Unit that the following guide will assist field operations training staffs and especially the FTOs and trainees in achieving the goals of the FTP.

MANAGEMENT OF THE FIELD TRAINING PROGRAM

The purpose of the Field Training Program (FTP) is to create a standardized program throughout the Department in patrol orientation, field training and trainee performance evaluation. Deputies newly assigned to patrol often experience difficulty in making the transition from what they learned in the academy and time spent in the custody and/or court services environments, to performing general law enforcement patrol duties competently.

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It is the intention of the FTO Unit that the following guide will assist field operations training staffs and especially the FTOs and trainees in achieving the goals of the FTP.

TRAINING RESPONSIBILITIES

Effective field training is a crucial component in the proper development of deputy personnel and can provide major benefits in employee effectiveness, service delivery quality, and future civil litigation. Therefore, the Chiefs of the Field Operations Regions and their command staffs are committed to the maintenance of all components of the FTP, ensuring the important task of properly developing patrol deputy personnel remains a Department priority. The Chiefs of the Field Operations Regions, in conjunction with the Field Training Officer Unit of the Advanced Training Bureau, will develop, implement, and maintain Department policy to enhance the effectiveness of all facets of the FTP.

The Field Training Officer Unit has the overall responsibility for the development, inspection, and maintenance of the Field Training Program.

Station Captains

To establish and maintain an effective training program within the Field Operations Regions, captains of each of the stations have the ultimate responsibility to ensure that their station's program is in compliance with the guidelines established by the FTP Manual. Flexibility remains, however, for the station commanders to tailor or adapt the FTP Manual to fulfill the unique requirements of their patrol area or service clientele, along as the FTO Unit is notified of any variances in the FTP.

Station captains shall ensure all FTO selections are made in accordance with established Department policy, emphasizing to those selected the importance of teaching skills and being a mentor/role model. Each selection must be properly documented in a confidential administrative file and maintained in conformity with Department policy.

Prior to assigning a trainee to a newly appointed FTO, station captains shall ensure that FTOs have attended FTO school, in accordance with Field Operations Directive 93-4, FTO School...Mandatory Requirements (**Appendix One**). Attendance to the FTO School is a prerequisite to performing FTO duties.

Captains must be committed to the program to such an extent that necessary time and resources are made available to ensure the program's success. The station captains commitment must extend through the ranks to include the lieutenants, sergeants, civilian supervisors and Field Training Officers of the station. Station captains are accountable for the detection and elimination of hazing and/or personal behavior which is inconsistent with the objectives of the Department's Field Training Program.

Station captains shall ensure all current FTOs have read Field Operations Directive 93-3, Standards of Conduct (**Appendix Two**) and the Field Training Officer Guidelines (**Appendix Three**), and that each has signed an acknowledgment of receipt which is filed and accessible. The FTO Guideline establishes that FTO candidates have been advised of Department expectations during the field training process, including the treatment of others, and that they have accepted the role of trainer consistent with those expectations. The FTO's signature, acknowledging receipt of the FTO Guidelines, shall be considered a prerequisite to performing field training duties.

Captains shall ensure the FTP is administered in a manner which is in compliance with the overtime provisions of the current Deputy Sheriff Memorandum of Understanding.

Captains shall review all current and past FTOs to identify those who most accurately reflect the Department's model of an ideal training officer. Those FTOs identified will be assigned as mentors to newly appointed FTOs. Participation as a mentor is voluntary. (Refer to Field Operations Directive 95-2, **Appendix Four.**)

Captains are responsible for maintaining a cadre of qualified FTOs, commensurate with the Department's identified training capacity at each station. This, in effect, means that station captains shall not deplete their FTO resources without appropriate replacement.

Critical to the Department's commitment to the FTP is the disqualification of FTO applicants and the de-selection of FTOs who fail to meet or maintain Department standards.

Station Training Lieutenant

Whenever possible, lieutenants should be given the full-time responsibility for training. A significant part of the training lieutenant's overall training responsibility will be the FTP.

The lieutenant's role in the training program is one of direction. They are responsible for the program's overall effectiveness. The responsibilities of the position include, but are not limited to:

Select qualified and enthusiastic training staff, both sworn and civilian
Act as a liaison between training and scheduling to ensure trainees are paired with compatible training officers and are assigned to the appropriate shift and patrol area to maximize learning
Participate in the selection of FTOs as required by Department Bonus Selection procedures and Field Training Officer Unit guidelines
Monitor each trainee's progress by ensuring Daily Observation Reports and other documentation are received and reviewed in a timely manner
Monitors all newly appointed FTOs during their first six months by reviewing the training sergeant's monthly written assessments and other documentation (Refer to Field Operations Directive 95-2, **Appendix Four.**)
Brief/reaffirm to Training Sergeants/Administrators and training officers the Department's Mission Statement and the objectives of the Field Training Program
Involve themselves with the Training Sergeants/Administrators and training officers regarding problem trainees, the FTP-Remedial Program, documentation, performance evaluations, and final responsibility for release from the remedial program
Formal review and recommendation to the station captain for release of trainees from training status
Monitor the conduct of training sergeants and training officers to develop and maintain an atmosphere for learning
Establish schedules for performance tests
Ensure trainees are under the direct and immediate supervision (physical presence) of a qualified FTO while engaged in the FTP

Training Sergeant/Administrator

A sergeant, whenever possible, should be given full-time responsibility for training. The training sergeant is considered the station's Field Training Manager/Administrator, for the purposes of POST Field Training Program certification. In the absence of a designated station training sergeant, civilian personnel may also be designated as the Field Training Manager/Administrator, after receiving appropriate POST required training. The station training sergeant is responsible for the maintenance of training records and is the one person who has the most personal contact with all participants; lieutenant, training officer and trainee. For this reason, the sergeant is the key component in the feedback process.

The Training Sergeant/Administrator primary responsibility is to focus their energies on station level training, offer recommendations for change, and act as a liason between the lieutenant, the training officer, and trainee. Some of the Training Sergeant/Administrator responsibilities may include:

Provide input regarding the selection of Field Training Officers
Station orientation of trainees
Determine the pairing of FTO to trainee, based on various factors such as trainee needs versus FTO tenure, special training or abilities, etc.*
Ensure that the FTO reads and signs the Field Training Officer Guidelines, once every six months when assigned a trainee
Review and sign Daily Observation Reports **(Appendix Five)** in a timely manner
Review and sign End of Phase Evaluations **(Appendix Six)** in a timely manner
Maintenance of trainee records
Maintenance of newly appointed FTO training folders*
Training and development of training officers
Administration of FTO Mentor program*
Monitor each trainee's progress with the training officer and when necessary, design a specific course of instruction for the FTP-Remedial designated trainee
Ride with trainees who are experiencing problems during the training program (refer to Section D,"Trainees with Performance and/or Learning Difficulties" for a complete description of responsibilities)
Prepare assessments for newly appointed FTOs*
Write all formal trainee performance evaluations, be they routine "Completion of Patrol Deputy Training Program" evaluations or "Improvement needed or Unsatisfactory", as a result of deficient performance in the FTP
Conduct counseling sessions
Provide functional supervision over both Field Training Officer and trainee
Ensure FTOs and trainees read and sign FOD 91-3, FTO/Trainee Standards of Conduct **(Appendix Two)**
Provide trainees with Field Operations Regions Trainee Informational Handout **(Appendix Eight)** and ensure the trainee reads and signs it
Make recommendation to training lieutenant for trainee's release from trainee status
Administer Final Examination
Administer End of FTP Trainee Evaluation **(Refer to Appendix Seven)**

*For further information regarding the FTO Mentor Program and Supervision Program, refer to Field Operations Directive 95-2, **Appendix Four**.*

Field/Patrol Sergeant's Responsibility

- Monitors daily progress of FTO and trainee
- Review and initial Daily Observation Reports on a daily basis
- Monitor FTO's performance /demeanor
- Be cognizant of any potential for hazing or hostile work environment associated with the FTP
- Complete newly appointed FTO questionnaire, FOD 95-2

Field Training Officer

FTOs are the critical link in imparting the requisite skills that will enable trainees to successfully complete the training program. FTOs are responsible for training, supervising, guiding and evaluating deputies newly assigned to field operations. They must display strong ethics and the highest possible degree of personal and professional integrity. They must be positive, supportive, and teach by example all requisite skills necessary to enable trainees to successfully complete the Field Training Program as qualified field deputies. FTOs must be dedicated to the training mission and support the Department's Core Values, Mission Statement, and the Law Enforcement Code of Ethics.

FTOs are teachers who will help trainees through this challenging field training. FTOs must be their trainee's supervisor, evaluator, instructor and partner. They must develop and accept only the highest standard of performance possible from the trainee. Following in the FTO's example, trainees must demonstrate discipline, patience, understanding and leadership in field situations.

The training program, although difficult and demanding, shall not include harassment or behavior designed to belittle or humiliate the trainee. The program's purpose is to develop well trained, highly motivated deputies who have a realistic concept of the job and display initiative. Hazing, harassment, and humiliation do not provide an environment which is conducive to learning; it only produces a deputy who endures the negative aspects of this type of training. Trainees may fail to learn as much as they should if they are reluctant to ask questions out of fear of humiliation. Trainees may also conceal correctable weaknesses if the relationship does not allow for open lines of communication.

An informational handout, entitled Field Training Officer Guidelines, has been developed for FTOs which conveys the Department's expectations of FTOs. This handout shall be read and signed by all FTOs and maintained in their unit level personnel file. **(Refer to Field Training Officer Guidelines, Appendix Three)**

FTOs must be selected from the most experienced, competent deputies at each station. The following qualities set training officers apart from the others:

- Appearance
- Commitment to the Department's Core Values
- Communications
- Initiative/ Field Performance
- Integrity
- Patience
- Training Desire and Ability
- Relations with the Community, Peers, and Superiors

The duties of the FTO include:

- Provide an example for trainees to emulate
- **Carefully and patiently** following the timetable of progress, instructing trainees in the rudiments of police practices, procedures, and positive behavior
- Give feedback on trainee's performance
- Evaluate trainee's progress. An objective, honest critique shall be submitted by the Field Training Officer to the training sergeant weekly, via the DOR.
- Completion of Daily Observation Reports
- End of Phase Evaluation
- Administers tests and exams
- Completion of phase Section & Standard checklists

Trainee

The Field Training Program is designed specifically to help trainees achieve success in Field Operations. The program provides an opportunity to succeed, however, success is not guaranteed. It is incumbent upon trainees to capitalize on the opportunity to be successful. Therefore, trainees must:

- Maintain a positive and receptive attitude toward participation in the FTP
- Accept constructive criticism of field performance, as referenced in DORs and End of Phase Evaluations
- Provide honest, constructive feedback regarding the FTP
- Achieve an acceptable score on all tests, exams, and final the examination
- Attain a rating of "competent" on the Section and Standard checklists
- Complete other assignments and tests as deemed necessary by the Training Sergeant and/or Administrator and FTO.
- Complete End of Field Training Program Evaluation

An informational handout, entitled Field Operations Trainee Informational Handout (**Appendix Two**) has been developed for deputies newly assigned to Field Operations Region assignments. This handout provides helpful hints and lists the expectations of the Department's executives to ensure success in the FTP. All deputy personnel entering the FTP will be given this information handout during their station orientation meeting. Trainees shall sign the Trainee Information Handout after reading it. The handout shall be maintained in the trainee's training folder.

Evaluation of the Program

Training is dynamic. As conditions change, training must change to reflect current needs. The FTO Unit will provide any necessary FTP assistance to the patrol stations depending upon their needs. Therefore, the following shall be the minimum requirements for evaluating a station's FTP:

- Twice per year, the training lieutenant, Training Sergeant/Administrators and FTOs of each station shall meet to discuss improving the program with respect to Department policy changes, validity of test questions, evaluation, and rating systems, etc. and report any changes recommendations and/or concerns regarding the FTP to FTO Unit.
- Twice per year, the training lieutenant and Training Sergeant/Administrator shall meet to discuss the management, operation, and revision of the program and report any changes recommendations and/or concerns regarding the FTP to FTO Unit.

Phase Training

The County's OJT program is conducted in phases, over a 27 week period, as described in the County's OJT manual, on pages B-4 through B-5 and "Phase" Table of Contents' pages:

ORIENTATION PHASE: Weeks 1 through 4

Trainees will attend patrol school during weeks one through three. During this Orientation Phase, trainees will be taught the fundamentals of patrol and will be tested and evaluated by patrol school instructors alongwith FTOs monitoring patrol school. In addition, trainees will be responsible for completing a "Patrol School Subject List" while at patrol school. This Subject List will contain categories of topics learned, dates completed and patrol school monitor's initials. Upon completion of patrol school, trainees will submit this Subject List to their station training staff, who will place it in the trainee's file.

Also, upon arrival at their new assignment, trainees will submit a memo to their FTO explaining how they have prepared for patrol. This will include any participation in "Ride Alongs," patrol related training, reports written, etc. This memo shall be retained in the trainee's file in the training office.

This phase also includes "Station Orientation" which usually occurs one day during the first week at their new station assignment. This first week at their new station assignment will be the fourth week of this Orientation Phase and trainees will not be evaluated on the DOR, but the checklists will be utilized. During this week, trainees will observe their FTO's actions, and/or participate at their FTO's discretion, as well as assist the FTO with paperwork and any other tasks deemed necessary. Expectations and objectives FTOs may have of trainees for the period of time they will work together should be clearly stated during this first week.

PHASE I: Weeks 5 through 8

This phase is a learning and acclamation phase, encompassing the simplest and/or the most frequently encountered procedures and officer safety considerations. The FTO's position is that of teacher, mentor and supervisor. FTOs will begin the process of daily evaluation by using the DOR form during this and all phases. FTOs and trainees will document any calls, reports, observations, training, etc., which occur during this and the subsequent phases by utilizing the Section and Standard checklists. FTOs shall prepare the End of Phase Evaluation at the end of this and all phases. Upon completion of the Phase I Test, checklist, End of Phase Evaluation and DORs, FTOs shall submit these, along with the Phase I Summary form to the Training Sergeant/Administrator within 10 days after the end of this and all other phases.

PHASE II : Weeks 9 through 12
PHASE III : Weeks 13 through 16
PHASE IV : Weeks 17 through 20

Trainees will continue their formal and practical training during this time. During Phases II through IV, trainees will be expected to increase their participation in the daily workload during their assignment with their FTO. Trainees will be involved in or exposed to most areas of knowledge and activity within these three phases of training. Trainees will be responsible for reaching a level of competency noted in the Section and Standard checklists identified in each phase, while exposed to additional areas of training. FTOs will provide continuous evaluation of their trainee's performance during this and all phases by using the DOR, Section and Standard checklists, Tests/Exams and the End of Phase Evaluations.

Also, during these phases, trainees may be placed with another FTO and/or moved to different shifts to give them exposure to different styles of training and environments. The trainee will be tested both orally and in writing to evaluate their knowledge of the material being covered and performed. The trainee will be responsible for referencing the "Manual of Policy and Procedures," and any other work related manuals or resources, during this and all phases.

During the FTP, it is mandatory that the trainee complete the following: two shifts of traffic training with a trained traffic enforcement deputy; one shift exposure to detective bureau; one shift exposure to desk operations; one shift exposure to jail operations. These variations of training may be introduced to the trainee during Phases II through IV. After the trainee is exposed to these five shifts of training, they will inform their FTO of the pertinent aspects of the training. Trainees shall write a memo to their FTO detailing their exposure to each of these diverse training assignments.

PHASE V: Weeks 21 through 24

The main focus of training is to teach trainees to work and operate as a one-person unit and to ensure competency in all areas of the FTP. The trainee shall be exposed to driving sometime during this phase, if not sooner. This phase will provide FTOs and trainees with the opportunity to address any concerns they may have regarding the trainee's progress. This critical phase designates the FTO's ultimate responsibility in deciding if their trainee is performing safely and competently with due regard for laws and policies that they may be introduced and rated in a one-person unit or "solo" car environment.

This phase may also include exposing the trainee to the jailer position, desk operations, Detective Bureau and traffic enforcement, if not completed in Phases II-IV, so the trainee can learn or expand upon these areas. Trainees will continue to be tested orally and in writing. The FTO will continue to provide evaluation by completing the Phase V Section and Standard checklist, DORs, Tests and the End Of Phase Evaluation.

PHASE VI: Weeks 24 through 27

During this phase, trainees will work in a one-person unit and their FTO will monitor them in a separate unit and observe their trainee's performance. FTOs will then evaluate whether their trainee can be signed off of training status. In evaluating their trainee, FTOs will continue to use the DORs, Phase VI Section and Standard checklist and the End of Phase Evaluation. The Training Sergeant/Administrator will administer the Phase VI Final Exam.

PHASE I

TRAINEE: _____

PHASE I

(Continued)

PHASE II

TRAINEE: _____

PHASE II

(Continued)

PHASE III

TRAINEE: _____

PHASE IV

TRAINEE: _____

PHASE IV

(Continued)

TRAINEE: _____

PHASE V

(Continued)

PHASE V

TRAINEE: _____

PHASE VI

TRAINEE : _____

METHOD: (FP = FIELD PERFORMED) (WT = WRITTEN TEST) (RP = ROLE PLAYING) (WT = VERBAL)

Redirected Effort is Prohibited

When local law enforcement agencies are required to provide an OJT program as set forth in POST Bulletin 98-1, local governments' funds are redirected to comply with the State's program.

The State has not been allowed to circumvent restrictions on shifting its burden to localities by directing them to shift their efforts to comply with State mandates however noble they may be.

This prohibition of substituting the work agenda of the state for that of local government, without compensation, has been found by many in the California Constitution. On December 13, 1988, Elizabeth G. Hill, Legislative Analyst, Joint Legislative (California) Budget Committee wrote to Jesse Huff, Commission on State Mandates [attached in Exhibit F] and indicated on page 6 that the State may not redirect local governments' effort to avoid reimbursement of local costs mandated by the State:

> "Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce services in one area to pay for a higher level of service in another."

Therefore, reimbursement for the subject program is required as claimed herein.

Attendance at Employer's School of Instruction Must be Paid

Neither the local police officers nor their local law enforcement agencies were given choices on whether or not to obtain the required OJT training. Such training is now State-mandated and must be incorporated in local law enforcement agencies' training programs.

Police officers must be paid for their time when they are required to attend their law enforcement agencies' (their employers') schools of instruction, as a condition of employment. Specifically, employees need not be paid for required training pursuant to the Fair Labor Standards Act (29 CFR (Code of Federal Regulations) Section 785.27) only if all of four conditions are met:

"Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

(a) Attendance is outside of the employee's regular working hours;

(b) Attendance is in fact voluntary;

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during such attendance. "

Clearly, not all of the above criteria are met. Certainly, attendance is not voluntary. Law enforcement officers are required to be trained. Attendance was not outside regular working hours. Therefore, counties and cities had to pay their trainees and incur trainee labor costs.

Similar POST Mandated Programs are Reimbursable

Similar POST mandated programs have been found to be reimbursable, including the landmark program: "Law Enforcement Sexual Harassment Training and Complaint Procedures".

On August 24, 2000, the Commission approved reimbursement for the "costs mandated by the State", unavoidably incurred as a result of performing mandated duties set forth in the County of Los Angeles Test Claim on Chapter 126, Statutes of 1993, adding Penal Code Section 13519.7.

In addition to finding sexual harassment training to be reimbursable, the Commission found duties set forth in POST's "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," to be reimbursable.

The Commission's "Law Enforcement Sexual Harassment Training and Complaint Procedures" decision was a landmark for local law enforcement. For years, as far back as the late 1980's, costs of peace officer training was test claimed before the Commission - with no results. For example, the City

of Pasadena filed a test claim for reimbursement of its newly mandated domestic violence training. The claim was denied because the Commission maintained among other things that the duty to obtain training was on the peace officer, not the local law enforcement agency and that the new hours could be absorbed in the pre-existing duty to provide a minimum number of advanced officer training hours.

In 1995, the County of Los Angeles filed a test claim for reimbursement of the costs of implementing the 2-hour domestic violence training pursuant to Penal Code section 13519(e), added by Chapter 965, Statutes of 1995, suffered the same fate as the Pasadena claim. It was denied. While the Commission recognized that the duty to provide for the training was on the agency, not the peace officer, the Commission still maintained that the new hours could be absorbed in the pre-existing duty to provide a minimum number of advanced officer training hours.

In 2000, the Commission found that sexual harassment training was reimbursable. The Commission noted that this training duty was imposed on the agency, not the officer, and that such new training hours were in addition to the pre-existing duty to provide a minimum number of advanced officer training hours(1).

In addition to being the first time that local law enforcement training costs were approved for SB90 reimbursement, Commission's sexual harassment training and complaint decision also marked the first time that POST

1 In pertinent part, the Commission ruled that "Penal Code section 13519.7, subdivision ©... constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours and is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires the local agency to provide or pay for continuing education training..."

procedures or executive orders, setting forth complaint procedures were approved for reimbursement(2).

Here, POST's OJT Bulletin 98-1 is an executive order which sets forth training requirements like those found reimbursable in Commission's decision on Chapter 126, Statutes of 1993, Adding Penal Code Section 13519.7, "Law Enforcement Sexual Harassment Complaint Procedures and Training".

State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in GC Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

> (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

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2 In pertinent part, the Commission ruled that " [t]he sexual harassment guidelines, entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514;"

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Costs Mandated by the State

The County has incurred increased costs in providing a new OJT program as set forth in POST Bulletin 98-1 and such costs are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et seq of the Government Code.

The County's State mandated duties and resulting costs in implementing the subject law required the County to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any

statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements have been met:

1. There are increased costs which a local agency is required to incur after July 1, 1980; and

2. The costs are incurred as a result of any statute or executive order enacted on or after January 1, 1975; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding cost mandated by the State are met herein.

First, local government is incurring increased OJT costs in complying with the requirements of POST's new OJT program set forth in Bulletin 98-1, effective January 9, 1998, well after July 1, 1980.

Second, the executive order here, POST Bulletin 98-1, was enacted on January 9, 1998, well after January 1, 1975.

Third, POST's OJT program, in Bulletin 98-1, was a new program, not required under prior law.

The County has therefore, incurred costs as a result of implementing "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

Therefore, reimbursement of the "costs mandated by the State" as claimed herein is required.

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LEROY D. BACA, SHERIFF

County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued January 9, 1998
Mandatory On-the-Job Training for Peace Officers Working Alone

Declaration of Bruce Fogarty

Bruce Fogarty makes the following declaration and statement under oath:

I, Bruce Fogarty, a Lieutenant with the Los Angles County Sheriff's Department, am responsible for implementing a mandatory POST approved Field Training Program for County's Peace officers pursuant to the subject law.

I declare that I have reviewed POST Bulletin 98-1, issued on January 9, 1998, requiring On-The-Job [OJT] training for "[a]ll regular officers, appointed after January 1, 1999, prior to working alone in general law enforcement patrol assignments".

I declare that before POST Bulletin: 98-1 was issued on January 9, 1998, OJT training was not required and the County could assign peace officers to work alone without such training.

I declare that the ability to assign peace officers to work alone is a necessity.

I declare that the County's OJT trainees are under "the direct and immediate supervision (physical presence) of a qualified field training officer".

I declare that the County's OJT training program meets "the field training program" requirement that it "... be delivered over a minimum of 10 weeks" as well as the requirement that it "be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics".

I declare that the County's OJT training program has required the County to dedicate trainee and trainer time, as well as provide associated training materials, for the sole purpose of complying with POST Bulletin 98-1.

I declare that the above duties are reasonably necessary, and cost the County of Los Angeles in excess of $200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that I have prepared the attached description of reimburseable activities.

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

06/20/01, WHITTIER, CA.
Date and Place

B. Bryant
Signature

Noted and Approved by: Rufus Fenwick, Gordon Ph. D. on 6/21/01 whittier, CA.
Name and Title Signature Date and Place

Description of Reimbursable Activities
Declaration of Bruce Fogarty

One-time-Cost

The design and development of a 10 week on the job training program pursuant to POST Bulletin 98-1, including course content, evaluation procedures to comply with the subject law.

Meet and confer with training experts on curriculum development.

Design training materials including, but not limited to training videos and audio visual aids.

Continuing Cost

Instructor time to prepare and teach 10 week training classes on POST Bulletin 98-1.

Trainee time to attend the 10 week training class.

Review and evaluation of OJT trainees to ensure that each phase is successfully completed.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-The- Job Training for Peace Officers Working Alone

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/25/01; Los Angeles, CA — A. Kaye

Date and Place — Signature

STATE OF CALIFORNIA — PETE WILSON, *Governor*

DEPARTMENT OF JUSTICE — DANIEL E. LUNGREN, *Attorney General*
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 ALHAMBRA BOULEVARD
SACRAMENTO, CALIFORNIA 95816-7083

January 9, 1998

BULLETIN: 98-1

SUBJECT: MANDATORY FIELD TRAINING PROGRAM

Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.
- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.
- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing agency has obtained a waiver as provided in PAM section D-13 and as described below.

- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.
- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999 and as soon as all POST program requirements are in place (e.g. agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.
- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)
4. Copy of the POST Field Training Program Guide 1997

Questions about requirements or assistance in the preparation of field training program plans should be directed to POST Area Consultants in the Training Delivery and Compliance Bureau at (916) 227-4862. Application packages for program approval should be mailed to:

Commission on Peace Officer Standards and Training
Basic Training Bureau
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

KENNETH J. O'BRIEN
Executive Director

Attachments
(Police and Sheriff's Departments, School/Campus Police, Other selected agencies)

ATTACHMENT A

Commission on Peace Officer Standards and Training

FIELD TRAINING PROGRAM

APPLICATION PROCESS

Agencies seeking approval must submit a completed Application for POST-Approved Field Training Program (POST 2-229) which is included. Signature of the agency head is required attesting to continued adherence to the field training program submitted for approval. Requests for approval of changes in previously approved programs shall be submitted in writing. An approved field training program will remain in place indefinitely unless there is a modification to the field training program by the agency. Once an agency field training program is modified in any way that impacts meeting POST's requirements, a new POST approval will be required for the modified program.

Even though an agency may already have a POST-approved (after academy) field training program, it must reapply because the previous voluntary program has been replaced with the above described mandatory program with changed requirements.

The Application For POST-Approved Field Training Program must be accompanied with a Field Training Program plan that shall minimally include: (1) a description of the selection process for field training officers, (2) an outline of the training proposed for agency trainees, (3) a description of the evaluation process for trainees and field training officers, and (4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms. If an agency's field training guide contains this information, it shall be considered a Field Training Program plan.

If an agency elects to use a locally developed field training guide, instead of the *POST Field Training Program Guide*, the guide must minimally include the following topics:

- Agency Orientation
- Patrol Vehicle Operations
- Officer Safety
- Report Writing
- California Codes (Penal, W&I, Etc.)
- Department Policies
- Patrol Procedures (including Pedestrian and Vehicle
- Traffic (including DUI)
- Use of Force
- Search and Seizure
- Radio Communications
- Self Initiated Activity
- Investigations/Evidence
- Community Relations/ Professional Demeanor

Stops)
Tactical Communication/
Management Resolution
Unlisted, Agency Specific
Topics

EXEMPTION REQUESTS

Requests for agency waiver of this training requirement must be mailed to the POST Executive Director and must present evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers. The Commission may approve waiver requests for a specified period of time. Agencies that do not provide patrol/general law enforcement services are exempt and do not have to seek a waiver.

FIELD TRAINING OFFICER COURSE

Field Training Officers must complete or have already completed a 40-hour POST Field Training Officer Course. Minimum curriculum requirements have been established for this course that impacts the 23 existing course presenters. Agencies that find these course presentations too distant, are invited to contact their POST Area Consultant to determine if this course can be presented more conveniently.

POST APPROVAL

All agency applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application package is received. If an agency's Field Training Program is initially not approved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the letter of disapproval.

ATTACHMENT B

1005. Minimum Standards for Training.

(a) Basic Training Standards (Required).

More specific information regarding basic training requirements is located in Commission Procedure D-1.

(1) Every regular officer, except those participating in a supervised POST-approved Basic Course Field Training Program, shall satisfactorily meet the training requirements of the Regular Basic Course before being assigned duties which include the exercise of peace officer power.

Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

An officer as described in Penal Code section 832.3 (a) is authorized to exercise peace officer powers while engaged in a field training program conducted as an approved segment of a POST-certified Regular Basic Course when the director of the basic training academy has received written approval from POST for a Basic Course Field Training Program. Requests for approval must be submitted to POST on an Application for POST-Approved Field Training Program, POST form 2-229 (Rev. 12/97). Application forms are available from POST.

Requirements for approval of a Basic Course Field Training Program are:

(A) The trainees have completed the training requirements of Penal Code section 832.

(B) The trainees are participants in a structured learning activity under the direction of the basic training academy staff.

(C) The trainees are, during field training, under the direct and immediate supervision (physical presence) of a peace officer who has been awarded a POST basic certificate and who has completed a POST-certified Field Training Officer Course.

(D) The basic training director has secured the written commitment of the trainee's agency head to provide the trainee with the structured field training experience using a qualified field training officer as described in subparagraph (1)(C).

(2) Every regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

A regular officer is **exempt** from the Field Training Program requirement following completion of the Regular Basic Course:

(A) while the officer's assignment remains custodial related, or

(B) if the employing agency does not provide general law enforcement patrol services, **or**

(C) if the officer is a lateral entry officer possessing a Regular Basic Certificate whose previous employment included general law enforcement patrol duties, **or**

(D) if the employing agency has obtained a waiver as provided for in PAM section D-13.

Requirements for the Field Training Program are set forth in PAM section D- 13.

(3) Every regularly employed and paid as such inspector or investigator of a district attorney's office as defined in section 830.1 Penal Code who conducts criminal investigations shall be required to satisfactorily meet the training requirements of the District Attorney Investigators Basic Course, PAM section D-14. Alternatively, the basic training standard for district attorney investigative personnel shall be satisfied by successful completion of the training requirements of the Regular Basic Course, PAM, section D-1-3, before these personnel are assigned duties which include performing specialized law enforcement or investigative duties, except all of the Regular Basic Course need not be completed before they participate in a POST-approved Basic Course Field Training Program as described in subparagraph (1). The satisfactory

completion of a certified Investigation and Trial Preparation Course, PAM section D-14, is also required within 12 months from the date of appointment as a regularly employed and paid as such inspector or investigator of a District Attorney's Office.

(4) Every regularly employed and paid as such marshal or deputy marshal, of a municipal court, as defined in section 830.1 Penal Code, shall satisfactorily meet the training requirements of the Regular Basic Course, PAM, section D-1-3, before these personnel are assigned duties which include performing specialized law enforcement or investigative duties, except all of the Regular Basic Course need not be completed before they participate in a POST-approved Basic Course Field Training Program as described in subparagraph (1).

(5) Every specialized officer, except regularly employed and paid as such inspectors or investigators of a district attorney's office, shall satisfactorily meet the training requirements of the Regular Basic Course, PAM, section D-1-3, within 12 months from the date of appointment as a regularly employed specialized peace officer; or for those specialized agency peace officers whose primary duties are investigative and have not satisfactorily completed the Regular Basic Course, the chief law enforcement administrator may elect to substitute the satisfactory completion of the training requirements of the P.C. 832 Arrest and Firearms Course and the Specialized Investigators' Basic Course, PAM, section D-1-5.

(6) Every regularly employed and paid as such peace officer member of Coroners' Offices as defined in Section 830.35 P.C., shall satisfactorily complete the training requirements of Penal Code Section 832, PAM, Section D-7-2 before the exercise of peace officer powers. The satisfactory completion of the POST-certified Coroners' Death Investigation Course, PAM, Section D-1-7 is also required, within one year from date of appointment, and shall only apply to peace officer coroners hired on or after the agency enters the POST program.

(7) Every appointed constable or deputy constable, regularly employed and paid as such, of a judicial district shall complete the training requirements of

the Penal Code 832 (Arrest and Firearms) Course.

(8) Every limited function peace officer shall satisfactorily meet the training requirements of the Arrest and Firearms Course (Penal Code section 832); training in the carrying and use of firearms shall not be required when an employing agency prohibits limited function peace officers the use of firearms.

(9) Every peace officer listed in paragraphs (1) - (7) shall satisfactorily complete the training requirements of Penal Code section 832 prior to the exercise of peace officer powers.

Continued - (b) through the incorporation by reference statement which begins "PAM section D-4 ... ".

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996 and ____* is herein incorporated by reference.

Continued - Incorporation by reference statements after above.

NOTE: Authority cited: Sections 832.6, 13503, 13506, and 13510, 13510.5 and 13519.8, Penal Code. Reference: Sections 832, 832.3, 832.6, 13506, 13510, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520, and 13523, Penal Code.

*date to filled in by OAL

POST ADMINISTRATIVE MANUAL

COMMISSION PROCEDURE D-13

FIELD TRAINING

Purpose

13-1. Purpose: This Commission procedure implements the minimum standards/requirements for field training programs established by law enforcement agencies pursuant to Sections 1005(a)(1) and (a)(2) and the collaborative field training courses.

Specific Requirements

13-2. Requirements for Field Training: The minimum content and approval requirements for field training programs are specified in section 13-3. The minimum content for collaborative courses is described in section 13-5, Field Training Officer Course; section 13-6, Field Training Administrator's Course; and section 13-7, Field Training Officer's Update Course. Requirements for certification and presentation of these collaborative courses are specified in Regulations 1051-1056. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course.

13-3. Field Training Program Description and Approval Requirements: Regulations 1005(a)(1) and (a)(2) specify the basic training requirements for regular officers as successful completion of the Regular Basic Course and a Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of law enforcement services. Field Training programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course. This field training does not extend to persons serving in ride-along, observer capacities.

Any agency which employs regular officers shall seek approval of their Field Training Program by submitting a field training program plan along with an Application For POST Approved Field Training Program, POST 2-229 (Rev. 12/97). An approved Field Training Program remains in force until modified, at which time a new approval is required. Prior to the submission of an application, a comparison should be made of the agency's present policies and practices versus POST's minimum standards/requirements for an approved Field Training Program. Where needed, the agency shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application is received. If an agency's Field Training Program is disapproved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

(a) A Field Training Program plan shall minimally include:

(1) a description of the selection process for field training officers, **and**
(2) an outline of the training proposed for agency trainees, **and**
(3) a description of the evaluation process for trainees and field training officers, **and**
(4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms).

(b) On POST form 2-229, the agency head must attest to the adherence of the following approval requirements:

(1) The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which shall minimally include the following topics:

- Agency Orientation
- Patrol Vehicle Operations
- Officer Safety
- Report Writing
- California Codes and Law
- Department Policies
- Patrol Procedures (including Pedestrian and Vehicle Stops)
- Control of Persons, Prisoners, and Mentally Ill
- Tactical Communication / Management Resolution
- Unlisted, Agency Specific Topics
- Traffic (including DUI)
- Use of Force
- Search and Seizure
- Radio Communications
- Self Initiated Activity
- Investigations / Evidence
- Community Relations / Professional Demeanor

(2) The field training program's emphasis shall be on both training and evaluation of trainees.

(3) A trainee shall have satisfactorily completed the Regular Basic Course before participating in the Field Training Program.

(4) The field training program shall have a field training administrator/supervisor who: has been awarded or is eligible for the award of a POST Supervisory Certificate or has been selected based on the agency head's (or his/her designate's) nomination or appointment. Recommended training is the Field Training Officer Course and/or Field Training Administrator's Course.

(5) Trainees shall be supervised depending upon their assignment:

(A) A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

(B) A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/ dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.

(6) Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of the daily evaluations and/or by completing weekly written summaries of performance that are reviewed with the trainee.

(7) A field training officer shall have: (1) been awarded a POST Basic Certificate; (2) successfully completed the POST-certified Field Training Officer Course; (3) one year patrol experience; (4) a supervisor's recommendation based upon the officer's desire to be a field training officer and their ability to be a positive role model; and (5) been selected based upon an agency specific selection process.

(8) Each field training officer shall be evaluated by the trainee and a field training administrator/supervisor. The trainee shall complete

and submit a confidential evaluation to a field training administrator at the end of the field training program. A field training administrator/supervisor shall provide a detailed evaluation to each field training officer on his or her performance as a field training officer.

(9) Documentation of trainee performance shall be maintained by the agency. The field training officer's attestation of each trainee's successful completion of the field training program and a statement that releases the trainee from the program, along with the signed concurrence of the agency/department head or his/her designate, shall be retained in agency records. Retention length shall be based upon agency record policies.

13-4. Agency Head Signature Required: Signature of the agency head is required attesting to continued adherence to the field training program which is submitted for approval. Requests for approval of changes in previously approved programs shall be submitted to POST in writing.

13-5. Field Training Officer's Course Description: Presentation of a Field Training Officer Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Course is a minimum of 40 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The POST Field Training Officer Course Curriculum shall minimally include the following topics:

Introduction/Orientation
Standardized Curricula & Performance Objectives
Field Training Program History & the Need for Standardization
Field Training Program Management
Legal Issues for the FTO
Key Elements of a Successful Field Training Program
The Professional Relationship Between the Field Training Officer and the Trainee
Cultural Diversity in Field Training Programs
Override/Intervention
Remediation Methodologies & Strategies
Adult Learning Theory
Officer Safety in the Field
Field Training Program Goals and Objectives
Supervisory Skills for the FTO
Ethics
Scenario Facilitation & Grading
Role Modeling
Teaching Skills
Demonstration
Expectations of/for Field Training Officers
Review of Regular Basic

Course Training
Competency Expectations /
Evaluations /
Documentation

13-6. Field Training Administrator's Course Description: Presentation of a Field Training Administrator's Course requires POST certification (refer to Regulations 1051-1056). The Field Training Administrator's Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Administrator's Course shall minimally include the following topics:

Field Training Program Management
Review of Regular Basic Course Training
Adult Learning
POST Field Training Program & Objectives
Oversight of Tests/Scenarios Development & Update System for Field Training Manual
Documentation & Evaluations
Agency Responsibilities
Review of FTO Course Training
History of Field Training Programs
Competency Evaluation
Supervisory Procedures
FTO Selection Process
FTO Training & Certification
Conduct of FTO's, Trainees, & FTO Administrators

13-7. Field Training Officer's Update Course Description: Presentation of a Field Training Officer's Update Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Update Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Officer Update Course Curriculum shall minimally include the following topics:

Review of Academy Training
Legal Update
Adult Learning Theory Update
Scenario Facilitation & Evaluation
Remediation Methodologies & Strategies
Skill Building Training
Ethics
Teaching Skills Update/Demonstration

Waiver of Mandatory Field Training Program or Courses

13-8. The Commission or its Executive Director, in response to a written request or on its own motion may, upon showing of

good cause, waive the field training requirements, for an agency and/or its personnel, for a specific period of time. Waivers pursuant to this section will be granted only upon presentation of evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

Historical Note:

Procedure D-13 was adopted and incorporated by reference into Commission Regulation 1005 on June 15, 1990, and amended on February 22, 1996 and January 1, 1999.

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FIELD TRAINING PROGRAM MANUAL

PREPARED
BY
THE FIELD TRAINING OFFICER UNIT
of the
ADVANCED TRAINING BUREAU

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT
LEROY D. BACA, SHERIFF

JANUARY 1, 1999

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PREFACE

The purpose of the Los Angeles County Sheriff's Department's Field Training Program is to assist Department training managers, supervisors, and Field Training Officers (FTOs) in the initial orientation and field training of deputies newly assigned to the Field Operations Regions. The goal of the Field Training Program is to produce a competently trained deputy sheriff who is capable of performing the requisite duties in a "solo"capacity. The Field Training Program is a systematic and progressive approach to the successful transition from the Custody and Court Services Divisions while learning the skills and knowledge necessary to function in the patrol environment.

Recently, The Commission on Peace Officer Standards and Training (POST) adopted new regulations which require that all peace officers participate in a mandatory, POST approved Field Training Program. We, as a Department, far exceeded the new Field Training Program guidelines, but were impacted, however, in that the new regulations require "Daily Observation Reports"(DORs), i.e., daily evaluations. To improve upon our existing program and maintain compliance with the POST mandates, our program was redesigned to a "Phase Training Program," which incorporates the daily observation reports. Each "phase" will essentially be one month, as was our former program. Within each phase, specific skills and knowledge concepts have been identified in which the trainee must show competence.

Field Training Officers and station training managers should not be unduly alarmed at the concept of daily evaluations, as the new Field Training Program was designed to be extremely user friendly. Field Training Officers will be required to complete a DOR, to be initialed by a shift field sergeant or shift training sergeant, then turned in weekly to the station training sergeant/supervisor. Specified learning areas within the phase are listed on the DOR, and need only be addressed by a quick rating scale. Any comments, positive or negative, will be recorded each day instead of being recounted monthly, as was the former program. It will prove to be much easier to document the daily training incidents instead of trying to recall them at the end of each month. As a result, the End of Phase Evaluation is less repetitive and condensed.

A significant component of the new program is to identify learning/performance deficiencies early and to begin immediate informal remediation. For example, an area in which a trainee is not competent may be documented and carried into the next phase. Concerted effort will be given to immediately remediate trainees. Once the training deficiency has been rectified, the trainee may continue the FTP. If, after being extended to a second phase and the deficiency isn't corrected, a formal remedial program will begin. The key to the program will be early identification and documentation of training deficiencies.

In summary, the major changes for the Field Training Officer will be:

- Phase training with identified learning goals
- Daily evaluations
- Immediate informal remediation
- Early formal remedial programs

The Los Angeles County Sheriff's Department is proud to present its new Field Training Program Manual. Its introduction reinforces the Department's commitment to developing and training professional law enforcement officers and ensuring our place as a world leader in law enforcement.

ACKNOWLEDGMENTS

FIELD TRAINING PROGRAM MANUAL
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DEPUTY ROCK WAGNER

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SPECIAL THANKS

The Field Training Officer Unit would like to express its sincere appreciation to all the personnel of the Field Operations Regions who provided invaluable knowledge and experience by participating in the design, organization, and development of this Field Training Program Manual. We especially recognize the participation of the Station Training Staffs and the Field Training Officers who were an integral part of the pilot program.

OUR CORE VALUES

We shall be service oriented and perform our duties with the highest possible degree of personal and professional integrity.

Service Oriented Policing means:

- *Protecting life and property*
- *Preventing crime*
- *Apprehending criminals*
- *Always acting lawfully*
- *Being fair and impartial and treating people with dignity*
- *Assisting the community and its citizens in solving problems and maintaining the peace*

We shall treat every member of the Department, both sworn and civilian, as we would expect to be treated if the positions were reversed.

We shall not knowingly break the law to enforce the law.

We shall be fully accountable for our own actions or failures and, when appropriate, for the actions or failures of our subordinates.

In considering the use of deadly force, we shall be guided by reverence for human life.

Individuals promoted or selected for special assignments shall have a history of practicing these values.

Our Mission

The quality of neighborhood life, its safety and welfare comes from the commitment of each of its citizens. The ***Los Angeles Sheriff's Department*** *takes pride in its role as a citizen of the community; partners with its members in the delivery of quality law enforcement services. We dedicate our full-time efforts to the duties incumbent upon every community member. As we act, we are universal citizens deriving our authority from those we serve. We accept our law enforcement mission to serve our communities with the enduring belief that in so doing, we serve ourselves. As professionals, we view our responsibilities as a covenant of public trust, ever mindful that we must keep our promises. As we succeed, our effectiveness will be measured by the absence of crime and fear in our neighborhoods and by the level of community respect for our efforts. In accomplishing this all important mission, we are guided by the following principles:*

To recognize that the primary purpose of our organization is not only the skillful enforcement of the law, but the delivery of ***humanitarian*** *services which promote community peace.*

To understand that we must maintain a level of professional ***competence*** *that ensures our safety and that of the public without compromising the constitutional guarantees of any person.*

To base our decisions and actions on ***ethical*** *as well as practical perspectives and to accept responsibility for the consequences.*

To foster a collaborative relationship with the public in determining the best course in achieving ***community order.***

To strive for ***innovation,*** *yet remain* ***prudent*** *in sustaining our fiscal health through wise use of resources.*

To never tire of our ***duty,*** *never shrink from the difficult tasks and never lose sight of our own humanity.*

CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a matter that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

MANAGEMENT OF THE FIELD TRAINING PROGRAM

SECTION A

MANAGEMENT OF THE FIELD TRAINING PROGRAM

The purpose of the Field Training Program (FTP) is to create a standardized program throughout the Department in patrol orientation, field training and trainee performance evaluation. Deputies newly assigned to patrol often experience difficulty in making the transition from what they learned in the academy and time spent in the custody and/or court services environments, to performing general law enforcement patrol duties competently.

The development of the FTP curriculum was based in part on the POST Field Training Program Guide, but more importantly, from input received directly from field personnel. The FTP is a systematic process by which a patrol trainee may make a successful transition into the patrol environment and become a competent "solo" patrol deputy. For the purposes of this Field Training Manual, a competent field deputy is defined as follows:

A competent field deputy is one who demonstrates professional behavior, skills, and knowledge consistent with the Department's Mission, Standards, and Core Values. One who can perform safely and effectively in a solo capacity, making sound decisions without immediate or direct supervision.

The Field Training Program is designed to achieve the following goals:

To provide standardized training to all newly assigned patrol deputies in the practical application of required information, skills, and knowledge.

To provide clear standards for rating and evaluation which gives all trainees every reasonable opportunity to succeed.

To enhance the professionalism, job skills and ethical standards of the Los Angeles County Sheriff's Department Members.

To produce a competent patrol deputy, capable of working a one person car assignment in a safe, skillful, productive and professional manner.

It is the intention of the FTO Unit that the following guide will assist field operations training staffs and especially the FTOs and trainees in achieving the goals of the FTP.

TRAINING RESPONSIBILITIES

Effective field training is a crucial component in the proper development of deputy personnel and can provide major benefits in employee effectiveness, service delivery quality, and future civil litigation. Therefore, the Chiefs of the Field Operations Regions and their command staffs are committed to the maintenance of all components of the FTP, ensuring the important task of properly developing patrol deputy personnel remains a Department priority. The Chiefs of the Field Operations Regions, in conjunction with the Field Training Officer Unit of the Advanced Training Bureau, will develop, implement, and maintain Department policy to enhance the effectiveness of all facets of the FTP.

The Field Training Officer Unit has the overall responsibility for the development, inspection, and maintenance of the Field Training Program.

Station Captains

To establish and maintain an effective training program within the Field Operations Regions, captains of each of the stations have the ultimate responsibility to ensure that their station's program is in compliance with the guidelines established by the FTP Manual. Flexibility remains, however, for the station commanders to tailor or adapt the FTP Manual to fulfill the unique requirements of their patrol area or service clientele, as long as the FTO Unit is notified of any variances in the FTP.

Station captains shall ensure all FTO selections are made in accordance with established Department policy, emphasizing to those selected the importance of teaching skills and being a mentor/role model. Each selection must be properly documented in a confidential administrative file and maintained in conformity with Department policy.

Prior to assigning a trainee to a newly appointed FTO, station captains shall ensure that FTOs have attended FTO school, in accordance with Field Operations Directive 93-4, FTO School...Mandatory Requirements (**Appendix One**). Attendance to the FTO School is a prerequisite to performing FTO duties.

Captains must be committed to the program to such an extent that necessary time and resources are made available to ensure the program's success. The station captains commitment must extend through the ranks to include the lieutenants, sergeants, civilian supervisors and Field Training Officers of the station. Station captains are accountable for the detection and elimination of hazing and/or personal behavior which is inconsistent with the objectives of the Department's Field Training Program.

Station captains shall ensure all current FTOs have read Field Operations Directive 93-3, Standards of Conduct (**Appendix Two**) and the Field Training Officer Guidelines (**Appendix Three**), and tha each has signed an acknowledgment of receipt which is filed and accessible. The FTO Guideline establishes that FTO candidates have been advised of Department expectations during the fiel training process, including the treatment of others, and that they have accepted the role of trainer consistent with those expectations. The FTO's signature, acknowledging receipt of the FTO Guidelines, shall be considered a prerequisite to performing field training duties.

Captains shall ensure the FTP is administered in a manner which is in compliance with the overtime provisions of the current Deputy Sheriff Memo187lum of Understanding.

Captains shall review all current and past FTOs to identify those who most accurately reflect the Department's model of an ideal training officer. Those FTOs identified will be assigned as mentors to newly appointed FTOs. Participation as a mentor is voluntary. (Refer to Field Operations Directive 95-2, **Appendix Four.**)

Captains are responsible for maintaining a cadre of qualified FTOs, commensurate with the Department's identified training capacity at each station. This, in effect, means that station captains shall not deplete their FTO resources without appropriate replacement.

Critical to the Department's commitment to the FTP is the disqualification of FTO applicants and the de-selection of FTOs who fail to meet or maintain Department standards.

Station Training Lieutenant

Whenever possible, lieutenants should be given the full-time responsibility for training. A significant part of the training lieutenant's overall training responsibility will be the FTP.

The lieutenant's role in the training program is one of direction. They are responsible for the program's overall effectiveness. The responsibilities of the position include, but are not limited to:

Select qualified and enthusiastic training staff, both sworn and civilian
Act as a liaison between training and scheduling to ensure trainees are paired with compatible training officers and are assigned to the appropriate shift and patrol area to maximize learning
Participate in the selection of FTOs as required by Department Bonus Selection procedures and Field Training Officer Unit guidelines
Monitor each trainee's progress by ensuring Daily Observation Reports and other documentation are received and reviewed in a timely manner
Monitors all newly appointed FTOs during their first six months by reviewing the training sergeant's monthly written assessments and other documentation (Refer to Field Operations Directive 95-2, **Appendix Four.**)
Brief/reaffirm to Training Sergeants/Administrators and training officers the Department's Mission Statement and the objectives of the Field Training Program
Involve themselves with the Training Sergeants/Administrators and training officers regarding problem trainees, the FTP-Remedial Program, documentation, performance evaluations, and final responsibility for release from the remedial program
Formal review and recommendation to the station captain for release of trainees from training status
Monitor the conduct of training sergeants and training officers to develop and maintain an atmosphere for learning
Establish schedules for performance tests
Ensure trainees are under the direct and immediate supervision (physical presence) of a qualified FTO while engaged in the FTP

Training Sergeant/Administrator

A sergeant, whenever possible, should be given full-time responsibility for training. The training sergeant is considered the station's Field Training Manager/Administrator, for the purposes of POST Field Training Program certification. In the absence of a designated station training sergeant, civilian personnel may also be designated as the Field Training Manager/Administrator, after receiving appropriate POST required training. The station training sergeant is responsible for the maintenance of training records and is the one person who has the most personal contact with all participants; lieutenant, training officer and trainee. For this reason, the sergeant is the key component in the feedback process.

The Training Sergeant/Administrator primary responsibility is to focus their energies on station level training, offer recommendations for change, and act as a liason between the lieutenant, the training officer, and trainee. Some of the Training Sergeant/Administrator responsibilities may include:

Provide input regarding the selection of Field Training Officers
Station orientation of trainees
Determine the pairing of FTO to trainee, based on various factors such as trainee needs versus FTO tenure, special training or abilities, etc.*
Ensure that the FTO reads and signs the Field Training Officer Guidelines, once every six months when assigned a trainee
Review and sign Daily Observation Reports **(Appendix Five)** in a timely manner
Review and sign End of Phase Evaluations **(Appendix Six)** in a timely manner
Maintenance of trainee records
Maintenance of newly appointed FTO training folders*
Training and development of training officers
Administration of FTO Mentor program*
Monitor each trainee's progress with the training officer and when necessary, design a specific course of instruction for the FTP-Remedial designated trainee
Ride with trainees who are experiencing problems during the training program (refer to Section D,"Trainees with Performance and/or Learning Difficulties" for a complete description of responsibilities)
Prepare assessments for newly appointed FTOs*
Write all formal trainee performance evaluations, be they routine "Completion of Patrol Deputy Training Program" evaluations or "Improvement needed or Unsatisfactory", as a result of deficient performance in the FTP
Conduct counseling sessions
Provide functional supervision over both Field Training Officer and trainee
Ensure FTOs and trainees read and sign FOD 91-3, FTO/Trainee Standards of Conduct **(Appendix Two)**
Provide trainees with Field Operations Regions Trainee Informational Handout **(Appendix Eight)** and ensure the trainee reads and signs it
Make recommendation to training lieutenant for trainee's release from trainee status
Administer Final Examination
Administer End of FTP Trainee Evaluation **(Refer to Appendix Seven)**

*For further information regarding the FTO Mentor Program and Supervision Program, refer to Field Operations Directive 95-2, **Appendix Four**.*

Field/Patrol Sergeant's Responsibility

- Monitors daily progress of FTO and trainee
- Review and initial Daily Observation Reports on a daily basis
- Monitor FTO's performance /demeanor
- Be cognizant of any potential for hazing or hostile work environment associated with the FTP
- Complete newly appointed FTO questionnaire, FOD 95-2

Field Training Officer

FTOs are the critical link in imparting the requisite skills that will enable trainees to successfully complete the training program. FTOs are responsible for training, supervising, guiding and evaluating deputies newly assigned to field operations. They must display strong ethics and the highest possible degree of personal and professional integrity. They must be positive, supportive, and teach by example all requisite skills necessary to enable trainees to successfully complete the Field Training Program as qualified field deputies. FTOs must be dedicated to the training mission and support the Department's Core Values, Mission Statement, and the Law Enforcement Code of Ethics.

FTOs are teachers who will help trainees through this challenging field training. FTOs must be their trainee's supervisor, evaluator, instructor and partner. They must develop and accept only the highest standard of performance possible from the trainee. Following in the FTO's example, trainees must demonstrate discipline, patience, understanding and leadership in field situations.

The training program, although difficult and demanding, shall not include harassment or behavior designed to belittle or humiliate the trainee. The program's purpose is to develop well trained, highly motivated deputies who have a realistic concept of the job and display initiative. Hazing, harassment, and humiliation do not provide an environment which is conducive to learning; it only produces a deputy who endures the negative aspects of this type of training. Trainees may fail to learn as much as they should if they are reluctant to ask questions out of fear of humiliation. Trainees may also conceal correctable weaknesses if the relationship does not allow for open lines of communication.

An informational handout, entitled Field Training Officer Guidelines, has been developed for FTOs which conveys the Department's expectations of FTOs. This handout shall be read and signed by all FTOs and maintained in their unit level personnel file. **(Refer to Field Training Officer Guidelines, Appendix Three)**

FTOs must be selected from the most experienced, competent deputies at each station. The following qualities set training officers apart from the others:

- Appearance
- Commitment to the Department's Core Values
- Communications
- Initiative/ Field Performance
- Integrity
- Patience
- Training Desire and Ability
- Relations with the Community, Peers, and Superiors

The duties of the FTO include:

- Provide an example for trainees to emulate
- **Carefully and patiently** following the timetable of progress, instructing trainees in the rudiments of police practices, procedures, and positive behavior
- Give feedback on trainee's performance
- Evaluate trainee's progress. An objective, honest critique shall be submitted by the Field Training Officer to the training sergeant weekly, via the DOR.
- Completion of Daily Observation Reports
- End of Phase Evaluation
- Administers tests and exams
- Completion of phase Section & Standard checklists

Trainee

The Field Training Program is designed specifically to help trainees achieve success in Field Operations. The program provides an opportunity to succeed, however, success is not guaranteed. It is incumbent upon trainees to capitalize on the opportunity to be successful. Therefore, trainees must:

- Maintain a positive and receptive attitude toward participation in the FTP
- Accept constructive criticism of field performance, as referenced in DORs and End of Phase Evaluations
- Provide honest, constructive feedback regarding the FTP
- Achieve an acceptable score on all tests, exams, and final the examination
- Attain a rating of "competent" on the Section and Standard checklists
- Complete other assignments and tests as deemed necessary by the Training Sergeant and/or Administrator and FTO.
- Complete End of Field Training Program Evaluation

An informational handout, entitled Field Operations Trainee Informational Handout **(Appendix Two)** has been developed for deputies newly assigned to Field Operations Region assignments. This handout provides helpful hints and lists the expectations of the Department's executives to ensure success in the FTP. All deputy personnel entering the FTP will be given this information handout during their station orientation meeting. Trainees shall sign the Trainee Information Handout after reading it. The handout shall be maintained in the trainee's training folder.

Evaluation of the Program

Training is dynamic. As conditions change, training must change to reflect current needs. The FTO Unit will provide any necessary FTP assistance to the patrol stations depending upon their needs. Therefore, the following shall be the minimum requirements for evaluating a station's FTP:

- Twice per year, the training lieutenant, Training Sergeant/Administrators and FTOs of each station shall meet to discuss improving the program with respect to Department policy changes, validity of test questions, evaluation, and rating systems, etc. and report any changes recommendations and/or concerns regarding the FTP to FTO Unit.
- Twice per year, the training lieutenant and Training Sergeant/Administrator shall meet to discuss the management, operation, and supervision of the program and report any changes recommendations and/or concerns regarding the FTP to FTO Unit.

INTRODUCTION TO PHASE TRAINING

SECTION B

INTRODUCTION TO PHASE TRAINING

"Phase Training" will consist of an Orientation Phase and six additional phases, Phases I through VI. Phase Training is based on a building block technique of teaching. Each phase of training will build on the preceding phases and prepare the trainee for the blocks of instruction to follow. The philosophy behind Phase Training is to provide the foundation and knowledge required for trainees to complete tasks of ever increasing complexity. This type of training will break down the basic applications and skills of patrol procedures, beginning with the **simplest,** most frequently encountered duties and moving to the more **complex** duties. With time and proper foundation, trainees will be required to show a level of competence in the most complex and challenging field situations which occur in the later phases.

In the course of the Field Training Program, trainees shall be assigned a minimum of two FTOs. The FTP usually lasts six months and must cover six phases. Every attempt should be made to keep the FTO and their trainee together. In the event the FTO becomes ill, takes a leave of absence, vacation, etc., the training staff will assign a qualified, Bonus I FTO as a replacement. The station training staff shall ensure that consistency is maintained in regard to training and work location.

If trainees are temporarily assigned to a relief deputy, other than a qualified Bonus I FTO, a Daily Observation Report, "DOR," **shall not** be completed by that relief deputy. **Only a Bonus I FTO may complete the DOR.** If the temporary relief deputy notes strengths or weaknesses while monitoring the trainee's performance, that deputy should send a detailed memo to the FTO documenting and explaining the trainee's performance. The FTO and training staff shall then monitor the trainee's progress and ensure continuation of training until the trainee's FTO returns or is replaced.

The Phase Field Training Program will include:

Patrol School	Practical Application	Review
Station Orientation	Standardized Examinations	Feedback
Formal Instruction	Documentation of Progress	Remediation

OVERVIEW OF PHASE TRAINING

ORIENTATION PHASE
Weeks 1 through 4
Patrol school (weeks 1 - 3)
First week at patrol station (week 1)
Station orientation

PHASE I
Weeks 5 through 8
Phase I Section and Standard
DORs
End of Phase I Evaluation
Phase I Test (open book)

PHASE II
Weeks 9 through 12
Phase II Section and Standard
DORs
End of Phase II Evaluation
Phase II Test (open book)
Phase I/Phase II Exam(closed book)

PHASE III
Weeks 13 through 16
Phase III Section and Standard
DORs
End of Phase III Evaluation
Phase III Test (open book)

PHASE IV
Weeks 17 through 20
Phase IV Section and Standard
DORs
End of Phase IV Evaluation
Phase IV Test (open book)
Phase III/Phase IV Exam(closed book)

PHASE V
Weeks 21 through 24
Phase V Section and Standard
DORs
End of Phase V Evaluation
Phase V Test (open book)

PHASE VI
Weeks 25 through 28
Phase VI Section and Standard
DORs
End of Phase VI Evaluation
Phase Training Final Exam (closed book)

In Phase VI, the final exam replaces any other tests/exams.

The "Departmental Utilized Forms" list is provided at the end of Phase I to introduce the trainee to the necessary forms which may or may not be used during the FTP. This list is retained by the trainee for reference purposes.

The "Report Writing List" is provided at the end of Phase I to enable the FTO and trainee to track common report scenarios and document exposure to these areas. This list shall be completed by the end of Phase V and submitted to the Training Sergeant/Administrator with the Phase V Summary.

At the end of each phase, a "Summary" form is provided for the FTO to maintain organization of the critical tasks for each phase.

The FTO may administer all tests/exams except the Phase VI final exam, which will be administered by the Training Sergeant/Administrator.

Any phase can be accelerated and completed in less than the allotted time, with the exception of Phase I. In fact, training staffs are encouraged to expedite the training process if a trainees display competence in all required areas of a phase.

During all phases, the FTO will give formal instruction and evaluate the trainee on performance, practical application of skills, standardized tests/examinations and retention of information. FTOs will provide trainees with a daily evaluation of their performance, as well as complete, extend or remediate them on the Section and Standard checklists and submit the End of Phase Evaluations.

Although trainees may be placed on formal remediation at any time during the FTP, Phase V and Phase VI are two phases in which the station training staff should be especially aware of a potential remediation scenario. If by the end of Phase V (end of 24th week) a trainee is unable to perform in a "solo unit capacity"under the supervision and monitoring of a Bonus I qualified FTO, a formal remediation program must be developed and implemented by the station training staff. If a trainee is extended beyond Phase VI and enters into a 29th week of training, the station training staff shall ensure that the trainee is engaged in a formal remediation program. Whenever a trainee is placed on formal remediation, the station training staff shall follow the guidelines listed in the Field Training Program Remedial Procedures to implement and develop a program.

If training is stopped or interrupted for a period of time due to unforseen circumstances (i.e., IOD, Relieved Of Duty, Military Leave, etc.) the training staff shall review the trainee's records and evaluate them upon their return. The training staff will then determine if the trainee's training status will continue without interruption or if the trainee will review the previously completed phases before progressing.

PHASE TRAINING

ORIENTATION PHASE: Weeks 1 through 4

Trainees will attend patrol school during weeks one through three. During this Orientation Phase, trainees will be taught the fundamentals of patrol and will be tested and evaluated by patrol school instructors alongwith FTOs monitoring patrol school. In addition, trainees will be responsible for completing a "Patrol School Subject List" while at patrol school. This Subject List will contain categories of topics learned, dates completed and patrol school monitor's initials. Upon completion of patrol school, trainees will submit this Subject List to their station training staff, who will place it in the trainee's file.

Also, upon arrival at their new assignment, trainees will submit a memo to their FTO explaining how they have prepared for patrol. This will include any participation in "Ride Alongs," patrol related training, reports written, etc. This memo shall be retained in the trainee's file in the training office.

This phase also includes "Station Orientation" which usually occurs one day during the first week at their new station assignment. This first week at their new station assignment will be the fourth week of this Orientation Phase and trainees will not be evaluated on the DOR, but the checklists will be utilized. During this week, trainees will observe their FTO's actions, and/or participate at their FTO's discretion, as well as assist the FTO with paperwork and any other tasks deemed necessary. Expectations and objectives FTOs may have of trainees for the period of time they will work together should be clearly stated during this first week.

PHASE I: Weeks 5 through 8

This phase is a learning and acclamation phase, encompassing the simplest and/or the most frequently encountered procedures and officer safety considerations. The FTO's position is that of teacher, mentor and supervisor. FTOs will begin the process of daily evaluation by using the DOR form during this and all phases. FTOs and trainees will document any calls, reports, observations, training, etc., which occur during this and the subsequent phases by utilizing the Section and Standard checklists. FTOs shall prepare the End of Phase Evaluation at the end of this and all phases. Upon completion of the Phase I Test, checklist, End of Phase Evaluation and DORs, FTOs shall submit these, along with the Phase I Summary form to the Training Sergeant/Administrator within 10 days after the end of this and all other phases.

PHASE II : Weeks 9 through 12
PHASE III : Weeks 13 through 16
PHASE IV : Weeks 17 through 20

Trainees will continue their formal and practical training during this time. During Phases II through IV, trainees will be expected to increase their participation in the daily workload during their assignment with their FTO. Trainees will be involved in or exposed to most areas of knowledge and activity within these three phases of training. Trainees will be responsible for reaching a level of competency noted in the Section and Standard checklists identified in each phase, while exposed to additional areas of training. FTOs will provide continuous evaluation of their trainee's performance during this and all phases by using the DOR, Section and Standard checklists, Tests/Exams and the End of Phase Evaluations.

Also, during these phases, trainees may be placed with another FTO and/or moved to different shifts to give them exposure to different styles of training and environments. The trainee will be tested both orally and in writing to evaluate their knowledge of the material being covered and performed. The trainee will be responsible for referencing the "Manual of Policy and Procedures," and any other work related manuals or resources, during this and all phases.

During the FTP, it is mandatory that the trainee complete the following: two shifts of traffic training with a trained traffic enforcement deputy; one shift exposure to detective bureau; one shift exposure to desk operations; one shift exposure to jail operations. These variations of training may be introduced to the trainee during Phases II through IV. After the trainee is exposed to these five shifts of training, they will inform their FTO of the pertinent aspects of the training. Trainees shall write a memo to their FTO detailing their exposure to each of these diverse training assignments.

PHASE V: Weeks 21 through 24

The main focus of training is to teach trainees to work and operate as a one-person unit and to ensure competency in all areas of the FTP. The trainee shall be exposed to driving sometime during this phase, if not sooner. This phase will provide FTOs and trainees with the opportunity to address any concerns they may have regarding the trainee's progress. This critical phase designates the FTO's ultimate responsibility in deciding if their trainee is performing safely and competently with due regard for laws and policies that they may be introduced and rated in a one-person unit or "solo" car environment.

This phase may also include exposing the trainee to the jailer position, desk operations, Detective Bureau and traffic enforcement, if not completed in Phases II-IV, so the trainee can learn or expand upon these areas. Trainees will continue to be tested orally and in writing. The FTO will continue to provide evaluation by completing the Phase V Section and Standard checklist, DORs, Tests and the End Of Phase Evaluation.

PHASE VI: Weeks 24 through 27

During this phase, trainees will work in a one-person unit and their FTO will monitor them in a separate unit and observe their trainee's performance. FTOs will then evaluate whether their trainee can be signed off of training status. In evaluating their trainee, FTOs will continue to use the DORs, Phase VI Section and Standard checklist and the End of Phase Evaluation. The Training Sergeant/Administrator will administer the Phase VI Final Exam.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
Patrol School Subject List

Patrol School Number _____

Trainee Name _____

Training Station _____

Patrol School Monitor _____

SUBJECT	DATE COMPLETED	MONITOR INITIALS
Policy & Procedure of Firearms		
Defensive Tactics		
Deputy Orientation		
Criminal Law		
Hate Crimes		
Search & Seizure		
Reasonable Suspicion Probable Cause		
Emergency Code 3 & Pursuit Driving		
Domestic Violence		
Crime Scene Preservation		
Tactical Communication		
Juvenile Investigations		
Laws of Arrest		
Ethics & Career Survival		

NOTE: Upon Completion, Submit Form To Station Training Staff

PHASE TRAINING: EVALUATION AND RATING

SECTION C

PHASE TRAINING: EVALUATION AND RATING

The Field Training Program is designed to help trainees achieve success in Field Operations. The program provides an opportunity to succeed, however, success and is not a guarantee. It is incumbent upon trainees to capitalize on the opportunity and become successful. Therefore trainees shall:

1. Achieve an acceptable rating on all DORs in Phases I thru VI of the FTP.

2. Achieve a passing score on the five "open book" tests, two "closed book" exams and one "closed book" final exam. **The tests, exams and final exam must be reviewed with the trainee as many times necessary to remediate them to 100%. These tests and exams which the trainee is required to complete, including the tests wherein they scored less than 100%, must be retained in the trainee's training file for future reference. Only those questions answered incorrectly need be remediated.**

3. Complete and be competent in each Section and Standard checklist identified in each phase.

4. Maintain an acceptable level of progression documented on the End of Phase Evaluations for each phase.

5. Complete other assignments and tests deemed necessary by the Training Sergeant/Administrator and designated FTO.

Each FTO is responsible for tracking their trainee's daily performance and completing the Daily Observation Reports, End of Phase Evaluations and Phase Checklists.

OVERVIEW: SECTION AND STANDARD CHECKLIST

During each phase, there is a Section and Standard checklist which shall be completed by the end of that phase. Each section is a topic or subject which is stated at the top of the page. Below the section, there are several subsections listed. Each subsection is defined by a standard. Each standard will provide a definition and/or a description of the subsection which the trainee shall be exposed to. Trainees will eventually be rated competent in each of the subsections.

Below is an exemplar Section and Standard heading. There are six boxes provided for the following:

Box #1 - The "SECTION AND STANDARD" box is for the subsection title which will be defined by a standard.

Box #2 - The "DATE/TAG# INTRODUCED" box is provided for FTOs to enter dates and tag numbers of when their trainee was introduced or exposed to the subsection.

Box #3 - The "DATE COMPETENT" box is provided for FTOs to enter the date when they believe their trainee is adequately performing or demonstrating a competent knowledge of the subsection.

Box #4 - The "METHOD" box is provided for FTOs to enter one of the four learning methods which are footnoted at the bottom of every section and standard checklist.

Box #5 - The " FTO INITIAL " box will be appropriately initialed by FTOs upon their trainee's completion of and competency in the listed subsections.

Box #6 - The " TRAINEE INITIAL " boxes will be appropriately initialed by trainees upon their completion of and competency in the listed subsections.

	#1	#2	#3	#4	#5	#6
	SECTION & STANDARD	DATE/TAG# INTRODUCED	DATE COMPETENT	METHOD	FTO INITIALS	TRAINEE INITIALS
a.	-----"Listed Subsections"----					

Anytime during the FTP, FTOs and trainees may elect to cover a subsection from a later phase to introduce their trainees to a given subsection. This will occur often because at the time the current phase is being covered by the FTO, that phase may not relate to the particular call, observation or training they may be handling. If a subsection from a later phase is introduced, FTOs and trainees shall insert a date on that subsection indicating when the subsection was introduced. Trainees will then be rated competent on the same date or at a later time, depending on the trainee's performance. If trainees are familiarized and deemed competent by their FTO in every section, subsection and standard, the trainee shall progress through the phase without interruption.

At the end of each Section and Standard checklist in Phases II through VI, there are two forms designed to assist FTOs in organizing the topics covered in these phases. The **"Review of Subsection"** form is used by FTOs to review those subsections from the **previous phase** which may typically require additional time, training or experience for the trainee to achieve competency. This Review of Subsection form provides a method to check the trainee's level of retention, understanding or application of previously introduced intermediate or complex subsections.

The **"Extension of Subsection"** form is used to document any subsections which need to be extended into the **next phase**. The additional check boxes provided are used to indicate a particular subsection which will need to be extended because the trainee was either "not exposed" to that subsection or the trainee was "deficient" or had difficulty with it. Anytime either box is checked, FTOs shall indicate the reason in the DOR and/or the End of Phase Evaluation for that phase.

If the subsection is extended into the next phase, FTOs shall use the blank Extension of Subsection form provided at the end of each phase checklist. FTOs shall write in the appropriate subsection and re-evaluate their trainee's performance at a later time during that phase. If a trainee has difficulty in any subsection, their FTO shall make every attempt to identify where the trainee is deficient and help them to correct the deficiency (informal remediation). FTOs shall remediate their trainee in the deficient Section and Standard and document the method or technique used.

For example, if a trainee was not exposed to or deficient in Phase I for the subsection on "Searching Suspects," and the FTO was unable to informally remediate them before moving on to Phase II, the FTO will extend the deficient subsection into Phase II. The Phase I subsection "Searching Suspects" will be written in on the blank Extension of Subsection form provided at the end of Phases II. The FTO may extend any subsection only one additional phase beyond the phase in which it was first listed. If the trainee continues to have difficulty with this subsection after informal remediation in Phase II, the FTO shall consider formal remediation before continuing with Phase III. If the trainee demonstrates some progress when informally remediating an extended subsection, the FTP should continue into the next phase. If the trainee demonstrates no progress when informally remediating an extended subsection, the trainee must enter into a formal remediation program.

Any time during the FTO's informal remediation of deficient subsections, the training staff and FTO may elect to enter the trainee into a formal remediation program regarding the subsection. If the trainee is deficient in a subsection, the training lieutenant, Training Sergeant/Administrator and/or the FTO shall review the deficiency to determine whether it is a minor or major obstacle in the continuation of the FTP. If the deficiency is considered minor to the trainee's progress, the Training Lieutenant, Training Sergeant/Administrator and/or the FTO will determine whether to continue their training, with close monitoring, to correct the deficiency. If the deficiency is determined to be serious or critical to the trainee's progress, this deficiency shall be immediately addressed within the given phase and formal remediation shall be instituted.

OVERVIEW: DAILY OBSERVATION REPORT-DOR
(PAGE ONE)

SHIFT - What shift did the trainee work that day (i.e. DAY, EM, PM)?

WEEK - What week number (1 - 28) of training is the trainee currently in?

PHASE - What phase (I-VI) of training is the trainee currently in?

FROM-TO- What dates does this DOR cover?

FTO- Who is the trainee's current FTO?

TRAINEE - Who is the trainee that is currently being evaluated on this DOR?

RATING SCALE (0-5) - These numbers are used in the evaluation boxes next to each of the categories listed on the DOR. Each number corresponds to the trainee's current level of competence in their FTP. A rating of "0" would indicate a trainee has just started training and has little or no experience in the field. For example, if an FTO placed a "1" in the box next to "REPORT WRITING", that would be an indication that their trainee is currently progressing at the level of a competent Phase I trainee. If a Phase I trainee is excelling and is progressing at the level of a Phase II or Phase III trainee, they can be rated at "2" or "3", etc. In the same respect, a trainee can also achieve a rating lower than the current phase of training. If the trainee is in Phase III of training and is performing at the level of a Phase I or Phase II trainee in REPORT WRITING, then the appropriate rating would be a "1" or a "2" for REPORT WRITING.

RATING SCALE (6) - A rating of "6" in any category indicates the trainee has progressed to the level of a competent patrol deputy for that category.

The DOR Competency Ratings section defines the individual ratings of 0-6 which apply to each of the eighteen categories contained in the DOR. Each number of the DOR 0-6 rating scale will be used by the FTO to rate the trainee's performance for each phase. The explanations of "0", "3", and "6", which are defined in the DOR Competency Ratings section, provide a guideline for only the low, middle and high ratings and should not be considered as the only ratings used.

NRT - An "X" in this box indicates that the trainee is deficient in the FTP and is "Not Responding to Training" (NRT) in this category. This rating may be used by FTOs typically after all other informal remediation methods or techniques have been attempted. If a trainee is not responding to training in any category, the training staff shall place the trainee on a formal remediation program targeting the problematic area of training.

TRAINEE/FTO/SHIFT SGT. INITIALS - Each indicated person must initial the DOR daily.

OVERVIEW: DAILY OBSERVATION REPORT-DOR
(PAGE TWO)

COMMENTS - Comments in this section should include documentation of any strengths and/or weaknesses trainees display during the shift. Include dates, times, URN numbers, and any informal remediation or training used to correct any deficiencies. Also, indicate if trainees work the shift with a relief deputy other than their regular FTO. Check the appropriate box to indicate if the comment section describes positive, negative and/or standard performance. If the trainee's performance is standard for that phase and without noteworthy strengths or weaknesses, check the "Std." box and exclude any comments. At the end of the week, FTOs shall review the DOR with their trainee and both shall sign the form. The DOR shall then be submitted to the Training Sergeant/Administrator who shall review and sign it.

DOR COMPETENCY RATINGS

RATING	
0	A trainee rated "0" has just started training and has little or no experience or knowledge in patrol.
1	A trainee rated "1" has minimal experience, has a basic understanding of patrol and has a beginning level of knowledge. The trainee is incapable of performing many patrol functions without an FTO and needs supervision and guidance. The trainee needs much improvement in many areas and displays an inability to complete tasks competently. They also lack in patrol exposure which limits their work quality. This typically represents a first month/phase trainee.
2	A trainee rated "2" has more knowledge and understanding than a "1" trainee, but their work performance is incomplete in many areas. Their knowledge base lacks in content and their experience level is inadequate. The trainee recalls and retains some details of the previous weeks and accomplishes basic patrol tasks. This typically represents a second month/phase trainee.
3	A trainee rated "3" has more knowledge and understanding than a "2" trainee, and their level of work performance is increasing. They display more retention and organization, as well as a developed sense of field application. A "3" trainee appears to relate laws, techniques and policies to basic field scenarios, but requires supervision. They also improve upon becoming multi-task oriented in handling basic and intermediate tasks. This typically represents a third month/phase trainee.
4	A trainee rated "4" has an understanding of many patrol related scenarios. As their experience level increases, their knowledge base increases appropriately. They recall and retain much of the information learned. Their work performance displays some quality, but contains errors, omissions, or mistakes. The trainee handles many basic and intermediate patrol related tasks unsupervised. Their application of learned information is evident in some aspects of their work. This typically represents a fourth month/phase trainee.
5	A trainee rated "5" is progressing adequately towards a "one-person unit " level of competency, but still lacks in completeness and organization in some areas. Their work product is generally clear, well developed and logical. Despite occasional errors or omissions, their performance indicates an understanding of field application and policies. This performance is indicative of a trainee who handles most scenarios unsupervised. Their knowledge and experience level guide their decision making. This typically represents a fifth month/phase trainee.
6	Competent unsupervised field deputy.

DOR COMPETENCY RATINGS (CONT.)

KNOWLEDGE:

1. DEPARTMENT POLICY:

0 The trainee has little or no working knowledge of Department policies, regulations, and/or procedures or violates same. The trainee is unable to conform or function within policy without supervision. The trainee is unable to reference the appropriate resource, (e.g., Manual, Case Assignment, Field Operations Directives, etc.).

3 The trainee has a basic working knowledge of Department policies, regulations, and/or procedures and usually complies with same. The trainee is often able to conform or function within some policies, but still requires supervision. The trainee is routinely able to reference the appropriate resources in a timely manner.

6 The trainee has a competent working knowledge of Department policies, regulations, and/or procedures and complies with same. The trainee is able to conform or function within policy with little or no supervision. The trainee is able to reference the appropriate resources in a timely manner.

2. PENAL CODES/VEHICLE CODES:

0 The trainee has little or no working knowledge of the Penal and Vehicle Codes. The trainee is unable to recall the basic elements of common codes. The trainee is unable to reference applicable resources in a timely manner without supervision.

3 The trainee has a basic working knowledge of the Penal and Vehicle Codes. The trainee is able to recall the basic elements of common codes. The trainee is usually able to reference applicable resources with supervision.

6 The trainee has a competent working knowledge of the Penal and Vehicle Codes. The trainee is able to recall the elements of most commonly used. The trainee is able to reference applicable resources in a timely manner with little or no supervision.

3. MISCELLANEOUS CODES:

0 The trainee has little or no working knowledge of miscellaneous codes, (e.g., Health and Safety Codes, Business and Professions Code, Welfare and Institution Codes, statistical codes, etc.) The trainee is unable to reference applicable resources in a timely manner without supervision.

3 The trainee has a basic working knowledge of miscellaneous codes. The trainee is usually able to reference applicable resources with supervision.

6 The trainee has a competent working knowledge of miscellaneous codes. The trainee is able to reference applicable resources in a timely manner with little or no supervision.

4. SEARCH AND SEIZURE LAWS:

0 The trainee has little or no working knowledge of search and seizure laws, (e.g., consensual encounters, probable cause, pat down searches, etc.). The trainee is unable to apply, document, or justify them without supervision.

3 The trainee has a basic working knowledge of search and seizure laws. The trainee is often able to apply, document or justify them in routine situations with supervision.

6 The trainee has a competent working knowledge of search and seizure laws. The trainee is able to apply, document or justify them in most situations with little or no supervision.

PERFORMANCE:

5. USE OF RESOURCES/FORMS/EQUIPMENT:

0 The trainee has little or no working knowledge of commonly used resources, forms and equipment. The trainee is unable to identify, utilize or apply the necessary resources, forms and equipment, in a timely manner without supervision.

3 The trainee has a basic working knowledge of commonly used resources, forms and equipment. The trainee is aware of the general location, function and application of resources, forms and equipment, but still requires supervision.

6 The trainee has a competent working knowledge of resources, forms and equipment. The trainee is able to complete forms accurately and utilize necessary resources and equipment specific to the task in a timely manner with little or no supervision.

6. OFFICER SAFETY/LOCATION AWARENESS:

0 The trainee has little or no working knowledge of officer safety. The trainee is unable to understand, recognize and apply appropriate officer safety techniques, (e.g., approaching, controlling, searching, positioning, etc.). The trainee is unaware of their location and is unable to read reporting district maps, relate their location or determine their direction.

3 The trainee has a basic working knowledge of officer safety. The trainee is able to relate and apply this officer safety information, with supervision, to routine patrol scenarios. The trainee has a basic working knowledge of location awareness and is able to read reporting district maps, can usually relate their location and has a developed sense of direction.

6 The trainee has a competent working knowledge of officer safety. The trainee relates and applies this officer safety information to most patrol scenarios with little or no supervision. The trainee has a competent working knowledge of location awareness and has no difficulty reading maps, relating their location to destination in a timely manner and knows their direction.

7. SEARCHES PERSONS/VEHICLES/BUILDINGS:

0 The trainee has little or no working knowledge of searching persons, vehicles or buildings. The trainee violates officer safety practices and conducts poor searches. The trainee fails to maintain a position that would prevent escape or attack and requires supervision.

3 The trainee has a basic working knowledge of searching persons, vehicles or buildings. The trainee is aware of basic officer safety issues and conducts routine searches. The trainee usually maintains a position that would prevent escape or attack and requires supervision.

6 The trainee has a competent working knowledge of searching persons, vehicles or buildings. The trainee is aware of officer safety issues and conducts thorough searches. The trainee maintains a position that would prevent escape or attack and requires little or no supervision.

8. REPORT WRITING:

0 The trainee has little or no working knowledge of report writing skills, (e.g., grammar, spelling, omissions, misstatements, etc.). The trainee is unable to accurately organize a concise, understandable report in a timely fashion. The trainee's report is illegible and they require supervision.

3 The trainee has a basic working knowledge of report writing skills, (e.g., grammar, spelling, omissions, misstatements, etc.). The trainee is usually able to accurately organize a concise, understandable routine report in a timely fashion. The trainee's report contains errors and they still require supervision.

6 The trainee has a competent working knowledge of report writing skills, (e.g., grammar, spelling, omissions, misstatements, etc.). The trainee is able to accurately organize a concise, understandable report in a timely fashion. The trainee's completed report contains minimal errors and they require little or no supervision.

9. DRIVING SKILLS:

0 The trainee has little or no working knowledge of emergency vehicle driving skills. The trainee displays poor decision making skills, is unable to operate the vehicle's equipment, and/or violates traffic laws. The trainee is unable to operate the vehicle safely under emergent and non-emergent conditions and requires supervision.

3 The trainee has a basic working knowledge of emergency vehicle driving skills. The trainee displays basic decision making skills, is usually able to operate the vehicle's equipment and violates few, if any, traffic laws. The trainee is able to operate the vehicle safely under emergent and non-emergent conditions but still requires supervision.

6 The trainee has a competent working knowledge of emergency vehicle driving skills. The trainee displays good decision making skills, is able to operate the vehicle's equipment and obeys traffic laws. The trainee is able to operate the vehicle under emergent and non-emergent conditions, and requires little or no supervision.

10. TRAFFIC ENFORCEMENT/INVESTIGATION:

0 The trainee has little or no working knowledge of traffic enforcement, traffic accident investigation, and the laws that pertain to them and requires supervision.

3 The trainee has a basic working knowledge of traffic enforcement, traffic accident investigation, and the laws that pertain to them and still requires supervision.

6 The trainee has a competent working knowledge of traffic enforcement, traffic accident investigation, and the laws that pertain to them and requires little or no supervision.

11. PROBLEM SOLVING/DECISION MAKING:

0 The trainee has little or no working knowledge of how to solve patrol related problems. The trainee is unable to recognize problems or potential problems and is indecisive. The trainee is unable to establish and follow appropriate task priority without supervision.

3 The trainee has a basic working knowledge of problem recognition and solving. The trainee is able to reason through basic problems and develop acceptable conclusion in routine situations.

6 The trainee has a competent working knowledge of problem recognition and solving. The trainee is able to reason through most problems with little or no supervision.

12. RADIO USE AND PROCEDURES:

0 The trainee does not hear nor comprehend radio transmissions. The trainee is unable to recognize their call sign and is unaware of radio traffic in adjoining reporting districts. The trainee is unable to use appropriate radio codes and improperly transmits when using the radio.

3 The trainee hears and comprehends some radio transmissions. The trainee is usually able to recognize their call sign and is aware of some radio traffic in adjoining reporting districts. The trainee retains some radio codes and occasionally accomplishes correct radio transmissions without supervision.

6 The trainee hears and comprehends radio transmissions. The trainee recognizes their call sign and is aware of radio traffic in adjoining reporting districts. The trainee retains and uses appropriate radio codes in correct radio transmission sequences with no supervision.

13. INTERVIEW/INVESTIGATIVE TECHNIQUES:

0 The trainee has little or no working knowledge of investigative skills, (e.g., interviewing techniques, evidence identification and collection, Miranda admonishment, etc.). The trainee is unable to conduct a thorough, clear and controlled interview. The trainee is unable to accurately identify the offense committed and requires supervision.

3 The trainee has a basic working knowledge of investigative skills. The trainee is usually able to conduct a thorough, clear and controlled routine interview. The trainee is often able to accurately identify the offense committed and requires supervision.

6 The trainee has a competent working knowledge of investigative skills. The trainee is able to conduct a thorough, clear and controlled interview. The trainee is able to accurately diagnose the offense committed and requires little or no supervision.

14. SELF-INITIATED FIELD ACTIVITY:

0 The trainee has little or no working knowledge of properly initiating contacts. The trainee avoids or fails to recognize suspicious activity and rationalizes suspicious behavior. The trainee lacks motivation or enthusiasm and requires supervision.

3 The trainee has a basic working knowledge of properly initiating contacts. The trainee is often able to identify, recognize and investigate basic types of suspicious activity. The trainee displays motivation towards self initiated contacts and still requires supervision.

6 The trainee has a competent working knowledge of properly initiating contacts. The trainee is able to identify, recognize and investigate most types of suspicious activity. The trainee is highly motivated towards self initiated contacts and requires little or no supervision.

ATTITUDE:

15. ACCEPTS FEEDBACK/CRITICISM:

0 The trainee is unable to accept constructive criticism. The trainee rationalizes mistakes, fails to use the criticism to improve their performance and does not take responsibility for their actions.

3 The trainee is able to accept routine constructive criticism and seeks advise or guidance. The trainee usually recognizes their mistakes, often uses the criticism to improve their performance and selectively applies it to their duties.

6 The trainee is able to accept constructive criticism in a positive manner. The trainee recognizes their mistakes, uses the criticism to improve their performance and applies it to their duties.

16. RELATIONSHIP WITH PEERS/SUPERVISORS:

0 The trainee is unable to communicate with peers or supervisors in a professional and courteous manner consistent with Department policy or the Core Values.

3 The trainee has a basic ability to communicate with peers or supervisors in a professional and courteous manner consistent with Department policy or the Core Values

6 The trainee displays the competent ability to communicate with peers or supervisors in a professional and courteous manner consistent with Department policy or the Core Values

17. RELATIONSHIP WITH PUBLIC:

0 The trainee is unable to communicate with the public in a professional and courteous manner during stressful and non-stressful conditions.

3 The trainee has a basic ability to communicate with the public in a professional and courteous manner during stressful and non-stressful conditions.

6 The trainee displays the competent ability to communicate with the public in a courteous and professional manner during all conditions.

18. CONFIDENCE/COMMAND PRESENCE:

0 The trainee is unable to project confidence, control and command presence. The trainee appears timid, fearful or shy. The trainee is unable to gain and maintain control or respect through their verbal or non-verbal skills. The trainee reacts inappropriately by over or under reacting.

3 The trainee is developing a sense of confidence, control and command presence. The trainee does not appear to display fear or cowardice in most situations. The trainee is usually able to gain and maintain control or respect by utilizing good verbal or non-verbal skills with some supervision. The trainee often reacts appropriately without over or under reacting.

6 The trainee is able to project confidence, control and command presence. The trainee does not appear fearful or cowardly. The trainee is able to gain and maintain control or respect by utilizing verbal and non-verbal skills with no supervision. The trainee reacts appropriately in all situations.

L.A. COUNTY SHERIFF'S DEPARTMENT
DAILY OBSERVATION REPORT

SHIFT:_____ WEEK:_____ FROM:_____ TO:_____ PHASE:_____

FTO*(print)*:_____ TRAINEE*(print)*:_____

Rating Scale: 0-5-Level of Competence 6-Competent in Patrol NRT-Not Responding to Training

	SUN	MON	TUE	WED	THU	FRI	SAT	NRT
KNOWLEDGE								
1. DEPARTMENT POLICY								
2. PENAL CODES/VEHICLE CODES								
3. MISCELLANEOUS CODES								
4. SEARCH AND SEIZURE LAWS								
5. RESOURCES/FORMS/EQUIPMENT								
PERFORMANCE								
6. OFFICER SAFETY/LOCATION AWARENESS								
7. SEARCHES: PERSONS/VEHICLES/BUILDINGS								
8. REPORT WRITING								
9. DRIVING SKILLS								
10. TRAFFIC ENFORCEMENT/INVESTIGATION								
11. PROBLEM SOLVING/DECISION MAKING								
12. RADIO USE AND PROCEDURES								
13. INTERVIEW/INVESTIGATIVE SKILLS								
14. SELF-INITIATED ACTIVITY/MOTIVATION								
ATTITUDE								
15. ACCEPTS FEEDBACK/CRITICISM								
16. RELATIONSHIP W/PEERS/SUPERVISOR								
17. RELATIONSHIP W/PUBLIC								
18. CONFIDENCE/COMMAND PRESENCE								
F.T.O. INITIALS								
TRAINEE INITIALS								
SHIFT SGT. INITIALS								

NOTE: Only Field Training Officers May Use This Form To Evaluate

DAY ONE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY TWO **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY THREE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY FOUR **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY FIVE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

+: Denotes positive performance **Std.**: Denotes standard performance **-** : Denotes negative performance

REVIEWED BY TRAINEE:_____ _____

Signature Date

REVIEWED BY TRAINING OFFICER:_____ _____

Signature Date

REVIEWED BY TRAINING SERGEANT:_____ _____

Signature Date

NOTE: For Additional Comments Attach a Continuation Form.

END OF PHASE EVALUATION

The purpose of the End of Phase Evaluation is to document the trainee's strengths and/or weaknesses during that phase, without repeating the information provided in the DORs. If these areas have been thoroughly documented in that phase's DORs, the End of Phase Evaluation can serve as a re-cap, indicate patterns of performance, or describe any specific training activity which occurred during that phase. As stated before, it is imperative that dates, times, file numbers, informal remediation, etc., are included in this and all other documentation.

After completing your portion of the evaluation, submit it to the Training Sergeant/Administrator. After being reviewed and signed by the Training Sergeant/Administrator, they will return it to the FTO who will review it with the trainee. After the trainee has reviewed, commented, and signed the evaluation, the FTO will re-submit it to the Training Sergeant/Administrator.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
END OF PHASE EVALUATION

PHASE _____ EVALUATION

Briefly document any areas of the phase training where the trainee is excelling, or having difficulties, which have not been documented on the DORs. Include dates, times, file numbers etc., when documenting the trainee's performance._____

_____

_____

_____

_____

F.T.O._____ _____ _____
Signature **Print name** **Date**

Trainee Comments_____

_____

_____

_____

Trainee_____ _____ _____
Signature **Print Name** **Date**

Training Sgt. Comments_____

_____

_____

_____

_____

Training Sgt._____ _____ _____
Signature **Print Name** **Date**

NOTE: For Additional Comments Attach a Continuation Form.

PAGE 1 OF _____

END OF PHASE EVALUATION
(Continued)

PHASE TRAINING REMEDIAL PROGRAM

SECTION D

TRAINEES WITH PERFORMANCE AND/OR LEARNING DIFFICULTIES

It should be understood that the Field Training Program, FTP, is a one-on-one, teacher/student relationship between the Field Training Officer and the trainee. Trainees are subject to stringent scrutiny under complex conditions not routinely found in other less demanding assignments. Therefore, it is not uncommon for performance or learning deficiencies to be discovered during Patrol School or The Field Training Program, even though the employee was previously rated "competent", or better, in past assignments.

FTOs who recognizes that their trainees are not progressing in the FTP at an acceptable rate, shall immediately notify the station training staff. Whether the trainee's difficulties occurred in Patrol School or in the FTP, the training staff, along with the FTO, will determine what additional training will be required to bring the trainee to an acceptable level. Prior to placing the trainee on a remedial program, the training sergeant shall ride a minimum of one eight-hour shift. The training sergeant will make a recommendation to either place the trainee on a formal remedial program because the trainee is having severe difficulties, or direct the FTO to attempt additional training techniques targeting the trainee's difficulties. If the training sergeant determines that the deficiencies are so severe as to place others in danger, the trainee may be removed from the field. This removal allows the training staff to assess whether there are any available resources which may assist in bringing the trainee's performance to a competent level or, if necessary, return to a custody assignment.

The FTP remedial program may extend up to 60 days. The program begins the day the trainee is furnished written notice of their failure to successfully complete patrol school or their failure to maintain a satisfactory level of performance during the course of the Field Training Program. FTOs should use the FTP's standardized Daily Observation Report, phase checklists and End of Phase Evaluations to document and advise the trainees of their progress.

The station developed remedial program will aid the trainee by providing the following:

- Study assignments and examinations in deficient areas
- Personalized training program for each trainee
- Close monitoring by the shift or station training sergeant
- Reassignment to another FTO, as necessary, and based on the trainee's deficiency
- Access to additional training such as SCC, force training, MDT, FTO Unit, etc.
- Detailed feedback to the trainee.

No later than the end of 60 days of remedial training, the training sergeant shall ride with the trainee to determine whether or not the trainee has progressed sufficiently for removal from the remedial program. The sergeant will make a recommendation to extend the trainee an additional month or, based on their improved progress, remove them from the remedial program and allow them to continue on the FTP. There is no set minimum period of time for the trainee to remain in a remedial program. As long as the trainee has progressed sufficiently in the area of deficiency, they may be removed from the program. Authorization for release from remedial training status shall be made by the station training lieutenant.

Occasionally, a trainee will show signs of improvement, however, they have not progressed sufficiently to warrant removal from the Remedial Program. If at the end of the 60 days of remedial training it can be reasonably predicted the trainee will successfully complete the FTP, an extension of 30 days may be granted. At the end of the 60 days, the training sergeant will once again ride with the trainee and submit an evaluation to the training lieutenant.

If the 30 day extension is not granted, one of three things will occur:

1. A recommendation will be made to release the trainee from remedial status and to continue their FTP or;
2. Remove the trainee from training status and return them to a custody assignment or;
3. Remove the trainee from county service as a Deputy Sheriff.

If the 30 day extension is granted before the end of that month of training, the training sergeant must again ride with the trainee and submit an evaluation to the training lieutenant. The training lieutenant, along with the Unit Commander, will then make a determination on which of the above listed options they will take.

If new performance deficiencies are observed during of remedial program, additional written notification describing those deficiencies will be made to the trainee by the station training staff. The new remedial training must follow the guidelines governing remedial programs, (e.g., written plan, evaluations, etc). The new deficiencies will be written into the existing plan and are not a basis for a new 60 day plan.

In 1983, the Department altered its policy with respect to the assignment of deputy personnel who fail patrol training. The current policy requires all deputy personnel who graduated on or after May 6, 1983 (Class #214), to transfer back to a custody facility for a period of one year. At the end of this year, they shall return to a patrol station for a second opportunity at patrol training. If this attempt also ends in failure, they shall be released from county service as a deputy sheriff.

If the deputy graduated from the academy before May 6, 1983 (Pre-Class #214) or were part of the Marshal merger of 1994, the deputy shall be transferred to a custody assignment with the option of returning to patrol. If they choose to return to patrol and that attempt also ends in failure, they shall be released from county service as a deputy sheriff.

APPENDIX

SECTION E

76-M176-SH-AD-131

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

DATE: March 29, 1998

OFFICE CORRESPONDENCE

FROM: JAMES M. CALLAS, CHIEF
WILLIAM A. BAKER, CHIEF
LARRY L. ANDERSON, CHIEF
FIELD OPERATIONS REGIONS

TO: UNIT COMMANDERS
FIELD OPERATIONS REGIONS

SUBJECT: FIELD OPERATIONS DIRECTIVE 93-4 **(revised 5-14-93)**

FIELD TRAINING OFFICER SCHOOL AND ADVANCED TACTICAL COMMUNICATIONS COURSE, MANDATORY REQUIREMENTS

All deputies that have completed the Bonus Selection Board process for the position of Training Officer (Field Operations), Bonus Position Selection Number 531, and are considered acceptable candidates by their Unit Commander, shall attend the Field Officer Training Course and the Department's Advanced Tactical Communications class. Both of these classes must be completed prior to appointment as a Field Training Officer.

Unit Commanders are directed to expedite the scheduling and attendance of any current Field Training Officer who has not been trained in the above classes and all Field Training Officer candidates (as noted above) into the next available class(es).

Field Training Officer candidates that last attended a Field Training Officer School in excess of one (1) year prior to appointment to the position of Field Training Officer School shall re-attend the Department's Field Training Officer School.

Contact the Field Operations Support Services Unit for class schedules and reservations.

JAMES M. CALLAS, CHIEF
FIELD OPERATIONS REGION I

WILLIAM A. BAKER, CHIEF
FIELD OPERATIONS REGION II

LARRY L. ANDERSON, CHIEF
FIELD OPERATIONS REGION III

JMC:WAB:LLA:JKM:REG:rg

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: April 19, 1995

OFFICE CORRESPONDENCE

FROM: JAMES M. CALLAS, CHIEF
LEROY D. BACA, CHIEF
KENNETH L. BAYLESS CHIEF
FIELD OPERATIONS REGIONS

TO: UNIT COMMANDERS

SUBJECT: FIELD OPERATIONS DIRECTIVE 91-3 **REVISED (4/95)**

TRAINING OFFICER/TRAINEE STANDARDS OF CONDUCT

It is the policy of the Department that all Sheriff's Deputies newly assigned to a station shall be treated with the consideration and respect that is afforded to all peace officers.

The purpose, therefore, of this directive is to ensure that all Field Operations Regions trainees are provided with a positive training environment by their units of assignment.

Each unit commander will establish a work environment wherein no hazing or discourtesy shall occur. Moreover, all conditions of the **Training Officer-Trainee Principles** shall be followed.

To assist the unit commander in enforcing this mandate, the attached will be briefed by the Training Sergeant to every trainee/training officer partnership. Additionally, both parties will be given a copy of the attached Training Officer - Trainee Principles sheet.

All personnel assigned to a station will treat a deputy sheriff trainee with respect and courtesy. Any failure to comply with this directive shall be investigated, documented, and appropriately corrected.

JAMES M. CALLAS, CHIEF
FIELD OPERATIONS REGION I

LEROY D. BACA, CHIEF
FIELD OPERATIONS REGION II

KENNETH L. BAYLESS, CHIEF
FIELD OPERATIONS REGION III

RMB:WAB:LLA:JKM:dw

TRAINING OFFICER-TRAINEE

PRINCIPLES

It is accepted by all parties that the relationship between Field Training Officer and Patrol Trainee is one of the most important relationships between two individuals that exists within the Sheriff's Department. Future service to the community, to a large extent, begins with the lessons and examples provided by the Field Training Officer and the effort to learn and develop provided by the Patrol Trainee.

There are certain principles relating to the Training Officer-Trainee relationship which are deemed essential for the good of the concerned individuals, the organization and the community. These principles are considered by all the parties to this memorandum as inviolable.

The principles include the following:

1. The Field Training Officer occupies this position after careful selection based on experience, fitness to train others, and demonstrated ability. The FTO's performance shall serve as a model to the trainee and embody Department philosophies and employ Department procedures.

2. The Patrol Trainee represents an individual entrusted by the Department to act in the capacity of a peace officer serving the community but who, because of limited experience, is expected to participate fully in a formal training program.

3. Both Training Officer and Trainee are viewed as highly valued members of the organization and must view one another in the same manner. Mutual respect is essential and a requirement in the relationship.

4. The Training Officer, being empowered with the confidence of the Department, is in charge and will direct the activity of the Trainee at all times.

5. Basic human dignity and the right to retain one's self-esteem must be respected by all parties. Police work is stressful by its very nature and the introduction of artificial stress, designed for no legitimate job-related purpose, is not appropriate. All parties recognize that the testing for job fitness and competency has value and pointless hazing has no value to the individual or the organization.

6. The Training Officer and the Patrol Trainee will, to a large extent, contribute to the manner in which our Department serves the community in the future. A positive relationship between these two parties will set the tone of that service and cause the Department to be ultimately successful in this service.

FIELD OPERATIONS REGIONS

FIELD TRAINING OFFICER GUIDELINES

The proper training of field deputies is one of the most important tasks in Law Enforcement. To assist training officers with this responsibility, some guidelines have been established to provide a standard and effective means of evaluating and managing trainees.

COMMUNICATIONS

1. Assist with your trainee's orientation on the first day by briefing him or her as to what will be expected during training and how their training is expected to progress. Establish expectations for your trainee and formulate a plan as to how you will achieve those results.

2. Always discuss your trainee's actions with him or her. Praise good performance and point out mistakes. Show your trainee how to correct their mistake(s) and improve performance. Repetitive mistakes in one area indicate a need for remedial training. You should consult the training sergeant, if necessary, to design a formal remedial program.

3. It is very important that communication between you and your trainee remain open and constant. Encourage your trainee to ask questions. Show the how to use sources of information within the Department (Case Assignment Manual, Policy and Procedures Manual, codes, etc.) to answer questions.

4. When you see another FTO's trainee make a serious mistake, discuss it immediately. Follow-up by notifying his or her FTO of the incident. If the incident is minor in nature and does not require immediate correction, advise his/her FTO as soon as possible.

5. A good training officer will establish the appropriate relationship with their trainee from the beginning. When the FTO feels comfortable, he or she should call the trainee by his/her first name, and in turn, the trainee should be allowed to address the FTO by his or her first name when approved by the FTO. First name communication may occur within the first week of training and should help strengthen the bond between FTO and trainee.

   To further ease communication between you and your trainee, address him or her in the presence of others by the title, "deputy" not "trainee", particularly in the presence of citizens. Trainees may be referred to as a trainee when appropriate to denote their training status, but only in the presence of Department personnel.

INSTRUCTIONAL TECHNIQUES

1. Most people remember 50% or less of what they see and hear. By reviewing and critiquing your trainee's performance after an event or training situation, you could raise their retention of the subject material to as much as 70%.

2. You should strive to teach your trainee the most safe, effective, efficient, and productive ways of doing the job.

3. Proofread and initial all of your trainee's reports until he or she demonstrates competence in report writing skills. If you are unable to proofread the report due to time restrictions, advise the Watch Sergeant so other arrangements can be made.

4. Remember the four basis steps of instruction:

    1. Expectation: Tell your trainee why the material should be learned.

    2. Presentation: Try to keep it simple. Depending on the complexity of the subject, decide whether to present the material all at once or in segments.

    3. Application: Show (by example) how the task is to be performed.

    4. Test: Verbal or written, make sure the necessary material is retained.

5. Learning is the modification of behavior as a result of experiences. People won't learn until they are ready or motivated to learn. Trainees are usually motivated to learn because they are interested in learning how to be a patrol deputy and getting off training status. If your trainee is not ready to learn, you must inspire them by praise, constructive criticism, example, and instruction to motivate him/her toward achieving their goal of becoming a competent patrol deputy.

6. A person will attempt to learn and remember subject material when they see value in the subject. You should always show your trainee why a subject is important to know and remember.

7. Generally, retention of learned material is impaired when: (1) too much new material is introduced, (2) many different, but somewhat similar, things are taught at once, or (3) too much activity and distraction is present while new material is being presented.

8. Exposure to a variety of situations and a large volume of work may sometimes be useful to spur your trainee's learning progress, but overloading your trainee with work or "stressing"them **without clear definable purpose wastes time.** Unnecessary, nonproductive and time-consuming tasks waste valuable training time that could be used to present useful material.

INSTRUCTIONAL TECHNIQUES(CONT.)

9. Training officers should share training ideas and problems among themselves. One training officer may have past experience with a training problem that could give insight as to how the problem with another trainee could be solved. You should always work together in improve your training skills and expertise.

10. Because each trainee is unique, you must be versatile and prepared to use various training approaches.

11. Within the first 4-8 weeks of training you should assess which areas your trainee is having trouble learning. Focus on improving your trainee's performance in those problem areas. Your trainee's inability or refusal to improve should be well documented. Officer safety problems should be reported immediately to the station training staff. Should these problems become chronic, termination of employment should be considered; needless to say, this requires extensive documentation.

12. Encourage trainees to listen and discuss tactical and situational problems as time permits. Direct your trainee's free time during shift hours toward reviewing training material.

DOCUMENTATION AND EVALUATIONS

1. Evaluations should be written daily to document your trainee's progress. Continued incompetence will require more extensive daily documentation and possibly a formal Remedial Program.

2. Trainee evaluations are based on your appraisal (judgement) of training progress. Evaluation should be objective, describing both good and poor performance.

3. Negative evaluations must be substantiated by evidence of consistent failures and incompetence. Dates, times, and circumstances or actual incidents must be included to show when and how your trainee failed to perform in a satisfactory manner.

4. In order to provide a standard for comparison, your trainee's performance should be evaluated against other trainees who are progressing satisfactorily at that phase of training, i.e, a rating of "3" in a given area would indicate that a trainee is performing satisfactorily for a deputy in the third month of training; a rating of "2" in the third month would indicate a deficiency.

5. Study tests are provided to ensure that trainees are exposed to critical training information. These tests should be taken first by the trainee "open book" to expose him or her to the material. Later "closed book"exams of prior tests will demonstrate what the trainee has retained.

6. You have an obligation to the Department, the public, yourself and to your peers to prevent unsatisfactory and/or incompetent trainees from remaining in patrol.

DOCUMENTATION AND EVALUATIONS(CONT.)

7. Documentation of your trainee's performance during training is of critical importance. **If an incident is not immediately documented, it may become virtually impossible to prove that inappropriate behavior or incompetent performance has occurred. Failure to properly document your trainee's failures will make it harder to remove him from patrol.**

8. Negative documentation that will be placed in your trainee's training or station records must be discussed with and signed by your trainee.

9. Documentation can be accumulated in many ways such as daily and weekly evaluations, end-of phase evaluations, tests and exams (both standard and training officer prepared), trainee written memos, training officer initiated contact sheets (good and bad), photocopied reports written by your trainee prior to corrections by the training officer or watch sergeant, and training check lists. These provide the means to gauge your trainee's progress. Don't forget to document occurrences in the field that demonstrate good or poor performance.

10. Your trainee may be directed to submit a memo to the training supervisor, through you, describing a mistake made (and the correct course of action if appropriate). Memos should be used as a training aid or for documentation only, and not for punishment.

11. In addition to the Daily Observation Reports, you should keep some type of daily written record or notebook of your trainee's progress. Notebook entries of "critical events" or times when trainee's performance was notably good or bad will allow you to recall the incident later when preparing an end-of- phase evaluation. Note the date and time these behaviors were discussed with your trainee and how your trainee was instructed to improve his/her performance.

12. Whenever you identify a deficiency in a trainee's performance, explain what course of action you have taken, or intend to take in order to correct it.

CONDUCT

1. **"Hazing", in any form, *is not acceptable*, and could result in disciplinary measures.** There should be no need to define "*hazing*"; however, the following is offered to give examples of what hazing could include: forbidding your trainee to communicate with other deputy personnel on non-training related interests; not allowing your trainee to eat meals or drink coffee in the presence of or with trained deputy personnel; or playing practical jokes on your trainee with the intent to "put him/her in their place".

2. Be professional and conform to the standards in the Policy and Procedures Manual. Your example will likely structure and mold your trainee's career.

3. Stress the importance of a "service" attitude in dealing with the public. A proper demeanor and the effective use of tact and diplomacy will often prevent complaints, which cause time-consuming investigations.

CONDUCT (CONT.)

From time to time you will undoubtedly encounter more work, whether self generated or dispatched, than your trainee can complete during your regularly scheduled shift. Trainees shall not be required to complete their work on their own time. All extended shift work shall be compensated by overtime. All overtime must be pre-approved by your supervisor, unless emergent circumstances exist.

The training process is a rigorous and extremely demanding one for the training officer as well as the trainee. The successful completion of such as effort is certainly cause for celebration. However, such festivities should be kept within the bounds of acceptable behavior. Unfortunately, such celebrations sometimes result in disciplinary actions or termination. Use your head. Encourage your trainee to use theirs. Good luck with the task before you!

I HAVE RECEIVED AND READ THE FOLLOWING DOCUMENTS:

1. FIELD TRAINING OFFICER GUIDELINES
2. TRAINING OFFICER - TRAINEE PRINCIPLES (F.O.D. 91-3)

TRAINING OFFICER: _____ EMPLOYEE # _____
(PRINT NAME)

TRAINING OFFICER: _____ DATE: _____
(SIGNATURE)

STATION: _____

RETAIN IN FIELD TRAINING OFFICER'S TRAINING FILE

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: MARCH 1, 1995

OFFICE CORRESPONDENCE

FROM: JAMES M. CALLAS, CHIEF
LEROY D. BACA, CHIEF
LARRY L. ANDERSON, CHIEF
FIELD OPERATIONS REGIONS

TO: ALL UNIT COMMANDERS
FIELD OPERATIONS REGIONS

SUBJECT: FIELD OPERATIONS DIRECTIVE 95-2

SUPERVISION OF FIELD TRAINING OFFICERS - FIRST SIX MONTH TRAINING EXPERIENCE

The following program was developed to track newly assigned Field Training Officers (FTO). It is the intent of this program to assess and assist inexperienced FTOs and to ensure quality training is occurring for newly assigned field personnel.

I. PAIRING OF MENTOR TO NEWLY APPOINTED FTO

The Unit Commander at each station shall review current and past FTOs to determine which individuals most accurately reflect the Department's model of an ideal training officer. These FTOs will be assigned as mentors to newly appointed FTOs. Participation as a mentor is voluntary.

Every effort should be made to assign the Mentor and new FTO on the same shift and regular days off. For practical reasons (3 deputies in a car) and to maintain a positive training atmosphere (preventing the image of "ganging up" on the trainee), the Mentor should not be assigned to work with the new FTO or trainee except when one of them is off-duty (i.e., station level training, sick call in, etc.).

The new FTO should be encouraged to utilize their Mentor to answer questions regarding the day to day functions of a FTO. At the completion of the new FTO's first six months of training, the formal Mentor/FTO relationship shall be dissolved. However, this does not preclude the FTO from continuing to seek advice from them on an informal basis.

II. FTO / TRAINEE ASSIGNMENTS

Station training sergeants shall make every effort to assign new FTOs (first three months as a FTO) to a trainee that has already completed their first three (3) months of training and is not experiencing significant learning difficulties. This practice should reduce the pressure and stress the new FTO typically experiences during their first few months as a training officer. Additionally, any mistakes the new FTO makes will not have as much of an impact on the trainee as they should by now have a good understanding of the duties and responsibilities of a patrol deputy.

In order to effectively measure the abilities of the new FTO, the second training experience should be with a new trainee just starting their first month of patrol training. This will allow station training sergeants to evaluate the performance of the new FTO during the most stressful stage of training. This process will also benefit the trainee as the new FTO will now have some practical experience as a training officer.

III. TRAINING FOLDERS FOR NEWLY ASSIGNED FTO'S

Station training sergeants shall maintain a separate training folder for all new FTOs. These folders shall be maintained for two (2) years. The folders shall contain, but are not limited to, the following items:

1. Field Sergeant Questionnaires (see section IV.)
2. Copies of field audits conducted on FTO, etc.
3. Monthly written evaluations by training sergeants.
4. Identification of the FTO's Mentor(s) and trainees.
5. FTO Application form and other relevant application paperwork.
6. Other documentation that provides insight into the effectiveness of the newly assigned FTO (i.e., citizen complaints, positive and negative supervisory contacts, on-duty traffic collisions, etc.).

IV. ASSESSING NEW FTO PROGRESS.

Station training sergeants will distribute and collect questionnaires (see attached) from all patrol sergeants that work on the same shift as the new FTO. These questionnaires will then be reviewed individually by the Training Sergeant, noting both strengths and weakness of the new FTO. These questionnaires shall be retained in the FTO's training folder.

V. FIELD AUDITS.

Station training sergeants shall acquire copies of all field audits conducted on the new FTO and trainee, FTO solely, trainee solely, and the trainee with other FTOs. These audits will be individually reviewed by the station training sergeant, noting both strengths and weakness of the new FTO. The audits on the trainee in absentia of their FTO can provide insight as to the effectiveness of the FTO and their training methods. These audits shall be kept in the FTO's training folder.

VI. ASSESSMENT OF NEWLY ASSIGNED FTO.

Station training sergeants shall review all questionnaires, field audits, and any other documentation collectively. This should provide the necessary insight into the FTO's capabilities to determine how well they are progressing. If an FTO is performing in a substandard manner, their training sergeant shall immediately address the difficulty(s), either remediating the FTO or deselecting them from the position. This review shall be conducted monthly for the first six (6) months the new FTO is training. Training sergeants shall prepare a written assessment, on a SH-AD-32, of the FTO's progress for each review period. This assessment shall be discussed with the FTO by the training sergeant and signed by both parties. The original shall be forwarded to the training lieutenant and a copy placed in the FTO's training folder.

NEWLY APPOINTED FTO QUESTIONNAIRE

TO: SERGEANT _____

FROM: TRAINING SERGEANT _____

SUBJECT: MONTHLY QUESTIONNAIRE / PROGRESS REPORT

F.T.O.: DEPUTY _____

EVALUATION PERIOD: _____ TO _____

RATE THE F.T.O. IN THE FOLLOWING AREAS	GOOD	FAIR	POOR
Compliance with Department's Service Oriented Policing mission.	____	____	____
Interpersonal (people) skills.	____	____	____
Sensitivity to community and Departmental cultural diversity needs.	____	____	____
Utilization of calls and self-initiated activity as training opportunities (i.e.: debriefs after significant incidents that have training value).	____	____	____
Maintains a professional relationship with trainee.	____	____	____
Adheres to Department's overtime policy, (special attention to trainee Overtime).	____	____	____
Quality and variety of reports.	____	____	____
Quality and variety of arrests.	____	____	____
Self-initiated activity; follow-up on calls, Detective information, and citizen contacts relative to criminal activity in the F.T.O.'s reporting districts.	____	____	____
Handles calls in a timely fashion.	____	____	____

Comments regarding strengths and weaknesses: _____

_____

_____

_____

_____

L.A. COUNTY SHERIFF'S DEPARTMENT

DAILY OBSERVATION REPORT

SHIFT:_____ WEEK:_____ FROM:_____ TO:_____ PHASE:_____

FTO*(print)*:_____ TRAINEE*(print)*:_____

Rating Scale: **0-5**-Level of Competence **6**-Competent in Patrol **NRT**-Not Responding to Training

	SUN	MON	TUE	WED	THU	FRI	SAT	NRT
KNOWLEDGE								
1. DEPARTMENT POLICY								
2. PENAL CODES/VEHICLE CODES								
3. MISCELLANEOUS CODES								
4. SEARCH AND SEIZURE LAWS								
5. RESOURCES/FORMS/EQUIPMENT								
PERFORMANCE								
6. OFFICER SAFETY/LOCATION AWARENESS								
7. SEARCHES: PERSONS/VEHICLES/BUILDINGS								
8. REPORT WRITING								
9. DRIVING SKILLS								
10. TRAFFIC ENFORCEMENT/INVESTIGATION								
11. PROBLEM SOLVING/DECISION MAKING								
12. RADIO USE AND PROCEDURES								
13. INTERVIEW/INVESTIGATIVE SKILLS								
14. SELF-INITIATED ACTIVITY/MOTIVATION								
ATTITUDE								
15. ACCEPTS FEEDBACK/CRITICISM								
16. RELATIONSHIP W/PEERS/SUPERVISOR								
17. RELATIONSHIP W/PUBLIC								
18. CONFIDENCE/COMMAND PRESENCE								
F.T.O. INITIALS								
TRAINEE INITIALS								
SHIFT SGT. INITIALS								

NOTE: Only Field Training Officers May Use This Form To Evaluate

DAY ONE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY TWO **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY THREE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY FOUR **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

DAY FIVE **DATE:**_____

COMMENTS:_____

+	
Std.	
-	

+: Denotes positive performance **Std.**: Denotes standard performance **-**: Denotes negative performance

REVIEWED BY TRAINEE:_____ _____

Signature Date

REVIEWED BY TRAINING OFFICER:_____ _____

Signature Date

REVIEWED BY TRAINING SERGEANT:_____ _____

Signature Date

NOTE: For Additional Comments Attach a Continuation Form.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
END OF PHASE EVALUATION

PHASE _____ EVALUATION

Briefly document any areas of the phase training where the trainee is excelling, or having difficulties, which have not been documented on the DORs. Always be sure to include dates, times, file numbers etc., when documenting a trainee's performance._____

_____

_____

_____

_____

F.T.O._____ _____ _____
Signature **Print name** **Date**

Trainee
Comments_____

_____

_____

_____

_____

Trainee_____ _____ _____
Signature **Print Name** **Date**

Training Sgt.
Comments_____

_____

_____

_____

_____

Training Sgt._____ _____ _____
Signature **Print Name** **Date**

NOTE: For Additional Comments Attach a Continuation Form.

END OF PHASE EVALUATION
(Continued)

FIELD TRAINING PROGRAM EVALUATION

The purpose of this evaluation instrument is to provide constructive feedback regarding your participation in the Field Training Program in order to monitor and improve the program. The intent of the evaluation is to critique the **program** in its entirety, which may include the performance of individuals involved in the delivery of the program. This evaluation should not be used, however, as a vehicle to initiate personnel complaints or grievances, as it is accepted you fully understood the Field Training Officer / Trainee Standards of Conduct and appropriate reporting procedures at the beginning of your Field Training Program. Established reporting procedures remain in effect.

Trainee Name (print) _____

1. What was the best part of the Field Training Program (FTP)?

2. What part of the training program needs improvement?

3. If you could change the trainee evaluation system, how would you change it and why?

4. Who were your Field Training Officers?

5. Identify the training officers you learned the most from.

6. What abilities, methods, or techniques did the training officers named in #6 use which helped you learn?

7. Did any training officers use methods or techniques which inhibited your training?

8. If yes to #7, what were those techniques or methods?

9. Were there enough exercises such as tests, role playing, practical application, etc.?

10. Are there training subjects which should have been covered more thoroughly?

11. Are there training subjects which should have had less time and effort devoted to them?

12. Does the FTP Manual sufficiently cover the subject matter you are expected to learn as a trainee?

13. If no to #12, what information needs to be added or changed to the manual in order to provide the best possible FTP?

14. How could the Department have better prepared you for your role as a trainee?

    a. In the academy?

    b. In custody?

    c. In Field Operations School?

15. What suggestions do you have for other trainees who are about to enter the training program?

16. Is there anything that members of the training staff or FTO Unit should be doing which would improve training?

17. Please provide any additional comments, suggestions, or observations about the training program you wish to share.

Trainee Signature _____ Date _____

Training Sergeant/
Administrator Signature _____ Date _____

FIELD OPERATIONS REGIONS

TRAINEE INFORMATIONAL HANDOUT

In the next few months you will receive some of the most important training in your career. You will be assigned a Field Training Officer who will guide, coach, and evaluate your progress.

You will participate in a Field Training Program. This training program is specific in nature, designed to economize time and effort. There are Daily Observation Reports, Phase Section and Standard Checklists, End of Phase Evaluations, written tests, and a final examination incorporated into the Field Training Program. Each of these will be employed on a set interval which will be discussed with you by your training officer. You should complete the training program in approximately six months, five months with your FTO and one month in a one person car.

However, there are a few deputies who will undertake the Field Training Program who have not adequately prepared for patrol and will experience some degree of difficulty with the program. If your performance is evaluated as being below minimum standards identified in the Field Training Program, you will be placed on an intensive remediation program. This remediation program will be developed for just the area(s) in which your performance is below standard. The program will be for a 60 day period during which your training officer will work with you to bring your performance up to an acceptable level. Should you fail to remediate within that time period, an extension of one month may be granted. If you still have not achieved an acceptable performance level, you will be transferred to Custody Division for a period of one year. You will then be returned to a patrol station to begin the training process again. If this effort also ends in failure, your employment with the Department will be terminated.

To aid in your training, the following guidelines have been established:

1. Follow the chain of command, which for training matters consists of your FTO, the shift Training Sergeant, the station Training Sergeant, the Training Lieutenant, etc. For other job related matters, the chain of command consists of your FTO, the Watch Sergeant, the Watch Commander, etc. Direct any questions you may have to your assigned training officer or to another training officer if your training is unavailable.

2. Be ready for work, in uniform, by the beginning of the shift briefing. Use any available time for reading reports, studying new material, baton practice on the body bag, warm-up exercises in the weight room, etc.

3. Those reports which were not completed during your previous shift should be completed in the report writing room to avoid congestion in the coffee room and secretary's area.

4. Advise the dispatcher when going "10-8" from the station. Check for calls waiting to be assigned to your car.

5. Have the courtesy to pause and knock before entering a supervisor's office, especially if he or she is busy with other work.

6. Utilize any available time to write reports, study codes, complete brain book, etc.

7. Share training information and handouts with other trainees. Work together to better your training.

8. Remember that the acceptance and trust of your co-workers takes time to acquire. Be yourself and make patrol training a positive experience.

9. Exchange phone numbers with your FTO and other trainees to facilitate communication during off-duty hours in case of unexpected emergencies, i.e., car trouble, etc.

10. The Manual of Policy and Procedures requires you to immediately report any off duty incidents in which you were involved to your Unit Commander or ranking supervisor on duty at your unit of assignment. Attempt to contact your assigned FTO by telephone or brief him or her as soon as practical to insure that proper administrative and policy procedures are followed.

11. Always check with the Watch Sergeant before leaving the station for rejected reports, logs, etc.

12. Maintain a positive and effective attitude. Be open to constructive criticism and remember your FTO is there to help you become an effective patrol deputy.

13. All trainees are expressly prohibited from working overtime, except in a emergency situation, without the prior written approval of a supervisor.

I HAVE RECEIVED THE FOLLOWING DOCUMENTS:

1. TRAINEE'S INFORMATIONAL HANDOUT
2. TRAINING OFFICER - TRAINEE PRINCIPLES (F.O.D. 91-3)

TRAINEE: _____ EMPLOYEE #_____
(PRINT NAME)

TRAINEE: _____ DATE: _____
(SIGNATURE)

STATION: _____

RETAIN THIS RECEIPT IN THE TRAINEE'S TRAINING FILE

PHASE I

TRAINEE: _____

PHASE I

(Continued)

PHASE II

TRAINEE: _____

PHASE II

(Continued)

PHASE III

TRAINEE: _____

PHASE IV

TRAINEE: _____

PHASE IV

(Continued)

TRAINEE: _____

PHASE V

TRAINEE: _____

PHASE V

(Continued)

PHASE VI

TRAINEE : _____

METHOD: (FP = FIELD PERFORMED) (WT = WRITTEN TEST) (RP = ROLE PLAYING) (VT = VERBAL TEST)

LAPD Passed Over as Reform Model

Law enforcement: The state controller, a mayoral candidate, shuns the department for UCLA conference.

By JAMES RAINEY
TIMES STAFF WRITER

Looking around the state for police reform and management role models, state Controller Kathleen Connell found examples in San Diego, San Francisco and the Los Angeles County Sheriff's Department. But she didn't find one in the Los Angeles Police Department, which she would oversee if she were elected the next mayor of Los Angeles.

That was the subtext of a half-day conference sponsored Tuesday by Connell, who invited representatives from other law enforcement agencies, but not the LAPD, to offer advice on how to improve public safety and morale in California's police departments.

Connell has been the harshest critic of both the Los Angeles Police Department and its city overseers among the six candidates who have declared their candidacies for mayor. On Tuesday, she depicted herself as the supporter of oppressed street officers.

"I think it is fair to assume the vast majority of officers are doing their jobs," Connell told the gathering of about 60 at UCLA's Anderson School of Management. "What they are lacking is adequate supervision in the field and the kind of support system they need to be effective."

Connell said that such management problems, evident throughout the country, "are more glaring in Los Angeles, whether it is through the Rampart situation or the killing of the actor [Anthony Dwain Lee]."

Connell used the gathering—one of her quarterly forums that cover a variety of issues—in an attempt to show that she is more than just a fiscal watchdog for the state, but an attentive public servant, who is paying close attention to the police issue as the April 10 mayoral primary election draws closer.

It remains to be seen whether the city's voters are as "enraged" about police scandals and management as Connell says they are and whether they believe that she has the answers to the problems facing the LAPD.

Connell said she is not prepared yet to commit to specific reform proposals, although she expressed an interest in some of the ideas presented at her conference, such as the flextime schedules employed by the Los Angeles County Sheriff's Department but not yet adopted by the LAPD.

Connell attempted to dramatize the magnitude of the problem facing Los Angeles even as the conference participants gathered for the morning session. She told a small circle of police officers that she believes the city's liability in the Rampart Division scandal and other police cases has been underestimated and could hit $1 billion.

That estimate is many times more than that of any city official. City Atty. James K. Hahn, also a candidate for mayor, has previously said Rampart-related payouts may amount to $125 million, while not projecting a figure for other police cases.

Later, Connell clarified that her $1-billion estimate was for *all* excessive-force cases and the cost of implementing a federal consent decree, which will require greater training and monitoring of officers.

Finally, a staff member added that Connell was referring to the costs, through history, that Los Angeles may have paid to settle its police cases.

In any event, two City Council members, told about the comments, recommended caution in discussing settlements related to the Police Department.

"Anybody can pluck a number out of the air, but I don't know if there is anything substantiating it," said Cindy Miscikowski. "We have to have real numbers to work through in terms of budgeting."

Councilman Michael Feuer said inflated estimates could embolden plaintiffs' attorneys.

But Connell's office insisted that the city is underestimating its liability. Huge payments will make it even more important to have a tough, fiscal manager like her running the city, Connell said.

"It's a fundamental hit on the balance sheet of the city of Los Angeles and a fundamental challenge to the city's Police Department," Connell said. "It will be necessary to make significant changes in the way we operate our city government in order to find the money to pay these liabilities. That is why I think the voters are so enraged."

CAROLYN COLE / Los Angeles Times

State Controller Kathleen Connell hosts a forum on police issues

The candidate said the performance audits that she plans to conduct of all the city's major departments, if she becomes mayor, will help find the money needed to pay for legal settlements and keep the city running.

Connell said she would look into suggestions from panel members to find ways to help police officers pay for their homes, perhaps through low-interest loans. And she pledged to try to increase grants from a state fund she oversees that already doles out $150 million to police departments for special programs.

She commended Los Angeles County Sheriff Lee Baca, a panel participant, for using flexible work schedules and other inducements to improve hiring in his department.

Baca said he admires Connell, but plans to support Antonio Villaraigosa for mayor. Baca said the former state Assembly speaker is a proven leader whose experience in the Legislature will help him bring more funding to local law enforcement agencies. He said he particularly appreciated Villaraigosa's support for a $96-million expenditure to build a new crime lab for the county.

LAPD Passed Over as Reform Model

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Joint Legislative Budget Committee

GOVERNMENT CODE SECTIONS 9140-9143

CALIFORNIA LEGISLATURE

LEGISLATIVE ANALYST
ELIZABETH G. HILL

925 L STREET, SUITE 650
SACRAMENTO, CALIFORNIA 95814
(916) 445-4656

December 13, 1988

Mr. Jesse Huff, Chairman
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814

Dear Mr. Huff:

This letter responds to your request for a recommendation on Claim No. CSM-4313, related to the reporting of cases involving the abuse of elderly persons. In this claim, Fresno County requests reimbursement for the increased costs it has allegedly incurred in providing protective services in reported cases of elder abuse. The county claims that Chapter 769, Statutes of 1987, requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome.

Our examination of the current law reveals, however, that most of the existing requirements with regard to county response to reported elder abuse preceded the enactment of Chapter 769. The statute which initially allowed reporting of dependent adult abuse was enacted in 1982. This reporting requirement was extended by legislation enacted in 1983 and 1985. Our analysis indicates, however, that Chapter 769 does impose increased workload on counties in the following manner:

- Chapter 769 repealed the 1990 sunset date on the existing law regarding reporting of dependent adult abuse. This imposes a mandate in 1990 and subsequent years by increasing county costs associated with reporting known or suspected dependent adult abuse cases. In addition, to the extent that the dependent adult abuse reporting program results in increased reports of abuse, it will increase county workload associated with investigation and resolution of these cases.

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- Chapter 769 requires county Adult Protective Services (APS) or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

Our analysis further indicates that the increased costs associated with Chapter 769 appear to be state-reimbursable to the extent that counties have augmented their County Services Block Grant (CSBG) with county funding to pay for these costs. A detailed analysis of the claim follows below.

Background

Adult Protective Services. Welfare and Institutions (W&I) Code Chapter 5.1 generally requires county governments to provide an APS program. The purpose of this program is to ensure the safety and well-being of adults unable to care for themselves. The program attempts to accomplish these objectives by providing social services and/or referrals to adults in need.

The state provides funding for APS through the County Services Block Grant (CSBG), which counties also use to fund a variety of other social service programs, including administration of In-Home Supportive Services. Under current law, each county generally has discretion as to the types of adult protective services to provide, the number of adults who receive such services, and the amount of CSBG funding allocated to these services. However, the state does require the county APS program to record and investigate reports of suspected elder or dependent adult abuse.

Reporting. Welfare and Institutions Code Chapter 11 (Section 15600 et seq.) requires dependent care custodians, health care providers, and specified public employees to report known or suspected physical abuse of an elderly or dependent adult. An elderly adult is defined as anyone aged 65 years or older. A dependent adult is any person between the ages of 18 and 64 years who is unable to care for himself or herself due to physical or mental limitations, or who is admitted as an inpatient to a specified 24-hour health facility. Care providers are permitted but not required to make such reports if the suspected abuse is not physical in nature.

Upon receiving a report, counties are required to file appropriate reports with the local law enforcement agency, the state long-term care ombudsman, and long-term care facility licensing agencies. In addition, the county is required to report monthly to the state Department of Social Services (DSS) regarding the number of abuse reports it has received.

Analysis

Fresno County claims that Chapter 769 requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome. In our view, the central question before the commission is what Chapter 769 actually requires a county to do upon receiving a 254rt of elder abuse. We examine

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requirements with regard to three areas of county response: reporting, investigation, and case resolution.

Reporting. Our review of the APS program's statutory history reveals that most of the current reporting requirements were in existence prior to the enactment of Chapter 769. Chapter 1184, Statutes of 1982, established W&I Code Chapter 11, which allowed any person witnessing or suspecting that a dependent adult was subject to abuse to report the suspected case to the county adult protective services agency. At that time, "dependent adult" included individuals over age 65 years. Chapter 11 initially was scheduled to sunset on January 1, 1986. Subsequent legislation expanded the reporting requirements. Specifically:

- Ch 1273/83 enacted W&I Code Chapter 4.5, which established a separate reporting system for suspected abuse of individuals aged 65 or older. This statute required elder care custodians, medical and nonmedical practitioners and employees of elder protective agencies to report suspected or known cases of physical abuse to the local APS agency. It also required county APS agencies to report the number of reports received to the state DSS.

- Ch 1164/85 amended W&I Code Chapter 11 to require similar mandatory reporting of physical abuse of a dependent adult. This statute also required law enforcement agencies and APS agencies to report to each other any known or suspected incident of dependent adult abuse. In addition, Chapter 1164 extended the program's sunset date to January 1, 1990.

Chapter 769, Statutes of 1987, consolidated the reporting requirements for elderly and dependent adult abuse within the same statute, and repealed the January 1, 1990 sunset date for dependent adult abuse reporting. The statute also made minor changes in the reporting requirements, including the following:

- The statute required abuse occurring within a long-term care facility to be reported to a law enforcement agency or the state long-term care ombudsman.

- The statute required county APS or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

In sum, various provisions of existing law impose increased reporting workload on local governments by requiring them to receive reports of suspected abuse made by other care providers, and to report specific information to other state and local agencies. However, our analysis indicates that the bulk of these requirements were imposed prior to Chapter 769. Therefore, only the marginal increase in workload imposed by Chapter 769 would appear to be subject to the current claim. These requirements include the following:

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- Reporting workload associated with reports of dependent adult abuse occurring after January 1, 1990. By repealing the January 1, 1990 sunset date for the dependent adult abuse reporting program, Chapter 769 imposes increased reporting workload on counties in 1990 and subsequent years.

- The workload required to report abuse incidents to the appropriate long-term care facility licensing agency.

We note that Chapter 769 also could reduce county workload to the extent that reports of abuse in a 24-hour health facility are made to the state long-term care ombudsman rather than to the local APS agency. We are unable to determine the potential magnitude of this reduction in costs. However, it appears unlikely that the reduction in costs in this area will fully offset the cost increases identified above, and particularly the costs associated with dependent adult abuse reporting in 1990 and beyond.

In addition to increasing reporting costs, Chapter 769 will increase county costs associated with investigating and resolving dependent adult abuse cases, to the extent that the mandatory reporting requirement results in identification of increased cases of abuse.

Investigation. Chapter 30-810.2 of the state Department of Social Services' (DSS) regulations, requires counties to investigate promptly most reports or referrals of adult abuse or neglect. Welfare and Institutions Code Section 15610 (m) defines "investigation" as the activities required to determine the validity of a report of elder or dependent adult abuse, neglect or abandonment. Thus, it appears that state law requires county APS agencies to act promptly to determine the validity of a reported incident of abuse.

Resolution. Welfare and Institutions Code Section 15635 (b) requires the county to maintain an inventory of public and private service agencies available to assist victims of abuse, and to use this inventory to refer victims in the event that the county cannot resolve the immediate or long-term needs of the victim. This referral requires assessment of the needs of the client, and identification of the appropriate agency to serve these needs. Depending on the needs of the client and the resources available, a county may refer the client to a county, state or federally funded program, or to a private organization. When serving an indigent client, the county is required to be the service provider of last resort if the client does not qualify for state or federal programs (W&I Section 17000).

To the extent that mandatory reporting of dependent adult abuse increases the number of cases reported to the county, it increases the county's APS workload. Presumably, the sunset of the reporting requirements would have led to a reduction in this workload. Thus, by repealing the January 1, 1990 sunset date on the dependent adult abuse reporting program, Chapter 769 probably results in increased county APS workload, in terms of both investigation and resolution in 1990 and subsequent years. Again, the

requirements with regard to elder abuse cases, and with regard to dependent adult cases reported prior to January 1, 1990, are imposed by earlier statutes. Consequently, any increased workload associated with these cases does not appear to be subject to the current claim.

Are costs reimbursable? The second question before the commission is whether the increased county costs associated with this mandate are state-reimbursable. Specifically, you must determine whether the costs associated with dependent adult and elder abuse reporting are reimbursable, given that the Legislature currently provides funding for the APS program in the form of the CSBG.

In order to determine whether the CSBG fully funds the increased workload imposed by Chapter 769, it is useful to understand the history of funding for APS. Prior to 1981, the state DSS' social services regulations contained detailed requirements identifying the minimum level of APS service that counties had to provide to clients. In 1981, however, the federal government reduced its support for social service programs (Title XX of the Social Security Act) by approximately 20 percent. To help the counties accommodate this reduction, DSS eliminated the specific requirements from its APS regulations and from the regulations governing various other social services programs, thereby giving the counties substantial discretion in the level of service they provide and in the amount of federal Title XX funds they allocate to APS.

In recognition of this increased county discretion, the Legislature, in the Budget Act of 1985, created the CSBG, which provides funds for the various social services programs, including APS, over which counties have substantial discretion. (In contrast, the counties have limited discretion over two major social services programs -- Child Welfare Services and In-Home Supportive Services. These programs are budgeted and their funds are allocated based on county caseloads and costs.) The level of funding provided through the CSBG was not tied to any measurement of the workload in any of the CSBG programs. Rather, it was based on county expenditures for all of the programs in 1982-83, with the expectation that counties would allocate CSBG funds to the various programs based on local priorities.

In sum, counties have considerable flexibility as to the types and level of services provided under APS, and as to the level of CSBG funding each county devotes to the APS program. Moreover, the amount of CSBG funds provided to each county does not necessarily reflect workload in that county. Thus, in response to the increased workload requirements imposed by Chapter 769, counties with insufficient CSBG funding to pay for the workload increase generally face two choices:

- The county can fund the increased APS workload by reducing expenditures in other areas of the APS program, or in other programs funded through CSBG. This, in effect, requires the county to realign its existing program priorities in order to redirect CSBG money to pay for the recording, investigation, and referral of reported abuse cases.

- The county can use its own funds to augment CSBG funding in order to provide an increased level of service within the existing program, while maintaining existing program priorities.

Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce service in one area to pay for a higher level of service in another. Moreover, in enacting Chapter 11, the Legislature did not require that counties realign their social service priorities in order to accommodate the increased workload. Therefore, we conclude that the costs associated with Chapter 769, are state-reimbursable to the extent that a county uses its own funding to pay for these costs. If, however, a county exercises its discretion to redirect CSBG funds to pay for the costs of elder and dependent adult abuse reporting, investigation, and resolution, these costs are not state-reimbursable.

Sincerely,

Elizabeth G. Hill

Elizabeth G. Hill
Legislative Analyst

EXHIBIT B

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

STATE OF CALIFORNIA

Gray Davis
Governor

Bill Lockyer
Attorney General

July 16, 2001

Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Mandatory On-the-Job Training for Peace Officers - 00.TC-19
County of Los Angeles

Dear Ms. Opie:

This letter is in response to your request for comments in your letter of July 9, 2001.

The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program. This new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies. There was no statutory enactment by the Legislature compelling adoption of Field Training program regulations.

Local entities, such as the County of Los Angeles, participate in the POST program on a voluntary basis. The County has passed an ordinance under the terms of which it agrees to abide by current and future employment and training standards enacted by the POST Commission.

The Commission's regulations include a waiver provision for participating agencies unable to comply due to significant financial constraints.

Please contact us if you have questions.

Sincerely,

Kenneth J. O'Brien

KENNETH J. O'BRIEN
Executive Director

KJO:gf:kh

RECEIVED
JUL 17 2001
COMMISSION ON
STATE MANDATES

EXHIBIT C

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 8, 2001

RECEIVED
AUG 0 8 2001
COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 9, 2001, the Department of Finance has reviewed the test claim submitted by the Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under California Code of Regulations, Title No. 11, Section Number 1005, last amended January 9, 1998, as issued by the Commission on Peace Officer Standards and Training (POST) in Bulletin 98-1, are reimbursable state mandated costs (Claim No. CSM-00-TC-19 "Mandatory On-the-Job Training for Peace Officers Working Alone"). Commencing with page 1 of the test claim, the claimant has identified thefollowing new duties, which it asserts are reimbursable state mandates:

- The development of a 10-week on-the-job training program for officers who will be working alone in general law enforcement patrol assignments.
- Preparation and instruction of a 10 week training class pursuant to the regulations.
- Employee/trainee participation in the class,
- Review and evaluation of trainees.

As the result of our review, we have concluded that the claim is without merit and should be denied. The reasons for this conclusion are as follows:

- Local law enforcement agency participation in POST Programs is optional. Local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code Sections 13522 and 13510. Therefore any costs associated with participation in an optional program are not reimbursable state-mandated local costs.

- Local agency participation inthis training was optional because local entities could have requested a waiver exempting them from this requirement. To the extent that a local entity did not request a waiver, the county was participating optionally.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 9, 2001 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF TODD JERUE
DEPARTMENT OF FINANCE
CLAIM NO. CSM-00-TC-19

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the California Code of Regulations, Title No. 11, Section Number 1005, last amended January 9, 1998 relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

August 8, 2001 at Sacramento, CA

Todd Jerue

PROOF OF SERVICE

Test Claim Name: "Mandatory On-the-Job Training for Peace Officers Working Alone"
Test Claim Number: CSM-00-TC-19

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915L Street, 8 Floor, Sacramento, CA 95814.

On August 8, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Ms. Pam Stone, Legal Counsel
DMG-MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Suite 603
Los Angeles, CA 90012

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Leroy Baca, Sheriff
Los Angeles County Sheriffs Department
4700 Ramona Blvd.
Monterey Park, CA 91754-2169

Harmeet Barkschat
Mandate Resource Services
8254 Heath Peak Place
Antelope, CA 95843

Executive Director
California Peace Officers' Association
1455 Response Rd.
Sacramento, CA 95815

P-8
Mr. Glen Fine, Assistant Executive Director
Peace Officers Standards and Training
Adminstrative Services Division
1601 Alhambra Blvd.
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B-8
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 8, 2001 at Sacramento, California.

Mary Latorre

Mary Latorre

EXHIBIT D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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J. TYLER McCAULEY
AUDITOR-CONTROLLER

October 23, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Review of State Agency Comments
County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-The- Job Training for Peace Officers Working Alone

The County of Los Angeles submits and encloses herewith the subject review to obtain timely and complete reimbursement for the State-mandated local program, in the captioned law.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

Review of State Agency Comments
County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-the- Job Training for Peace Officers Working Alone

The State Department of Finance and the Commission on Peace Officer Standards and Training [POST] have commented on the test claim filed by the County of Los Angeles [County] to recover costs incurred in providing on-the-job [OJT] training as mandated in POST Bulletin 98-1.

S. Calvin Smith, Program Budget Manager of the State Department of Finance [Finance] indicates on page 1 of his August 8, 2001 letter to Paula Higashi, Executive Director, Commission on State Mandates [Commission], that:

> "Local law enforcement agency participation in POST programs is optional. Local entities agree to participate in POST programs and to comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code Sections 13522 and 13510. Therefore any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
>
> Local agency participation in this training was optional because local entities could have requested a waiver exempting them from this requirement. To the extent that a local entity did not request a waiver, the county was participating optionally."

The comments of Kenneth J. O'Brien, Executive Director of POST in his July 16, 2001 letter to Commission's Paula Higashi, are similar to those of Finance except that Mr. O'Brien also indicates that:

> "The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, *requiring* that certain peace officers complete a minimum ten-week Field Training Program. This new training requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies." [Emphasis added.]

Mr. O'Brien then points out [in his July 16th letter] that "[l]ocal entities, such as the county of Los Angeles, participate in the POST program on a voluntary basis".

However, the County maintains that while "participation" in the POST program may be "voluntary"[1], completion of the required training is not.

POST Training is Necessary to Exercise Peace Officer Powers

According to Daniel E. Lungren, California's Attorney General, writing in Opinion Number 97-503, issued on October 24, 1997 [attached], POST training is necessary to exercise peace officer powers. Specifically, Mr. Lungren concludes, on page 293, that:

> "If a police officer or deputy sheriff fails to complete the training prescribed by the Commission on Peace Officer Standards and Training or obtain the basic certificate issued by the commission, such officer may exercise only non-peace officer powers; the officer may not exercise the powers of arrest, serving warrants, carrying concealed weapons without a permit, or similar peace officer powers."

Mr. Lungren, explains, on page 294 of Opinion 97-503, that:

> "Penal Code section 832.3, subdivision (a) provides:
>
> ". . . any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training *before exercising the powers of a peace officer*, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. The training course for an undersheriff and deputy sheriff of a county and a police officer of a city shall be the same." (Italics added.)

1 The POST web site, as of October 19, 2001, indicates that "more than 580 agencies" have "volunteered" for the POST program, including virtually all local law enforcement agencies.

Subdivision (a) of section 832.4 states:

> "Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment *in order to continue to exercise the powers of a peace officer* after the expiration of the 18-month period." (Italics added.)
>
> Accordingly, a police officer or deputy sheriff must first take a course of training "before exercising the powers of a peace officer" (s 832.3, subd. (a)) and thereafter obtain a basic certificate from the Commission within 18 months "in order to continue to exercise the powers of a peace officer" (s 832.4, subd. (a))."

Therefore, a peace officer is not able to "exercise the powers of a peace officer unless certain POST training standards are met.

POST Training Standards

Mr. Lungren elaborates, on pages 294-295 in Opinion 97-503, on POST training requirements for certain peace officer powers:

> "The Commission sets standards and issues various certificates, depending upon the duties and responsibilities of the individual peace officers. (See ss 13510- 13519.9.) The standards serve "the purpose of raising the level of competence of local law enforcement officers . . . ." (s 13510, subd. (a).) Certificates are issued "for the purpose of fostering professionalism, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs' departments . . . ." (s 13510.1, subd. (b).) The training includes, among other aspects, a comprehensive firearms course. (Cal. Code Regs., tit. 11, s 1081.)

In examining these statutory requirements and the law enforcement powers of a peace officer, we are guided by well settled principles of statutory construction. "When interpreting a statute our primary task is to determine the Legislature's intent." (Freedom Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal.4th 821, 826.) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245, 268.) "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (People v. Woodhead (1987) 43 Cal.3d 1002, 1009.)

In applying these principles of statutory construction, we note that the principal power of a peace officer involves the more liberal standards applicable to the power of arrest. Section 836, subdivision (a) states:

"A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 [ss 830-832.9] without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed."

Therefore, there are POST training requirements for exercising peace officer powers, including arrest powers. Further, exercising such powers are not optional or voluntary. Indeed, Government Code Section 26601 unambiguously mandates that:

"The sheriff *shall* arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have

committed a public offense." [Emphasis added.]

For example, not going through a red light is merely a suggestion if the peace officer has no arrest powers. However, under Section 26601, the Sheriff does have arrest powers, and, must have POST training in order to exercise them.

Mandatory POST Training for Deputy Sheriffs on Patrol

It appears well established that POST training is mandatory for deputy sheriffs in order for them to exercise peace officer powers, including powers routinely utilized in patrol and OJT assignments. The scope of such mandated training for deputy sheriffs, based on their assignments, was addressed by California's Sixth District Appellate Court in Richard T. Abbate v. County of Santa Clara, Cal.App.4th 1231, 111 Cal.Rptr.2d 412 (August 2001) [attached].

The Abbate Court examined the question of whether " ... correctional officers ... transferred from county department of correction to sheriff's office for assignment as sheriff's transportation officers, security officers and deputies of sheriff to work in county jail; ... were deputy sheriffs with statutory peace officer status, and also [should] ... county ... provide officers with state-mandated peace officer training..." as was provided for "... deputy sheriffs with statutory peace officer status", 111 Cal.Rptr.2d, page 412. The Court reasoned, on page 418, that:

> "The "specific meaning under the law" that plaintiffs claim for the term "deputy sheriff" is that of a person "stand[ing] in the shoes of the Sheriff in carrying out their official duties." (See Gov.Code, s 24101; Litzius v. Whitmore (1970) 4 Cal.App.3d 244, 249, 84 Cal.Rptr. 340.) However, "[w]hen not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal." (Gov.Code, s 1194, italics added.) Whether a person employed by the Sheriff is a section 830.1(a) "deputy sheriff" is based upon "the work to be performed or the duties to which one may be assigned that determines his status as an officer or employee." (Cunning v. Carr (1924) 69 Cal.App. 230, 233, 230 P. 987.) Section 830.1(a) contemplates the possibility of a lesser delegation when it confers peace officer status on "[a]ny sheriff, undersheriff or deputy sheriff, employed in that capacity, ..." (Italics added.) Thus, an employee of the sheriff not required to perform the duties of a deputy sheriff is "otherwise provided for" (Gov.Code, s 1194), is not

"employed in that capacity" (s 830.1(a)), and is not a deputy sheriff with full peace officer powers."

For those otherwise employed, POST training is not required. However, for those employed in the capacity of a deputy sheriff with full peace officer powers, including those assigned patrol duties as is the case in the subject test claim, POST OJT training is mandated as claimed herein.

Waiver is Limited and Temporary

The waiver provision, raised by POST and Finance, is limited and temporary. It covers the rare exception, not the rule.

For example, the waiver clearly indicates that the County can only be granted a waiver "due to significant financial constraint or the absence of qualified personnel to serve as field training officers" [POST Administrative Manual, Commission Procedure D-13, Field Training, Page D-50 (attached)].

With respect to Los Angeles County, there is no significant financial constraint. There is no absence of qualified personnel to serve as field training officers. Therefore, the County cannot possibly qualify for waiver of the subject OJT training. It is unambiguously mandated.

In addition, even if some local law enforcement agencies were to qualify for a waiver, the required training would not be permanently waived, but waived only "for a specified period of time" [POST Manual, page D-50].

In sum, the waiver exception is temporary and limited. Sooner or later all must comply. All must provide OJT training to peace officers assigned patrol duties. All must incur reimbursable costs as claimed herein.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

Review of State Agency Comments
County of Los Angeles Test Claim
POST Bulletin: 98-1, Issued on January 9, 1998
Mandatory On-the- Job Training for Peace Officers Working Alone

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of State agency comments.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

10/23/01; Los Angeles, CA
Date and Place

Signature

course is the only one open to the proposed relator. In other words, in matters solely of private concern, it should be the policy to deny quo warranto in cases where there is adequate remedy otherwise available to the parties claiming to be aggrieved. *People* v. *Milk Producers*, 60 Cal.App. 439."

In our 1947 opinion, it was contended that one private corporation was encroaching upon the name and exclusive franchise of another. In the present matter, we have an even greater focus upon a private dispute between two factions within a private corporation. Under these circumstances, the filing of an action in the name of the People of the State of California would not serve the public interest.

Accordingly, the application for leave to sue in quo warranto is denied.

Opinion No. 97-503—October 24, 1997

Requested by: THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Opinion by: DANIEL E. LUNGREN, Attorney General
Gregory L. Gonot, Deputy

THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING, has requested an opinion on the following question:

If a police officer or deputy sheriff fails to complete the training prescribed by the Commission on Peace Officer Standards and Training or obtain the basic certificate issued by the commission, what powers may such officer exercise?

CONCLUSION

If a police officer or deputy sheriff fails to complete the training prescribed by the Commission on Peace Officer Standards and Training or obtain the basic certificate issued by the commission, such officer may exercise only non-peace officer powers; the officer may not exercise the powers of arrest, serving warrants, carrying a concealed weapon without a permit, or similar peace officer powers.

ANALYSIS

We are here concerned with police officers and deputy sheriffs who are required to complete a comprehensive course of training prescribed by the Commission on Peace Officer Standards and Training ("Commission"). Two

statutes are the focus of this opinion. Penal Code section 832.3, subdivision (a)[1] provides:

> ". . . any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training *before exercising the powers of a peace officer*, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. The training course for an undersheriff and deputy sheriff of a county and a police officer of a city shall be the same." (Italics added.)

Subdivision (a) of section 832.4 states:

> "Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment *in order to continue to exercise the powers of a peace officer* after the expiration of the 18-month period." (Italics added.)

Accordingly, a police officer or deputy sheriff must first take a course of training "before exercising the powers of a peace officer" (§ 832.3, subd. (a)) and thereafter obtain a basic certificate from the Commission within 18 months "in order to continue to exercise the powers of a peace officer" (§ 832.4, subd. (a)).[2]

The Commission sets standards and issues various certificates, depending upon the duties and responsibilities of the individual peace officers. (See §§ 13510-13519.9.) The standards serve "the purpose of raising the level of competence of local law enforcement officers . . . ." (§ 13510, subd. (a).) Certificates are issued "for the purpose of fostering professionalism, education, and experience necessary to adequately accomplish the general

[1] All references hereafter to the Penal Code are by section number only.

[2] While certain exceptions are contained in the statutory scheme (see § 832.3, subd. (e)), none pertain to the present inquiry. Other peace officers may be required to take only the introductory course of training and possibly some specialized training. (See § 832, subd. (b)(1).)

police service duties performed by peace officer members of city police departments, county sheriffs' departments . . . ." (§ 13510.1, subd. (b).) The training includes, among other aspects, a comprehensive firearms course. (Cal. Code Regs., tit. 11, § 1081.)

In examining these statutory requirements and the law enforcement powers of a peace officer, we are guided by well-settled principles of statutory construction. "When interpreting a statute our primary task is to determine the Legislature's intent." (*Freedom Newspapers, Inc.* v. *Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Walnut Creek Manor* v. *Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268.) "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (*People* v. *Woodhead* (1987) 43 Cal.3d 1002, 1009.)

In applying these principles of statutory construction, we note that the principal power of a peace officer involves the more liberal standards applicable to the power of arrest. Section 836, subdivision (a) states:

> "A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 [§§ 830-832.9] without a warrant, may arrest a person whenever any of the following circumstances occur:
>
> (1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
>
> (2) The person arrested has committed a felony, although not in the officer's presence.
>
> (3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed."

A peace officer may also carry out searches and seizures incident to an arrest, provided that the arrest is both custodial and lawful. (*U.S.* v. *Mota* (9th Cir. 1993) 982 F.2d 1384.) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (§ 835, subd. (a).)

The fact that a private person may also make an arrest under certain conditions (§ 837; *People* v. *Martin* (1964) 225 Cal.2d 91, 94) does not affect our analysis of "the powers of a peace officer" for purposes of sections 832.3 and 832.4. A police officer or deputy sheriff may exercise his or her powers as a private person—as authorized by statute—even when the more extensive powers of arrest by a peace officer are precluded under the terms of sections 832.3 or 832.4.

Peace officers have various other powers, such as the authority[3] to serve search warrants (§§ 1528-1530), close areas in a disaster or other emergency (§ 409.5; 67 Ops.Cal.Atty.Gen. 535 (1984)) and operate emergency vehicles (Veh. Code, § 21055).

Peace officers are exempt from numerous statutory prohibitions such as those against carrying a concealed weapon (§§ 12025, 12027) and carrying a loaded firearm in a vehicle or public place (§ 12031). (See 80 Ops.Cal.Atty.Gen. 100 (1997).) Do these statutory exemptions qualify as "powers of a peace officer" for purposes of sections 832.3 and 832.4? In a letter opinion (Cal. Atty. Gen., Indexed Letter, No. IL 75-123 (Aug. 18, 1975)), we concluded that peace officers who have not successfully completed the training mandated by section 832.3 may not carry a loaded firearm. We stated in part:

> ". . . [I]n enacting the Penal Code section 832 series, the Legislature was particularly concerned with seeing that peace officers receive training in the exercise of their powers to arrest and in the carrying and use of firearms. It is apparent, therefore, that the Legislature intended the exemption . . . granted peace officers under Penal Code section 12031(b)(1) to be one of the 'powers of a peace officer' as that phrase is used in Penal Code section 832.3. Those peace officers specified in Penal Code section 832.3 who are hired after January 1, 1975, and who have not successfully completed the training mandated by section 832.3, therefore, are not exempt from [the prohibition] . . . by the exception codified in Penal Code section 12031(b) . . . ." (*Id.*, at pp. 2-3.)

Carrying a concealed weapon and a loaded firearm in a vehicle or public place are part of "the powers of a peace officer" as that phrase is used in sections 832.3 and 832.4.[4]

---

[3] In this context, we may use the terms "powers" and "authority" interchangeably. (See 72 Ops.Cal.Atty.Gen. 154, 156 (1989).)

[4] As with our discussion of the powers of arrest, a private person may carry a concealed weapon and a loaded firearm in a vehicle or public place under certain conditions (e.g., by obtaining a license).

The requirements of sections 832.3 and 832.4 are not conditions of employment, but rather are limitations placed upon the exercise of peace officer powers. (*Gauthier* v. *City of Red Bluff* (1995) 34 Cal.App.4th 1441, 1448, fn. 3.) Thus the officers who fail to meet the requirements may retain their "status" as peace officers, although their powers would change. (See *Service Employees International Union Local 715 (AFL-CIO)* v. *City of Redwood City* (1995) 32 Cal.App.4th 53, 59-60; 78 Ops.Cal.Atty.Gen. 209, 212-213 (1995); 72 Ops.Cal.Atty.Gen. 167, 172 (1989); 65 Ops.Cal.Atty.Gen. 618, 626 (1982); 63 Ops.Cal.Atty.Gen. 829, 833-834 (1980).) Even though a police officer or deputy sheriff has not received training (§ 832.3) or obtained the basic certificate (§ 832.4), he or she would nevertheless be considered "designated" as a peace officer in section 830.1, subdivision (a) ["Any . . . deputy sheriff, . . any police officer . . . is a peace officer"] for purposes of section 830 ["no person other than those designated in this chapter is a peace officer"].

We conclude that if a police officer or deputy sheriff fails to complete the training prescribed by the Commission or fails to obtain the basic certificate issued by the Commission, such officer may exercise only non-peace officer powers; the officer may not exercise the powers of arrest, serving warrants, carrying concealed weapons without a permit, or similar peace officer powers.

Opinion No. 97-505—October 24, 1997

Requested by: MEMBER OF THE CALIFORNIA ASSEMBLY

Opinion by: DANIEL E. LUNGREN, Attorney General
Anthony M. Summers, Deputy

THE HONORABLE BRUCE THOMPSON, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. May Federal Protective Service officers who have been appropriately trained take law enforcement actions to enforce state or local laws while away from federal property with respect to (a) state offenses committed in their presence that pose a serious threat to persons and property, (b) assistance to state and local law enforcement officers upon request, (c) the arrest of persons and the search of property in obedience to a lawful warrant, and (d) offenses committed in their presence that do not pose a threat to

other respects, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the modification and to forward the amended abstract to the Department of Corrections.

NARES, J., and O'ROURKE, J., concur.

Richard T. ABBATE et al., Plaintiffs and Appellants,

v.

COUNTY OF SANTA CLARA et al., Defendants and Respondents.

No. H021274.

Court of Appeal, Sixth District.

Aug. 28, 2001.

After correctional officers were transferred from county department of correction to sheriff's office for assignment as sheriff's transportation officers, security officers and deputies of sheriff to work in county jail, officers' union brought action against county for declaratory relief to establish that the transferred officers were deputy sheriffs with statutory peace officer status, and also sought writ of mandate directing county to provide officers with state-mandated peace officer training. The Superior Court, Santa Clara County, No. CV781371, Robert A. Baines, J., found that officers were not deputy sheriffs and denied extraordinary relief. Union appealed. The Court of Appeal, Premo, Acting P.J., held that the transferred correctional officers did not become "deputy sheriffs" statutorily entitled to peace officer status.

Affirmed.

1. Declaratory Judgment ⇐5.1, 394

Whether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion and the court's decision to grant or deny relief will not be disturbed on appeal unless it be clearly shown that the discretion was abused.

2. Mandamus ⇐187.9(1, 6)

In reviewing a trial court's judgment on a petition for writ of ordinary mandate, the appellate court applies the substantial evidence test to the trial court's factual findings, but exercises its independent judgment on legal issues, such as the interpretation of statutes.

3. Appeal and Error ⇐1008.1(10)

An appellate court will uphold the trial court's factual determination of a contract's meaning if substantial evidence supports the determination.

4. Appeal and Error ⇐931(1), 1010.1(6)

In determining whether substantial evidence supports a finding, the appellate court may not reweigh the evidence, but must consider the evidence in the light most favorable to the prevailing party, giving them the benefit of every reasonable inference and resolving conflicts in the evidence in support of the judgment.

5. Contracts ⇐176(3)

When parol evidence is introduced to aid in the interpretation of the meaning of doubtful or uncertain contractual language, the meaning of the contract is a question of fact.

6. Sheriffs and Constables ⇐17

Correctional officers who were transferred under an agreement between county department of correction and sheriff's office to the sheriff's office for assignment as sheriff's transportation officers, security officers, and deputies of sheriff to work in county jail did not become "deputy sheriffs" statutorily entitled to peace officer status, where sheriff did not provide officers with deputy sheriff badges, and officers were not sworn as sheriff's deputies even though they were sworn as peace officers by the department. West's Ann.Cal.Penal Code § 830.1(a).

7. Sheriffs and Constables ⇐17

Whether a person employed by the sheriff is a "deputy sheriff" entitled to peace officer status under statute is based upon the work to be performed or the duties to which one may be assigned that determines his status as an officer or employee. West's Ann.Cal.Penal Code § 830.1(a).

8. Sheriffs and Constables ⇐17

Correctional officers who were transferred from county department of correction to sheriff's office for assignment as sheriff's transportation officers were "appointed on a contract basis" and were not employed by sherif, and thus they were not entitled to peace officer status, where transfer and reassignment of officers was accomplished in accordance with contract between department and sheriff's office. West's Ann.Cal.Penal Code §§ 830.1(a), 831.6.

Burnett, Burnett & Allen, San Jose, Douglas B. Allen, Milpitas, Blaine L. Fields, San Jose, Attorneys for Plaintiffs/Appellants.

Office of the County Counsel, Ann Miller Ravel, James Rumble, San Jose, Dodd, Futterman & Dupree, Martin H. Dodd, San Francisco, Attorney for Defendants/Respondent.

PREMO, Acting P.J.

After two unsuccessful attempts to provide armed correctional officers in the Santa Clara County jail when control of the jail was transferred from the Sheriff to the newly formed county Department of Correction (Correction), in 1997 the Santa Clara County Board of Supervisors retransferred jail functions requiring armed officers to the Sheriff. Correctional officers were transferred to the Sheriff's Office for assignment as sheriff's transportation officers, sheriff's security officers, and deputies of the sheriff to work in the jail. Thereafter, plaintiff Santa Clara County Correctional Peace Officers' Association [1] sought declaratory relief to establish that these officers were deputy sheriffs with Penal Code section 830.1(a) [2] peace officer status. Plaintiffs also requested a writ of mandate directing defendant County of Santa Clara [3] to provide state-mandated

1. Plaintiffs are Richard T. Abbate, president of the Correctional Peace Officers' Association who is employed in the Santa Clara County Department of Correction and who holds the position "Correctional Officer/Sheriff, Correctional Officer/Deputy Sheriff," and the Correctional Peace Officers' Association suing on behalf of himself and others similarly situated, collectively, "CPOA."

2. Further statutory references are to the Penal Code unless otherwise stated; "subdivision" is omitted.

3. Defendants are the County of Santa Clara, its board of supervisors, Pete McHugh, Blanca Alvarado, Jim Beall, Joe Simitian, Don Gage, Santa Clara County Department of Correction Chief Timothy Ryan, the county Department of Correction, Sheriff Laurie Smith,

POST training [4] and take whatever steps were needed to regularize the position of these officers. The trial court found that correctional officers were not deputy sheriffs and denied extraordinary relief.

FACTS

In 1988, the voters approved a charter amendment which transferred responsibility for the county jails from the Sheriff to Correction to save public funds. Correction, a law enforcement agency, was established pursuant to Government Code section 23013 and was vested with the same authority as the sheriff with respect to institutional punishment, care, treatment and rehabilitation of prisoners. (*People v. Garcia* (1986) 178 Cal.App.3d 887, 895–896, 223 Cal.Rptr. 884.) However, certain functions performed in the jail such as transporting prisoners, pursuing escaped prisoners, conducting searches and seizures and arrests, and supervising the custodial officers, required officers who were authorized to carry firearms.

Sheriffs and deputy sheriffs are peace officers (§ 830.1(a)) and have the authority to carry firearms. Sheriff's deputies employed at the jail had peace officer training and the full powers of peace officers and performed all the functions for which armed officers were needed at the jail. When the jail was transferred to Correction, the deputies were transferred from the Sheriff's Office to that department, but retained a contractual right to transfer to the Sheriff's Office as vacancies arose. By June 1990, a substantial number had done so, thus reducing the number of armed officers below that required by state law.

The solution attempted by the Chief of Correction was to confer limited peace officer powers on his deputies. However, the Chief of Correction is a custodial officer, that is, "a public officer, not a peace officer, employed by a law enforcement agency of a ... county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility ...." (§§ 831(a) and 831.5(a).[5]) Custodial officers (called correctional officers by the County) have no right to carry or possess firearms in the performance of their duties. (§ 831(b).) Thus, Correction could not confer peace officer status on the correctional officers. (*County of Santa Clara v. Deputy Sheriffs' Assn.* (1992) 3 Cal.4th 873, 877–878, 13 Cal.Rptr.2d 53, 838 P.2d 781.)

County next attempted to fill the need for armed officers in the jail by consolidating Correction and the county Probation Department. Probation officers are entitled to carry firearms in the performance of certain duties, such as transporting persons on parole or probation, in connection with the escape of any inmate or ward from a state or local institution, and in connection with violations of any penal provisions of law discovered in the performance of duty. (§ 830.5) The merger was declared unlawful by this court in (*People ex rel. Deputy Sheriffs' Assn. v. County of Santa Clara* (1996) 49 Cal.App.4th 1471, 57 Cal.Rptr.2d 322.)

and the Santa Clara County Sheriff's Office, collectively, "County."

4. Section 832 sets forth training requirements prescribed by the Commission on Peace Officer Standards and Training (POST).

5. Section 831.5(a) was amended in 1999 to add Santa Clara County to the counties named in the section and "to clarify the relationships of the correctional officers and deputy sheriffs in Santa Clara County." (§ 831.5(j).) (Stats.1999, ch. 635 (Sen. Bill No. 1019) § 1, pp. 3587–3589, eff. Oct. 10, 1999.)

The next attempt to supply peace officers for the jail, is in issue here. In April 1997, County and the Sheriff's Office entered an agreement (Agreement), in effect until June 4, 2001,[6] intended to temporarily solve the problem by transferring correctional officers and the transportation and security functions requiring armed officers to the Sheriff until passage of anticipated amendments to section 830.1(c).[7] The amendments were not enacted. However, they would have granted limited peace officer status to correctional officers in Santa Clara County.

The Agreement transfers inmate transportation and perimeter security functions and allocates personnel to carry out these duties to the Sheriff's Office. The Sheriff agrees to "appoint correctional officers as deputies to perform transportation, security or other correctional officer functions with such peace officer authority as conferred by law...."

The Agreement separately treats current deputy sheriffs working in the jail and correctional officers. "Full Peace Officer Personnel Assigned to [Correction]" are 12 sergeants and 1 lieutenant within Correction "who have remained full peace officer deputies of the Sheriff, and currently possess Basic, Intermediate or Advanced POST certificates. These 13 Penal Code [section] 830.1(a) deputies of the Sheriff are available to exercise peace officer supervision and other peace officer duties as may be required." The Sheriff agrees to maintain staffing of section 830.1(a) sergeants at 13 and lieutenants at 1 and to add 1 captain.

"Penal Code [section] 830.1(a) deputies of the Sheriff of any rank ... assigned to [Correction] ... shall maintain their status as deputies of the Sheriff, and maintain their status as POST certified peace officers unless revoked by the Sheriff for good cause."

As for the correctional officers, "until such time as Penal Code Section 830.1(c) is amended to include coverage of Santa Clara County," paragraph 2 transfers 74 correctional officers to the Sheriff's Office to carry out transportation assignments; 11 are transferred to perform medical security duties; and 11 are transferred to fill court security assignments thereby freeing 11 deputy sheriffs for assignment to Elmwood jail perimeter functions.

The remaining 600–plus correctional officers are described in paragraph 4 as "[a]ll correctional officers and sergeants, not transferred pursuant to Paragraph 2." They are "transferred to the Sheriff's Office and immediately reassigned pursuant to the provisions of the Penal Code as deputies of the Sheriff until such time as Penal Code Section 830.1(c) is amended to include coverage of Santa Clara County." For all correctional officers, "[o]nce the

6. We take judicial notice at plaintiffs' request that the Agreement was extended by way of a ninth amendment until June 4, 2001, while the parties "work[ed] out the issues which have been identified in the proposed agreement."

7. Section 830.1(c) in current effect states, "Any deputy sheriff of a county of the first class, and any deputy sheriff of the County of San Diego, who is employed to perform duties exclusively or initially relating to custodial assignments, with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency."

amendment is in effect the Sheriff shall change the officers [*sic*] status to that of Sheriff's Correctional Officers or Sheriff's Correctional Sergeant with on duty peace officer authority as conferred by law...."

According to the declaration of James Rumble, assistant county counsel who was "closely involved with the legal, factual and political issues concerning the status of Santa Clara County correctional officers" over the last decade, the provisions for Sheriff's transportation and security officers were intended to comply with sections 831.4 and 831.6. "The remaining correctional officers [who] were transferred to the Sheriff's Office, but immediately reassigned to [Correction] as 'deputies of the Sheriff' to serve under the supervision of full peace officers still working in the jails .... were essentially deputized as sheriff's security officers within the meaning of Penal Code § [*sic*] 831.4 for purposes of working in the jails." (Cf. *County of Santa Clara v. Deputy Sheriffs' Assn.*, *supra*, 3 Cal.4th at p. 882, fn. 11, 13 Cal.Rptr.2d 53, 838 P.2d 781["[t]he parties appear to agree that the sheriff may deputize custodial officers as peace officers under appropriate circumstances"].)

Rumble continues, "[t]he Sheriff's Office retains supervision over such officers to the extent that they exercise a number of peace officer-related duties, including in particular, gun-bearing authority. [Correction] is responsible for supervising all other correctional officer job functions."

Six months after plaintiffs filed this action for declaratory and extraordinary relief, in September 1999, the Legislature amended section 831.5 via Senate Bill 1019 "to settle the issue of the 'status' of the correctional officers which Santa Clara County will use within its detention facilities. Those issues primarily pertain to both limited peace officer status and the authority of those custodial officers to carry firearms, both on and off duty." (Sen. Bill No. 1019, Bill Analysis, p. 5.)

Section 831.5(a) now includes Santa Clara County in the list of counties whose custodial officers are not "employees of, and under the authority of, the sheriff, ..." The statute also provides: "(h) Custodial officers employed by the Santa Clara County Department of Corrections are authorized to perform the following additional duties in the facility: [¶] (1) Arrest a person [under certain conditions]. [¶] (2) Search property, cells, prisoners, or visitors. [¶] (3) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.[¶] (4) Conduct searches and seizures pursuant to a duly issued warrant. [¶] (5) Segregate prisoners. [¶] (6) Classify prisoners.... [¶] These duties may be performed at the Santa Clara Valley Medical Center as needed and only as they directly relate to guarding inpatient, in-custody inmates. This subdivision shall not be construed to authorize the performance of any law enforcement activity involving any person other than the inmate or his or her visitors.

"(i) Nothing in this section shall authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

"(j) It is the intent of the Legislature that this section, as it relates to Santa Clara County, enumerate specific duties of custodial officers (known as 'correctional officers' in Santa Clara County) and to clarify the relationships of the correctional officers and deputy sheriffs in Santa Clara County. These duties are the same duties of the custodial officers prior to the date of enactment of Senate Bill 1019.... It is further the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process between the County of Santa Clara and the authorized bargaining representative for the custodial

officers. However, nothing in this section shall be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs nor to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs."

The changes do not alter section 831.5(c) which still provides, "A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police."

At the hearing on the instant petition, County argued that "[section] 831.5 answers all of the questions with regard to the first cause of action for declaratory relief. There isn't any controversy about [correctional officers'] duties. The statute provides for it. So, therefore, there isn't any declaration needed from this court because the Legislature has already spoken."

The court agreed, stating, "the intent of the parties to the [Agreement] was not to make the transferred correctional officers into full peace officers. [¶] The language that we have talked about, and we have argued about, clearly indicates that there was not a desire on the part of the County, and apparently not on the part of the Sheriff's Department to make the transferred correctional officers into full peace officers." The court stated that amended section 831.5 was not a factor in its decision. However, the court agreed with County that because of the amendments to section 831.5, there was no present controversy regarding the correctional officers' authority to act as transportation or security officers under sections 831.4 and 831.6. The court stated plaintiffs were not entitled to act as peace officers beyond those powers given in the Agreement, and it denied mandamus to compel the Sheriff to provide POST-certified training and other relief. This appeal ensued.

ISSUES ON APPEAL

Plaintiffs question: "Did the Board of Supervisors and Sheriff by legislative act appoint a majority of the Santa Clara County Correctional Officers as Deputies of the Sheriff by the adoption of the agreement between the office of the Sheriff and the County of Santa Clara, dated April 15, 1997? Having done so, is the Board precluded by Government code § [*sic*] 26605.1 [8] from forcing those deputies of the Sheriff to become custodial officers under Penal Code § [*sic*] 831.5? Is the Sheriff obligated to provide State mandated training for the transferred deputy sheriffs? [¶] Were the correctional officers entitled to a declaration by the Court establishing their status as Deputy Sheriffs and mandatory relief requiring the Sheriff and the County to acknowledge their status and provide the required State mandated training?"

SCOPE OF REVIEW

[1, 2] " 'Whether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion . . . and the court's decision to grant or deny relief will not be disturbed on appeal unless it be clearly shown . . . that the discretion was abused.' " *(Application Group, Inc. v. Hunter Group, Inc.* (1998) 61 Cal.App.4th 881, 892-893, 72 Cal.

8. Government Code section 26605.1 states, "Notwithstanding any other provision of law, no deputy sheriff shall be required to become a custodial or other officer involuntarily."

Rptr.2d 73.) In reviewing a trial court's judgment on a petition for writ of ordinary mandate, the appellate court applies the substantial evidence test to the trial court's factual findings, but exercises its independent judgment on legal issues, such as the interpretation of statutes. (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 52–53, 80 Cal.Rptr.2d 137.)

[3, 4] An appellate court will uphold "the trial court's factual determination of a contract's meaning if substantial evidence supports the determination." (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274, 90 Cal.Rptr.2d 41.) In determining whether substantial evidence supports the finding, the appellate court may not reweigh the evidence, but must consider the evidence in the light most favorable to the prevailing party, giving them the benefit of every reasonable inference and resolving conflicts in the evidence in support of the judgment. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766, 60 Cal.Rptr.2d 770.)

[5] When parol evidence is introduced to aid in the interpretation of the meaning of doubtful or uncertain contractual language, the meaning of the contract is a question of fact. (*Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1559, 6 Cal.Rptr.2d 698.)

DECLARATORY RELIEF

[6] Plaintiffs claim that the trial court erred in finding that "deputies of the sheriff" were not "sheriff's deputies" because County "did not 'intend' to make the correctional officers full [section] 830.1(a) deputies when [it] adopted the ... Agreement." Plaintiffs claim that the term "deputy" has a specific meaning under the law, that "deputies of the Sheriff" cannot act under "all three public officer sections at a time while working in the jails," and that the correctional deputies transferred under the Agreement cannot be compelled to become custodial officers.

[7] The "specific meaning under the law" that plaintiffs claim for the term "deputy sheriff" is that of a person "stand[ing] in the shoes of the Sheriff in carrying out their official duties." (See Gov.Code, § 24101; *Litzius v. Whitmore* (1970) 4 Cal.App.3d 244, 249, 84 Cal.Rptr. 340.) However, "*[w]hen not otherwise provided for,* each deputy possesses the powers and may perform the duties attached by law to the office of his principal." (Gov.Code, § 1194, italics added.) Whether a person employed by the Sheriff is a section 830.1(a) "deputy sheriff" is based upon "the work to be performed or the duties to which one may be assigned that determines his status as an officer or employee." (*Cunning v. Carr* (1924) 69 Cal.App. 230, 233, 230 P. 987.) Section 830.1(a) contemplates the possibility of a lesser delegation when it confers peace officer status on "[a]ny sheriff, undersheriff, or deputy sheriff, *employed in that capacity,* ..." (Italics added.) Thus, an employee of the sheriff not required to perform the duties of a deputy sheriff is "otherwise provided for" (Gov.Code, § 1194), is not "employed in that capacity" (§ 830.1(a)), and is not a deputy sheriff with full peace officer powers.

[8] County asserts sections 831.4 and 831.6 are the two sources of authority allowing the sheriff to assign county correctional officers for transportation and security functions for the jail. Plaintiffs counter that the corrections officers given section 831.6 transportation duties cannot be transportation officers because they are employed by the Sheriff.

Section 831.6 provides that "(a) A transportation officer is a public officer, not a

peace officer, appointed on a contract basis—fined in Section 3301 of the Government Code. A sheriff's ... security officer may carry or possess a firearm, baton, and other safety equipment and weapons authorized by the sheriff ... while performing the duties authorized in this section, ..." Assuming, arguendo, that transportation and guard functions are concurrent assignments for a single officer, we tend to agree. How could an officer charged under section 831.4 to protect "locations or facilities as directed by the sheriff" (and only incidentally patrons and employees) simultaneously be charged with the section 831 duty to maintain custody of prisoners (patrons of the jail?) and perform tasks related to the operation of a local detention facility (and only incidentally protect the facility)? May an officer carry a firearm as a section 831.4 sheriff's security officer while being forbidden to carry or possess firearms in the performance of his or her section 831 duties? The duties clash.

by a peace officer to transport a prisoner or prisoners. [¶] (b) A transportation officer shall have the authority of a public officer, and shall have the right to carry or possess firearms, only while engaged in the transportation of a prisoner or prisoners for the duration of the contract...."

Plaintiffs do not recite the factual basis for their assertion that transferred correctional officers are employed by the Sheriff and are not appointed on a contract basis; maybe it is because section 2 of the Terms of Agreement states, "[t]he coded positions of the officers enumerated above [for transportation and security officer assignments] shall be allocated to the Sheriff's budget; and the officers who are transferred shall be subject to the Sheriff's appointing and disciplinary authority."

Nevertheless, the reassignment of the correctional officers was accomplished in accordance with a contract between two county agencies, Correction and the Sheriff's Office. As such, the transportation officers were "appointed on a contract basis."

Next, plaintiffs assert that corrections officers "cannot simultaneously operate under Penal Code §§ [*sic*] 831 and 831.4 as the code sections are mutually exclusive of their duties and the authority to carry a weapon."

Under section 831.4, "(a) A sheriff's ... security officer is a public officer, employed by the sheriff of a county ... whose primary duty is the security of locations or facilities as directed by the sheriff ... limited to the physical security and protection of properties owned, operated, controlled, or administered by the county ..., or necessary duties with respect to the patrons, employees, and properties of the employing county. ... [¶] (b) A sheriff's ... security officer is not a peace officer nor a public safety officer as defined in Section 3301 of the Government Code. A sheriff's ... security officer may carry or possess a firearm, baton, and other safety equipment and weapons authorized by the sheriff ... while performing the duties authorized in this section, ..." Assuming, arguendo, that transportation and guard functions are concurrent assignments for a single officer, we tend to agree. How could an officer charged under section 831.4 to protect "locations or facilities as directed by the sheriff" (and only incidentally patrons and employees) simultaneously be charged with the section 831 duty to maintain custody of prisoners (patrons of the jail?) and perform tasks related to the operation of a local detention facility (and only incidentally protect the facility)? May an officer carry a firearm as a section 831.4 sheriff's security officer while being forbidden to carry or possess firearms in the performance of his or her section 831 duties? The duties clash.

However, we do not decide this issue because we consider the point moot in light of section 831.5 now in effect, and the expiration of the Agreement on June 4, 2001.

To summarize, substantial evidence supports the trial court's finding that the correctional officers did not become section 830.1(a) deputy sheriffs under the Agreement. The sheriff did not provide the correctional officers with deputy sheriff badges, nor were the correctional officers sworn as sheriff's deputies even though they were sworn as peace officers by Correction. Since the correctional officers never became peace officers, they are not being forced to return to custodial officer status in violation of Government Code section 26605.1. The Sheriff is not obliged to provide correctional officers with deputy sheriff POST training. The trial court did not abuse its discretion in declining to

make the declaration requested by plaintiffs and in denying mandamus.

DISPOSITION

The judgment is affirmed.

ELIA and MIHARA, JJ., concur.

Stephen Craig NICOLOPULOS, Plaintiff and Appellant,

v.

CITY OF LAWNDALE et al., Defendants and Respondents.

No. B144311.

Court of Appeal, Second District, Division 4.

Aug. 28, 2001.

Former elected city clerk, who was ousted by declaration that the office was vacant, sought mandamus, injunctive, monetary and declaratory relief from city, city council, and individual members of the council. The Superior Court, Los Angeles County, BS061535, Dzintra Janavs, J., sustained city defendants' demurrer without leave to amend. Clerk appealed. The Court of Appeal, Charles S. Vogel, P.J., held that: (1) quo warranto would be clerk's sole remedy on remand; (2) fact that clerk brought a § 1983 action would not excuse his failure to use exclusive state remedy of quo warranto; and (3) quo warranto procedure satisfied constitutional due process for addressing clerk's claim.

Reversed and remanded with directions.

1. Quo Warranto ⇐5

Quo warranto is the exclusive remedy in cases where it is available; title to an office cannot be tried by mandamus, injunction, writ of certiorari, or petition for declaratory relief. West's Ann.Cal.C.C.P. § 803.

2. Quo Warranto ⇐5

Where a former officeholder has been ousted by a declaration the office is vacant due to his nonresidency, and a successor has been appointed or elected to fill the vacant term, quo warranto is the ousted official's sole remedy for challenging the alleged vacancy. West's Ann.Cal.C.C.P. § 803.

3. Quo Warranto ⇐10

It is in the quo warranto proceeding that a former officeholder has his day in court before it can be conclusively adjudged against him that the office was vacant at the time the appointment was made. West's Ann.Cal.C.C.P. § 803.

4. Quo Warranto ⇐33

The current incumbent must be a party to the quo warranto proceeding, with the right to be heard. West's Ann.Cal. C.C.P. § 803.

5. Quo Warranto ⇐60

If a former officeholder succeeds in quo warranto, ousting the current incumbent, he may be restored to office and may recover the damages which he may have sustained by reason of the usurpation of the office by the defendant. West's Ann. Cal.C.C.P. §§ 806, 807.

6. Quo Warranto ⇐62

Court of Appeal would take judicial notice of fact that there was, at time of appeal, a de facto incumbent of the office

POST ADMINISTRATIVE MANUAL

COMMISSION PROCEDURE D-13

FIELD TRAINING

Purpose

13-1. Purpose: This Commission procedure implements the minimum standards/requirements for field training programs established by law enforcement agencies pursuant to Sections 1005(a)(1) and (a)(2) and the collaborative field training courses.

Specific Requirements

13-2. Requirements for Field Training: The minimum content and approval requirements for field training programs are specified in section 13-3. The minimum content for collaborative courses is described in section 13-5, Field Training Officer Course; section 13-6, Field Training Administrator=s Course; and section 13-7, Field Training Officer=s Update Course. Requirements for certification and presentation of these collaborative courses are specified in Regulations 1051-1056. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course.

13-3. Field Training Program Description and Approval Requirements: Regulations 1005(a)(1) and (a)(2) specify the basic training requirements for regular officers as successful completion of the Regular Basic Course and a Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of law enforcement services. Field Training programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course. This field training does not extend to persons serving in ride-along, observer capacities.

Any agency which employs regular officers shall seek approval of their Field Training Program by submitting a field training program plan along with an Application For POST Approved Field Training Program, POST 2-229 (Rev. 12/97). An approved Field Training Program remains in force until modified, at which time a new approval is required. Prior to the submission of an application, a comparison should be made of the agency=s present policies and practices versus POST=s minimum standards/requirements for an approved Field Training Program. Where needed, the agency shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application is received. If an agency=s Field Training Program is disapproved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

(1) A Field Training Program plan shall minimally include:

(1) a description of the selection process for field training officers, and

(2) an outline of the training proposed for agency trainees, and

(3) a description of the evaluation process for trainees and field training officers, and

(4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms).

(b) On POST form 2-229, the agency head must attest to the adherence of the following approval requirements:

(6) The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which shall minimally include the following topics:

Agency Orientation	Traffic (including DUI)
Patrol Vehicle Operations	Use of Force
Officer Safety	Search and Seizure
Report Writing	Radio Communications
California and Law	Self Initiated Activity
Department Policies	Investigations/Evidence
Patrol Procedures (including Pedestrian and Vehicle Stops)	Community Relations/Professional Demeanor
Control of Persons, Prisoners, and Mentally Ill	Tactical Communication/ Management Resolution
Unlisted, Agency Specific Topics	

(2) The field training program=s emphasis shall be on both training and evaluation of trainees.

1 A trainee shall have satisfactorily completed the Regular Basic Course before participating in the Field Training Program.

2 The field training program shall have a field training administrator/supervisor who: has been awarded or is eligible for the award of a POST Supervisory Certificate or has been selected based on the agency head=s (or his/her designate=s) nomination or appointment. Recommended training is the Field Training Officer Course and/or Field Training Administrator=s Course.

3 Trainees shall be supervised depending upon their assignment:

1 A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

2 A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.

(6) Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee=s progress shall be monitored by a field training administrator/supervisor by review and signing of the daily evaluations and/or by completing weekly written summaries of performance that are reviewed with the trainee.

(7) A field training officer shall have: (1) been awarded a POST Basic Certificate; (2) successfully completed the POST-certified Field Training Officer Course; (3) one year patrol experience; (4) a supervisor=s recommendation based upon the officer=s desire to be a field training officer and their ability to be a positive role model; and (5) been selected based upon an agency specific selection process.

(8) Each field training officer shall be evaluated by the trainee and a field training administrator/supervisor. The trainee shall complete and submit a confidential evaluation to a field training administrator at the end of the field training program. A field training administrator/supervisor shall provide a detailed evaluation to each field training officer on his/her performance as a field training officer.

(9) Documentation of trainee performance shall be maintained by the agency. The field training officer=s attestation of each trainee=s successful completion of the field training program and a statement that releases the trainee from the program, along with the signed concurrence of the agency/department head of his/her designate, shall be retained in agency records. Retention length shall be based upon agency record policies.

13-4. Agency Head Signature Required: Signature of the agency head is required attesting to continued adherence to the field training program which is submitted for approval. Requests for approval of changes in previously approved programs shall be submitted to POST in writing.

13-5. Field Training Officer=s Course Description: Presentation of a Field Training Officer Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Course is a minimum of 40 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The POST Field Training Officer Course Curriculum shall minimally include the following topics:

Introduction/Orientation
Standardized Curricula & Performance Objectives
Field Training Program History & the Need for Standardization
Field Training Program Management
Legal Issues for the FTO
Key Elements of a Successful Field Training Program
The Professional Relationship Between the Field Training Officer and the Trainee
Cultural Diversity in Field Training Programs
Override/Intervention
Remediation Methodologies & Strategies
Adult Learning Theory
Officer Safety in the Field
Field Training Program Goals and Objectives
Supervisory Skills for the FTO
Ethics
Scenario Facilitation & Grading
Role Modeling
Teaching Skills Demonstration
Expectations of/for Field Training Officers
Review of Regular Basis Course Training
Competency Expectations/Evaluations/Documentation

13-6. Field Training Administrator=s Course Description: Presentation of a Field Training Administrator=s Course requires POST certification (refer to Regulations 1051-1056). The Field Training Administrator=s Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Administrator=s Course shall minimally include the following topics:

Field Training Program Management
Review of Regular Basis Course Training
Adult Learning
POST Field Training Program & Objectives
Oversight of Test/Scenarios
Development & Update System for Field Training Manual
Documentation & Evaluations
Agency Responsibilities
Review of FTO Course Training
History of Field Training Programs
Competency Evaluation
Supervisory Procedures
FTO Selection Process
FTO Training & Certification
Conduct of FTOs, Training, & FTO Administrators

13-7. Field Training Officer=s Update Course Description: Presentation of a Field Training Officer=s Update Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Update Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Officer Update Course Curriculum shall minimally include the following topics:

Review of Academy Training	Recommendation Methodologies & Strategies
Legal Update	Skill Building Training
Adult Learning Theory Update	Ethics
Scenario Facilitation & Evaluation	Teaching Skills Update/Demonstration

Waiver of Mandatory Field Training Program or Courses

13-8. Waiver of Mandatory Field Training Program or Courses: The Commission or its Executive Director, in response to a written request or on its own motion may, upon showing of good cause, waive the field training requirements, for an agency and/or its personnel, for a specific period of time. Waivers pursuant to this section will be granted only upon presentation of evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

Mailing List

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COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 24th day of October 2001, I served the attached:

Documents: Review of State Agency Comments, County of Los Angeles, POST Bulletin, Issued on January 9, 1998, Mandatory On-The-Job Training for Peace Officers Working Alone, including *a 1 page letter of J. Tyler McCauley dated 10/23/01 , a 6 page narrative, a 1 page Leonard Kaye Declaration, and a 17 page attachment, all pursuant to 00-TC-19, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates - FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of October, 2001, at Los Angeles, California.

Hasmik Yaghobyan

SixTen and Associates
Mandate Reimbursement Services

ITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

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Certified Mail # 7001 0360 0000 5999 8898

September 10, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF SANTA MONICA COMMUNITY COLLEGE DISTRICT

POST Bulletin 98-1
POST Administrative Manual,Commission Procedure D-13

Peace Officers Working Alone (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica Community College District test claim for the above referenced mandate. This claim is a duplicate and supplement to CSM #00-TC-19 to establish eligibility for school district remibursement.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Cheryl Miller
Associate Vice President, Business Services
Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing. Please advise.

Sincerely,

Keith B. Petersen

C: Dr. Carol Berg, Consultant, Education Mandated Cost Network
Cheryl Miller, Santa Monica Community College District
Leonard Kaye, Esq., County of Los Angeles, Auditor-Controller's Office
Pamela A. Stone, Maximus, Inc.
William McGuire, Clovis Unified School District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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SEP 13 2002

COMMISSION ON STATE MANDATES

Claim No. 02-TC-06

TEST CLAIM FORM

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address
Cheryl Miller
Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Peace Officers Working Alone (K-14)

POST Bulletin 98-1
POST Administrative Manual, Commission Procedure D-13

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative		Telephone No.
Cheryl Miller Associate Vice President - Business Services	FAX	(310) 434-9221 (310) 434-3607

Signature of Authorized Representative

Date

x Cheryl Miller

August 30, 2002

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 415-8605
Fax: (858) 514-8645

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM. _____
Santa Monica Community College	POST Bulletin: 98-1
Test Claimant.	Peace Officers Working Alone (K-14)
	TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Santa Monica Community College District is a "school district" as defined

in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts and community college districts to apply for approval of their Field Training Programs, to require their peace officers who have completed the Regular Basic Course to complete a Field Training Program approved by the Commission on Peace Officer Standards and Training before working alone and for any district which is unable to comply with the program's requirements due to financial hardship or lack of qualified field training officers, to apply for and obtain a waiver from the commission from the requirements for a Field Training Program.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Penal Code Section 832.3[2] required that peace officers successfully complete a

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[1]Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

[2]Penal Code Section 832.3, added by Chapter 477, Statutes of 1973, Section 1, as amended by Chapter 1397, Statutes of 1974, Section 1:

"(a) Except as provided in subdivision (b), any sheriff, undersheriff, or deputy sheriff of a county, any policeman of a city, and any policeman of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, for the purposes of the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall successfully complete a course of training approved by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training.

course of training prior to exercising the powers of a peace officer.

Penal Code Section 13500[3] provided that there shall be a Commission on Peace

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(b) A police department of a city or district which employs 10 or fewer sworn law enforcement officers in its service on the effective date of this subdivision, and does not employ more than 10 sworn law enforcement officers in its service during the 1975 calendar year, may apply to the Commission on Peace Officer Standards and Training for a permit authorizing a policeman first employed after January 1, 1975, to exercise the powers of a peace officer without the successful completion of the course of training required by subdivision (a). Such application shall include a plan showing that the policeman to be granted peace officer powers will complete the training required by subdivision (a) within six months of the date of the permit authorizing peace officer powers.

If the commission determines that the policeman is by reason of training or experience likely to successfully complete the course of training required by subdivision (a) within six months of the date of the permit to exercise the powers of a peace officer, then the commission in the interest of justice may permit such policeman to exercise the powers of a peace officer for a specified period of time not to exceed six months, and in no case to extend beyond January 1, 1976.

This subdivision shall be operative until January 1, 1976, and at such date shall have no force or effect."

[3]Penal Code Section 13500, added by Chapter 1823, Statutes of 1959, Section 2, as amended by Chapter 1540, Statutes of 1974, Section 1:

"There is in the Department of Justice a Commission on Peace Officer Standards and Training, hereafter referred to in this chapter as the commission. The commission consists of 10 members appointed by the Governor, after consultation with, and with the advice of, the Attorney General and with the advice and consent of the Senate.

The commission shall be composed of the following members:

(1) Two members shall be (i) sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, (ii) peace officers who are deputy sheriffs or city policemen, or (iii) any combination thereof.

(2) Three members shall be sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police.

(3) One member shall be a peace officer of the rank of sergeant or below with a minimum of five years' experience as a deputy sheriff or city policeman.

(4) Two members shall be elected officers or chief administrative officers of counties in this state.

(5) Two members shall be elected officers or chief administrative officer of cities

Officer Standards and Training within the Department of Justice and identifies the members who shall be elected to it and the length of their terms.

Penal Code Section 13503[4] described the Commission's powers which included,

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in this state.

The Attorney General shall be an ex officio member of the commission.

Of the members first appointed by the Governor, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor.

The additional member provided for by the Legislature in its 1973-1974 Regular Session shall be appointed by the Governor on or before January 15, 1975, and shall serve for a term of three years."

[4]Penal Code Section 13503, added by Chapter 1823, Statutes of 1959, Section 2, as amended by Chapter 1640, Statutes of 1967, Section 1:

"In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at such times and places as it may deem proper;

(b) To employ an executive secretary and, pursuant to civil service, such clerical and technical assistants as may be necessary;

(c) To contract with such other agencies, public or private, or persons as it deems necessary, for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;

(d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions;

(e) To develop and implement programs to increase the effectiveness of law enforcement and when such programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs;

(f) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the State Government;

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it."

in subdivision (e), the power to develop and implement programs to increase the effectiveness of law enforcement.

Penal Code Section 13506[5] provided that the commission may adopt regulations as are necessary to carry out the purposes of the chapter.

Penal Code Section 13510[6] provided that the Commission on Peace Officer Standards and Training shall adopt and amend rules establishing minimum training standards.

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[5]Penal Code Section 13506, as added by Chapter 1823, Statutes of 1959, Section 2:

"The commission may adopt such regulations as are necessary to carry out the purposes of this chapter."

[6]Penal Code Section 13510, added by Chapter 1823, Statutes of 1959, Section 2, as amended by Chapter 1075, Statutes of 1973, Section 2:

"For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, police officers of a district authorized by statute to maintain a police department, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, police officers of a district authorized by statute to maintain a police department, and peace officer members of a district, which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code."

Penal Code Section 832[7] provided that peace officers must complete a basic course of training within twelve months of employment in the carrying and use of firearms and in the exercise of their powers to arrest.

Prior to January 1, 1975 there was no requirement that each school district and

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[7]Penal Code Section 832, as added by Chapter 1504, Statutes of 1971, as amended by Chapter 410, Statutes of 1974, Section 1:

"(a) Every person described in this chapter as a peace officer, shall receive a course of training in the exercise of his powers to arrest and a course of training in the carrying and use of firearms. The course of training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. Such courses shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training.

(b) (1) Every such peace officer described in this chapter shall, by July 1, 1974, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is greater, have satisfactorily completed the course of training in the carrying and use of firearms described in subdivision (a).

(2) Every such peace officer described in this chapter, except a peace officer described by subdivision (l) of Section 830.3, shall, by July 1, 1974, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is greater, have satisfactorily completed the course of training in the exercise of his powers to arrest described in subdivision (a).

(3) Every peace officer described by subdivision (l) of Section 830.3 shall, by January 1, 1975, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is greater, have satisfactorily completed the course of training as described in subdivision (a).

(c) Persons described in this chapter as peace officers who have not so satisfactorily completed the courses described in subdivision (a) by the dates specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete such courses.

(d) Any peace officer who on the effective date of this section possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from the provisions of this section."

community college district apply for approval of a Field Training Program for officers working alone, or a waiver, if necessary. There was also no requirement that each school district and community college district require its peace officers to complete a Field Training Program.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 468, Statutes of 1983, Section 2, amended Penal Code Section 832[8] to change the description of the course of training from "in the exercise of his powers to arrest and a course of training in the carrying and use of firearms" to a course of training "prescribed by the Commission on Peace Officer Standards and Training" and to make

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[8]Penal Code Section 832, added by Chapter 1504, Statutes of 1971, Section 2, as amended by Chapter 468, Statutes of 1983, Section 2:

"(a) Every person described in this chapter as a peace officer, shall receive a course of training ~~in the exercise of his powers to arrest and a course of training in the carrying and use of firearms~~ prescribed by the Commission on Peace Officer Standards and Training. ~~The course of~~ Training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. ~~Such courses shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training.~~

(b) (1) Every peace officer described in this chapter, within 90 days following the date that he was first employed by any employing agency, shall, prior to the exercise of the powers of a peace officer, have satisfactorily completed the course of training as described in subdivision (a).

(2) Every peace officer described in Section 832.3 shall satisfactorily complete the training required by this section as part of the training and under the limitations set forth in Section 832.3.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the courses described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the courses.

(d) Any peace officer who on the effective date of this section possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from the provisions of this section."

other technical changes.

Chapter 157, Statutes of 1987, Section 1, amended Penal Code Section 832[9] to describe the required course required of peace officers[10] as an "introductory course of training", to add that on or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed and approved by the commission, and to make technical changes.

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[9]Penal Code Section 832, added by Chapter 1504, Statutes of 1971, Section 2, as amended by Chapter 157, Statutes of 1987, Section 1:

"(a) Every person described in this chapter as a peace officer, shall ~~receive a~~ satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms.

(b) (1) Every peace officer described in this chapter, within 90 days following the date that he or she was first employed by any employing agency, shall, prior to the exercise of the powers of a peace officer, have satisfactorily completed the course of training as described in subdivision (a).

(2) Every peace officer described in Section 13510 or in subdivision (a) of Section 830.2 may satisfactorily complete the training required by this section as part of the training prescribed pursuant to Section 13510.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the courses described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the courses.

(d) Any peace officer who on ~~the effective date of this section~~ March 4, 1972, possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from ~~the provisions of~~ this section."

[10] Members of a community college police department and persons employed as members of a school district police department are peace officers. Penal Code Section 830.32

1 Chapter 746, Statutes of 1998, Section 4, amended Penal Code Section 832.3[11]

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[11]Penal Code Section 832.3, added by Chapter 477, Statutes of 1973, Section 1, as amended by Chapter 746, Statutes of 1998, Section 4:

"(a) Except as provided in subdivisions (b) and (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training pursuant to this subdivision within two years of appointment. The training course for a sheriff, an undersheriff, and a deputy sheriff of a county, and a police chief and a police officer of a city or any other local law enforcement agency, shall be the same.

(b) For the purpose of standardizing the training required in subdivision (a), the commission shall develop a training proficiency testing program, including a standardized examination which enables (1) comparisons between presenters of the training and (2) development of a data base for subsequent training programs. Presenters approved by the commission to provide the training required in subdivision (a) shall administer the standardized examination to all graduates. Nothing in this subdivision shall make the completion of the examination a condition of successful completion of the training required in subdivision (a).

(c) Notwithstanding subdivision (c) of Section 84500 of the Education Code and any regulations adopted pursuant thereto, community colleges may give preference in enrollment to employed law enforcement trainees who shall complete training as prescribed by this section. At least 15 percent of each presentation shall consist of nonlaw enforcement trainees if they are available. Preference should only be given when the trainee could not complete the course within the time required by statute, and only when no other training program is reasonably available. Average daily attendance for these courses shall be reported for state aid.

(d) Prior to July 1, 1987, the commission shall make a report to the Legislature on academy proficiency testing scores. This report shall include an evaluation of the correlation between academy proficiency test scores and performance as a peace officer.

(e) (1) Any deputy sheriff described in subdivision (c) of Section 830.1 shall be exempt from the training requirements specified in subdivision (a) as long as his or her assignments remain custodial related.

to add subdivisions (f), (g), and (h). Subdivision (f) requires any school or community college police officer, first employed after July 1, 1999, to successfully complete the basic course of training before exercising the powers of a peace officer. Subdivision (g) provides that the commission shall prepare a specialized course of instruction for the training of school peace officers which is intended to supplement any other training requirements. Subdivision (h) provides the time periods by which school peace officers

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(2) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the training for peace officers pursuant to subdivision (a) of Section 832, and within 120 days after the date of employment, shall complete the training required by the Board of Corrections for custodial personnel pursuant to Section 6035, and the training required for custodial personnel of local detention facilities pursuant to Division 1 (commencing with Section 100) of Title 15 of the California Code of Regulations.

(3) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the course of training pursuant to subdivision (a) prior to being reassigned from custodial assignments to duties with responsibility for the prevention and detection of crime and the general enforcement of the criminal laws of this state.

(f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer. A school police officer shall not be subject to this subdivision while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training.

(g) The commission shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment."

must complete the courses of training.

The Commission on Peace Officer Standards and Training issued Bulletin 98-1, Mandatory Field Training Program, effective January 9, 1998, (hereinafter POST Bulletin 98-1) which approved amendments to Commission Regulation 1005 and Procedure D-13, copies of which are attached as Exhibit 2 and is incorporated herein by reference. Significant changes in the regulation included:

1. All regular officers, appointed after January 1, 1999 and after completing the regular basic course are required to complete a POST-approved Field Training Program prior to working alone.
2. The field training program, delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics.
3. A waiver provision was established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers. Attachment A to POST Bulletin 98-1 provides that waivers, when granted, shall be for a specified period of time.
4. In order to comply with the field training requirements, agencies were required to apply for a POST-Approved Field Training Program and were encouraged to apply prior to January 1, 1999 to ensure availability of the

approved program for new hires after that date.

5. The new field training requirement did not affect the requirements for the regular basic certificate requirements.

The agencies affected by POST Bulletin requirements were police departments, sheriff's departments, school/campus police departments and selected other agencies[12].

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The POST Bulletin, POST Administrative Manual and Commission Procedure D-13 referenced are "executive orders" as defined in Government Code Section 17516[13] which result in school districts incurring costs mandated by the state, as defined in

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[12] POST Bulletin 98-1, Page 2.

[13] Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.

(b) Any officer or official serving at the pleasure of the Governor.

(c) Any agency, department, board, or commission of state government.

"Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. "Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

Government Code Section 17514[14], by creating new state-mandated duties related to the uniquely governmental function of providing public safety services to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[15]

The new duties mandated by the state upon school districts, county offices of education and community college districts require state reimbursement of the direct and indirect costs of labor, material and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) To develop and implement policies and procedures, and periodically update those policies and procedures, to ensure that each law enforcement officer employed by the district shall participate in a

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[14]Government Code Section 17514, as added by Chapter 1459, Statutes of 1984:

"'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted in or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[15] "Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155: "In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

mandatory field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training, pursuant to POST Bulletin 98-1 and Commission Procedure D-13.

B) To develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training, pursuant to POST Bulletin 98-1 and Commission Procedure D-13.

C) To pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its Field Training Officers and its law enforcement officers attending a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training, pursuant to POST Bulletin 98-1 and Commission Procedure D-13.

D) To plan, develop and implement a field training program to be delivered over a minimum of 10 weeks, based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics, pursuant to POST Bulletin 98-1 and Commission Procedure D-13.

1. Pursuant to POST Bulletin 98-1, Attachment A, and Commission

Procedure D-13, school districts seeking approval of a field training program, shall submit a completed application accompanied with a field training program that shall minimally include:

(a) a description of the selection process for field training officers,

(b) an outline of the training proposed for employees,

(c) a description of the evaluation process for trainees and field training officers, and

(d) copies of supporting documents such as field training guides, polices and procedures and evaluation forms.

2. Pursuant to POST Bulletin 98-1 and Commission Procedure D-13, Attachment A, school districts electing to use a locally developed training guide, instead of the POST Field Training Program Guide, must minimally include a prescribed list of topics.

3. Pursuant to POST Bulletin 98-1, Attachment A and Commission Procedure D-13, in the event the school district's Field Training Program is initially not approved, the district must resubmit an application for approval upon correction of the deficient areas outlined in the letter of disapproval.

E) Pursuant to POST Bulletin 98-1 and Commission Procedure D-13, in lieu of development of a field training program as described in paragraph D), above, when unable to comply with the program's requirements due to

either financial hardship or lack of availability of personnel who qualify as field training officers, to apply for a waiver of those requirements.

1. Pursuant to POST Bulletin 98-1, Attachment A and Commission Procedure D-13, requests for agency waiver of the training requirement must present evidence that the district is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

2. Pursuant to POST Bulletin 98-1, Attachment A and Commission Procedure D-13, in the event the specified period of time for a waiver expires, the district must either comply with the training requirements or submit a request for another agency waiver.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[18] statutory exceptions to a finding

[18]Government Code Section 17556 as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced regulations, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[17]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state (except to the extent that the Commission on Peace Officer Standards and Training may reimburse program costs from its annual appropriation) and

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(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[17]Government Code Section 17565:

"If a local agency or school district, at its option, had been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

there is no other provision of law for recovery of costs from any other source. To the extent that these POST reimbursements may be received, they would reduce or offset the mandated costs, but these reimbursements are not a Section 17556 exception to a finding of costs mandated by the state.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Eileen Miller, Chief of Police
Santa Monica Community College District

And

Declaration of Greg Bass, Director of Child Welfare and Attendance
Clovis Unified School District

Exhibit 2: POST Regulations

POST Bulletin 98-1

Commission Procedure D-13

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on August 30, 2002, at Santa Monica, California, by

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Voice: (310) 434-9221
Fax: (310) 434-3607

/

/

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Aug 30, 2002
Date

EXHIBIT 1
DECLARATIONS

DECLARATION OF EILEEN MILLER

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

POST Bulletin 98-1
Commission Procedure D-13

Peace Officers Working Alone (K-14)

I, Eileen Miller, Chief of Police, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Chief of Police of the Santa Monica Community College District, I am responsible for the district's compliance with peace officer training standards. I am familiar with the provisions and requirements of the POST Bulletin enumerated above.

This Post Bulletin requires the Santa Monica Community College District to:

1) Pursuant to Post Bulletin 98-1, develop and implement policies and procedures, and periodically update those policies and procedures, to insure that each law enforcement officer employed by the district shall participate in a mandatory field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

2) Pursuant to POST Bulletin 98-1, to develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

3) Pursuant to POST Bulletin 98-1, to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

4) Pursuant to POST Bulletin 98-1, to plan, develop and implement a field training program to be delivered over a minimum of 10 weeks, based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics.

A. Pursuant to POST Bulletin 98-1, Attachment A, school districts seeking approval of a field training program, shall submit a completed application accompanied with a field training program that shall minimally include:

(1) a description of the selection process for field training officers,

(2) an outline of the training proposed for employees,

(3) a description of the evaluation process for trainees and filed training officers, and

(4) copies of supporting documents such as filed training guides, policies and procedures and evaluation forms.

B. Pursuant to POST Bulletin 98-1, Attachment A, school districts electing to use a locally developed training guide, instead of the POST Field Training Program Guide, must minimally include a prescribed list of topics.

C. Pursuant to POST Bulletin 98-1, Attachment A, in the event the school district's Field Training Program is initially not approved, the district must resubmit an application for approval upon correction of the deficient areas outlined in the letter of disapproval.

5) Pursuant to POST Bulletin 98-1, in lieu of the development of a field training program as described in paragraph 4), above, when unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers, to apply for a waiver of those requirements.

A. Pursuant to POST Bulletin 98-1, Attachment A, requests for agency waiver of the training requirement must present evidence that the district is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

B. Pursuant to POST Bulletin 98-1, Attachment A, in the event the specified period of time for a waiver expires, the district must either comply with the training requirements or submit a request for another agency waiver.

It is estimated that the Santa Monica Community College District has incurred approximately $200, or more, annually in staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 30 day of Aug, 2002, at Santa Monica, California

Eileen Miller
Chief of Police
Santa Monica Community College District

DECLARATION OF GREG BASS

Clovis Unified School District

Test Claim of Santa Monica Community College District

COSM No. _____

POST Bulletin 98-1
Commission Procedure D-13

Peace Officers Working Alone (K-14)

I, Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District , make the following declaration and statement.

In my capacity as Director of Child Welfare and Attendance for Clovis Unified School District, I am the supervisor of the district police department and responsible for the district's compliance with peace officer training standards. I am familiar with the provisions and requirements of the POST Bulletin enumerated above.

This Post Bulletin requires the Clovis Unified School District to:

1) Pursuant to Post Bulletin 98-1, develop and implement policies and procedures, and periodically update those policies and procedures, to insure that each law enforcement officer employed by the district shall participate in a mandatory field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

2) Pursuant to POST Bulletin 98-1, to develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

3) Pursuant to POST Bulletin 98-1, to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending a field training program prior to working alone as prescribed and certified by the Commission on Peace Officer Standards and Training.

4) Pursuant to POST Bulletin 98-1, to plan, develop and implement a field training program to be delivered over a minimum of 10 weeks, based upon structured learning content as recommended in the POST Field Training Program Guide or upon a locally developed field training guide which includes the minimum POST specified topics.

A. Pursuant to POST Bulletin 98-1, Attachment A, school districts seeking approval of a field training program, shall submit a completed application accompanied with a field training program that shall minimally include:

(1) a description of the selection process for field training officers,

(2) an outline of the training proposed for employees,

(3) a description of the evaluation process for trainees and filed training officers, and

(4) copies of supporting documents such as filed training guides, policies and procedures and evaluation forms.

B. Pursuant to POST Bulletin 98-1, Attachment A, school districts electing to use a locally developed training guide, instead of the POST Field Training Program Guide, must minimally include a prescribed list of topics.

C. Pursuant to POST Bulletin 98-1, Attachment A, in the event the school district's Field Training Program is initially not approved, the district must resubmit an application for approval upon correction of the deficient areas outlined in the letter of disapproval.

5) Pursuant to POST Bulletin 98-1, in lieu of the development of a field training program as described in paragraph 4), above, when unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers, to apply for a waiver of those requirements.

A. Pursuant to POST Bulletin 98-1, Attachment A, requests for agency waiver of the training requirement must present evidence that the district is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

B. Pursuant to POST Bulletin 98-1, Attachment A, in the event the specified period of time for a waiver expires, the district must either comply with the training requirements or submit a request for another agency waiver.

It is estimated that Clovis Unified School District has incurred approximately $200, or more, annually in staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 28 day of Aug, 2002, at Clovis, California

Greg Bass
Director of Child Welfare and Attendance
Clovis Unified School District

EXHIBIT 2
POST REGULATIONS

STATE OF CALIFORNIA PETE WILSON, *Governor*

DEPARTMENT OF JUSTICE DANIEL E. LUNGREN, *Attorney General*
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 ALHAMBRA BOULEVARD
SACRAMENTO, CALIFORNIA 95816-7083

January 9, 1998

BULLETIN: 98-1

SUBJECT: MANDATORY FIELD TRAINING PROGRAM

Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.
- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.
- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing agency has obtained a waiver as provided in PAM section D-13 and as described below.

- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.
- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999 and as soon as all POST program requirements are in place (e.g. agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.
- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)
4. Copy of the POST Field Training Program Guide 1997

Questions about requirements or assistance in the preparation of field training program plans should be directed to POST Area Consultants in the Training Delivery and Compliance Bureau at (916) 227-4862. Application packages for program approval should be mailed to:

Commission on Peace Officer Standards and Training
Basic Training Bureau
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

KENNETH J. O'BRIEN
Executive Director

Attachments
(Police and Sheriff's Departments, School/Campus Police, Other selected agencies)

ATTACHMENT A

Commission on Peace Officer Standards and Training

FIELD TRAINING PROGRAM

APPLICATION PROCESS

Agencies seeking approval must submit a completed Application for POST-Approved Field Training Program (POST 2-229) which is included. Signature of the agency head is required attesting to continued adherence to the field training program submitted for approval. Requests for approval of changes in previously approved programs shall be submitted in writing. An approved field training program will remain in place indefinitely unless there is a modification to the field training program by the agency. Once an agency field training program is modified in any way that impacts meeting POST's requirements, a new POST approval will be required for the modified program.

Even though an agency may already have a POST-approved (after academy) field training program, it must reapply because the previous voluntary program has been replaced with the above described mandatory program with changed requirements.

The Application For POST-Approved Field Training Program must be accompanied with a Field Training Program plan that shall minimally include: (1) a description of the selection process for field training officers, (2) an outline of the training proposed for agency trainees, (3) a description of the evaluation process for trainees and field training officers, and (4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms. If an agency's field training guide contains this information, it shall be considered a Field Training Program plan.

If an agency elects to use a locally developed field training guide, instead of the *POST Field Training Program Guide*, the guide must minimally include the following topics:

- Agency Orientation
- Patrol Vehicle Operations
- Officer Safety
- Report Writing
- California Codes (Penal, W&I, Etc.)
- Department Policies
- Patrol Procedures (including Pedestrian and Vehicle
- Traffic (including DUI)
- Use of Force
- Search and Seizure
- Radio Communications
- Self Initiated Activity
- Investigations/Evidence
- Community Relations/ Professional Demeanor

Stops)
Tactical Communication/
Management Resolution
Unlisted, Agency Specific
Topics

EXEMPTION REQUESTS

Requests for agency waiver of this training requirement must be mailed to the POST Executive Director and must present evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers. The Commission may approve waiver requests for a specified period of time. Agencies that do not provide patrol/general law enforcement services are exempt and do not have to seek a waiver.

FIELD TRAINING OFFICER COURSE

Field Training Officers must complete or have already completed a 40-hour POST Field Training Officer Course. Minimum curriculum requirements have been established for this course that impacts the 23 existing course presenters. Agencies that find these course presentations too distant, are invited to contact their POST Area Consultant to determine if this course can be presented more conveniently.

POST APPROVAL

All agency applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application package is received. If an agency's Field Training Program is initially not approved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the letter of disapproval.

ATTACHMENT B

1005. Minimum Standards for Training.

(a) Basic Training Standards (Required).

More specific information regarding basic training requirements is located in Commission Procedure D-1.

(1) Every regular officer, except those participating in a supervised POST-approved Basic Course Field Training Program, shall satisfactorily meet the training requirements of the Regular Basic Course before being assigned duties which include the exercise of peace officer power.

Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

An officer as described in Penal Code section 832.3 (a) is authorized to exercise peace officer powers while engaged in a field training program conducted as an approved segment of a POST-certified Regular Basic Course when the director of the basic training academy has received written approval from POST for a Basic Course Field Training Program. Requests for approval must be submitted to POST on an Application for POST-Approved Field Training Program, POST form 2-229 (Rev. 12/97). Application forms are available from POST.

Requirements for approval of a Basic Course Field Training Program are:

(A) The trainees have completed the training requirements of Penal Code section 832.

(B) The trainees are participants in a structured learning activity under the direction of the basic training academy staff.

(C) The trainees are, during field training, under the direct and immediate supervision (physical presence) of a peace officer who has been awarded a POST basic certificate and who has completed a POST-certified Field Training Officer Course.

(D) The basic training director has secured the written commitment of the trainee's agency head to provide the trainee with the structured field training experience using a qualified field training officer as described in subparagraph (1)(C).

(2) Every regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

A regular officer is **exempt** from the Field Training Program requirement following completion of the Regular Basic Course:

(A) while the officer's assignment remains custodial related, or

(B) if the employing agency does not provide general law enforcement patrol services, **or**

(C) if the officer is a lateral entry officer possessing a Regular Basic Certificate whose previous employment included general law enforcement patrol duties, **or**

(D) if the employing agency has obtained a waiver as provided for in PAM section D-13.

Requirements for the Field Training Program are set forth in PAM section D- 13.

(3) Every regularly employed and paid as such inspector or investigator of a district attorney's office as defined in section 830.1 Penal Code who conducts criminal investigations shall be required to satisfactorily meet the training requirements of the District Attorney Investigators Basic Course, PAM section D-14. Alternatively, the basic training standard for district attorney investigative personnel shall be satisfied by successful completion of the training requirements of the Regular Basic Course, PAM, section D-1-3, before these personnel are assigned duties which include performing specialized law enforcement or investigative duties, except all of the Regular Basic Course need not be completed before they participate in a POST-approved Basic Course Field Training Program as described in subparagraph (1). satisfactory

completion of a certified Investigation and Trial Preparation Course, PAM section D-14, is also required within 12 months from the date of appointment as a regularly employed and paid as such inspector or investigator of a District Attorney's Office.

(4) Every regularly employed and paid as such marshal or deputy marshal, of a municipal court, as defined in section 830.1 Penal Code, shall satisfactorily meet the training requirements of the Regular Basic Course, PAM, section D-1-3, before these personnel are assigned duties which include performing specialized law enforcement or investigative duties, except all of the Regular Basic Course need not be completed before they participate in a POST-approved Basic Course Field Training Program as described in subparagraph (1).

(5) Every specialized officer, except regularly employed and paid as such inspectors or investigators of a district attorney's office, shall satisfactorily meet the training requirements of the Regular Basic Course, PAM, section D-1-3, within 12 months from the date of appointment as a regularly employed specialized peace officer; or for those specialized agency peace officers whose primary duties are investigative and have not satisfactorily completed the Regular Basic Course, the chief law enforcement administrator may elect to substitute the satisfactory completion of the training requirements of the P.C. 832 Arrest and Firearms Course and the Specialized Investigators' Basic Course, PAM, section D-1-5.

(6) Every regularly employed and paid as such peace officer member of Coroners' Offices as defined in Section 830.35 P.C., shall satisfactorily complete the training requirements of Penal Code Section 832, PAM, Section D-7-2 before the exercise of peace officer powers. The satisfactory completion of the POST-certified Coroners' Death Investigation Course, PAM, Section D-1-7 is also required, within one year from date of appointment, and shall only apply to peace officer coroners hired on or after the agency enters the POST program.

(7) Every appointed constable or deputy constable, regularly employed and paid as such, of a judicial district shall complete the training requirements of

the Penal Code 832 (Arrest and Firearms) Course.

(8) Every limited function peace officer shall satisfactorily meet the training requirements of the Arrest and Firearms Course (Penal Code section 832); training in the carrying and use of firearms shall not be required when an employing agency prohibits limited function peace officers the use of firearms.

(9) Every peace officer listed in paragraphs (1) - (7) shall satisfactorily complete the training requirements of Penal Code section 832 prior to the exercise of peace officer powers.

Continued - (b) through the incorporation by reference statement which begins "PAM section D-4 ... ".

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996 and ____* is herein incorporated by reference.

Continued - Incorporation by reference statements after above.

NOTE: Authority cited: Sections 832.6, 13503, 13506, and 13510, 13510.5 and 13519.8, Penal Code. Reference: Sections 832, 832.3, 832.6, 13506, 13510, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520, and 13523, Penal Code.

*date to filled in by OAL

POST ADMINISTRATIVE MANUAL

COMMISSION PROCEDURE D-13

FIELD TRAINING

Purpose

13-1. Purpose: This Commission procedure implements the minimum standards/requirements for field training programs established by law enforcement agencies pursuant to Sections 1005(a)(1) and (a)(2) and the collaborative field training courses.

Specific Requirements

13-2. Requirements for Field Training: The minimum content and approval requirements for field training programs are specified in section 13-3. The minimum content for collaborative courses is described in section 13-5, Field Training Officer Course; section 13-6, Field Training Administrator=s Course; and section 13-7, Field Training Officer=s Update Course. Requirements for certification and presentation of these collaborative courses are specified in Regulations 1051-1056. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course.

13-3. Field Training Program Description and Approval Requirements: Regulations 1005(a)(1) and (a)(2) specify the basic training requirements for regular officers as successful completion of the Regular Basic Course and a Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of law enforcement services. Field Training programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course. This field training does not extend to persons serving in ride-along, observer capacities.

Any agency which employs regular officers shall seek approval of their Field Training Program by submitting a field training program plan along with an Application For POST Approved Field Training Program, POST 2-229 (Rev. 12/97). An approved Field Training Program remains in force until modified, at which time a new approval is required. Prior to the submission of an application, a comparison should be made of the agency=s present policies and practices versus POST=s minimum standards/requirements for an approved Field Training Program. Where needed, the agency shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within 10 working days regarding the completeness of the plan and application. A decision for approval shall be reached within 15 working days from the date the application is received. If an agency=s Field Training Program is disapproved, the agency must resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

(1) A Field Training Program plan shall minimally include:

(1) a description of the selection process for field training officers, and

(2) an outline of the training proposed for agency trainees, and

(3) a description of the evaluation process for trainees and field training officers, and

(4) copies of supporting documents (i.e., field training guides, policies and procedures, and evaluation forms).

(b) On POST form 2-229, the agency head must attest to the adherence of the following approval requirements:

(6) The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which shall minimally include the following topics:

Agency Orientation	Traffic (including DUI)
Patrol Vehicle Operations	Use of Force
Officer Safety	Search and Seizure
Report Writing	Radio Communications
California and Law	Self Initiated Activity
Department Policies	Investigations/Evidence
Patrol Procedures (including Pedestrian and Vehicle Stops)	Community Relations/Professional Demeanor
Control of Persons, Prisoners, and Mentally Ill	Tactical Communication/ Management Resolution
Unlisted, Agency Specific Topics	

(2) The field training program=s emphasis shall be on both training and evaluation of trainees.

1 A trainee shall have satisfactorily completed the Regular Basic Course before participating in the Field Training Program.

2 The field training program shall have a field training administrator/supervisor who: has been awarded or is eligible for the award of a POST Supervisory Certificate or has been selected based on the agency head=s (or his/her designate=s) nomination or appointment. Recommended training is the Field Training Officer Course and/or Field Training Administrator=s Course.

3 Trainees shall be supervised depending upon their assignment:

1 A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

2 A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.

(6) Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee=s progress shall be monitored by a field training administrator/supervisor by review and signing of the daily evaluations and/or by completing weekly written summaries of performance that are reviewed with the trainee.

(7) A field training officer shall have: (1) been awarded a POST Basic Certificate; (2) successfully completed the POST-certified Field Training Officer Course; (3) one year patrol experience; (4) a supervisor=s recommendation based upon the officer=s desire to be a field training officer and their ability to be a positive role model; and (5) been selected based upon an agency specific selection process.

(8) Each field training officer shall be evaluated by the trainee and a field training administrator/supervisor. The trainee shall complete and submit a confidential evaluation to a field training administrator at the end of the field training program. A field training administrator/supervisor shall provide a detailed evaluation to each field training officer on his/her performance as a field training officer.

(9) Documentation of trainee performance shall be maintained by the agency. The field training officer=s attestation of each trainee=s successful completion of the field training program and a statement that releases the trainee from the program, along with the signed concurrence of the agency/department head of his/her designate, shall be retained in agency records. Retention length shall be based upon agency record policies.

13-4. Agency Head Signature Required: Signature of the agency head is required attesting to continued adherence to the field training program which is submitted for approval. Requests for approval of changes in previously approved programs shall be submitted to POST in writing.

13-5. Field Training Officer=s Course Description: Presentation of a Field Training Officer Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Course is a minimum of 40 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The POST Field Training Officer Course Curriculum shall minimally include the following topics:

Introduction/Orientation
Standardized Curricula & Performance Objectives
Field Training Program History & the Need for Standardization
Field Training Program Management
Legal Issues for the FTO
Key Elements of a Successful Field Training Program
The Professional Relationship Between the Field Training Officer and the Trainee
Cultural Diversity in Field Training Programs
Override/Intervention
Remediation Methodologies & Strategies
Adult Learning Theory
Officer Safety in the Field
Field Training Program Goals and Objectives
Supervisory Skills for the FTO
Ethics
Scenario Facilitation & Grading
Role Modeling
Teaching Skills Demonstration
Expectations of/for Field Training Officers
Review of Regular Basis Course Training
Competency Expectations/Evaluations/Documentation

13-6. Field Training Administrator=s Course Description: Presentation of a Field Training Administrator=s Course requires POST certification (refer to Regulations 1051-1056). The Field Training Administrator=s Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Administrator=s Course shall minimally include the following topics:

Field Training Program Management
Review of Regular Basis Course Training
Adult Learning
POST Field Training Program & Objectives
Oversight of Test/Scenarios
Development & Update System for Field Training Manual
Documentation & Evaluations
Agency Responsibilities
Review of FTO Course Training
History of Field Training Programs
Competency Evaluation
Supervisory Procedures
FTO Selection Process
FTO Training & Certification
Conduct of FTOs, Training, & FTO Administrators

13-7. Field Training Officer=s Update Course Description: Presentation of a Field Training Officer=s Update Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Update Course is a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. The Field Training Officer Update Course Curriculum shall minimally include the following topics:

Review of Academy Training	Recommendation Methodologies & Strategies
Legal Update	Skill Building Training
Adult Learning Theory Update	Ethics
Scenario Facilitation & Evaluation	Teaching Skills Update/Demonstration

Waiver of Mandatory Field Training Program or Courses

13-8. Waiver of Mandatory Field Training Program or Courses: The Commission or its Executive Director, in response to a written request or on its own motion may, upon showing of good cause, waive the field training requirements, for an agency and/or its personnel, for a specific period of time. Waivers pursuant to this section will be granted only upon presentation of evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.

STATE OF

CALIFORNIA

October 18, 2002

Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Peace Officers Working Alone (K-14), 02-TC-06
Santa Monica Community College District, Claimant
POST Bulletin 98-1
POST Administrative Manual, Commission Procedure D-13

Dear Ms. Opie:

POST Commission staff has reviewed the above test claim. Participation in the POST Program is voluntary. Agencies participating in the field training program approval process have either: 1) absorbed any additional costs incurred to meet the POST approval process, or 2) have not incurred any additional costs because the agency previously established a program that meets or exceeds the minimum standards set by POST in January 1999.

Agencies choosing to participate in the POST program, and seeking approval of field training programs, should budget annually for anticipated costs. Since community college district police departments such as the Santa Monica Community College District Police Department derive revenue from the State, the agency should budget for anticipated training needs.

The Santa Monica Community College states it incurred $200.00 or more annually in staffing and other costs to develop and implement policy and procedure; to develop tracking procedures; to plan, develop, and implement a field training program; and to cover travel, meals, and substitute salaries for its field training officers (FTOs) and trainees. As a point of clarification, participants in the POST Program are reimbursed for travel, per diem, and tuition associated with attendance at mandated Field Training Officer courses.

If the residual cost of the program causes an undue hardship for the Claimant, the Claimant may request a waiver from the Executive Director of POST as described in this test claim.

Sincerely,

RICHARD W. REED
Assistant Executive Director

RWR:ks:kh

EXHIBIT G

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 18, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of September 19, 2002, the Department of Finance has reviewed the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under Bulletin 98-1, effective January 9, 1998, as issued by the Commission on Peace Officer Standards and Training (POST) are reimbursable state mandated costs (Claim No. CSM-02-TC-06 "Peace Officers Working Alone"). Commencing with Page 12, Part 3, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Development and implementation of policies and procedures to track each peace officer to ensure that they have completed a mandatory field training program.
- Unreimbursed costs of travel, subsistence, meals, training fees, and substitute salaries of its Field Training Officers and law enforcement officers attending a field training program.
- Development and implementation of a field training program pursuant to POST Bulletin 98-1.

As the result of our review, we have concluded that the claim is without merit and should be denied. The reasons for this conclusion are as follows:

- Local entity participation in POST Programs is optional. Local entities agree to participate in POST Programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code Sections 13522 and 13510. Therefore any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
- Local agency participation in this training was optional because local entities could have requested a waiver exempting them from this requirement. To the extent that a local entity did not request a waiver, the entity was participating optionally.

Additionally, we note that another test claim has been filed regarding the Commission on Peace Officer Standards and Training Bulletin 98-1 (Claim No. CSM-00-TC-19 "Mandatory On-the-Job Training for Peace Officers Working Alone"). We request that these two claims be consolidated.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your September 19, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Marcia Caballin, Principal Program Budget Analyst or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Mona Martinez for

Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF MARCIA CABALLIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-06

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the POST Bulletin 98-1 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

October 18, 2002
at Sacramento, CA

Marcia Caballin
Marcia Caballin

PROOF OF SERVICE

Test Claim Name: Peace Officers Working Alone
Test Claim Number: CSM-02-TC-06

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On October 18, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Department of Finance
Attention: Susan Geanacou
915 L Street, Suite 1190
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
School Fiscal Services
Attention: Gerry Shelton
560 J Street, Suite 150
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Sacramento, CA 95825

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Department of Finance
Attention: Keith Gmeinder
915 L Street, 8th Floor
Sacramento, CA 95814

Cost Recovery Systems
Attention: Annette Chinn
705-2 East Bidwell Street #294
Folsom, CA 95630

Spector, Middleton, Young & Minney
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

County of San Bernardino
Attention: Mark Cousineau
Officer of the Auditor-Controller
222 West Hospitality Lane
San Bernardino, CA 92415

California Peace Officers Association
Attention: Executive Director
1455 Response Road, Suite 190
Sacramento, CA 95815

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Commission on Peace Officers Standards and Training
Attention: Richard Reed
1601 Alhambra Blvd.
Sacramento, CA 95816

Shields Consulting Group
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

David Wellhouse & Associates, Inc.
Attention: David Wellhouse
9175 Kelfer Blvd. Suite 121
Sacramento, CA 95826

Santa Monica Community College District
Attention: Cheryl Miller
1900 Pico Blvd
Santa Monica, CA 90405

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

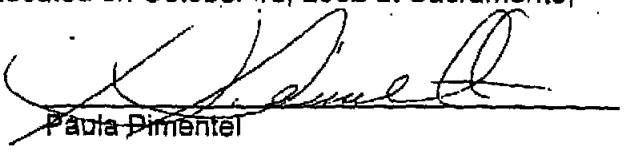
County of Los Angeles
Attention: Leonard Kaye
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

California Community Colleges
Attention: Patrick Lenz
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Reynolds Consulting Group
Attention: Sandy Reynolds
P.O. Box 987
Sun City, CA 92586

MAXIMUS
Attention: Pam Stone
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 18, 2002 at Sacramento, California.



Paula Pimentel

STATE OF CALIFORNIA ARNOLD S

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
E: (916) 323-3562
(916) 445-0278
E-mail: csminfo@csm.ca.gov

May 12, 2004

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, CA 90012-2766

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

And Interested Parties (See enclosed Mailing List)

RE: **Consolidation of Test Claims/Tentative Hearing Date**
Mandatory On-The-Job Training for Peace Officers Working Alone (00-TC-19)
Peace Officers Working Alone (K-14) (02-TC-06)

Dear Mr. Kaye and Mr. Petersen:

The two test claims listed above share common issues, allegations, documents, and regulations. In light of these similarities and to ensure the complete, fair, and timely consideration, these claims are now consolidated for analysis and hearing pursuant to my authority under California Code of Regulations, title 2, section 1183.06. This action will be effective 10 days from the date of this letter. Any party may appeal the action to consolidate pursuant to section 1183.06, subdivision (d), of the Commission's regulations.

For future correspondence, these test claims are designated *Mandatory On-The-Job Training for Peace Officers Working Alone* (00-TC-19, 02-TC-06), County of Los Angeles and Santa Monica Community College District, Claimants. A consolidated mailing list is enclosed.

This matter is tentatively scheduled for hearing on September 30, 2004. A draft staff analysis will be issued on or about July 22, 2004.

Please contact Camille Shelton at (916) 323-8215 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enc.

MAILED: Mail List FAXED:
DATE: 6/12/24 INITIAL: VS
CHRON: FILE:
WORKING BINDER:

Commission on State Mandates

Original List Date: 7/6/2001
Last Updated: 3/12/2004
List Print Date: 05/12/2004
Claim Number: 00-TC-19
Issue: Mandatory On-The-Job Training for Peace Officers Working Alone

Mailing Information: Other

Mailing List

Related

02-TC-06 Peace Officers Working Alone (K-14)

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Paul Minney
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Mr. Leroy Baca
Los Angeles County Sheriffs Department
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Monterey Park, CA 91754-2169

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Fax: (323) 000-0000

Mr. Leonard Kaye, Esq.
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Auditor-Controller's Office
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Sacramento, CA 95841

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Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
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Sun City, CA 92586

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1380 Lead Hill Boulevard, Suite #106
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Mr. Todd Wherry
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Rancho Cordova, CA 95670

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COMMISSION ON STATE MANDATES
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SACRAMENTO, CA 95814
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FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

June 2, 2004

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, CA 90012-2766

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

And Affected State Agencies and Interested Parties (See enclosed Mailing List)

RE: **Draft Staff Analysis/Hearing Date (July 29, 2004)**
Mandatory On-The-Job Training for Peace Officers Working Alone
(00-TC-19, 02-TC-06)
Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1;
POST Administrative Manual, Procedure D-13
County of Los Angeles and Santa Monica Community College District, Claimants

Dear Mr. Kaye and Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **June 23, 2004**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing **July 29, 2004**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 8, 2004. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Camille Shelton, Senior Commission Counsel, if you have any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc.

MAILED:
FAXED:
DATE: 6/3/04
INITIAL: VS
CHRON:
FILE:
WORKING BINDER:

ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS

Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1;
POST Administrative Manual, Procedure D-13

Mandatory On-The-Job Training For Peace Officers Working Alone

(00-TC-19, 02-TC-06)

County of Los Angeles and Santa Monica Community College District, Claimants

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EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL STAFF ANALYSIS

STAFF ANALYSIS

Claimants

County of Los Angeles and Santa Monica Community College District

Chronology

06/29/01	County of Los Angeles files test claim, *Mandatory On-The-Job Training for Peace Officers Working Alone* (00-TC-19)
07/09/01	Test claim (00-TC-19) deemed complete
07/16/01	Commission on Peace Officer Standards and Training (POST) files comments on test claim (00-TC-19)
08/08/01	Department of Finance files comments on test claim (00-TC-19)
08/31/01	Claimant requests an extension of time to file rebuttal
09/04/01	Claimant's request for an extension of time is granted
10/23/01	Claimant files rebuttal to state agency comments
07/19/02	Request from SixTen and Associates to include school districts in test claim (00-TC-19)
09/13/02	Santa Monica Community College District files test claim, *Peace Officers Working Alone (K-14)* (02-TC-06)
09/19/02	Test claim (02-TC-06) deemed complete
10/21/02	POST files comments on test claim (02-TC-06)
10/22/02	Department of Finance files comments on test claim (02-TC-06)
05/12/04	Test claims, 00-TC-19 and 02-TC-06, are consolidated
06/03/04	Draft staff analysis on consolidated test claim is issued

Background

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13, establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties. The claimants contend that the POST bulletin and manual constitute an executive order that requires reimbursement pursuant to article XIII B, section 6 of the California Constitution.

The POST bulletin, which was issued on January 9, 1998, states in pertinent part the following:

> Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training

requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.
- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.
- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing authority has obtained a waiver as provided in PAM section D-13 as described below.
- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.
- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999, and as soon as all POST program requirements are in place (e.g., agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.
- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)

4. Copy of the POST Field Training Guide 1997

Effective January 1, 1999, section 1005 of the POST regulations was amended to provide for the field training program.[1] As amended, section 1005, subdivision (a)(2), stated in relevant part that "[e]very regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM [POST Administrative Manual] section D-13."

Beginning July 1, 2004, further amendments to POST's regulations and administrative manual on the field training program go into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations will be amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." In addition, some of the required activities for the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual will be placed in section 1004 of the POST regulations.[2]

The field training activities provided in the POST Administrative Manual and in POST regulations include the following:

- Any department that employs peace officers and/or Level I Reserve peace officers shall have a POST-approved field training program. Requests for approval of the program shall be submitted on form 2-229, signed by the department head.
- The field training program shall be delivered over a minimum of 10 weeks and based upon the structured learning content specified in the POST Administrative Manual section D-13 and the POST Field Training Program Guide.[3]
- The trainee shall have successfully completed the Regular Basic Course before participating in the field training program.
- The field training program shall have a training supervisor/administrator/coordinator that has been awarded or is eligible for the award of a POST Supervisory Certificate, and meets specified POST requirements, including completion of a POST-certified Field Training Supervisor/Administrator/Coordinator Course.
- The field training program shall have field training officers that meet specified POST requirements, including completion of a POST-certified Field Training Officer Course.
- A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer. A trainee assigned to non-peace officer, specialized functions for the purpose of specialized

---

[1] California Code of Regulations, title 11, section 1005.

[2] See exhibit ___, POST's notice of rulemaking. In addition, beginning July 1, 2004, the field training program content and course curricula will be updated to include specific components of leadership, ethics, and community oriented policing.

[3] The POST Field Training Program Guide is attached as Exhibit ___.

training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.

- Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of daily evaluations and/or completing weekly written summaries of performance that are reviewed by the trainee.
- Each field training officer shall be evaluated by the trainee and supervisor/administrator at the end of the program.[4]

Claimants' Positions

Both claimants contend that POST Bulletin 98-1 and Administrative Manual Procedure D-13 constitute a reimbursable state-mandated program. The County of Los Angeles is requesting reimbursement for the following activities:

- One-time cost to design and develop a ten-week on-the-job training program, including course content and evaluation procedures to comply with the subject law.[5]
- One-time cost to meet and confer with training experts on curriculum development.[6]
- One-time cost to design training materials including, but not limited to, training videos and audio visual aids.[7]
- One-time cost to comply with POST application process for POST approval of county field training program.[8]
- Continuing cost for instructor time to prepare and teach ten-week training classes.[9]

  This includes the following instructor and administrator training:

  - 40-hour POST field training officer course in accordance with POST procedure, D-13-5;[10]
  - 24-hour POST field training administrator course, POST procedure D-13-6;[11] and

---

[4] Exhibit ___, POST Administrative Manual, Procedure D-13, and section 1004 of the POST regulations, effective July 1, 2004.

[5] Declaration of Lieutenant Bruce Fogarty, Los Angeles County Sheriff's Department, dated June 21, 2001. Staff notes that the County of Los Angeles' field training program is 28 weeks of training. (See Exhibit A, Page B-2 of the County of Los Angeles Field Training Program Manual, attached to the test claim.)

[6] *Ibid.*

[7] *Ibid.*

[8] Exhibit A, Test Claim, pages 3-5.

[9] Declaration of Lt. Bruce Fogarty.

[10] Exhibit A, Test Claim, pages 6 and 11.

- 24- hour field training officer's update, POST procedure D-13-7.[12]

- Continuing cost for trainee time to attend the ten-week training class.[13]
- Continuing cost to review and evaluate trainees to ensure that each phase is successfully completed.[14]

Santa Monica Community College District requests reimbursement for the following activities:

- Develop and implement policies and procedures, with periodic updates.
- Develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates in the field training program.
- Pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of field training officers and law enforcement officers attending the training.
- Plan, develop and implement a field training program and submit an application for approval of the field training program.
- Apply for a waiver of the field training requirements when unable to comply due to either financial hardship or lack of availability of personnel who qualify as field training officers.[15]

Position of the Department of Finance

The Department of Finance filed comments on both test claims arguing that the test claim should be denied for the following reasons:

- Local law enforcement agency participation in POST programs is optional. Local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code sections 13522 and 13510. Therefore, any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
- Local agency participation in the training is optional because local entities can request a waiver exempting them from the training.[16]

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[11] *Id.* at page 12.

[12] *Ibid.*

[13] Declaration of Lt. Bruce Fogarty.

[14] *Ibid.*

[15] See declaration of Eileen Miller, Chief of Police of the Santa Monica Community College District, and declaration from Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District (Exhibit B).

[16] Exhibit C.

Position of POST

POST filed comments on the County of Los Angeles test claim as follows:

> The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program. This new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies. There was no statutory enactment by the Legislature compelling adoption of Field Training program regulations.
>
> Local entities, such as the County of Los Angeles, participate in the POST program on a voluntary basis. The County has passed an ordinance under the terms of which it agrees to abide by current and future employment and training standards enacted by the POST Commission.
>
> The Commission's regulations include a waiver provision for participating agencies unable to comply due to significant financial constraints.[17]

POST also filed comments on the Santa Monica Community College test claim, which further alleges that agencies choosing to participate in the POST program should budget annually for anticipated costs. POST also states that participants in the POST program are reimbursed for travel, per diem, and tuition associated with attendance at field training officer courses.[18]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[21] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[17] Exhibit D.

[18] *Ibid.*

[19] Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[20] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

[21] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

task.[22] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[23]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[24] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[25] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[26]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[27] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[28]

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[22] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at p. 754.)

[23] *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

[24] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[25] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[26] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[27] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[28] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280.

Issue I: Are the documents issued by POST, Bulletin 98-1 and POST Administrative Manual Procedure D-13, subject to article XIII B, section 6 of the California Constitution?

A. State law does not require school districts and community college districts to employ peace officers and, thus, the field training requirements do not impose a state mandate on school districts and community college districts.

Santa Monica Community College District contends that the documents issued by POST constitute executive orders that impose a mandate on school districts and community college districts to provide the required field training to their officers. Staff disagrees. For the reasons described below, staff finds that the documents issued by POST are not subject to article XIII B, section 6 of the California Constitution because they do not impose a mandate on school districts and community college districts. School districts and community college districts are not required by state law to employ peace officers.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[29] Although the Legislature is permitted to authorize school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[30] the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools. However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves.[31] In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision as follows:

> [H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, "it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." [Citation omitted.][32]

The Legislature is permitted to authorize school districts to act in any manner that is not in conflict with the Constitution. The Legislature, however, does not require school districts and

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[29] California Constitution, article IX, section 1.

[30] California Constitution, article IX, section 14.

[31] Article I, section 28, subdivision (c) of the California Constitution provides "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are **safe**, secure and peaceful." (Emphasis added.)

[32] *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455.

community college districts to employ peace officers. Pursuant to Education Code section 38000:[33]

> [t]he governing board of any school district may establish a security department ....or a police department ...[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. "The governing board of a community college district may establish a community college police department ... [and] may employ personnel as necessary to enforce the law on or near the campus. ... This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

In *Department of Finance v. Commission on State Mandates*, the California Supreme Court found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."[34] The court further stated, on page 731 of the decision, that:

> *[W]e reject claimants' assertion that they have been legally compelled to incur* notice and agenda *costs*, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Thus, pursuant to state law, school districts and community college districts remain free to discontinue their own police departments and employing peace officers. Thus, the field training duties imposed by the POST documents that follow from the discretionary decision to employ peace officers do not impose a reimbursable state mandate.

Therefore, the POST documents are not subject to article XIII B, section 6 of the California Constitution with respect to school districts because they do not impose a mandate on school districts and community college districts.

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[33] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[34] *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 743.

B. State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Assuming for the sake of argument only that school districts are required to employ peace officers, staff finds that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a state-mandated program on either school districts or local agencies. Thus, the POST documents are not subject to article XIII B, section 6 of the California Constitution. As more fully described below, participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state. Furthermore, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants.

Participation in POST is voluntary

As described by POST in their comments to the test claims, the ten-week field training program was enacted by POST under their authority to set standards for employment and training of peace officers employed by agencies that participate in the POST program.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers ..." (Pen. Code, § 13510.) To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and to the training of peace officers. But, these rules apply only to those cities, counties, and school districts that participate in the POST program and receive state aid. Penal Code section 13510, subdivision (a), expressly states that "[t]hese rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter ..."[35]

The state aid is provided in Penal Code section 13520, which states the following: "There is hereby created in the State Treasury a Peace Officers' Training Fund, which is hereby appropriated, without regard to fiscal years, exclusively for costs of administration and for grants to local governments and districts pursuant to this chapter."

Penal Code section 13552 further provides that any local agency or school district may apply for the state aid by filing an application with POST, accompanied by an ordinance or resolution from the governing body stating that the agency will adhere to the standards for recruitment and training established by POST. Penal Code section 13552 states the following:

> Any city, city and county, or district which desires to receive state aid pursuant to this chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an ordinance, or ... a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, or district will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

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[35] Penal Code section 13507, subdivision (e) and (f), defines "district" to include school districts and community college districts.

Penal Code section 13523 provides that "[i]n no event shall any allocation be made to any city, county, or district which is not adhering to the standards established by the commission as applicable to such city, county, or district."

In the *Department of Finance* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.[36] As the court stated,

> [T]he core point ... is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.][37]

Here, participation in the underlying POST program is voluntary. The plain language of Penal Code section 13522 authorizes the governing body of local agencies and school districts to decide whether to apply for state aid through POST. If the local entity decides to file an application, the entity must adopt an ordinance or regulation agreeing to abide by POST rules and regulations as a condition of applying for state aid. Not all local agencies and school districts have applied for POST membership.[38]

Thus, like the school districts in the *Department of Finance* case, local agencies and school districts here are free to decide whether to 1) continue to participate and receive POST funding, even though they must also incur program-related costs associated with the field training program, or 2) decline to participate in the POST program.[39] Therefore, local agencies and school districts are not mandated by the state to provide field training to their officers.

Finally, the field training program at issue in this case is not like other legislatively-mandated training programs imposed on law enforcement agencies, as asserted by the County of Los Angeles. The County argues that the Commission's analysis of this claim should be the same as its analysis and findings of state-mandated programs in *Sexual Harassment Training in the Law Enforcement Workplace* (CSM 97-TC-07, adopted September 28, 2000) and *Domestic Violence Training* (CSM 96-362-01, adopted February 26, 1998).[40] But, the test claims on the Sexual Harassment and Domestic Violence Training involved Penal Code statutes (Pen. Code, §§ 13519.7 and 13519) that required POST to develop the training courses and required local law enforcement agencies to provide the POST-developed training courses to their officers.[41] Here,

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[36] *Department of Finance, supra*, 30 Cal.4th at page 731.

[37] *Department of Finance, supra*, 30 Cal.4th at page 742.

[38] See Exhibit __, POST's list of law enforcement agencies, with several agencies, as of March 11, 2004, noted as not a POST participating agency.

[39] *Id.* at page 753.

[40] Exhibit A, County of Los Angeles test claim, pages 39-41.

[41] The Commission ultimately denied the test claim on Domestic Violence Training because there was no evidence that the state mandated local agencies to incur increased costs mandated

the Legislature has not enacted a statute compelling POST to develop a field training course and has not compelled local agencies and school districts to provide a field training program for their officers. Thus, the same rationale does not apply. Instead, local agencies and school districts are not mandated by the state, as described above, to provide field training to their officers.

Accordingly, staff finds that participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state.

POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status

The claimants allege that the field training program for officers working alone is part of the basic training requirement imposed by the state on all officers to obtain peace officer status. Thus, the claimants argue that field training is not voluntary. Staff disagrees.

It is true, as argued by the claimants, that officers are required to complete a basic course of training prescribed by POST before they can exercise the powers of a peace officer, and must obtain the basic certificate issued by POST within 18 months of employment in order to continue to exercise the powers of a peace officer.[42] If the officer fails to complete the POST basic training or obtain the basic certificate, the officer may exercise only non-peace officer powers; for example, the officer may not exercise the powers of arrest, serve warrants, or carry a concealed weapon without a permit.[43] The basic training and certificate is mandated by statute, and applies to all officers, whether or not their employers are POST members.[44]

But, based on the plain language of Bulletin 98-1, POST Regulations, the POST Administrative Manual, and the comments filed by POST on these test claims, the field training program is not part of the legislatively-mandated basic training requirement imposed on all officers. Field training is required only if the local agency or school district employer has elected to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Page two of the POST Bulletin 98;1 expressly states that the "requirements for the POST regular Basic Certificate are *not* affected by the field training requirement." (Emphasis added.) Page two of the bulletin also describes those agencies affected by the new requirements as "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies *in the POST program*..." (Emphasis added.) Thus, agencies that decide not to participate in the POST program are not affected by the field training requirement.

In addition, section 1005, subdivision (a)(1), of the POST regulations, as amended in January 1999, provided that "[a]n officer as described in Penal Code section 832.2 (a) [a peace officer, first employed after January 1, 1975, that successfully completes the basic training course prescribed by POST] *is authorized to exercise peace officer powers while engaged in a*

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by the state. The Second District Court of Appeal upheld the Commission's decision. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.)

[42] Penal Code sections 832, 832.3, subdivision (a), and 832.4.

[43] 80 Opinions of the California Attorney General 293, 297 (1997).

[44] 55 Opinions of the California Attorney General 373, 375 (1972).

field training program ..." (Emphasis added.) Section 1005, subdivision (a)(2), further provided that "[e]very regular officer, *following completion of the Regular Basic Course* and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13." (Emphasis added.)[45] Thus, unlike the statutory requirement to successfully complete the basic training course before exercising the powers of a peace officer, an officer is not required to complete the field training program before he or she has the powers of a peace officer to make arrests, serve warrants, and carry a concealed weapon. Therefore, the field training program is not part of the basic training program.

Moreover, beginning July 1, 2004, further amendments to POST's regulations and the POST Administrative Manual on the field training program will go into effect. According the regulatory notice issued by POST, section 1005 of the POST regulations will be amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." The plain language of section 1005, as amended, indicates that the field training program is not part of the basic training program. Section 1005, as amended, will provide as follows:

> (a) Minimum Entry-Level Training Standards (Required).
>
> (1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) ..., and 1005(a)(4) ..., *shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers.* Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.
>
> (A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5(below), *following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision,* shall complete a POST-approved Field Training Program as set forth in PAM section D-13. (Emphasis added.)

The statutory authority and reference listed for section 1005 of the POST regulations includes Penal Code section 832 and 832.3, the statutes that require the successful completion of a basic course of training prescribed by POST before a person can exercise the powers of a peace officer.[46]

In addition, the activities required to be performed by POST participating agencies under the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual will be placed in section 1004 of the POST regulations beginning July 1, 2004. The statutory authority and reference for section 1004 of the POST regulations are Penal Code

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[45] See also, POST Administrative Manual Procedure D-13-3.

[46] See exhibit ___, POST's notice of rulemaking; California Code of Regulations, title 11, sections 1004 and 1005 (eff. 7/1/04).

13503, 13506, 13510, and 13510.5, the statutes that authorize POST to set standards for employment and training of peace officers employed by agencies that participate in POST.[47]

In addition to the plain language of the regulations and the POST Administrative Manual, the comments filed by POST on these test claims indicate that the field training program adopted by POST was meant only for POST participating agencies. POST states that the "new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers *employed by participating agencies*."[48] POST's interpretation of their regulations and Administrative Manual, is entitled to great weight and the courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.[49]

Accordingly, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants. Rather, the field training program is imposed only on POST participating agencies.

Conclusion

Staff concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- State law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts.
- State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis and deny this consolidated test claim.

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[47] *Ibid.*

[48] Exhibit D, emphasis added.

[49] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11.

■ POST

Field Training Program Guide

The mission of
the California Commission on
Peace Officer Standards and Training
is to continually enhance
the professionalism of
California law enforcement
in serving its communities.

POST Field Training Program Guide

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FOREWORD

The purpose of this *POST Field Training Program Guide* is to provide administrators of POST-participating agencies with information and assistance in applying POST field training program regulations within their field training program development and maintenance. A standardized program and forms have been developed to guide law enforcement departments and their Field Training Officers (FTOs) through the initial orientation and field training of newly assigned patrol officers. The program is designed to assist the new officers in making the transition from what they learned in the academy to performing general law enforcement uniformed patrol duties competently in the field.

The POST standardized program (with its structured learning content and applicable regulations) and the other program samples in this guide are an accumulation of the best aspects of existing field training programs throughout our state and the nation. They were designed and provided with the following criteria in mind:

> *Defensible/Fair – The program 1) ensures proper selection and training of FTOs, 2) allows trainee feedback mechanisms, 3) provides a comprehensive list of performance objectives, and 4) utilizes a standardized evaluation process.*
>
> *Effective/Manageable – The program is performance-based and includes adequate documentation, minimum time completion requirements, and competency specifications.*
>
> *Adaptable/Flexible – The program is adaptable to any size or type of agency. Flexibility is afforded as agencies are able to incorporate agency-specific policies and procedures and other local references/ resources into the program.*

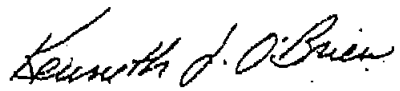
The POST field training program regulations and POST-approved field training programs are intended to achieve the following goals:

continued

- To produce a competent peace officer capable of working a uniformed, solo patrol assignment in a safe, skillful, productive, and professional manner.
- To provide standardized training to all newly assigned patrol officers in the practical application of learned information.
- To provide clear standards for rating and evaluation which give all trainees every reasonable opportunity to succeed.
- To enhance the professionalism, job skills, and ethical standards of the law enforcement community.

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities. This *POST Field Training Program Guide* has been developed to support this mission, drawing upon the expertise of and input from the law enforcement community statewide and nationally.

The Commission appreciates the contributions made by the Field Training Advisory Council, the Reno (Nevada) Police Department, the Police Executive Research Forum (PERF), and the Office of Community Oriented Policing Services (COPS), US Department of Justice, in providing input to prepare this guide. Questions or comments regarding this document should be directed to the Basic Training Bureau at (916) 227-4252.



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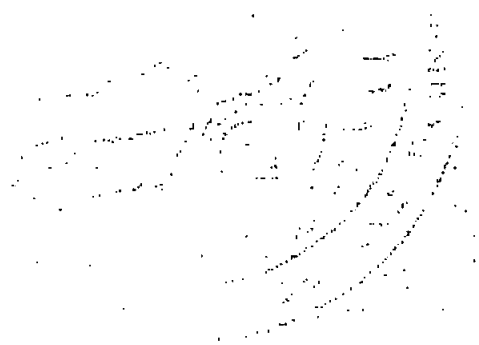
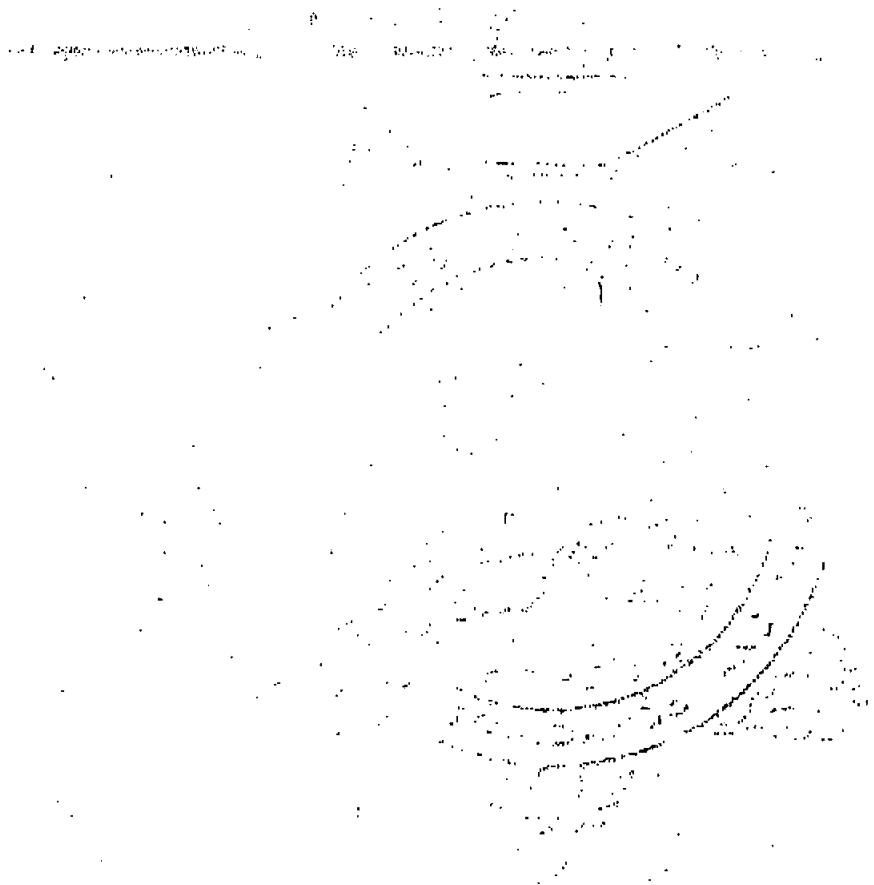


■ PART I

Program Orientation



Field Training Overview

Field training is intended to facilitate a peace officer's transition from the academic setting (or custody assignment) to the performance of general law enforcement uniformed patrol duties of the employing department. Although an officer graduating from the POST Regular Basic Course (Academy) has received a thorough introduction to basic law enforcement subjects, that officer cannot be expected to immediately assume the full responsibilities of an experienced officer. Newly assigned officers must receive additional training in the field, on actual calls for service, where they can learn from officers who already have practical patrol experience. Field training introduces a newly assigned officer to the personnel, procedures, policies, and purposes of the individual law enforcement department and provides the initial formal and informal training specific to the department and the day-to-day duties of its officers.

In order to make the new officers' field training as effective as possible, they are assigned to a Field Training Officer (FTO). The FTO is an experienced officer selected and trained to conduct this type of training. It is the responsibility of the FTO to thoroughly review the field training program guide materials with the newly assigned officer (henceforth referred to as the trainee) and to demonstrate proper patrol procedures. Trainees will be required to perform various law enforcement duties under the guidance and supervision of their assigned FTO and a Field Training Program Supervisor/Administrator/ Coordinator (FTP SAC). The trainee's performance will be evaluated by the FTO and monitored by the FTP SAC through daily and/or weekly reviews. This one-on-one style of training, in actual law enforcement situations, sets it apart from any prior academic endeavor.

Field training has a significant impact on the individual trainee in terms of imprinting attitudes, style, values, and ethics in carrying out the duties of policing that will remain with the officer throughout a career. Because of this, it is probably the most effective influence on the future direction of a department. The law enforcement department head and his/her field training staff must be certain that their field training program not only develops the necessary technical skills but also reflects the policing philosophy of the department and the community that it serves.

The field training staff has the responsibility of building the future of the department through the people they train. The field training program must have a training philosophy that ensures that each trainee is given the maximum opportunity to show that he/she can do the job. To accomplish this, the program must create a positive environment in which learning is maximized and in which trainees are able to perform to the best of their ability. The approach must be fair, firm, friendly, and, above all, professional. The example set must be beyond reproach. Evaluation must be sincere and given in a straightforward manner emphasizing the positive as well as the negative aspects of performance. At no time should trainees be demeaned or ridiculed. Trainees should never be treated in a way that deprives them of their dignity. Every effort must be made to ensure that the stress felt by the trainee is caused by the job and not from the words or actions of the field trainers.

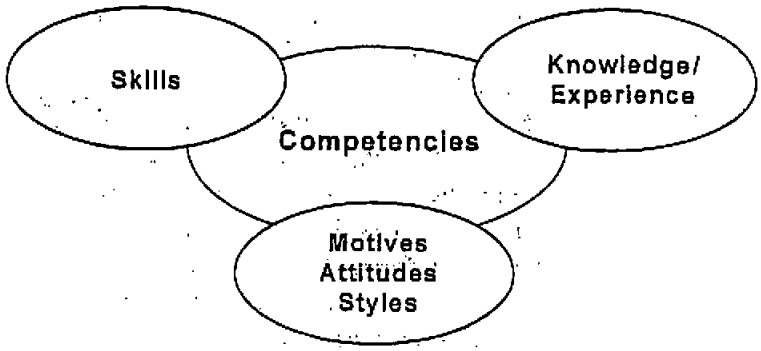
Department leaders and field training program staff have a responsibility to the community they serve. This responsibility requires that the department train and retain only the most competent officers. Not everyone has the capability to perform the complex, demanding tasks of the patrol officer position. If, after sufficient training, the trainee does not meet the acceptable standards, he/she must be removed from patrol duties. To do otherwise would be an injustice to the department, the community it serves, and to the trainee.

To accomplish the field training task requires the utmost dedication and patience throughout the department. All levels must support the training mission and accommodate training needs. The future of the department rests in the implementation of a well organized and administered field training program. Support of the program and the program staff will result in successful trainees who can perform the duties of a patrol officer in a safe, effective, and competent manner.

POST's Role/Expectations of Field Training Programs

The POST Field Training Program and the collaborative field training regulations are intended to support a competency-based training system. Trainees need to develop competencies relevant to their position as new patrol officers. The program helps trainees achieve specific objectives in order to be successful in their new organizational role and to develop skills, knowledge, abilities, and attitudes at a personal and professional level. In this program, competency includes behaviors that demonstrate effective (acceptable) or superior performance. These behaviors may not always include specific knowledge (i.e., exact penal code references) but do include learned or practical experience, or the behavioral application of knowledge that produces a successful result. Competencies are not necessarily specific skills but, rather, the application of skills that produces a successful result.

Objectives of Competency-based Training System



Departments will determine their own levels of acceptable performance and the competent standard of a solo patrol officer. As shown above, competencies have several components. Many of these are addressed in the hiring process; however, it's usually only in the field training program, when these components actually have to work and come together, that potential success and true competence is revealed. The field training program staff has the responsibility to evaluate that competence and the success of each trainee. The future of the department rests in their hands. ■

Field Training Program Elements

The *POST Field Training Program Guide* has been designed based upon research and input from numerous law enforcement departments throughout California and the nation. The following program elements are designed to provide assistance to POST-participating departments seeking approval of their field training programs. POST's regulatory standards and requirements for program approval are incorporated into these elements.

Scope of the Program

The *POST Field Training Program* is designed to be completed by peace officers who have successfully completed the POST Regular Basic Course (Academy) and have been assigned to perform general law enforcement uniformed patrol duties. POST regulations exempt lateral officers who have a POST Basic Certificate and one year prior solo patrol experience; however, a structured training program is highly recommended to introduce new officers to the department's philosophies, procedures, and community services.

This program also meets the 400-hour field training requirement for Level I Reserves. Another POST exemption allows department heads to hire their own Level I Reserves if the officer: 1) is appointed to a full-time peace officer position within the same department and previously completed the department's entire POST-approved Field Training Program within 12 months of the new appointment, or 2) has the signed concurrence of the department head attesting to the individuals competence, based upon experience and/or other field training, as a solo general law enforcement uniformed patrol officer.

These requirements and/or exemptions can be reported by the department head when applying for POST approval of their field training program on POST form 2-229.

Length of the Program

POST-Approved Field Training Programs must minimally be 10 weeks long. The *POST Field Training Program Guide* is presented in such a way as to

provide maximum flexibility in the time required to present its objectives. Research and experience in presenting similar programs have shown that a minimum of 10 weeks is required to provide a trainee time to become minimally proficient in general law enforcement uniformed patrol duties to the extent that he/she can operate independently of a field training officer. Most California programs are between 12 to 16 weeks. This period allows sufficient time for the FTO and Field Training Supervisor/Administrator/Coordinator (FTP SAC) to provide further department-specific training, guidance, and evaluation to the trainee. It is incumbent upon the field training staff to work, within acceptable limits, to individualize a training approach for each trainee. ***Trainees need time to learn.*** Department administrators with input from their field training staff should establish a set time period for their field training program, based on department needs and philosophy, before they consider a recommendation to release a trainee from the program.

Orientation

The field training program shall begin with an orientation period of at least one week. The department should determine the actual length of this orientation based upon the trainee's previous assignment and type of academy training (department vs. regional academy). This orientation allows for a smooth transition from the academy, prior department, or custody assignment to the field training program. The trainee's first few days in the field training program may prove to be the most critical in terms of "setting the stage" for trainee learning and development.

Where possible, it is recommended that departments establish an initial classroom setting under the direction of the FTP SAC. The purpose of this assignment is to address performance objectives or agency-specific needs more appropriate for a classroom setting. This orientation must include firearms and impact weapons qualification as well as trainee demonstrated proficiency in arrest and control techniques. The introduction to the field training program should also include a discussion of the goals of the program, the procedures by which those goals are met, and what is expected of the trainee in order to attain those goals.

Orientation should provide a familiarization with the city or county and the department's personnel and equipment. This orientation period is not evaluated. The goal of this orientation is to give trainees a solid foundation from which they can actively enter into the program.

Standardized/Phase Training

In order to maintain uniformity, a concentrated effort must be made to standardize certain aspects of field training that fall within each topic/area of performance skills. FTOs must have confidence in the training that has preceded their segment of training. Without standardized training, the second FTO (or third, or fourth, etc.) is evaluating the trainee not only on the trainee's shortcomings but on the training deficiencies of the other FTO(s) as well. Training must take place before evaluation and must be uniform if the evaluation is to be valid.

Following the *POST Field Training Program Guide* or using a training program based on the same structured learning content (topical areas of instruction and performance objectives) will *minimize problems* that arise from inconsistent training **and** will *ensure maximum uniformity* in the training process. A fundamental element of the field training program is phase training. Phase training is designed to provide the following:

1. a systematic approach to field training,
2. consistent and standardized training,
3. the means of assuring the trainee's capability to perform competently as a solo patrol officer, and
4. the opportunity to train with various FTOs and to be exposed to their methods and techniques while operating within standardized guidelines.

During each phase, the trainee will complete a portion of the program including specific performance objectives designed to ensure that the trainee has learned specific skills. Many field training programs, including the *POST Field Training Program*, are divided into four phases.

Phase I is the introductory phase. It consists of the orientation period (of at least one week) followed by several weeks of instruction and training. During this time, the trainee will be taught certain basic skills. These include officer safety and other areas of potential liability to the organization and the trainee. FTOs assigned to Phase I responsibility are identified as the "Primary FTO" (*Primary FTOs are sometimes assigned because they may be the best prepared to deal with what is believed to be the trainee's biggest challenge based on the information available*). The important elements of this phase are the molding of the trainee's attitude toward the experienced officers and making it clear that the program is not "just something else they have to get through." The FTO's function as a role model is particularly important here.

The trainee's ultimate success may hinge on his/her attitude toward the training program and on the image projected by the FTO.

Phase II is somewhat more complex than the first phase and is the phase where trainees become more adept with their new role. During this phase, it is expected trainees will begin handling calls for service with less input required from their FTO. They should begin to master the skills at hand. The FTO must acknowledge the trainee's growing assertiveness and remain constantly aware of and monitor the workload, guarding against under or over loading, to ensure a proper learning environment.

Phase III is the last phase of formal training. Trainees will be expected to handle all patrol details, except those they have not yet been exposed to, without assistance. They should be initiating all patrol activities on their own. During Phase III, training continues to a lesser extent in an environment where critical evaluation takes on ever increasing importance. This is also an opportunity for the FTO to review those tasks previously accomplished and to be sure the trainee is prepared for the final phase.

Phase IV is the test phase. It is predominantly an evaluation only phase. It generally consists of one week of observed patrol activity. The training guide (and all performance objectives) should have been completed prior to the trainee's entry into this phase. An important aspect of this phase is the trainee's return to his or her Primary FTO for evaluation. This is done so that the FTO who originally observed the trainee will be able to evaluate the final product and compare performance levels. To ensure the trainee acts as the lead officer during this phase, the primary FTO should observe the actions of the trainee from a "ride-along" position while wearing plain clothes. The FTO will not take any action except in instances where his/her intervention is necessary. This FTO intervention should occur under the following circumstances:

1. *Officer Safety* – If the actions of the trainee constitute a hazard or potentially dangerous situation to officers or citizens, the FTO must take whatever action is necessary to reduce the hazard and ensure proper safety practices are followed.
2. *Illegal and Unethical Activity* – The FTO must ensure that the trainee's actions are legal and ethical at all times. Neither of these conditions shall be sacrificed for training purposes.
3. *Embarrassment to a Citizen, the Department, or the FTO* – The FTO must not allow an incident to get to the point where the trainee embarrasses or brings discredit to a citizen, the Department, the FTO, or himself/herself at any time.

If it is determined the trainee has demonstrated a pattern of difficulty or an inability to perform to the established standards of achievement in any phase, he/she should either receive an extension of training, be given a remedial training assignment or "contract", or be terminated from the program. A phase training overview is provided in Figure 1.

Fig. 1
Phase Training – An Overview

Standardization and consistency of phase training are essential to the success of any field training program. Standardized training provides for uniform application of policy, procedure, and law throughout the department. Consistency in training ensures fair and impartial treatment of all trainees.

Phase I	Phase II	Phase III	Phase IV
FTO "A" PRIMARY FTO	FTO "B"	FTO "C"	FTO "A" PRIMARY FTO
• Orientation (no evaluation) • Daily Evaluations • Weekly Progress Reports • End of Phase Report	• Daily Evaluations • Weekly Progress Reports • End of Phase Report	• Daily Evaluations • Weekly Progress Reports • End of Phase Report	• Daily Evaluations • End of Phase Report • Completion Record/ Competency Attestation

Rotating Trainers/Trainees

Whenever possible, the department's field training program should be separated into a set of phases or evaluation periods encompassing a certain number of weeks and certain topics/areas of instruction. When a phase has been completed, the FTP SAC should assign the trainee to another FTO and, if possible, to another shift. The assignment of a different FTO will expose the trainee to a variation of training styles and personal approach to the job. Trainees who are having difficulty in the program will sometimes improve their performance significantly after such a change. The FTP SAC should attempt to match training difficulties of the trainee with specific expertise of an FTO (e.g., a trainee having report writing difficulties should be assigned to an FTO who is an exemplary report writer, or a trainee who needs exposure to enforcement activity, should be assigned to the area or shift with the highest number of calls for service). If the department can provide FTOs on each shift, trainees should be rotated to a different shift for at least one evaluation period to provide exposure to the variation of responses that are appropriate at different times of the day.

Evaluation Frequency

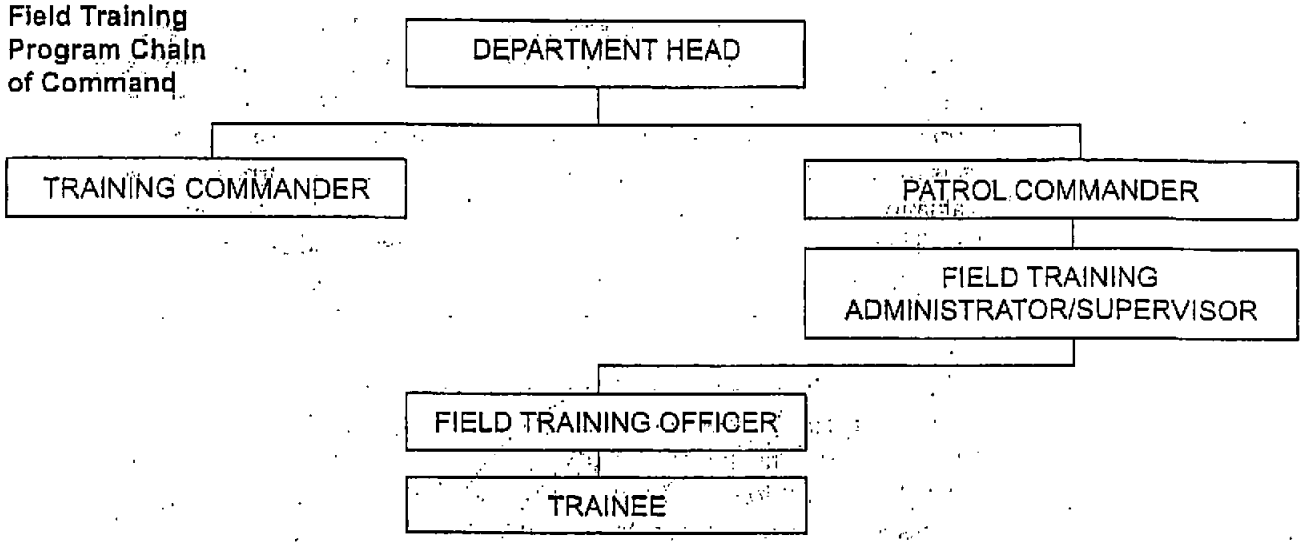
Each trainee's progress, as he/she proceeds through the field training program, is recorded by means of written evaluations. The evaluation process is as important as the training process. One without the other would make the learning process unachievable. Evaluations have many purposes. The obvious is to document a trainee's progress, but there are other purposes as well. Evaluations are excellent tools for informing trainees of their performance level. They are also used for identifying training needs and documenting training efforts. Further, they chronicle the skills and efforts of the trainers. In essence, evaluation represents feedback on many aspects of the program.

Evaluation should be immediate, constant, and fair. POST field training regulations require that evaluation come in several ways from several levels of involvement in the field training program. FTOs are expected to complete Daily Observation Reports (DORs), Daily Training Notes with Weekly Progress Reports, and End of Phase Reports on each trainee while FTP SACs are expected to review and sign each DOR or Weekly Training Progress Report and/or complete their own Supervisor's Weekly Report (SWR). Collectively, over the duration of the program, these written evaluations relate a chronological story of performance. These evaluations describe the trainee's successes, failures, improvements, digressions, and attempts to manage each of these occurrences. Honest and objective evaluations of trainees must be a prime consideration of all members of the field training staff. Part II of this guide contains more information on evaluation.

Organizational Structure/Chain of Command

Most field training programs are administered/supervised by the patrol division. This usually includes the selection, training, and daily supervision of the FTOs, as well as the day-to-day operation of the program. Each department must assign at least one FTP SAC to coordinate tasks such as trainee/FTO assignments, remediation, review of the DORs and other weekly and end of phase reports. Patrol provides the framework and virtually all of the opportunity for trainees to apply the skills they learned in the academy. Patrol also has a chain of command that can be adapted to administering a field training program. The patrol division can effectively handle administration of the field training program as long as there is communication with other interested divisions (i.e., personnel, training, etc.) and the FTP SAC has time to manage the program. Figure 2 represents a patrol supervised chain of command for the field training program.

Fig. 2
Patrol-supervised Field Training Program Chain of Command



In some departments, another division or service bureau may oversee the field training program. Regardless of the bureau or division assigned to manage the program, a chain of command must exist for the field training program. This chain of command is to be adhered to as long as the business being conducted relates to the field training program and its goals. There may be times when the program administrator or a field training sergeant is not available. In this case, a departure from this procedure is allowable if a matter of urgency exists and action must be taken immediately. In most cases, however, time is not a factor and the chain of command should be followed.

It is important that each member of the field training program staff have a sense of organizational loyalty. As information flows up and down the chain of command, decisions get made and the program runs smoothly. Decisions made at an inappropriate level may interfere with program staff and department goals and create feelings of anxiety among the staff as well as with the trainees. The field training program staff operates as a team and, consequently, decisions made affect every member of that team. Decisions made at the proper level, with sufficient input, benefit all.

Program Staff/Personnel Training

Glenn Kaminsky, one of the founding fathers of the field training concept, states in *The Field Training Concept in Criminal Justice Agencies*, 2002, that "everyone must understand all the aspects of the field training program. Everyone must be on the same page. Only one path leads to success in the implementation of field training, and that path is training...for all."

POST, with input from field training participants and experts throughout the state, has established minimum training requirements for field training program staff that have the most influence over and the most direct responsibility for trainees--the FTP SAC and the FTOs.

The FTP SAC training requirement states that every peace officer promoted, appointed, or transferred to a supervisory or management position overseeing a field training program shall successfully complete a POST-certified Field Training Supervisor/Administrator/Coordinator (SAC) Course prior to or within 12 months of the initial promotion, appointment, or transfer to such a position. Departments in the POST program are only required to appoint one SAC; however, it is recommended that any and all officers with direct day-to-day responsibility over FTOs and trainees attend the SAC Course.

FTOs must successfully complete a POST-certified Field Training Officer Course prior to training new officers **and** complete 24 hours of update training every three years. This update training can be satisfied by completing a POST-certified Field Training Officer Update Course or by completing 24 hours of department-specific training in the same field training topics contained in the Field Training Officer Update Course.

Every reassigned FTO, after a three year-or-longer break in service as a FTO, must successfully complete a POST-certified Field Training Officer Update Course prior to training new officers and then complete the same 24 hours of update training, described above, while they remain in the FTO assignment.

Special Assignments

As a rule, trainees should be under the direct and immediate supervision (physical presence) of a qualified field training officer throughout the program. However, field training can be significantly enhanced by an experience that is not included in the training guide. If a department has the resources, assignments can be made for brief periods to allow the trainee to work with another senior officer (non-FTO) or civilian (non-law enforcement duties) on special investigations or in specialized training areas (i.e., field evidence technician, criminal investigation, narcotics, etc.). A few hours spent in the communications center or at the patrol information counter can also be productive. Special occurrences, such as a mutual aid request for a demonstration or anticipated civil disobedience, or a request for added manpower at a department-involved event, should be met by assigning the trainee(s) as a group and with as much supervision as practical. These assignments must have the prior approval of the FTP SAC whenever possible.

At no time should another officer (or civilian) who has not attended a POST-certified Field Training Officer Course evaluate a trainee. However, documentation of the special assignment as well as significant training or action that occurred is recommended. This documentation should be provided on the DOR narrative continuation page or on a Daily Training Notes page. The officer, detective, dispatcher, or civilian to whom the trainee was assigned should write a brief narrative of the assignment and any significant training and/or performance that was accomplished. This action can also be followed if the FTO misses a shift due to illness, court, etc., and another employee provided training and/or supervision. Again, these assignments must have the prior approval of the FTP SAC whenever possible.

Remedial Extension(s)

As mentioned before, a program length should be pre-determined (POST minimum is 10 weeks). It should be understood, however, that situations might occur which make it difficult to always adhere to a set time limit. These situations may have their source in the trainee's performance; other times they are administrative in nature. For whatever reason(s) they occur, trainees must be given a fair opportunity to prove themselves.

Trainees may have their field training extended to allow them sufficient time to master complex tasks. This is not a guarantee that every trainee has the right to an extension. The decision to extend shall be that of the FTP SAC and is usually made before the trainee enters Phase IV (the final phase). This decision should be based on a review of performance and other information available as well as the recommendations of the FTOs and program staff. The extension provides an opportunity to have any diagnosed and documented problems remediated.

An extension in the field training program may be handled several ways. The trainee may continue to work with the same FTO or may be assigned to a different FTO on any of the available shifts. A decision may even be made to utilize an outside resource. The field training extension should be tailored to fit the needs of the trainee. This is a difficult time for the trainee and a time when he or she might "give up." It is the FTO's responsibility to see that the extension is viewed from a positive perspective and as a strategy that will lead to success. The foundation for a decision to extend is whether or not the cause is viewed as something that can be corrected. Field training program extensions should occur infrequently and should not be granted by the program staff unless the probability of success is anticipated. Part II of this guide contains more information on the remediation process and remedial strategies.

Termination

The field training program is designed to develop competent solo patrol officers. This level of competence, unfortunately, is not always reached. Some trainees can perform many, but not all, of the tasks required of solo patrol officers, while still others are simply unable to deal with the stress of the job. Whatever the reason(s), some trainees will not be able to meet the performance standards of a competent solo patrol officer.

Each department should have a policy or procedure established to deal with these situations. Most department procedures include the following: If, during the field training program, it is concluded by consensus that a trainee should be recommended for termination, it then becomes necessary that all memoranda having bearing on an eventual decision be gathered. This documentation summarizing the trainee's performance should include all evaluation instruments, remedial training assignment worksheets, and other written memos with conclusions and recommendations concerning retention or dismissal. It should reflect the writer's (FTO and FTP SAC) point of view and not be influenced by others' opinions, as well as reflect the positive and negative aspects of the trainee's work.

The recommendation to the department head (or his/her designee) to terminate a trainee should be made only after all submitted reports are reviewed by the FTOs involved, the FTP SAC, and the training and patrol command staff. The trainee should be advised of the pending recommendation only after all the memoranda have been submitted through the chain of command to the department head. It should *not* be the FTO's role to notify the trainee of his/her impending termination but that of the FTP SAC. The trainee should be given the right to speak to anyone he/she wishes in the chain of command. Many trainees will elect to resign prior to being terminated from the program. Even if the trainee resigns, all memoranda and other reports or evaluations should be completed and maintained in his/her file to document the field training performance.

FTO and Program Critique

An important element of running a consistent and successful field training program is the continuous evaluation of FTO performance and the relevance of the program itself. The FTP SAC has the responsibility to seek feedback from trainees who are participating in or who have completed the field training program. The feedback should encompass both the program and its FTOs.

Departments should consider developing written critique forms to assist in this process. Sample forms can be found in Appendices IX and X. Critique forms

should be structured so that the trainee is encouraged to offer candid opinions concerning the training program and the FTO's performance as an instructor. Critiques completed by the trainees offer insights into the training ability of particular FTOs and an overall assessment of the effectiveness of the field training program from the perspective of the trainee. To the extent possible, the FTP SAC should maintain trainee confidentiality and any information provided from the critiques to program staff should be in the form of general training and improvement material. The FTP SAC must ensure that FTOs understand the purposes of the program critique/evaluation policy. The FTP SAC shall provide (at least annually) a detailed evaluation to each FTO on his/her performance as a Field Training Officer.

Competency Attestation/Completion Record

Departments must document a trainee's successful completion of the training program per POST regulations. Usually at the end of the final evaluation phase, the final phase FTO will attest to the trainee's competence and successful completion of the field training program. A statement that releases the trainee from the program, with the signed concurrence of the department head, or his/her designee, shall be retained in department records. A sample Completion Record/Competency Attestation form can be found in Appendix XI.

Documentation

Throughout the program various forms and reports are necessary to ensure proper documentation of trainee performance. Samples of all of the forms mentioned thus far can be found in the Appendices of this guide. Departments are encouraged to use the forms within this guide or create more effective forms for their programs. As new innovations occur which are incorporated into the program, these forms will be revised. The basic formats of most of these forms have, however, been in existence for many years. The structure of each form is designed to facilitate the training function and/or assist in evaluation. Retention of these forms and any other field training records should be based upon department record policies.

Field Training Staff Meetings

At or near the end of each phase, a meeting should be scheduled for all FTOs who have, or are about to receive, a trainee. The involved FTP SAC should also attend. The purpose of these meetings is to review the progress of each trainee and pass on information relative to special training problems and remediation efforts. The FTP SAC is afforded the opportunity to review drafts of the End of Phase Reports (EPR) or Phase Evaluation Reports and see that they

are consistent with what the FTOs are reporting at the meeting. A requirement that the evaluation(s) be submitted on or before the final day of the phase, or at the meeting, will improve the turnaround time for presenting the evaluation to the trainee in a timely manner.

The field training staff should meet at least once a year, preferably quarterly, for additional training, information and ideology exchange, and review of evaluation standards. This will allow the FTOs the opportunity to enhance the department's standardization and consistency within the program. These meetings could also serve as one way to meet the POST requirement for FTO update training.

Field Training Program Revisions

FTP SACs must establish a procedure for reviewing their field training program structure, goals, policies, related written materials, etc. Traditionally, a committee is established to review the program elements annually. Any changes should be made in compliance with POST regulations. ■

ROLE/EXPECTATIONS OF TRAINEES

Role of the Trainee

The role of the field training program trainee is to demonstrate the ability to perform at a solo uniformed patrol officer level by the end of the program. This is the standard by which the trainee will be measured throughout the training program.

The trainee's primary responsibility while assigned to the field training program is to devote his/her full attention and efforts toward successfully completing that program. This may be a very intense and stressful time in the trainee's life. The field training program staff will make every effort to provide the tools necessary for the trainee to succeed in this task. Trainees must simply give their best effort each and every moment they are assigned to the program.

Expectations of Trainees

Trainees are to be respectful to their FTOs and other program staff. The FTO's direction is to be accepted and followed at all times. If the trainee believes that a specific order is improper, or an evaluation is not fair, he/she should discuss it with the FTO. If the trainee is still unable to resolve the issue, the trainee should ask to meet with the FTP SAC. If the trainee still has a concern or problem, the trainee may ask the FTP SAC to set up a meeting with the commanding officer of the field training program. The FTP SAC shall notify the commanding officer, and a meeting shall be scheduled.

Trainees will complete all assignments in a prompt, timely manner. They will follow all policy and procedures as outlined in the department manuals.

Trainees should ask questions when they arise. FTOs are an information resource and trainees should not wait for the FTO to cover an area of concern they may have. **Trainees are expected to make mistakes.** They should not be overly concerned with errors when they are made. Instead they must channel their efforts into recognizing and correcting the error(s).

While off duty, trainees should not respond to police calls, nor should they conduct police investigations unless the situation is life threatening. Trainees should discuss these types of situations with their FTO and follow department policy when dealing with off-duty situations.

Trainees will receive evaluations (Daily Observation Reports, Weekly Training Progress Reports, Supervisor Weekly Reports, and End of Phase Reports). Trainees should use these forms to track their progress and to help identify any areas requiring additional effort on their part. Trainees should be open and honest during the review of these evaluations. Trainees shall be receptive to constructive criticism given by FTOs and field training program staff. They may verbalize an explanation for their action; however, repeated rationalization, excessive verbal contradictions, and hostility are not acceptable and are counter productive to the field training program itself.

Trainees' relationships with field training program staff, other trainees, and co-workers shall be respectful and strictly professional, both on and off duty, while they are in the training program. Dating and socializing should be prohibited unless the relationship began before the trainee was hired or assigned and the department head or field training program commanding officer is aware of the relationship. Department policy regarding these issues should be fully explained and followed. ■

ROLE/EXPECTATIONS OF FIELD TRAINING OFFICERS

Role of the Field Training Officer

Field Training Officers (FTOs) have significant additional responsibilities over and above their law enforcement duties when assigned to train a new officer. In addition to performing in an exemplary manner, while trainees closely watch, FTOs must slow their pace to review the purpose and detail of every new encounter. FTOs must guide trainees through a comprehensive curriculum that requires the blending of knowledge and skills, and the good judgment of when, where, and how to apply them.

The essentials of the FTO's role are that he/she applies the techniques of coaching by providing a role model to follow and giving encouragement and direction to the trainee to apply what has been taught. The FTO must follow that up by giving feedback on the trainee's performance. It is important that this assessment have a positive impact on the performance of the trainee. The FTO's appraisal of the trainee's abilities should always be followed with positive reinforcement and encouragement to continue good performance or an adjustment of training techniques and methodologies to meet the needs of the trainee in rectifying any performance deficiencies.

The system that effectively identifies and selects qualified personnel to be FTOs will more often produce technically competent and active officers because patrol supervisors and commanders generally focus on these attributes and recommend officers who have them. It follows that the system will select FTOs who not only set very high standards for themselves but for the trainees as well. In discussing the role of the FTO, although high standards are desirable, the trainee must measure up to the standards that the department sets for the field training program, not higher standards set by the FTO.

FTOs must be flexible and able to change as the challenges change; otherwise, the trainee, the program, and the department will suffer. A bad FTO can disrupt the entire training process and potentially destroy the department. A great deal of trust and responsibility go with this assignment and good FTOs can make major positive impacts within their department.

Expectations of Field Training Officers

Teacher/Trainer

Any officer who becomes a Field Training Officer must have a passion for teaching. The most obvious function of the FTO is that of a teacher. In most cases, this teaching will occur on calls for service and during self-initiated activity. Other times teaching may occur over a cup of coffee or during casual conversation. Teaching may also occur in a formal classroom environment using lesson plans and audiovisual aids. FTOs are often selected for their subject matter expertise (formal training and education) and their practical experience. FTOs must understand the learning process and teaching methodologies and work hard to develop and maintain their skills. As teachers, FTOs should be willing to accept the responsibility for the progress of the trainee, or lack of it, until they can identify any other uncontrollable factors that are the cause of the trainee's performance.

FTOs should recall how they felt when they began training and, consequently, they may appreciate the trainee's state of mind. The trainee's problems and fears can be dispelled by the FTO through a genuine display of concern about the trainee and his/her success in the program. The trainee should not be pampered but should be treated in a professional, realistic, objective, friendly, and empathetic manner.

FTOs should immediately establish a positive relationship with the trainee. There should be a clear understanding of the FTO role and the trainee role, and it should be explained to the trainee. The sooner trainees know what the training program expectations are, the less apprehensive and more responsive they will be.

It is incumbent upon the program staff and the FTO to work, within acceptable limits, to individualize a training approach for each trainee. Sufficient flexibility has been built into this field training program so that the individual needs of the trainee and the organization can both be met. It is expected that the trainee has the necessary qualities to succeed and, with effective training, he/she will successfully complete the field training program.

FTO training methods should be conducive to producing a successful trainee. Ineffective training methods can seriously alter a trainee's self image. The use of loud, profane speech or humiliation tactics is not acceptable conduct. These methods do not contribute to the learning environment.

FTOs should reinforce positive attributes and accomplishments instead of downgrading weaknesses. Trainees respond more quickly to positive state-

ments than to negative ones. Above all, within the limits of good judgment, FTOs should use realistic and established training methods that are conducive to the trainee's temperament, needs, and development as a patrol officer.

FTOs must conduct themselves in a professional manner at all times. They must teach and reinforce department policy and procedures. FTOs who focus on values and teach real life lessons will have a profound impact on the trainee's success. They should remember that trainees will be a product of what they are taught and of the behavior that is demonstrated to them. FTOs should attempt to set the highest standards in all areas of their performance. FTOs with a true desire to teach are often more concerned about their contribution to the success of each trainee and the program than any compensation or recognition they might receive.

Role Model

FTOs must be positive role models! They must lead by example exhibiting integrity, honesty, and ethical behavior. Maintaining a professional demeanor and appearance; adhering to department rules and regulations; supporting the department's vision, mission, and values; adhering to program guidelines in terms of policies and confidentiality; and having a positive attitude toward the department, the training program, the job, and the trainee accomplish the best aspects of role modeling. FTOs dedicated to the goals and success of the field training program will be respectful of, and respected by, trainees, peers/co-workers, and supervisors.

During the orientation process, and each time a trainee is introduced to a new FTO, the FTO should establish a friendly, open, and professional rapport with the trainee. Learning is enhanced through effective communication. Rapport is important to communication because trainees are not likely to share their ideas, questions, or feelings unless they feel their FTO is open or empathetic to them.

FTOs should also convey an attitude that trainees can succeed in the training program. Trainees are not likely to develop when they feel or are told that success is not possible. Trainees need to believe that their FTOs want them to succeed and that the FTOs will help them achieve success. There is nothing more disconcerting than facing a "stacked deck." Everyone needs to know that they have a chance to succeed. FTOs should expect trainees to succeed.

It is particularly important that FTOs maintain a positive and objective attitude when assigned a trainee who has not performed well with another FTO. The subsequent FTO must give the trainee every opportunity to succeed in that: 1) the trainee should not be stereotyped or be discriminated against, and

2) judgments should be based on independent observations, not on the comments of others. It is entirely possible that the change of FTOs and the application of a positive attitude by the subsequent FTO may be sufficient to elicit an acceptable performance from the trainee. The emphasis should be placed on developing a competent, proactive solo patrol officer, rather than on finding a way to discharge the trainee.

What FTOs expect from their trainees and how they (the trainees) are treated largely determines the trainees' success in the program. Trainees, more often than not, perform at a level they believe is expected of them. The expectation of an event can actually make it happen in field training. FTOs cannot avoid the cycle of events that stem from low expectations by merely hiding their feelings toward the trainee. It is virtually impossible to do this in that messages are constantly being conveyed through actions, mannerisms, expressions, tone of voice, and omissions. FTOs will often communicate the most when they think they are communicating the least. To say nothing, for example, may be viewed as coldness, anger, or disinterest. What is critical in the communication of expectations is often not what the FTO says but how the FTO behaves.

The goals of the program, the department, the trainee, and the FTO can be simultaneously achieved through open, honest, professional, and positive attitudes.

Evaluator

FTOs are also expected to be evaluators. They must develop and use skills to determine if learning is occurring and whether or not remedial training is necessary. Evaluation skills are of primary importance to the field training program. FTOs must give critical feedback and clear direction to guide the trainee to an acceptable level of competence. If FTOs cannot evaluate, they cannot train. Evaluation is accomplished by the use of Daily Observation Reports, Standardized Evaluation Guidelines, Weekly Training Progress Reports, End of Phase Reports, and through the use of worksheets, remedial training, evaluation sessions, and verbal feedback. The principle element of effective evaluation is objectivity. Use of Standardized Evaluation Guidelines (SEGs) when completing the Daily Observation Reports (DORs) and frequent field training staff meetings are several ways to ensure standardization of evaluations in the training program.

FTOs should not discuss their trainee's progress with other department personnel, other than those who have a need and right to know. Supervisors involved in evaluations should ensure that positive as well as negative aspects of a

trainee's performance are discussed and documented. They should also ensure that the comments are based on direct observation and not on speculation.

FTOs are expected to exhibit evaluation skills that assess performance with fair and impartial feedback and that provide objective and honest documentation.

Leader

FTOs should exemplify the department's vision, mission, and values in the program and the community. FTOs should share responsibility with their trainee, delegating through problem-solving, and training him/her to engage in pre-planning. The FTO must develop and utilize multiple resources.

FTOs are expected to take charge. They are often the most proactive officers in the department. They should motivate and support the trainee while holding him/her accountable for his/her own success in the training program. Trainees will want to succeed because of the FTO's leadership. ■

ROLE/EXPECTATIONS OF THE FIELD TRAINING PROGRAM SUPERVISOR/ADMINISTRATOR/ COORDINATOR (SAC)

Role of the Field Training Program SAC

The role of the Field Training Program Supervisor/Administrator/Coordinator (FTP SAC) is to ensure that the standards and objectives of the department's field training program are adhered to. To meet these requirements, the FTP SAC must monitor the training activities of the FTOs and seek periodic feedback on the newly assigned officer's training progress. In administering the program, the FTP SAC is responsible for ensuring that the department's program is in compliance with the minimum standards established by POST. FTP SACs must be trained in the various components of the program and should have influence within the department. The FTP SAC is expected to protect and promote the department's field training program through the following:

Expectations of the Field Training Program SAC

Observation

While it is not necessary to routinely respond to calls that are assigned to a training team, a FTP SAC should, in the course of his/her duties, observe the trainee perform. Since the FTP SAC is responsible for providing feedback to both team members, the interaction between the trainee and his/her FTO should also be observed.

Feedback

Direct feedback from a FTP SAC to the trainee can have a significant impact (sometimes officers can recall these incidents throughout their entire careers); therefore, it should be done judiciously. To praise a trainee, or both the trainee and the FTO, openly for an incident of good performance, will serve to positively reinforce the program. Negative comments on the trainee's performance should be made to the FTO privately, while giving support to his/her role in bringing the trainee's performance up to an acceptable level.

Counsel

Just as a FTP SAC would assess and guide officers in their other law enforcement duties, he/she must often counsel the FTO through the training process. A personal style that the FTO has may have an adverse impact on trainees, or other issues such as a personal relationship, favors, or a serious conflict with a trainee must be detected and remedied.

Trainee Assignments

The FTP SAC should have an overview of the training progress of each trainee in the program and the assignment status of each FTO. To effectively manage trainee assignments requires planning and a working knowledge of vacation schedules, special assignments, or training courses that the FTOs could be assigned to during a training cycle/phase. The FTP SAC should also be in a position to cross administrative lines (shifts, platoons, etc.) for the purpose of making FTO/trainee assignments that meet the needs of the trainee. To maintain the integrity of the program, the assignment of trainees to FTOs should remain with the FTP SAC.

Extending/Terminating Trainees in the Program

Based on the recommendation of the FTO and a review of trainee performance and evaluation reports, the FTP SAC should have the authority to extend field training for a trainee **who is responding** to remedial efforts. Conversely, the FTP SAC, in accordance with the department's policy, should make a recommendation for termination of employment for a trainee who is not responding to remedial training efforts.

Program and FTO Evaluation

The FTP SAC has the responsibility to seek feedback from trainees who are participating in or who have completed the field training program. The feedback should encompass both the program and its FTOs. Meeting with the trainees and/or reviewing evaluation instruments can accomplish this. The FTP SAC must ensure that FTOs understand the FTO evaluation policy. The FTP SAC shall provide (at least annually) a detailed evaluation to each FTO on his/her performance as a Field Training Officer.

FTO Selection/Deselection

Selection, training, and supervision of FTOs are key elements to successful field training programs. FTP SACs are expected to develop, maintain, and oversee the selection process for FTOs in the program. Administrative guide-

lines should be established and set forth by the department in a general order or policy directive. Minimum qualifications and a department specific selection process should be included in the directive. Details of how candidates are evaluated, selected, approved, and certified may also be included. The process of deselection or decertification for FTOs who are reassigned, who no longer wish to participate in the program, or who have demonstrated unacceptable performance, as a trainer, should also be explained.

Academy Liaison

In order to closely ally field training with the Regular Basic Course (Academy), the FTP SAC should carefully analyze how both are organized, administered, and evaluated. A more detailed orientation may be required for departments that rely on regional training centers for new hires. Insight on special training needs of individual trainees can be gained by contacting academy staff.

Departments are encouraged to develop a system whereby FTOs and FTP SACs can monitor academy training techniques. This would be intended to ensure continuity and relevance between the academy and the department's field training program.

POST also suggests that the FTP SAC establish liaisons with people involved in other aspects of the program and profession such as the D.A.'s Office, Parole, Probation, Public Works, Mental Health, etc. It serves as an invaluable resource to have an established liaison within each of these areas and more. ■

PART II

Evaluation, Documentation, and Remediation

EVALUATION

During the field training process, trainees must be guided, directed, and apprised of their progress through verbal and written feedback and evaluations. This guide provides several samples of written evaluations including Daily Observation Reports (DORs), Supervisor Weekly Reports (SWRs), and End of Phase Reports (EPRs); and alternatively, Daily Training Notes, Weekly Progress Reports, and Phase Evaluation Reports (Appendices I-VII). A department's choice of forms is not nearly as crucial as the actual feedback process and content of the evaluations. Evaluations must be consistent, objective, and administered in a manner that promotes good performance and progress throughout the program. The performance objectives in the field training manual, the judgment used by the trainee, and the skills, knowledge, and competency demonstrated in performing the job-related duties of a uniformed patrol officer will serve as the basis for these evaluations.

The Process

Each trainee shall be evaluated in a number of categories which, when taken together, reflect the totality of the job for which the trainee was hired (this guide is designed to reflect general law enforcement uniformed patrol duties but could be modified to many other law enforcement jobs such as dispatching, custody, etc.). When possible, these categories should be rooted in a *Job Task Analysis* that has been completed specifically for the department. *Job Task Analysis* is the process of obtaining information about a job, and its requirements, in order to determine the knowledge, skills, behaviors, and attitudes that are required for satisfactory performance of the job in question. If the department has not completed a job task analysis specific to its uniformed patrol officer position, the department should utilize the job task analysis information collected by POST or utilize categories developed by a similar type of department. Research by POST and other law enforcement agencies has indicated that the key job task elements (competencies) for the patrol officer position are similar throughout the nation.

The evaluation procedure should be based on the behavioral anchor approach, which uses Behavior Anchored Ratings (BARs). Once the relevant job-related

categories have been determined, the *what* to be evaluated has been identified. *How* to rate these categories now becomes the issue. *How* is based upon the employee's performance as measured against the department's standards. Most departments use Standardized Evaluation Guidelines (SEGs). The SEGs have been established to ensure each FTO's rating of a trainee will be equal and standard throughout the program. They are designed to provide a definition, in behavioral terms, of various levels of performance. The SEGs (or whatever accepted standard is established by the department) must be applied equally to all trainees, regardless of their experience, time in the program, or other incidental factors. Departments using a DOR should provide SEGs for every category listed on the face sheet of the DOR. Departments using Daily Training Notes and Weekly Progress Reports should provide a clear evaluation "scale."

Beause law enforcement has a wide variety of techniques and procedures, it becomes extremely important that standardization of performance appraisal occurs. *Proper* evaluation without standardization is not possible. In order to promote standardization of the evaluation process within each department, there is a need to articulate and document reference points. These reference points need to explain the rationale supporting the scores used by each department, such as "1" (Unacceptable), "4" (Acceptable), "7" (Superior), "NI" (Needs Improvement), "C" (Competent), etc.

SEGs, evaluation "scales," and the explanations for Unacceptable, Acceptable, Superior, Needs Improvement, and Competent may be modified to reflect the operational standards for any given department. The SEGs, evaluation "scales," and such found in this guide may need to be modified to accurately reflect the levels of knowledge, skills, behaviors, and attitudes in a particular department. Likewise, the categories listed on the Daily Observation Reports or Weekly Training Progress Reports may also be modified to reflect the "job". For example, if a department requires that each officer be trained as an EMT, that category and the relevant guidelines should be included. The categories selected for rating should: (1) cover the totality of what an employee is required to do, and (2) be anchored in behaviorally descriptive terms.

Rating Behavior/Performance

A written department standard or "scale" should accompany each category evaluated on the DOR or Weekly Training Progress Reports. Most departments use the "San Jose Model" which utilizes a 7-point rating scale, while others utilize another point variation scale (a 3,4, or 5-point) or alphabetic scales ("NI" - needs improvement, "C" - competent, etc.). **Whatever rating scale a department chooses, all trainees should be evaluated throughout the entire program utilizing the solo patrol officer standard as "acceptable" or "competent."**

The FTO's role is to examine the trainee's performance and choose the appropriate description as provided in the relevant SEG or evaluation scale. The FTO selects the description that "fits" the behavior that they are evaluating; i.e., 1, 4, 7, "NI," or "C" anchor. Performance, however, does not always "fit" into the nice, neat rating box. A trainee's performance may be somewhat better or worse than the rating descriptor. In these cases, where behavior is not "anchored" by the appropriate description, the FTO must select the score.

For example, in the 7-point rating scale there are behavioral descriptions found only at numbers "1", "4", and "7." In the case of report writing, the "1" rating states the trainee takes three or more times the amount of time an experienced officer takes to complete a report. If the trainee takes perhaps only 2 times the amount of time, the FTO may choose to give him/her a "2" rating and/or if the trainee shows steady improvement to being able to complete a report in only about 15-20 minutes beyond the amount of time an experienced officer would take to complete the report, a "3" might be the appropriate rating. Even if FTOs have different opinions as to when to rate a behavior or performance a "2" or a "3", the bottom line is that both ratings indicate a less than acceptable (competent) performance. The same logic would follow for "5" or "6" ratings as well.

Although this may appear subjective, most FTOs who have completed a POST-certified Field Training Officer Course will select one score over another because they are; 1) familiar with the job; 2) have been trained to know what is expected within their program, and 3) have the best perception of the trainee's performance that day as well as his/her progress (or lack thereof) within the program.

The most difficult part of the evaluation process for FTOs is to surrender their own opinions of what the trainee's performance *should* be. FTOs **MUST** rate the trainee pursuant to the language in the guidelines if the trainee's performance is consistent with the language of that guideline. **FTOs shall have no discretion in this matter.** It is the only way that objective evaluations will be accomplished. If each evaluator (FTO) uses the same measuring device (SEGs), you should see the same results, the same scores.

Common Performance Evaluation Errors

If the objectivity of the evaluation process is called into question, it is most likely because one or more FTOs did not follow the guidelines or standards established by the department. It may be that one or more of the following "errors" entered into the evaluation process.

The **ERROR OF LENIENCY** occurs when the FTO assigns scores beyond those that are deserved. In a field training program, this often occurs because the FTO introduces the variable of "experience" or the amount of time the trainee has spent in the program. In other words, the FTO recognizes the performance as less than adequate but considers it "OK" given the amount of experience the trainee has had. The same performance, seen several weeks later, may result in the awarding of an "Unacceptable" score. If the performance does not change, the score should remain the same regardless of how long the employee has been in the program. Remember... **Whatever rating scale a department chooses, all trainees should be evaluated throughout the entire program utilizing the solo patrol officer standard as "acceptable" or "competent."**

The **ERROR OF PERSONAL BIAS** (also called the "Halo" or "Horns" effect) occurs when the FTO allows personal feelings about the employee to affect the ratings. Particular "likes" or "dislikes" limit appraisal objectivity. What is rated in the field training program is whether or not an individual can safely, effectively, and competently do the job as described...that's all!

The **ERROR OF CENTRAL TENDENCY** is seen when the FTO routinely "bunches" scores toward the center of the rating scale. This error is often present in field training programs when departments using the numeric scale require written comments for scores of 1, 2, 6, and 7. Some FTOs, not wishing to take the time to document, will assign scores of 3, 4, or 5 routinely to avoid the "mandatory" reporting rule. Central tendency errors also occur when the FTO does not give close attention to performance and, to be on the "safe side," or to avoid any controversy, rates in the middle of the scale. Many departments using the numeric scale require only that scores of "1" and "7" be documented which allows for more latitude in the scoring.

The **ERROR OF RELATED TRAITS** happens when the FTO gives the same rating to traits that he/she considers related in some way. The value of rating each trait separately is lost and the overall rating loses specificity.

The **ERROR OF EVENT BIAS** comes into play when one or two traits (or a particular behavior) dominate the appraisal. The FTO may evaluate all remaining traits based on the dominant trait or performance. An outstanding bit of work or a severe mistake, not treated as an individual occurrence, may bring about the "Halo" or "Horns" effect.

"NO ROOKIE EVER GETS A 7" (or Exceeds Standards, Superior, etc) is a belief too often expressed. The SEGs and rating descriptions should be based on real life experiences and should not reflect artificial standards. While it may be difficult for many trainees to perform at a "Superior" level in a number of

categories, that score could be attainable for some. There is no place for unrealistic expectations/goals in a job-related performance evaluation system.

The **ERROR OF "ROOM TO GROW"** occurs when the FTO, wanting to "motivate" the trainee to work harder, assigns a score less than what the trainee deserves. When a trainee fails to get the recognition that he/she deserves, there may be a loss, rather than a gain, in terms of motivation.

The **ERROR OF AVERAGING SCORES.** FTOs who assign a score based on an average of the trainee's performance for the day have selected a score that is not accurate. For example, a trainee, stopping at thirty or more traffic lights during the day, goes through one without stopping. Some will say that "on the average" the trainee obeys traffic signals and an acceptable rating is given. It is not acceptable to go through a red light but the score suggests to the trainee that it is "OK." Additionally, no one will know what the trainee did unless the FTO includes a written comment about the fault.

FTOs are often uncomfortable about giving an "Unacceptable" rating when a trainee has performed well in an area throughout the day with one or two exceptions. Objective evaluation requires that the FTO acknowledge the mistake(s) by assigning a score *less than* "Acceptable." The FTO must give the trainee an "Unacceptable" rating in an area regardless of how minor or infrequent the mistake(s) when weighed against the trainee's otherwise good performance. The FTO will mediate any hard feelings on the part of the trainee by adding documentation that acknowledges the good performance as well as the mistake.

Finally, there are other errors that trainers must guard against. These are biases that have a tendency to influence us when rating the performance of another. Taking into account a trainee's standing in the academy class; relationship to another member of the department; the presence or absence of educational achievement; age, gender, race or sexual orientation; physical appearance; etc., are only a few of a person's characteristics that dilute objectivity. Performance-related evaluations tend to be more objective and to center on *what* the individual does rather than *who* the individual is. Employees want their performance, not their personality, discussed during a performance review. In this way, defensiveness on the part of the trainee will diminish, and the FTO will be able to avoid these common appraisal errors.

The only measure that FTOs should use when evaluating the behavior and performance of a trainee is the department's Standardized Evaluation Guidelines or Evaluation "Scale."

Evaluation Comments/Narratives/Documentation

To make the most effective use of the narrative portions of written evaluations, it is important for the FTO to remember four "goals" of documentation. To provide meaningful evaluation, the documentation should be:

1. CLEAR
2. CONCISE
3. COMPLETE
4. CORRECT

Ten Steps How to Achieve the Four Goals

The following suggestions will support the FTO in accomplishing the documentation goals.

1. **Set the stage.**
   Provide a description of the situation or conditions that are present when the trainee performs. This will allow the reader to more fully understand what occurred.
   Example: The trainee, using excellent defensive driving techniques, brought an 80 mph, high-speed chase to a successful halt.

2. **Use verbatim quotes.**
   It is sometimes clearer to report what was said rather than attempt to describe the effect of the words.
   Example: The trainee, when logging an arrestee's property and finding $535 in his wallet, remarked, "Where does a low life jerk like you get this much money?" This angered the arrestee and resulted in a physical confrontation.

3. **Report the facts — avoid conclusions.**
   Report what occurred. Do not include your interpretation of why something occurred. In the example below, there are several possible reasons why the trainee is not making the traffic stops other than a lack of motivation or confidence.
   Example: The trainee lacks motivation or confidence. Despite training in vehicle violation stops, the trainee, although admitting that he saw the violation, had to be told to make these stops on five separate occasions.

4. **Remember your audience.**
   When writing your evaluation(s), consider who may be reading the report. In addition to the trainee, your report may be read by your supervisor, department head, an attorney representing your depart-

ment or the trainee, an arbitrator, or judge. These readers will form opinions of your abilities based on what they read.

5. **Watch your grammar, spelling, and legibility. Avoid slang, jargon, and swearing.**
   Not everyone who will be reading your evaluation(s) understands radio codes and penal code sections. Explain any code sections used. Be professional and model your expectations.

6. **Speak to performance, not personality.**
   Criticize the act, not the person. Criticizing the person brings about defensiveness. While more difficult to do in written vs. verbal form, the "Impersonal" style of documentation relieves some of the stress.

   Example: Rather than write "You did a poor job of handling the disturbance call..." try "Trainee Jones did a poor job of handling...," etc.

7. **Use lists, if appropriate.**
   The use of a "list" approach will sometimes save time and space.

   Example: The trainee, when asked, failed to accurately identify the following ten code definitions: 10-7, 10-8, 10-16, 10-27, 10-28, 10-29, 10-35, and 10-62.

8. **Think remedial.**
   What has been tried? How did it work? What will you try next? Document your training plans and the results thereof.

9. **Use quantification whenever possible.**
   Quantification or the documentation of a standard that is familiar to every reader adds clarity to the documentation.

   Example: It took Bill five tries to successfully complete a burglary report. See attached.

10. **Do not predict.**
    Avoid statements such as "I am sure that Ann, with a little more effort, will be able to master the radio," or "Charlie's skills will no doubt improve as the weeks go by." Rather than make statements of this nature, the FTO should write what the behavior should produce; i.e., "When Bill can complete reports of this nature within 30 minutes or less, he will be performing at an acceptable level." Predictions set up false expectations.

If FTOs can write acceptable reports, they should be able to write acceptable evaluation narratives. One way to keep documentation of this type in perspective is to write as though telling a story to a close friend or co-worker who was

not present when the behavior was observed. Would all the details be included or just generalities? When in doubt, reread what's written and ask if you REALLY know what happened from what was written. Another approach is to have another FTO or supervisor read the narrative. Do they have any questions? If so, the documentation may need more work.

Discussing Evaluations

The FTO and trainee's discussion of evaluations is a particularly important aspect of the field training program. Merely completing the evaluation and having the trainee sign it will not achieve the objectives of a proper evaluation.

The performance evaluation must:

1. Be understood by the trainee. This does not mean the trainee has to be in agreement with the entire evaluation, just that he/she understands it.
2. Be the basis for plans to help the trainee improve performance as needed.
3. Give the trainee recognition for strong points and acceptable performance as well as call attention to weak areas and/or deficient performance.

FTOs should allow ample time to discuss evaluations with trainees. Discussions should be held where privacy can be maintained with little or no interruptions. These discussions should be a "two-way conversation." Trainees should be encouraged to express how they feel. Trainees should be encouraged to be more self-aware and perhaps, even be given a chance for self-evaluation.

FTOs should listen to what the trainees have to say and not show disapproval when they do respond to the evaluation. FTOs should re-emphasize that performance is being discussed and not a defense of the evaluation.

Once a discussion has been completed, the FTO should ensure that the trainee signs the evaluation and has the opportunity to provide written comments or speak with the FTP SAC if desired. ■

Performance Evaluation Documents

Daily Observation Report

The Daily Observation Report (DOR) is to be completed by the FTO at the end of each shift that the trainee is assigned to work during the field training program. Days where the trainee receives no evaluation by a qualified FTO (i.e., Orientation, days off sick or injured, non-enforcement or special assignments, etc.) can also be documented on the DOR. Only the headings and narrative portions should be completed for those shifts. The DOR is used to record the trainee's performance, specific training or instruction presented, and any other information of importance related to the trainee's activities in the training program that day.

This report is the permanent record of the trainee's progress in terms of performance, skills, knowledge, the improvements needed, and the FTO's efforts to bring about change. It is the principle document used for determining the trainee's status in the program.

The form shall be completed at or near the end of each shift and reviewed with the trainee unless unusual circumstances exist. It is important that this feedback be shared with the trainee as close to the events documented so that he/she can have the benefit of utilizing the feedback in advance of the next call for service and/or shift.

The DOR is designed to rate observed behavior with reference to either a numerical or alphabetic scale (i.e., 1,4, and 7 or NI and C). The form lists specific categories of behavior (i.e., officer safety, driving skill, appearance, etc.). Each category must be rated or an indication made that the performance was "not observed" (N.O.) during the shift covered by that DOR. Circling or marking the appropriate number or letter records the numeric or alphabetic rating based on the Standardized Evaluation Guideline for each category. Ratings such as Unacceptable, Below Standard, Far Exceeds Standards, and/or Superior should be explained on the reverse side of the form.

Some DORs have a "N.R.T." box on the face of the form. "N.R.T." means "Not Responding to Training." In addition to a numerical rating in the particular category, this box may also be marked or the N.R.T. box alone may be marked. N.R.T. is assigned after reasonable remedial efforts have failed to result in improvement. Citing N.R.T. is a serious step and is considered a "red flag" for the trainee and the FTP SAC. From this point, if improvement is not made, termination may result. It is expected there will be significant documentation about the problem before this step is taken. The decision to assign N.R.T. is somewhat subjective but one that can be reasonably justified. The FTO must first get a sense of the difficulty of the task. Is it an easy task or one that is rather difficult to learn? Once the difficulty or complexity is known, the FTO then must get an idea of how many tries the trainee has had at task completion. This process is a search for the presence or absence of balance (i.e., Has the trainee had enough opportunities to effectively complete the task given the difficulty?). If the answer is "Yes," N.R.T. is appropriate. If "No," continue with remediation.

Note→ We must be sure that any remediation that has been given is perceived as that likely to bring about the desired change. The quantity and quality of remediation will be examined to ensure that the strategies employed would likely lead to improvement.

The "R.T." found on some DORs refers to remedial training or the time spent by the FTO in the correction or review of previously taught information or procedures. When 15 minutes (some departments use a 10-minute standard) or more is spent in any one category, the FTO shall record the number of minutes in the appropriate box. If the FTO spends less than 15 minutes in the task area, a "check" or "X" is sufficient. More information on remedial training and strategies begins on Page II-15.

Some DORs have a Daily Score ("D.S.") box on the left side of the face of the form. This column of boxes can serve several purposes. Most often after the FTO has reviewed the DOR with the trainee, the trainee should transfer (write) each score from the rating scale into the box in this column. This practice serves to reinforce how the trainee performed on that day. Secondly, these scores can later be transferred to a chart reflecting rated performance over a period of time. The tracking of these scores produces a picture of improvement or lack thereof. A chart of this type can also be used by the FTP SAC to identify potential inconsistencies in individual FTO ratings.

The reverse side of the DOR is designed for narrative comments. Both negative and positive performance should be noted by the FTO. Steps taken to assist trainees in improving their performance should also be noted here.

All DORs are to be signed and dated by both the trainee and the FTO. In some departments the FTP SAC may also sign these forms. The FTP SAC must monitor the trainee's progress through the review and signing of these DORs and/or through the completion of a Supervisor's Weekly Report (SWR). Sample DORs with the supplementary SEGs can be found in Appendices I and II.

Daily Training Notes

Some departments may choose the Daily Training Notes/Weekly Training Progress Reports documentation method. Like DORs, Daily Training Notes are invaluable in providing immediate feedback to a trainee on his/her performance. FTO notes should be made as soon as possible after incidents occur. The notes should be verbally reviewed with the trainee and he/she should also be allowed to review the notes. The written comments should be used as the primary basis for the Weekly Training Progress Reports that the FTO is required to prepare during the training program. Each important incident and response must be addressed and noted in order to give the trainee direction to continue good performance or improve poor performance. FTOs should note whatever steps are taken to assist the trainee in improving his/her performance. Sample Daily Training Notes can be found in Appendix III.

Weekly Training Progress Reports

Departments using Daily Training Notes will have FTOs complete Weekly Training Progress Reports. These progress reports are completed at the end of each week of the training program. They are designed to match the objectives covered during that week and augment the daily training notes. Specific comments concerning performance below an acceptable level should be articulated in the Daily Training Notes for justification.

Rating Levels
Training Progress Evaluation Scale

Performance in each evaluation category is rated between 1 and 4 indicating the trainee's performance during the week. The specific meaning of each number can be found in the breakdown listed below:

4 – **BETTER THAN ACCEPTABLE:** Performance exceeds the agency's standard

3 – **ACCEPTABLE:** Performance meets the agency's standard

2 – **IMPROVEMENT IS NEEDED:** Performance is progressing toward acceptable but does not yet meet the agency's standard

1 – **UNACCEPTABLE:** Performance is not at an acceptable level

N.R.T. – **NOT RESPONDING TO TRAINING:** Trainee has been rated at level 1 or 2 and, after remediation, shows no improvement

Performance Descriptions

"Better than Acceptable." A trainee who performs significantly above that which is expected and above the standard of the agency.

"Acceptable." Given when the performance satisfies the required standard. It is interpreted as the training progress is satisfactory and the trainee should at least maintain that level of performance. Every effort should be made to encourage the trainee to strive for improved performance that would be recognized in future Training Progress Reports and to guide him/her to the fullest development of his/her capacities.

"Some Improvement Needed." Notifies the trainee that his/her performance is deficient. It is intended to stimulate the trainee to improve and maintain a higher level of work performance. Usually, it also means that the FTO must devote additional attention to assisting the trainee in making the needed improvement. The special attention may take the form of greatly increased effort, special training, or a remedial training plan.

"Unacceptable." Indicates that performance is significantly below the expectation of standard work performance. The trainee, with the assistance of his/her FTO, must make every effort to improve competence in that category.

"N.R.T." Comment (Not Responding to Training). A trainee who has been rated at Level 1 or 2, and after remediation shows no improvement in performance, should be notified that he/she is "NRT." This comment should alert the trainee and training staff that there is a continuing problem. It notifies the trainee that the need for improvement is so great that the trainee's continued stay in the program is in jeopardy.

The specific standard for each of the rating levels in a Weekly Training Progress Report will be determined by a department's own standards. A sample Weekly Training Progress Report can be found in Appendix IV.

Supervisor's Weekly Report

In an effort to ensure accountability, supervision, and participation from a higher level within the department, some departments may require the FTP SAC to complete an evaluation of the trainee's performance and progress each week. The evaluation will be completed and administered to the trainee by the FTP SAC. This report is useful not only to report a trainee's performance but also to serve as a check and balance of the FTO's evaluation of the trainee.

The Supervisor's Weekly Report (SWR) contains a sentence in which the supervisor advises the trainee that his/her performance for that week was either "acceptable" or " unacceptable." The FTP SAC will also advise the

trainee as to the level of his/her overall performance at that point in the program. This report provides additional feedback to the trainee and an opportunity for the trainee to discuss other training issues with a supervisor, if needed. The SWR should be signed and dated by both the trainee and the FTP SAC. A sample SWR can be found in Appendix V.

End of Phase Report

Departments using DORs and phase training will have FTOs complete an End of Phase Report (EPR). EPRs detail the trainee's significant strengths and weaknesses, as well as list specific training provided during the phase. The EPRs also list recommendations for training needed by the trainee during the next phase of instruction.

In this report, FTOs will indicate their judgment as to the actual level of performance demonstrated by the trainee. The EPR should be discussed in a field training staff meeting with the FTP SAC, the trainee's current FTO, and the trainee's next FTO. Special training problems should be clarified and addressed with the development of a specific training regimen for the next phase of instruction. The EPR should be signed and dated by the trainee, the FTO, and the FTP SAC. A sample EPR can be found in Appendix VI.

Phase Evaluation Report

Departments using Daily Training Notes and Weekly Training Progress Reports will have FTOs complete a Phase Evaluation Report. These are formatted similarly to the Weekly Training Progress Reports but must include all of the objectives that were covered from the previous weeks.

It must also address the judgment displayed in performing the objectives, the skills demonstrated in conducting preliminary investigations, preparing reports, performing self-initiated activity, and the acceptability of personal characteristics such as personal relations and dependability. Objectives that were carried over from a previous evaluation period because they were not acceptably performed, or are not currently being performed at an acceptable level, should also be included.

The Phase Evaluation Report should not contain any reference to an incident that was not part of the Daily Training Notes or has not been reviewed with the trainee. A sample Phase Evaluation Report can be found in Appendix VII, while a completed sample is in Appendix XX.

Completion Record/Competency Attestation

Upon the trainee's successful completion of the field training program, it will be the responsibility of the Final Phase FTO to complete a competency attestation of the trainee's ability to perform the duties of a solo patrol officer.

After assuring that all the materials from the field training program guide have been covered and signed off, and after personally observing the trainee's acceptable performance in all of the functional areas or categories, the FTO will initiate a Completion Record/Competency Attestation form to be routed through the chain of command. The form should be signed and dated by the trainee, the Final Phase FTO, the FTP SAC, and the department head (or his/her designee). This form should become a permanent part of the trainee's training record. A sample Completion Record/Competency Attestation form can be found in Appendix XI. ■

Remedial Training Strategies

Most FTOs will report that training is an "ongoing" process that is the result of the natural interactions between themselves and the trainee. Simple comments such as "keep your gun hand clear" or "this word is spelled..." often take place simultaneously to the observed mistake. Some training may have to take place at another time or location away from the actual event. What is important to remember is that; 1) a mistake or performance deficiency must be corrected; and 2) that correction should come as soon as practical after the behavior without interfering with the department's service responsibilities. Most performance mistakes are relatively simple to fix and are corrected almost immediately. The problems that do not seem to go away, or are repeated, call for a more formal approach known as remedial training.

Remedial training is defined as: **A correction or review of previously taught information or procedures.** "Previously taught" should not include any training that the trainee may have received in the Regular Basic Course (Academy). Remedial training becomes necessary when the trainee's job performance is evaluated as less than acceptable after having been provided with sufficient training or intervention that should have corrected and improved the job performance.

While the FTO's role is to help the trainee overcome performance deficiencies and give him/her every opportunity to learn and perform, some performance deficiencies have as their root cause something that the FTO cannot correct. Examples might be immaturity, absence of a positive self-image, lack of common sense and worldliness, lack of life experience, stress, and fear. These are attitudinal based and are occasionally so deeply ingrained in the trainee's behavioral package that they cannot be overcome. It would be wrong to automatically assume that a failure to perform well is linked to one of these reasons. It is more likely that inexperience and an absence of sufficient practice has led to the problem. Remedial training should begin as soon as the ongoing deficiency is noted.

Since formal remedial training may require an extended stay in the field training program, there are several steps the FTO can take when trying to resolve the deficiency:

1. Being as specific as possible, identify and describe the deficiency. Do not overlook calling upon the trainee to help in this endeavor.
2. Reflect on, and determine, what has been tried and found to be effective with similar performance problems.
3. Develop a plan which clearly identifies what the new officer is expected to accomplish, under what conditions, within what time frame, and using what resources.
4. Implement the plan and evaluate its success. If the desired level of performance (goal) was not achieved, return to step one.

Consider using a Remedial Training Assignment Worksheet (Appendix VIII) when developing a remedial plan. Be sure to document the plan, the FTO's efforts, and the results.

Remedial Training Strategies

The following section is designed to assist FTOs in recognizing and correcting training deficiencies and/or performance problems. It describes some of the commonly reported trainee problems and offers strategies for resolving them. For any identified deficiency/problem, the types of remedial training strategies are limited only by imagination and feasibility; however, no training should be dangerous, demeaning, harassing, or expose the department to liability. Department policies, procedures, or safety standards must never be violated for the sake of training.

The following strategies can be appropriate for assisting trainees in gaining proficiency with items in the field training program guide or in designing written training plans.

Role Plays and Scenarios

These can be used for a variety of performance tasks. Care should be taken regarding the following:

1. All participants must be made aware that the situation is a training exercise, not an actual event.
2. No loaded weapons should ever be used in field training scenarios.

3. Notification of other potentially involved parties (i.e., dispatch, neighboring departments, patrol and/or field training supervisors, etc).
4. Choice of location (so as not to involve unknowing citizens or other officers).
5. Selection of role players who understand the win-win philosophy (If the trainees do it right, they win!).

Role Reversals

Similar to role plays, here the FTO reverses roles with the trainee. The trainee then watches the FTO perform a task in the same incorrect manner that the trainee did earlier. The trainee is then required to critique the FTO and offer suggestions for improvement.

Commentary Driving

The trainee is advised to maintain a running commentary of what is observed while operating the vehicle (in the case of Driving Skills) or while acting as either the driver or passenger (in the case of Patrol Observation and Orientation Skills).

When Driving Skills are being taught, the trainee's recitation should focus on street/traffic conditions, traffic control devices, and defensive driving information. When Patrol Observation is being taught, the trainee should direct his/her attention to people and things that would be of police interest. The intent of this training is to move the trainee from "looking" as a civilian to "seeing" as a police officer does. When Orientation Skills are being taught, the trainee provides a commentary of the: 1) direction of travel, 2) location by intersection, and 3) identification of landmarks.

Verbalization

This technique is useful for those trainees who routinely know what to do but once subjected to stressful situations are unable to perform the required task(s).

Trainees are instructed to talk out their thoughts. If they are en route to a call, they must describe the call to the FTO, tell how they will get there and, once there, what their actions will be. In this way, they must organize their thoughts and present them to the FTO in a clear and logical manner.

An important benefit for trainees from this exercise is not only the "putting in order" of their thoughts and actions but also the slowing of their thought processes and prevention of "overload." By having them "talk out" their thoughts,

their thinking will revert to a slower, more understandable pace. This process should have a calming effect and reduce stress.

Flash Cards

Having trainees make flash cards enhances the learning process by using more than one learning style. Flash cards are particularly effective with subjects such as Radio Codes, Orientation Skills, Vehicle or Criminal Statutes and Elements, and Spelling.

Spelling Quizzes

The FTO keeps track of words that are frequently misspelled. The trainee is provided a list of these words and advised a few days in advance of the quiz. If the trainee finds it helpful, he/she may wish to practice writing the words a number of times.

Self-Evaluations

This technique, especially valuable when the trainee has difficulty accepting feedback, entails having the trainee keep notes during the shift and complete a DOR at the end. The DOR should be labeled "Self-Evaluation." As with the FTO's evaluation, both parties review and compare their DORs at the end of the shift.

Directing Traffic

1. FTO draws diagrams for trainee to place self, flow of traffic, ideal locations for fire and medical response, etc.
2. Shut down an intersection and let trainee practice. Start with quiet intersections and build to busier.
3. Have trainee speak with other FTOs, traffic officer, etc.
4. Have trainee speak with fire and medical responders for their perspective(s).
5. Request assignments for these types of calls.

Traffic Stops

1. Role play, in a parking lot, using other FTOs and vehicles.
2. Videos
   a. Professionally made.
   b. Film trainees in action so they can watch themselves.
3. Have trainee speak/ride with a traffic officer, etc.
4. FTO draws diagram for the trainee to place self, vehicle positions, ideal locations for stop, etc.
5. Use miniature cars for placement.
6. Develop a checklist - first written, then mental.
7. Verbal and written quizzing on traffic codes and elements.
8. Have trainee practice completing citations and warnings on copied blank forms.

Report Writing

1. Use report writing exercises.
2. Pull some good and bad reports as examples. Be sure to remove the author's name.
3. Interview detectives, instructors, attorneys, and judges as to what they think makes a good report.
4. Have trainee enroll in a writing class.
5. Have trainee obtain and read library books on the subject.
6. Develop checklist to include elements of crimes for the more common calls.
7. Suggest trainee purchase a speller.
8. Have trainee recite the elements of a crime and describe how the elements were accomplished and in what sequence.
9. Have trainee spend time working with an in-house expert or academy instructor.

DUI

1. Role reversal with FTO making actual stops and trainee doing the critique.
2. Role plays in a parking lot using other FTOs and vehicles.
3. Videos
   a. Professionally made.
   b. Film trainees in action so they can watch themselves.
   c. Previous DUI arrests.
4. Interview DUI officers, instructors, and attorneys.
5. Review old DUI reports.
6. Review actual case law at library.
7. Have trainee ride with a traffic officer.
8. Develop a checklist for procedures and forms.

Courtroom Demeanor

1. Interview detectives, instructors, attorneys and judges as to what they think makes a good witness.
2. Have trainee observe a trial.
3. Conduct a mock trial.
4. Have trainee perform a courtroom role play, using one of his/her citations or arrests.

Investigative Procedures

1. Interview detectives, instructors, and attorneys as to what they think makes a good investigation.
2. Verbal and written quizzes on elements of crimes.
3. Have trainee spend some time with an I.D. technician.
4. Tour a crime laboratory.
5. Follow one of the trainee's cases through with the assigned detective.
6. Create a mock crime scene.

Felony Stops

1. Practice visualization techniques.
2. Role plays with trainee as officer and suspect, in daylight and darkness.
3. FTO draws diagrams for trainee to place self, vehicle positions, ideal locations for stop, etc.
4. Develop a checklist for verbal commands.

Domestic Disputes

1. Use models (dolls, playhouse, etc.) for placement.
2. Role play using other FTOs.
3. Interviews with victim's advocate or groups.
4. Attend an Order of Protection hearing.
5. Request assignments for these types of calls.

Orientation Skills

1. Give trainee a copy of a map that contains the streets but no names. Trainee fills in the names.
2. Verbal and written quizzes on the hundred blocks, landmarks, and other important locations.
3. Throughout shift ask trainee, "Where are we now?"
4. Give the trainee addresses, transparencies, and a marker. Have trainee trace the route to the location.
5. Have trainee obtain and study overhead maps from highway department or run maps from the fire department.
6. Demonstrate efficient ways to use the Thomas Guide, including checking the index.

Radio Procedures and Codes

1. Role plays
   a. What is going on with other officers?
   b. Sample sentences/codes.
   c. Describe scenario. Ask trainee how to say it on the radio.
2. Obtain a tape recorder that you and the trainee use as a radio in role plays.
3. Have trainee speak in codes rather than plain text/English.
4. Assign trainee to a shift in Communications to work with a dispatcher. Have trainee log the codes and then decipher into plain text/English, turning in the final product.
5. Have trainee listen to a scanner.
6. Have trainee read all license plates phonetically.
7. Listen to old communications tapes.

Accident Investigation

1. Have trainee ride with an accident investigator.
2. Develop a checklist for steps in completing an accident report.
3. Review past reports and diagrams.
4. Create a scenario and have the trainee draw a diagram.
5. Request assignments for these types of calls.
6. Using crayon attached to the corners of a block, show tire skids, etc.
7. Visit driving track skid pan.
8. Observe an autopsy for occupant injuries, etc.
9. Visit a junkyard for damage estimates, etc.

Rapport with Citizens

1. Increase exposure to public.
   a. Business contact card file.
   b. Traffic stops.
   c. Neighborhood watch and crime prevention meetings.
   d. Front desk.
2. Have trainee spend a shift with a public information officer.
3. Role plays.
4. Videotape trainee's contacts. Have trainee review and critique performance.
5. Assign trainee to work with a department volunteer.

Total Confusion

1. Have trainee complete a self-evaluation.
2. Develop a flow chart of basic tasks.
3. Have trainee speak with and/or observe FTOs, sergeants, and/or staff psychologist.
4. Flash cards.
5. Read past case reports.
6. Role play simple tasks.
7. Have trainee list his/her perceptions of the job.

Summary

For remedial training strategies, always remember to:

1. Diagnose the true problem.
2. Provide feedback.
3. Use all the resources available.
4. Be creative.
5. Document the trainee's performance and your efforts. ■

PART III

Field Training Program Packages

Field Training Program Packages

POST regulations require departments seeking approval of their field training programs to submit a field training program package along with an Application for POST-Approved Field Training Program, POST form 2-229, signed by the department head. Prior to submitting the package and application, a department representative should review the department's current policies, procedures, and program content against POST's minimum standards/requirements for program content, operations, and personnel. When necessary, the department representative shall make changes to comply with the POST minimum standards/requirements before submitting the package.

A field training program package submitted for approval shall minimally include:

1. a written description of the department's specific selection process for Field Training Officers,
2. an outline of the training proposed for department trainees,
3. a written description of the evaluation process for trainees and Field Training Officers, and
4. copies of supporting documents (i.e., field training program guides, General Orders related to field training program personnel and their training, policies and procedures, and/or evaluation forms).

Some departments may include all of the above information in their field training program guides while others will need to make and send copies of the separate documents, G.O.s, policies and procedures, etc., with their field training program guide to complete the necessary package.

A field training program guide or manual is vital to the success of any field training experience. The guide should be used to instruct newly assigned patrol officers in the various duties that they will most likely perform during their careers. The guide should serve as the "lesson plan" for the Field Training Officer's instruction. Each department is encouraged to develop

a training guide, manual, or workbook for its field training program. These guides should minimally contain two parts, a program orientation portion and a list of performance objectives.

Elements of a Field Training Program Guide

The first part of the guide should contain information explaining the field training program and its operation. It should be provided to trainees at or prior to the time they enter the program. While this portion of the guide may not contain all the information found in the department administrative manuals and general orders, certain excerpts from these documents should be incorporated into this section of the training guide.

While a department may incorporate whatever it wishes in this part of the guide, several items recommended for inclusion are:

1. Goals and Objectives of the Field Training Program
2. Chain of Command and Supervision Information
3. Explanation of the Elements of the Field Training Program
4. Role/Expectations of Trainees and Field Training Officers
5. Explanation of the Evaluation Process
6. Copies of the evaluation instruments (i.e., DORs; SEGs; Weekly Training Progress Reports; etc.) and other program forms with brief explanations

Providing trainees with this information at the start of the program serves several purposes. It clarifies the trainee's role in the training process, improves understanding of the mechanics of the program, enhances the credibility of the FTO, and reduces a good deal of apprehension normally found in any training program.

The second part of the field training guide should contain performance objectives incorporating the knowledge, skills, abilities, and attitudes that the FTO is required to impart to the trainee and then evaluate the trainee's ability to retain and competently perform the same. These objectives are designed to ensure that trainees receive specific training in designated topics or areas. These training topics are generally broken into weekly and/or phase segments. Responsibility for covering the performance objectives and other listed tasks lies with the FTO to whom the trainee is assigned for that specific week, group of weeks, or phase. If the department has organized these topics or areas into a specific format, standardization will occur since each FTO will cover the same

material with every trainee during the same assignment period. Training in and completion of the designated topics or areas will give trainees the foundation to draw from when handling incidents that have not been actively demonstrated. It will be impossible to train a newly assigned officer in every area that may be encountered throughout a career but this program should provide a firm foundation on which to build.

Field Training Officers should, at a minimum, instruct in the areas that are outlined in each specific topic. To further assure accountability, columns or sign-off boxes can be placed on each page of the guide wherein the FTO indicates, by placing his/her initials and badge number: (1) the date the material or objective was discussed, instructed, or demonstrated, and (2) the date the trainee displayed adequate competence. The FTO should also identify the manner in which the skill, knowledge, or ability was performed (i.e., written test, verbal test, scenario/role-play, or field performance). Additionally, there should be a place for the trainee's initials, badge number, and date wherein the trainee acknowledges having received the instruction.

Finally, departments should strongly consider the inclusion of various resource materials in the guide or perhaps the development of a separate resource materials guide. Examples may include important policies, run maps, municipal codes, etc. The purpose of this is twofold. First, the material remains as a reference for the trainee and, secondly, the FTO will use these materials as the lesson plan rather than attempting to "ad lib" when it comes time to instruct on the particular topic. If a policy or procedure is included in the guide or a separate resource manual, it is much easier for the FTO to teach from the actual policy rather than from memory of the policy. This also allows for better documentation that the material was covered.

In addition to the instruction the trainee will be receiving from the FTO, it is possible the trainee will need to do some further studying. The training staff should maintain a library that could include the Regular Basic Course Training and Testing Specifications, Learning Domain Workbooks, POST training videos and telecourses, and any other department-developed training aids. Trainees are also advised to maintain copies of the Penal Code, Vehicle Code, and Municipal Codes (or Quick-codes of same), and know the location(s) of other reference materials including a list of community service resources.

It should be the responsibility of the Field Training Program SAC to oversee the development and maintenance of the department's field training program guide. Each FTP SAC should designate a committee to review, and keep current, the materials presented in the department's guide. While the concepts, tasks, and performance objectives of field training programs statewide are extremely similar, the field training program guide, manual, or workbook is

one item that should be individually developed (tailor-made) by and for each department. When done right, no one department's guide could be duplicated and used by a second because of the differences in the codes, policies, philosophies, service areas, streets and locations, and so on. Constant revision based on input from trainees, FTOs, and other program staff will make the department's field training program guide a viable resource and basis for a successful field training program. ■

PART IV

POST Field Training Program

THE POST FIELD TRAINING PROGRAM

The *POST Field Training Program* is a sample program designed to be used by a FTO and trainee as a basis for instruction and study. The program contains statements of performance (i.e., objectives) that begin by introducing the newly assigned officer to the department and patrol duties, and progresses to performance independent of the FTO. This program contains no policies, procedures, or specific methods to follow; it simply directs a training response to needs or situations that could be encountered by any police officer in the state who is assigned to general law enforcement uniformed patrol duties. Therefore, a department using this sample program should include its specific policies, procedures, or methods *or* the trainee should be required to obtain and learn the department's directives and policies for each objective. The FTO has a duty to assist by directing the study and diligently testing the trainee's knowledge. This program also requires the trainee to apply skills and knowledge that were acquired in the Regular Basic Course (Academy). The FTO must help the trainee apply these skills and knowledge in a real life environment with actual law enforcement incidents.

The *POST Field Training Program* is as comprehensive and complete as possible for statewide application. However, any department using this program should compare POST's program objectives relative to its own objectives, policies, and responses, and add any additional objectives that may be needed. The objectives (skills, knowledge, abilities, and attitudes) included in the POST program are considered to be the minimum standards on which to base a field training program in the state. Departments are strongly encouraged to add to this program or develop their own program (structured learning content) based on the same minimum standards.

The *POST Field Training Program* can be used in training newly assigned officers and deputies who have recently graduated from the Regular Basic Course (Academy), who have been employed through lateral entry, or any others who are on their initial assignment to general law enforcement uniformed patrol duties. The following areas are intended to clarify the application of the *POST Field Training Program*:

Structured Learning Content Topics/Instructional Areas

As mentioned earlier, the duties of general law enforcement uniformed patrol officers are quite similar within the state and the nation. Research and experience have demonstrated that new officers should demonstrate competency in the following topics or areas:

- **Agency Orientation** (including Standards and Conduct)
- **Ethics**
- **Leadership**
- **Patrol Vehicle Operations**
- **Officer Safety**
- **Report Writing**
- **California Codes and Law**
- **Department Policies** (General Orders, Local Policies, and Philosophies)
- **Patrol Procedures** (including Domestic Violence and Pedestrian and Vehicle Stops)
- **Control of Persons, Prisoners, and Mentally Ill** (Adults and Juveniles)
- **Traffic** (including DUI)
- **Use of Force**
- **Search and Seizure**
- **Radio Communications**
- **Self Initiated Activity**
- **Investigations/Evidence**
- **Community Relations/ Professional Demeanor** (including Cultural Diversity, Community Policing, and Problem Solving)
- **Tactical Communication/ Conflict Resolution**
- **Additional Agency-Specific Topics** (may include Community Specific Problems, Special Needs Groups, etc.)

Format

The *POST Field Training Program* has the above listed 19 topics or areas of instruction segmented. Each contains knowledge- and performance-based objectives for the trainee to accomplish. Each topic may be presented, wholly or in portions, in a suitable training period that will meet the department's needs (i.e., one day, one week, one month). The objectives in each of the listed topics build from basic issues to more complex to assist in an incremental learning approach. This is intended to enhance retention so the trainee is able to relate some element of past instruction to each new subject. The department's training staff must determine the appropriate format for its field training program. If a department wishes to use the same performance objectives as listed in the *POST Field Training Program*, but prioritize the presentation order to their own needs, POST can provide these topics and performance objectives in a computer ready format (MS Word). A department can then add its specific policies, procedures, locations, references, etc. to further enhance the program. This POST format allows flexibility but is designed to hold the trainee responsible for each of the required performance objectives.

Training and Testing Methods

Although the *POST Field Training Program* is written in performance-based objectives, there is no intention to restrict a department's methods of presentation or measuring of the trainee's acceptable performance of the task(s).

The department's training staff should agree on a schedule and/or manner for training and testing new officers. Because of the very nature of patrol work, not every field incident that the *POST Field Training Program* requires a trainee to perform will occur within the time frame of the program. The FTO should improvise by volunteering, when possible, for assignments that will assist in meeting the training objectives. In some cases, it may be necessary for the FTO to set up a scenario exercise or rely on the trainee's verbal or written explanation of handling the situation coupled with his/her performance in similar incidents.

Initially, the trainee must be provided with, and allowed the opportunity to study written documents, policy directives, training bulletins, or general orders that the trainee is responsible for knowing. The FTO should then proceed through the field training guide discussing, instructing, or demonstrating each performance objective. The FTO should encourage the trainee to take increasing responsibility for field performance based on the nature of incidents and the amount of experience the trainee has in the program. This responsibility ultimately includes the satisfactory completion of each performance

objective. It is the intention of the field training program to have the new officers demonstrate their satisfactory completion of or competency in these performance objectives through actual, on-duty handling of field situations. This is, for obvious reasons, the preferred method of demonstrating that the trainee comprehends and can apply what has been taught. Based on a variety of reasons (calls for service, type of department, demographics, location, etc.), however, trainees may have to demonstrate successful comprehension and competency through alternative means. The methods for "competency demonstration" used in the *POST Field Training Program* are:

Competency Demonstration Methods

1. **Department-Constructed Knowledge Tests.** Some portions of the field training program may require department-constructed knowledge tests that measure the skills and knowledge required to achieve one or more performance objectives. These tests may be in written or verbal format. When a written department-constructed knowledge test is used, trainees should earn a score equal to or greater than the minimum passing score established by the department. Trainees who fail a written department-constructed knowledge test on the first attempt should: a) be provided with an opportunity to review the test results in a manner that does not compromise test security; b) have a reasonable time, established by the department, to prepare for a retest; and c) be provided with an opportunity to be retested with a department-constructed, parallel form of the same test. If the trainee fails the retest, it will be the department's responsibility to determine if the trainee should be given another retest or terminated from the field training program.

   Special Note: These tests should be standardized to ensure accuracy and fairness and may also serve as an additional evaluation instrument.

2. **Scenario Tests.** Some portions of the field training program may require scenario tests, which are job simulation tests, that measure the skills and knowledge required to achieve one or more performance objectives. When a scenario test is used, trainees should demonstrate their competency in performing the tasks required by the scenario test. Competency means that the trainee performed at a level that demonstrates he/she is able to perform as a solo patrol officer. A qualified field training officer should make this determination. Trainees who fail to clearly demonstrate competency when first tested should be provided with an opportunity to be retested. The retest should occur after a qualified field training officer has provided documented remedial training to the trainee. The duration of, and subject matter covered in, the remedial training shall be determined

by the department. If the trainee fails to demonstrate competency on the retest, it will be the department's responsibility to determine if the trainee should be given another retest or terminated from the field training program.

Special Note: **Officer safety must be of the utmost concern during the use of any simulated/scenario exercises. At no time are loaded weapons to be used in any scenario testing during the field training program. (Departments may wish to refer to the POST Guidelines for Student Safety in Certified Courses that contain specific guidelines for scenario training and event simulations that may prove helpful in organizing such testing.).**

3. **Field Performance Tests.** Most portions of the field training program will require field performance tests which are generally in the form of calls for service, traffic enforcement, self-initiated activity, etc. When field performance tests occur, trainees must demonstrate their competency in performing the tasks required of a solo patrol officer. A qualified field training officer should make this determination. Trainees who fail to clearly demonstrate competency during a field performance test should be provided remedial training. The remedial training should be provided and documented by a qualified field training officer. The duration of, and subject matter covered in, the remedial training shall be determined by the department. If the trainee does not respond to remedial training and fails to demonstrate competency on subsequent and/or repeated field performance tests, it will be the department's responsibility to determine if the trainee and/or department will benefit from additional remedial training and testing or if the trainee should be terminated from the field training program.

The POST Field Training Program Model

This standardized *POST Field Training Program* has been developed through input from various departments and experts throughout the state and nation. It is not intended to be a stand alone, state-of-the-art program. It is intended to set a minimum standard on which each department can build its own specific field training program. It is further intended to assist the process in which the trainee receives on-the-job instruction to complement or reinforce classroom (academy) training.

When combined with a valid trainee evaluation program, this field training program, properly administered and supervised, can and should be one of the most important phases of basic training for law enforcement officers. POST field training regulations and this sample provide for the foundational field

training needed to supplement classroom training as well as the appropriate guidance and supervision required to allow the trainee to safely, effectively, and competently apply basic law enforcement principles within the community being served. Figure 3 represents a phase training overview of the *POST Field Training Program*.

Fig. 3
Phase Training Model Overview

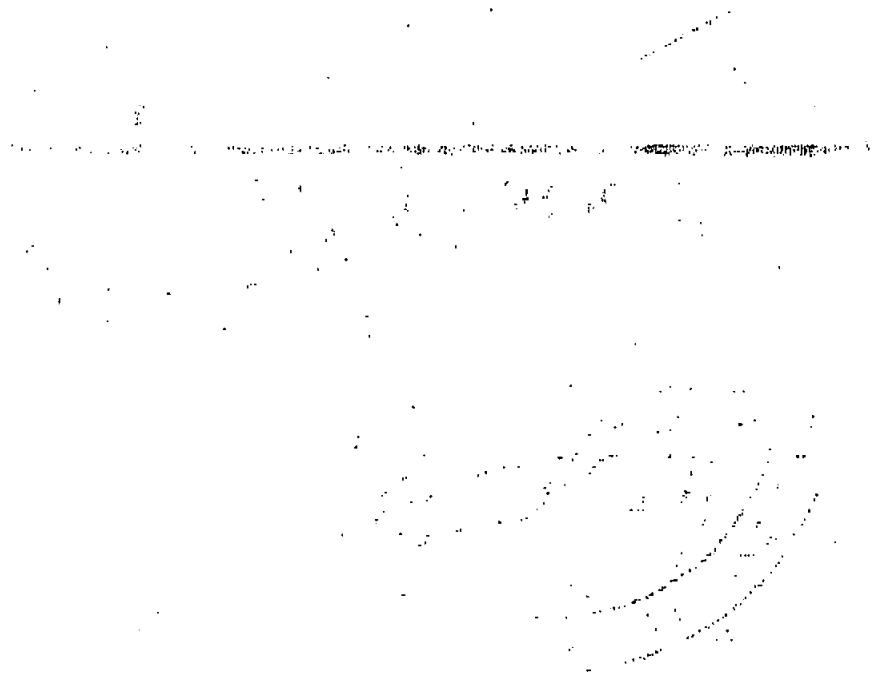
Phase I	Phase II	Phase III	Phase IV
• Orientation/ Department Policies • Officer Safety • Ethics • Use of Force • Patrol Vehicle Operations • Community Relations/ Professional Demeanor • Radio Communication	• Leadership • California Codes and Law • Search and Seizure • Report Writing • Control Of Persons/ Prisoners/Mentally Ill • Patrol Procedures Part 1	• Patrol Procedures Part 2 • Investigations/ Evidence • Tactical Communication/ Conflict Resolution • Traffic	• Self-Initiated Activity • Primary FTO Observation Phase (usually in plain clothes)

Phase V

Solo Patrol Officer/On Probation
Evaluations by Supervisor throughout probation (every 1–3 months) ■

FTP

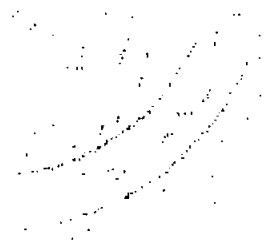
POST Field Training Program Sample



Link to POST model program

PART V

COPS Police Training Program



COPS
Problem-based Learning (PBL)/ Police Training Officer (PTO) Program

Introduction

The Police Training Officer (PTO) program is a new model for post-academy field training in law enforcement. In this model, recruits use problem-based learning (PBL) to address neighborhood problems in partnership with the communities they serve. Problem-based learning is a recent development in police education and this program is the first time it has been used in such a fashion. Two of the developers of the PBL/PTO program, Greg Saville (MES. MCIP) and Gerard Cleveland (MA, B.Ed.), provided the following program summary specifically for inclusion in the California *POST Field Training Program Guide.*

Origination of Problem-Based Learning (PBL)

Problem-based learning (PBL) has been used widely to teach medical students training to become doctors. On the Web today you will find dozens of university, high school, and elementary school sites that indicate these facilities are using PBL. Problem-based learning began in the late 1970s and early 1980s when Dr. H. S. Barrows from McMaster University Medical School in Ontario (Canada) found that medical students were entering examining rooms with vast amounts of knowledge but unable to ask the right questions of the patients they were examining. Their learning had taken place in classrooms and within the covers of medical texts, but when faced with actual patients, the interns were often unable to apply their knowledge successfully to cure the patients' ailments.

Medical students were not training simply to learn about diseases or anatomy or pharmacology. They were learning to improve the quality of peoples' lives by incorporating many strategies. While the students needed an essential body of knowledge, they also needed to know how and when to apply that information effectively when treating patients. Further, the students required a system of learning and retaining information that they could continue to use throughout their careers as doctors. PBL was so successful that numerous medical schools have now adopted it for use.

The similarities to policing are striking. Trainees need to learn much more than just the laws and procedures of our jurisdictions. They must understand how to use their knowledge judiciously and effectively when dealing with individuals within that community. They must also have a learning guideline that they can use each time they encounter different community problems.

Because we are asking more from our police today, it follows that we must provide them with the resources and the training to fulfill their expanding roles. The title *law enforcer* is too narrow a mandate or description for any officer working in the United States today. Herman Goldstein pioneered the concept of Problem-Oriented Policing and wrote that the police objectives in our society span a wide range of activities from the protection of threats to life and property and assisting crime victims to the creation and maintenance of a community security. It makes good sense to have police trainees thinking about roles and responsibilities as they approach specific problems in their daily work.

PBL/PTO Program Summary

Many police agencies in California have adopted a philosophy widely known as community oriented policing and problem solving (COPPS). As a philosophy, COPPS operates at the very basic foundation of our culture: our values. To embrace value-driven policing, departments must determine the local community values and use them as the basis for creating their COPPS philosophy. Typically this begins at the level of the patrol officer, and it is during field training where these values are first taught.

New officers across the state enter their organizations with various views of policing. During the first several months these officers develop a manner of behaving that allows them to operate safely, ethically, and competently in their new environment. If field training does not inculcate them into the principles of COPPS and value-driven policing, police progress will be impossible to sustain into the future. That is why the new Police Training Officer (PTO) program has been developed.

Recent education research has significantly improved our understanding of how adults learn. We now know a great deal about how the brain works and how individuals function when involved in learning new information or developing new skills. The problem-based learning methodology so successfully used by Dr. Barrows with medical school students in the 1970s and 80s has been adapted and designed specifically for police training. That problem-based learning philosophy has been incorporated as the central component of the PTO program.

We also know that learning styles are based upon "multiple intelligences," an idea developed by Harvard University's Howard Gardiner. Further, we know that when acquiring knowledge or skills, adults must be able to transfer what they learn to *real-life* situations. Daniel Goleman and others argue that learners, especially those who want to work effectively with others, must acquire a level of relationship knowledge, or "Emotional Intelligence," to claim any sort of success as problem solvers or leaders.

Problem-based learning capitalizes on contemporary research and is an integral component of the PTO program. In this program, recruits learn COPPS and value-driven policing from the very start of the program. From their first day of training, the recruits begin solving problems in partnership with others within and external to the department. This collaboration resides at the center of the PBL training activities. The regular duties of policing are incorporated, but they are put into the context of specific neighborhood problems that these new officers will face throughout their careers. Recruits are challenged to think creatively and to effectively use community resources to deal with disorder and crime. They are allowed to learn through both their positive and negative experiences, without failing the program, and they quickly gain the confidence required to employ collaborative, ethical, and creative approaches to policing.

Moving Forward

Now is the time for police training to move forward into the 21st Century. For over 25 years, law enforcement officers in California, indeed across America, have used different versions of the same field training officer program (FTO) to coach recruits who graduate from the academy. Known by different names, the traditional model uses training checklists that list topics such as animal services, arrest powers, evidence, family disputes, juvenile procedures, and so forth. Individually, each of these items is an important part of the job. But in the traditional FTO program, testing emphasizes the performance of individual tasks, rather than the ability to deal holistically with a variety of police activities, skills, and knowledge. In the real world of policing, seldom do events occur as independent actions. Rather, they take place as complicated affairs in which officers must use discretion in interpreting events, make intelligent decisions, and actually resolve problems. A checklist does little to teach the trainee how to resolve complex problems. The PTO program addresses the disconnect that currently exists between *task training* and holistic, problem-solving policing.

Incorporating problem-based learning into the new PTO program commenced with research by consultants working with the Reno Police Department

and the Police Executive Research Forum under funding from the Office of Community Oriented Policing Services. The project was launched in 2000 through the work of Reno Police Chief Jerry Hoover and Deputy Chief Ronald Glensor. Police consultants Gerry Cleveland and Gregory Saville from the University of New Haven wrote the PTO manual incorporating problem-based learning and taught 200 police training officers in the six initial pilot agencies: Reno, NV; Savannah, GA; Lowell, MA; Charlotte-Mecklenberg, NC; Colorado Springs, CO; and, Richmond, CA. From that point, the original authors, officers in Reno, researchers from the Police Executive Research Forum, and officers from the other pilot agencies made many contributions to *fine tune* the final product.

During this research, hundreds of training officers from across the country responded to surveys. They indicated that early in the traditional FTO program trainees begin to believe that they can survive by doing the minimum amount or "just enough" rather than taking a risk in the performance of a task, failing and receiving a low grade on the daily observation reports. The trainees get *marks* on the FTO checklists for successfully stopping speeding cars, but there is no corresponding check mark to indicate whether or not *ongoing* traffic problems in the area were actually solved. Similarly, the trainee may receive a check mark for dealing with pedestrian *contacts*, but less evaluative emphasis is placed on whether or not this contact had any significant impact on neighborhood crime. The current evaluation system does little to establish a climate for the kind of learning that improves problem-solving. In short, current FTO training and evaluation procedures are inculcating our young officers to mirror the practices of incident-driven policing.

The traditional FTO model focuses upon legal issues, in particular liability and termination. Vicarious liability is something that all police administrators must consider. The FTO format was designed to enable agency heads to stand up in court and defend themselves against claims of inadequate or insufficient training. In research for the new PTO program it became apparent that, in fact, very few departments have been able to effectively use the model for that purpose. Courts, as well as the public, are generally more interested in knowing that trainees learn proper policing methods so that mistakes do not happen in the first place. The type of training model an agency chooses and the method by which they apply the training, and adhere to those training guidelines, has a greater significance than simply checking off tasks on a performance list.

A focus on liability issues has led, in common practice, to a focus on time and effort spent documenting the reasons for termination, rather than on training. Certainly, agencies require documentation to plan and complete remedial training efforts. But in the traditional FTO program much of the documentation tends to be a paper trail for justifying the termination of the trainee. Once

the training officer has decided that the evaluations are for termination, training tends to stop and building a case against the trainee starts. In the new PTO program, the authors have addressed this problem by separating the role of the trainer and evaluator in an effort to enhance the training and ensure that those individuals selected for employment have every possible chance to successfully complete the police officer training program.

Conclusion

The writers of this summary, Greg Saville (MES. MCIP) and Gerard Cleveland (B. Ed., MA), and indeed all of the agencies and organizations mentioned in it have graciously included California POST staff in many of their training sessions and conferences. California POST supports the efforts made by the Office of Community Oriented Policing Services, U.S. Department of Justice, the Police Executive Research Forum (PERF), and the Reno Police Department in the research and development of this project. POST regulations have been revised to allow selected agencies to begin pilot testing this program. Implementation kits will be available through POST's Basic Training Bureau. A more extensive program description can be found in Appendix XIV. ■

POST My CA

Library, Clearinghouse & Resources

Law Enforcement Agencies

The following is a list of local California law enforcement agencies. Unless otherwise indicated, all a participating agencies and departments. Links are provided to those agencies with websites. These pages outside the POST website, and POST is not responsible for the content or security of these

Law enforcement agencies may notify POST of updated website information (website address, brol sending an email message to postmaster@post.ca.gov.

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Alameda County District Attorney (not a POST participating agency)
Alameda County Sheriff's Department/Coroner
Alameda Police Department
Alameda / Contra Costa Transit District Police Department
Albany Police Department
Alhambra Police Department
Allan Hancock Community College District Police Department
Alpine County District Attorney (not a POST participating agency)
Alpine County Sheriff's Department
Alturas Police Department
Amador County District Attorney
Amador County Sheriff's Department/Coroner
Anaheim Police Department
American River College Police Department (not a POST participating agency)
Anderson Police Department
Angels Camp Police Department
Antioch Police Department
Arcadia Police Department
Arcata Police Department
Arroyo Grande Police Department
Arvin Police Department
Atascadero Police Department
Atherton Police Department
Atwater Police Department
Auburn Police Department
Azusa Pacific University Campus Safety Department (not a POST participating agency)
Azusa Police Department

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Bakersfield Police Department
Baldwin Park Police Department
Banning Police Department
Barstow Police Department
Bay Area Rapid Transit (BART) Police Department

Bear Valley Police Department
Beaumont Police Department
Bell Gardens Police Department
Bell Police Department
Belmont Police Department
Belvedere Police Department
Benicia Police Department
Berkeley Police Department
Beverly Hills Police Department
Biola University Campus Safety Department (not a POST participating agency)
Bishop Police Department
Blue Lake Police Department
Blythe Police Department
Brawley Police Department
Brea 911 Communications Center
Brea Police Department
Brentwood Police Department
Brisbane Police Department
Broadmoor Police Department
Buena Park Police Department
Burbank Airport Authority Police Department
Burbank Police Department
Burlingame Police Department
Burlington Northern Santa Fe Railway
Butte Community College Police Department
Butte County District Attorney
Butte County Sheriff's Department /Coroner

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CA Alcoholic Beverage Control
CA Assembly Sergeant at Arms
CA Attorney General (not a POST participating agency)
CA Board of Corrections (not a POST participating agency)
CA Consumer Affairs Board of Dental Examiners
CA Consumer Affairs Medical Board of California
CA Department of Consumer Affairs' Security and Investigative Services
CA Department of Corporations
CA Department of Corrections (not a POST participating agency)
CA Department of Developmental Services
CA Department of Employment Development
CA Department of Fish and Game
CA Department of Forestry and Fire Protection
CA Department of Health, Food and Drug Branch
CA Department of Health Services
CA Department of Industrial Relations
CA Department of Insurance Department
CA Department of Justice, Crime and Violence Prevention Center (not a POST participating agency)
CA Department of Justice, Division of Gambling Control
CA Department of Justice, Division Law Enforcement
CA Department of Justice Medi-Cal Fraud
CA Department of Mental Health
CA Department of Motor Vehicles
CA Department of Parks and Recreation
CA Department of Social Services
CA Department of Toxic Substances Control
CA Franchise Tax Board
CA Governor's Office of Criminal Justice Planning (not a POST participating agenc

CA California Highway Patrol
CA Horse Racing Board
CA Office of Emergency Services
CA Secretary of State Office of Investigation
CA State Controller
CA State Fair Police Department
CA State Lottery
CA State Public Defender (not a POST participating agency)
CA Youth Authority (not a POST participating agency)
Cabrillo Community College Police Department
Calaveras County Coroner (not a POST participating agency)

Calaveras County District Attorney
Calaveras County Sheriff's Department
Calexico Police Department
California City Police Department
California Criminalistics Institute (not a POST participating agency)
California Institute of Technology Police Department (not a POST participating agency)
Calipatria Police Department
Calistoga Police Department
Campbell Police Department
Capitola Police Department
Carlsbad Police Department
Carmel Police Department
Cathedral City Police Department
Ceres Department of Public Safety
Cerritos Community College District Police Department
Chapman University Department of Public Safety (not a POST participating agency
Chico Police Department
Chino Police Department
Chowchilla Police Department
Chula Vista Police Department
Citrus Community College Police Department (not a POST participating agency)
Citrus Heights Police Department (not a POST participating agency)
Claremont College Department of Campus Safety (not a POST participating agenc
Claremont Police Department
Clayton Police Department
Clearlake Police Department
Cloverdale Police Department
Clovis Police Department
Clovis Unified School District Police Department
Coalinga Police Department
Colma Police Department
Colton Police Department
Colusa County District Attorney
Colusa County Sheriff's Department
Colusa Police Department
Compton Unified School District Police Department
Concord Police Department
Concordia University Department of Campus Safety and Security (not a POST participating agency)
Contra Costa Community College District Police Department
Contra Costa County District Attorney
Contra Costa County Sheriff's Department/Coroner
Corcoran Police Department
Corning Police Department
Corona Police Department
Coronado Police Department
Costa Mesa Department of Communications
Costa Mesa Police Department
Cosumnes River College Police Department (not a POST participating agency)
Cuyamaca College Police Department (not a POST participating agency)
Cotati Police Department
Covina Police Department
CPSU Pomona Department of Public Safety
CPSU San Luis Obispo Police Department
Crescent City Police Department
CSU Chancellor's Office
CSU Bakersfield Department of Public Safety
CSU Channel Islands Police Department
CSU Chico Department of Public Safety
CSU Dominguez Hills Department of Public Safety
CSU Fresno Department of Public Safety
CSU Fullerton Department of Public Safety
CSU Hayward Department of Public Safety
CSU Humboldt Department of Public Safety
CSU Long Beach Department of Public Safety
CSU Los Angeles Department of Public Safety
CSU Monterey Bay Department of Public Safety
CSU Northridge Department of Public Safety
CSU Sacramento Department of Public Safety
CSU San Bernardino Department of Public Safety
CSU San Diego Department of Public Safety

CSU San Francisco Department of Public Safety
CSU San Jose Department of Public Safety
CSU San Marcos Department of Public Safety
CSU Sonoma Department of Public Safety
CSU Stanislaus Department of Public Safety
Cuesta College Department of Public Safety
Culver City Police Department
Cypress Police Department

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Daly City Police Department
Dana Point Police Department (not a POST participating agency)
Danville Police Department (not a POST participating agency)
Davis Police Department
De Anza College Police Department (not a POST participating agency)
Del Norte County District Attorney
Del Norte County Sheriff's Department
Del Rey Oaks Police Department
Delano Police Department
Desert Hot Springs Police Department
Dinuba Police Department
Dixon Police Department
Dos Palos Police Department
Downey Police Department

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East Bay Regional Parks District Department of Public Safety
East Palo Alto Police Department
El Cajon Police Department
El Camino Community College District Police Department
El Centro Police Department
El Cerrito Police Department
El Dorado County District Attorney (not a POST participating agency)
El Dorado County Sheriff's Department
El Monte Police Department
El Segundo Police Department
Emeryville Police Department
Escalon Police Department
Escondido Police Department
Etna Police Department
Eureka Police Department
Exeter Police Department

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Fairfax Police Department
Fairfield Police Department
Farmersville Police Department
Ferndale Police Department
Firebaugh Police Department
Folsom Police Department
Fontana Police Department
Fontana Unified School District Police Department
Foothill/De Anza Community College District Police Department
Fort Bragg Police Department
Fortuna Police Department
Foster City Police Department
Fountain Valley Police Department
Fowler Police Department
Fremont Police Department
Fremont-Newark Community College District Police Department
Fresno City College Police Department (not a POST participating agency)
Fresno County District Attorney
Fresno County Sheriff's Department
Fresno Police Department
Fresno Yosemite International Airport
Fullerton Police Department

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Galt Police Department
Garden Grove Police Department
Gardena Police Department
Gavilan College Campus Security Department (not a POST participating agency)
Gilroy Police Department
Glendale Community College District Police Department
Glendale Police Department
Glendale Police Department Park Rangers
Glendora Police Department
Glenn County District Attorney
Glenn County Sheriff's Department/Coroner
Gonzales Police Department
Grant Joint Union High School District Police Department
Grass Valley Police Department
Greenfield Police Department
Gridley Police Department
Grossmont / Cuyamaca Community College District Police Department
Grover Beach Police Department
Guadalupe Police Department
Gustine Police Department

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Hacienda - La Puente School District Police and Safety Department
Half Moon Bay Police Department
Hanford Police Department
Hawthorne Police Department
Hayward Police Department
Healdsburg Police Department
Hemet Police Department
Hercules Police Department
Hermosa Beach Police Department
Hesperia Unified School District Police Department
Hillsborough Police Department
Hollister Police Department
Holtville Police Department
Humboldt County Coroner
Humboldt County District Attorney
Humboldt County Sheriff's Department
Humboldt Department of Welfare/Investigations
Huntington Beach Police Department
Huntington Park Police Department
Huron Police Department

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Imperial County District Attorney
Imperial County Sheriff's Department
Imperial Police Department
Indio Police Department
Inglewood Police Department
Inglewood Unified School District Police Department
Inyo County District Attorney
Inyo County Sheriff's Department
Ione Police Department
Irvine Police Department
Irvine Valley Community College District Police Department
Irwindale Police Department
Isleton Police Department

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Jackson Police Department

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Kensington Police Department
Kerman Police Department
Kern County District Attorney
Kern County District of Parks & Recreation Police Department
Kern County Sheriff's Department
Kern High School District Police Department
King City Police Department
Kings County District Attorney
Kings County Sheriff's Department
Kings County Human Services Agency, Fraud Bureau
Kingsburg Police Department

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La Habra Police Department
La Mesa Police Department
La Palma Police Department
La Verne Police Department
Laguna Beach Police Department
Lake County District Attorney
Lake County Sheriff's Department
Lake Hemet Municipal Water District
Lake Shastina District Police Department
Lakeport Police Department
Lassen County District Attorney
Lassen County Sheriff's Department
Lemoore Police Department
Lincoln Police Department
Lindsay Department of Public Safety
Livermore Police Department
Livingston Police Department
Lodi Police Department
Lompoc Police Department
Long Beach Police Department
Long Beach Unified School District Safety Department (not a POST participating agency)
Los Alamitos Police Department
Los Altos Police Department
Los Angeles City Department of General Services
Los Angeles City Housing Authority
Los Angeles County Coroner
Los Angeles County District Attorney
Los Angeles County Probation Department (not a POST participating agency)
Los Angeles County Public Safety
Los Angeles County Sheriffs Department
Los Angeles Department of Transportation Investigations (not a POST participating agency)
Los Angeles Department of Park Rangers (not a POST participating agency)
Los Angeles Police Department
Los Angeles Port Police Department
Los Angeles Unified School District Police Department
Los Angeles World Airports Police Department
Los Banos Police Department
Los Gatos Police Department
Los Rios Community College District Police Department
Loyola Marymount University Office of Public Safety (not a POST participating agency)

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Madera County District Attorney
Madera County Sheriff's Department
Madera Police Department
Mammoth Lakes Police Department
Manhattan Beach Police Department
Manteca Police Department
Maricopa Police Department
Marin Community College District Police Department
Marin County Coroner
Marin County District Attorney

Marin County Sheriff's Department
Marina Department of Public Safety
Mariposa County District Attorney
Mariposa County Sheriff's Department
Martinez Police Department
Marysville Police Department
Maywood Police Department
Mendocino County District Attorney
Mendocino County Sheriff's Department
Menlo Park Police Department
Merced County District Attorney
Merced County Sheriff's Department
Merced Police Department
Mill Valley Police Department
Millbrae Police Department
Mills College Department of Public Safety (not a POST participating agency)
Milpitas Police Department
Mira Costa Community College District Police Department
Modesto Police Department
Modoc County District Attorney
Modoc County Sheriff's Department
Mono County District Attorney
Mono County Sheriff's Department
Monrovia Police Department
Montclair Police Department
Montebello Police Department
Montebello Unified School District Police Department
Monterey County District Attorney
Monterey County Emergency Communication
Monterey County Sheriff's Department
Monterey Park Police Department
Monterey Police Department
Monterey Peninsula Airport District Police Department
Moorpark College Police Department (not a POST participating agency)
Moraga Police Department
Morgan Hill Police Department
Morro Bay Police Department
Mount San Jacinto Community College District Police Department
Mt. Shasta Police Department
Mountain View Emergency Communications
Mountain View Police Department
Murrieta Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Napa County District Attorney
Napa County Sheriff's Department
Napa Police Department
Napa Valley College Department of Public Safety
National City Police Department
Nevada City Police Department
Nevada County District Attorney
Nevada County Sheriff's Department
Newark Police Department
Newman Police Department
Newport Beach Police Department
Novato Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Oakdale Police Department
Oakland City Housing Authority Police Department
Oakland Park Rangers
Oakland Police Department
Occidental College Department of Campus Safety (not a POST participating agenc

Oceanside Police Department
Oceanside Small Craft Harbor District
Ohlone College Police Department (not a POST participating agency)
Ontario International Airport

Ontario Police Department
Orange County Auto Theft Task Force (OCATT) (not a POST participating agency)
Orange County District Attorney
Orange County District Attorney Welfare Fraud
Orange County Probation Department (not a POST participating agency)
Orange County Sheriff's Department/Coroner
Orange Police Department
Orland Police Department
Oroville Police Department
Oxnard Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Pacific Grove Police Department
Pacific Union College Department of Public Safety (not a POST participating agenc
Pacifica Police Department
Palm Springs Police Department
Palo Alto Police Department
Palomar Community College District Police Department
Palos Verdes Estates Police Department
Paradise Police Department
Parlier Police Department
Pasadena City College District Police Department
Pasadena Police Department
Pasadena Unified School District Police Department
Paso Robles Police Department
Pepperdine University Public Safety Department (not a POST participating agency)
Petaluma Police Department
Piedmont Police Department
Pinole Police Department
Pismo Beach Police Department
Pittsburg Police Department
Placentia Police Department
Placer County District Attorney
Placer County Probation Department (not a POST participating agency)
Placer County Sheriff's Department
Placerville Police Department
Pleasant Hill Police Department
Pleasanton Police Department
Plumas County District Attorney (not a POST participating agency)
Plumas County Sheriff's Department
Pomona Police Department
Pomona Unified School District Police Department
Port Hueneme Police Department
Porterville Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Red Bluff Police Department
Redding Police Department
Redlands Police Department
Redondo Beach Police Department
Redwood City Police Department
Reedley Police Department
Rialto Police Department
Richmond Police Department
Ridgecrest Police Department
Rio Dell Police Department
Rio Vista Police Department
Ripon Police Department
Riverside Community College District Police Department
Riverside County District Attorney
Riverside County Public Social Services
Riverside County Sheriff's Department
Riverside Police Department
Rocklin Police Department
Rohnert Park Police Department
Roseville Police Department
Ross Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Sacramento City College Police Department
Sacramento County Coroner
Sacramento County District Attorney
Sacramento County Human Assistance
Sacramento County Sheriff's Department
Sacramento Police Department
Saddleback Community College Police Department
Saint Helena Police Department
Salinas Police Department
San Anselmo Police Department
San Benito County Communications Center
San Benito County District Attorney
San Benito County Marshal
San Benito County Sheriff's Department
San Bernardino County Coroner
San Bernardino County District Attorney
San Bernardino County Sheriff's Department
San Bernardino Police Department
San Bernardino Unified School District Police Department
San Bruno Police Department
San Carlos Police Department
San Diego Community College District Police Department
San Diego City Schools Police Department
San Diego County District Attorney
San Diego County Medical Examiner (not a POST participating agency)
San Diego County Probation Department (not a POST participating agency)
San Diego County Sheriff's Department
San Diego Harbor Police Department, Port Of
San Diego Police Department
San Fernando Police Department
San Francisco Community College District Police Department
San Francisco County Coroner
San Francisco County District Attorney
San Francisco County Emergency Communications
San Francisco County Sheriff's Department
San Francisco Municipal Railway Police Department
San Francisco Police Department
San Gabriel Police Department
San Jacinto Police Department
San Joaquin County District Attorney
San Joaquin County Sheriff's Department
San Joaquin Delta College Police Department
San Joaquin County Probation Department (not a POST participating agency)
San Jose Police Department
San Jose Unified School District Police Department
San Jose / Evergreen Community College District Police Department
San Leandro Police Department
San Luis Obispo County District Attorney
San Luis Obispo County Sheriff's Department
San Luis Obispo Police Department
San Marino Police Department
San Mateo County Coroner
San Mateo County District Attorney
San Mateo County Public Safety Communications Center
San Mateo County Sheriff's Department
San Mateo Police Department
San Pablo Police Department
San Rafael Police Department
San Ramon Police Department (not a POST participating agency)
Sand City Police Department
Sanger Police Department
Santa Ana Police Department
Santa Ana Unified School District Police Department
Santa Barbara County District Attorney
Santa Barbara County Sheriff's Department
Santa Barbara County District Attorney Welfare Fraud
Santa Barbara Police Department
Santa Clara City Communications Department
Santa Clara County Communications Department

Santa Clara County District Attorney
Santa Clara County District Attorney - Welfare Fraud
Santa Clara County Sheriff's Department
Santa Clara Police Department
Santa Clara University Department of Campus Safety (not a POST participating agency)
Santa Cruz County District Attorney
Santa Cruz County Sheriff's Department
Santa Cruz Police Department
Santa Fe Springs Police Services (not a POST participating agency)
Santa Maria Police Department
Santa Monica Community College District Police Department
Santa Monica Police Department
Santa Paula Police Department
Santa Rosa Junior College Police Department
Santa Rosa Police Department
Sausalito Police Department
Scotts Valley Police Department
Seal Beach Police Department
Seaside Police Department
Sebastopol Police Department
Selma Police Department
Sequoias, College of the, Police Department
Shafter Police Department
Shasta Area Safety Communications Agency
Shasta County District Attorney
Shasta County Marshal
Shasta County Sheriff's Department
Sierra County District Attorney (not a POST participating agency)
Sierra County Sheriff's Department
Sierra Madre Police Department
Signal Hill Police Department
Simi Valley Police Department
Siskiyou County District Attorney
Siskiyou County Sheriff's Department
Snowline Joint Unified School District Police Department
Solano Community College Police Department
Solano County District Attorney
Solano County Sheriff's Department
Soledad Police Department
Sonoma County District Attorney
Sonoma County Human Services Department
Sonoma County Probation Department (not a POST participating agency)
Sonoma County Sheriff's Department
Sonoma Police Department
Sonora Police Department
South Bay Regional Public Communications Authority
South Gate Police Department
South Lake Tahoe Police Department
South Pasadena Police Department
South San Francisco Police Department
Southwestern Community College Police Department
Stallion Springs Police Department
Stanford University Department of Public Safety (not a POST participating agency)
Stanislaus County District Attorney
Stanislaus County Sheriff's Department
Stanislaus Regional 9-1-1
State Center Community College District Police Department
Stockton Police Department
Stockton Unified School District Police Department
Suisun City Police Department
Sunnyvale Department of Public Safety
Supreme Court of California
Susanville Police Department
Sutter County District Attorney
Sutter County Sheriff's Department
Sutter Creek Police Department

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Taft Police Department

Tehama County Coroner
Tehama County District Attorney
Tehama County Sheriff's Department
Temecula Police Department (contracted through Riverside County Sheriff's Department)
Tiburon Police Department
Torrance Police Department
Tracy Police Department
Trinidad Police Department
Trinity County District Attorney
Trinity County Marshal
Trinity County Sheriff's Department
Truckee Police Department
Tulare County District Attorney
Tulare County Probation Department (not a POST participating agency)
Tulare County Sheriff's Department
Tulare Police Department
Tulelake Police Department
Tuolumne County District Attorney
Tuolumne County Sheriff's Department
Turlock Police Department
Tustin Police Department
Twin Cities Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

UC Berkeley Police Department
UC Davis Police Department
UC Irvine Police Department
UC Los Angeles Police Department
UC Riverside Police Department
UC San Diego Police Department
UC San Francisco Police Department
UC Santa Barbara Police Department
UC Santa Cruz Police Department
Ukiah Police Department
Union City Police Department
Union Pacific Railroad
University of La Verne Campus Safety Department (not a POST participating agency)
Upland Police Department
U.S. Attorney for the Central District of California (not a POST participating agency)
University of San Diego Public Safety Department (not a POST participating agenc

University of San Francisco Public Safety Department (not a POST participating agency)
University of Southern California Department of Public Safety (not a POST participating agency)

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Vacaville Police Department
Vallejo Police Department
Ventura County Community College District Police Department
Ventura County Medical Examiner (not a POST participating agency)
Ventura County District Attorney
Ventura County Sheriff's Department
Ventura Harbor Patrol (not a POST participating agency)
Ventura Police Department
Vernon Police Department
Visalia Police Department

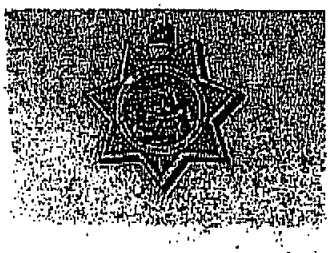
A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Walnut Creek Police Department
Walnut Valley Unified School District Police Department (not a POST participating agency)
Watsonville Police Department
Weed Police Department

West Cities Police Communications Center
West Contra Costa Unified School District Police Department
West Covina Communications District
West Covina Police Department
West Sacramento Police Department
West Valley-Mission Community College District Police Department
Westminster Police Department
Westmorland Police Department
Wheatland Police Department
Whittier College Police Department (not a POST participating agency)
Whittier Police Department
Williams Police Department
Willits Police Department
Willows Police Department
Windsor Police Department (not a POST participating agency)
Winters Police Department
Woodlake Police Department
Woodland Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y

Yolo County Communications Emergency Services Agency
Yolo County District Attorney
Yolo County Sheriff's Department
Yreka Police Department
Yuba City Police Department
Yuba County Sheriff's Department
Yuba Community College District Police Department
Yucaipa Police Department (not a POST participating agency)



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THIS FILE WAS ORIGINALLY APPROVED ON 10-07-02 WITH AN EFFECTIVE DATE OF 7-01-03

DUE TO FINANCIAL CONSTRAINTS, AN EMERGENCY FILE WAS APPROVED DELAYING THE EFFECTIVE DATE TO 7-1-04

REGULAR RULEMAKING FILE WAS SUBMITTED TO REQUEST AN EFFECTIVE DATE OF 7-1-04

REGULAR RULEMAKING FILE WAS SUBMITTED TO REQUEST AN EFFECTIVE DATE OF 7-1-04

Commission on Peace Officer Standards and Training

NOTICE OF PROPOSED REGULATORY ACTION: AMEND COMMISSION REGULATIONS 1004, 1005, AND COMMISSION PROCEDURE D-13

FIELD TRAINING PROGRAM

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST), pursuant to the authority vested by Sections 13503 of the Penal Code (powers of the Commission on POST) and Section 13506 (authority for Commission on POST to adopt regulations), and in order to interpret, implement and make specific Sections 13510 (authority for the Commission on POST to adopt and amend rules establishing minimum standards for California local law enforcement officers) and 13510.5 of the Penal Code (authority for the Commission on POST to adopt and amend standards for certain other designated California peace officers), proposes to adopt, amend or repeal regulations in Chapter 2 of Title 11 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission, at their April 23, 2003 meeting, approved staff's proposal to amend the implementation date of the above referenced Commission Regulations and Procedure from July 1, 2003 to July 1, 2004.

These amended regulations and procedure were the result of numerous meetings with a group of Subject Matter Experts (SMEs), hereafter refered to as the POST Field Training Advisory Council. The original implementation date of July 1, 2003 was selected based on the ability of the Council to meet as frequently as they had previously met and the ability to contract with an instructional designer for assistance in redesigning the collaborative courses. Due to budgetary and personnel constraints, that Council has not met since the regulation changes were approved by the Commission, nor has POST been able to contract with any instructional designers.

The original changes were meant to encourage and allow agencies time to review their current field training programs, study the changing trends of field training, and then, if desired, modify their programs to include the options offered by POST's new, broadened regulations. The changes were also meant to provide for more interactive and enhanced curriculum within the field training courses to increase a Field Training Officer's (FTO's) and Field Training Supervisor/Administrator/Coordinator's (SAC's) ability to create, train in, and operate the best, agency-specific field training program they can.

The budgetary and personnel constraints of the last fiscal year and the pending constraints of the upcoming fiscal year(s), will not allow POST to adequately prepare to meet the needs of our agencies prior to the original implementation date of July 1, 2003.

Much of the work involved in redesigning the POST model Field Training Program Guide and the curriculm content for the field training courses has been and will continue to be done by POST staff. It will then be presented to the Council, as well as other SMEs, for review and revision at fewer, shorter meetings.

POST and the Field Training Advisory Council recognize that many agencies already have field training programs that meet or exceed the revised training standards, but that many others may need/want more time to review the revisions and implement them in an appropriate agency-specific field training program. Additionally, both POST and the Field Training Advisory Council, want to ensure that the revised curriculums of the field training courses are well designed and specific to the needs of each of the related field training assignments.

This action calls for an extension for implementing the revised field training requirements to July 1, 2004 and minor language modifications. This will allow POST and client agencies more time to better prepare high quality programs and courses. All current field training personnel prior to the implementation date will be 'grandfathered' into the regulations. Agencies would then have until July 1, 2005 to train those assigned to a Field Training SAC position and July 1, 2007 to meet the FTO update training requirement.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than 5:00 p.m. on August 4, 2003. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, fax number (916) 227-2801, or email at ken.obrien@post.ca.gov

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8 any interested person, or his or her duly authorized representative, may request in writing, no later than 15 days prior to the close of the public comment period, that a public hearing be held.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date of which the revised text is made available.

TEXT OF PROPOSAL

Copies of the Initial Statement of Reasons and exact language of the proposed action may be obtained by submitting a request in writing to the contact person at the address below. This address also is the location of all information considered as the basis for these proposals. The information will be maintained for inspection during the Commissions' normal business hours (8 a.m. to 5 p.m., Monday through Friday).

Copies of the Final Statement of Reasons, once it has been prepared pursuant to subdivision (a) of Section 11346.9, may be obtained from the address at the end of this notice.

ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None
Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states, and has found that the proposed amendment of Regulations 1004, 1005, and Commission Procedure D-13, will have no effect on California businesses, including small businesses, because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

In order to take this action, the Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning written material pertaining to the proposed action should be directed Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891, fax number (916) 227-3895 or e-mail at leah.cherry@post.ca.gov. The back-up contact person as well as inquiries concerning the substance of the proposed action/text for the proposed changes should be directed to Kate Singer, Senior Consultant, at (916) 227-3935, fax number (916) 227-6932 or e-mail at kate.singer@post.ca.gov

INTERNET ACCESS

Select Regulations, then Notices of Proposed Regulation Changes to view proposed regulatory actions on POST's home page (www.post.ca.gov).

AMENDMENT OF COMMISSION REGULATIONS 1004, 1005, AND
COMMISSION PROCEDURE D-13

FIELD TRAINING PROGRAM

1004. Field Training Program

(a) Program Requirements: Any department which employs peace officers and/or Level I Reserve peace officers shall have a POST-approved Field Training Program. Requests for approval of a department's Field Training Program shall be submitted on POST form 2-229 (Rev. 04/02), signed by the department head attesting to the adherence of the following program requirements:

(1) The Field Training Program shall be delivered over a minimum of 10 weeks and based upon the structured learning content as specified in PAM section D-13.

[1004(a)(2) through (e) . . . cont.]

NOTE: Authority cited: Sections 13503, 13506, 13510, and 13510.5 Penal Code.
Reference: Sections 13503, 13506, 13510, and 13510.5 Penal Code.

AMENDMENT OF COMMISSION REGULATIONS 1004, 1005, AND
COMMISSION PROCEDURE D-13

FIELD TRAINING PROGRAM

1005. Minimum Standards for Training. (Reference Regulation 1007 and Commission Procedure H for *reserve peace officer* training standards.)

(a) Minimum Entry-Level Training Standards (Required). ~~More specific information regarding basic training requirements is located in Commission Procedure D-1, D-13, D-14 and Regulation Section 1081.~~

(1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) [peace officers whose primary duties are investigative], and 1005(a)(4) [coroners or deputy coroners], shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers. Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5(below), following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

(B) Exemptions to the Field Training Program Requirement: An officer is exempt from the Field Training Program requirement following completion of the Regular Basic Course:

1. While the officer's assignment remains custodial related, or

2. If the officer's employing department does not provide general law enforcement uniformed patrol services and the department has been granted an exemption as specified in Regulation 1004, or

3. If the officer is a lateral entry officer possessing a POST Basic Certificate and who has either:

   a) completed a POST-approved Field Training Program, or

   b) ~~obtained~~ one year previous experience performing general law enforcement uniformed patrol duties, or

4. If the officer was a Level I Reserve and is appointed to a full-time peace officer position within the same department and has previously completed the department's entire POST-approved Field Training Program within the last 12 months of the new appointment, or has the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement uniformed patrol officer, or

5 If the officer's employing department has obtained approval of a field training compliance extension request provided for in Regulation 1004.

[(a)(2) through PAM section D-4 *** continued]

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, January 1, 1999, ~~July 1, 2003~~and July 1, 2004 is herein incorporated by reference.

PAM section H-3 adopted effective June 15, 1990, and amended effective July 1, 1992, is herein incorporated by reference.

[The POST Basic Academy Physical through The document, *Training Specifications for the Reserve* *** continued]

[(a)(2) through PAM section D-4 *** continued]

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code. Reference: Sections 832, 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

AMENDMENT OF COMMISSION REGULATIONS 1004, 1005, AND
COMMISSION PROCEDURE D-13

FIELD TRAINING PROGRAM

POST ADMINISTRATIVE MANUAL

COMMISSION PROCEDURE D-13

FIELD TRAINING

Purpose

13-1. Purpose: This Commission procedure implements the process for requesting approval of Field Training Programs established by law enforcement agencies pursuant to Section 1004. It also establishes the minimum content and curriculum requirements for the Field Training Program, Field Training Officer Course, Field Training Supervisor/ Administrator/Coordinator (SAC) Course, and Field Training Officer Update Course.

Specific Requirements

13-2. Field Training Program Description and Approval Process: Regulation 1005(a)(1) specifies the basic training requirements for peace officers as successful completion of the Regular Basic Course and a POST-approved Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of general law enforcement uniformed patrol services. Field Training Programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course. This field training does not extend to persons serving in ride-along, observer capacities.

Any department seeking approval of their Field Training Program shall submit a Field Training Program package (described in (a) below) along with an Application For POST Approved Field Training Program, POST form 2-229 (Rev. 04/02) signed by the department head. Prior to the submission of a package and application, a review should be made of the department's present policies, practices, and structured learning content versus POST's minimum standards/requirements for an approved Field Training Program as stated in Regulation 1004 and section 13-3 below. Where needed, the department shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within 30 working days regarding the completeness of the package and application. A decision for approval shall be reached within 45 working days from the date the application is received. If a department's Field Training Program is disapproved, the department shall, within 60 days, resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

(a) A Field Training Program package submitted for approval shall minimally include:

(1) a written description of the department's specific selection process for Field Training Officers;

(2) an outline of the training proposed for department trainees;

(3) a written description of the evaluation process for trainees and Field Training Officers; and,

(4) copies of supporting documents (i.e., field training guides, learning matrixes, policies and procedures, and evaluation forms).

[D-13-3 through D-13-6 . . . cont.]

Historical Note:

Procedure D-13 was adopted and incorporated by reference into Commission Regulation 1005 on June 15, 1990, and amended on February 22, 1996, January 1, 1999, ~~and July 1, 2003~~and July 1, 2004.

Commission on Peace Officer Standards and Training

AMENDMENT OF COMMISSION REGULATIONS 1004, 1005,
AND COMMISSION PROCEDURE D-13
FIELD TRAINING PROGRAM

INITIAL STATEMENT OF REASONS

The Commission on Peace Officer Standards and Training (POST) proposes to amend Regulations 1004, 1005, and Commission Procedure D-13. The proposed amendments include:

- Extension of the implementation date of the changes to July 1, 2004, approved at the April 23, 2003 Commission meeting.
- Language modifications for clarification and accuracy.

~~Justification for Proposed Extension of Implementation Date~~

An extension to the implementation date (originally set for July 1, 2003) for amendments to Regulations 1004, 1005, and Procedure D-13 is proposed. Budgetary and personnel constraints over the last fiscal year have caused the delay in redesigning the *POST Field Training Program Guide* and the curriculum content for the field training courses; all of which are required when the regulations take effect. Extending the implementation date to July 1, 2004 will allow POST and client agencies more time to better prepare high quality programs and courses.

Justification for Proposed Amendment to Commission Regulation 1004

1004(a)(1) The word "and" has been added for clarification purposes.

Justification for Proposed Amendments to Regulation 1005

1005(a) Changes made for clarification and accuracy and do not impose any regulatory requirement. The training standards listed under (a) refer to various entry-level positions. This language will reflect the entry-level requirements for each of the listed positions as well as eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses. The last sentence was redundant and removed.

1005(a)(1)(B)(3)(b) The word "obtained" is being deleted to reflect Commission approved language and for clarity.

1005(a)(1)(B)(4) The word "uniformed" is being added to reflect Commission approved language and for clarity.

Justification for Proposed Amendment to Commission Procedure D-13

D-13-2 The word "general" is added for clarification and consistency.

DUE TO FINANCIAL CONSTRAINTS, AN EMERGENCY FILE WAS APPROVED DELAYING THE EFFECTIVE DATE TO 7-1-04

Finding of Emergency

The Commission on Peace Officer Standards and Training finds that an emergency exists, and that the foregoing amendment is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

The Commission proposes to modify Regulation 1005 to change the effective date of previously approved OAL Regulatory Action Number 02-0827-01S. The reasons for this requested action are:

- budgetary and personnel constraints of the last fiscal year and the pending constraints of the upcoming fiscal year(s), will not allow POST to adequately prepare to meet the needs of our agencies prior to the original implementation date of July 1, 2003,
- provide agencies more time to review their current field training programs,
- study the changing trends of field training, and then, if desired/needed, modify their programs to include the options offered by POST's regulations.

Authority and Reference Citations

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code.
Reference: Sections 832, 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

Informative Digest

This regulation was previously amended and approved, with an effective date of July 1, 2003. POST is requesting postponing the effective date until July 1, 2004, to ensure structure and consistency in Field Training Programs and courses statewide, as well as accommodate new trends and methods that will enhance agencies missions and values in concert with POST's Strategic Plan. Due to POST and agency fiscal constraints, this additional year will allow agencies to develop, update, revise, and submit their programs to POST for approval.

Local Mandate Determination

This regulatory action does not impose a mandate on local agencies or school districts.

Declaration Relating to Impact on all California Businesses Including Small Businesses

The Commission on Peace Officer Standards and Training, in the development of the proposed regulation, has assessed the potential for adverse economic impact on businesses in California, including the ability of California businesses to compete with businesses in other states, and has found that the proposed amendment to Regulation 1005 will have no effect. This finding was based on the determination that the proposed amendments to Regulation 1005 in no way apply to businesses.

Cost Estimate

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to Any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Cost impact on Private Persons or Entities: None

Housing Costs: None

Alternatives Considered

No alternative considered by this agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

Assessment

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

Contact Person

Inquiries concerning the proposed action and requests for written material (regulation text and statement of reasons) pertaining to the proposed action should be directed to Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Blvd., Sacramento, CA 95816-7083, or by telephone at (916) 227-3891.

AMEND COMMISSION REGULATION 1005

FIELD TRAINING PROGRAM

1005. **Minimum Standards for Training.** (Reference Regulation 1007 and Commission Procedure H for *reserve peace officer* training standards:)

[1005(a) through PAM section D-4 *** continued]

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, January 1, 1999, and ~~July 1, 2003~~July 1, 2004, is herein incorporated by reference.

[PAM section D-14 through The document, *Training Specifications for Peace* *** continued]

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code.
Reference: Sections 832, 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

THIS FILE WAS ORIGINALLY APPROVED ON 10-07-02 WITH AN EFFECTIVE DATE OF 7-01-03

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

FINAL STATEMENT OF REASONS

The Initial Statement of Reasons located behind Tab C is herein incorporated by reference with the following additions:

PUBLIC COMMENT

Correspondence: Responses are filed behind Tab E, and summarized as follows:

Craig Hendricks, Sergeant, Arroyo Grande Police Department e-mailed the following concern:

- Level I peace officers hired by their own agency as full-time officers would only be exempt from the FTO requirement if they had completed the FTO program within 12 months of their appointment. He wanted to know the justification for this 12-month limitation; he stated that a Level I reserve with several years experience should not have to repeat the FTO program and may be more qualified than the Level I who just completed FTO.

    - POST's response was to propose an amendment to Commission Regulation 1005(a)(1)(B)4. that would permit an alternative to the 12-month limitation if a signed concurrence of the department head is obtained which attests to the individual's competence, based upon experience, and/or other field training as a solo general law enforcement patrol officer.

Oral Testimony:

Commander George Gascon, Los Angeles Police Department Training Group stated that his department, although not in opposition, had several concerns that he wished to see addressed:

- Clarification as to the FTO Coordinator. Will that be one individual, representing an entire department?

- 24 hours of training every 36 months is excessive, particularly in light of the fact that 14 hours of perishable skills training is also required. This would place a significant financial burden upon the Los Angeles Police Department because it has 800 FTOs. Not only is POST creating more hours but it is also dictating the type of training Los Angeles P.D. would have. This precludes departments from developing training that may be more relevant and reflective of the individual nature of each organization.

- Clarification of the precise meaning of the directive to have "supervisory review of the documentation" on a weekly basis.

Staff provided the following information in response to the above questions:

- The training is to be given to **one** individual who is identified by the agency. Large agencies are to determine, in-house, whether they wish to send more than one person to the training.
- The 24 hour requirement can be met two different ways:

  1) by completing the 24 hour POST certified course; or
  2) by completing the 24 hours in-house. However, if the requirement is met in this way, the agency must maintain accurate documentation.

- The following clarifying language has been added:

  Regulation 1004(a)(6) Trainee performance shall be:
  A) documented daily through journaling, daily training notes, or daily observation reports and shall be reviewed with the Trainee by the Field Training Officer, and
  B) monitored by the Field Training Program Supervisor/Administrator/ Coordinator (SAC), or designee, by review and signing of the DORs or by completing and signing of weekly written summaries of performance (Supervisor's Weekly Report, Coaching and Training Reports) and that those are reviewed with the trainee.

Commander Gascon stated that based upon the staff response, the Los Angeles Police Department is "o.k." with the proposed regulation.

LOCAL MANDATE DETERMINATION

This regulatory action does not impose a mandate on local agencies or school districts.

DECLARATION RELATING TO IMPACT ON ALL CALIFORNIA BUSINESSES INCLUDING SMALL BUSINESSES

The Commission on Peace Officer Standards and Training, in the development of the proposed regulations, has assessed the potential for adverse economic impact on businesses in California, including the ability of California business to compete with businesses in other states, and found that the proposed regulation addition will have no effect. This finding was based on the determination that the proposed regulation adoption of Commission Regulation 1012, and amendments to Commission Regulations 1001, 1004, 1005, and Commission Procedures D-13 in no way applies to businesses, including small businesses.

ALTERNATIVES CONSIDERED

No alternative considered by this agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed additions.

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

UPDATED INFORMATIVE DIGEST

There has been no change in the laws relating to the proposed regulation or to the effect of the proposed regulation, from that stated in the Notice of Proposed Regulatory Action, except for the following:

Proposed Regulation 1004.(a)(6)(B) text* was amended in response to field concerns/comments.

Proposed Regulation 1005.(a)(1)(B)4. text* was amended in response to concerns and comments made by Sergeant Craig Hendricks, Arroyo Grande Police Department.

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*Changes made to the original proposed text are shown in double underline.

July 19, 2002

Subject: **15-Day Notice: Field Training Program**

The proposed text on the above subject originally available for public comment until June 10, 2002 is proposed for amendment.

This notice of new proposed text is being mailed to all persons whose comments were received by POST during the original public comment period, and all persons who have requested notification from POST of the availability of such changes. A request for the modified text should be addressed to Leah Cherry, Associate Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816. The Commission will accept written comments on the modified text until August 5, 2002.

The new proposed text is attached with the new amended text denoted in double underline. If you have questions please contact me at the address above or call (916) 227-3891.

Sincerely,

Leah Cherry
Associate Analyst
Information Services Bureau

Attachment

April 10, 2002

NOTICE OF PUBLIC HEARING

BULLETIN: 02-08

SUBJECT: **PUBLIC HEARING ON THE FIELD TRAINING PROGRAM PROPOSAL TO ADOPT COMMISSION REGULATION 1012, AMEND COMMISSION REGULATIONS 1001, 1004, 1005, AND COMMISSION PROCEDURE D-13.**

A public hearing is being held to consider the proposal to adopt Commission Regulation 1012 and amend Commission Regulations 1001, 1004, 1005, and Procedure D-13 to ensure structure and consistency in Field Training Programs and courses statewide, as well as accommodate new trends and methods that will enhance agencies missions and values in concert with POST's Strategic Plan. The proposal calls for the new regulations and procedures to be implemented and in place by July 1, 2003. This lead time allows agencies to develop, update, revise, and submit their programs to POST for approval.

The public hearing will be held:

Date:	July 17, 2002	Place:	Hyatt Regency, San Francisco Airport 1333 Bayshore Highway
Time:	10:00 a.m.		Burlingame, CA 94010

Pursuant to provisions of the Administrative Procedures Act, the Commission invites input on this proposal. Written comments relative to the proposed actions must be received at POST no later than 4:30 p.m. on June 10, 2002.

The attached Notice of Proposed Regulatory Action provides details concerning the proposed regulatory changes. Inquires concerning the proposed action may be directed to Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891.

KENNETH J. O'BRIEN
Executive Director

Attachment

Commission on Peace Officer Standards and Training

NOTICE OF PUBLIC HEARING

NOTICE OF PROPOSED REGULATORY ACTION TO ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST), pursuant to the authority vested by Sections 13503 of the Penal Code (powers of the Commission on POST) and Section 13506 (authority for Commission on POST to adopt regulations), and in order to interpret, implement and make specific Sections 13510 (authority for the Commission on POST to adopt and amend rules establishing minimum standards for California local law enforcement officers) and 13510.5 of the Penal Code (authority for the Commission on POST to adopt and amend standards for certain other designated California peace officers), proposes to adopt, amend or repeal regulations in Chapter 2 of Title 11 of the California Code of Regulations. A public hearing on staff's proposal will be held before the full Commission on:

Date: July 17, 2002 Place: Hyatt Regency, San Francisco Airport
1333 Bayshore Highway
Time: 10:00 a.m. Burlingame, CA 94010

Notice is also hereby given that any interested person may present oral statements or arguments relevant to the action proposed during the public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In November 1997, the Commission approved regulation and procedure changes that provided for the mandating of standardized field training programs and the integration of those programs as part of the basic training requirement for all peace officers. Since that date, POST has had the opportunity to observe the effects of our current regulations and procedures (both at POST and at the participating agencies) and to meet with field trainers from various law enforcement agencies to determine the effectiveness and propriety of those regulations and procedures.

In order to meet law enforcement's changing needs and to implement necessary modifications to POST's current regulations and procedures related to field training, staff is proposing the following changes:

- Specific and structured training for Supervisors, Administrators, and Coordinators (SACs) of field training programs would be required within 12 months of assignment. The 24-hour Supervisor/Administrator/Coordinator (SAC) Course enables those assigned to the position to understand the ongoing dynamics of field training and it's relationship to the constantly changing Regular Basic Course. Additionally, this will ensure that anyone assigned to this position without prior field training experience understands the

criticality of the position and the field training program itself.

- Specific, structured, and on-going updated training for Field Training Officers (FTOs) would be required every three years following completion of the FTO Course. This training is necessary to keep FTOs apprised of the ongoing dynamics of field training and it's relationship to the constantly changing Regular Basic Course. Adult learning strategies and training methodologies are frequently changing. Specific, structured, and on-going training is a reasonable and logical requirement.

- A new definition of "uniformed patrol duties" that clearly establishes which peace officers are required to participate in a POST-Approved Field Training Program. This definition is supported by the POST Job Task Analysis (1998), the recent revision to the CPT requirement, and the integration of community oriented policing facets. This will clarify that specialized agencies (i.e. railroad police, ocean and small craft harbor police, etc.) are not mandated to comply with field training regulations specifically designed for uniformed patrol duties performed in marked patrol cars.

- Moving language currently in Procedure D-13 and determined to be regulatory into Regulation 1004 (former Regulation 1004 being renumbered to 1012) to meet Office of Administrative Law (OAL) requirements and provide more clarity for departments seeking approval of their field training programs. This also allows for a separation of regulations that impact departments (Regulation 1004) and those that impact individual officers (Regulation 1005).

- Modifications to Regulation 1005 makes the regulation more specific to the uniformed patrol assignment. It allows agencies to hire their own Level I Reserves as regular full-time uniformed patrol officers without requiring them to complete a POST-approved field training program over again (current regulations require them to repeat the program, which is costly, time-consuming, and redundant training), and ensures departmental compliance with the POST field training program regulations within two years (raising the professional standards of peace officer training throughout California).

- Updates to the original topics in Procedure D-13 (field training program content and course curricula) to include specific components of leadership, ethics, and community oriented policing; a POST Strategic Plan objective.

- Modifications that accommodate POST agencies who utilize alternative field training methods (i.e., problem-based field training programs) that better integrate leadership, ethics, community oriented policing, and problem oriented policing; another POST Strategic Plan objective.

This proposal calls for the regulations and procedure to be implemented and in place by July 1, 2003. This lead time allows agencies to develop, update, revise, and submit their programs to POST for approval. Field Training Officers hired after July 1, 2003 will have until July 1, 2004 to attend the required course. Field Training Officers assigned prior to July 1, 2003 will have until July 1, 2006 to meet the required FTO update training.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than 4:30 p.m. on June 10, 2002. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, fax number (916) 227-2801, or email at ken.obrien@post.ca.gov

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date of which the revised text is made available.

TEXT OF PROPOSAL

Copies of the Initial Statement of Reasons and exact language of the proposed action may be obtained by submitting a request in writing to the contact person at the address below. This address also is the location of all information considered as the basis for these proposals. The information will be maintained for inspection during the Commissions' normal business hours (8 a.m. to 5 p.m., Monday through Friday).

Copies of the Final Statement of Reasons, once it has been prepared pursuant to subdivision (a) of Section 11346.9, may be obtained from the address at the end of this notice.

ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states, and has found that the proposed adoption of Commission Regulation 1012 and amendment of Commission Regulations 1001, 1004, 1005 and Commission Procedure D-13, will have no effect on California businesses, including small businesses, because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

In order to take this action, the Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning written material pertaining to the proposed action should be directed Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891, fax number (916) 227-3895 or e-mail at leah.cherry@post.ca.gov. The back-up contact person as well as inquiries concerning the substance of the proposed action/text for the proposed curriculum revisions to the Field Training Program should be directed to Kate Singer, Senior Consultant, (916) 227-3935, fax number (916) 227-6932 or e-mail at kate.singer@post.ca.gov

INTERNET ACCESS

The Commission has posted on its website (www.post.ca.gov) the information regarding this proposed regulatory action. Select "Regulation Notices" from the topics listed on the website's home page.

Commission on Peace Officer Standards and Training

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

PUBLIC HEARING – JULY 17, 2002

SCRIPT

CHAIRMAN:

This hearing is regarding the proposed adoption and amendment of Commission Regulations 1001, 1004, 1005, 1012 and Commission Procedure D-13 – Field Training Program.

EXECUTIVE DIRECTOR:

This hearing is conducted in compliance with requirements set forth in the *Administrative Procedures Act*. The records of compliance are on file at POST headquarters. The proposed amendment is described in Agenda Item D, announced in POST Bulletin 02-08, and published in the California Regulatory Notice Register, as required by law.

I would like to remind any persons wishing to receive copies of any regulation revised as a result of the hearing today, to please be sure to list your name, agency, and mailing address on the sign-in sheet located at the registration table.

HEARING

CHAIRMAN:

We will now open the Hearing to consider the adoption and amendment of Commission Regulations 1001, 1004, 1005, 1012 and Commission Procedure D-13 – Field Training Program. This proposal would provide structure and consistency in Field Training Programs and courses statewide, and accommodate new trends and methods that will enhance agencies missions and values in concert with POST's Strategic Plan.

EXECUTIVE DIRECTOR:

Each written comment that has been received has been acknowledged and all concerns responded to in writing by staff. A summary of the written commentary that has been received will now be read into the record:

Craig Hendricks, Sergeant, Arroyo Grande Police Department e-mailed the following concerns regarding this proposal:

- Level I peace officers hired by their own agency as full-time officers would only be exempt from the FTO requirement if they had completed the FTO program within 12 months of their appointment. He wanted to know the justification for this 12-month limitation; he stated that a Level I reserve with several years experience should not have to repeat the FTO program and may be more qualified than the Level I who just completed FTO.

This concludes a summary of the written commentary. A response to the points raised will be given later in the public hearing.

CHAIRMAN:

We will now hear staff's report on the proposed adoption and amendment of Commission Regulations 1001, 1004, 1005, 1012 and Commission Procedure D-13 – Field Training Program.

STAFF:

(Bureau assigned will make report.)

CHAIRMAN:

We will now receive, for the record, testimony from the audience. Persons testifying on the issue before us now are requested to please state their full name and agency affiliation.

Those who **oppose the recommendation**, please come forward.

Those who **support the recommendation**, please come forward.

There being no further testimony, the Public Hearing to adopt and amend Commission Regulations 1001, 1004, 1005, 1012 and Commission Procedure D-13 – Field Training Program, is concluded.

The California Code of Regulations requires POST to list each objection or recommendation made by the public, how the proposed action now under consideration is to be changed to accommodate each concern or recommendation, or the reasons for making no change. The Chair calls upon staff to address each concern or recommendation.

EXECUTIVE DIRECTOR:

Sergeant Hendricks's concerns:

- Level I peace officers hired by their own agency as full-time officers would only be exempt from the FTO requirement if they had completed the FTO program within 12 months of their appointment. He wanted to know the justification for this 12-month limitation; he stated that a Level I reserve with several years experience should not have to repeat the FTO program and may be more qualified than the Level I who just completed FTO.

  - POST's response was to propose an amendment to Commission Regulation 1005(a)(1)(B)4. that would permit an alternative to the 12-month limitation if a signed concurrence of the department head is obtained which attests to the individual's competence, based upon experience, and/or other field training as a solo general law enforcement patrol officer.

CHAIRMAN:

Having considered staff's recommendations and the written and oral testimony received, the Chair will now entertain a motion regarding the adoption and amendment of Commission Regulations 1001, 1004, 1005, 1012 and Commission Procedure D-13 – Field Training Program.

Commission on Peace Officer Standards and Training

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

1001. Definitions.

[(a) through (mm) * * * continued]

(nn) "Uniformed patrol duties" are general law enforcement duties which include the detection and investigation of crime, patrol of a geographic area, responding to the full range of requests for police services, general enforcement of all state and local laws including physical arrests of suspects, and working with the community to reduce crime and address community concerns. These duties are performed by peace officers, wearing a department uniform, carrying [redacted] and utilizing a marked emergency vehicle.

NOTE: Authority cited: Sections 13506 and 13510.3, Penal Code.
Reference: Sections 13503, 13507, 13510, 13510.1, 13510.3, 13510.5, and 13523, Penal Code.

DOUBLE UNDERLINE TEXT
Commission on Peace Officer Standards and Training

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

1005. Minimum Standards for Training. ~~[Effective 7-1-2000].~~ (Reference Regulation 1007 and Commission Procedure H for *reserve peace officer* training standards.)

(a) Minimum~~Basic~~ Training Standards (Required). More specific information regarding basic training requirements is located in Commission Procedure D-1, D-13, D-14 and Regulation Section 1081.

[(a)(1) *** continued]

(A) **Field Training Program Requirement:** Every peace officer, except Reserve Levels II and III and those officers described in sections (~~A~~B)1-45(below), following completion of the Regular Basic Course and **before** being assigned to perform **general** law enforcement **uniformed patrol duties** without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

(B) **Exemptions to the Field Training Program Requirement:** An officer **is exempt** from the Field Training Program requirement following completion of the Regular Basic Course:

1. While the officer's assignment remains custodial related, **or**
2. If the officer's employing ~~agency~~department does not provide general law enforcement uniformed patrol services and the department has been granted an exemption as specified in Regulation 1004, **or**
3. ~~If the officer is a lateral entry officer possessing a Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or~~
3. If the officer is a lateral entry officer possessing a POST Basic Certificate and who has either:
   c) completed a POST-approved Field Training Program, or
   d) obtained one year previous experience performing general law enforcement uniformed patrol duties, or
4. If the officer was a Level I Reserve and is appointed to a full-time peace officer position within the same department and has previously completed

the department's entire POST-approved Field Training Program within the last 12 months of the new appointment, or

45 If the officer's employing ~~agency~~department has obtained ~~a waiver~~ ~~as~~approval of a field training compliance extension request provided for in ~~PAM section D-13~~Regulation 1004.

[(a)(2) through PAM section D-4 *** continued]

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, ~~and amended effective~~ January 1, 1999, and * is herein incorporated by reference.

PAM section H-3 adopted effective June 15, 1990, and amended effective July 1, 1992, is herein incorporated by reference.

~~The POST Field Training Guide (1988) (A Model POST Field Training Program) Section II, pages II-1 through II-39, is herein incorporated by reference effective June 15, 1990.~~

[The POST Basic Academy Physical through The document, *Training Specifications for the Reserve* *** continued]

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code.
Reference: Sections 832; 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

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* Date to be filled in by OAL.

the department's entire POST-approved Field Training Program within the last 12 months of the new appointment, or has the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement patrol officer, or

45 If the officer's employing ~~agency~~department has obtained ~~a waiver as~~approval of a field training compliance extension request provided for in ~~PAM section D-13~~Regulation 1004.

[(a)(2) through PAM section D-4 *** continued]

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, ~~and amended effective~~ January 1, 1999, and * is herein incorporated by reference.

PAM section H-3 adopted effective June 15, 1990, and amended effective July 1, 1992, is herein incorporated by reference.

~~The POST Field Training Guide (1988) (A Model POST Field Training Program) Section II, pages II-1 through II-39, is herein incorporated by reference effective June 15, 1990.~~

[The POST Basic Academy Physical through The document, *Training Specifications for the Reserve* *** continued]

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code.
Reference: Sections 832, 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

* Date to be filled in by OAL.

NEW TEXT

the department's entire POST-approved Field Training Program within the last 12 months of the new appointment, or has the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement patrol officer, **or**

45 If the officer's employing ~~agency~~department has obtained ~~a waiver as~~approval of a field training compliance extension request provided for in ~~PAM section D-13~~Regulation 1004.

[(a)(2) through PAM section D-4 *** continued]

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, ~~and amended effective~~ January 1, 1999, and July 1, 2003 is herein incorporated by reference.

PAM section H-3 adopted effective June 15, 1990, and amended effective July 1, 1992, is herein incorporated by reference.

~~The POST Field Training Guide (1988) (A Model POST Field Training Program) Section II, pages II-1 through II-39, is herein incorporated by reference effective June 15, 1990.~~

[The POST Basic Academy Physical through The document, *Training Specifications for the Reserve* *** continued]

NOTE: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code.
Reference: Sections 832, 832.3, 832.3(f) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13
FIELD TRAINING PROGRAM

POST ADMINISTRATIVE MANUAL

COMMISSION PROCEDURE D-13

FIELD TRAINING

Purpose

13-1. Purpose: This Commission procedure implements the ~~minimum standards/requirements~~process for requesting approval of ~~f~~Field ~~t~~Training ~~p~~Programs established by law enforcement agencies pursuant to Sections 1004. ~~1005(a)(1) and (a)(2) and the collaborative field training courses~~. It also establishes the minimum content and curriculum requirements for the Field Training Program, Field Training Officer Course, Field Training Supervisor/ Administrator/Coordinator (SAC) Course, and Field Training Officer Update Course.

Specific Requirements

~~13-2. Requirements for Field Training: The minimum content and approval requirements for field training programs are specified in section 13-3. The minimum content for collaborative courses is described in section 13-5, Field Training Officer Course; section 13-6, Field Training Administrator's Course; and section 13-7, Field Training Officer's Update Course. Requirements for certification and presentation of these collaborative courses are specified in Regulations 1051-1056. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course.~~

13-~~3~~2. Field Training Program Description and Approval ~~Requirements~~Process: Regulations 1005(a)(1) ~~and (a)(2) specify~~ specifies the basic training requirements for ~~regular~~ peace officers as successful completion of the Regular Basic Course and a POST-approved Field Training Program. The Field Training Program is designed to provide a training continuum which integrates the acquired knowledge and skills from the Regular Basic Course with the practical application of law enforcement uniformed patrol services. Field Training ~~p~~Programs approved by POST are restricted to supervised field training provided to peace officers after they have completed the Regular Basic Course. This field training does not extend to persons serving in ride-along, observer capacities.

Any ~~agency~~ department ~~which employs regular officers shall~~ seeking approval of their Field Training Program shall ~~by~~ submit~~ting~~ a ~~f~~Field ~~t~~Training ~~p~~Program ~~plan~~ package (described in (a) below) along with an Application For POST Approved Field Training Program, POST form 2-229 (Rev. ~~12/97~~ 04/02) signed by the department head. ~~An approved Field Training Program remains in force until modified, at which time a new approval is required~~. Prior to the

submission of ~~an~~ package and application, a ~~comparison~~ review should be made of the ~~agency's~~ department's present policies, ~~and~~ practices, and structured learning content versus POST's minimum standards/requirements for an approved Field Training Program as stated in Regulation 1004 and section 13-3 below. Where needed, the ~~agency~~department shall make changes to comply with the POST minimum standards/requirements. All applicants shall be notified in writing within ~~10~~30 working days regarding the completeness of the ~~plan~~ package and application. A decision for approval shall be reached within ~~15~~45 working days from the date the completed application is received. If ~~an agency's~~ department's Field Training Program is disapproved, the ~~agency~~department ~~must~~ shall, within 60 days, resubmit an application for approval upon correction of the deficient areas outlined in the disapproval letter.

(a) A Field Training Program ~~plan~~package submitted for approval shall minimally include:

(1) a written description of the department's specific selection process for ~~f~~Field ~~t~~Training ~~o~~Officers~~, and~~;

(2) an outline of the training proposed for ~~agency~~ department trainees~~, and~~;

(3) a written description of the evaluation process for trainees and ~~f~~Field ~~t~~Training ~~o~~Officers~~,~~; **and**,

(4) copies of supporting documents (i.e., field training guides, learning matrixes, policies and procedures, and evaluation forms).

~~(b) On POST form 2-229, the agency head must attest to the adherence of the following approval requirements:~~

~~(1) The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which shall minimally include the following topics:~~

13-3. **Field Training Program Minimum Content Requirements:** The *POST Field Training Program Guide* may be used as a model for developing a Field Training Program. In order to meet local needs, flexibility to cover additional content may be authorized with prior POST approval. A POST-approved Field Training Program shall minimally include the following topics:

Agency Orientation (including Standards and Conduct)	Traffic (including DUI)
Ethics	Use of Force
Leadership	Search and Seizure
Patrol Vehicle Operations	Radio Communications
Officer Safety	Self-Initiated Activity
Report Writing	Investigations / Evidence
	Community Relations/Professional

California Codes and Law	Demeanor (including Cultural Diversity, Community Policing, and Problem Solving)
Department Policies (General Orders, Local Policies, and Philosophies)	Tactical Communication/~~Management~~ Conflict Resolution
Patrol Procedures (including Domestic Violence and Pedestrian and Vehicle Stops)	~~Unlisted~~ Additional Agency-Specific Topics (may include Community Specific Problems, Special Needs Groups, etc.)
Control of Persons, Prisoners, and Mentally Ill (Adults and Juveniles)	

~~(2) The field training program's emphasis shall be on both training and evaluation of trainees.~~

~~(3) A trainee shall have satisfactorily completed the Regular Basic Course before participating in the Field Training Program.~~

~~(4) The field training program shall have a field training administrator who has been awarded or is eligible for the award of a POST Supervisory Certificate or has been selected based on the agency head's (or his/her designate's) nomination or appointment. Recommended training is the Field Training Officer Course and/or Field Training Administrator's Course~~

~~(5) Trainees shall be supervised depending upon their assignment:~~

~~(A) A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer~~

~~(B) A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.~~

~~(6) Each trainee shall be evaluated daily with written summaries of performance and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of the daily evaluations and/or by completing weekly written summaries of performance that are reviewed with the trainee.~~

~~(7) A field training officer shall have:(1) been awarded a POST Basic Certificate; (2) successfully completed the POST-certified Field Training Officer Course; (3) one year patrol experience; (4) a supervisor's recommendation based upon the officer's desire to be a field training officer and their ability to be a positive role model; and (5) been selected based upon an agency specific selection process.~~

~~(8) Each field training officer shall be evaluated by the trainee and a field training Administrator/Supervisor. The trainee shall complete and submit a confidential evaluation to a field training administrator/supervisor at the end of the field training program. A field training administrator shall provide a detailed evaluation to each field training officer on~~

~~his/her performance as a field training officer.~~

~~(9) Documentation of trainee performance shall be maintained by the agency. The field training officer's attestation of each trainee's successful completion of the field training program and a statement that releases the trainee from the program, along with the signed concurrence of the agency/department head of his/her designate, shall be retained in agency records. Retention length shall be based upon agency record policies.~~

~~13-4. Agency Head Signature Required: Signature of the agency head is required attesting to continued adherence to the field training program which is submitted for approval. Requests for approval of changes in previously approved programs shall be submitted to POST in writing~~

13-54. Field Training Officer's Course ~~Description~~Minimum Requirements: Presentation of a Field Training Officer Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Course ~~is~~ shall be a minimum of 40 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. Instructional methodology is at the d etion of individual course presenters unless specified otherwise in a training specification document developed for the course. The ~~POST~~ Field Training Officer Course Ccurriculum shall minimally include the following topics:

~~Introduction/Orientation~~
~~Standardized Curricula & Performance Objectives~~
~~Field Training Program History & the Need for Standardization~~
~~Field Training Program Management~~
~~Legal Issues for the FTO~~
~~Key Elements of a Successful Field Training Program~~
~~The Professional Relationship Between the Field Training Officer and the Trainee~~
~~Review of Regular Basic Course Training~~
~~Cultural Diversity in Field Training Programs~~
~~Override/Intervention~~
~~Remediation Methodologies & Strategies~~
~~Adult Learning Theory~~
~~Officer Safety in the Field~~
~~Field Training Program Goals and Objectives~~
~~Supervisory Skills for the FTO~~
~~Ethics~~
~~Scenario Facilitation & Grading~~
~~Role Modeling~~
~~Expectations of/for Field Training Officers~~
~~Teaching Skills Demonstration~~
~~Competency Expectations/Evaluations/Documentation~~

Field Training Program Goals and Objectives
Keys to Successful Field Training Programs
Field Training Program Management/Roles of Program Personnel
Teaching and Training Skills Development (including Adult Learning, Problem-Based Learning, Training Demonstration, etc.)
The Professional Relationship Between the and the Trainee (including Cultural Diversity)
Evaluation/Documentation
Expectations and Roles of the FTO (including Leadership, Ethics, Coaching, Mentoring Supervision, Role Modeling, etc.)
Officer Safety Intervention
Remediation/Testing/Scenarios
Trainee Termination
FTOLegal Issues and Liabilities
Review of the Regular Basic Course Training
Competency Expectations

13-65. Field Training Supervisor/Administrator's/Coordinator (SAC) Course ~~Description~~ Minimum Requirements: Presentation of a Field Training Supervisor/Administrator~~'s~~ /Coordinator (SAC) Course requires POST certification (refer to Regulations 1051-1056). The Field Training Supervisor/Administrator's/Coordinator (SAC) Course ~~is~~ shall be a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course. The Field Training Supervisor/Administrator's/Coordinator~~'s~~ (SAC) Course shall minimally include the following topics:

Field Training Program Management
Review of Regular Basis Course Training
~~Adult Learning~~ Contemporary Learning Methods
POST Field Training Program & Objectives
Oversight of Test/Scenarios
Development & Update System for Field Training Manual
Documentation & Evaluations
Agency Responsibilities
Review of FTO Course Training
History of Field Training Programs
Competency Evaluation
Supervisory Procedures
FTO Selection Process
FTO Training & Certification
Conduct of FTOs, ~~Training~~ Trainees, & FTO Supervisors/Administrators /Coordinators (SACs)

13-76. Field Training Officer's Update Course ~~Description~~ Minimum Requirements: Presentation of a Field Training Officer's Update Course requires POST certification (refer to Regulations 1051-1056). The Field Training Officer Update Course ~~is~~ shall be a minimum of 24 hours. In order to meet local needs, flexibility to present additional curriculum may be authorized with prior POST approval. Instructional methodology is at the discretion of individual course presenters unless specified otherwise in a training specification document developed for the course. The Field Training Officer Update Course ~~C~~curriculum shall minimally include the following topics:

Review of ~~Academy~~ Regular Basic Course Training
Legal ~~Update~~ Issues and Liabilities
~~Adult Learning Theory Update~~Contemporary Learning Methods
~~Scenario Facilitation & Evaluation~~
Training/Teaching Skills Development
Leadership, Ethics, and Professionalism
Remediation/Testing/Scenarios
Trainee Termination
Evaluation/Documentation
~~Recommendation Methodologies & Strategies~~
~~Skill Building Training~~
~~Ethics~~
Teaching Skills ~~Update~~/Demonstration Competency Expectations
Additional Agency/Presenter-specific topics (which may include: Community Oriented Policing, Challenging Traits of Today's Trainees, Report Writing for FTOs, Problem Solving for FTOs, Supervisory Skills Development, etc.)

~~Waiver of Mandatory Field Training Program or Courses~~

~~13-8. Waiver of Mandatory Field Training Program or Courses: The Commission or its Executive Director, in response to a written request or on its own motion may, upon showing of good cause, waive the field training requirements, for an agency and/or its personnel, for a specific period of time. Waivers pursuant to this section will be granted only upon presentation of evidence that the agency is unable to comply due to significant financial constraint or the absence of qualified personnel to serve as field training officers.~~

Historical Note:
Procedure D-13 was adopted and incorporated by reference into Commission Regulation 1005 on June 15, 1990, and amended on February 22, 1996, ~~and amended effective~~ January 1, 1999, and *.

* Date to be filled in by OAL.

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13

FIELD TRAINING PROGRAM

~~POST ADMINISTRATIVE MANUAL~~

~~1004.~~ 1012. ~~Certification of Courses~~**Conditions for Continuing Employment**

(a) Every full-time peace officer employed by a participating department shall be required to serve in a probationary status for not less than 12 months from the date appointed to a full-time peace officer position.

(b) In order to continue to exercise peace officer powers, any individual appointed to a full-time peace officer position pursuant to Penal Code section 830.1(a) must obtain a Basic Certificate as set forth in Penal Code section 832.4.

~~NOTE: Authority cited: Section 13506, Penal Code.~~
~~Reference: Sections 13503, 13510, 13510.5 and 13511, Penal Code.~~

NOTE: Authority cited: Section 11422, Government Code; and Section 832.4 Penal Code.
Reference: Sections 832.4 and 13506, Penal Code.

DOUBLE UNDERLINE/STRIKEOUT TEXT

Commission on Peace Officer Standards and Training

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

1004. Field Training Program

(a) **Program Requirements:** Any department which employs peace officers and/or Level I Reserve peace officers shall have a POST-approved Field Training Program. Requests for approval of a department's Field Training Program shall be submitted on POST form 2-229 (Rev. 04/02), signed by the department head attesting to the adherence of the following program requirements:

(1) The Field Training Program shall be delivered over a minimum of 10 weeks based upon the structured learning content as specified in PAM section D-13.

(2) A trainee shall have successfully completed the Regular Basic Course before participating in the Field Training Program.

(3) The Field Training Program shall have a Field Training Supervisor/Administrator/ Coordinator (SAC) who:

(A) has been awarded or is eligible for the award of a POST Supervisory Certificate **or**

(B) has been appointed by the department head (or his/her designate).

(C) meets the training requirement specified in 1004(c) below.

(4) The Field Training Program shall have Field Training Officers (FTOs) who:

(A) have been awarded a POST Basic Certificate (not Specialized);

(B) have a minimum of one year general law enforcement uniformed patrol experience; and,

(C) have been selected based upon a department-specific selection process; and,

NEW TEXT

(D) meets the training requirements specified in 1004(d) below.

Trainees shall be supervised depending upon their assignment

(A) A trainee assigned to general law enforcement uniformed patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified Field Training Officer (as described in (4) above).

(B) A trainee temporarily assigned to non-enforcement, specialized function(s) for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified Field Training Officer while performing the specialized function(s).

(6) Trainee performance shall be:

(A) documented daily through journaling, daily training notes, or Daily Observation Reports (DORs) and shall be reviewed with the trainee by the Field Training Officer; and,

(B) monitored by a Field Training Program SAC, or designee, by review and signing of the DORs or, by completing and/or signing weekly written summaries of performance (e.g., Supervisor's Weekly Report, Coaching and Training Reports) that are reviewed with the trainee.

(7) Each Field Training Officer shall be evaluated by the trainee and a Field Training Supervisor/Administrator/Coordinator (SAC) as follows:

(A) The trainee shall complete an evaluation of each assigned Field Training Officer at the end of the Field Training Program.

(B) The Field Training Supervisor/Administrator/Coordinator (SAC) shall provide, at least annually, a detailed evaluation to each Field Training Officer on his/her performance as a Field Training Officer.

) Trainees shall complete an evaluation of the Field Training Program at the end of the program.

(9) The Field Training Officer's attestation of each trainee's competence and successful completion of the Field Training Program and a statement that releases the trainee from the program, along with the signed concurrence of the department head, or his/her designate, shall be retained in department records. Retention length shall be based upon department record policies.

An approved Field Training Program remains in force **until modified**, at which time a new approval is required.

(b) **Program Exemption:** A department may request an exemption of the Field Training Program requirement if:

(1) the department does not provide general law enforcement uniformed patrol services; or

(2) the department hires only lateral entry officers possessing a POST Basic Certificate and who have either:

(A) completed a POST-approved Field Training Program, or

(B) one year previous experience performing general law enforcement uniformed patrol duties.

Requests for an exemption shall be made on POST form 2-229 (Rev. 04/02), signed by the department head, along with written documentation attesting to the department's qualification(s) for an exemption. In the event that a department no longer meets the exemption criteria, a request for POST-approval of the department's Field Training Program shall be made as outlined in PAM, section D-13.

(c) **Field Training Supervisor/Administrator/Coordinator (SAC) Training Requirement:** Every peace officer promoted, appointed, or transferred to a supervisory or management position overseeing a field training program shall successfully complete a POST-certified Field Training Supervisor/Administrator/ Coordinator (SAC) Course (as set forth in PAM, section D-13) prior to or within 12 months of the initial promotion, appointment, or transfer to such a position.

(d) **Field Training Officer (FTO) Training Requirements:**

(1) Every newly appointed FTO shall:

(A) successfully complete a POST-certified Field Training Officer Course (as set forth in PAM, section D-13) prior to training new officers; and,

(B) complete 24-hours of update training every three years following completion of the Field Training Officer Course. The update training shall be satisfied by:

1. completing a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13); or,

2. completing 24-hours of department-specific training in the field training topics contained in the Field Training Officer Update Course (as set forth in PAM, section D-13)

(2) Every reassigned FTO, after a 3 year-or-longer break in service as an FTO, shall

(A) successfully complete a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13) prior to training new officers; and,

(B) complete 24-hours of update training every three years. The update training shall be satisfied by:

1. completing a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13); or,

2. completing 24-hours of department-specific training in the field training topics contained in the Field Training Officer Update Course (as set forth in PAM, section D-13)

(e) **Field Training Compliance Extension Request**: The Commission, or its Executive Director, in response to a written request on POST form 2-229 (Rev. 04/02) may extend compliance with the field training program requirements for a department and/or its officers for up to one year. The requesting department must supply a written justification for an extension, and an action plan as to how and when the department will comply with the field training regulations. An additional one-year extension may be granted through the same process. A department will be considered out of compliance after the deadline of the second extension.

NOTE: Authority cited: Sections 13503, 13506, 13510, and 13510.5 Penal Code. Reference: Sections 13503, 13506, 13510, and 13510.5 Penal Code.

ADOPT COMMISSION REGULATION 1012 AND AMEND COMMISSION REGULATIONS 1001, 1004, 1005 AND PROCEDURE D-13 FIELD TRAINING PROGRAM

INITIAL STATEMENT OF REASONS

The Commission on Peace Officer Standards and Training (POST) proposes to adopt a new Commission Regulation 1012 and amend Commission Regulations 1001, 1004, 1005 and Procedure D-13. The proposed changes are the result of an ongoing review of the Field Training Program by a subject matter Advisory Council to ensure that POST standards meet law enforcement's changing needs. These changes were presented and approved at the April 10, 2002 Commission meeting.

JUSTIFICATION FOR PROPOSED AMENDMENTS TO COMMISSION REGULATION 1001

A new definition for "uniformed patrol duties" is proposed to clarify and assist staff and the field in determining which law enforcement agencies are required to have a POST-approved Field Training Program.

JUSTIFICATION FOR PROPOSED AMENDMENTS TO COMMISSION REGULATION 1004

The old Regulation 1004 has been renumbered to 1012 so that the Field Training Program regulatory language can be near Regulation 1005 stating the minimum standards for training; which includes completion of the field training program. The new Regulation 1004 speaks to the agency requirements for a POST-approved Field Training Program; whereas, Regulation 1005 speaks to the individual officer's requirement to complete a POST-approved Field Training Program. The majority of the language in the new Regulation 1004 has been moved from Procedure D-13 since it is regulatory language vs. procedural language. Specifically, justification for the new Regulation 1004 is as follows:

1004(a)	Language moved from Procedure D-13-3 (old) and D-13-3(b) (old) because it is regulatory, not procedural
1004(a)(1)	Language moved from Procedure D-13-3(b)(1) old because it is regulatory, not procedural
1004(a)(2)	Language moved from Procedure D-13-3(b)(3) old because it is regulatory, not procedural
1004(a)(3)	Language moved from Procedure D-13-3(b)(4) old because it is regulatory, not procedural. Subsection (C) is a new training requirement as recommended by the subject matter experts on the Field Training Advisory Council. The committee unanimously agreed that in order to effectively supervise a POST-approved Field Training Program, an individual needs training on the statewide standards and

processes. This will ensure that anyone assigned to this position without prior field training experience understands the criticality of the position and the field training program itself.

1004(a)(4) Language moved from Procedure D-13-3(7) old because it is regulatory, not procedural.

1004(a)(5) Language moved from Procedure D-13-3(5) old because it is regulatory, not procedural. Language has been modified slightly for clarification purposes.

1004(a)(6) Language moved from Procedure D-13-3(6) old because it is regulatory, not procedural. Language has been modified slightly for clarification purposes and to meet the changing needs of law enforcement. This will accommodate a problem-based learning model program being introduced around the country and in California.

1004(a)(7) Language moved from Procedure D-13-3(8) old because it is regulatory, not procedural. Language was modified slightly for clarification purposes.

1004(a)(8) Language is new, per the Field Training Program Advisory Council, to reflect existing procedures in law enforcement agencies statewide. This ensures evaluation of both field training officer performance *and* the effectiveness of the field training program itself.

1004(a)(9) Language moved from Procedure D-13-3(9) old because it is regulatory, not procedural.

1004(a) Language moved from Procedure D-13-3 old because it is regulatory, not procedural.

1004(b) Language moved from Procedure D-13-8 old and modified for clarification. Since the field training program requirements are specifically designed for the uniformed patrol position in an agency, this exempts those agencies who do not perform uniformed patrol services and those agencies who only hire lateral officers who have already completed a POST-approved field training program at another agency or who have already performed at least one-year of solo patrol experience.

1004(c) Language moved from Procedure D-13-3(4) old; however, the training requirement for the SAC course is now mandatory. The Field Training Program Advisory Council unanimously agreed that in order to effectively supervise a POST-approved Field Training Program, an individual needs training on the statewide standards and processes. This will ensure that anyone assigned to this position without prior field training experience understands the criticality of the position and the field training program itself. Individuals are given 12 months to take the course as is done with other POST training mandates for supervisors, managers and executives.

1004(d) Language moved from Procedure D-13-3(7) old. New language was added, per the Field Training Program Advisory Council, to require FTOs to attend update training every 3 years in order to maintain currency with POST and Field Training standards. Adult learning strategies and training methodologies are frequently changing. Specific, structured, and on-going training is a reasonable and logical requirement. This new training mandate also applies to FTOs that had a 3 year-or-longer break from being a FTO for the same reasons.

1004(e) Language moved from Procedure D-13-8 old and modified for clarification. An

extension to meet the regulatory requirements can be granted; however, there is a time period specified in which the agency will eventually have to comply. This new requirement eliminates the possibility of an agency having a 'standing' exemption and never complying with the Field Training regulations, thereby raising the professional standards of peace officer training throughout California.

JUSTIFICATION FOR PROPOSED AMENDMENTS TO COMMISSION REGULATION 1005

1005(a)(1)(A) Reference sections modified to reflect changes in the regulation; 'uniformed' was added for clarification to staff and the field which individuals are required to complete a POST-approved Field Training Program.

1005(a)(1)(B) Heading added for clarification and assistance in locating the exemptions in the regulatory language.

1005(a)(1)(B)(2)Language modified for consistency; 'uniformed' was added for clarification to staff and the field; language added to clarify that in order for an individual to be exempt from the Field Training Program requirement, his/her department must have been granted an exemption.

1005(a)(1)(B)(3)Language moved from old (3) section and modified to clarify, per the Field Training Program Advisory Council, that the individual must have completed a POST-approved Field Training Program or had at least one year of previous experience.

1005(a)(1)(B)(4)New language to accommodate Level I Reserve officers who are transferring to a full-time, paid regular officer position. Regulatory language requires Level I Reserves to complete the same POST-approved Field Training Program as regulars; however, when the individual transferred over to a full-time, paid regular officer position they were then again required to complete the same POST-approved Field Training Program. This new exemption eliminates the unnecessary (and costly) redundant training for Level I Reserves

1005(a)(1)(B)(5)Language modified for consistency and accuracy with other regulatory changes being made in this package.

Incorporated by Reference stmntsModified to reflect new amendment dates in the event that these proposed changes are approved. Statement deleted because the 1988 Field Training Guide has been replaced with a newer version. The replacement occurred in 1999; however, this statement was overlooked at that time.

JUSTIFICATION FOR PROPOSED ADOPTION OF COMMISSION REGULATION 1012

This new regulation was originally Commission Regulation 1004. It is proposed that Commission Regulation 1004 be changed to regulatory language for the Field Training Program so that it is in close proximity to the minimum training standard language in Commission Regulation 1005 which refers to the Field Training Program. Commission Regulation #1012 hasn't been used for years and is proposed to be this regulatory language's new reference.

JUSTIFICATION FOR PROPOSED AMENDMENTS TO COMMISSION PROCEDURE D-13

D-13-1	Language modified for clarification that the procedure implements the process; whereas the minimum standards/requirements are actually regulatory language that has been moved to new Regulation 1004. New language comes from 13-2 below clarifying the purpose of the procedure as also establishing the minimum content requirements for the various Field Training Program courses.
D-13-2 (old)	Language moved to D-13-1 and D-13-4 through D-13-6 new. Language on certification and presentation was redundant with language in D-13-4 through D-13-6.
D-13-2 (new)	Section renumbered; language modified for clarification, accuracy, grammar and consistency. Deleted section regarding modified packages was moved to new Regulation 1004(a). The timeframes for responding to applicants has been increased to accommodate staff shortages in the Basic Training Bureau and added workload issues.
D-13-2(a)	Language modified for clarification, consistency and to accommodate changing law enforcement needs by adding an additional description of supporting documents. This will accommodate a problem-based learning model program being introduced around the country and in California.
D-13-2(b)	Language moved to new Regulation 1004 in part and D-13-3 (new) in part
D-13-3	New heading added to assist staff and the field in locating where the minimum content requirements are. Some language was moved from D-13-2(b) (old) above. Other language was added for clarification. Additional topical areas were added to address the changing needs of law enforcement and meet POST Strategic Plan objectives. This will also accommodate a problem-based learning model program being introduced around the country and in California.
D-13-2(b)(2) – (9)	old Language deleted as it is no longer necessary with the other regulatory requirements established for the program. Language moved to new Regulation 1004(a)(2), 1004(a)(3); 1004(a)(5); 1004(a)(6); 1004(a)(4); 1004(a)(7), and; 1004(a)(9), respectively since the language is regulatory, not procedural.
D-13-4(old)	Language was moved to new Regulation 1004(a)
D-13-4(new)	Language modified for accuracy. New language was moved from D-13-2 (old). Topical areas have been modified to address the changing needs of law enforcement and meet POST Strategic Plan objectives.
D-13-5(new)	Language modified for accuracy and consistency. New language was moved from D-13-2 (old). Topical areas have been modified to address the changing needs of law enforcement and meet the POST Strategic Plan objectives.
D-13-6(new)	Language modified for accuracy and consistency. New language was moved from D-13-2 (old). Topical areas have been modified to address the changing needs of law enforcement and meet POST strategic Plan objectives. Additionally, this language accommodates the methods by which this training can be reasonably and consistently met.
D-13-8(old)	Language moved to new Regulation 1004(b) and (e) since the language is regulatory, not procedural.

Incorporated by
Reference stmntModified to reflect new amendment dates in the event that these proposed changes are approved.

JUSTIFICATION FOR REVISION TO POST FORM 2-229

The proposed revision to POST form 2-229 updates the form which hasn't been revised since 12/97. About two years ago, around January 2000, the "after academy application" process (page 2 of form 2-229) became obsolete due to regulation changes. However, the form was overlooked and not revised at that time. The revised form contains the language as justified above, eliminates the previous page 2, and consolidates onto one form the exemption and waiver process; standardizing the format for these requests.

C

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 11. LAW
DIVISION 2. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
ARTICLE 1. GENERAL

This database is current through 4/23/2004, Register 2004, No. 17.

s 1004. Field Training Program.

(a) Program Requirements: Any department which employs peace officers and/or Level I Reserve peace officers shall have a POST-approved Field Training Program. Requests for approval of a department's Field Training Program shall be submitted on POST form 2-229 (Rev. 04/02), signed by the department head attesting to the adherence of the following program requirements:

(1) The Field Training Program shall be delivered over a minimum of 10 weeks and based upon the structured learning content as specified in PAM section D- 13.

(2) A trainee shall have successfully completed the Regular Basic Course before participating in the Field Training Program.

(3) The Field Training Program shall have a Field Training Supervisor/Administrator/Coordinator (SAC) who:

(A) has been awarded or is eligible for the award of a POST Supervisory Certificate or

(B) has been appointed by the department head (or his/her designate).

(C) meets the training requirement specified in 1004(c) below.

(4) The Field Training Program shall have Field Training Officers (FTOs) who:

(A) have been awarded a POST Basic Certificate (not Specialized);

(B) have a minimum of one year general law enforcement uniformed patrol experience; and,

(C) have been selected based upon a department-specific selection process; and,

(D) meets the training requirements specified in 1004(d) below.

(5) Trainees shall be supervised depending upon their assignment

(A) A trainee assigned to general law enforcement uniformed patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified Field Training Officer (as described in (4) above).

(B) A trainee temporarily assigned to non-enforcement, specialized function(s) for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified Field Training Officer while performing the specialized function(s).

(6) Trainee performance shall be:

(A) documented daily through journaling, daily training notes, or Daily Observation Reports (DORs) and shall be reviewed with the trainee by the Field Training Officer; and,

(B) monitored by a Field Training Program SAC, or designee, by review and signing of the DORsor,by completing and/or signing weekly written summaries

of performance (e.g., Supervisor's Weekly Report, Coaching and Training Reports) that are reviewed with the trainee.

(7) Each Field Training Officer shall be evaluated by the trainee and a Field Training Supervisor/Administrator/Coordinator (SAC) as follows:

(A) The trainee shall complete an evaluation of each assigned Field Training Officer at the end of the Field Training Program.

(B) The Field Training Supervisor/Administrator/Coordinator (SAC) shall provide, at least annually, a detailed evaluation to each Field Training Officer on his/her performance as a Field Training Officer.

(8) Trainees shall complete an evaluation of the Field Training Program at the end of the program.

(9) The Field Training Officer's attestation of each trainee's competence and successful completion of the Field Training Program and a statement that releases the trainee from the program, along with the signed concurrence of the department head, or his/her designate, shall be retained in department records. Retention length shall be based upon department record policies.

An approved Field Training Program remains in forceuntil modified, at which time a new approval is required.

(b) Program Exemption: A department may request an exemption of the Field Training Program requirement if:

(1) the department does not provide general law enforcement uniformed patrol services; or

(2) the department hires only lateral entry officers possessing a POST Basic Certificate and who have either:

(A) completed a POST-approved Field Training Program, or

(B) one year previous experience performing general law enforcement uniformed patrol duties.

Requests for an exemption shall be made on POST form 2-229 (Rev. 04/02), signed by the department head, along with written documentation attesting to the department's qualification(s) for an exemption. In the event that a department no longer meets the exemption criteria, a request for POST-approval of the department's Field Training Program shall be made as outlined in PAM, section D-13.

(c) Field Training Supervisor/Administrator/Coordinator (SAC) Training Requirement: Every peace officer promoted, appointed, or transferred to a supervisory or management position overseeing a field training program shall successfully complete a POST-certified Field Training Supervisor/Administrator/Coordinator (SAC) Course (as set forth in PAM, section D-13) prior to or within 12 months of the initial promotion, appointment, or transfer to such a position.

(d) Field Training Officer (FTO) Training Requirements:

(1) Every newly appointed FTO shall:

(A) successfully complete a POST-certified Field Training Officer Course (as set forth in PAM, section D-13) prior to training new officers; and,

(B) complete 24-hours of update training every three years following completion of the Field Training Officer Course. The update training shall be satisfied by:

1. completing a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13); or,

2. completing 24-hours of department-specific training in the field training topics contained in the Field Training Officer Update Course (as set forth in PAM, section D-13)

(2) Every reassigned FTO, after a 3 year-or-longer break in service as an FTO, shall

(A) successfully complete a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13) prior to training new officers; and,

(B) complete 24-hours of update training every three years. The update training shall be satisfied by:

1. completing a POST-certified Field Training Officer Update Course (as set forth in PAM, section D-13); or,

2. completing 24-hours of department-specific training in the field training topics contained in the Field Training Officer Update Course (as set forth in PAM, section D-13)

(e) Field Training Compliance Extension Request: The Commission, or its Executive Director, in response to a written request on POST form 2-229 (Rev. 04/02) may extend compliance with the field training program requirements for a department and/or its officers for up to one year. The requesting department must supply a written justification for an extension, and an action plan as to how and when the department will comply with the field training regulations. An additional one-year extension may be granted through the same process. A department will be considered out of compliance after the deadline of the second extension.

Note: Authority cited: Sections 13503, 13506, 13510 and 13510.5, Penal Code. Reference: Sections 13503, 13506, 13510 and 13510.5, Penal Code.

HISTORY

1. Repealer of subsection (b) filed 5-14-82; designated effective 7-1-82 (Register 82, No. 20).

2. Amendment of section and Notefiled 8-10-2000; operative 9-9-2000 (Register 2000, No. 32).

3. Renumbering of former section 1004 to new section 1012 and new section 1004 filed 10-7-2002; operative 7-1-2003 (Register 2002, No. 41).

4. Amendment of subsection (a)(1) filed 10-7-2003; operative 11-6-2003 (Register 2003, No. 41).

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END OF DOCUMENT

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 11. LAW
DIVISION 2. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
ARTICLE 1. GENERAL

This database is current through 4/23/2004, Register 2004, No. 17.

s 1005. Minimum Standards for Training (Reference Regulation 1007 and Commission Procedure H forreserve peace officer training standards.)

(a) Minimum Entry-Level Training Standards (Required).

(1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) [peace officers whose primary duties are investigative], and 1005(a)(4) [coroners or deputy coroners], shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers. Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5 (below), following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

(B) Exemptions to the Field Training Program Requirement: An officer isexemptfrom the Field Training Program requirement following completion of the Regular Basic Course:

1. While the officer's assignment remains custodial related,or

2. If the officer's employing department does not provide general law enforcement uniformed patrol services and the department has been granted an exemption as specified in Regulation 1004,or

3. If the officer is a lateral entry officer possessing a POST Basic Certificate and who has either:

a) completed a POST-approved Field Training Program, or

b) one year previous experience performing general law enforcement uniformed patrol duties,or

4. If the officer was a Level I Reserve and is appointed to a full-time peace officer position within the same department and has previously completed the department's entire POST-approved Field Training Program within the last 12 months of the new appointment,orhas the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement uniformed patrol officer,or

5. If the officer's employing department has obtained approval of a field training compliance extension request provided for in Regulation 1004.

More specific information regarding basic training requirements is located in Commission Procedure D-1.

(2) Every district attorney investigator or inspector (Penal Code section 830.1), regularly employed and paid as such, in addition to the Regular Basic Course training requirement set forth in Regulation 1005(a)(1) shall complete a POST-certified Investigation and Trial Preparation Course, PAM section D-14, within 12 months from the date of appointment.

(3) Every peace officer whoseprimary duties are investigative, except district attorney investigators or

inspectors, shall complete, within 12 months from the date of appointment, the Regular Basic Course or the Specialized Investigators' Basic Course, PAM, section D-1-5, as elected by the department head. Departments in the following categories have been identified as primarily investigative and may exercise the option provided in this section: 1) state investigative agencies including the Supreme Court of California, (2) welfare investigations, 3) welfare fraud, (4) social services, 5) human assistance/services, and 6) District Attorney child support divisions or welfare fraud units (appointed under P.C. 830.35).

(4) Every coroner or deputy coroner [as defined in Penal Code section 830.35(c)], regularly employed and paid as such, shall satisfactorily complete the PC 832 Arrest and Firearms Course before the exercise of peace officer powers. In addition to the PC 832 Arrest and Firearms Course, satisfactory completion of the POST-certified Coroners' Death Investigation Course, PAM, Section D-1-7, is also required within 12 months from date of appointment. The Coroners' Death Investigation Course requirement shall only apply to peace officer coroners hired on or after the agency enters the POST program.

(5) Every school police officer employed by a K-12 school district or California Community College district before July 1, 1999, in addition to the Regular Basic Course requirement set forth in Regulation 1005(a)(1), shall complete a POST-certified Campus Law Enforcement Course [(Regulation 1081(a)(20)] no later than July 1, 2002. Every school police officer employed by a K-12 school district or California Community College district after July 1, 1999, in addition to the Regular Basic Course, shall complete a POST- certified Campus Law Enforcement Course within two years of the date of first appointment.

(6) Every limited function peace officer shall satisfactorily meet the training requirements of the PC 832 Arrest and Firearms Course; except training in the carrying and use of firearms shall not be required when an employing agency prohibits limited function peace officers the use of firearms.

(7) Every peace officer prior to exercising peace officer powers shall complete the requirements of Penal Code section 832, which may be part of the minimum basic training standard or a separately certified course.

(b) Supervisory Course (Required).

(1) Every peace officer promoted, appointed or transferred to a first-level supervisory position shall satisfactorily complete a certified Supervisory Course prior to promotion or within 12 months after the initial promotion, appointment or transfer to such position. An officer who will be appointed within 12 months to a first-level supervisory position or an officer assigned to a quasi-supervisory position may attend a Supervisory Course, if authorized by the department head. Requirements for the Supervisory Course are set forth in PAM, section D-3.

(2) Every department participating in the POST reimbursement program may be reimbursed for completion of the Supervisory Course by an officer as described in (b)(1) above, provided that the officer is full time and has been awarded or is eligible for the award of the Basic Certificate.

(c) Management Course (Required).

(1) Every peace officer promoted, appointed or transferred to a middle management position shall satisfactorily complete a certified Management Course prior to promotion or within 12 months after the initial promotion, appointment or transfer to such position. An officer who will be appointed within 12 months to a middle management or higher position or an officer who is assigned to a first-level supervisory position may attend a Management Course, if authorized by the department head. Completion of the Supervisory Course is a prerequisite to attending the Management Course. Requirements for the Management Course are set forth in PAM, section D-4.

(2) Every department participating in the POST reimbursement program may be reimbursed for completion of the Management Course by an officer described in (c)(1) above, provided the officer is full time and has satisfactorily completed the Supervisory Course.

(3) Every regular officer who is duly elected or

appointed to the Board of Directors or Executive Board of a local Peace Officer Association or Deputy Sheriff Association may attend a certified Management Course if authorized by their department head. The officer's jurisdiction may be reimbursed following satisfactory completion of such training provided that the officer has satisfactorily completed the training requirements of the Supervisory Course.

(4) Every regular officer who is duly elected or appointed to the Board of Directors of a local Peace Officer Association or Deputy Sheriff Association and is on 100% release from their organization may attend the Management Course without prior approval of their department head.

(d) Continuing Professional Training (Required). Continuing Professional Training is required for the purpose of maintaining, updating, expanding, and/or enhancing an individual's knowledge and/or skills. It is training which exceeds the training required to meet or requalify entry-level minimum standards. Qualifying and non-qualifying courses are specified in section (d)(2) below.

(1) Requirement: Every peace officer, Level I and Level II Reserve Officer [defined in PAM sections H-1-2(a)-(b)], Public Safety Dispatcher [defined in Regulation 1001(bb)], and Public Safety Dispatch Supervisor shall satisfactorily complete the Continuing Professional Training (CPT) requirement of 24 or more hours of training every two years*. Effective January 1, 2002, Perishable Skills and Communications training must satisfy a portion of the CPT requirement (reference subsection (3) below.)

* Determination of Two-Year Period: The beginning date for the two-year compliance cycle will be determined as follows (see note for exception):

For all peace officers below the rank of middle management: Upon completion date of the Regular Basic Course or Specialized Investigators' Basic Course, whichever is the appropriate entry-level training requirement.

For coroner peace officers below the rank of middle management: Upon completion date of Arrest and Firearms training (PC832).

For Level I reserve officers: July 1, 1995

For all Level II reserve officers: July 1, 1999.

For all peace officers appointed to a middle management position or above, Public Safety Dispatchers, and Public Safety Dispatch Supervisors: July 1, 2000. Note:Appointment date will be used when the individual's appointment to the position occurs after the date specified above.

(2) Qualifying Training. The above CPT requirement is met by satisfactory completion of one or more POST-certified courses totaling a minimum of 24 hours. Recommended topics for CPT are listed in PAM section D-2.

The following POST-certified courses do not qualify for CPT:

Regular Basic Course Field Training Program Investigation and Trial Preparation Course Specialized Investigators' Basic Course PC 832, Arrest and Firearms Course Coroners' Death Investigation Course Campus Law Enforcement Course Aviation Security Course Reserve Level III Module Reserve Level II Module Reserve Level I Module Public Safety Dispatcher's Basic Course POST Requalification Course POST Workshops (those designed to provide input or advice to POST) Field Management Training Team Building Workshops

The CPT requirement may be satisfied by an alternative method of compliance as determined by the Commission, i.e. Commission selected non-POST certified courses (reference Regulation 1060 and PAM section D-2-3).

(3) Perishable Skills/Communications Requirements for CPT. Effective January 1, 2002, all peace officers (except Reserve officers) below the middle management position and assigned to patrol, traffic, or investigation who routinely effect the physical

arrest of criminal suspects are required to complete Perishable Skills and Communications training. In-lieu of completing the training, the requirement may be met by successfully passing a presenter-developed test that measures the approved training objectives.

Perishable Skills training shall consist of a minimum of 12 hours in each two- year period. Of the total 12 hours required, a minimum of 4 hours of each of the three following topical areas shall be completed:

1. Arrest and Control

2. Driver Training/Awareness or Driving Simulator*

3. Tactical Firearms* or Force Options Simulator

*Reference Commission Procedure D-2 for minimum requirements.

Communications training, either tactical or interpersonal, shall consist of a minimum of 2 hours in each two-year period. Reference Commission Procedure D-2 for minimum requirements.

It is recommended that managers and executives complete, within their two-year compliance cycle, two hours of CPT devoted to updates in the perishable skills topical areas enumerated above.

(4) Exemptions. Agencies may request an exemption from all or part of the Perishable Skills and Communications training requirement. Agencies must request an exemption in writing and provide an attestation that their peace officers do not carry firearms, or they infrequently interact with or effect physical arrests of criminal suspects, or do not utilize marked emergency vehicles during normal course of business.

(e) Executive Development Course (Optional).

(1) The Executive Development Course is designed for department heads and their executive staff positions. An officer who will be appointed within 12 months to a department head or executive position may attend the Executive Development Course, provided the officer has satisfactorily completed the Management Course. Requirements for the Executive Development Course are set forth in PAM, section D-5.

(2) Every department participating in the POST reimbursement program may be reimbursed for completion of the Executive Development Course by an officer as described in (e)(1) above, provided the officer is full time and has satisfactorily completed the Management Course.

(f) Legislatively Mandated Training.

(1) Specific training mandated by the legislature is specified in Regulation 1081.

(g) Field Management Training (Optional).

(1) Field Management Training is designed to assist in the solution of specific management problems within individual Regular Program departments.

(2) Requirements for Field Management Training are set forth in PAM, section D-9.

(h) Records Supervisor Training (Required only for records supervisors applying for Records Supervisor Certificate).

To be eligible for the award of a Records Supervisor Certificate, a law enforcement records supervisor shall satisfactorily complete the following POST-certified courses:

(1) Public Records Act (minimum 16 hours); and

(2) Records Supervisor Course (minimum 40 hours).

Additional requirements for award of the Records Supervisor certificate are specified in Commission

Procedure F-6, which is incorporated by reference into Commission Regulation 1011.

PAM section D-1-1 adopted effective September 26, 1990 and amended January 14, 1994, August 7, 1996, January 1, 2001, and January 1, 2004 is herein incorporated by reference.

PAM section D-1-2 adopted effective September 26, 1990 and amended January 11, 1992, January 14, 1994, August 7, 1996, and February 13, 1997 is herein incorporated by reference.

PAM section D-1-3 adopted effective April 15, 1982, and amended January 24, 1985, September 26, 1990, January 14, 1994, July 16, 1994, December 16, 1994, August 16, 1995, August 7, 1996, November 27, 1996, February 22, 1997, August 16, 1997, December 4, 1997, January 1, 2001, January 1, 2002, April 10, 2002, and January 1, 2004 is herein incorporated by reference.

PAM section D-1-4 adopted effective October 20, 1983, and amended September 26, 1990, October 27, 1991, January 14, 1994, May 7, 1995, July 21, 2000, January 1, 2001, and July 1, 2002, is herein incorporated by reference.

PAM Section D-1-6 adopted effective February 4, 1993 is herein incorporated by reference.

PAM section D-1-7 adopted effective January 1, 2004 is herein incorporated by reference.

PAM section D-2 adopted effective April 15, 1982, and amended January 24, 1985, July 1, 2000, September 11, 2000, November 11, 2000, January 1, 2002, September 12, 2002, and May 7, 2003 is herein incorporated by reference.

PAM section D-3 adopted effective April 15, 1982, and amended October 20, 1983, January 29, 1988, and March 8, 2003 is herein incorporated by reference.

PAM section D-4 adopted effective April 15, 1982 and amended November 2, 2000 is herein incorporated by reference.

PAM section D-13 adopted effective June 15, 1990 and amended February 22, 1996, January 1, 1999, and July 1, 2004, is herein incorporated by reference.

PAM section D-14 adopted effective January 1, 2002, is herein incorporated by reference.

PAM section H-3 adopted effective June 15, 1990, and amended effective July 1, 1992, is herein incorporated by reference.

The document,Training Specifications for the Investigation and Trial Preparation Course, adopted January 1, 2002, is herein incorporated by reference.

The POST Basic Academy Physical Conditioning Manual (February 1990) adopted effective September 26, 1990, and amended and retitled to (1996) on February 22, 1997, is herein incorporated by reference.

The document,Training and Testing Specifications for Peace Officer Basic Courses,adopted effective January 1, 2001 and amended effective October 1, 2001, January 1, 2002, July 1, 2002, January 1, 2003, and January 1, 2004 is herein incorporated by reference.

Note: Authority cited: Sections 832.3, 832.6, 13503, 13506, 13510, 13510.3, 13510.5 and 13519.8, Penal Code. Reference: Sections 832, 832.3, 832.5, 832.6(a) and (h), 832.6, 13506, 13510, 13510.3, 13510.5, 13511, 13513, 13514, 13516, 13517, 13519.8, 13520 and 13523, Penal Code.

HISTORY

1. Renumbering of former subsections (a)(5) and (a)(6) to subsections (a)(6) and (a)(7), and new subsection (a)(5) filed 12-18-89; operative 1-17-90 (Register 89, No. 51). For prior history, see Register 88, No. 3.

2. Amendment of subsection (g)(2) filed 4-26-90; operative 5-26-90 (Register 90, No. 21).

3. Amendment filed 5-16-90; operative 6-15-90 (Register 90, No. 21).

4. Amendment of subsection (a) and PAM sections D-1-3, D-1-4, D-1-5, and D-1-6 and the adoption and incorporation by reference of PAM D-1-1, D-1-2, the POST Basic Academy Physical Conditioning Manual (February 1990), and Performance Objectives for the POST Basic Course - 1989, filed 8-27-90; operative 9-26-90 (Register 90, No. 42).

5. Amendment of Performance Objectives for the POST Basic Course (1989) filed 5-30-91; operative 6-29-91 (Register 91, No. 28).

6. Amendment filed 9-27-91; operative 10-28-91 (Register 91, No. 51).

7. Amendment of subsection (j)(2) filed 12-12-91; operative 1-13-92 (Register 92, No. 9).

8. Amendment of subsection (j)(2) filed 12-23-91; operative 7-1-92 (Register 92, No. 19).

9. Amendment of subsection (j)(2) filed 9-28-92; operative 10-28-92 (Register 92, No. 40).

10. New subsection (a)(5), subsection renumbering, and adoption and incorporation by reference of PAM D-1-8 filed 1-5-93; operative 2-4-93 (Register 93, No. 2).

11. Amendment of subsection (j)(2) and adoption and incorporation by reference of document Performance Objectives for the POST Basic Course filed 3-29-93; operative 4-28-93 (Register 93, No. 14).

12. Amendment of subsection (j)(2) and incorporated by reference of Commission Procedure D-1 filed 12-15-93; operative 1-14-94 (Register 93, No. 51).

13. Amendment of subsection (j)(2) and documents PAM section D-1-3 and Training Specifications for the Regular Basic Course incorporated by reference filed 6-16-94; operative 7-16-94 (Register 94, No. 24).

14. Amendment of subsection (j)(2) and documents PAM section D-1-3 and Training Specifications for the Regular Basic Course incorporated by reference filed 11-16-94; operative 12-16-94 (Register 94, No. 46).

15. Amendment of subsection (a)(4), amendment of PAM section D-1-6 (incorporated by reference), and repealer and new document, Training Specifications for the Specialized Investigators' Basic Course - 1995 (incorporated by reference), filed 4-7-95; operative 5-8-95 (Register 95, No. 14).

16. Amendment of subsections (d)(1)-(2) filed 4-17-95; operative 5-17-95 (Register 95, No. 16).

17. Amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

18. Amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 7-17-95; operative 8-16-95 (Register 95, No. 29).

19. Amendment of document, Training Specification for the Regular Basic Course (incorporated by reference) filed 7-24-95; operative 8-23-95 (Register 95, No. 30).

20. Amendment of document, Training Specification for the Regular Basic Course (incorporated by reference) filed 7-25-95; operative 8-24-95 (Register 95, No. 30).

21. Amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) and Notefiled 8-21-95; operative 9-20-95 (Register 95, No. 34).

22. Amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 10-11-95; operative 11-10-95 (Register 95, No. 41).

23. Amendment of penultimate paragraph and amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 1-18-96; operative 2-17-96 (Register 96, No. 3).

24. Amendment of subsection (d)(1), PAM section D-13 (incorporated by reference) and Notefiled 1-23-96; operative 2-22-96 (Register 96, No. 4).

25. Amendment of penultimate paragraph and amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 2-28-96; operative 3-29-96 (Register 96, No. 9).

26. Amendment of subsections (a)(3)-(5), repealer of PAM section D-1-5 and PAM section renumbering (incorporated by reference) and amendment of Notefiled 4-2-96; operative 5-2-96 (Register 96, No. 14).

27. Amendment of penultimate paragraph and amendment of document, Training

Specifications for the Regular Basic Course(incorporated by reference) filed 4-17-96; operative 5-17-96 (Register 96, No. 16).

28. Amendment of PAM sections D-1-1, D-1-2 and D-1-3 (incorporated by reference), and adoption of theTraining Specifications for the Reserve Module "D" - 1995(incorporated by reference) filed 7-8-96; operative 8-7-96 (Register 96, No. 28).

29. Amendment of PAM section D-1-3 (incorporated by reference) and amendment ofPost Administrative Manual, Commission Procedure D-1, (incorporated by reference) filed 10-28-96; operative 11-27-96 (Register 96, No. 44).

30. Amendment of antepenultimate paragraph and amendment of document,Training Specification for the Regular Basic Course(incorporated by reference) filed 11-13-96; operative 12-13-96 (Register 96, No. 46).

31. Amendment of subsection (d)(2) filed 11-20-96; operative 12-20-96 (Register 96, No. 47).

32. Amendment of antepenultimate paragraph and amendment of document,Training Specifications for the Regular Basic Course(incorporated by reference) filed 1-13-97; operative 2-12-97 (Register 97, No. 3).

33. Amendment of subsection (h)(2) and PAM section D-1-2 (incorporated by reference) filed 1-14-97; operative 2-13-97 (Register 97, No. 3).

34. Amendment of subsection (j)(2), PAM section D-1-3 (incorporated by reference), andThe POST Basic Academy Physical Conditioning Manual(incorporated by reference) filed 1-23-97; operative 2-22-97 (Register 97, No. 4).

35. Change without regulatory effect amending subsection (j)(2) and PAM section D-1-3 (incorporated by reference) filed 2-13-97; operative 3-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 7).

36. Amendment of antepenultimate paragraph and amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 4-16-97; operative 5-16-97 (Register 97, No. 16).

37. Amendment of antepenultimate paragraph and amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 6-5-97; operative 7-5-97 (Register 97, No. 23).

38. Amendment of subsection (j)(2) and PAM section D-1-3 (incorporated by reference) filed 7-17-97; operative 8-16-97 (Register 97, No. 29).

39. Amendment of last paragraph and amendment of the document, Training Specifications for the Reserve Training Module "D" (incorporated by reference) filed 7-25-97; operative 8-24-97 (Register 97, No. 30).

40. Amendment of subsections (j)(2) and PAM section D-1-3 (incorporated by reference) filed 11-4-97; operative 12-4-97 (Register 97, No. 45).

41. Amendment of antepenultimate paragraph and amendment of documentTraining Specifications for the Regular Basic Course (incorporated by reference) filed 12-15-97; operative 1-14-97 (Register 97, No. 51).

42. New subsections (k)-(k)(2) and amendment of Notefiled 1-9-98; operative 2-8-98 (Register 98, No. 2).

43. Editorial correction of subsection (k)(2) (Register 98, No. 9).

44. Amendment of antepenultimate paragraph and amendment of document, Training Specifications for the Regular Basic Course (incorporated by reference) filed 3-12-98; operative 4-11-98 (Register 98, No. 11).

45. Editorial change amending History35 (Register 98, No. 20).

Amendment of subsections (a)-(a)(1) and (a)(1)(C) and (D), new subsections (a)(2)-(a)(2)(D), subsection renumbering, amendment of newly designated subsections (a)(3)-(5) and (a)(9), amendment of subsection (k)(2), and amendment of Form 2-229 and PAM section D-13 (incorporated by reference) filed 7-15-98; operative [redacted] (Register 98, No. 29).

47. Editorial correction of History46 (Register 98, No. 35).

48. Amendment of subsections (a)(3) and (k)(2) and PAM section D-1-4 (incorporated by reference) filed 8-25-98; operative 9-24-98 (Register 98, No. 35).

49. Amendment of last paragraph and amendment of document,Training Specifications for the Reserve Training Module "D"(incorporated by reference) filed 8-27-98; operative 9-26-98 (Register 98, No. 35).

50. Amendment of antepenultimate and last paragraphs and amendment of document, Training Specifications for the Reserve Training Module "D"(incorporated by reference) filed 10-27-98; operative 11-26-98 (Register 98, No. 44).

51. Amendment of subsections (g)-(g)(2) filed 3-22-99; operative 4-21-99 (Register 99, No. 13).

52. Amendment of subsections (d)(1)-(2), repealer of subsection (d)(3), new subsections (d)(3)-(4), subsection renumbering, repealer of subsections (f)-(f)(2) and (h)-(h)(2), subsection relettering, and amendment of PAM section D-2 (incorporated by reference) filed 8-19-99; operative 7-1-2000 (Register 99, No. 34).

53. Amendment of PAM section D-1-5 and amendment of documentTraining

Specifications for the Specialized Investigators' Basic Course(both incorporated by reference) filed 7-21-2000; operative 7-21-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 29).

54. Amendment of section heading, section and Notefiled 8-10-2000; operative 9-9-2000 (Register 2000, No. 32).

55. Amendment of subsection (h)(2) and PAM section D-4 (incorporated by reference) filed 10-3-2000; operative 11-2-2000 (Register 2000, No. 40).

56. Amendment of subsections (d)(2) and (h)(2) and PAM section D-2 (incorporated by reference) filed 10-12-2000; operative 11-11-2000 (Register 2000, No. 41).

57. Amendment of PAM sections D-1-1, D-1-3 and D-1-5 (incorporated by reference), repealer and new antepenultimate paragraph and replacement of the documentTraining Specifications for the Regular Basic Coursewith the new documentTraining and Testing Specifications for Peace Officer Basic Courses(incorporated by reference) and amendment of last two paragraphs filed 12-29-2000; operative 1-1-2001 pursuant to Government Code section 11343.4(d) (Register 2000, No. 52).

58. Amendment of PAM section D-1-3 (incorporated by reference) filed 1-3-2001; operative 1-1-2002 (Register 2001, No. 1).

59. Amendment of subsection (d)(2) and amendment of PAM section D-2 (incorporated by reference) filed 5-22-2001; operative 1-1-2002 (Register 2001, No. 21).

60. New subsections (c)(3)-(4) filed 8-2-2001; operative 9-1-2001 (Register 2001, No. 31).

61. Editorial correction of document titles in penultimate and antepenultimate

paragraphs (Register 2001, No. 33).

62. Amendment of antepenultimate paragraph and amendment of documentTraining and Testing Specifications for Peace Officer Basic Courses(incorporated by reference) filed 8-16-2001; operative 10-1-2001 (Register 2001, No. 33).

63. Editorial correction of subsection (h)(2) (Register 2001, No. 38).

64. Repealer of PAM section D-1-4, renumbering of PAM sections, new PAM section D-14 and new documentTraining Specifications for the Investigation and Trial Preparation Course(all incorporated by reference) filed 10-17-2001; operative 1-1-2002 (Register 2001, No. 42).

65. Amendment of PAM section D-1-3 and amendment of the document,Training and Testing Specifications for Peace Officer Basic Courses(both incorporated by reference) and amendment of the antepenultimate paragraph filed 12-5-2001; ~~operative 1-1-2002 pursuant to Government Code section 11343.4~~ (Register 2001, No. 49). 66. Change without regulatory effect amending subsection (d)(2) and PAM section D-2 (incorporated by reference) filed 1-14-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 3).

66. Change without regulatory effect amending subsection (d)(2) and PAM section D-2 (incorporated by reference) filed 1-14-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 3).

67. Amendment of PAM section D-1-3 (incorporated by reference) and repealer of the documentTraining Specifications for the Reserve Training Module "D" - Modular Format(incorporated by reference) filed 3-11-2002; operative 4-10-2002 (Register 2002, No. 11).

68. Amendment of penultimate paragraph and amendment of the document,Training and Testing Specifications for Peace Officer Basic Courses(incorporated by reference) filed 4-26-2002; operative 7-1-2002 (Register 2002, No. 17).

69. Amendment of subsection (h)(2), amendment of PAM section D-1-4, amendment of the document,Training and Testing Specifications for Peace Officer Basic Coursesand elimination of the document,Training Specifications for the Specialized Investigators' Basic Course(all incorporated by reference) filed 5-21-2002; operative 7-1-2002 (Register 2002, No. 21).

70. Amendment of subsection (h)(2) and amendment of Learning Domains #23 and #36 within the document,Training and Testing Specifications for Peace Officer Basic Courses(incorporated by reference) filed 5-24-2002; operative 7-1-2002 (Register 2002, No. 21).

71. Amendment of subsection (h)(2) and amendment of PAM section D-2 (incorporated by reference) filed 8-13-2002; operative 9-12-2002 (Register 2002, No. 33).

72. Amendment of subsections (a) and (a)(1)(A), redesignation and amendment of portion of subsection (a)(1)(A) and subsections (a)(1)(A)1.-4. as new subsections (a)(1)(B)-(a)(1)(B)5., amendment of PAM section D-13 (incorporated by reference) and repealer of thePOST Field Training Guide(incorporated by reference) filed 10-7-2002; operative 7-1-2003 (Register 2002, No. 41).

73. Amendment of last paragraph and amendment of documentTraining and Testing Specifications for Peace Officer Basic Courses(incorporated by reference) filed 11-26-2002; operative 1-1-2003 (Register 2002, No. 48).

74. Amendment of PAM section D-3 (incorporated by reference) and amendment of subsection (h) filed 2-6-2003; operative 3-8-2003 (Register 2003, No. 6).

75. Amendment of subsections (d)(1)-(4) and (h)(2) and amendment of PAM section D-2 (incorporated by reference) filed 4-7-2003; operative 5-7-2003 (Register 2003, No. 15).

76. Amendment of subsection (h)(2) and amendment of PAM section D-13 (incorporated by reference) filed 5-5-2003 as an emergency; operative 5-5-2003 (Register 2003, No. 19). A Certificate of Compliance must be transmitted to

OAL by 9-2-2003 or emergency language will be repealed by operation of law on the following day.

77. Amendment of subsection (d)(3) filed 7-8-2003; operative 8-7-2003 (Register 2003, No. 28).

78. Amendment of subsections (a)(4), (a)(6), (h)(2) and PAM sections D-1-1 and D-1-3, new PAM section D-1-7 (PAM sections incorporated by reference) and amendment of last paragraph filed 8-21-2003; operative 1-1-2004 (Register 2003, No. 34).

79. Editorial correction inserting inadvertently omitted text in subsection (a)(1)(B)4. and correcting History 76(Register 2003, No. 40).

80. Certificate of Compliance as to 5-5-2003 order, including amendment of subsections (a), (a)(1)(B)1.b) and (a)(1)(B)4., transmitted to OAL 8-26-2003 and filed 10-7-2003 (Register 2003, No. 41).

81. Amendment of last paragraph and further amendment of version of documentTraining and Testing Specifications for Peace Officer Basic Courseseffective 1-1-2004 (incorporated by reference) filed 11-13-2003; operative 1-1-2004 (Register 2003, No. 46).

82. Amendment of subsection (d)(3) and amendment of Commission Procedure D-2 (incorporated by reference) filed 12-30-2003; operative 1-29-2004 (Register 2004, No. 1).

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Briefs and Other Related Documents

Supreme Court of California

YAMAHA CORPORATION OF AMERICA, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant.

No. S060145.

Aug. 27, 1998.

Seller of musical instruments sought refund of use taxes assessed on musical instruments that it purchased outside state, stored within state, and ultimately gave away as promotional gifts. The Superior Court, Los Angeles County, No. BC 079 444, Daniel A. Curry, J., ordered refund for gifts to out-of-state recipients, and State Board of Equalization appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding opinion of Court of Appeal. The Supreme Court, Brown, J., held that Board's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were not entitled to degree of judicial deference given to quasi- legislative rules.

Reversed and remanded.

Mosk, J., filed concurring opinion, which George, C.J., and Werdegar, J., joined.

Opinion, 61 Cal.Rptr.2d 244, vacated.

West Headnotes

[1] Administrative Law and Procedure 796
15Ak796 Most Cited Cases

The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

[2] Statutes 219(1)
361k219(1) Most Cited Cases

Agency interpretation of a statute does not carry the same weight, and it is not reviewed under the same standard, as a quasi-legislative regulation; disapproving *Rizzo v. Board of Trustees*, 27 Cal.App.4th 853, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego*, 147 Cal.App.3d 11, 194 Cal.Rptr. 722; *Rivera v. City of Fresno*, 6 Cal.3d 132, 98 Cal.Rptr. 281, 490 P.2d 793.

[3] Administrative Law and Procedure 797
15Ak797 Most Cited Cases

When a court assesses the validity of quasi-legislative rules, the scope of its review is narrow; if the court is satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

[4] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

Because interpretation is an agency's legal opinion, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference than quasi-legislative rule.

[5] Statutes 219(1)
361k219(1) Most Cited Cases

Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent is fundamentally situational; court must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command.

[6] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act (APA) provisions, that circumstance weighs in favor of judicial deference; however, even formal interpretive rules do not command the same weight

as quasi-legislative rules. 5 U.S.C.A. § 551 et seq.

[7] Taxation ⚷1336
371k1336 Most Cited Cases

State Board of Equalization's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were entitled to some consideration by court in use tax refund case, but not degree of judicial deference given to quasi-legislative rules.

***2 *4 **1032 Daniel E. Lungren, Attorney General, Carol H. Rehm, Jr., David S. Chaney and Philip C. Griffin, Deputy Attorneys General, for Defendant and Appellant.

Bewley, Lassleben & Miller, Jeffrey S. Baird, Joseph A. Vinatieri and Kevin P. Duthoy, Whittier, for Plaintiff and Respondent.

Daniel Kostenbauder, Lawrence V. Brookes, Berkeley, Wm. Gregory Turner and Dean F. Andal as Amici Curiae on behalf of Plaintiff and Respondent.

BROWN, Justice.

For more than 40 years, the State Board of Equalization (Board) has made available for publication as the Business Taxes Law Guide summaries of opinions by its attorneys of the business tax effects of a wide range of transactions. Known as "annotations," the summaries are prompted by actual requests for legal opinions by the Board, its field auditors, and businesses subject to statutes within its jurisdiction. The annotations are *5 brief statements -- often only a sentence or two -- purporting to state definitively the tax consequences of specific hypothetical business transactions. [FN1] More extensive analyses, called "back-ups," are available to those who request them.

FN1. Two examples, drawn at random, illustrate the annotation form: "Beer Can Openers, furnished by breweries to retailers with beer, are not regarded as 'self consumed' by the breweries. 10/2/50." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots. (1998) Annot. No. 280.0160, p. 3731.) "Bookmarks Sold For $2.00 'Postage And Handling'. A taxpayer located in California offers a bookmark to customers for a $2.00 charge, designated as postage and handling. Most of the orders received for the bookmark are from out of state. [¶] Assuming that the charge for the bookmark is 50 percent or more of its cost, the taxpayer is considered to be selling the bookmarks rather than consuming them (Regulation 1670(b)). Accordingly, when a bookmark is sent to a California customer through the U.S. Mail, the amount of postage shown on the package is considered to be a nontaxable transportation charge. For example, when a bookmark is sent to a California customer, if the postage on the envelope is shown as 25 cents, then the taxable gross receipts from the transfer is $1.75. If the bookmark is mailed to a customer located outside California, tax does not apply to any of the $2.00 charge. 12/5/88." (*Id.*, Annot. No. 280.0185, pp. 3731-3732.)

FACTS

The taxpayer here, Yamaha Corporation of America (Yamaha), sells musical instruments nationwide. It purchased a quantity of these outside California without paying tax ("extax"), stored them in its resale inventory in a California warehouse, and eventually gave them away to artists, musical equipment dealers and media representatives as promotional gifts. Delivery was made by shipping the instruments via common carrier, either inside or outside California. Yamaha made similar gifts of brochures and other advertising material. Following an audit, the Board determined Yamaha had used the musical instruments and promotional materials *in* California and was thus subject to the state's use tax, an impost levied as a percentage of the property's purchase price. (See Rev. & Tax.Code, § 6008 et seq.) Yamaha paid the taxes determined by the Board to be due (about $700,000) under protest and then brought this refund suit. Although it did not contest the tax assessed on property given to California residents, Yamaha contended no tax was due on the gifts to *out-of-state* recipients.

The superior court decided Yamaha's out-of-state gifts were excluded from California's use tax, and ordered a refund. That disposition, however, was overturned by the Court of Appeal. Casting the issue as whether Yamaha's promotional gifts had occurred in California or in the state of the donee, the Court of Appeal looked to an annotation in the Business Taxes

Law Guide. According to the guide, gifts are subject to California's use tax *6 "[w]hen the donor divests itself of control over the property in this state ..." [FN2] ***3 (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731.) **1033 Adopting that annotation as dispositive, the Court of Appeal reversed the judgment of the superior court and reinstated the Board's tax assessment. We granted Yamaha's petition for review and now reverse the Court of Appeal's judgment and order the matter returned to that court for further proceedings consistent with our opinion.

FN2. The annotation on which the Board relied -- Annotation No. 280.0040 -- purports to interpret section 6009.1 of the Revenue and Taxation Code, excluding from the definition of storage and use "keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state." Captioned "Advertising Material -- Gifts," the annotation provides that "Advertising or promotional material shipped or brought into the state and temporarily stored here prior to shipment outside state is subject to use tax when a gift of the material [is] made and title passes to the donee in this state. When the donor divests itself of control over the property in this state the gift is regarded as being a taxable use of the property. 10/11/63." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731.)

DISCUSSION

I

[1] The question is what legal effect courts must give to the Board's annotations when they are relied on as supporting its position in taxpayer litigation. In the broader context of administrative law generally, the question is what standard courts apply when reviewing an agency's *interpretation* of a statute. In effect, the Court of Appeal held the annotations were entitled to the same "weight" or "deference" as "quasi-legislative" rules. [FN3] The Court of Appeal adopted the following formulation: "'[A] long-standing and consistent administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is either 'arbitrary, capricious or without rational basis' [citations], *7 or is 'clearly erroneous or unauthorized.' [Citation.] Opinions of the administrative agency's counsel construing the statute," the court went on to say, "are likewise entitled to consideration. [Citations.] Especially where there has been acquiescence by persons having an interest in the matter," the court added, "courts will generally not depart from such an interpretation unless it is unreasonable or clearly erroneous." As this extract from the Court of Appeal opinion indicates, the court relied on a skein of cases as supporting these several, somewhat inconsistent, propositions of administrative law.

FN3. Throughout, we use the terms "quasi-legislative" and "interpretive" in their traditional administrative law senses; i.e., as indicating both the constitutional source of a rule or regulation and the weight or judicial deference due it. (See, e.g., 1 Davis & Pierce, Administrative Law (3d ed. 1994) § 6.3, pp. 233-248.) Of course, administrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; cf. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296 [comparing the two kinds of rules and suggesting that while interpretive rules are not quasi-legislative in the traditional sense, "an agency would arguably still have to adopt these regulations in accordance with [Administrative Procedure Act rulemaking requirements]." The issue is not strictly presented by this case, however: Government Code section 11342, subdivision (g) declares that "[r]egulation" does not include "legal rulings of counsel issued by the ... State Board of Equalization."].)

We reach a different conclusion. An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has

confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. Justice Mosk may have provided the best description when he wrote in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 38 Cal.Rptr.2d 139, 888 P.2d 1268, that " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." ***4**1034(*Id.* at pp. 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; see also *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325-326, 109 P.2d 935 [An "administrative interpretation ... will be accorded great respect by the courts and will be followed if not clearly erroneous. [Citations.] But such a tentative ... interpretation makes no pretense at finality and it is the duty of this court ... to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. [Citations.] The ultimate interpretation of a statute is an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body."].)

Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending *8 on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See *Traverso v. People ex rel. Dept. of Transportation* (1996) 46 Cal.App.4th 1197, 1206, 54 Cal.Rptr.2d 434.) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." (Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)

II

[2] Here, the Court of Appeal relied on language from its prior cases suggesting broadly that an agency interpretation of a statute carries the *same* weight -- that is, is reviewed under the same standard -- as a quasi- legislative regulation. Unlike the annotations here, however, quasi- legislative rules are the substantive product of a delegated *legislative* power conferred on the agency. The formulation on which the Court of Appeal relied is thus apt to lead a court (as it led here) to abdicate a quintessential judicial duty -- applying its independent judgment de novo to the merits of the *legal* issue before it. The fact that in this case the Court of Appeal determined Yamaha's tax liability by giving the Board's annotation a weight amounting to unquestioning acceptance only compounded the error.

We derive these conclusions from long-standing administrative law decisions of this court. Although the web making up that jurisprudence is not seamless, on the whole it is both logical and coherent. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593 (*Culligan*), the taxpayer sued for a refund of sales and use taxes paid under protest on ion-exchange equipment used to condition water and leased to residential subscribers. Because it came from a service business rather than the rental of property, the taxpayer contended, the income was not subject to the Sales and Use Tax Law. In refund litigation, the Board relied on an affidavit of its assistant chief counsel characterizing the transactions as leases taxable under the Sales and Use Tax Law. The trial court rejected the Board's position, calling it an unwarranted extension of the words of the statute, and awarded judgment to the taxpayer. (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.)

Justice Sullivan began his opinion for a unanimous court by asking what was "the appropriate standard of review applicable to the [use tax] assessment against" the taxpayer. (*Culligan, supra,* 17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The Board *9 contended its assessment was based on an "administrative classification" and could be judicially overturned only if it was "arbitrary, capricious or

without rational basis." (*Ibid.*) Our opinion pointed out, however, that the basis for the Board's tax assessment "was not embodied in any formal regulation or even interpretative ruling covering the water ***5 **1035 conditioning industry as a whole." (*Ibid.*) Instead, its basis "was nothing more than the Board auditor's interpretation of two existing regulations." (*Ibid.*) "If the Board had promulgated a formal regulation determining the proper classification of receipts derived from the rental of exchange units ... and the regulation had been challenged in the [refund] action," our *Culligan* opinion went on to say, "the proper scope of reviewing such regulation *would* be one of limited judicial review as urged by the Board. [Citations.]" (*Ibid.*, italics added.)

That was not the case in *Culligan*, however. Instead of adopting a formal regulation, the Board and its staff had considered the facts of the taxpayer's particular transactions, interpreted the statutes and regulations they deemed applicable, and "arrived at certain conclusions as to plaintiff's tax liability and assessed the tax accordingly." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Far from being "the equivalent of a regulation or ruling of general application," the Board's argument was "merely its litigating position in this particular matter." (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In an important footnote to its opinion, the *Culligan* court disapproved language in several Court of Appeal decisions "indicating that the proper scope of review of such litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit) is to determine whether the Board's assessment was arbitrary, capricious or had no reasonable or rational basis." (*Id.* at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593.)

Although the Court of Appeal in this case cited *Culligan, supra*, 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, it regarded *American Hospital Supply Corp. v. State Bd. of Equalization* (1985) 169 Cal.App.3d 1088, 215 Cal.Rptr. 744 (*American Hospital*) as the decisive precedent. The question there was whether disposable paper menus, used for patients' meals in hospitals, were subject to the sales tax. In concluding they were, the Court of Appeal relied on a ruling of Board counsel interpreting a quasi-legislative regulation of the Board. "Interpretation of an administrative regulation," the court wrote, "like [the] interpretation of a statute, is a question of law which rests with the courts. However, the agency's own interpretation of its regulation is entitled to great weight." (*Id.* at p. 1092, 215 Cal.Rptr. 744.) The Board's interpretation could be overturned, the opinion went on to state, only if it was " 'arbitrary, capricious or without rational basis.' " (*Ibid.*)

The *American Hospital* opinion also rejected the taxpayer's contention that because the rule at issue was only an interpretation and not a quasi- legislative rule, it was not entitled to deference. *10(*American Hospital, supra*, 169 Cal.App.3d at p. 1092, 215 Cal.Rptr. 744.) Instead, the court read *Culligan* as standing for the *opposite* proposition. Because we had said the rule at issue there did not cover an entire industry, the Court of Appeal reasoned *Culligan* had held in effect that it was nothing more than a " 'litigating position' " and could be ignored. (119 Cal.App.3d at p. 1093, 215 Cal.Rptr. 744.) On that basis, *American Hospital* concluded that because the Board's position on the taxability of paper menus *was* embodied in a "formal regulation" *and* covered the entire hospital industry, it was entitled to same deference as a quasi-legislative rule: "[It] must prevail because it is neither 'arbitrary, capricious or without rational basis' (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d 86, 92, 130 Cal.Rptr. 321, 550 P.2d 593) nor is it 'clearly erroneous or unauthorized' (*Rivera v. City of Fresno* [(1971)] 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793)." (*Ibid.*)

We think the Court of Appeal in *American Hospital, supra*, 169 Cal.App.3d 1088, 215 Cal.Rptr. 744, and the Court of Appeal in this case by relying on it, failed to distinguish between two classes of rules -- quasi- legislative and interpretive -- that, because of their differing legal sources, command significantly different degrees of deference by the courts. Moreover, *American Hospital* misread our opinion in *Culligan*, when it identified the feature that distinguishes one kind of rule from the other. Although the Court of Appeal here did not rely on other prior cases as much as on *American Hospital*, it cited several that appear to perpetuate the same ***6 **1036 confusion. (See *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793.)

[3] It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind --

quasi-legislative rules -- represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. (See, e.g., 1 Davis & Pierce, Administrative Law, *supra*, § 6.3, at pp. 233-248; 1 Cooper, State Administrative Law (1965) Rule Making: Procedures, pp. 173-176; Bonfield, State Administrative Rulemaking (1986) Interpretive Rules, § 6.9.1, pp. 279-283; 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 116, p. 1160 [collecting cases].) Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it *11 is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204 (*Wallace Berrie*): " '[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is "within the scope of the authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].' [Citation.] 'These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' (*Culligan, supra*, 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593 [citations].)" [FN4]

FN4. In one respect, our opinion in *Wallace Berrie* may overstate the level of deference -- even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has "final responsibility for the interpretation of the law" under which the regulation was issued. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; see cases cited, *post*, at p. 7 of 78 Cal.Rptr.2d, at p. 1037 of 960 P.2d; *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022, 50 Cal.Rptr.2d 892 [Standard of review of challenges to "fundamental legitimacy" of quasi-legislative regulation is " 'respectful nondeference.' "].)

[4] It is the other class of administrative rules, those *interpreting* a statute, that is at issue in this case. Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this "expertise," expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion*, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. (*Bodinson Mfg. Co. v. Cal. Emp. Com., supra*, 17 Cal.2d at pp. 325-326, 109 P.2d 935.)

In *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1, we contrasted **1037 ***7 the narrow *12 standard under which quasi-legislative rules are reviewed -- " limited," we wrote, "to a determination whether the agency's action is arbitrary, capricious, lacking in evidentiary support, or contrary to procedures provided by law" (*id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1) -- with the broader standard courts apply to interpretations. The quasi-legislative standard of review "is *inapplicable* when the agency is not exercising a discretionary rule-making power, but merely *construing* a controlling statute. The appropriate mode of review in such a case is one in which the judiciary, although taking ultimate responsibility for the construction of the statute, accords great weight and respect to the administrative construction. [Citation.]" (*Ibid.*, italics added; see also *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1,

11, 270 Cal.Rptr. 796, 793 P.2d 2 ["courts are the ultimate arbiters of the construction of a statute"]; Dyna-Med, Inc. v. Fair Employment & Housing Com. *(1987) 43 Cal.3d 1379, 1389, 241 Cal.Rptr. 67, 743 P.2d 1323 ["The final meaning of a statute ... rests with the courts."]*; Morris v. Williams *(1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 [" 'final responsibility for the interpretation of the law rests with the courts.' "].)*

[5] Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent -- the "weight" it should be given -- is thus fundamentally *situational*. A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. Professor Michael Asimow, an administrative law adviser to the California Law Revision Commission, has identified two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: those "indicating that the agency has a comparative interpretive advantage over the courts," and those "indicating that the interpretation in question is probably correct." (Cal. Law Revision Com., Tent. Recommendation, Judicial Review of Agency Action (Aug.1995) p. 11 (Tentative Recommendation); see also Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1192-1209.)

[6] In the first category are factors that "assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (Tentative Recommendation, *supra*, at p. 11.) The second group of *13 factors in the Asimow classification -- those suggesting the agency's interpretation is likely to be correct -- includes indications of careful consideration by senior agency officials ("an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member" (Tentative Recommendation, *supra*, at p. 11)), evidence that the agency "has consistently maintained the interpretation in question, especially if [it] is long-standing" (*ibid.*) ("[a] vacillating position ... is entitled to no deference" (*ibid.*)), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions -- which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative "product" -- that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because " 'the ultimate resolution of ... legal questions rests with the courts' " (*Culligan, supra*, 17 Cal.3d at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593), judges play a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative rules.

***8 **1038 A valuable judicial account of the process by which courts reckon the weight of agency interpretations was provided by Justice Robert Jackson's opinion in *Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (*Skidmore*), a case arising under the federal Fair Labor Standards Act. The question for the court was whether private firefighters' " 'waiting time' " was countable as "working time" under the act and thus compensable. (323 U.S. at p. 136, 65 S.Ct. 161.) "Congress," the *Skidmore* opinion observed, "did not utilize the services of an administrative agency to find facts and to determine in the first instance whether particular cases fall within or without the Act." (*Id.* at p. 137, 65 S.Ct. 161.) "Instead, it put this responsibility on the courts. [Citation.] But it did create the office of Administrator, impose upon him a variety of duties, endow him with powers to inform himself of conditions in industries and employments subject to the Act, and put on him the duties of bringing injunction actions to restrain violations. Pursuit of his duties has accumulated a considerable experience in the problems of ascertaining [the issue in suit] and a knowledge of the customs prevailing in reference to their solution.... He has set forth his views of the application of the Act under different circumstances in an interpretative bulletin and in informal rulings. They provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it. [Citation.]" (*Id.* at pp. 137-138, 65 S.Ct. 161.)

*14 No statute prescribed the deference federal

courts should give the administrator's interpretive bulletins and informal rulings, and they were "not reached as a result of ... adversary proceedings." (*Skidmore, supra,* 323 U.S. at p. 139, 65 S.Ct. 161.) Given those features, Justice Jackson concluded, the administrator's rulings "do not constitute an interpretation of the Act or a standard for judging factual situations which *binds* a ... court's processes, as an authoritative pronouncement of a higher court might do." (*Ibid.*, italics added.) Still, the court held, the fact that "the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect." (*Id.* at p. 140, 65 S.Ct. 161.) "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

[7] The parallels between the statutory powers and administrative practice of the Board in interpreting the Sales and Use Tax Law, and those of the federal agency described in *Skidmore,* are extensive. As with Congress, our Legislature has not conferred adjudicatory powers on the Board as the means by which sales and use tax liabilities are determined; instead, the validity of those assessments is settled in tax refund litigation like this case. (Rev. & Tax.Code, § 6933.) Like the federal administrator in *Skidmore,* the Board has not adopted a formal regulation under its quasi-legislative rulemaking powers purporting to interpret the statute at issue here. As in *Skidmore,* however, the Board and its staff have accumulated a substantial "body of experience and informed judgment" in the administration of the business tax law "to which the courts and litigants may properly resort for guidance." (323 U.S. at p. 140, 65 S.Ct. 161.) Some of that experience and informed judgment takes the form of the annotations published in the Business Taxes Law Guide.

The opinion in the *Skidmore* case and Professor Asimow's account for the Law Revision Commission -- together spanning a half-century of judicial and scholarly comment on the characteristics and role of administrative interpretations -- accurately describe their value and the criteria by which courts judge their weight. The deference due an agency interpretation -- including the Board's annotations at issue here -- turns on a legally informed, commonsense assessment of their contextual merit. "The weight of such a judgment in a particular case," to borrow again from Justice Jackson's opinion in *Skidmore,* "will depend upon *the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors* ***1039 ****9 *which give it power to persuade, if lacking power* *15 *to control.*" (*Skidmore, supra,* 323 U.S. at p. 140, 65 S.Ct. 161, italics added.)

As we read the brief filed by the Attorney General, the Board does not contend for any greater judicial weight for its annotations. Its brief on the merits states that "Yamaha is correct that the annotations are not regulations, and they are not binding upon taxpayers, the Board itself, or the Court. Nevertheless, the annotations are digests of opinions written by the legal staff of the Board which are evidentiary of administrative interpretations made by the Board in the normal course of its administration of the Sales and Use Tax Law.... [T]he annotations have substantial precedential effect within the agency. [¶] The interpretation represented in [the] annotations is certainly entitled to some consideration by the Court."

We agree.

CONCLUSION

In deciding this case, the Court of Appeal gave greater weight to the Board's annotation than it warranted. Although the standard used by the Court of Appeal was not the correct one and prejudiced the taxpayer, regard for the structure of appellate decisionmaking suggests the case should be returned to the Court of Appeal. That court can then consider the merits of the use tax issue and the value of the Board's interpretation in light of the conclusions drawn here. To the extent language in *Rizzo v. Board of Trustees, supra,* 27 Cal.App.4th at page 861, 32 Cal.Rptr.2d 892, *DeYoung v. City of San Diego, supra,* 147 Cal.App.3d at page 18, 194 Cal.Rptr. 722, and *Rivera v. City of Fresno, supra,* 6 Cal.3d at page 140, 98 Cal.Rptr. 281, 490 P.2d 793, is inconsistent with the foregoing views, it is disapproved. We express no opinion on the merits of the underlying question of Yamaha's use tax liability.

DISPOSITION

The judgment of the Court of Appeal is reversed and the cause is remanded to that court for further proceedings consistent with this opinion.

GEORGE, C.J., and KENNARD, BAXTER and CHIN, JJ., concur.

MOSK, Justice, concurring.

I concur in the judgment of the majority that the Court of Appeal's formulation of the standard of review for tax annotations, the summaries of tax opinions of the State Board of Equalization's (Board) legal counsel published in the Business Taxes Law Guide, was not quite correct. Specifically the Court of Appeal erred in suggesting that it would defer to *16 the Board's or its legal counsel's rule unless that rule is "arbitrary and capricious." The majority do not purport to change the well-established, if not always consistently articulated, body of law pertaining to judicial review of administrative rulings, but merely attempt to clarify that law. I write separately to further clarify the relevant legal principles and their application to the present case.

The appropriate starting point of a discussion of judicial review of administrative regulations is an analysis of quasi-legislative regulations, those regulations formally adopted by an agency pursuant to the California Administrative Procedures Act (APA) and binding on the agency. "The proper scope of a court's review is determined by the *task* before it." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679, 170 Cal.Rptr. 484, 620 P.2d 1032, italics added.) In the case of quasi-legislative regulations, the court has essentially two tasks. The first duty is "to determine whether the [agency] exercised [its] quasi-legislative authority within the bounds of the statutory mandate." (*Morris v. Williams* (1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 (*Morris*).) As the *Morris* court made clear, this is a matter for the independent judgment of the court. "While the construction of a statute by officials charged with its administration, including their interpretation of the authority invested in them to implement and carry out its provisions, is entitled to *great weight*, nevertheless 'Whatever the force of administrative construction ... *final responsibility for the interpretation of the law rests with the courts.*' [Citation.] Administrative regulations **1040 ***10 that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations. [Citations.]" (*Ibid.*, italics added.) This duty derives directly from statute. "Under Government Code [[FN1]] section 11373 [now § 11342.1], '[e]ach regulation adopted [by a state agency], to be effective, must be within the scope of authority conferred....' Whenever a state agency is authorized by statute 'to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute....*' ([§ 11342.2].)" (*Morris, supra*, 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697, fn. omitted, italics added by *Morris* court.)

FN1. All further statutory references are to the Government Code unless otherwise stated.

The court's second task arises once it has completed the first. "If we conclude that the [agency] was empowered to adopt the regulations, we must also determine whether the regulations are 'reasonably necessary to effectuate the purpose of the statute.' [(§ 11342.2).] In making such a determination, the court will not 'superimpose its own policy judgment upon the *17 agency in the absence of an arbitrary and capricious decision.' [Citations.]" (*Morris, supra*, 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.)

In *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, 270 Cal.Rptr. 796, 793 P.2d 2 (*Rank*) we further clarified the two tasks and two distinct standards of review for courts scrutinizing agency regulations. We stated: "As we said in *Pitts v. Perluss* (1962) 58 Cal.2d 824[, 833, 27 Cal.Rptr. 19, 377 P.2d 83], '[a]s to quasi-legislative acts of administrative agencies, "judicial review is limited to an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and give the notices required by law."' [Citations.] When, however, a regulation is challenged as inconsistent with the terms or intent of the authorizing statute, the standard of review is different, because the courts are the ultimate arbiters of the construction of a statute. Thus, [the *Morris* court] in finding that the challenged regulations contravened legislative intent, rejected the agency's claim that the only issue for review was whether the regulations were arbitrary and capricious." (*Ibid.*, fn. omitted.) The *Rank* court then proceeded to reiterate the *Morris* formulation that " '[w]hile the construction of a statute by officials charged with its administration ... is entitled to great weight, ... final responsibility for the interpretation of the law rests

with the courts.' " (*Ibid.*) [FN2] (We will henceforth refer to this standard as the "independent judgment/great weight standard.")

FN2. Certain of our own cases have confused the standards of review in this two-pronged test. For example, in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204, after stating the above two-pronged test, declared that neither prong " 'present[s] a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is ' arbitrary, capricious or [without] reasonable or rational basis.' [Citation.]" As the discussion of *Rank* and *Morris* above makes clear, the first prong of the inquiry -- whether the regulation is "within the scope of the authority conferred" -- is *not* limited to the "arbitrary and capricious" standard of review, but employs the independent judgment/great weight standard. (*Rank, supra*, 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2; *Morris, supra*, 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.) This confusion is in part responsible for the misstatements of the Court of Appeal in the present case.

There is an important qualification to the independent judgment/great weight standard articulated above, when a court finds that the Legislature has *delegated* the task of interpreting or elaborating on a statute to an administrative agency. A court may find that the Legislature has intended to delegate this interpretive or gap-filling power when it employs open-ended statutory language that an agency is authorized to apply or "when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make." (Asimow, *The Scope of Judicial Review of Decisions of *18 California Administrative Agencies* (1995) ***11*104142 UCLA L.Rev. 1157, 1198-1199 (Asimow).) For example, in *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 9 Cal.Rptr.2d 358, 831 P.2d 798 (*Moore*), we reviewed a regulation by the Board of Accountancy, the agency statutorily chartered to regulate the accounting profession in this state. The regulation provided that those unlicensed by that board could not use the title "accountant," interpreting a statute, Business and Professions Code section 5058, that forbids use of titles "likely to be confused with" the titles of "certified public accountant" and "public accountant." (2 Cal.4th at p. 1011, 9 Cal.Rptr.2d 358, 831 P.2d 798.) As we stated, "the Legislature delegated to the Board the authority to determine whether a title or designation not identified in the statute is likely to confuse or mislead the public." (*Id.* at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798.)

Thus, the agency's interpretation of a statute may be subject to the most deferential "arbitrary and capricious" standard of review when the agency is expressly or impliedly delegated interpretive authority. Such delegation may often be implied when there are broadly worded statutes combined with an authorization of agency rulemaking power. But when the agency is called upon to enforce a detailed statutory scheme, discretion is as a rule correspondingly narrower. In other words, a court must always make an independent determination whether the agency regulation is "within the scope of the authority conferred," and that determination includes an inquiry into the extent to which the Legislature intended to delegate discretion to the agency to construe or elaborate on the authorizing statute.

The above schema applies to so-called "interpretive" regulations as well as quasi-legislative regulations. As the majority observe, "administrative rules do not always fall neatly into one category or the other...." (Maj. opn., *ante*, at p. 3, fn. 3 of 78 Cal.Rptr.2d, at p. 1033, fn. 3 of 960 P.2d.) Indeed, regulations subject to the formal procedural requirements of the APA include those that "interpret" the law enforced or administered by a government agency, as well as those that "implement" or "make specific" such law. (§ 11342, subd. (b).) As we recently stated: "A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially *legislative* in nature even if it merely *interprets* applicable law." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296, italics added.) [FN3] Moreover, all regulations are "interpretive" to some extent, because all *19 regulations implicitly or explicitly interpret "the authority invested in them to implement and carry out [statutory] provisions...." (*Morris, supra*, 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697.)

FN3. I note that in federal law, by contrast, the term "interpretive rule" is given a particular significance and legal status. According to statute, "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" are required to be published in the Federal Register. (5 U.S.C. § 552(a)(1)(D).) But such "interpretive rules," and "general statements of policy" are explicitly exempt from the notice and hearing provisions of the federal APA. (5 U.S.C. § 553(b)(3)(A).) No such distinction exists in California law..

Of course, some regulations may be properly designated "interpretive" inasmuch as they have no purpose other than to interpret statutes. (See, e.g., *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1.) In the case of such regulations, courts will be engaged only in the first of the two tasks discussed above, i.e., ensuring that the regulation is within the scope of the statutory authority conferred, employing the independent judgment/great weight test. (See *id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1.)

In sum, when reviewing a quasi-legislative regulation, courts consider whether the regulation is within the scope of the authority conferred, essentially a question of the validity of an agency's statutory interpretation, guided by the independent judgment/great weight standard. (*Rank, supra,* 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2.) This is in contrast to the second aspect of the inquiry, whether a regulation is "reasonably necessary"**1042 ***12 to effectuate the statutory purpose," wherein courts "will not intervene in the absence of an arbitrary or capricious decision." (*Ibid.*, citing *Morris, supra,* 67 Cal.2d at p. 749, 63 Cal.Rptr. 689, 433 P.2d 697.) Courts may also employ the "arbitrary and capricious" standard in reviewing whether the agency's construction of a statute is correct if the court determines that the particular statutory scheme in question explicitly or implicitly delegates this interpretive or "gap-filling" authority to an administrative agency. (See *Moore v. California State Bd. of Accountancy, supra,* 2 Cal.4th at pp. 1013- 1014, 9 Cal.Rptr.2d 358, 831 P.2d 798; Asimow, *supra,* 42 UCLA L.Rev. at p. 1198.)

What standard of review should be employed for administrative rulings that were not formally adopted under the APA? Such regulations fall generally into two categories. The first is the class of regulations that *should* have been formally adopted under the APA, but were not. In such cases, the law is clear that in order to effectuate the policies behind the APA courts are to give *no* weight to these interpretive regulations. (*Tidewater Marine Western, Inc., v. Bradshaw, supra,* 14 Cal.4th at p. 576, 59 Cal.Rptr.2d 186, 927 P.2d 296; *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205, 149 Cal.Rptr. 1, 583 P.2d 744.) To hold otherwise would help to perpetuate the problem of avoidance by administrative agencies of " 'the mandatory requirements of the [APA] of public notice, opportunity to be heard by the public, filing with the Secretary of State, and publication in the [California Code of Regulations].' " *20 (*Armistead, supra,* 22 Cal.3d at p. 205, 149 Cal.Rptr. 1, 583 P.2d 744.) For these reasons, and quite apart from any expertise the agency may possess in interpreting and administering the statute, courts in effect ignore the agency's illegal regulation.

In the second category are those regulations that are not subject to the APA because they are expressly or implicitly exempted from or outside the scope of APA requirements. For such rulings, the standard of judicial review of agency interpretations of statutes is basically the same as for those rules adopted under the APA, i.e., the independent judgment/great weight standard. (See, e.g., *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491, 501, 138 Cal.Rptr. 696, 564 P.2d 848 [applying essentially this standard to a statutory interpretation arising within the context of the Workers' Compensation Appeals Board's decisional law]; see also Asimow, *supra,* 42 UCLA L.Rev. at pp. 1200-1201; Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) pp. 81-82 (Judicial Review of Agency Action).)

The Board counsel's legal ruling at issue in this case is an example of express exemption from the APA. Section 11342, subdivision (g), specifies that the term "regulation" for purposes of the APA does not include "legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization...." It is therefore evident that our decisions pertaining to regulations that fail to be approved according to required APA procedures are inapposite. It also appears evident that these rulings, as agency interpretations of statutory law, are also to

be reviewed under the independent judgment/great weight standard.

But, as the majority point out, the precise weight to be accorded an agency interpretation varies depending on a number of factors. Professor Asimow states that deference is especially appropriate not only when an administrative agency has particular expertise, but also by virtue of its specialization in administering a statute, which "gives [that agency] an intimate knowledge of the problems dealt with in the statute and the various administrative consequences arising from particular interpretations." (Asimow, *supra*, 42 UCLA L.Rev. at p. 1196.) Moreover, deference is more appropriate when, as in the present case, the agency is interpreting "the statute [it] enforces" rather than "some other statute, the common law, the [C]onstitution, or prior judicial precedents." (*Ibid.*)

Another important factor, as the majority recognize, is whether an administrative construction is consistent and of long standing. (Maj. opn., *ante*, at p. 7 of 78 Cal.Rptr.2d, at p. 1037 of 960 P.2d) This factor is particularly important for resolution of the present case because the tax annotation with which the case is principally concerned, *21 Business ***13 **1043 Taxes Law Guide Annotation No. 280.0040, was first published in 1963, and *Yamaha Corp. of America* does not contest that it has represented the Board's position on the tax question at issue at least since that time. (See now 2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Annots. (1998) Annot. No. 280.0040, p. 3731 (hereafter Annotation No. 280.0040).)

As the Court of Appeal has stated: "Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous." (*Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892). This principle has been affirmed on numerous occasions by this court and the Courts of Appeal. (See, e.g., *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Nelson v. Dean* (1946) 27 Cal.2d 873, 880-881, 168 P.2d 16; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1256-1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board* (1988) 202 Cal.App.3d 1177, 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 252, 239 Cal.Rptr. 395; *Horn v. Swoap* (1974) 41 Cal.App.3d 375, 382, 116 Cal.Rptr. 113.) Moreover, this principle applies to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. (See, e.g., *DeYoung, supra*, 147 Cal.App.3d 11, 19-21, 194 Cal.Rptr. 722 [long-standing interpretation of city charter provision embodied in city attorney's opinions]; *Napa Valley Educators' Assn., supra*, 194 Cal.App.3d at pp. 251-252, 239 Cal.Rptr. 395 [evidence in the record of the case, including a declaration by official with the State Department of Education, shows long-standing practice of following a certain interpretation of an Education Code provision].)

Two reasons have been advanced for this principle. First, "When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation." (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra*, 24 Cal.2d at p. 757, 151 P.2d 233; see also *Nelson v. Dean, supra*, 27 Cal.2d at p. 881, 168 P.2d 16; *Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892.)

Second, as we stated in *Moore, supra*, 2 Cal.4th at pages 1017-1018, 9 Cal.Rptr.2d 358, 831 P.2d 798, "a presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be *22 presumed to know of it." As the Court of Appeal has further articulated: " '[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent.' " (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892; see also *Thornton v. Carlson, supra*, 4 Cal.App.4th at p. 1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board, supra*, 202 Cal.App.3d at p. 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist., supra*, 194 Cal.App.3d at p. 252, 239 Cal.Rptr. 395; *Horn v. Swoap, supra*, 41 Cal.App.3d at p. 382, 116 Cal.Rptr. 113.) I note that in the present case, the statute under consideration, Revenue and Taxation Code section 6009.1, has been amended twice since the issuance of Annotation No. 280.0040. (Stats.1965, ch. 1188, § 1, p. 3004; Stats.1980, ch. 546, § 1, p.

1503.)

To state the matter in other terms, courts often recognize the propriety of assigning great weight to administrative interpretations of law either by reference to an explicit or implicit delegation of power by the Legislature to an administrative agency (see *Moore, supra,* 2 Cal.4th at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798; Asimow, *supra,* 42 UCLA L.Rev. at pp. 1198-1199), or by noting the agency's specialization and expertise in interpreting the statutes it is ***14 **1044 charged with administering (see *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982, 8 Cal.Rptr.2d 565; Asimow, *supra,* 42 UCLA L.Rev. at pp. 1195-1196). But there is a third reason for paying special heed to an administrative interpretation: the reality that the administrative agency -- by virtue of the necessity of performing its administrative functions -- creates a body of de facto law in the interstices of statutory law, which is relied on by the business community and the general public to order their affairs and, after a sufficient passage of time, is presumptively accepted by the Legislature. In the present case, this third rationale for according great weight to an administrative interpretation is particularly applicable. Thus, judicial deference in this case is owed not so much to the tax annotation per se but to a long-standing practice of enforcement and interpretation by Board staff of which the annotation is evidence.

There are also particularly sound reasons why the principle of giving especially greater weight to long-standing administrative practice should apply when, as in this case, that practice is embodied in a published ruling of the Board's legal counsel. These rulings have a special legal status. As noted, they have been specifically exempted from the APA by section 11342, subdivision (g). The purpose of this exemption was stated by the Franchise Tax Board staff in its enrolled bill report to the Governor immediately prior the enactment of the 1983 amendment containing the exemption, and its statement could be equally well applied to the Board of *23 Equalization. "Department counsel issues a large number of legal rulings in several forms which address specific problems of taxpayers. While these opinions address specific problems, *they are intended to have general application to all taxpayers similarly situated.* This bill provides that such rulings are not regulations, and accordingly, not subject to the [Office of Administrative Law (OAL)] review process. This statutory determination will permit the department to continue to provide a valuable service to taxpayers. If rulings were deemed to be regulations, the service would have to be discontinued because of the administrative burdens created by the OAL review process." (Franchise Tax Bd. staff, Enrolled Bill Rep., Assem. Bill No. 227 (1983-1984 Reg. Sess.) Sept. 16, 1983, p. 3, italics added.)

Thus, the passage of the 1983 amendment to section 11342 was evidently designed for the benefit of taxpayers, so that they would continue to have information about the effective legal positions of the two tax boards. The complexity of tax law and its application to the manifold factual situations of individual taxpayers appears to far outpace an agency's capacity to promulgate and amend formal regulations. Given the importance of certainty in tax law, the Board has long engaged in the practice of issuing legal opinions to individual taxpayers. (See 1 Cal. Taxes (Cont., Ed., Bar Supp.1996) § 2.152, p. 347.) The Legislature recognized such practice, and recognized the propriety of taxpayer reliance on such rulings, in Revenue and Tax Code section 6596. That section provides that if a person's failure to make a timely payment or return "is due to the person's reasonable reliance on written advice from the [B]oard," that person would be relieved of certain payment obligations. The authorization in section 11342 to publish such individual rulings without following APA requirements is a further legislative means of facilitating business planning and increasing taxpayer certainty about tax law. Publication of this information allows taxpayers subject to the sales and use tax to structure their affairs accordingly, and, if they perceive the need, lobby the Board or the Legislature to overturn these legal rulings. As the Attorney General states in his brief, such rulings, while not binding on the agency, "have substantial precedential effect within the agency." There is accordingly no reason to decline to extend to such legal rulings, insofar as they embody the Board's long-standing interpretations of the sales and use tax statutes, the especially great weight accorded to other representations of long-standing administrative practice. [FN4]

FN4. Yamaha and amicus curiae claim that tax annotations are frequently inconsistent, and that the Board legal staff has been lax in purging the Business Taxes Law Guide of outdated annotations. Obviously, to extent that an old annotation does *not* represent the Board's long- standing, *consistent,*

interpretation, it does not merit the same consideration. (See *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1125, 41 Cal.Rptr.2d 46.) In the present case, Yamaha does not contend that Annotation No. 280.0040 is inconsistent with other annotations, or with the Board's actual practice, since it was issued.

***15 **1045 Tax annotations representing the Board's long-standing position may usefully be contrasted to positions the Board might adopt in the context of *24 litigation. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, we found that such litigating positions were not entitled to as great a level of deference as administrative rulings that were "embodied in formal regulation[s] or even interpretive ruling[s] covering the ... industry as a whole...." (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593). [FN5] The tax annotation at issue in this case, although originally addressing an individual taxpayer's query, was published and has represented the Board's categorical position regarding taxation of gifts originating from a California source. The annotation, therefore, being both an interpretive ruling of a general nature, and one of long standing, is deserving of significantly greater weight than if the Board had adopted its position only as part of the present litigation. [FN6]

FN5. I note that some of the *Culligan* court's language may be open to misinterpretation. The Board in that case contended that the proper standard of review was whether its position was "arbitrary, capricious or without rational basis." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court disagreed, holding that " '[t]he interpretation of a regulation, like the interpretation of the statute, is, of course, a question of law [citations], and while an administrative agency's interpretation of its own regulation obviously deserves great weight [citations], the ultimate resolution of such legal questions rests with courts.' " (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In expressing its disagreement with the proposition that the Board's litigating position deserves the highest level of deference, the *Culligan* court differentiated such positions from "formal regulation" of a general nature, which, the court agreed, would be overturned only if arbitrary and capricious. (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Perhaps because the *Culligan* court was focused on making a distinction between regulations of a general nature and litigating positions, it did not articulate the two-pronged judicial inquiry into the validity of quasi-legislative regulations as discussed above, nor did it specify that the arbitrary and capricious standard applied only to the *second* prong. Nonetheless, the *Culligan* court was correct in holding that statutory interpretations contained in formal regulations merit more deference, all other things being equal, than an agency's litigating positions.

FN6. Moreover, although the *Culligan* court referred to "litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit)" (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593), it was not implying that all material contained in tax bulletins were "litigating positions." Indeed the *Culligan* court cited *Henry's Restaurants of Pomona, Inc. v. State Bd. of Equalization* (1978) 80 Cal.App.3d 1009, 106 Cal.Rptr. 867, as an example of a case typifying the limited judicial review appropriate for regulations of a general nature. (*Culligan, supra*, at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court in *Henry's Restaurants* considered the Board's interpretation of a sales tax question issued in the form of a General Sales Tax Bulletin. (80 Cal.App.3d at p. 1014, 106 Cal.Rptr. 867.) The citation to *Henry's Restaurants* shows that the *Culligan* court's reference to "litigating positions of the Board ... announced ... in tax bulletins" was not to legal rulings of a general nature that might be contained in tax bulletins.

It may be argued that regulations formally adopted in compliance with the APA should intrinsically be assigned greater weight than tax annotations, because the former are promulgated only after a notice and comment period, whereas the latter are devised by the Board's legal staff without public input. *25 In the abstract, that argument is not without merit. But even if the statutory interpretations contained in tax

annotations are not, *ab initio*, as reliable or worthy of deference as formally adopted regulations, the well-established California case law quoted above demonstrates that such reliability may be earned subsequently. Tax annotations that represent the Board's administrative practices may, if they withstand the test of time, merit a weight that initially may not have been intrinsically warranted. Or in other words, while formal APA adoption is one factor in favor of giving greater weight to an agency construction of a statute, the fact that a rule is of long- standing and the statute it interprets has been reenacted are other such factors.

In sum, as the Attorney General correctly sets forth in his brief, the appropriate standard **1046 of review for Annotation No. 280.0040 ***16 can be stated as follows: (1) the court should exercise its independent judgment to determine whether the Board's legal counsel correctly construed the statute; (2) the Board's construction of the statute is nonetheless entitled to "great weight"; (3) when, as here, the Board is construing a statute it is charged with administering and that statutory interpretation is long-standing and has been acquiesced in by persons interested in the matter, and by the Legislature, it is particularly appropriate to give these interpretations great weight. (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 861, 32 Cal.Rptr.2d 892.) [FN7]

FN7. The majority quote at length from (*Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161) to describe the proper standard of judicial review of administrative rulings. I note that the United States Supreme Court has at least partly abandoned *Skidmore* 's open-ended formulation in favor of a more bright line one. (See *Chevron v. Natural Resources Defense Council* (1984) 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694.) In any case, I agree with the majority that many of the factors discussed in Justice Jackson's opinion in *Skidmore* are appropriate considerations under the governing California decisions, and that the discussion in *Skidmore* may be a useful guide to the extent it is consistent with the independent judgment/great weight test subsequently developed under California law.

The Court of Appeal in this case, although it stated the standard of review nearly correctly, reflected some of the confusion found in our case law when it suggested that it would defer to the Board's annotation unless it was "arbitrary, capricious or without rational basis." It is therefore appropriate to remand to the Court of Appeal for reconsideration in light of the proper standard of review.

GEORGE, C.J., and WERDEGAR, J., concur.

78 Cal.Rptr.2d 1, 19 Cal.4th 1, 960 P.2d 1031, 98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211

Briefs and Other Related Documents (Back to top)

• 1997 WL 572877 (Appellate Brief) BRIEF ON THE MERITS (Aug. 11, 1997)

END OF DOCUMENT

Original List Date: 7/6/2001
Last Updated: 6/2/2004
List Print Date: 06/02/2004
Claim Number: 00-TC-19
Issue: Mandatory On-The-Job Training for Peace Officers Working Alone

Mailing Information: Draft Staff Analysis

Mailing List

Related

02-TC-06 Peace Officers Working Alone (K-14)

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EXHIBIT J

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AUDITOR-CONTROLLER

June 18, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
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Dear Ms. Higashi:

Review of Commission Staff Draft Analysis
Los Angeles County Test Claim [00-TC-19]
Santa Monica Community College District Test Claim [02-TC-06]
Commission on Peace Officer Standards and Training Bulletin: 98-1

We submit the subject review regarding new State-mandated field training requirements for general law enforcement patrol agencies.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

Review of Commission Staff Draft Analysis
Los Angeles County Test Claim [00-TC-19]
Santa Monica Community College District Test Claim [02-TC-06]
Commission on Peace Officer Standards and Training Bulletin: 98-1
Mandatory On-the- Job Training for Peace Officers Working Alone

On June 2, 2004 Commission staff issued their first analysis of the subject test claims which allege that the Commission on Peace Officer Standards and Training (POST) has unambiguously mandated that Los Angeles County [County] and the Santa Monica Community College District provide field [on-the-job] training as explicitly required in POST Bulletin 98-1.

Before POST Bulletin: 98-1 was issued on January 9, 1998, field training was not mandated and not part of an officer's basic training. Now, a peace officer may not be assigned to general law enforcement patrol duties without this new basic training.

Mandated Training

POST Bulletin 98-1, entitled "MANDATORY FIELD TRAINING PROGRAM', clearly indicates that mandatory field training, is now an "integral part" of the previously mandated "basic training" requirement. In the Bulletin's first paragraph, POST's Executive Director, Mr. Kenneth J. O'Brien, states:

> "'[The] Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies."

Accordingly, all local law enforcement agencies must comply as the mandatory field training program is now an integral part of the basic training requirement, found to be mandated by Commission staff [Staff Analysis, page 13].

Expanded Basic Training

Commission staff note that the "basic training" requirement is mandated [Staff Analysis, page 13] but fail to note that such "basic training" has been expanded under the subject test claim legislation to include, as an "integral part", mandatory field training as set forth in POST Bulletin 98-1.

Also, staff's argument, on page 12 of their analysis, that "... local agencies and school districts are not mandated by the state to provide field training to their officers..." if local agencies and school districts "... decline to participate in the POST [reimbursement] program..."; is irrelevant to the issue before the Commission.

The relevant inquiry is whether local agencies and school districts, employing general law enforcement patrol officers which exercise peace officer powers, can or cannot decline to participate in POST's new basic training program which now includes field training. And the answer here is clearly that local agencies and school districts cannot decline to participate. As acknowledged by Commission staff, on page 13 of their analysis, it is undisputed that:

> "If the officer fails to complete the POST basic training or obtain the basic certificate, the officer may exercise only non-peace officer powers; for example, the officer may not exercise the powers of arrest, serve warrants, or carry a concealed weapon without a permit. The basic training and certificate is mandated by statute, and applies to all officers, whether or not their members are POST members."

Therefore, local agencies and school districts, employing general law enforcement patrol officers which exercise peace officer powers, are required to participate in POST's new basic training program which now includes field training as detailed in Section 1005 of Title 11, Division 2 of the California Code of Regulations.

Section 1005

POST's new field training program for all peace officers assigned to general law enforcement patrol duties is an integral and required component of such officer's basic training as is clearly illustrated in pertinent part of Section 1005(a) of Title 11, Division 2 of the California Code of Regulations:

"(a) Minimum Entry-Level Training Standards (Required).

(1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) [peace officers whose primary duties are investigative], and 1005(a)(4) [coroners or deputy coroners], shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers. Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5 (below), following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

---"

It should be further noted that there are no exceptions to the [above] basic course - field training requirements which are based on whether the employing officer's agency is or is not a member of POST. In particular, the only exceptions to the field training requirement are provided for in Section 1005(B) of Title 11, Division 2 of the California Code of Regulations as follows:

"(B) Exemptions to the Field Training Program Requirement: An officer is exempt from the Field Training Program requirement following completion of the Regular Basic Course:

1. While the officer's assignment remains custodial related, or

2. If the officer's employing department does not provide general law enforcement uniformed patrol services and the department has been granted an exemption as specified in Regulation 1004;or

3. If the officer is a lateral entry officer possessing a POST Basic Certificate and who has either:

a) completed a POST-approved Field Training Program, or

b) one year previous experience performing general law enforcement uniformed patrol duties, or

4. If the officer was a Level I Reserve and is appointed to a full-time peace officer position within the same department and has previously completed the department's entire POST-approved Field Training Program within the last 12 months of the new appointment, or has the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement uniformed patrol officer, or

5. If the officer's employing department has obtained approval of a field training compliance extension request provided for in Regulation 1004."

Accordingly, except as noted above, a peace officer may not be assigned to general law enforcement patrol duties without basic course - field training.

POST Basic Training is Necessary to Exercise Peace Officer Powers

According to Daniel E. Lungren, California's Attorney General, writing in Opinion Number 97-503, issued on October 24, 1997 [attached to Los Angeles County's [October 23, 2001] Review of State Agency Comments], POST basic training is necessary to exercise peace officer powers. Specifically, Mr. Lungren concludes, on page 293, that:

"If a police officer or deputy sheriff fails to complete the training prescribed by the Commission on Peace Officer Standards and Training or obtain the basic certificate issued by the commission, such officer may exercise only non-peace officer powers; the officer may not exercise the powers of arrest, serving warrants, carrying concealed weapons without a permit, or similar peace officer powers."

Mr. Lungren, explains, on page 294 of Opinion 97-503, that:

"Penal Code section 832.3, subdivision (a) provides:

". . . any sheriff, undersheriff, or deputy sheriff of a county, any

police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. The training course for an undersheriff and deputy sheriff of a county and a police officer of a city shall be the same." (Emphasis added.)

Also, subdivision (a) of Penal Code section 832.4 states:

"Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment in order to continue to exercise the powers of a peace officer after the expiration of the 18-month period." (Emphasis added.)

Accordingly, a police officer or deputy sheriff must first take a basic course of training "before exercising the powers of a peace officer" (s 832.3, subd. (a)) ... a course which now includes field training. Otherwise, the peace officer is not able to "exercise the powers of a peace officer".

POST Training Standards

Mr. Lungren explains, on pages 294-295 in Opinion 97-503, the necessity of POST training requirements for certain peace officer powers:

"The Commission sets standards and issues various certificates, depending upon the duties and responsibilities of the individual peace officers. (See ss 13510- 13519.9.) The standards serve "the purpose of

raising the level of competence of local law enforcement officers."...

(s 13510, subd. (a).) Certificates are issued "for the purpose of fostering professionalism, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs' departments . . . ." (s 13510.1, subd. (b).) The training includes, among other aspects, a comprehensive firearms course. (Cal. Code Regs., tit. 11, s 1081.)

In examining these statutory requirements and the law enforcement powers of a peace officer, we are guided by well settled principles of statutory construction. "When interpreting a statute our primary task is to determine the Legislature's intent." (Freedom Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal.4th 821, 826.) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245, 268.) "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (People v. Woodhead (1987) 43 Cal.3d 1002, 1009.)

In applying these principles of statutory construction, we note that the principal power of a peace officer involves the more liberal standards applicable to the power of arrest. Section 836, subdivision (a) states:

"A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 [ss 830-832.9] without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed."

Therefore, there are POST training requirements for exercising peace officer powers, including arrest powers. Further, exercising such powers are not optional or voluntary. Indeed, Government Code Section 26601 unambiguously mandates that:

> "The sheriff shall arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense." [Emphasis added.]

Otherwise, stopping for a red light is merely a suggestion.

Accordingly, under Section 26601, the Sheriff requires arrest powers, and, consequently is required to implement POST's new basic – field training in order to obtain such powers.

Mandatory POST Training for Deputy Sheriffs on Patrol

It appears well established that POST training is mandatory for deputy sheriffs in order for them to exercise peace officer powers, including powers routinely required in patrol assignments. The scope of such mandated training for deputy sheriffs, based on their assignments, was addressed by California's Sixth District Appellate Court in Richard T. Abbate v. County of Santa Clara, Cal.App.4th 1231, 111 Cal.Rptr.2d 412 (August 2001) 1997 [attached to Los Angeles County's [October 23, 2001] Review of State Agency Comments].

The Abbate Court examined the question of whether "... correctional officers ... transferred from county department of correction to sheriff's office for assignment as sheriff's transportation officers, security officers and deputies of sheriff to work in county jail, ... were deputy sheriffs with statutory peace officer status, and also [should] ... county ... provide officers with state-mandated peace officer training..." as was provided for "... deputy sheriffs with statutory peace officer status", 111 Cal.Rptr.2d, page 412. The Court reasoned, on page 418, that:

"The "specific meaning under the law" that plaintiffs claim for the term "deputy sheriff" is that of a person "stand[ing] in the shoes of the Sheriff in carrying out their official duties." (See Gov.Code, s 24101; Litzius v. Whitmore (1970) 4 Cal.App.3d 244, 249, 84 Cal.Rptr. 340.) However, "[w]hen not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal." (Gov.Code, s 1194). Whether a person employed by the Sheriff is a section 830.1(a) "deputy sheriff" is based upon "the work to be performed or the duties to which one may be assigned that determines his status as an officer or employee." (Cunning v. Carr (1924) 69 Cal.App. 230, 233, 230 P. 987.) Section 830.1(a) contemplates the possibility of a lesser delegation when it confers peace officer status on "[a]ny sheriff, undersheriff or deputy sheriff, employed in that capacity, ..." Thus, an employee of the sheriff not required to perform the duties of a deputy sheriff is "otherwise provided for" (Gov.Code, s 1194), is not "employed in that capacity" (s 830.1(a)), and is not a deputy sheriff with full peace officer powers." [Emphasis added.]

For those officers 'otherwise employed', POST training is not required. However, for all other peace officers employed in the capacity of a deputy sheriff, including those assigned patrol duties, full peace officer powers are required. And the new basic field training is required to obtain such powers.

Pervasive Mandate

POST's new basic training program, which now includes field training, is a pervasive mandate. It applies to all general law enforcement patrol agencies --- irrespective of their participation in POST. Otherwise, agencies and districts could avoid the substantial burden this field training mandate imposes by electing not to participate in POST.

Further, POST Bulletin 98-1, as noted on page 2, was sent to "all agencies" as all are subject to the new field training requirement. Such agencies include "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program". All these law

enforcement agencies were required to review and comply with additional requirements set forth in attachments to Bulletin 98-1, listed on page 2, as follows:

"Description of the program approval process.

Copies of the Commission Regulations which are effective January 1, 1999.

Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97).

Copy of the POST Field Training Program Guide 1997."

Staff of police departments, sheriff's departments, school/campus police departments, and selected other agencies in the POST, were instructed on page 2 of the 98-1 Bulletin that specific questions "... about requirements or assistance in the preparation of field training program plans should be directed to POST Area Consultants in the Training Delivery and Compliance Bureau at (916) 227-4862. Application packages for program approval should be mailed to Commission on Peace Officer Standards and Training, Basic Training Bureau, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083

Statewide Basic - Field Training Regulations

Mr. Kenneth J. O'Brien, Executive Director of POST, in his July 16, 2001 letter to Commission's Executive Director, Paula Higashi, reaffirmed that POST has enacted Statewide basic – field training regulations. Specifically, Mr. O'Brien stated that POST "... did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program" [emphasis added].

As a result, every general law enforcement agency in California is now required to provide on-the-job field training to their patrol officers. POST's Bulletin 98-1 and Regulation Section 1005, as previously discussed, explicitly state that law enforcement agencies are mandated to implement this new basic - field training.

Nevertheless, Commission staff suggest that "several agencies" in California are excluded from this requirement because they are not "POST participating agencies" [Staff Analysis, page 12, footnote 38]. However, the "several

agencies" cited by staff, which provide general law enforcement patrol services, contract for peace officer personnel employed and trained by POST member agencies. For example, the City of Citrus Heights is not a POST participating agency but contracts with a Sheriff's department that is. As explained on page 107 of the "City of Citrus Heights 2003-04 Annual Budget", attached in pertinent part as Exhibit 1:

> "The [Citrus Heights] Police Department is operated as a stand-alone police agency responsive to the needs of the City residents and businesses, although the personnel who comprise the work force of the Department are obtained through a contract with the Sacramento County Sheriff's Department."

On page 36 of the "City of Citrus Heights 2003-04 Annual Budget", attached in pertinent part as Exhibit 1, all 95 staff of the Citrus Heights Police department are shown as retained under "contract".

Also attached in Exhibit 2 are pertinent web pages of agencies which do not participate in POST but are under contract with agencies that do participate --- that do enable compliance with the mandatory basic–field training[1].

Therefore, the basic-field training mandate claimed herein applies to all general law enforcement patrol service agencies throughout California --- even general law enforcement patrol service agencies which are not participating in POST cannot escape this requirement.

Accordingly, complete and timely reimbursement for costs incurred in implementing the new basic - field training requirements, as claimed herein, is now required.

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1 In Exhibit 2, see web site information published by, or in behalf of, the: City of San Ramon Police Department [Exhibit 2, page 2], Town of Windsor Police Department [Exhibit 2, page 3], Santa Fe Springs Police Department [Exhibit 2, page 4], City of Dana Point Police Department [Exhibit 2, page 5].

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Review of Commission Staff Draft Analysis
Los Angeles County Test Claim [00-TC-19]
Santa Monica Community College District Test Claim [02-TC-06]
Commission on Peace Officer Standards and Training Bulletin: 98-1
Mandatory On-the- Job Training for Peace Officers Working Alone

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing parameters and guidelines and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of the Commission staff's draft analysis, attached hereto.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/18/04; Los Angeles, CA
Date and Place

Signature

CITY of CITRUS HEIGHTS

2003-2004 Annual Budget

Adopted May 2003

City Council

William Hughes, Mayor
James Shelby, Vice Mayor
Jeannie Bruins, Council Member
Bret Daniels, Council Member
Roberta MacGlashan, Council Member

City Manager

Henry Tingle

Department Directors

Cathy Capriola, Administrative Services Director
Ray Holland, Interim General Services Director
Susan Mahoney, Finance Director
Janet Rugglero, Community Development Director
Henry Serrano, Police Chief

Budget Staff

Helen Brewer, Public Information Coordinator
Susan Mahoney, Finance Director
Hilary Straus, Senior Management Analyst

City of Citrus Heights
6237 Fountain Square Drive
Citrus Heights, CA 95621
(916) 725-2448 (916) 725-5799 (fax)
www.ci.citrus-heights.ca.us
May 2003

POSITION ALLOCATION SUMMARY

Department / Position	Total FY 01-02 FTE	Total FY 02-03 FTE	02-03 FY Budget Status	03-04 FY Recommended Budget Status	03-04 FY Employee FTE	03-04 FY Contract FTE	03-04 FY Total City FTE
CITY ATTORNEY'S OFFICE							
City Attorney							
City Attorney Staff	3.50	3.50	Contract	No Change		3.50	3.50
	3.50	3.50		Sub-Total	-	3.50	3.50
CITY MANAGER'S OFFICE							
General Management							
City Manager	1.00	1.00	Employee	No Change	1.00		1.00
Senior Management Analyst	0.50	1.00	Employee	No Change	1.00		1.00
Executive Support Supervisor	0.50	0.50	Employee	No Change	0.40		0.40
Administrative Assistant	0.40	0.30	Employee	No Change	0.25		0.25
Office Assistant	n/a	0.75	Employee	No Change	0.50		0.50
Economic Development / RDA / Community Information							
Economic Development Manager	1.00	1.00	Employee	No Change	1.00		1.00
Public Information Coordinator	1.00	1.00	Employee	No Change	1.00		1.00
Senior Office Assistant	0.50	0.50	Employee	No Change	0.50		0.50
Office Assistant	n/a	n/a	Employee	No Change	0.35		0.35
Intern		n/a	Temporary	Approved	n/a		n/a
City Clerk							
City Clerk	1.00	1.00	Employee	No Change	1.00		1.00
Office Assistant	1.00	1.00	Employee	No Change	1.00		1.00
Intern	n/a	n/a	Temporary	Approved	n/a		n/a
	6.90	8.05		Sub-Total	8.00	-	8.00
ADMINISTRATIVE SERVICES							
Administrative Services / General Mgt							
Administrative Services Director	0.30	0.20	Employee	No Change	0.10		0.10
Senior Management Analyst	0.35	0.30	Employee	No Change	0.35		0.35
Executive Support Supervisor	0.20	0.20	Employee	No Change	0.20		0.20
Administrative Assistant	0.30	0.20	Employee	No Change	0.10		0.10
Senior Office Assistant	0.50	0.50	Employee	No Change	0.25		0.25
Office Assistant	n/a	0.25	Employee	No Change	-		-
Office Assistant/Receptionist	1.00	1.00	Employee	No Change	1.00		1.00
Human Resources							
Administrative Services Director	0.40	0.60	Employee	No Change	0.75		0.75
Senior Management Analyst	0.30	0.20	Employee	No Change	0.30		0.30
Executive Support Supervisor	0.30	0.30	Employee	No Change	0.40		0.40
Administrative Assistant	0.20	0.40	Employee	No Change	0.65		0.65
Senior Office Assistant			Employee	No Change	0.10		0.10
Office Assistant	n/a	n/a	Employee	No Change	0.15		0.15
Intern	n/a	n/a	Temporary	Approved	n/a		n/a
Risk Management							
Administrative Services Director	0.10	0.10	Employee	No Change	0.10		0.10
Senior Management Analyst	0.20	0.40	Employee	No Change	0.35		0.35
Senior Office Assistant			Employee	No Change	0.10		0.10
Information Technology							
Administrative Services Director	0.20	0.10	Employee	No Change	0.05		0.05
Information Technology Manager	1.00	1.00	Employee	No Change	1.00		1.00
Information Technology Analyst II	1.00	1.00	Employee	No Change	1.00		1.00
Senior Management Analyst	0.15	0.10	Employee	No Change	-		-
Information Technology Technician	0.50	0.50	Employee	No Change	0.50		0.50
Administrative Assistant	0.10	0.10	Employee	No Change	-		-
Senior Office Assistant			Employee	No Change	0.05		0.05
Intern	n/a	n/a	Temporary	Approved	n/a		n/a
	7.10	7.45		Sub-Total	7.50	-	7.50

	FY 01-02 FTE	FY 02-03 FTE	Budget Status	Recommended Budget Status	Employee FTE	Contract FTE	Total City FTE
COMMUNITY DEVELOPMENT							
General Management							
Community Development Director	1.00	1.00	Employee	No Change	1.00		1.00
Administrative Assistant	1.00	1.00	Employee	No Change	1.00		1.00
Intern	n/a	n/a	Temporary	Approved	n/a		n/a
Building							
Chief Building Official	1.00	1.00	Contract	No Change		1.00	1.00
Deputy Building Official	1.00	1.00	Contract	No Change	n/a	n/a	
Building Inspector	3.00	2.50	Contract	No Change		3.50	3.50
Building Permit Technician	2.00	2.00	Contract	No Change		2.00	2.00
Planning							
Senior Planner	1.00	1.00	Employee	No Change	1.00		1.00
Associate Planner	1.00	1.00	Employee	No Change	1.00		1.00
Assistant Planner	1.00	1.00	Employee	No Change	1.00		1.00
Planning Technician	1.00	1.00	Employee	No Change	1.00		1.00
Office Assistant	n/a	0.70	Employee	No Change	0.70		0.70
CDBG/Grants/Housing							
Community Enhancement Manager	1.00	1.00	Employee	No Change	1.00		1.00
Housing Planner	0.20	1.00	Employee	No Change	1.00		1.00
Neighborhood Enhancement							
Neighborhood Enhancement Officer Trainee/II	3.00	2.00	Employee	No Change	2.00		2.00
Neighborhood Enhancement Technician	n/a	n/a	Employee	No Change	1.00		1.00
Office Assistant	n/a	0.30	Employee	No Change	0.30		0.30
Office Assistant	1.00	1.00	Employee	No Change	1.00		1.00
	18.20	18.50		Sub-Total	13.00	6.50	19.50
FINANCE							
Finance							
Finance Director	1.00	1.00	Employee	No Change	1.00		1.00
Senior Accountant-Auditor	1.00	1.00	Employee	No Change	1.00		1.00
Accounting Technician	1.00	1.00	Employee	No Change	1.00		1.00
Account Clerk	2.00	2.00	Employee	No Change	2.00		2.00
Office Assistant	n/a	1.00	Employee	No Change	1.00		1.00
	5.00	6.00		Sub-Total	6.00	-	6.00
GENERAL SERVICES							
General Management							
General Services Director	1.00	1.00	Employee	No Change	1.00		1.00
Administrative Assistant	1.00	1.00	Employee	No Change	1.00		1.00
Management Analyst	0.50	-	Employee	Moved to CMO	-		-
Engineering & Street Maintenance							
City Engineer	1.00	1.00	Employee	No Change	1.00		1.00
Senior Civil Engineer	1.00	1.00	Employee	No Change	1.00		1.00
Associate Engineer	2.00	1.00	Employee	No Change	1.00		1.00
Senior Engineering Technician	1.00	1.00	Employee	No Change	1.00		1.00
Senior Civil Engineer (PT)	0.40	0.40	Employee	No Change	0.40		0.40
Senior Civil Engineer (PT)	n/a	0.50	Employee	No Change	0.50		0.50
Senior Civil Engineer (PT)	0.75	-	Employee	No Change	-		-
Associate / Assistant Engineer	-	-	Employee	No Change	-		-
Construction Inspector	n/a	1.00	Employee	No Change	1.00		1.00
Maintenance Coordinator - Transportation	0.50	1.00	Employee	No Change	1.00		1.00
Office Assistant	1.00	1.00	Employee	No Change	1.00		1.00
Office Assistant	1.00	1.00	Employee	No Change	1.00		1.00
Office Assistant	n/a	0.50	Employee	No Change	0.50		0.50
Intern	n/a	n/a	Temporary	Approved	n/a		n/a

Department / Position	Total FY 01-02 FTE	Total FY 02-03 FTE	02-03 FY Budget Status	03-04 FY Recommended Budget Status	03-04 FY Employee FTE	03-04 FY Contract FTE	03-04 FY Total City FTE
Public Services / Contract Services							
Facility and Grounds Supervisor	1.00	1.00	Employee	No Change	1.00		1.00
Maintenance Coordinator - Buildings/Grounds	n/a	1.00	Employee	No Change	1.00		1.00
Maintenance Worker II (PT)	0.50	0.50	Temporary	No Change	0.50		0.50
Office Assistant	n/a	1.00	Employee	No Change	1.00		1.00
Drainage / Land Use							
Senior Civil Engineer - Drainage / Land Use	n/a	1.00	Employee	No Change	1.00		1.00
Associate Engineer	-	1.00	Employee	No Change	1.00		1.00
Senior Civil Engineer (PT)	0.50	0.50	Employee	No Change	0.50		0.50
Maintenance Coordinator - Drainage	n/a	1.00	Employee	No Change	1.00		1.00
Office Assistant	n/a	0.50	Employee	No Change	0.50		0.50
Community Relations							
Management Analyst II	1.00	1.00	Employee	No Change	1.00		1.00
	14.15	19.90		Sub-Total	19.90	-	19.90
POLICE DEPARTMENT							
General Management							
Chief of Police	1.00	1.00	Contract	No Change		1.00	1.00
Lieutenant	1.00	1.00	Contract	No Change		1.00	1.00
Records Officer II / Budget Coordinator	1.00	1.00	Contract	No Change		1.00	1.00
Senior Office Assistant	2.00	2.00	Contract	No Change		2.00	2.00
Records Officer Equipment / Fleet Manager	1.00	1.00	Contract	No Change		1.00	1.00
Patrol Services							
Lieutenant	3.00	3.00	Contract	No Change		3.00	3.00
Sergeant	9.00	9.00	Contract	No Change		9.00	9.00
Patrol Officers	52.00	50.00	Contract	No Change		50.00	50.00
Sergeant – Traffic Enforcement	n/a	1.00	Contract	No Change		1.00	1.00
Patrol Officers - Traffic Enforcement	n/a	5.00	Contract	No Change		5.00	5.00
Community Services							
Lieutenant	1.00	1.00	Contract	No Change		1.00	1.00
Sergeant	1.00	2.00	Contract	No Change		2.00	2.00
Detectives	8.00	8.00	Contract	No Change		8.00	8.00
POP Officers	3.00	3.00	Contract	No Change		3.00	3.00
Narcotic Detectives	n/a	4.00	Contract	No Change		4.00	4.00
Community Services Specialist	2.00	2.00	Contract	No Change		2.00	2.00
Sheriff's Service Representative	1.00	1.00	Contract	No Change		1.00	1.00
	86.00	95.00		Sub-Total	-	95.00	95.00
TOTAL FULL-TIME EQUIVALENTS	140.85	158.40			54.40	105.00	159.40

Staffing Configuration

Current Employees - FY 02-03	54.40
Eliminated Positions	0.00
Proposed Full-Time Employees	0.00
Proposed Part-Time Employees	0.00
Total City Employees for 03/04 FY	54.40

FTE EMPLOYEES	34%
FTE CONTRACT STAFF	66%

NOTE:
Overfilling IT Tech with IT Analyst I on Limited Term capalty awaiting budget ramifications
Underfilling Maintenance Worker II with part-time MW position

Police

Department Description

The Police Department has a multitude of responsibilities and obligations which include: improving the quality of life in the community, keeping the peace and preserving public order, protecting life and property, apprehending criminal offenders, recovering stolen property and identifying the rightful owners, and enforcing traffic safety laws. The Police Department is operated as a stand-alone police agency responsive to the needs of the City residents and businesses, although the personnel who comprise the work force of the Department are obtained through a contract with the Sacramento County Sheriff's Department.

The Police Department has six areas of responsibility:

- ***Administration*** is responsible for effective management and coordination of police services in the community.

- ***Patrol and Traffic Services Division*** performs a wide variety of functions, including: responding to life threatening emergencies and in-progress criminal activity, addressing quality of life issues in neighborhoods and business districts, and performing peacekeeping activities. This Division also provides traffic enforcement and accident investigation. The Traffic Enforcement Unit augments the traffic component of Patrol Services by providing directed traffic enforcement by motorcycle officers in identified problem areas. This unit also provides expertise in major accident investigations.

- ***Investigative Services Division*** performs follow-up investigations on criminal, and traffic related cases.

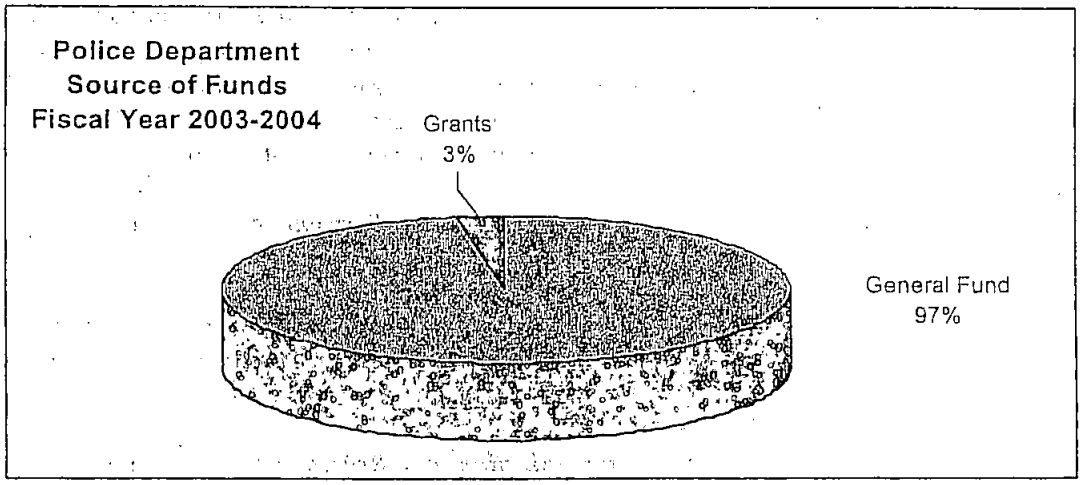
- ***Neighborhood Services Division*** focuses on problem oriented policing, crime prevention, crime and traffic analysis, and fingerprinting. This Division also takes crime reports from the public.

- ***Communications and Records Services*** are provided by the Sheriff's Technical Services Division. It is responsible for handling calls-for-service from the community and dispatching of officers. This Division also provides processing, routing, storage, and retrieval of police reports and citations.

- ***Program Support Services*** consist of a menu of fee-for-service support such as helicopter patrol, canine units, crime scene investigation, SWAT Team and hazardous material response.

Source and Use of Funds

POLICE DEPARTMENT	2003-2004 Proposed	2002-2003 Estimated	2001-2002 Actual
Source of Funds			
General Fund	14,232,801	12,677,227	12,399,040
Grants	408,333	487,333	150,000
Total Source of Funds	14,641,134	13,164,560	12,549,040
Use of Funds			
Police Administration	1,289,298	1,417,810	1,159,914
Patrol & Traffic Services	8,624,068	7,891,445	7,241,443
Investigative Services	1,432,928	1,303,120	1,289,904
Neighborhood Services	1,002,771	912,186	867,988
Communication & Records	716,244	651,561	619,952
Program Support	1,575,825	1,388,438	1,368,894
Total Use of Funds	14,641,134	13,164,560	12,549,040



2003-2004 Objectives

Administration

- Monitor expenditures to ensure the most effective use of resources and to maximize savings.
- Develop an operational plan and organizational structure that controls contract costs while maintaining or increasing Department effectiveness.
- Work with the San Juan Unified School District on public safety issues of mutual concern.
- Increase the number of opportunities for positive involvement with youth through association with youth organizations.

- Continually evaluate the operations of the Department for continuity with the principles of community policing.

Patrol and Traffic Services

- Enhance citizen and officer interaction by assignment of officers to neighborhood associations and participation in Beat Team Meetings.
- Increase the level of problem oriented policing occurring in Patrol.
- Increase emphasis on traffic safety.

Investigative Services

- Develop effective methods of monitoring and tracking issues associated with: alcohol related businesses, adult oriented businesses, massage and escort services, gaming, tobacco-related complaints, and bingo.

Neighborhood Services

- Further develop relationships with the business community through participation in the Chamber of Commerce and contacts with the Problem Oriented Police Officer.
- Increase community participation in the Neighborhood Watch Program.
- Increase accessibility of crime analysis information and crime mapping to the public as well as officers.

City of San Ramon
CALIFORNIA

Police Services

WE PROVIDE EFFICIENT DELIVERY OF QUALITY PUBLIC SERVICES THAT ARE ESSENTIAL TO THOSE WHO LIVE AND WORK IN SAN RAMON

From the Office of the Chief

As each new year arrives, my staff and I review the expectations of the City in the delivery of police services. We focus our priorities by being in tune with the needs of the community we serve. This past year we have implemented some very successful programs that are proving daily how important they are.

- A civilian Crime Prevention Specialist was added and works as a team member to the Investigative Division. This Specialist, Erica Reed, has been a tremendous representative for the department to the residents and business community. She provides a variety of programs/presentations on crime prevention and crime awareness to neighborhood groups and crime victims to insure they know how to protect themselves against future crimes.

- Also added to the Investigation Division was a Misdemeanor Complaint Officer. This assignment is a temporary, rotational patrol officer position. It allows patrol officers a chance to work felony investigations for a six-month period and learn more about the investigation process. This position also follows up and files all misdemeanor arrest cases with the District Attorney's Office.

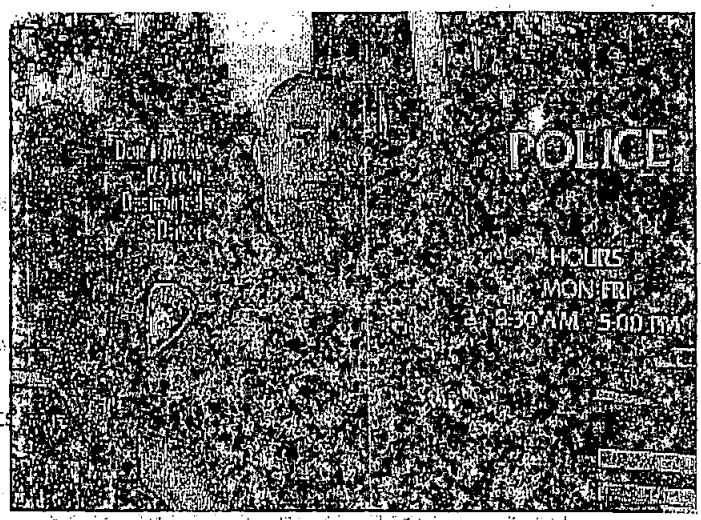
- The addition of a Fleet Services Specialist came late in the year but has made a huge impact on our fleet operations. With a fleet of over 45 vehicles it was time to hire a full-time person to oversee the maintenance and management of our police vehicles and patrol equipment. This Specialist is also going to assist Engineering Services and Building Inspection with the oversight of their fleets.

- Finally, the addition of a part-time Emergency Planner to assist the Police Department in the management of the City's Disaster Preparedness Program was a great investment. Not only did we get a San Ramon resident, but we also found a retired police lieutenant that had done many years of emergency planning for the City of Oakland and the Oakland Coliseum. The Planner has brought the city's Emergency Plan up to date and is busy planning on-going training for city staff.

2002 was a challenging year for us, for as we continued to add staff to meet our growing service levels, our facilities get smaller and more cramped. As we continue to plan for the future we are quickly out-growing our present location and workspace. We have

begun looking for additional space to expand into and occupy until the City Civic Center is built. We continue to plan for additional responsibilities and duties to the expanding Dougherty Valley.

San Ramon Police Services are delivered through a contract with the Office of the Sheriff. All our officers come from the Sheriff's Department and work for the City on a contractual basis. I have been able to handpick the officers who come to work in San Ramon and as a result, have selected the best applicants from a large pool of candidates. These professional men and women come to work in San Ramon because it is one of the best assignments in the Sheriff's Department. As a result, the Police Department is the recipient of highly motivated, well-trained officers who take a personal interest in San Ramon. These officers are dedicated to making San Ramon a safe community for citizens to work and live.



2003 finds me looking at retirement. Although it will be just shy of three years since I took the helm of the Police Department, I am proud of our accomplishments and the direction in which we are going. The Department has grown to 44 officers and provides a variety of quality services to meet the needs of a growing city. We have served the community with integrity, professionalism, sensitivity, cooperation, and vision. We have many challenges still ahead that will test the Police Department and city leadership. Certainly, the present depressed economy and the possibility of war, along with the responsibilities of homeland defense are just a few areas that will be of concern.

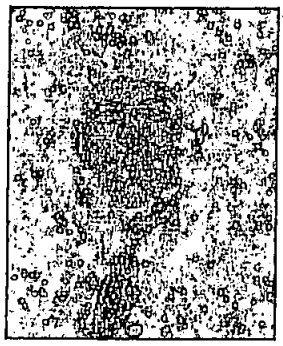
I will assist in the selection of the new Chief to insure the continuity of programs currently in place and future development of new services. It is my interest to leave the department in the hands of a competent leader -- one who has vision as well as leadership.

Sincerely,

Brian Lindblom

Brian Lindblom, Chief of Police
City of San Ramon

POLICE DEPARTMENT



PAUL DAY
Chief of Police -Town of Windsor
Lieutenant-Sonoma County Sheriff's Dept.

9291 Old Redwood Highway, Building 300
Town Phone: (voicemail) (707) 838-1234
Town Fax: (707) 838-1233
Town email: pday@townofwindsor.com

EDUCATION/BACKGROUND/EMPLOYMENT:

- Associate of Science, SRJC
- Sonoma County Sheriff's Department, 21 years
- US Army Military Police and helicopter medic, 4 years

PROFESSIONAL INVOLVEMENT

- Sonoma County Law Enforcement Chief's Association

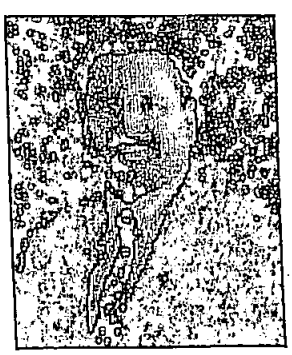
POLICE CHIEF'S ADMINISTRATIVE RESPONSIBILITY

The Chief of Police is responsible for all Departmental planning, organization, staffing and administration for the Town of Windsor's Police Department.

History of the Town of Windsor Police Department

In 1992 the Town of Windsor voted to contract with the Sonoma County Sheriff's Department for law enforcement services. The Sheriff's Department received a five year contract starting in July 1993 to provide law enforcement to the Town. In 1998 the Town of Windsor once again voted to award the Sheriff's Department a second contract, this time for ten years of law enforcement service.

Town of Windsor Police Chiefs



Chief Jim Piccinini (1993-1995)
The Town Council selected the first Police Chief, Sheriff's Lieutenant Jim Piccinini, who served in this position from 1993 to 1995. Lt. Jim Piccinini was eventually promoted to Captain for the Sonoma County Sheriff's Department Patrol Division. In 1998 Jim Piccinini became the Sheriff for Sonoma County. We are all proud to have the first Windsor Police Chief become the Sheriff of Sonoma County.

Police Services

Fernando Tarin - Director of Police Services

E-mail Fernando Tarin

ith the exception of jailing and dispatching, this Department is responsible for management of all law enforcement rvices within the City. The Department is staffed by both City personnel and officers of the Whittier Police epartment, who provide services to Santa Fe Springs under contract.

olice Services Center
1576 Telegraph Road.
anta Fe Springs, CA 90670-9928
62) 409-1850 * FAX 409-1854 * TDD 409-1855
pen 8:00 a.m. - 11:00 p.m. Telephone accessible - 24 hours

- **Animal Control**
  All dogs and cats must be licensed yearly.
- **Community Intervention Team**
  Counselors, a community psychologist, police officers and probation officers work with at risk youth and families.
- **Crime Prevention Services**
  Aside from crime prevention programs and workshops, Police Services perform safety inspections for homes and businesses. Specific businesses are required to have permits regulated through Police Services.
- **mergency Preparedness**
  - **Business Emergency Preparedness Network**
    Facilitates business self-reliance, creates a communications system with the City's Emergency Operations Center, and promotes the sharing of resources during an emergency. The network consists of trained business volunteers.
  - **Community Alert Network (CAN)**

City of Dana Point

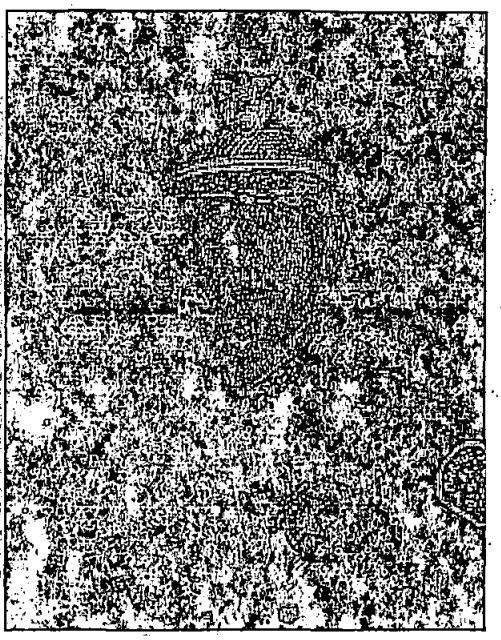
A Message from Sheriff-Coroner Michael S. Carona

General Info
Codes
City Services
City Council
Planning Comm.
Departments
Visitor Info
Current Events
Site Map

Many Documents require the Free Adobe Reader Download Here!

Hotlines:
EMERGENCY: **Dial 911**
Police **(949) 770-6011**
Traffic: **(949) 248-3598**
Dumping: **(949) 248-3565**
Graffiti: **(949) 248-3573**

Welcome to the Orange County Sheriff's Department. As you explore this site, you will find that our department is as dynamic and diverse as the County of Orange is progressive and multi-faceted. During the past 100 years, the men and women of this department have established an exemplary record of law enforcement service as our county has evolved from its semi-rural beginnings into a major international socio-economic region. Challenges, which in some respects seemed unimaginable have been successfully overcome, but many more lie ahead. This is why we have recommitted ourselves to increasing the public safety and enhancing the quality of life for everyone. We are combining time-proven methods with emerging technologies to confront the unknown threats to our communities in the new millennium. With your involvement we are confident we will continue to persevere and provide future generations with an unsurpassed level of safety.



On behalf of the men and women of the Orange County Sheriff's Department, I thank you for your continued support and welcome your comments and suggestions.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 18th day of June 2004, I served the attached:

Documents: Los Angeles County's "Review of Commission Staff Draft Analysis – POST Training Bulletin 98-1" , Test Claims 00-TC-19, 02-TC-06, "Mandatory On-the-Job Training for Peace Officers Working Alone", including *a 1 page letter of J. Tyler McCauley dated 6/18/04, a 10 page narrative, a 1 page declaration of Leonard Kaye, and a 12 page exhibits, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of June , 2004, at Los Angeles, California.

Lorraine Hadden

Mailing List

Claim Number: 00-TC-19
Issue: Mandatory On-The-Job Training for Peace Officers Working Alone

Related

02-TC-06 Peace Officers Working Alone (K-14)

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June 21, 2004

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Re: CSM No. 00-TC-19, 02-TC-06
Test Claim of County of Los Angeles and
Santa Monica Community College District
Mandatory On-The-Job Training For Peace Officers Working Alone

Dear Ms. Higashi:

I have received the draft staff analysis to the above referenced test claim and respond on behalf of Santa Monica Community College District, test claimant.

PART A

Staff concludes that state law does not require school districts and community college districts to employ peace officers and, thus, the field training requirements do not impose a state mandate on school districts and community college districts. The basis of its recommendation to the Commission that it deny the test claim (so far as the negative recommendation relates to school districts and community college districts) is "...there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves", citing *Leger v. Stockton Unified School District* (1988) 202 Cal.App.3d 1448, 1455.

Based upon this erroneous conclusion, staff suggests the following remedy:

> "Thus, pursuant to state law, school districts and community college districts remain free to discontinue their own police departments and employing peace officers." (Draft Staff Analysis, at page 10)

1. Students and Staff Have an Inalienable Right to Safe, Secure and Peaceful Schools

A. Staff Mistakenly Relies on the Tort Language of *Leger*

At page 9 of the Draft Analysis, Staff refers to Article 1, section 28, subdivision (c)[1] (hereinafter, section 28(c)) of the California Constitution - a portion of "The Victims Bill of Rights" initiative - approved by the people, June 8, 1982, which staff admits "require(s) K-12 school districts to maintain safe schools." Staff goes on to argue, however, that there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves.

As support for its self-serving conclusion that there is no constitutional requirement to maintain school police departments, Staff quotes[2] a well excised portion of the opinion, at page 1455, which states that a constitutional provision is not self executing when it "merely indicates principles, without laying down rules by means of which those principles may be given the force of law."

Staff's error is trying to stretch rules of tort law to fit an issue of constitutional law. Section 28(c) was intended to encompass safety only from criminal behavior. *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 248

In *Leger*[3], the complaint alleged that employees of the district negligently failed to protect plaintiff from an attack by a nonstudent in a school restroom. The complaint attempted to establish ***tort liability*** by alleging that Section 28(c) created a ***duty*** of due care, which is an essential element of the ***tort of negligence***. The *Leger* court held:

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[1] California Constitution, Article 1, section 28, subdivision (c):

"**Right to Safe Schools.** All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

[2] Staff indents and blocks off 6 lines to appear as if it is a direct quotation from *Leger*. In fact, only a portion of the last sentence is a direct quotation.

[3] *Leger* is a pleading case appealing the trial court's sustaining defendants' general demurrer, without leave to amend.

"Article 1, section 28, subdivision (c) of the California Constitution is not self-executing in the sense of providing a right to recover money damages for its violation."

(The court then discusses the application of section 28(c) in a constitutional sense - see: section 1B infra)

"The question here is whether section 28(c) is 'self-executing' in a different sense...in particular, whether it provides citizens with a specific remedy by way of damages for its violation in the absence of legislation granting such a remedy.

"...Here, however, section 28(c)...imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred." (Opinion, at pages 1453-1455, emphasis supplied)

Therefore, the quotation offered by Staff applies only to a civil action seeking money damages for personal injury, a tort action.

B. The Constitutional Provisions of *Leger* Support the Test Claim

The portion of the *Leger* decision (omitted by Staff) discussing the constitutional import of section 28(a) supports a conclusion that districts are, indeed, obligated to provide safe schools. The court first refers to Article 1, section 26, of the California Constitution which provides: "The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." The court then goes on to say:

"Under this constitutional provision, all branches of government are required to comply with constitutional directives (citations) or prohibitions (citation). Thus, in the absence of express language to the contrary, every constitutional provision is self-executing in the sense that agencies of government are prohibited from taking official actions that contravene constitutional provisions. (Ibid) 'Every constitutional provision is self-executing to this extent, that everything done in violation of it is void.' (Citation)." (*Leger*, at page 1454, emphasis supplied)

Where there is a self-executing provision, the right given may be enjoyed and protected, or the duty imposed may be enforced.

> "...the Constitution furnishes a rule for its own construction. That rule, unchanged since its enactment in 1879, is that constitutional provisions are 'mandatory and prohibitory, unless by express words they are declared to be otherwise.' (Art.1, §26, Cal.Const.) (footnote omitted) The rule applies to all sections of the Constitution alike and is binding upon all branches of the state government, including this court, in its construction of (constitutional provisions) (Citation) (¶) Section 26 of article 1 'not only commands that its provisions shall be obeyed, but that disobedience of them is prohibited'." *Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 687 (interpreting article 11, section 6 - Judicial, school, county, and city offices shall be non-partisan)

California courts have held other inalienable rights to be self-executing. *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, 829 (right to privacy); *Laguna Publishing Co. v. Golden Rain Foundation of Laguna Hills* (1982) 131 Cal.App.3d 816, 851, fn 16 (right to free speech and press).

The *Leger* court went even further to restate the long standing rule that the responsibility of school districts for the safety of children *is even greater* than the responsibility of the police for the public in general:

> "A contrary conclusion would be wholly untenable in light of the fact that 'the right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming. ...[¶] The public school setting is one in which governmental officials are directly in charge of children and their environs, including where they study, eat and play. ...Further, the responsibility of school officials for each of their charges, the children, is heightened as compared to the responsibility of the police for the public in general'." (Opinion, at page 1459)

Therefore, under the constitutional law provisions of *Leger*, Article 1, section 26, of the California Constitution mandates that all branches of government are required to comply with the constitutional directive of Article 1, section 28, and protect both students' and staff's inalienable right to attend campuses which are safe, secure and peaceful. Therefore, districts, themselves, are required to provide safe schools. To say that school districts are "free to discontinue" providing police services and "free to discontinue" employment of peace officers is contrary to the will of the people of California in their "Victims Bill of Rights" that commands that all students and staff of

public schools have an inalienable right to be provided with schools that are safe, secure and peaceful.

2. Discontinuing Campus Police Departments is an Irrelevant Standard

The legislature has decided that school police departments are an appropriate method of securing the right to safe schools.

History of Campus Police Departments

A. Community Colleges

In 1970, former Education Code Section 25429[4] provided that the governing board of a community college district may establish a community college police department and employ such personnel as may be necessary for its needs. Persons so employed were peace officers only in or about the campus of the community college and other grounds or properties owned, operated, controlled, or administered by the community college.

Chapter 1010, Statutes of 1976, Section 2 recodified and renumbered Education Code Section 25429 as Education Code Section 72330[5].

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[4] Education Code Section 25429, added by Chapter 1592, Statutes of 1970, Section 2:

"The governing board of a community college district may establish a community college police department and employ, in accordance with the provisions of Chapter 3 (commencing with Section 13280) of Division 10 such personnel as may be necessary for its needs.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers only upon the campus of the community college and in or about other grounds or properties owned, operated, controlled, or administered by the community college, or the state on behalf of the community college."

[5] Education Code Section 72330, (formerly Section 25429), added by Chapter 1592, Statutes of 1970, Section 2, as recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2 (Operative as of April 30, 1977):

"The governing board of a community college district may establish a community college police department and employ, in accordance with the provisions of Chapter ~~3~~ 4

Chapter 1340, Statutes of 1980, Section 9, added Penal Code Section 830.31[6],

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(commencing with Section ~~13580~~ 88000) of ~~Division 10~~ Part 51 of this division such personnel as may be necessary for its needs.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers only upon the campus of the community college and in or about other grounds or properties owned, operated, controlled, or administered by the community college, or the state on behalf of the community college."

[6] Penal Code Section 830.31, added by Chapter 1340, Statutes of 1980, Section 9:

"The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and such under terms and conditions as are specified by their employing agency.

(a) Members of an arson-investigating unit, regularly employed and paid as such, of a fire protection agency of the state, of a county, city, or district, and members of a fire department or fire protection agency of the state, or a county, city, or district regularly paid and employed as such, provided that the primary duty of arson investigators shall be the detection and apprehension of persons who have violated any fire law or committed insurance fraud, and the primary duty of fire department or fire protection agency members other than arson investigators when acting as peace officers shall be the enforcement of laws relating to fire prevention and fire suppression.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid as such, provided that the primary duty of any such peace officer shall be the protection of park property and the preservation of the peace therein.

(c) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as prescribed in Section 72330 of the Education Code.

(d) A welfare fraud or child support investigator or inspector, regularly employed and paid as such by a county, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of the Welfare and Institution Code and Section 270 of this code.

effective September 30, 1980, which identified those persons who are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest. Subdivision (c) included members of a community college police department appointed pursuant to Education Code Section 72330. Therefore, the former parochial jurisdiction of community college police departments was extended to any place in the state.

Chapter 470, Statutes of 1981, Section 77, amended Education Code Section 72330[7]

(e) The coroner and deputy coroners, regularly employed and paid as such, of a county, provided that the primary duty of any such peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

(f) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(g) Harbor police regularly employed and paid as such by a county, city, or district other than peace officers authorized under Section 830.1, and the port warden and special officers of the Harbor Department of the City of Los Angeles, provided that the primary duty of any such peace officer shall be the enforcement of law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(h) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, provided that the primary duty of any such officer shall be the protection of the properties of the utility district and the protection of the persons thereon."

[7]Education Code Section 72330, (formerly Section 25429), added by Chapter 1592, Statutes of 1970, Section 2, as amended by Chapter 470, Statutes of 1981, Section 77:

"The governing board of a community college district may establish a community college police department and employ, in accordance with the provisions of Chapter 4 (commencing with Section 88000) of Part 51 ~~of this division~~ such personnel as may be necessary for its needs.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers as defined by

to clarify that community college police are peace officers as defined by Section 830.31 of the Penal Code, but only for the purpose of carrying out the duties of their employment.

Chapter 945, Statutes of 1982, Section 5, amended Education Code Section 72330[8] to provide that a community college police department shall be under the supervision of a community college chief of police and that each campus of a multicampus community college district may designate a chief of police.

Chapter 1165, Statutes of 1989, Section 3, amended Education Code Section 72330[9]

Section 830.31 of the Penal Code, but only for the purpose of carrying out the duties of their employment, and only upon the campus of the community college and in or about other grounds or properties owned, operated, controlled, or administered by the community college, or the state on behalf of the community college."

[8]Education Code Section 72330, (formerly Section 25429), added by Chapter 1592, Statutes of 1970, Section 2, as amended by Chapter 945, Statutes of 1982, Section 5:

"The governing board of a community college district may establish a community college police department, under the supervision of a community college chief of police, and employ, in accordance with the provisions of Chapter 4 (commencing with Section 88000) of Part 51 such personnel as may be necessary ~~for its needs~~ to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college. Each campus of a multicampus community college district may designate a chief of police.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers as defined by Section 830.31 of the Penal Code ~~, but only for the purpose of carrying out the duties of their employment, and only upon the campus of the community college and in or about other grounds or properties owned, operated, controlled, or administered by the community college, or the state on behalf of the community college.~~"

[9]Education Code Section 72330, (formerly Section 25429), added by Chapter 1592, Statutes of 1970, Section 2, as amended by Chapter 1165, Statutes of 1989, Section 3:

"The governing board of a community college district may establish a community

to change the reference to peace officers defined "by Section 830.31 of the Penal Code" to those defined "in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code".

Chapter 1165, Statutes of 1989, Section 23, repealed Penal Code Section 830.31, and Section 25 added Penal Code Section 830.32[10] which defines those "peace officers" whose authority extends to any place in the state. Subdivision (a) includes members of a community college police department appointed pursuant to Education Code Section 72330.

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college police department, under the supervision of a community college chief of police, and employ, in accordance with the provisions of Chapter 4 (commencing with Section 88000) of Part 51 that personnel as may be necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college. Each campus of a multicampus community college district may designate a chief of police.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers as defined ~~by Section 830.31 of the Penal Code~~ in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code."

[10]Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 25:

"The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 39670 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 39670 of the Education Code."

Chapter 409, Statutes of 1991, Section 4, amended Education Code Section 72330[11] to add subdivision (c) which requires the governing board of a community college to set minimum qualifications for the community college chief of police and requires the chief of security or chief of police to comply with the training requirements of the subdivision.

Chapter 746, Statutes of 1998, Section 3, amended Penal Code Section 830.32[12] to add subdivision (c) to provide that peace officers employed by a California Community College district, who have completed training as prescribed by subdivision (f) of Section 832.3, shall be designated as school police officers.

So, it can be seen that the legislature has expanded the role of community college peace officers from "only in or about the campus and other grounds or properties owned by the college" since 1970, in the following 34 years, to full-fledged police departments with offices on each campus and authorized to enforce the law anywhere in the state.

B. School Districts

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[11]Education Code Section 72330, (formerly Section 25429), added by Chapter 1592, Statutes of 1970, Section 2, as amended by Chapter 409, Statutes of 1991, Section 4:

"(c) The governing board of a community college district that establishes a community college police department shall set minimum qualifications of employment for the community college chief of police, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall be required to comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the community college district, whichever occurs later. This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

[12]Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 1, as amended by Chapter 746, Statutes of 1998, Section 3:

"(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer."

In 1967, Education Code Section 15831[13] provided that the governing board of any school district may establish a security patrol and to employ such personnel as may be necessary to ensure the security of school district personnel and pupils and the security of the real and personal property of the school district.

Chapter 1010, Statutes of 1976, Section 2 recodified and renumbered Education Code Section 15831 as Education Code Section 39670[14].

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[13]Education Code Section 15831, added by Chapter 240, Statutes of 1961, Section 1, as amended by Chapter 987, Statutes of 1967, Section 1:

"The governing board of any school district may establish a security patrol and employ, in accordance with the provisions of Chapter 3 (commencing with Section 13580) of Division 10 such personnel as may be necessary to ensure the security of school district personnel and pupils in or about school district premises and the security of the real and personal property of the school district and to cooperate with local law enforcement agencies in all matters involving the security of personnel, pupils, and real and personal property of the school district. It is the intention of this provision that a school district patrol department shall be supplementary to city and county law enforcement agencies and shall under no circumstances be vested with general police powers."

[14]Education Code Section 39670, (formerly Section 15831), added by Chapter 240, Statutes of 1961, Section 1, as recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2 (Operative as of April 30, 1977):

"The governing board of any school district may establish a security patrol and employ, in accordance with the provisions of Chapter ~~3~~ 5 (commencing with Section ~~13580~~ 45100) of Part 25 of Division ~~10~~ 3 of this title such personnel as may be necessary to ensure the security of school district personnel and pupils in or about school district premises and the security of the real and personal property of the school district and to cooperate with local law enforcement agencies in all matters involving the security of personnel, pupils, and real and personal property of the school district. It is the intention of this provision that a school district patrol department shall be supplementary to city and county law enforcement agencies and shall under no circumstances be vested with general police powers."

Chapter 306, Statutes of 1977, Section 2, amended Education Code Section 39670[15] to read "security department" instead of "security patrol".

Chapter 945, Statutes of 1982, Section 1, amended Education Code Section 39670[16] to provide that the governing board of any school district may also establish a school district police department under the supervision of a school district chief of security, chief of police, or other official designated by the superintendent of the school district in addition to "security departments". The phrase "to cooperate with local law

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[15]Education Code Section 39670, (former Section 15831), added by Chapter 240, Statutes of 1961, Section 1, as amended by Chapter 306, Statutes of 1977, Section 2:

"The governing board of any school district may establish a security ~~patrol~~ department and employ, in accordance with the provisions of Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of this title such personnel as may be necessary to ensure the security of school district personnel and pupils ~~in or about school district premises~~ and the security of the real and personal property of the school district and to cooperate with local law enforcement agencies in all matters involving the security of personnel, pupils, and real and personal property of the school district. It is the intention of this provision that a school district ~~patrol~~ security department shall be supplementary to city and county law enforcement agencies and shall under no circumstances be vested with general police powers."

[16] Education Code Section 39670, (formerly Section 15831), added by Chapter 240, Statutes of 1961, Section 1, as amended by Chapter 945, Statutes of 1982, Section 1:

"The governing board of any school district may establish a security department or school district police department under the supervision of a school district chief of security, chief of police, or other official designated by the superintendent of the school district, and employ, in accordance with the provisions of Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of this title such personnel as may be necessary to ensure the ~~security~~ safety of school district personnel and pupils, and the security of the real and personal property of the school district ~~and to cooperate with local law enforcement agencies in all matters involving the security of the personnel, pupils, and real and personal property of the school district~~. It is the intention of this ~~provision~~ the Legislature in enacting this section that a school district security or police department shall be supplementary to city and county law enforcement agencies and shall under no circumstances be vested with general police powers."

enforcement agencies in all matters involving the security of the personnel, pupils, and real and personal property of the school district" was deleted.

Chapter 1165, Statutes of 1989, Section 23, repealed Penal Code Section 830.31, and Section 25 added Penal Code Section 830.32[17] which defines those "peace officers" whose authority extends to any place in the state. Subdivision (b) includes members of a school district police department employed pursuant to Education Code Section 39670.

Chapter 277, Statutes of 1996, Section 5, added Education Code Section 38000[18]

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[17]Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 25:

"The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 39670 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 39670 of the Education Code."

[18] Education Code Section 38000, added by Chapter 277, Statutes of 1996, Section 5:

"(a) The governing board of any school district may establish a security department under the supervision of a chief of security or a police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to

which substantially restates former Education Code Section 39670 (which was then repealed by Section 6) except, now, a school district may also assign a deputized school police reserve officer to a schoolsite to supplement the duties of school police personnel.

Chapter 746, Statutes of 1998, Section 3, amended Penal Code Section 830.32[19] to add subdivision (c) to provide that peace officers employed by a K-12 public school district, who have completed training as prescribed by subdivision (f) of Section 832.3, shall be designated as school police officers.

Chapter 135, Statutes of 2000, Section 135, amended subdivision (b) of Penal Code Section 830.32[20] to change references from Education Code Section 39670 to Section

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supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of any additional personnel."

[19] Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 25, as amended by Chapter 746, Statutes of 1998, Section 3:

"(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer."

[20] Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 25, as amended by Chapter 135, Statutes of 2000, Section 135:

"(b) Persons employed as members of a police department of a school district pursuant to Section ~~39670~~ 38000 of the Education Code, if the primary duty of the

38000.

So, it can be seen again, that the legislature, in attempting to make school districts safe, secure and peaceful, has expanded the responsibility of school district police departments from merely establishing security patrols in 1961 over the following 43 years into full-fledged police departments with police officers whose authority extends to any place in the state.

C. The Duties and Obligations of Campus Police Have Been Greatly Expanded

Chapter 659, Statutes of 1999, Section 1, amended Family Code Section 6240[21] to

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police officer is the enforcement of the law as prescribed in Section ~~39670~~ 38000 of the Education Code."

[21] Family Code Section 6240, added by Chapter 219, Statutes of 1993, Section 154, as amended by Chapter 659, Statutes of 1999, Section 1:

"As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(8) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(9) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(10) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(11) A peace officer employed by a police department of a school district,

include, peace officers of a California community college police department and peace officers employed by a police department of a school district within the definition of a "law enforcement officer" as used in Part 3 - "Emergency Protective Orders", commencing with Section 6240. Section 6250[22] allows a judicial officer to issue an ex parte emergency protective order when a law enforcement officer asserts reasonable grounds to believe any of the following: (a) that a person is in immediate and present danger of domestic violence, (b) that a child is in immediate and present danger of abuse by a family or household member, (c) that a child is in immediate and present danger of being abducted by a parent or relative, or (d) that an elder or dependent adult is in immediate and present danger of abuse. Therefore, the legislature has expanded the powers of California community colleges and school districts to include the authority to obtain emergency protective orders to help prevent domestic violence, child abuse, child abductions and elder abuse.

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as defined in subdivision (b) of Section 830.32.
(c) "Abduct" means take, entice away, keep, withhold, or conceal."

[22] Family Code Section 6250, added by Chapter 219, Statutes of 1993, Section 154, as amended by Chapter 561, Statutes of 1999, Section 1:

"A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:
(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.
(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.
(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse, . [sic — punctuation.]

Chapter 659, Statutes of 1999, Section 1.5, added Family Code Section 6250.5,[23] which allows a judicial officer to issue an ex parte emergency protective order to a peace officer of a community college or school district when that peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety, when the issuance of that order is consistent with a memorandum of understanding between the college or school police department and the local sheriff or police chief. Therefore, the authority and responsibility of community college and district peace officers was again expanded to obtain emergency protective orders when there is reasonable grounds to believe that there is a demonstrated threat to campus safety.

Penal Code Section 646.9 defines the crime of stalking. Chapter 659, Statutes of 1999, Section 2, amended subdivision (a) of Penal Code Section 646.91[24] to add

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[23] Family Code Section 6250.5, added by Chapter 659, Statutes of 1999, Section 1.5:

"A judicial officer may issue an ex parte emergency protective order to a peace officer defined in subdivisions (a) and (b) of Section 830.32 if the issuance of that order is consistent with an existing memorandum of understanding between the college or school police department where the peace officer is employed and the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located and the peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety."

[24] Penal Code Section 646.91, added by Chapter 169, Statutes of 1997, Section 2, as amended by Chapter 659, Statutes of 1999, Section 2:

"(a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable ~~ground~~ grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected

peace officers of a community college or school district to the list of peace officers who are charged with the responsibility of obtaining an ex parte emergency protective order based upon a victim's allegation that he or she has been willfully, maliciously and repeatedly followed or harassed by another person who has made a credible threat and the victim is in reasonable fear for his or her safety, or the safety of his or her immediate family. Subdivision (b) requires the requesting peace officer to sign the emergency order. Subdivision (h) requires the requesting peace officer to (1) serve the order on the restrained person, if he or she can be reasonably located, (2) to give a copy of the order to the protected person, or a minor protected person's parent or guardian, and (3) file a copy of the order with the court as soon as practicable after issuance. Subdivision (i) requires the peace officer to use every reasonable means to

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person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(l) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(m) "Judicial officer," as used in this section, means a judge, commissioner, or referee.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing.

(o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven."

enforce an emergency protective order. Subdivision (k) requires the requesting peace officer to carry copies of the order while on duty. Therefore, community college and school district peace officers are now required to sign emergency orders prohibiting "stalking", to serve the order on the restrained person if he or she can be reasonably located, to give a copy of the order to the protected person, to file a copy of the order with the court, and to carry copies of the order while on duty.

Penal Code Section 12028.5 defines domestic violence incidents and provides for the temporary taking custody of firearms at the scene of domestic violence incidents and provides procedures to be taken subsequent to the taking of temporary custody of those firearms. Chapter 659, Statutes of 1999, Section 3, amended Section 12028.5[25],

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[25] Penal Code Section 12028.5, added by Chapter 901, Statutes of 1984, Section 1, as amended by Chapter 659, Statutes of 1999, Section 3:

"(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section

830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in

subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

subdivision (b), to add community college and school district peace officers to those officers required to take custody of firearms and comply with Section 12028.5. Therefore, community college and school district peace officers, who are at the scene of a family violence incident involving a threat to human life or a physical assault, are now required to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present.

Chapter 659, Statutes of 1999, Section 3, renumbered former subdivisions (c) through (j) of Section 12028.5 as subdivisions (d) through (k) respectively. Subdivision (f) requires, in those cases where a law enforcement agency has reasonable cause to believe that the return of the firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, to advise the owner of the firearm or other deadly weapon and, within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. Therefore, when a community college district or school district peace officer seizes a firearm or other deadly weapon at the scene of a domestic violence incident, and the officer has reasonable cause to believe that the return of the firearm or other deadly weapon would likely result in endangering the victim or the person reporting the assault or threat, the district, is required to refer the seizure to district counsel for the filing of a petition to determine if the firearm or other deadly weapon should be returned.

Chapter 1 of Title 5 of the Penal Code, commencing with Section 13700, is entitled "Law Enforcement Response to Domestic Violence". Chapter 659, Statutes of 1999, Section 5, amended Subdivision (c) of Education Code Section 13700[26] to include

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(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section."

[26] Penal Code Section 13700, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 659, Statutes of 1999, Section 5:

"As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two

community college and school district peace officers within the definition of peace officers subject to the Title on Responses to Domestic Violence. Section 13701[27], at

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unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence."

[27] Penal Code Section 13701, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 659, Statutes of 1999, Section 5:

"As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d)

subdivision (a), requires every law enforcement agency (including school and district police departments) in the state to develop, adopt and implement written policies and standards for officers' responses to domestic violence calls to reflect the fact that domestic violence is alleged criminal conduct and that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. Subdivision (b) requires the written policies to encourage the arrest of domestic violence offenders if there is probable cause to believe that an offense has been committed and requires the arrest of the offender if there is probable cause to believe that a protective order has been violated. Therefore, community colleges and school districts with peace officers are required to develop, adopt and implement written policies pertaining to responses to domestic violence calls and to arrest offenders.

Again, we see the legislature, anticipating their continued existence, depends and relies upon campus police departments by including them when making provisions for emergency protective orders, domestic violence situations, stalking, serving and enforcement of temporary restraining orders, taking custody of firearms, initiating petitions in superior court and making arrests on campus of domestic violence offenders.

Application of History to Inalienable Right

In 1982, the people of the State of California acknowledged that the right to safe schools is an inalienable right.

In attempting to make our schools safe, secure and peaceful, the Legislature has enacted laws intended to accomplish that goal. The Legislature has relied on school police departments by authorizing them to become involved in emergency protective orders, domestic matters, stalking prevention, serving restraining orders, and taking custody of weapons.

The people and the legislature has not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who have first hand knowledge of what is necessary for their respective communities. It is a local decision. Whether to satisfy this duty by the utilization of a school police department or by contracting with another local agency to provide the service is a local

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of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence."

decision based upon the needs of that community. To say that districts are "free to discontinue" providing their own police departments is another way of saying that their collective judgment on how to best fulfill their duty to provide safe schools can be ignored. Staff's suggestion that a constitutional duty to protect an inalienable right can be satisfied by discarding a system chosen by the legislature and the people is unacceptable.

The Staff Analysis Errs in Other Respects

3. Other Local Agencies Have Not Been Held to the Same Standard

Staff applies a different standard to school districts and community college districts than it does to other police departments.

Article XI, section 1,[28] subdivision (b), states that "The Legislature shall provide for...an elected county sheriff..." There is nothing in section 1(b) which requires the county to maintain a law enforcement agency or employ peace officers. There is nothing in the section which mandates a sheriff's department or a posse of deputy sheriffs. The section only requires that a sheriff be elected.

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[28] California Constitution, Article 11, Section 1, adopted June 2, 1970, as last amended on June 7, 1988:

"(a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees."

As for city police forces, Article 11, section 5,[29] subdivision (b), states that "[I]t shall be competent in all city charters to provide...for: (1) the constitution, regulation, and government of the city police force..." The constitution merely states that it shall be competent to provide for a city police force in city charters. Using the usual meaning of the English language, "shall be competent to provide" means that cities have the authority to do so, it is not a mandate to do so. Whether a city actually maintains a police force is a discretionary act.

Therefore, test claimant asserts that a different standard is being applied to school districts and community college districts than is applied to counties and cities. The constitutional provision which gives students and staff of public schools the inalienable right to attend campuses which are safe, secure and peaceful is translated by Staff to conclude that districts are not required to maintain a law enforcement agency or employ peace officers. Whereas, as to counties, the fact that "the Legislature shall provide for...an elected county sheriff..." is interpreted to mean that counties are required to maintain a police force; and, as to cities, the provision that "it shall be competent to provide for the government of a city police force" in city charters is somehow enhanced to read that cities are "required" to maintain a police force.

4. **Staff's Inconsistency is Arbitrary and Unreasonable**

[29] California Constitution, Article 11, Section 5, Adopted June 2, 1970:

"(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees."

It is a matter of record that the Commission, many times in the past, has approved reimbursements for school police, e.g.,:

465/76	Peace Officer Procedural Bill of Rights
1249/92	Threats Against Peace Officers
1120/96	Peace Officers' Survivors Health Benefits
126/93	Law Enforcement Sexual Harassment Training
875/85	Photographic Record of Evidence
284/98	Law Enforcement College Jurisdiction Agreements
908/96	Sex Offenders: Disclosure by Law Enforcement Officers

Indeed, in the Law Enforcement College Jurisdiction Agreement mandate, community college police services were the only services determined by the Commission to be reimbursable.

Staff has given no compelling legal reason for this change in course. To do so now, without a compelling reason, is both arbitrary and unreasonable.

Test claimant takes notice of the fact that staff has previously responded to this objection.[30] In its prior Final Staff Analysis,[31] Staff wrote: "Prior Commission decisions are not controlling in this case....the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process and does not constitute an arbitrary action by the agency", citing *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772.

The *Weiss* opinion states the whole rule:

> "Probably deliberate change in or deviation from established administrative policy should be permitted *so long as the action is not arbitrary or unreasonable.* This is the view of most courts. (Citations)" *Weiss v. State Board of Equalization* (supra, at page 777)

[30] Final Staff Analysis, for Test Claim 00-TC-24, Peace Officer Personnel Records: Unfounded Complaints and Discovery, page 12

[31] Test Claimant also takes notice that this conclusion was not made until the final staff analysis and was not fully briefed at the time of the Commission hearing.

The rule of law which is the subject of this objection is the rule of "*stare decisis*".[32] The *Weiss* court explained why the rule exists: "'Consistency in administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" The California Supreme Court recently explained:

> "...the doctrine of stare decisis, 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law'." *Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 504

So Staff is mistaken when it asserts that *Weiss* holds that the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process and does not constitute an arbitrary action by the agency, when the decision actually states it is "probably" permissible so long as the action is not arbitrary or unreasonable, and that same decision states that "to adopt different standards for similar situations is to act arbitrarily."

Reliance on prior decisions is also a factor:

> "The significance of stare decisis is highlighted when legislative reliance is potentially implicated. (citation) Certainly, '[*s*]*tare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response." *Sierra Club v. San Joaquin Local Agency Formation Commission* (supra, at 504)

An acceptable answer, then, needs to concentrate on the facts before coming to a conclusion whether or not the action taken is arbitrary or unreasonable. In *Weiss*, there was no element of reasonable reliance. Plaintiff was seeking a liquor license near a school and complained that denial was unreasonable when other businesses had been granted licenses before him. The court, in *Weiss*, answered this argument with "[H]ere

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[32] "New Latin, to stand by things that have been settled: the doctrine under which courts adhere to precedent on questions of law in order to insure certainty, consistency, and stability in the administration of justice with departure from precedent permitted for compelling reasons (as to prevent the perpetuation of injustice)." Merriam-Webster's Dictionary of Law © 1996

the board was not acting arbitrarily even if it did change its position because it may have concluded that another license would be too many in the vicinity of the school." (Opinion, at page 777) Simply stated, the *Weiss* court held that the licensing board had a rational reason for acting as it did.

In the present case, for many years, school districts and community college districts have maintained police departments as their means of fulfilling their obligation to provide safe schools. They have learned from the Commission (from its prior decisions set forth above) that they would be reimbursed for peace officer activities mandated by the Legislature. Relying on these prior decisions of the Commission, they have incurred costs (in the instant case, since 1998) for activities mandated by the test claim legislation. This is not a situation where the Commission acts prospectively and makes a U-turn, it is a situation where the Commission acts retroactively and denies reimbursement for costs already incurred by districts in reliance on the Commission's prior decisions.

Staff has offered no compelling reason[33] (because there is none) why mandated activities of district peace officers were reimbursable in previous rulings and now activities of district peace officers are not reimbursable, other than what appears to be a whim or current fancy. This 180 degree change of course does not insure certainty, consistency and stability in the administration of justice. This comes square within the *Weiss* explanation that "to adopt different standards for similar situations is to act arbitrarily."

5. Staff Misinterprets the "Kern" Case

As a final argument, staff states:

> "...the California Supreme Court found that 'if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate'." (Citing: *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727,743 ("Kern")

[33] Test claimant anticipates that Staff will respond that its compelling reason is that a recent decision of the Supreme Court ("*Kern*", *infra*) establishes a new rule of law, i.e., discretionary activities of local agencies are not reimbursable. To the contrary, this has been the law since 1984. *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783

(Emphasis supplied by Staff)

Staff badly misconstrues the scope of "Kern".

The controlling case law on the subject of legal compulsion, vis-a-vis non-legal compulsion, is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II).*

(1) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and had sought to maintain federal compliance.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. The court also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under

Section 9(b).[34]

In other words, *Sacramento I* concluded that the loss of federal funds and tax credits did not amount to "compulsion".

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was reversed.

However, the court disapproved that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion".

(4) *Sacramento II* "Compulsion" Reasoning

The State argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. The local agencies responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

The State then argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

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[34] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

> "However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own unemployment program after 43 years or more in operation was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without any real discretion to do otherwise. The only reasonable alternative was to comply with the new legislation.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(5) Statutory Compulsion is not Required

In "Kern", at page 736, the Supreme Court first made it clear that the decision did not hold, as suggested here by Staff, that legal compulsion is always necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court affirmed that other circumstances such as were presented in

Sacramento II could result in non-legal compulsion:

> "In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining the existence of a mandate is whether compliance with the test claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates*, (1992) 11 Cal.App.4th 1564, 1582

The process for such a determination is found in *Sacramento II*, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.

Staff has not considered this process of balancing the various relevant factors in its determination that police departments of school districts and community college districts are not required by state law. Therefore, its conclusion is without a necessary legal foundation.

PART B

1. The Language of Section 1005 Controls - No Interpretation is Required

Section 1005 of Title 11, California Code of Regulations, in relevant part, states:

> "(a) Minimum Entry-Level Training Standards (Required).
>
> (1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) [peace officers whose primary duties are investigative], and 1005(a)(4) [coroners or deputy coroners], shall complete the

Regular Basic Course before being assigned duties which include the exercise of peace officer powers. Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5 (below), following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13.

(B) Exemptions to the Field Training Program Requirement: An officer is exempt from the Field Training Program requirement following completion of the Regular Basic Course:

1. While the officer's assignment remains custodial related, or

2. If the officer's employing department does not provide general law enforcement uniformed patrol services and the department has been granted an exemption as specified in Regulation 1004, or

3. If the officer is a lateral entry officer possessing a POST Basic Certificate and who has either:

a) completed a POST-approved Field Training Program, or

b) one year previous experience performing general law enforcement uniformed patrol duties, or

4. If the officer was a Level I Reserve and is appointed to a full-time peace officer position within the same department and has previously completed the department's entire POST-approved Field Training Program within the last 12 months of the new

> appointment, or has the signed concurrence of the department head attesting to the individual's competence, based upon experience and/or other field training as a solo general law enforcement uniformed patrol officer, or
>
> 5. If the officer's employing department has obtained approval of a field training compliance extension request provided for in Regulation 1004..."

The language of the regulation is clear: except for certain reserve level officers and officers specifically exempted, every peace officer shall complete the Regular Basic Course [section 1005(a)(1)] and, following completion of the basic course, but before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program [section 1005(a)(1)(A)].

There is order in the most fundamental rules of statutory (or regulatory) interpretation. "The key is applying those rules in proper *sequence*." Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238 (hereinafter "Halbert's") (emphasis in the original)

> "First, a court should examine the actual language of the statute. (Citations)...¶ In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning (citations) unless, of course, the statute itself specifically defines those words to give them a special meaning (citations). ¶ If the meaning is without ambiguity, doubt, or uncertainty, then the language controls. (Citations)"
>
> "(Second) if the meaning of the words is not clear, courts must take the second step and refer to the legislative history. (Citations)"
>
> "(Third) The final step - and one which we believe should only be taken when the first two steps have failed to reveal clear meaning- is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable (citations), in accord with common sense and justice, and to avoid an absurd result (citations)..." (opinion, at pp. 1238-1240)

Halbert requires that we should first give to the words their ordinary, everyday meaning. "[I]f the meaning is without ambiguity, doubt, or uncertainty, then the language controls."

(opinion, at p.1239) Since the meaning of the words of section 1005 are clear, there is no need to take steps two and three. In accord, see Californians Against Waste v. Department of Conservation (2002) 104, Cal.App.4th 317, where the court stated "Our analysis begins and ends with the examination of the language of (the section in question)...", after concluding that step 1 of *Halbert's* revealed no ambiguity in the words of the statute.

Here, the words are clear, the Field Training Program is mandatory after completion of the Regular Basic course.

2. Staff Has Not Properly Analyzed the "Election" Issue

First of all, the clear meaning of section 1005 does not present any "election" issue. Yet, staff concludes that the field training program is not part of the basic training requirement imposed by the state on all officers to obtain peace officer status. It states, as the basis for its conclusion, that field training is required only if the local agency or school district employer has "elected" to become a member of POST.

Assuming, *arguendo*, that there is an election, Staff has focused on the wrong "election". Under Title 11, California Code of Regulations, Regulation 1005, subdivision (a)(1)(A), every peace officer *shall complete* a POST-approved Field Training Program before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision.

Therefore, the decision to be made is not whether or not to become a member of POST; the decision is whether or not the local agency needs to assign a particular officer (or group of officers) to patrol duties without direct and immediate supervision. If the facts presented to the local agency[35] *require* that the officer (or officers) be assigned to patrol duty without direct and immediate supervision, the local agency would be *required* to have its officers enroll in the field training program.

As noted above, *Sacramento II* supplies the needed analysis for whether or not a local agency is required to have patrol officers work alone, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal

[35] Such as budget restraints or lack of a sufficient number of officers. It is presumed that a local agency will not assign two officers to a patrol when the situation allows for the utilization of only one officer.

and practical consequences of nonparticipation, noncompliance, or withdrawal.

Staff has not considered the legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Staff's conclusion is based upon the wrong premise. The decision for local agencies is not whether or not to join POST, the decision is whether it can afford to have patrols staffed by two officers.

3. POST's Interpretation is Not Entitled to Great Weight

Staff refers to comments filed by POST which indicate that the field training program was meant only for POST participating agencies. Staff then concludes that POST's interpretation of their regulations and Administrative Manual is entitled to great weight and the courts generally will not depart from such construction unless it is clearly erroneous or unauthorized, citing *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11. This was not the holding of *Yamaha*. In fact, in *Yamaha*, the court held that the agency's interpretation was not entitled to great weight and the Supreme court reversed the decision of the appellate court which had done so.

At pages 6-7, the *Yamaha* court first presented the issue and then a preview of its decision:

> "...the question is what standard courts apply when reviewing an agency's *interpretation* of a statute. In effect, the Court of Appeal held the annotations were entitled to the same 'weight' or 'deference' as 'quasi-legislative' rules. (footnote omitted) The Court of appeal adopted the following formulation: '[A] long-standing and consistent administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is either 'arbitrary, capricious or without rational basis [citations] or is 'clearly erroneous or unauthorized'....As this extract from the Court of Appeal opinion indicates, the court relied on a skein of cases as supporting these several, somewhat inconsistent, propositions of administrative law. We reach a different conclusion....unlike quasi-legislative regulations...an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation...Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum...it is the duty of this court...to state the true

meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction..."
(Emphasis by the court - Underlining supplied)

At pages 10-11, the *Yamaha* court explained the "black letter" law that there are two categories of administrative rules. One kind, quasi-legislative rules,[36] represents an authentic form of substantive law lawmaking. Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow.

The other class of administrative rules are those *interpreting* a statute, where, unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power, instead, it represents the agency's view of the statutes legal meaning and effect. Because an interpretation is an agency's *legal opinion*, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of deference.

Therefore, the *interpretation* of POST expressed in two letters to the Commission commenting on the test claims, wherein it expressed the opinion that field training programs were meant only for POST participating agencies, commands a commensurably lesser degree of deference. Whereas, Title11, Section 1005, which was published following Administrative Procedure Act requirements, which included a notice to the public of the proposed rule and opportunity for public comment, are quasi-legislative rules which have the dignity of statutes and the scope of the Commission's review is narrow. That rule states that every peace officer shall complete a POST-approved Field Training Program before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision. Nothing in Section 1005 limits the mandate only to POST participating agencies.

Since the *interpretation* of the rule as expressed in the two letters to the Commission is "clearly" erroneous, it is the duty of the Commission and Commission staff to state the true meaning of the regulation finally and conclusively, as clearly stated in Section 1005, even though this requires the overthrow of an earlier erroneous administrative

[36] The *Yamaha* court, at page 13, noted "If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions-which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhances the accuracy and reliability of the resulting administrative 'product'-that circumstance weighs in favor of judicial deference."

construction.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

Attachments

Pursuant to the standard practice that copies of additional court decisions cited (other than published court decisions arising from state mandate determinations) that may impact the alleged mandate be attached to comments and rebuttals, copies of the following cases (in order of citation) are attached hereto and are incorporated herein by reference:

1. Leger v. Stockton Unified School District (1988) 202 Cal.App.3d 1448
   249 Cal.Rptr. 688

2. Brosnahan v. Brown (1982) 32 Cal.3d 236
   186 Cal.Rptr. 30; 651 P.2d 274

3. Unger v. Superior Court (Marin County Democratic Central Com.) (1980)
   102 Cal.App.3d 681; 162 Cal.Rptr. 611

4. Porten v. University of San Francisco (1976) 64 Cal.App.3d 825
   134 Cal.Rptr. 839

5. Laguna Publishing Co. v. Golden Rain Foundation (1982) 131 Cal.App.3d 816
   182 Cal.Rptr. 813

6. Weiss v. State Board of Equalization (1953) 40 Cal.2d 772

256 P.2d 1

7. Sierra Club v. San Joaquin Local Agency Formation Commission (1999) 21 Cal.4th 489; 87 Cal.Rptr. 2d 702; 981 P.2d 543

8. Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233 8 Cal.Rptr.2d 298

9. Californians Against Waste v. Department of Conservation (2002) 104 Cal.App.4th 317; 274 Cal.Rptr. 286

DECLARATION OF SERVICE

RE: Mandatory On-The-Job Training For Peace Officers Working Alone
00-TC-19, 02-TC-06
CLAIMANT: County of Los Angeles and Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of June 21, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 6/21/04, at San Diego, California.

Diane Bramwell

Original List Date: 7/6/2001
Last Updated: 6/2/2004
List Print Date: 06/02/2004
Claim Number: 00-TC-19
Issue: Mandatory On-The-Job Training for Peace Officers Working Alone

Mailing Information: Draft Staff Analysis

Mailing List

Related

02-TC-06 Peace Officers Working Alone (K-14)

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ATTACHMENT "1"

Leger v. Stockton Unified School District (1988)

202 Cal.App.3d 1448; 249 Cal.Rptr. 688

[No. C000367. Third Dist. July 25, 1988.]

JAIME LEGER et al., Plaintiffs and Appellants, v. STOCKTON UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.

SUMMARY

A high school student sued his school district and his high school's principal and wrestling coach, alleging they negligently failed to protect him from an attack by a nonstudent in a high school restroom. The trial court sustained defendants' general demurrer to the first amended complaint without leave to amend. The student was battered while changing clothes for wrestling practice. The court's ruling was based in part on Gov. Code, § 845, exempting public entities and employees from liability for deficiencies in police protection services. (Superior Court of San Joaquin County, No. 172920, K. Peter Saiers, Judge.)

The Court of Appeal reversed. The court held Cal. Const., art. I, § 28, subd. (c), the right to safe schools, is not self-executing in the sense of supplying a right to sue for damages, and also that it therefore imposes no mandatory duty on a school district or its employees to make a high school safe and supplies no basis for liability under Gov. Code, § 815.6, for particular injuries proximately resulting from the failure to discharge such a duty. However, the court further held defendants had a duty to use reasonable care to protect the student in the pleaded circumstances, since the school district (under Gov. Code, § 820) and its employees (under Gov. Code, § 815.2) had the same liability as would have obtained in the private sector. Gov. Code, § 845, did not immunize defendants, as the student did not allege failure to provide police protection. (Opinion by Sims, J., with Sparks, Acting P. J., and Watkins, J.,* concurring.)

* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Pleading § 22—Demurrer as Admission.**—A general demurrer admits the truthfulness of properly pleaded factual allegations of the complaint.

(2a-2d) **Government Tort Liability § 14—Constitutional Right to Safe Schools—Enforceability.**—The right to safe schools (Cal. Const., art. I, § 28, subd. (c)) is not self-executing in the sense of supplying a right to sue for damages. It declares a general right without specifying any rules for its enforcement, imposes no express duty on anyone to make schools safe, and is devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Also, there is no indication in the history of the right (e.g., in the ballot arguments) to suggest it was intended to support an action for damages in the absence of enabling and defining legislation.

[See **Cal.Jur.3d (Rev)**, Criminal Law, § 2040 et seq.]

(3) **Constitutional Law § 5—Operation and Effect—As Limitation of Power.**—In accordance with the requirement of Cal. Const., art. I, § 26, that all branches of government comply with constitutional directives and prohibitions, and in the absence of express language to the contrary, every constitutional provision is self-executing in the sense that agencies of government are prohibited from taking official actions that contravene constitutional provisions, and everything done in violation of the Constitution is void.

(4) **Constitutional Law § 7—Mandatory, Directory, and Self-executing Provisions—Distinctions.**—A constitutional provision may be mandatory without being self-executing. It is self-executing if no legislation is necessary to give effect to it, and if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law. A constitutional provision is presumed to be self-executing unless a contrary intent is shown.

[See **Am.Jur.2d**, Constitutional Law, § 139 et seq.]

(5) Government Tort Liability § 14—Mandatory Duty to Make Schools Safe.—Because Cal. Const., art. I, § 28, subd. (c), the right to safe

schools, does not supply the necessary rule for its implementation, but is simply a declaration of rights, it imposes no mandatory duty on a school district or its employees to make a high school safe and supplies no basis for liability under Gov. Code, § 815.6, for particular injuries proximately resulting from the failure to discharge such a duty.

(6) **Government Tort Liability § 16—Claims—Constitutional Torts—Civil Remedy.**—The civil remedy for constitutional torts is a direct claim by the victim of the official wrongdoing to secure compensation for the denial of his constitutional rights.

(7a-7f) **Government Tort Liability § 15—Supervision of Students—Negligence—Pleading—Battery of Student by Nonstudent.**—In a high school student's action against his school district and its employees for negligently failing to protect him from an attack by a nonstudent in a school restroom, the trial court erred in sustaining defendants' general demurrer to the first amended complaint, since defendants had a duty to use reasonable care to protect plaintiff in the pleaded circumstances. Plaintiff alleged he was attacked while changing clothes for wrestling practice and that defendants knew or should have known the rest room was an unsupervised location unsafe for students and that attacks by nonstudents were likely there. Since liability would thus have existed in the private sector, defendants had similar liability under Gov. Code, §§ 820 (the school district) and 815.2 (the employees), where no other statutory immunity obtained.

(8) **Negligence § 9—Duty of Care—Question of Law.**—The existence of a duty of care is a question of law, for legal duties express conclusions that in certain cases it is appropriate to impose liability for injuries suffered.

(9) **Negligence § 9.4—Duty of Care—Special Relationship.**—As a general rule, one owes no duty to control the conduct of another or to warn those in danger of such conduct. Such a duty may arise, however, if (a) a special relation exists between the actor and the third person that imposes a duty on the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other that gives the other a right to protection.

(10a, 10b) **Government Tort Liability § 15—Supervision of Students—Negligence—Duty of Care—Special Relationship.**—A special relationship is formed between a school district (including its individual employees responsible for student supervision) and its students so as

to impose an affirmative duty to take all reasonable steps to protect the students.

(11) **Government Tort Liability § 15—Supervision of Students—Negligence—Duty of Care—Standard of Care.**—A school district and its employees owe the student a duty to use the degree of care that a person of ordinary prudence, charged with comparable duties, would exercise in the same circumstances.

(12a, 12b) **Government Tort Liability § 15—Supervision of Students—Negligence—Duty of Care—Foreseeability.**—The existence of a duty of care of a school district and its employees toward a student depends in part on whether a particular harm to the student is reasonably foreseeable. School authorities who know of threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures simply because violence has yet to occur.

[Liability of university, college, or other school for failure to protect student from crime, note, 1 **A.L.R.4th** 1099.]

(13) **Appellate Review § 128—Rulings on Demurrers.**—Whether a plaintiff can prove his allegations, or whether it will be difficult to prove them, are not appropriate questions for a reviewing court when ruling on a demurrer.

(14) **Government Tort Liability § 15—Supervision of Students—Negligence—Duty of Care—Availability of Funds.**—The availability of funds is a valid policy consideration in determining whether to impose a duty of care on a school district.

(15) **Government Tort Liability § 2—As Governed by Statute.**—In California, all government tort liability must be based on statute.

(16) **Courts § 37—Doctrine of Stare Decisis—Propositions Not Considered.**—It is axiomatic that cases are not authority for propositions not considered.

(17) **Schools § 52—Parents and Students—Supervision—Private Schools—Duty.**—A private school is not required to provide constant supervision over pupils at all times. No supervision is required where the school has no reason to think any is required. There is a duty to

provide supervision with respect to a particular activity if the school officials could reasonably anticipate that supervision was required.

[Tort liability of private schools and institutions of higher learning for negligence of, or lack of supervision by, teachers and other employees or agents, note, 38 A.L.R.3d 908.]

(18) **Schools § 52—Parents and Students—Supervision—Private Schools—Negligence—Dangers—Jury Question—Respondeat Superior.**—Where a student is injured in performing a task on the direction of school authorities without supervision, the question of private school negligence is one for the jury if there is evidence of the existence of a danger known to the school authorities, who neglect to guard the student against such danger, or if there is an unknown danger that the school, by the exercise of ordinary care as a reasonably prudent person, would have discovered. Where the liability of the private school is sought to be predicated on alleged negligence of teachers or other employees or agents of the school, it is generally recognized that liability on the part of the school may be established under the doctrine of repondeat superior if negligence within the scope of their employment is shown.

(19) **Government Tort Liability § 11—Police and Correctional Activities—Immunity—Purpose.**—Gov. Code, § 845, exempting public entities and employees from liability for deficiencies in police protection service, was designed to protect from judicial review in tort litigation the political and budgetary decisions of policy-makers, who must determine whether to provide police officers or their functional equivalents.

COUNSEL

Laura E. Bainbridge for Plaintiffs and Appellants.

Mayall, Hurley, Knutsen, Smith & Green and Peter J. Whipple for Defendants and Respondents.

OPINION

SIMS, J.—In this case, we hold that the complaint of a high school student states a cause of action for damages against his school district and its

employees. The complaint alleges employees of the district negligently failed to protect plaintiff Jaime Leger from an attack by a nonstudent in a school restroom, where they knew or reasonably should have known the restroom was unsafe and attacks by nonstudents were likely to occur.

Plaintiff contends the trial court erroneously sustained the demurrer of defendants Stockton Unified School District (District), Dean Bettker, and Greg Zavala to plaintiff's first amended complaint without leave to amend.

(1) Since a general demurrer admits the truthfulness of properly pleaded factual allegations of the complaint (*Peterson* v. *San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 804 [205 Cal.Rptr. 842, 685 P.2d 1193]), we recount the pertinent allegations: At all relevant times defendant Bettker was the principal of Franklin High School, and defendant Zavala was a wrestling coach. Each such defendant was an employee of defendant District and was acting within the scope of his employment respecting the matters stated in the complaint.

Plaintiff, a student at Franklin High School, was injured on the school campus when he was battered by a nonstudent on February 14, 1983. Plaintiff was attacked in a school bathroom where he was changing his clothes before wrestling practice. Defendants knew or should have known the bathroom was an unsupervised location unsafe for students and that attacks by nonstudents were likely to occur there.

The complaint pled three legal theories of relief against defendants. The first count alleged a violation of plaintiff's inalienable right to attend a safe school. (Cal. Const., art. I, § 28, subd. (c).) The second count alleged the constitutional provision imposed a mandatory duty on defendants, within the meaning of Government Code section 815.6, to make plaintiff's school safe, the breach of which entitled him to damages. The third count alleged defendants negligently failed to supervise him or the location where he was changing his clothes for wrestling practice, knowing or having reason to know the location was unsafe for unsupervised students.

DISCUSSION

I

Article I, section 28, subdivision (c) of the California Constitution is not self-executing in the sense of providing a right to recover money damages for its violation.

(2a) Plaintiff first argues that article I, section 28, subdivision (c) of the California Constitution is self-executing and by itself provides a right to

recover damages. That provision, enacted as a part of "the Victim's Bill of Rights," reads: "*Right to Safe Schools.* All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (Referred to hereafter for convenience as section 28(c).)

Article I, section 26 of the California Constitution provides: "The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

(3) Under this constitutional provision, all branches of government are required to comply with constitutional directives (*Mosk* v. *Superior Court* (1979) 25 Cal.3d 474, 493, fn. 17 [159 Cal.Rptr. 494, 601 P.2d 1030]; *Bauer-Schweitzer Malting Co.* v. *City and County of San Francisco* (1973) 8 Cal.3d 942, 946 [106 Cal.Rptr. 643, 506 P.2d 1019]) or prohibitions (*Sail'er Inn, Inc.* v. *Kirby* (1971) 5 Cal.3d 1, 8 [95 Cal.Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351]). Thus, in the absence of express language to the contrary, *every* constitutional provision is self-executing in the sense that agencies of government are prohibited from taking official actions that contravene constitutional provisions. (*Ibid.*) "Every constitutional provision is self-executing to this extent, that everything done in violation of it is void." (*Oakland Paving Co.* v. *Hilton* (1886) 69 Cal. 479, 484 [11 P. 3]; see *Sail'er Inn, Inc.* v. *Kirby, supra,* 5 Cal.3d at p. 8.)

(2b) The question here is whether section 28(c) is "self-executing" in a different sense. Our concern is whether section 28(c) provides any rules or procedures by which its declaration of rights is to be enforced, and, in particular, whether it provides citizens with a specific *remedy* by way of damages for its violation in the absence of legislation granting such a remedy. (See *Laguna Publishing Co.* v. *Golden Rain Foundation* (1982) 131 Cal.App.3d 816, 858 [182 Cal.Rptr. 813] (dis. opn. of Kaufman, J.).)

(4) "A provision may be mandatory without being self-executing. It is self-executing if no legislation is necessary to give effect to it, and if there is nothing to be done by the Legislature to put it into operation. A constitutional provision contemplating and requiring legislation is not self-executing. [Citation.] In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms and there is no language indicating that the subject is referred to the Legislature for action [citation]; and such provisions are inoperative in cases where the object to be accomplished is made to depend in whole or in part on subsequent legislation." (*Taylor* v. *Madigan* (1975) 53 Cal.App.3d 943, 951 [126 Cal.Rptr. 376].)

The following rule has been consistently applied in California to determine whether a constitutional provision is self-executing in the sense of providing a specific method for its enforcement: " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.' " (*Older* v. *Superior Court* (1910) 157 Cal. 770, 780 [109 P. 478], quoting Cooley, Constitutional Limitations (7th ed. 1903) p. 121; see *Winchester* v. *Howard* (1902) 136 Cal. 432, 440 [69 P. 77]; *Chesney* v. *Byram* (1940) 15 Cal.2d 460, 462 [101 P.2d 1106]; *People* v. *Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *California Housing Finance Agency* v. *Elliott* (1976) 17 Cal.3d 575, 594 [131 Cal.Rptr. 361, 551 P.2d 1193].)

We recognize that a constitutional provision is presumed to be self-executing unless a contrary intent is shown. (*Winchester* v. *Howard, supra,* 136 Cal. at p. 440; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, § 38, p. 3278.) (2c) Here, however, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, " 'it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.' " (5) (See fn. 1.) (*Older* v. *Superior Court, supra,* 157 Cal. at p. 780, citation omitted.)[1]

(2d) Although not cited by plaintiff, we note that in *White* v. *Davis* (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222], the court held that the constitutional provision protecting the right of privacy (Cal. Const., art. I, § 1)[2] was self-executing and supported a cause of action for an injunction. (13 Cal.3d at pp. 775-776.)

White's conclusion was based upon an "election brochure 'argument,' a statement which represents . . . the only 'legislative history' of the constitu-

[1] For this reason, and contrary to plaintiff's contention, section 28(c) does not supply a basis for liability under Government Code section 815.6, which provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Because section 28(c) does not supply the necessary rule for its implementation, but is simply a declaration of rights, it imposes no mandatory duty upon defendants to make Franklin High School safe. (See *Nunn* v. *State of California* (1984) 35 Cal.3d 616, 624-626 [200 Cal.Rptr. 440, 677 P.2d 846].)

[2] Article I, section 1 provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

tional amendment . . . ." (*Id.*, at p. 775.) The court reasoned that a statement in the brochure that the amendment would create "'a legal and enforceable right of privacy for every Californian'" showed that the privacy provision was intended to be self-executing. (*Ibid.*)

By way of contrast, there is no indication in any of the sparse "legislative history" of section 28(c) to suggest it was intended to support an action for damages in the absence of enabling and defining legislation. The ballot arguments do not so much as hint at such a remedy. "The Victim's Bill of Rights" itself declares that, "The rights of victims pervade the criminal justice system, encompassing . . . the . . . basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished *so that the public safety is protected and encouraged as a goal of highest importance.* [¶] *Such public safety extends to public . . . senior high school campuses, where students and staff have the right to be safe and secure in their persons.* [¶] *To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary* and proper as deterrents to criminal behavior and to serious disruption of people's lives." (Art. I, § 28, subd. (a)., italics added.) Thus, the goal of public safety, including the safety of those in our schools, is to be reached through reforms in the criminal laws (see *Brosnahan* v. *Brown* (1982) 32 Cal.3d 236, 247-248 [186 Cal.Rptr. 30, 651 P.2d 274]); a private right to sue for damages is nowhere mentioned nor implied. Since the enactment of section 28(c) was accomplished without "legislative history" comparable to that relied on by the court in *White* v. *Davis, supra,* 13 Cal.3d 757, that case does not aid plaintiff's theory.

We hold that section 28(c) is not self-executing in the sense of supplying a right to sue for damages.[3] (*Older* v. *Superior Court, supra,* 157 Cal. at p. 780.)

Plaintiff relies upon *Porten* v. *University of San Francisco* (1976) 64 Cal.App.3d 825 [134 Cal.Rptr. 839], and *Laguna Publishing Co.* v. *Golden Rain Foundation, supra,* 131 Cal.App.3d 816 for the proposition a self-executing constitutional provision supports an action for damages. *Porten,* following *White* v. *Davis, supra,* 13 Cal.3d 757, held a plaintiff could sue for

[3]This conclusion does not mean that section 28(c) is without practical effect. To implement section 28(c), the Legislature has enacted chapter 1.1 of part 1, title 15 of the Penal Code (§§ 627-627.10) establishing procedures by which nonstudents can gain access to school grounds and providing punishments for violations. The Legislature has also enacted chapter 2.5 of part 19 of division 1 of title 1 of the Education Code (§§ 32260-32296), the Interagency School Safety Demonstration Act of 1985, "to encourage school districts, county offices of education, and law enforcement agencies to develop and implement interagency strategies, programs, and activities which will improve school attendance and reduce the rates of school crime and vandalism." (Ed. Code, § 32261.)

damages for violation of his state constitutional right of privacy. (*Porten, supra,* 64 Cal.App.3d at p. 832.) We have no occasion here to determine whether we agree with *Porten,* because it is premised on the violation of a different, self-executing provision of the Constitution. Although not cited by plaintiff, *Fenton* v. *Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797 [185 Cal.Rptr. 758] is similarly distinguishable because it relies upon the self-executing nature of article II, section 2 of our Constitution, guaranteeing a right to vote. (*Fenton, supra,* at p. 805.)

Laguna Publishing Co. v. *Golden Rain Foundation, supra,* 131 Cal.App.3d 816, also fails to support plaintiff's theory. There, the court held plaintiff could pursue recovery of damages for violation of its right to free speech guaranteed by article I, section 2 of our state Constitution. (Pp. 853-854.) However, contrary to plaintiff's suggestion, *Laguna Publishing* was not premised upon the self-executing nature of the subject constitutional provision. (See *id.,* at p. 851.) (6) (See fn. 4.) Rather, *Laguna Publishing* followed *Melvin* v. *Reid* (1931) 112 Cal.App. 285 [297 P. 91] in allowing a cause of action for violation of free speech rights without regard to the self-executing nature of the constitutional provision.[4] (*Laguna Publishing Co., supra,* at pp. 852-853.) The court also relied upon Civil Code sections 1708 and 3333. (*Ibid.*) The case is therefore inapposite to the theory advanced by plaintiff.

[4]To the extent *Laguna Publishing* follows *Melvin* v. *Reid, supra,* 112 Cal.App. 285, the case represents a specie of "constitutional tort." " 'The civil remedy for *constitutional* torts is a direct claim by the victim of the official wrongdoing to secure compensation for the denial of his *constitutional* rights.' [Citation.]" (*Fenton* v. *Groveland Community Services Dist., supra,* 135 Cal.App.3d at p. 803, italics in original; see *Bivens* v. *Six Unknown Fed. Narcotics Agents* (1971) 403 U.S. 388 [29 L.Ed.2d 619, 91 S.Ct. 1999]; *Gay Law Students Assn.* v. *Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 474-475 [156 Cal.Rptr. 14, 595 P.2d 592]; *Stalnaker* v. *Boeing Co.* (1986) 186 Cal.App.3d 1291, 1302-1308 [231 Cal.Rptr. 323].) "Without question, the rebirth of reliance on state bills of rights is one of the most fascinating developments in civil rights law of the last two decades." (Friesen, *Recovering Damages for State Bills of Rights Claims* (1985) 63 Tex.L.Rev. 1269.) "The literature on the renewed use of state constitutions is already too long to collect conveniently in a footnote." (*Id.,* at fn. 2; see, e.g., Wells, *The Past and the Future of Constitutional Torts: From Statutory Interpretation to Common Law Rules* (1986) 19 Conn.L.Rev. 53; Comment, *The Right to Safe Schools: A Newly Recognized Inalienable Right* (1983) 14 Pac. L.J. 1309; Love, *Damages: A Remedy for the Violation of Constitutional Rights* (1979) 67 Cal.L.Rev. 1242; Katz, *The Jurisprudence of Remedies: Constitutional Legality and the Law of Torts in Bell* v. *Hood* (1968) 117 U.Pa.L.Rev. 1.)

"Whether a cause of action can be inferred from the Constitution, without any explicit statutory authorization, is a complex question and one which is mired in the dark ages of constitutional law." (Yudof, *Liability for Constitutional Torts and the Risk-Averse Public School Official* (1976) 49 So.Cal.L.Rev. 1322, 1354, fn. omitted.) Plaintiff has not argued that he is entitled to recover money damages for violation of a constitutional right even where the subject constitutional provision is not self-executing. We will not investigate this "complex question" on our own motion. (See 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 479, pp. 469-470.)

II

Defendant District is liable to plaintiff pursuant to Government Code sections 815.2 and 820.

(7a) Plaintiff also contends that ordinary principles of tort law imposed a duty upon defendants to use reasonable care to protect him from the attack in the pleaded circumstances. At this point, we agree.

A. *Plaintiff has pled that defendants owed him a duty of care.*

The first question is whether defendants owed plaintiff a duty of care. (*Williams* v. *State of California* (1983) 34 Cal.3d 18, 22 [192 Cal.Rptr. 233, 664 P.2d 137].)

(8) The existence of a duty of care is a question of law, for legal duties express conclusions that in certain cases it is appropriate to impose liability for injuries suffered. (*Tarasoff* v. *Regents of University of California* (1976) 17 Cal.3d 425, 434 [131 Cal.Rptr. 14, 551 P.2d 334, 83 A.L.R.3d 1166]; *Dillon* v. *Legg* (1968) 68 Cal.2d 728, 734 [69 Cal.Rptr. 72, 441 P.2d 912, 29 A.L.R.3d 1316].)

(9) "As a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct. Such a duty may arise, however, if '(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection.' (Rest.2d Torts (1965) § 315; *Thompson* v. *County of Alameda* (1980) 27 Cal.3d 741, 751-752 [167 Cal.Rptr. 70, 614 P.2d 728]; *Tarasoff* v. *Regents of University of California* (1976) 17 Cal.3d 425 [131 Cal.Rptr. 14, 551 P.2d 334, 83 A.L.R.3d 1166].)" (*Davidson* v. *City of Westminster* (1982) 32 Cal.3d 197, 203 [185 Cal.Rptr. 252, 649 P.2d 894]; see also *Lopez* v. *Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 788-789 [221 Cal.Rptr. 840, 710 P.2d 907]; *Williams* v. *State of California, supra,* 34 Cal.3d at p. 23.)

In *Rodriguez* v. *Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707 [230 Cal.Rptr. 823], the court considered whether a school district could be held liable when a student was assaulted on campus by a nonstudent. (10a) On the question of duty, the court concluded "that a special relationship is formed between a school district and its students so as to impose an affirmative duty on the district to take all reasonable steps to protect its students." (P. 715.)

(7b), (10b) Although *Rodriguez* did not address the question, we think it obvious that the individual school employees responsible for supervising

plaintiff, such as the principal and the wrestling coach, also had a special relation with plaintiff upon which a duty of care may be founded. (See *Tarasoff* v. *Regents of University of California, supra,* 17 Cal.3d at p. 436.) A contrary conclusion would be wholly untenable in light of the fact that "the right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming. . . . [¶] The public school setting is one in which governmental officials are directly in charge of children and their environs, including where they study, eat and play. . . . Further, the responsibility of school officials for each of their charges, the children, is heightened as compared to the responsibility of the police for the public in general." (*In re William G.* (1985) 40 Cal.3d 550, 563 [221 Cal.Rptr. 118, 709 P.2d 1287].)

(11) *Rodriguez* notwithstanding, defendants still contend they should owe no duty to protect plaintiff from this attack. They correctly contend that neither school districts nor their employees are the insurers of the safety of their students. (*Dailey* v. *Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747 [87 Cal.Rptr. 376, 470 P.2d 360].) But plaintiff makes no assertion of strict liability; rather, the complaint pleads negligence. Defendants do owe plaintiff a duty to use the degree of care which a person of ordinary prudence, charged with comparable duties, would exercise in the same circumstances. (*Ibid.*)

(12a) Of course, in the present circumstances, the existence of a duty of care depends in part on whether the harm to plaintiff was reasonably foreseeable. (See *Isaacs* v. *Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 125 [211 Cal.Rptr. 356, 695 P.2d 653].) Neither schools nor their restrooms are dangerous places per se. (Cf. *Peterson* v. *San Francisco Community College Dist., supra,* 36 Cal.3d at p. 812.) Students are not at risk merely because they are at school. (See *Chavez* v. *Tolleson Elementary School Dist.* (1979) 122 Ariz. 472 [595 P.2d 1017, 1 A.L.R.4th 1099].) A contrary conclusion would unreasonably "require virtual round-the-clock supervision or prison-tight security for school premises, . . ." (*Bartell* v. *Palos Verdes Peninsula Sch. Dist.* (1978) 83 Cal.App.3d 492, 500 [147 Cal.Rptr. 898].)

(7c) Here, however, plaintiff's first amended complaint pled that defendants knew or should have known that he was subject to an unusual risk of harm at a specific location on school grounds. Thus, the complaint alleged defendants knew or should have known that members of the junior varsity wrestling team (including plaintiff) were changing clothes before wrestling practice in the unsupervised boys' restroom, that defendants knew or should have known the unsupervised restroom was unsafe for students,

and that attacks were likely to occur there. These allegations sufficiently state that the harm to plaintiff was reasonably foreseeable in the absence of supervision or a warning. Plaintiff had no obligation to plead that prior acts of violence had occurred in the restroom. (See *Isaacs* v. *Huntington Memorial Hospital, supra,* 38 Cal.3d at p. 129.) (12b) For example, school authorities who know of threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures simply because violence has yet to occur. (See *id.,* at pp. 125-126.)

(13) Whether plaintiff can prove these allegations, or whether it will be difficult to prove them, are not appropriate questions for a reviewing court when ruling on a demurrer. (*Concerned Citizens of Costa Mesa, Inc.* v. *32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936 [231 Cal.Rptr. 748, 727 P.2d 1029].)

Defendants argue they should owe no duty to plaintiff because school districts cannot afford the liability. (14) This court has recognized that the availability of funds is a valid policy consideration in determining whether to impose a duty of care on a school district. (*Wright* v. *Arcade School Dist.* (1964) 230 Cal.App.2d 272, 278 [40 Cal.Rptr. 812]; *Raymond* v. *Paradise Unified School Dist.* (1963) 218 Cal.App.2d 1, 8 [31 Cal.Rptr. 847]; see also *Bartell* v. *Palos Verdes Peninsula Sch. Dist., supra,* 83 Cal.App.3d at p. 500.)

(7d) However, the record contains no information bearing upon the budgets of school districts generally, nor of this defendant District in particular, nor upon the cost or availability of insurance. Nor have we been cited to materials of which we might take judicial notice. With the record in this posture, we agree with defendants, who candidly admit in their brief, "If there is a remedy to this situation, it is not with the courts but with the Legislature."

We therefore conclude plaintiff has adequately pled that defendants breached a duty of care they owed him.

B. *There is a statutory basis for liability.*

Even though *Rodriguez* v. *Inglewood Unified School Dist., supra,* determined a school district has a duty to protect students on campus from violent assaults by third parties, the court concluded the defendant school district was not liable because no statute provided for liability. (186 Cal.App.3d at pp. 715-716.) (15) "[I]n California, all government tort liability must be based on statute. . . ." (*Lopez* v. *Southern Cal. Rapid Transit Dist., supra,* 40 Cal.3d at p. 785, fn. 2, citation omitted.)

However, *Rodriguez* did not examine Government Code sections 815.2 and 820, imposing liability on a public entity for the torts of its employees.

(All further statutory references are to the Government Code unless otherwise indicated.) (16) "It is axiomatic that cases are not authority for propositions not considered." (*People* v. *Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7 [82 Cal.Rptr. 724, 462 P.2d 580]; *Milicevich* v. *Sacramento Medical Center* (1984) 155 Cal.App.3d 997, 1005-1006 [202 Cal.Rptr. 484].)

Here, as we have noted, plaintiff has sued employees of the District and pursues the District on a theory of respondeat superior. (See *Perez* v. *Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967-968 [227 Cal.Rptr. 106, 719 P.2d 676].) Section 820 provides in relevant part that except as otherwise statutorily provided, "a public employee is liable for injury caused by his act or omission to the same extent as a private person." (Subd. (a).) Section 815.2 provides in pertinent part that the entity "is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would . . . have given rise to a cause of action against that employee . . . ." (Subd. (a).) Thus, "the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§ 815, subd. (b))." (*Societa per Azioni de Navigazione Italia* v. *City of Los Angeles* (1982) 31 Cal.3d 446, 463, fn. omitted [183 Cal.Rptr. 51, 645 P.2d 102]; see Van Alstyne, Cal. Government Tort Liability Practice (Cont.Ed.Bar 1980) §§ 2.31-2.32, pp. 74-80.)

The next question is: would a private school and its employees be liable in the pleaded circumstances? The answer is "yes."

(17) "As a general rule, it has been held that a [private] school is not required to provide constant supervision over pupils at all times. Thus, no supervision is required where the school has no reason to think any is required. . . . [¶] *It appears that a [private] school has a duty to provide supervision with respect to a particular activity if the school officials could reasonably anticipate that supervision was required* . . . ." (Annot., Tort Liability of Private Schools and Institutions of Higher Learning for Negligence of, or Lack of Supervision By, Teachers and Other Employees or Agents (1971) 38 A.L.R.3d 908, 916, fns. omitted; italics added.)

(18) "Where a student is injured in performing a task on the direction of school authorities without supervision, the question of [private] school negligence is one for the jury if there is evidence of the existence of a danger known to the school authorities, who neglect to guard the student against such danger, or if there is an unknown danger which the school, by the exercise of ordinary care as a reasonably prudent person, would have discovered." (38 A.L.R.3d at p. 919, fn. omitted.)

"Where the liability of the [private] school is sought to be predicated on alleged negligence of teachers or other employees or agents of the school, it is generally recognized that liability on the part of the school may be established under the doctrine of respondeat superior if negligence within the scope of their employment is shown." (38 A.L.R.3d at p. 912.)

In *Schultz* v. *Gould Academy* (Me. 1975) 332 A.2d 368, the Supreme Court of Maine held a private girls' school was liable for the negligence of its night watchman who failed to prevent a criminal assault on a 16-year-old girl student by an unknown intruder in a school dormitory. At about 3 a.m., the watchmen had observed footprints in fresh snow leading up to the building and on a roof adjacent to a screened but unlocked second story window. (*Id.*, at p. 369.) The watchman saw water on stairs leading to the basement; a stairwell also connected the basement to upper floors in the dorm. (*Ibid.*) Although the watchman investigated storage rooms in the basement, he did not alert anyone to the possibility that the intruder was on the upper floors where the attack occurred. (*Id.*, at pp. 369-370, fn. 3.)

The court held that the employee and the school had a duty to guard the students against dangers of which they had actual knowledge and those which they should reasonably anticipate. (332 A.2d at p. 371.) The court concluded that, "forewarned by furtive and intrusive movements in and around the girls' dormitory, a reasonably prudent man, charged with the protection of the dormitory's young female residents would have taken some measures to avert the likelihood that one (or more) of them would be physically harmed." (*Id.*, at p. 372.)

(7e) We think the foregoing authorities state the appropriate law to be applied in California. Under these authorities, if defendants here were in the private sector, they would be liable to plaintiff upon the facts pled in the first amended complaint. We therefore conclude that the defendant employees are similarly liable under section 820, and the District is liable under section 815.2 unless some other statute grants immunity from liability.

III

On demurrer, the District is not entitled to immunity.

Defendants contend imposition of liability in such a situation would contravene section 845, which provides in relevant part that, "Neither a public entity nor a public employee is liable for failure to . . . provide police protection service or . . . for failure to provide sufficient police protection service." Defendants argue that imposing a duty on the District is tantamount to requiring them to have a police or security force. This contention

was persuasive below; the trial court granted the demurrer based in part on section 845.

(19) However, section 845 was designed to protect from judicial review in tort litigation the political and budgetary decisions of policymakers, who must determine whether to provide police officers or their functional equivalents. (*Lopez* v. *Southern Cal. Rapid Transit Dist., supra,* 40 Cal.3d at p. 792; *Taylor* v. *Buff* (1985) 172 Cal.App.3d 384, 391 [218 Cal.Rptr. 249].) (7f) Plaintiff's complaint does not plead that defendants should have provided police personnel or armed guards. There are measures short of the provision of police protection services, such as posting warning signs or closer supervision of students who frequent areas of known danger, that might suffice to meet the duty of reasonable care to protect students. (See *Lopez* v. *Southern Cal. Rapid Transit Dist., supra,* at pp. 787-788, 791-793.) We cannot assume as a matter of law, and without proof on the question, that defendants' duty could be satisfied only by the provision of a police protection service. (*Ibid.*)

The trial court erred when it sustained defendants' general demurrer to plaintiff's first amended complaint.

DISPOSITION

The judgment is reversed.

Sparks, Acting P. J., and Watkins, J.,* concurred.

* Assigned by the Chairperson of the Judicial Council.

ATTACHMENT "2"

Brosnahan v. Brown (1982)

32 Cal.3d 236; 186 Cal.Rptr. 30; 651 P.2d 274

[S.F. No. 24441. Sept. 2, 1982.]

JAMES J. BROSNAHAN et al., Petitioners, v.
EDMUND G. BROWN, JR., as Governor, etc., et al., Respondents.

SUMMARY

Three taxpayers and voters who asserted various constitutional defects in the manner in which an initiative measure known as The Victims' Bill of Rights was submitted to the voters petitioned the Court of Appeal for writs of mandate or prohibition. On motion of respondent Attorney General, the cause was transferred to the Supreme Court (Cal. Rules of Court, rule 20), and the Supreme Court denied the peremptory writ. The court first held that the provisions of the initiative measure, also known as Proposition 8, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Cal. Const., art. II, § 8, subd. (d)). The court held that each of the measure's several facets, which dealt with matters such as restitution, safe schools, bail, and prior convictions, shared the common concern of promoting the rights of actual or potential crime victims and that it was this goal that united all of the measure's provisions in advancing its common purpose. The court also held that Cal. Const., art. IV, § 9, providing that a statute may not be amended by reference to its title and that a section of a statute may not be amended unless the section is reenacted, is not applicable to constitutional amendments, such as Cal. Const., art. I, § 28 ("truth-in-evidence" provision of Prop. 8), which have the effect of amending or repealing statutes. Even assuming art. IV, § 9, controlled constitutional amendments which themselves amend a statute, the court held that Proposition 8 did not amend any statute or section of a statute within the meaning of such provision. Although the initiative measure added new statutory sections and may also have repealed or modified by implication only preexisting statutory provisions, the court held art. IV, § 9, was not intended to apply in such situations. Thus, the failure of the initiative measure to identify the statutory provisions that were amended or repealed by implication did not render it void. Finally, the court held

that Proposition 8 did not on its face constitute an impermissible impairment of essential government functions and did not constitute a revision of the state Constitution, rather than a mere amendment thereof. (Opinion by Richardson, J., with Newman, Kaus and Reynoso, JJ., concurring. Separate dissenting opinion by Bird, C. J. Separate dissenting opinion by Mosk, J., with Broussard, J., concurring.)

HEADNOTES

(1) **Initiative and Referendum § 6—State Elections—Initiative Measures—Single Subject Rule.**—The provisions of a statewide initiative measure, known as The Victims' Bill of Rights, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Cal. Const., art. II, § 8, subd. (d)). Each of the measure's several facets, which dealt with matters such as restitution, safe schools, bail, and prior convictions, shared the common concern of promoting the rights of actual or potential crime victims, and it was this goal that united all of the measure's provisions in advancing its common purpose.

[See **Cal.Jur.3d,** Initiative and Referendum, § 19; **Am.Jur.2d,** Initiative and Referendum, § 24.]

(2) **Criminal Law § 191—Mentally Disordered Sex Offenders—Repeal of Article.**—Cal. Const., art. IV, § 9, provides that a statute may not be amended by reference to its title and that a section of a statute may not be amended unless the section is reenacted as amended. However, any procedural defect in the adoption, by initiative measure, of Welf. & Inst. Code, § 6331 (repeal of article on Mentally Disordered Sex Offenders (MDSOs)) was harmless. Although § 6331 declared "inoperative" the "article" within which such section was contained without identifying the text of such article, the entire article dealing with MDSOs was repealed in 1981 (Stats. 1981, ch. 928, § 2), thus rendering § 6331 a nullity.

(3) **Bail and Recognizance § 1—Validity of Constitutional Amendments.**—An initiative measure which added a new constitutional provision regarding the right to release on bail or on one's own recognizance (Cal. Const., art. I, § 28, subd.(e)) and which repealed the

previous bail provision (Cal. Const., art. I, § 12) was not defective, even though it failed to set out in full the text of the repealed provision. Although Cal. Const., art. IV, § 9, provides that a statute may not be amended by reference to its title and that a section of a statute may not be amended unless the section is reenacted as amended, such provision by its terms refers to the amendment of a statute and does not purport to affect constitutional amendments. In addition, the relevant voters' pamphlet set forth the entire text of the former bail provision in "strikeout type," indicating that such provision would be "deleted" by the initiative measure.

(4) **Statutes § 16—Repeal—By Implication—Constitutional Amendments.**—Cal. Const., art. IV, § 9, providing that a statute may not be amended by reference to its title and that a section of a statute may not be amended unless the section is reenacted as amended, is not applicable to constitutional amendments, such as Cal. Const., art. I, § 28 (providing that relevant evidence shall not be excluded in criminal proceedings), which have the effect of amending or repealing statutes. Even assuming art. IV, § 9, controlled constitutional amendments which themselves amend a statute, the amendment at issue, which was enacted as part of an initiative measure on victims' rights, did not amend any statute or section of a statute within the meaning of art. IV, § 9. Although the measure added new statutory sections and may also have repealed or modified by implication only preexisting statutory provisions, art. IV, § 9, was not intended to apply in such a situation. Thus, the failure of the initiative measure to identify the statutory provisions that were amended or repealed by implication did not render it void. It would have been unrealistic to require the proponents of the initiative to anticipate and specify in advance every change in existing statutory provisions which could be expected to result from the adoption of the measure.

(5) **Initiative and Referendum § 6—State Elections—Initiative Measures—Impairment of Essential Government Functions.**—An initiative measure known as The Victims' Bill of Rights did not on its face constitute an impermissible impairment of essential government functions, so as to render it invalid. Even assuming the accuracy of a prediction that the measure's restrictions on plea bargaining would aggravate court congestion, plea bargaining was not an essential prerequisite to the administration of justice, and

any effect on the criminal justice system from such restrictions was largely speculative. Also speculative was a supposed breakdown of the criminal justice system resulting from giving crime victims an opportunity to appear in both felony and misdemeanor cases and from imposing greater punishment on defendants whose multiple offenses were tried separately. Finally, the possibility that implementation of the initiative's sentencing and safe schools provisions might entail substantial additional public funding was not a proper ground for its invalidation.

(6) **Constitutional Law § 3—Adoption and Alteration—Distinction Between Revision and Amendment.**—An initiative measure known as The Victims' Bill of Rights did not constitute a revision of the state Constitution, rather than a mere amendment thereof, so as to require its adoption pursuant to a constitutional convention or legislative submission to the people. The measure's quantitative changes, which amounted to repealing one constitutional section and adding another, were not so extensive as to change directly the substantial entirety of the Constitution by the deletion or alteration of numerous existing provisions. Further, while the measure accomplished substantial qualitative changes in the criminal justice system, even in combination such changes fell considerably short of constituting such far reaching changes in the basic governmental plan as to amount to a constitutional revision.

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OPINION

RICHARDSON, J.—We consider multiple constitutional challenges to an initiative measure which was adopted by the voters of this state at the June 1982 Primary Election. Designated on the ballot as Proposition 8 and commonly known as "The Victims' Bill of Rights," this initiative incorporated several constitutional and statutory provisions which were directed, in the words of the measure's preamble, towards "ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights . . . ." (Cal. Const., art. I, § 28, subd. (a).)

Petitioners are three taxpayers and voters who assert various constitutional defects in the manner Proposition 8 was submitted to the voters, and who object to the expenditure of public funds to implement it. Respondents are certain public officials and courts charged with the responsibility of implementing, enforcing or applying the new measure.

In an earlier, related proceeding, we ordered the measure to be placed on the primary election ballot, reserving for our further consideration the substantive issues herein presented pending the outcome of the

election. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [181 Cal.Rptr. 100, 641 P.2d 200].) The present petition, seeking writs of mandate or prohibition, was originally filed in the Court of Appeal. On motion of respondent Attorney General, we transferred the cause to this court. (Rule 20, Cal. Rules of Court.) It is uniformly agreed that the issues are of great public importance and should be resolved promptly. Accordingly, under well settled principles, it is appropriate that we exercise our original jurisdiction. (See *Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [149 Cal.Rptr. 239, 583 P.2d 1281] [hereafter *Amador*]; *Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 808-809 [114 Cal.Rptr. 577, 523 P.2d 617].)

Our inquiry here is limited, framed in the following manner by the petition itself: "This petition for extraordinary relief attacks neither the merits nor the wisdom of the [initiative's] multiple proposals. Petitioners challenge only the manner in which those proposals were submitted to the voters . . . ." At this time we neither consider nor anticipate possible attacks, constitutional or otherwise, which in the future may be directed at the various substantive changes effected by Proposition 8. As in *Amador*, we examine here "only those principal, fundamental challenges to the validity of [Prop. 8] as a whole . . . . 'Analysis of the problems which may arise respecting the interpretation or application of particular provisions of the act should be deferred for future cases in which those provisions are more directly challenged.' [Citation.]" (*Amador*, 22 Cal.3d at p. 219.) We will conclude that, notwithstanding the existence of some unresolved uncertainties, as to which we reserve judgment, the initiative measure under scrutiny here survives each of petitioners' four constitutional objections.

Preliminarily, we stress that "it is a fundamental precept of our law that, although the legislative power under our constitutional framework is firmly vested in the Legislature, '*the people* reserve to themselves the powers of initiative and referendum.' (Cal. Const., art. IV, § 1.) It follows from this that, '"[the] power of initiative must be *liberally construed* . . . to promote the democratic process."' [Citations.]" (*Amador* at pp. 219-220, italics added.) Indeed, as we so very recently acknowledged in *Amador*, it is our solemn duty jealously to guard the sovereign people's initiative power, "it being one of the most precious rights of our democratic process." (*Id.*, at p. 248.) Consistent with prior precedent, *we are required to resolve any reasonable doubts in favor of the exercise of this precious right.* (*Ibid.*)

Bearing in mind these fundamental principles, we next summarize the basic provisions of Proposition 8. As in *Amador*, we caution that our summary description and interpretation of the measure by no means preclude subsequent challenges to the legality of its provisions, apart from the specific constitutional issues resolved herein. (*Id.*, at p. 220.)

I. SUMMARY OF PROPOSITION 8

As previously noted, the measure denominated "The Victims' Bill of Rights," accomplishes several changes in the criminal justice system in this state for the purpose of protecting or promoting the rights of victims of crime. Thus, section 28 is added to article I of the California Constitution, section 12 of article I (relating to the right to bail) is repealed, and certain additions are made to the Penal and Welfare and Institutions Codes. The primary changes or additions are as follows:

a. *Preamble; Victims' Rights and Public Safety*

Section 28, subdivision (a), is added to article I of the state Constitution expressing a "grave statewide concern" to enact "safeguards in the criminal justice system" for the protection of victims of crime. The preamble recites generally that the rights of victims include, among others, the right to restitution for financial losses, and the expectation that felons will be "appropriately detained in custody, tried by the courts, and sufficiently punished so that public safety is protected and encouraged ...." In addition, the provision states that "[s]uch public safety extends to public ... school campuses, where students and staff have the right to be safe and secure in their persons." The preamble concludes by observing that "broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives."

b. *Restitution*

Section 28, subdivision (b), is added to the Constitution to assure generally that persons who "suffer losses as a result of criminal activity shall have the right to restitution" from the persons convicted of those crimes. "Restitution shall be ordered ... in every case, ... unless compelling and extraordinary reasons exist to the contrary."

c. *Safe Schools*

Section 28, subdivision (c), declares the "inalienable right" of public school students and staff "to attend campuses which are safe, secure and peaceful."

d. *Truth-in-evidence*

Section 28, subdivision (d), provides that (except as provided by statutes enacted by a two-thirds vote of both houses of the Legislature) "relevant evidence shall not be excluded in any criminal proceeding ....." The provision applies equally to juvenile criminal proceedings, but does not affect "any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103," or rights of the press.

e. *Bail*

Section 28, subdivision (e), relates to bail and replaces repealed section 12 of article I. The new provision requires that "primary consideration" be given to "public safety," and authorizes the judge or magistrate to consider "the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing" in ruling on bail matters. In addition, the provision forbids release on one's "own recognizance" of a person charged with any "serious felony" (see Pen. Code, § 1192.7, subd. (c)). (As noted below, all or part of subd. (e) may not have taken effect because of the passage of a competing measure (Prop. 4) by a larger vote.)

f. *Prior Convictions*

Section 28, subdivision (f), permits the unlimited use in a criminal proceeding of "any prior felony conviction" for impeachment or sentence enhancement, and requires proof thereof "in open court" when the prior conviction is an element of any felony offense.

g. *Diminished Capacity; Insanity*

The addition of section 25 to the Penal Code abolishes the defense of diminished capacity (subd. (a)); places upon the defendant who pleads insanity the burden of proving his or her incapability of "knowing or

understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense" (subd. (b)); and permits consideration of evidence of diminished capacity or mental disorder "only at the time of sentencing or other disposition or commitment" (subd. (c)).

h. *Habitual Criminals*

Section 667 is added to the Penal Code to require that persons convicted of a "serious felony" receive a sentence enhancement of five years for each prior conviction of such a felony "on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively." (Subd. (a).)

i. *Victim's Statements*

New sections 1191.1 and 3043 in the Penal Code, and section 1767 in the Welfare and Institutions Code, permit the victim of any crime or the next of kin the right to prior notice of, and to attend, all sentencing proceedings (subd. (a)), or parole eligibility or parole setting hearings in criminal (subd. (b)) or Youth Authority (subd. (c)) proceedings. The victim or next of kin may appear and "express his or her views concerning the crime and the person responsible." The sentencing or parole authority shall consider these views in making its decision and shall state "whether the person would pose a threat to public safety" if granted probation or released on parole.

j. *Plea Bargaining*

Section 1192.7 is added to the Penal Code to prohibit plea bargaining if the indictment or information charges "any serious felony" or any offense of driving while intoxicated, "unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence." (Subd. (a).) Subdivision (c) contains a list of the various offenses deemed to be "serious felonies."

k. *Sentencing to Youth Authority*

The addition of section 1732.5 to the Welfare and Institutions Code provides that no person convicted of murder, rape or other "serious fel-

ony" committed when he or she was 18 years or older shall be committed to Youth Authority.

l. Mentally Disordered Sex Offenders

New section 6331 of the Welfare and Institutions Code renders "inoperative" the article dealing with mentally disordered sex offenders (MDSOs). (As this article was repealed in 1981, the initiative does not appear to accomplish any change in the law.)

m. *Severability*

Section 10 of the initiative recites that if any section or clause thereof is held invalid, such invalidity shall not affect any remaining provisions which can be given effect without the invalid provision.

n. *Amendments*

A two-thirds vote of both houses of the Legislature is required to amend most of the statutory provisions adopted by Proposition 8.

Having summarized its principal elements, we examine petitioners' four challenges to the validity of Proposition 8.

II. THE SINGLE SUBJECT RULE

Our Constitution provides that "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Art. II, § 8, subd. (d).) In determining whether a measure "embrac[es] more than one subject," we have previously held that "an initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, *all of its parts are 'reasonably germane'* to each other," and to the general purpose or object of the initiative. (*Amador*, 22 Cal.3d at p. 230, italics added; see *Fair Political Practices Com.* v. *Superior Court* (1979) 25 Cal.3d 33, 38-39 [157 Cal.Rptr. 855, 599 P.2d 46] [hereafter *FPPC*]; *Perry* v. *Jordan* (1949) 34 Cal.2d 87, 90-92 [207 P.2d 47].)

In *Amador*, for example, we upheld a four-pronged taxation measure which limited real property tax rates and assessments and restricted state and local taxes, on the ground that such restrictions were reasonably germane to the general subject of property tax relief. (22 Cal.3d at

p. 231.) Even more recently in *FPPC*, we rejected a single-subject challenge to a lengthy political reform measure which contained the following multiple complex features: (1) establishment of a fair political practices commission; (2) creation of disclosure requirements for candidates' financial supporters; (3) limitation on campaign spending; (4) regulation of lobbyist activities; (5) enactment of conflict of interest rules; (6) adoption of rules relating to voter pamphlet summaries of arguments; (7) location of the ballot position of candidates; and (8) specification of auditing and penalty procedures to aid in the act's enforcement. (See 25 Cal.3d at p. 37.)

In *FPPC*, we reemphasized that the single subject rule is to be "construed liberally," and that "Numerous provisions, *having one general object*, if fairly indicated in the title, may be united in one act." (*Id.*, at p. 38, italics added.) In amplification, we used this language in *FPPC* in describing the overriding principle which controls our disposition of the single-subject attack against Proposition 8: "*Consistent with our duty to uphold the people's right to initiative process, we adhere to the reasonably germane test and, in doing so, find that the measure before us complies with the one subject requirement .... In keeping with the policy favoring the initiative, the voters may not be limited to brief general statements but may deal comprehensively and in detail with an area of law.*" (25 Cal.3d at p. 41, italics added.)

Our own precedent is both venerable and current. While *FPPC* is only three years old, its underlying thesis was enunciated by us fifty years ago. In *FPPC* we cited with approval *Evans v. Superior Court* (1932) 215 Cal. 58, 61-62 [8 P.2d 467]. *Evans* is most instructive. We there upheld the adoption, in a single act, of extensive probate legislation consisting of *one thousand and seven hundred* sections covering a wide spectrum of topics within the general "area" of "probate law," which sections previously were contained in part in several codes and statutes. This "one general object" included such disparate subjects as the essential elements of wills, the rights of succession, the details of the administration and distribution of decedents' estates, and the procedures, duties, and rights of guardianships of the persons and estates of minors and incompetents. (215 Cal. at p. 61.) Despite the extremely broad sweep of this legislation, we concluded that all of these matters were "reasonably germane" to the general object of the legislation and did not embrace more than a single subject. Expanding on this concept, in *Evans*, we said "The legislature may insert in a single act all legislation germane to the general subject as expressed in its title and within

the field of legislation suggested thereby. [Citation.] Provisions which are logically germane to the title of the act and are included within its scope may be united. The general purpose of a statute being declared, the details provided for its accomplishment will be regarded as necessary incidents. [Citations.] . . . A provision which conduces to the act, or which is auxiliary to and promotive of its main purpose, or has a necessary and natural connection with such purpose is germane within the rule. [Citation.]" (Pp. 62-63.)

(1) On the basis of the foregoing authorities, it is readily apparent that Proposition 8 meets the "reasonably germane" standard. Each of its several facets bears a common concern, "general object" or "general subject," promoting the rights of actual or potential crime victims. As explained in the initiative's preamble, the 10 sections were designed to strengthen procedural and substantive safeguards for victims in our criminal justice system. These changes were aimed at achieving more severe punishment for, and more effective deterrence of, criminal acts, protecting the public from the premature release into society of criminal offenders, providing safety from crime to a particularly vulnerable group of victims, namely school pupils and staff, and assuring restitution for the victims of criminal acts.

Just as *Evans*, *Amador* and *FPPC* upheld broad and multifaceted "reform" measures pertaining to the subjects of probate, property taxation, and politics, respectively, Proposition 8 constitutes a reform aimed at certain features of the criminal justice system to protect and enhance the rights of crime victims. This goal is the readily discernible common thread which unites all of the initiative's provisions in advancing its common purpose.

Focusing on the initiative's "safe schools" provision, petitioners contend that it concerns an entirely unrelated matter, isolated from criminal behavior, and therefore embraces a separate subject. Petitioners argue specifically that the right to safe schools is an undefined, amorphous concept which could encompass such diverse hazards as acts of nature, acts of war, environmental risks, or building code violations. A careful look at the preamble of Proposition 8 refutes this contention. New article I, section 28, subdivision (a), of the Constitution recites that the enactment of laws "ensuring a bill of rights for victims of *crime*, including safeguards in the *criminal justice system* . . . is a matter of grave statewide concern. The rights of victims pervade the *criminal* justice system," and include not only reimbursement for losses

from "*criminal* acts" but also the expectation that "persons who commit *felonious* acts" shall be detained, tried and punished "so that the public safety is protected." (Italics added.) The preamble then continues, "*Such public safety* extends to public . . . school campuses, where students and staff have the right to be safe and secure in their persons." The preamble further concludes that "broad reforms . . . are necessary and proper as deterrents to *criminal* behavior." (Italics added.) Clearly, the right to safety encompassed within article I, section 28, subdivision (c), was intended to be, is aimed at, and is limited to, the single subject of safety from *criminal* behavior.

We are reinforced in our conclusion that Proposition 8 embraces a single subject by observing that the measure appears to reflect public dissatisfaction with several prior judicial decisions in the area of criminal law. As explained in the ballot argument favoring Proposition 8, "This proposition will overcome some of the adverse decisions by our higher courts," which had created "additional rights for the criminally accused and placed more restrictions on law enforcement officers." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Prim. Elec. (Jun. 8, 1982), argument in favor of Prop. 8, p. 34.) While we might disagree with both the accuracy of this premise and the overall wisdom of the initiative measure, nonetheless, it is not our function to pass judgment on the propriety or soundness of Proposition 8. In our democratic society in the absence of some compelling, overriding constitutional imperative, we should not prohibit the sovereign people from either expressing or implementing their own will on matters of such direct and immediate importance to them as their own perceived safety. (See *Amador*, pp. 228-229.)

Petitioners, however, would engraft upon the "reasonably germane" test of *Evans*, *Amador* and *FPPC* a further requirement that the several provisions of an initiative measure must be "interdependent." Petitioners argue that, unlike the "interlocking" relationship of the various elements of the tax reform measure upheld in *Amador* (see 22 Cal.3d at p. 231), Proposition 8 contains disparate provisions covering a variety of "unrelated" matters such as school safety, restitution, bail, diminished capacity, and the like.

No preceding case has ever suggested that such interdependence is a constitutional prerequisite. In *Evans*, for example, we carefully explained that "Numerous provisions, having one general object, if fairly indicated in the title, *may* be unified in one act. Provisions governing

projects so related and interdependent as to constitute a single scheme *may* be properly included within a single act. [Citation.] The legislature *may* insert in a single act all legislation germane to the general subject as expressed in its title and within the field of legislation suggested thereby. [Citation.]" (215 Cal. at pp. 62-63, italics added.)

In context, it is obvious that *Evans'* reference to interdependence merely illustrated *one type* of multifaceted legislation which would meet the single subject test. Significantly, as noted, in *Evans* we upheld extensive probate legislation concerning such diverse and unrelated topics as the rights of intestate succession, the powers of guardians over the persons and estates of incompetent persons, and the sale and leasing of estate property, on the express ground that all of these provisions "have one general object." (P. 65.)

Moreover, in *Amador*, while acknowledging that the provisions of the tax measure under scrutiny were "interdependent" and "interlocking" (22 Cal.3d at p. 231), we did not suggest that any such relationship was *essential* to the measure's validity. Indeed, immediately preceding the foregoing observation, we had stated that the property tax initiative satisfied *both* the traditional reasonably germane test *and* the so-called "functional relationship" test which was proposed in the dissent in *Schmitz* v. *Younger* (1978) 21 Cal.3d 90, 97-100 [145 Cal.Rptr. 517, 577 P.2d 652] (dis. opn. by Manuel, J.). (See 22 Cal.3d at p. 230.) Thus, petitioners' assumption that *Amador* requires that an initiative's several provisions be "interdependent" is incorrect.

Finally, as previously indicated, in *FPPC* we upheld a comprehensive political reform package despite the lack of any apparent "interdependence" of many of its varied provisions. Thus, for example, the section of the initiative denying an incumbent a favored position on the ballot (Gov. Code, § 89000) clearly did not "interlock" with the separate provisions mandating every administrative agency to adopt a conflict of interest code (*id.*, §§ 87300-87312). Similarly, and quite obviously, neither of the foregoing portions of the initiative was in any sense in a "dependent" relationship with another section of the initiative which established that "the election precinct of a person signing a statewide petition shall not be required to appear on the petition when it is filed with the county clerk" (*id.*, § 85203). Each of these diverse provisions, while generally related to a political reform program, clearly would not have satisfied a strict "interdependence" test.

Petitioners, sensing the evident inconsistency between *FPPC* and their own present position, characterize the *FPPC* lead opinion as a mere "plurality" opinion entitled to little weight. Yet six of the seven justices in that case voted to *sustain* the multifaceted provisions of the Fair Political Practices Act against a single-subject attack. It was only Justice Manuel who dissented on this point. His observations regarding the act's multifarious character and his conceptual differences with his six colleagues are very revealing for, in his view: "The regulation of the election process, no matter how broadly defined, has little to do with the regulation of the day-to-day activities of lobbyists. The adoption of codes governing conflicts of interest in all state agencies ... is yet another matter. Although each of these might conceivably form a part of a unified legislative program directed toward the policy objective of 'political reform,' each concerns an entirely different and discrete *subject*." (25 Cal.3d at p. 57; italics in original.)

If Justice Manuel's characterization of the Fair Political Practices Act is accurate, and if we are to follow our own precedent, our holding in *FPPC* necessarily controls the disposition of the present case, for on their face the various provisions of Proposition 8 certainly are no less germane, interdependent or interrelated than the provisions of the statute which we so recently sustained in *FPPC* against a similar single-subject attack.

Petitioners argue that because Proposition 8 is designed to protect the rights of *potential* as well as actual victims of crime, its objective somehow thereby becomes too broad. Yet surely the Fair Political Practices Act which we readily upheld in *FPPC* was subject to the same criticism, for it too was aimed at protecting the general citizenry *in their role as potential victims of political corruption*. Obviously, the fact that a multifaceted measure seeks to protect the general public from harm (whether from present *or* future criminal acts, political corruption or excessive taxation) presents no constitutional impediment to its validity.

Petitioners speculate that the multiplicity of Proposition 8's provisions enhanced the danger of election "logrolling," whereby certain groupings of voters, each constituting numerically a minority, but in aggregate a majority, may approve a measure which lacks genuine popular support in order to secure the benefit of one favored but isolated and severable provision. Yet, as we emphasized in *FPPC*, such a risk "is inherent in any initiative containing more than one sentence or even an

'and' in a single sentence unless the provisions are redundant .... [¶] The enactment of laws whether by the Legislature or by the voters in the last analysis always presents the issue whether on balance the proposed act's benefits exceed its shortcomings." (25 Cal.3d at p. 42.) Indeed, almost all laws whether enacted by a legislature or adopted directly by the people through an initiative contain both benefits and burdens. The decision to enact laws, whether directly by the people or through their representatives, involves the weighing of pros and cons. The resolution of few public issues is free from this balancing process and exercise of choices.

As in *FPPC*, so in *Amador* we rejected the contention that the single-subject rule requires a showing that each one of a measure's several provisions was capable of gaining voter approval independently of the other provisions. We expressed our conclusion that "Aside from the obvious difficulty of ever establishing satisfactorily such 'independent voter approval,' this standard would defeat many legitimate enactments containing isolated, arguably 'unpopular,' provisions reasonably deemed necessary to the integrated functioning of the enactment as a whole. We avoid an overly strict judicial application of the single-subject requirement, for to do so could well frustrate legitimate efforts by the people to accomplish integrated reform measures." (*Amador*, 22 Cal.3d at p. 232.)

One commentator, examining the purpose of the rule within this context, has noted that "The one-subject rule ... attacks log-rolling by striking down unnatural combinations of provisions in acts—those dealing with more than one subject—on the theory that the best explanation for the unnatural combination is a tactical one—log-rolling." (Ruud, "*No Law Shall Embrace More Than One Subject*" (1958) 42 Minn.L. Rev. 389, 408.) It is highly unlikely that Proposition 8 was the product of any logrolling whatever, because it contains no "unnatural combination" of provisions on unrelated subjects which might suggest an inordinate vote-getting scheme on behalf of the proponents. All of the provisions are designed to protect victims of crime and partake of a common consistent theme, namely, to strengthen or tighten the laws in aid of crime's victims. The measure is singularly unsusceptible to such "log-rolling" criticism.

Finally, petitioners insist that the complexity of Proposition 8 may have led to confusion or deception among voters, who were assertedly uninformed regarding the contents of the measure. Yet, as was the case

in both *Amador* and *FPPC*, Proposition 8 received widespread publicity. Newspaper, radio and television editorials focused on its provisions, and extensive public debate involving candidates, letters to the editor, etc., described the pros and cons of the measure. In addition, before the election each voter received a pamphlet containing (1) the title and summary prepared by the Attorney General; (2) a detailed analysis of the measure by the Legislative Analyst, and (3) a complete "Text of the Proposed Law." This text contained the entirety of the 10 sections of the Victims' Bill of Rights and included in "strikeout type" the text of former article I, section 12, of the Constitution. Each voter also was given written arguments in favor of Proposition 8 and rebuttal thereto, and written arguments against Proposition 8 and rebuttal thereto. (See *Amador*, 22 Cal.3d at pp. 231, 243-244; *FPPC*, 25 Cal.3d at p. 42.)

Moreover, as we stated in *FPPC* in disposing of an identical contention that the measure was too complicated, "Our society being complex, the rules governing it whether adopted by legislation or initiative will necessarily be complex. Unless we are to repudiate or cripple use of the initiative, risk of confusion must be borne." (*Ibid.*)

Petitioners' entire argument that, in approving Proposition 8, the voters must have been misled or confused is based upon the improbable assumption that the people did not know what they were doing. It is equally arguable that, faced with startling crime statistics and frustrated by the perceived inability of the criminal justice system to protect them, the people knew exactly what they were doing. In any event, we should not lightly presume that the voters did not know what they were about in approving Proposition 8. Rather, in accordance with our tradition, "*we ordinarily should assume that the voters who approved a constitutional amendment '. . . have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered.*'" (*Amador, supra*, at pp. 243-244, italics added; see *Wright* v. *Jordan* (1923) 192 Cal. 704, 713 [221 P. 915].)

There are those rare occasions similar to that which prompted the people's adoption of the single-subject initiative rule in 1948 (Cal. Const., art. II, § 8, subd. (d)) in which our intervention is justified. The proposed initiative may be so all encompassing, so multifaceted as to demand a conclusion of unconstitutionality. We faced such a measure in *McFadden* v. *Jordan* (1948) 32 Cal.2d 330 [196 P.2d 787], in which

21,000 words were proposed to be added to 15 of the 25 constitutional articles. This initiative dealt with such widely disparate subjects as gambling, civic centers, mining, fishing, city budgets, liquor control, senate reapportionment, and oleomargarine. We concluded that the measure constituted an improper revision of our constitutional scheme. In *McFadden*, we likewise could not fairly and reasonably have decided that any single subject was served by such a grabbag of social, political, economic and administrative enactments. Proposition 8 is manifestly not such a measure.

For all of the foregoing reasons, we conclude that Proposition 8 does not violate the single-subject requirement of article II, section 8, subdivision (d), of the California Constitution.

We do not suggest, of course, that initiative proponents are given blank checks to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or to the general object which is sought to be promoted. The single-subject rule indeed is a constitutional safeguard adopted to protect against multifaceted measures of undue scope. For example, the rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as "government" or "public welfare." In the present case, however, we merely respect this court's liberal interpretative tradition, notably expressed in *Evans*, *Amador*, and *FPPC*, of sustaining statutes and initiatives which fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose.

III. VALIDITY OF STATUTORY AMENDMENTS

Petitioners contend that the proponents of Proposition 8 failed in several particulars to comply with the constitutionally mandated procedure for amending statutes. Article II, section 8, subdivision (b), of the state Constitution requires that the initiative measure petition set forth "the text of the proposed statute or amendment to the Constitution . . . ." It is uncontradicted that the proponents of the measure complied with this provision. Petitioners rely, however, upon article IV, section 9, which provides that "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended." (See also Elec. Code,

§§ 3571, 3572; Gov. Code, §§ 88000, 88002, requiring that the ballot pamphlets disclose the text of any existing statutory provisions sought to be repealed or amended.)

The foregoing provision, containing a "single subject" rule applicable to statutes, also forbids amending a statute "by reference to its title" and "unless the section is re-enacted as amended." Petitioners assume that this language "requires that if a statute is to be altered, the language of the statute must be fully set forth together with the changes proposed. Reference to sections, title or codes is not sufficient." According to petitioners, Proposition 8 violated this requirement by failing to describe or identify (1) the provisions in the Welfare and Institutions Code rendered "inoperative" by the adoption of section 6331 of the code (dealing with the commitment of mentally disordered sex offenders); (2) the language of article I, section 12, of the Constitution (pertaining to right to bail) repealed by section 2 of Proposition 8; and (3) the provisions of the Evidence Code (and other codes) amended or repealed by the adoption of article I, section 28, subdivision (d), of the Constitution (forbidding the exclusion of "relevant evidence"). Petitioners list 26 statutory provisions which they suggest were "*sub silentio* amended to be inapplicable in criminal trials."

a. *Repeal of MDSO Statute*

(2) As previously noted, Proposition 8 added section 6331 to the Welfare and Institutions Code. The section declares "inoperative" the "article" within which section 6331 is contained, but fails to identify the text of that article. As we have explained, however, the entire article dealing with MDSOs was repealed in 1981 (Stats. 1981, ch. 928, § 2) and the Legislative Analyst observed in the voters' pamphlet that new section 6331 is superfluous and "has no effect." (Ballot Pamp., *supra*, p. 55.) Assuming that this conclusion is correct, the section being a nullity, any procedural defect in adopting that section must be deemed harmless, especially in view of the severability clause (§ 10) in Proposition 8.

b. *Bail Amendment*

(3) Proposition 8 added a new provision to the Constitution regarding the right to release on bail or on one's own recognizance. (Cal. Const., art. I, § 28, subd. (e).) The previous bail provision (art. I, § 12) was repealed. Petitioners contend that the initiative measure was defec-

tive in failing to set out in full the text of the repealed provision. Several reasons persuade us otherwise.

First, nothing in article IV, section 9, requiring reenactment of statutes, purports to affect *constitutional* amendments such as those before us; by its terms this provision refers to the amendment of a "statute."

Next, we observe that the voters' pamphlet for the June 1982 primary contained a "Text of Proposed Law" which set forth the entire text of former article I, section 12, in "strikeout type," indicating that this provision would be "deleted" by Proposition 8. We may fairly assume that the voters duly considered the text set forth in the voters' pamphlet prior to casting their vote. (*Amador*, 22 Cal.3d at pp. 231, 243-244.)

Finally, as previously noted, it may be that a substantial part of the bail provisions of Proposition 8 never took effect. We are advised that Proposition 4 on the June 1982 ballot received a greater number of votes than Proposition 8, in which event Proposition 4 would prevail as to those matters inconsistent with the latter measure. (See Cal. Const., art. XVIII, § 4.) Accordingly, any procedural defect in adopting the bail provisions of Proposition 8 would be harmless to a large extent and would not affect the remaining, severable provisions of the measure.

c. *Repeal of Statutes by Implication*

(4) Petitioners contend that Proposition 8 is void to the extent that it amends or repeals *by implication* various statutory provisions not identified (by section number, title or text) in the measure. In advancing this argument petitioners point to new article I, section 28, subdivision (d), of the Constitution, which provides that, with the exception of the several statutory exceptions specified therein, "relevant evidence shall not be excluded in any criminal proceeding . . . ."

Initially, we question whether the provisions of article IV, section 9, of the state Constitution apply to *constitutional amendments* (such as new art. I, § 28) which have the effect of amending or repealing statutes. The purpose of these procedural limitations was described by us in *People v. Western Fruit Growers* (1943) 22 Cal.2d 494, 500-501 [140 P.2d 13]: "In the absence of such a provision [forbidding amendment of a statute 'by reference to its title' and requiring 're-enactment' as amended] *legislative bodies* commonly amended an act or a section of

it by directing the insertion, omission or substitution of certain words, or by adding a provision, without setting out the entire context of the section as amended. [Citations.] The objection to this method of amendment was the uncertainty and difficulty of correctly reading the original section as later changed. [¶] To avoid the mischief inherent in the mechanics of this *legislative process*, the People of California imposed certain requirements *upon the Legislature*, but the provision should be reasonably construed and limited in its application to the specific evil which it was designed to remedy. It is not to be technically measured, nor used as a weapon for striking down legislation which may not reasonably be said to have been enacted contrary to the specified method. [Citations.]" (Italics added; see also *Scott A.* v. *Superior Court* (1972) 27 Cal.App.3d 292, 294-295 [103 Cal.Rptr. 683]; *Estate of Henry* (1941) 64 Cal.App.2d 76, 82 [148 P.2d 396].)

In *Wallace* v. *Zinman* (1927) 200 Cal. 585, 590-591 [254 P. 946, 62 A.L.R. 1341], the court held that the subject/title requirements of the predecessor (art. IV, § 24) to the provision under scrutiny here applied to both legislative and initiative measures. The measure in *Wallace*, however, was not a constitutional amendment which, as we recognized in that case, "need not conform" to the provisions of former section 24. (*Id.*, at p. 593.)

Furthermore, we expressly held more recently that this same predecessor provision was inapplicable to constitutional amendments which were adopted by initiative. (*Prince* v. *City & County of S.F.* (1957) 48 Cal.2d 472, 475 [311 P.2d 544].) As we stated in *Prince*, "Article IV of the Constitution deals with the 'Legislative Department' and section 24 is intended to be and has been limited to legislative enactments under the Constitution. [Citations.]" Therefore, because the "truth-in-evidence" provision of Proposition 8 is contained in a constitutional amendment (art. I, § 28, subd. (d)), that provision is not governed by the requirements of article IV, section 9.

Moreover, even were we to assume that the provisions of article IV, section 9, controlled constitutional amendments which themselves "amend" a statute, Proposition 8 did not amend any statute or section of a statute within the meaning of that provision. The measure added *new* sections to the Penal Code and the Welfare and Institutions Code, and may also have repealed or modified *by implication only* preexisting statutory provisions. Article IV, section 9, was not intended to apply in such a situation. (*Harris* v. *Fitting* (1937) 9 Cal.2d 117, 120 [69 P.2d

833]; *Evans* v. *Superior Court, supra*, 215 Cal. 58, 65-66; *Matter of Coburn* (1913) 165 Cal. 202, 211 [131 P. 352]; *Hellman* v. *Shoulters* (1896) 114 Cal. 136, 151-153 [44 P. 915, 45 P. 1057]; *Spencer* v. *G.A. MacDonald Constr. Co.* (1976) 63 Cal.App.3d 836, 850 [134 Cal.Rptr. 78]; *Estate of Henry, supra*, 64 Cal.App.2d 76, 82; cf. *Scott* v. *Superior Court, supra*, 27 Cal.App.3d 292, 294-295 [invalid statutory attempt to amend "any provision of law" specifying 21 years as the age of majority].)

Evans, again, is illustrative. As we have previously noted, the Legislature adopted the Probate Code (Stats. 1931, ch. 281, p. 587) in a single enactment consisting of approximately 1,700 different sections. After rejecting a "single subject" challenge, we considered whether the act was void for failure to "publish at length" any prior acts or sections "on the ground that they were revised or amended." (P. 65.) We held that the enactment was "a new and original piece of legislation. *Its terms are not revisory or amendatory of any former act.* Consequently, the provisions of the Constitution requiring that revised or amended laws shall be 'published at length as revised or amended' does not apply, *even though the provisions of the Probate Code may be inconsistent with existing statutes* . . . . While the act does not expressly refer to other acts and repeal them in terms, it does repeal them by necessary implication. [Citation.] . . . [*T*]*he section* (sec. 24, art. IV) '*does not apply to amendments by implication.*' [Citation.]" (215 Cal. at pp. 65-66, italics added.)

It may be true, as petitioners state, that Proposition 8 has amended or repealed, by implication, various statutory provisions not specified in the text of that measure. Yet as we pointed out long ago in *Hellman*, *supra*, "To say that every statute which thus affects the operation of another is therefore an amendment of it would introduce into the law an element of uncertainty which no one can estimate. *It is impossible for the wisest legislator to know in advance how every statute proposed would affect the operation of existing laws.*" (114 Cal. at p. 152, italics added.) Similarly, it would have been wholly unrealistic to require the proponents of Proposition 8 to anticipate and specify in advance every change in existing statutory provisions which could be expected to result from the adoption of that measure.

We conclude that Proposition 8 did not violate article IV, section 9, of the California Constitution.

[Sept. 1982]

IV. EFFECT ON ESSENTIAL GOVERNMENTAL FUNCTIONS

(5) Petitioners' third challenge is that Proposition 8 is invalid as an impermissible impairment of "essential government functions." They rely on cases which hold as a general proposition that "The initiative . . . is not applicable where 'the *inevitable* effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential . . . .' [Citations.]" (*Simpson* v. *Hite* (1950) 36 Cal.2d 125, 134 [222 P.2d 225], italics added; see *Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, 143, 144 [130 Cal.Rptr. 465, 550 P.2d 1001] [mere "speculative consequences" are insufficient].) We assume, for purposes of discussion, that the principles of these cases (which involve *local* initiative or referendum measures) are equally applicable to measures of statewide application.

Petitioners conjure several supposed consequences of Proposition 8 which "will severely impair the functioning of the courts, the Department of Corrections and the public school system." As will appear, however, none of these consequences is as inevitable as petitioners suggest. Indeed, we may assume that the courts and other agencies, interpreting and applying the various provisions of Proposition 8, will approach their task with a view toward preserving, rather than destroying, the essential functions of government.

First, petitioners predict that the measure's restrictions upon plea bargaining will have a "most damaging effect" upon already crowded court calendars. Even assuming that this prediction is accurate, we cannot accept petitioners' underlying premise that an initiative measure which, as a collateral effect, may aggravate court congestion is void under the *Simpson* principle. In *Simpson* we examined an initiative measure which would have directly prevented a local board of supervisors from designating a site for court buildings. We stressed that, among other adverse effects, such an initiative "could interfere with the functioning of the courts by depriving them of the quarters which the supervisors were bound to, and in good faith sought to, furnish." (36 Cal.2d at p. 133; see also *Geiger* v. *Board of Supervisors* (1957) 48 Cal.2d 832, 839 [313 P.2d 545] [referendum inapplicable to repeal local sales and use tax]; *Chase* v. *Kalber* (1915) 28 Cal.App. 561, 569-570 [153 P. 397] [referendum inapplicable to repeal street improvement ordinance].) No such constricting effect on court operations is herein presented. While plea bargaining may well be a useful device in reduc-

ing court congestion, unlike a courthouse it is really not an *essential* prerequisite to the administration of justice. Moreover, any effect upon the criminal justice system from restrictions upon plea bargaining would be largely speculative and would not appear on the face of Proposition 8. That measure's *conditional* prohibition against plea bargaining appears to apply only to the postindictment or postinformation stage, and only with respect to "serious felonies" as defined therein. Bargaining may continue with respect to lesser offenses. Moreover, even as to serious felonies, bargaining may proceed if material witnesses or evidence become unavailable, or if the plea would not substantially reduce the expected sentence. Finally, the Legislature by a two-thirds vote may restore plea bargaining in *all* cases.

For similar reasons, we reject petitioners' assertion that a "breakdown of the justice system" will inevitably result from (1) giving crime victims an opportunity to appear in both felony and misdemeanor cases, and (2) imposing greater punishment on defendants whose multiple offenses are tried separately. Assuming arguendo that petitioners' characterization of the legal effect of Proposition 8 is correct in these respects, any supposed "breakdown" is wholly speculative. Unlike petitioners, we cannot presume that most crime victims will accept the opportunity (and accompanying embarrassment and inconvenience) of testifying at misdemeanor trials, or that most prosecutors will forego the obvious concrete advantages of consolidated trials in the hope of securing an aggravated term for "habitual" offenders.

Petitioners next predict that Proposition 8's more severe sentencing provisions will increase California's prison population to an extent exceeding the state budget for prison expenditures. Again, the point is entirely conjectural; one might as readily argue that the measure will deter persons who otherwise might resort to crime, thereby *reducing* the prison population. Either contention involves pure guesswork and, in any event, we find no authority for the proposition that an initiative measure may be declared invalid solely by reason of the high financial cost of implementing it.

Finally, petitioners assert that Proposition 8's creation of a "right of safety" for students and staff of public schools "might very well herald the end of public education as we know it." Petitioners suggest that enforcement of the right of safety might entail substantial increased expenditures for school security guards, safety devices, and payments of tort damages and legal fees at the cost of books, equipment, and more

traditional operational and maintenance expenses. Yet the implementation of comparably broad constitutional rights, such as the right to pursue *and obtain* "safety" (Cal. Const., art. I, § 1) has not produced any such financial ruin. In any event, we need not speculate on these matters for, as we have indicated, the mere possibility that implementation of Proposition 8 might entail substantial additional public funding is not a proper ground for invalidating the measure.

We conclude that Proposition 8 does not on its face constitute an undue impairment of essential governmental functions under the *Simpson* rule.

V. CONSTITUTIONAL REVISION OR AMENDMENT

(6) Petitioner's final argument is that Proposition 8 is such a "drastic and far-reaching" measure as to constitute a "revision" of the state Constitution rather than a mere "amendment" thereof. Faced with an identical argument in *Amador*, we acknowledged, "although the voters may accomplish an amendment by the initiative process, a constitutional revision may be adopted only after the convening of a constitutional convention and popular ratification or by legislative submission to the people." (22 Cal.3d at p. 221; see Cal. Const., art. XVIII.)

In evaluating this contention, we employ a dual analysis, examining both the quantitative and qualitative effects of Proposition 8 upon our constitutional scheme. (*Amador*, 22 Cal.3d at p. 223.)

On its face, the measure has a limited quantitative effect, repealing only one constitutional section (art. I, § 12, right to bail), and adding another (art. I, § 28, right to restitution, safe schools, truth-in-evidence, bail and use of prior convictions). We are satisfied that such a change is not "so extensive ... as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions ...." (*Ibid.*; see *Livermore v. Waite* (1894) 102 Cal. 113, 118-119 [36 P. 424].)

From a qualitative point of view, while Proposition 8 does accomplish substantial changes in our criminal justice system, even in combination these changes fall considerably short of constituting "such far reaching changes in the nature of our *basic governmental plan* as to amount to a revision ...." (*Amador*, 22 Cal.3d at p. 223, italics added; see *McFadden v. Jordan, supra*, 32 Cal.2d 330, 348.)

In urging that Proposition 8 effects a constitutional revision petitioners envision two significant consequences from the measure's limitation upon plea bargaining and its creation of a right to safe schools: (1) the inability of the judiciary to perform its constitutional duty to decide cases, particularly civil cases; and (2) the abridgement of the constitutional right to public education. As we have already indicated, however, petitioners' forecast of judicial and educational chaos is exaggerated and wholly conjectural, based primarily upon essentially unpredictable fiscal or budgetary constraints. In *Amador*, we discounted similar dire predictions that the adoption of article XIII A of the state Constitution (Prop. 13 on the June 1978 primary ballot) would result in a loss of "home rule" and the conversion of our governmental framework from "republican" to "democratic" in form. (22 Cal.3d at p. 224.) We observed that "nothing on the face of the article" compels such results (p. 225), nor confirms that the article "necessarily and inevitably" will produce those feared results (p. 226).

It is further suggested that because of its reference to various sections of the Evidence Code and Penal Code, Proposition 8 thereby somehow delegates to the Legislature the power to make future constitutional amendments merely by amending the provisions of those statutes.

No such amendments have as yet taken place, of course, and the propriety or validity of any such amendment poses questions which are not presently before us. Moreover, no authority is cited for the proposition that the Constitution may not incorporate by reference the terms of an existing statute, or authorize the Legislature to define terms or modify rules upon which constitutional provisions are based. A random inspection of the Constitution readily reveals the fallacy of these arguments. There is ample contrary precedent. (As to the first proposition, see, e.g., art. IV, § 28, subd. (a); art. XIX, §§ 7, 9, and as to the second, see, e.g., art. II, § 3; art. XII, § 3; art. XIII, § 3 subd. (k).)

For the above reasons, nothing contained in Proposition 8 necessarily or inevitably will alter the basic governmental framework set forth in our Constitution. It follows that Proposition 8 did not accomplish a "revision" of the Constitution within the meaning of article XVIII.

VI. CONCLUSION

In *Associated Home Builders, etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d

1038], Justice Tobriner, referring to the law creating the initiative and referendum procedures, said: "Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the court to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' [Citations.]" (*Ibid.*, fns. omitted.)

Consistent with our firmly established precedent, we have jealously guarded this precious right, giving the initiative's terms a liberal construction, and resolving reasonable doubts in favor of the people's exercise of their reserved power. We conclude that Proposition 8 survives each of the four constitutional challenges raised by petitioners.

The alternative writ previously issued is discharged and the peremptory writ is denied.

Newman, J., Kaus, J., and Reynoso, J., concurred.

BIRD, C. J.—I respectfully dissent. Today, a bare majority of this court obliterates one section of the state Constitution by effectively repealing the single-subject rule. It then proceeds to wink at other violations of the Constitution, thereby setting dangerous precedents and giving future draftsmen of initiative measures the message that they may proceed unrestrained by the Constitution.

I.

Petitioners challenge the validity of Proposition 8, the "Victims' Bill of Rights" initiative, submitted to the voters on June 8, 1982. This court must decide whether the draftsmen of the initiative (1) violated the Constitution's single-subject rule (Cal. Const., art. II, § 8, subd. (d)); (2) failed to disclose on the face of the initiative the full purpose and effect of its provisions in violation of article IV, section 9; or (3) illegally revised the Constitution (see art. XVIII, §§ 1-3).

After this court declined to consider the constitutional validity of Proposition 8 before the primary election, the Secretary of State placed the measure on the June ballot. (See *Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [181 Cal.Rptr. 100, 641 P.2d 200].) The initiative was approved by 56 percent of the voters.

The day after the primary election, three taxpayers filed a petition for writ of mandate and/or prohibition in the Court of Appeal, challenging the constitutionality of Proposition 8. On June 14th, the Attorney General petitioned this court to transfer the cause from the Court of Appeal. His petition was granted, the cause was transferred, and an alternative writ of prohibition was issued. Directly thereafter, the case was set for oral argument.

The issues presented are of great public importance, and the parties have properly invoked the exercise of this court's original jurisdiction. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [149 Cal.Rptr. 239, 583 P.2d 1281] [hereafter *Amador Valley*].)

This court must decide whether the "multifarious" provisions of Proposition 8 violate the people's mandate as set forth in the California Constitution that no initiative may contain more than a single subject.

The initiative contains a plethora of provisions.[1] The first section labels the proposal the "Victims' Bill of Rights." The next two amend the California Constitution, the first by repealing section 12 of article I,[2] and the second by adding a new section 28 to article I.

The new section 28 provides that (1) "all persons who suffer losses" as a result of crime have the right to restitution from those convicted of the crimes (subd. (b)); (2) students and staff of public schools have "the inalienable right" to attend "safe, secure and peaceful" campuses (subd. (c)); (3) with certain exceptions, "relevant evidence shall not be excluded in any criminal proceeding" (subd. (d)); (4) the constitutional right to bail is curtailed (subd. (e)); and (5) all prior felony convictions,

[1]See appendix for the full text of the initiative.

[2]Section 12 of article I provided, "A person shall be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. [¶] A person may be released on his or her own recognizance in the court's discretion."

"whether adult or juvenile," shall be used for impeachment or sentence enhancement in subsequent criminal proceedings (subd. (f)).

The next six sections of the initiative add five new statutes to the Penal Code and three to the Welfare and Institutions Code.[3] These sections purport to (1) prohibit the introduction of evidence concerning the lack of capacity to form the requisite mental state in a criminal trial (§ 4); (2) redefine the defense of not guilty by reason of insanity (*ibid.*); (3) provide a five-year sentence enhancement for each separate prior conviction of a "serious felony" (§ 5); (4) permit victims of crime, or next of kin of deceased victims, to attend sentencing and parole hearings in order to state their views, and require the court or parole board to consider such statements (§ 6); (5) require the court or the parole board to consider public safety before granting probation or parole (*ibid.*); (6) strictly limit plea bargaining in any case where an information or indictment charges a "serious felony" or certain other crimes (§ 7); (7) prevent the commitment to the Youth Authority of anyone convicted of a "serious felony" committed when the person was 18 years of age or older (§ 8); and (8) repeal those provisions of the Welfare and Institutions Code governing mentally disordered sex offenders (§ 9).

Article II, section 8, subdivision (d) of the California Constitution mandates that "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."[4] This single-subject limitation on initiative measures was adopted by a 2-1 margin at the 1948 general election.[5]

A similar limitation on the Legislature, requiring that statutes embrace but a single subject, has been a feature of our state Constitution since 1849. (See current art. IV, § 9.)[6] California is not unique in that

[3]Proposition 8 declares that a new section 1767 "is added to the Welfare and Institutions Code." However, two statutes with that identical section number already exist. (See Stats. 1981, ch. 588, § 2, No. 5 Deering's Adv. Legis. Service, p. 174; and Stats. 1981, ch. 591, § 1, No. 5 Deering's Adv. Legis. Service, p. 179.) How the new section is intended to interrelate with the preexisting statutes is not addressed in the initiative measure.

[4]All constitutional references are to the California Constitution unless otherwise noted.

[5]Initially adopted as article IV, section 1c, the provision was renumbered article IV, section 22 in 1966. In 1976, it was placed in section 8 of article II as subdivision (d).

[6]The legislative single-subject rule was initially a feature of article IV, section 25 of the Constitution of 1849. When a new Constitution was adopted in 1879, the rule was shifted to article IV, section 24, where it remained until the 1966 constitutional revision relocated it to its present position.

regard, for similar provisions are found in the constitutions of most states. (See Ruud, "*No Law Shall Embrace More Than One Subject*" (1958) 42 Minn.L.Rev. 389, 389.)

In California, the legislative single-subject rule has long been interpreted as requiring that all the provisions of a legislative enactment be "interdependent" and "'reasonably germane' to each other." (See, e.g., *Amador Valley, supra*, 22 Cal.3d at p. 230; *Evans* v. *Superior Court* (1932) 215 Cal. 58, 62 [8 P.2d 467], and cases cited; *Ex parte Liddell* (1892) 93 Cal. 633, 637-638 [29 P. 251].) "Provisions governing projects *so related and interdependent as to constitute a single scheme* may be properly included within a single act.... A provision which ... is auxiliary to and promotive of [the act's] main purpose, or has a necessary and natural connection with such purpose is germane within the rule." (*Evans, supra*, 215 Cal. at pp. 62-63, italics added.)

This standard has frequently been applied to legislative enactments. (See, e.g., *Metropolitan Water Dist.* v. *Marquardt* (1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28]; *Barber* v. *Galloway* (1924) 195 Cal. 1, 12-13 [231 P. 34]; see also *Tarpey* v. *McClure* (1923) 190 Cal. 593, 597 [213 P. 983] [examining whether the provisions of an act were "legitimately and intimately connected one with another"]; *Robinson* v. *Kerrigan* (1907) 151 Cal. 40, 51 [90 P. 129] [considering whether provisions were "necessary to make [an act] effective and symmetrical" or "reasonably necessary as means for attaining the object of the act"]; *Ex parte Liddell, supra*, 93 Cal. at pp. 637-638.)

The important concerns underlying the legislative single-subject limitation were noted by this court in 1881. "'The practice ... of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in its support members who were in favor of particular measures, but neither of which could command the requisite majority on its own merits, was found to be not [only] a corruptive influence in the Legislature itself, but destructive of the best interests of the State.'" (*People* v. *Parks* (1881) 58 Cal. 624, 640.)

The initiative and referendum provisions of our state Constitution were adopted in 1911. At that time, no specific provision of the Constitution limited initiatives to a single subject. However, the policies underlying the legislative single-subject requirement apply with equal, if not greater, force to initiative measures.

Legislative enactments usually are adopted only after a lengthy process of public hearings, numerous readings and votes by each house of the Legislature. In addition, the Governor has the opportunity to review each enactment. (See Note, *The California Initiative Process: A Suggestion for Reform* (1975) 48 So.Cal.L.Rev. 922, 931-932 [hereafter, *The California Initiative Process*].)

By contrast, initiatives are drafted only by their proponents, so there is usually no independent review by anyone else. There are no public hearings. The draftsmen so monopolize the process that they completely control who is given the opportunity to comment on or criticize the proposal before it appears on the ballot.

This private process can and does have some detrimental consequences. The voters have no opportunity to propose amendments or revisions. (Compare art. XVIII, § 1 [legislatively proposed constitutional amendment or revision may be amended even after the initial approval by the Legislature if the people have not yet voted on the proposal].) "[T]he only expression left to all other interested parties who are not proponents is the 'yes' or 'no' vote they cast." (*The California Initiative Process, supra*, 48 So.Cal.L.Rev. at p. 933; *Taschner* v. *City Council* (1973) 31 Cal.App.3d 48, 64 [107 Cal.Rptr. 214].)

Since the only people who have input into the drafting of the measure are its proponents, there is no opportunity for compromise or negotiation. "The result of this inflexibility is that more often than not a proposed initiative represents the most extreme form of law which is considered politically expedient." (*Schmitz* v. *Younger* (1978) 21 Cal.3d 90, 99 [145 Cal.Rptr. 517, 577 P.2d 652] (dis. opn. of Manuel, J.).)

Finally, the initiative process renders it difficult for the individual voter to become fully informed about any particular proposal. "Voters have neither the time nor the resources to mount an in depth investigation of a proposed initiative." (*Ibid.*; see also *The California Initiative Process, supra*, 48 So.Cal.L.Rev. at pp. 934-939.)

"'The majority of qualified electors are so much interested in managing their own affairs that they have no time carefully to consider measures affecting the general public. A great number of voters undoubtedly have a superficial knowledge of proposed laws to be voted upon, which is derived from newspaper comments or from conversation with their associates.... [T]he assertion may safely be ventured that it is

only the few persons who earnestly favor or zealously oppose the passage of a proposed law, initiated by petition, who have attentively studied its contents and know how it will probably affect their private interests. The greater number of voters do not possess this information . . . .'" (*Wallace* v. *Zinman* (1927) 200 Cal. 585, 592 [254 P. 946, 62 A.L.R. 1341].)

As a direct result of these concerns, the Legislature placed on the general election ballot in 1948 a constitutional amendment to provide that initiative measures be limited to one subject. The ballot pamphlet argument in support of this measure noted the dangers of voter confusion and lack of information inherent in the initiative process.[7] That statement informed the voters that the adoption of a single-subject restriction in the Constitution would help ensure that the electorate would have an opportunity to fully analyze and evaluate an initiative measure. (Ballot Pamp., Gen. Elec. (Nov. 2, 1948) pp. 8-9.)

The ballot pamphlet statement further emphasized the risk that a multi-subject initiative might mislead the electorate as to the true import of the measure. This, in turn, would lead the voters to adopt an initiative because they favored some of its provisions, without realizing the effect of other, less-publicized sections.

"Today, any proposition may be submitted to the voters by initiative and it may contain any number of subjects. By this device a proposition may contain 20 good features, but have *one bad one secreted* among the 20 good ones. The busy voter does not have the time to devote to the study of long, wordy, propositions and must rely upon such sketchy information as may be received through the press, radio or picked up in general conversation. If improper emphasis is placed upon one feature and the remaining features ignored, or if there is a failure to study the entire proposed amendment, the voter may be misled as to the over-all effect of the proposed amendment. [¶] [*The single-subject rule*] *entirely eliminates the possibility of such confusion inasmuch as it will limit each proposed amendment to one subject and one subject only.*" (Ballot Pamp., Gen. Elec. (Nov. 2, 1948) pp. 8-9, italics added.)

The single-subject amendment may have been spurred by the initiative measure analyzed in *McFadden* v. *Jordan* (1948) 32 Cal.2d 330

[7]Initiative ballot pamphlet arguments are the equivalent of the legislative history of a legislative enactment. (*People* v. *Knowles* (1950) 35 Cal.2d 175, 182 [217 P.2d 1]; see also *Carter* v. *Seaboard Finance Co.* (1949) 33 Cal.2d 564, 580-581 [203 P.2d 758].)

[196 P.2d 787]. (See *Amador Valley, supra*, 22 Cal.3d at p. 229.) In *McFadden*, this court invalidated an initiative proposal on the ground that it represented a revision of the Constitution, not an amendment. (See *post*, part II.) The court stressed the dangers inherent in a proposal containing "multifarious" provisions. "It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, adopt all." (*McFadden, supra*, 32 Cal.2d at p. 346.)

These statements reflect the separate dangers posed by an initiative which contains multiple subjects. First, there is a risk that voters will be unaware of the contents of an initiative's disparate provisions. Second, there is a danger that an initiative will pass not because a majority of the voters favor any or all of its provisions, but because minorities who advocate some of its parts will aggregate their votes, giving it a *false* majority. Finally, the combination of numerous subjects in one initiative deprives the voters of their right to vote independently on the merits of each separate proposal. Voters who favor some of a measure's provisions must choose to vote for all or none.

The single-subject rule, adopted by the electorate in 1948, addresses all of these problems. The requirement that an initiative embrace but one subject narrows the breadth of the issues which a voter must examine and evaluate. It enables the voter to obtain a clear idea of the contents of an initiative from a quick survey of its general provisions. In addition, a voter's freedom of choice is protected by preventing initiative sponsors from forcing the electorate to vote for undesired provisions in order to enact favored sections.

Thus, the draftsmen of an initiative measure are required to submit their proposal in a form which enables the voters to make intelligent, informed and discriminating choices. By adopting a constitutional amendment which minimizes the potential for deception, fraud, forced compromises and false majorities, the people of this state have indicated a clear desire to protect themselves from the dangers posed by multi-subject initiatives.

The single-subject rule does not limit the initiative power of the people, but rather it requires that drafters of initiative measures state their proposals in a way which permits intelligent and informed choices, free from deception and forced compromises. It serves, therefore, to preserve the integrity of the initiative process and not to limit the power of the people.

Shortly after the single-subject rule for initiatives was adopted, this court was called upon to interpret the requirement in *Perry* v. *Jordan* (1949) 34 Cal.2d 87 [207 P.2d 47]. The initiative challenged in that case sought to repeal an article of the Constitution concerning aid to the aged and blind. The court found that the article attacked by the initiative constituted but one subject. That article covered the level of aid, eligibility requirements, and the machinery necessary to administer the aid program. The court held that these provisions were "'so related and interdependent as to constitute a single scheme,'" and, therefore, did not violate the single-subject rule. (*Id.*, at pp. 92-93, quoting *Evans* v. *Superior Court*, *supra*, 215 Cal. at p. 62.)

Recently, this court unanimously reaffirmed the standards set forth in *Perry* and *Evans*. The court held that compliance with the single-subject rule requires that an initiative's provisions be "*reasonably interrelated and interdependent, forming an interlocking 'package'* ...." (*Amador Valley*, *supra*, 22 Cal.3d at p. 231, italics added.)

The decision in *Amador Valley* emphasized the importance of the relationship among an initiative's separate features. In rejecting a single-subject attack on an initiative that added article XIII A to the Constitution, this court did not rely on the fact that the initiative's provisions fell within the general concept "taxation." Rather, the court examined the interrelationship among the initiative's four provisions.

The first two provisions specifically limited property taxes. The third and fourth limited the method by which other state and local taxes could be altered. Petitioners in *Amador Valley* argued that the provisions regarding state and local taxation did not involve the same subject as those regarding property taxes. The court, however, concluded that the limits on nonproperty taxes were necessary to effectuate the property tax relief which was the central subject of the initiative. "[A]ny tax savings resulting from the operation of sections 1 and 2 could be withdrawn or depleted by additional or increased state or local levies of

other than property taxes . . . ." (*Id.*, at p. 231.) Therefore, all four of the initiative's sections were necessary to the success of its scheme.

Indeed, interdependence of that initiative's provisions was the precise basis on which this court carefully distinguished the decision of the Arizona Supreme Court in *Kerby* v. *Luhrs* (1934) 44 Ariz. 208 [36 P.2d 549, 94 A.L.R. 1502]. The Arizona case held that an initiative which proposed a new tax on copper production, a new method of evaluating public utility property, and a new state tax commission, violated the single-subject requirement of the Arizona Constitution.

This court observed that although the provisions at issue in the Arizona case all dealt with "taxation," they were not "interdependent" or "interlock[ing]." Any of the provisions in *Kerby* "singly, could have been adopted 'without the slightest need of adopting' the others." (*Amador Valley, supra*, 22 Cal.3d at p. 232.) By contrast, "the four elements [of the initiative measure in *Amador Valley*] *not only pertain to the general subject of taxation, but also are reasonably interdependent and functionally related to each other*. . . . Each of the four basic elements of [the initiative] was designed to interlock with the others to assure an effective tax relief program." (*Ibid.*, italics added.)

Respondents are incorrect when they argue that the requirement that an initiative's provisions be "reasonably interrelated and interdependent" was abandoned in *Fair Political Practices Com.* v. *Superior Court* (1979) 25 Cal.3d 33, 37-43 [157 Cal.Rptr. 855, 599 P.2d 46]. The plurality opinion in that case does *not* support respondent's position. First, only three justices joined the lead opinion. Neither the analysis nor the language employed in that opinion constitutes binding precedent, since it did not represent a majority view of this court. (*Del Mar Water, etc. Co.* v. *Eshleman* (1914) 167 Cal. 666, 682 [140 P. 591].)

In addition, although the plurality opinion purported to rely on the "reasonably germane" standard, it curiously failed to apply this court's longstanding interpretation of that term as requiring interdependence of all the provisions of an initiative. (See *Evans* v. *Superior Court, supra*, 215 Cal. at pp. 62-63.) Respondents stretch both law and logic when they argue that three justices of this court overruled a long line of cases sub silentio.

Finally, nothing in the *result* of *Fair Political Practices Com.* indicates that the "interdependence" test has been discarded. As former Justice Tobriner noted in his concurrence, the initiative at issue in that case satisfied even the stricter requirement that its provisions "'must be functionally related in furtherance of a common underlying purpose.'" (*Fair Political Practices Com., supra*, 25 Cal.3d at p. 50, quoting *Schmitz* v. *Younger, supra*, 21 Cal.3d at pp. 99-100 (dis. opn. of Manuel, J.). (See discussion *post*, at p. 277.)

The single-subject rule thus requires that the separate provisions of an initiative submitted to the voters not only "pertain" to the same subject, but also be "'reasonably germane' to each other." (*Amador Valley, supra*, 22 Cal.3d at p. 230.) The various parts must "interlock" so as to form a cohesive program aimed at the specific purpose of the initiative. (*Ibid.*) Evaluated in light of this standard, Proposition 8 does not meet the single-subject requirement of our state Constitution.[8]

The multiple provisions of Proposition 8 are much broader than the initiative's self-proclaimed title or the official title prepared for the ballot pamphlet by the Attorney General. The proposition denominated itself the "Victims' Bill of Rights," while the Attorney General called it the "Criminal Justice" initiative. Both of these appellations are deceptive.

Initially, only two aspects of the initiative relate directly to victims—restitution and victims' statements at sentencing and parole hearings. The numerous sections of the initiative revising criminal procedures may have an incidental effect on the victims of crime, but some may actually *harm* victims rather than protect them.

For instance, the constitutional amendment providing that all relevant evidence is admissible in criminal proceedings appears to eliminate statutory protections for victims of crime, such as the Evidence Code provision authorizing a court to bar public release of a rape vic-

[8]Some members of the court have suggested that the single-subject limitation applicable to initiatives (see art. II, § 8) imposes a stricter standard than that applicable to legislative enactments (see art. IV, § 9). (See dis. opn. of Manuel, J., in *Schmitz* v. *Younger, supra*, 21 Cal.3d at pp. 98-100; conc. opn. of Tobriner, J., in *Fair Political Practices Com.* v. *Superior Court, supra*, 25 Cal.3d at p. 50; see also conc. and dis. opn. of Mosk, J., in *Brosnahan* v. *Eu, supra*, 31 Cal.3d at p. 9, fn. 3. But see plurality opinion in *Fair Political Practices Com., supra*, at pp. 40-42.) This question need not be addressed here since the initiative so clearly violates both standards.

tim's address and telephone number. (See Evid. Code, § 352.1.) Indeed, the California State Coalition of Rape Crisis Centers, appearing as amicus curiae in support of petitioners, argues forcefully that Proposition 8 seriously weakens legal protections for rape victims. The Coalition claims that the potential now exists for the victim again to become the "second defendant" at a rape trial.[9]

The "Truth-in-Evidence" provision also curtails other rights presently enjoyed by our citizens. It appears to authorize the admission of evidence of a victim's past conduct or character that might otherwise have been excluded. (See, e.g., Evid. Code, §§ 786, 787, 1101, 1104; Gov. Code, § 7489.)

Consider also the limitation on plea bargaining which may pose a serious problem for some victims. Many victims of crime—particularly young children and victims of sexual assaults—do not want to be forced to relive their ordeal on the witness stand at a trial. They may prefer that the charges against their assailants be settled before trial by means of a reasonable plea bargain, to avoid the agony of testifying at public trial. However, in many situations Proposition 8 bars the court and the prosecutor from considering a negotiated settlement to protect the victim. Clearly, in many of its most important provisions the proposition is not a "Victims' Bill of Rights" at all.

The voters were misled by the titles proposed by the draftsmen and the Attorney General. The section of the initiative creating a right to "safe, secure and peaceful" schools is not encompassed within either of the titles set forth in the ballot pamphlet. The right to personal safety, security and peace is not limited to safety from criminal violence. The initiative purports to grant to students and staff a right to protection from *every* danger that might threaten their safety, security or peace. This undefined right could encompass such diverse hazards as acts of nature, acts of war, environmental risks, building code violations, disruptive noises, disease and pestilence, and even psychological or emotional threats, as well as crime. The right to protection from noise or fire is not the same subject as "victims' rights" or "criminal justice."[10]

[9]Further, rape crisis counselors have submitted affidavits asserting that they know of rape victims who, before Proposition 8 was enacted, intended to testify against their assailants, but who now have decided not to bring charges against alleged rapists because of the passage of Proposition 8.

[10]The Attorney General argues that this section of the initiative is intended only to guarantee protection from crime in the schools, and that, therefore, it protects "poten-

In an effort to find a formula which covers all the varied provisions of Proposition 8, the Attorney General is forced to propose a single subject that is broader than the titles presented to the voters. Apparently, he has abandoned the proponents' earlier argument in *Brosnahan* v. *Eu, supra*, 31 Cal.3d 1, that the single subject of this initiative is "public safety." He now claims that victims' rights must be interpreted more broadly to include "potential" as well as actual victims of crime. Thus, he contends that the entire proposition falls within a single subject which he defines as "reform of the criminal justice system as it relates to the actual and potential victims of crime."

The initial flaw in this argument is that it does not explain the relevance of the provision guaranteeing "safe, secure and peaceful" schools. That provision is not limited to protecting persons from crime.

The Attorney General's argument has additional shortcomings. The fact that he must transform the "Victims' Bill of Rights" into the "Victims' and Potential Victims' Bill of Rights" in an attempt to encompass all of its provisions within a "single subject" illustrates a fatal problem with this initiative. As used by the Attorney General, "potential victims" of crime includes all of us in virtually every aspect of our lives. If this court were to accept such an expansive definition of a single subject, initiatives could embrace hundreds of unconnected statutes, countless rules of court and volumes of judicial decisions, as well as completely alter the complex interrelationships of our society.

The single-subject rule would be rendered meaningless if it could be complied with simply by devising some general concept expansive enough to encompass all of an initiative's provisions. If the requirement of the rule could be so easily met, *any* initiative could be upheld by finding that all of its provisions fell within some catchall subject such as "the general welfare" or "the citizenry."

As Justice Mosk noted in *Brosnahan* v. *Eu, supra*, "The constitutional requirement is not satisfied by attaching a broad label to a measure and then claiming that its provisions are encompassed under that wide umbrella. Otherwise, initiatives which refer to 'property' or 'women' or

tial" victims. However, the language of the proposition is not so limited. It affords students and staff an "inalienable right" to "safe, secure and peaceful" schools. There is no indication that this broadly worded right was intended to protect against only one particular danger.

'public welfare' or the 'pursuit of happiness' could also be held to constitute one subject, no matter how diverse their terms." (31 Cal.3d at p. 11 (conc. and dis. opn.); see also *Fair Political Practices Com.* v. *Superior Court, supra*, 25 Cal.3d at p. 57 (dis. opn. of Manuel, J.) ["The single subject rule ... is not concerned with umbrellas; it is concerned with *subjects*."].)

The Attorney General is correct in noting that this court has upheld measures addressing subjects as broad as "probate" (*Evans* v. *Superior Court, supra*, 215 Cal. 58), "water resources" (*Metropolitan Water Dist.* v. *Marquardt, supra*, 59 Cal.2d 159), and "real property tax relief" (*Amador Valley, supra*, 22 Cal.3d 208). However, these "single subjects" differ in two crucial respects from the subject proposed by the Attorney General in this case.

First, each of the subjects upheld in *Evans, Metropolitan Water Dist.* and *Amador Valley* is focused on a well-defined aspect of our society. None is as broad or as amorphous as "potential victims."

Equally important, the statutes and initiatives upheld in those cases passed constitutional muster because their provisions were all *interrelated*. Where the subject of a proposal encompasses multiple provisions, the measure will satisfy the requirements of the single-subject rule only if those provisions interrelate so as to form a unitary whole. This court has consistently held that the "reasonably germane" standard of the single-subject rule demands that the provisions of an act or initiative be "so related and interdependent as to constitute a single scheme ...." (*Evans* v. *Superior Court, supra*, 215 Cal. at p. 62; *Amador Valley, supra*, 22 Cal.3d at p. 230; *Metropolitan Water Dist.* v. *Marquardt, supra*, 59 Cal.2d at p. 173.)

The rule articulated in these cases controls here. Any single provision of Proposition 8 "could have been adopted 'without the slightest need of adopting' the others." (*Amador Valley, supra*, 22 Cal.3d at p. 232, quoting *Kerby* v. *Luhrs, supra*, 36 P.2d at p. 554.) Even if a given provision of Proposition 8 may be said to interlock with another, the remainder are completely *independent* and *unnecessary* to the effective implementation of that interlocking area.

The provision creating a right to safe schools is the most striking example of this independence. None of the other provisions of this initiative are even remotely connected to implementing that right.

Justice Mosk stated it well. "Although the measure piously declares that safe schools are a right, it does not contain one provision referring to schools. A voter or the signer of a petition would reasonably expect that a lengthy amendment which states in one of its first paragraphs that 'students and staff have the right to be safe and secure in their persons' on campus would contain some reference to and propose some protection of that right in its substantive provisions. . . . [T]his expectation is not fulfilled." (*Brosnahan* v. *Eu, supra*, 31 Cal.3d at pp. 11-12 (conc. and dis. opn. of Mosk, J.).)

Further, under a faithful interpretation of the single-subject rule, the remaining provisions of Proposition 8 clearly "embrac[e] more than one subject." The measure is replete with proposals for important policy changes, many of which are enormously complex. This aggregation into one initiative measure of so many far-reaching, yet unrelated, proposals sharply conflicts with the fundamental concerns underlying the single-subject rule.

The "Truth-in-Evidence" provision presents a striking illustration of the multiplicity of subjects contained in Proposition 8. That section undertakes a major revision of a complicated area of the law. It appears in effect to amend dozens of sections of the Evidence Code and overturn numerous judicial decisions.

The constitutional and practical ramifications of these changes are startling. Every criminal proceeding in the state would be affected, and each trial will have its own ad hoc rules of evidence. Yet, this wholesale revision of our state's rules of evidence was insinuated into an initiative containing such other controversial and disparate subjects as bail and own-recognizance release, the insanity defense, plea bargaining, juvenile justice, and the laws governing mentally disordered sex offenders.

The consequences of the proposition's limitation on plea bargaining could be even greater than those resulting from the changes wrought by the "Truth-in-Evidence" section. Over 95 percent of the criminal convictions in California have heretofore been reached through plea bargains. (Cal. Dept. of Justice, Crime & Delinquency in Cal. (1981) p. 48.) The voters were not informed of the possible effect of a wholesale ban in the superior court on a practice so integral to the present criminal justice system. As a result, they were never given the opportunity to weigh the possible high price they might have to pay for a vast increase in the number of criminal trials. They were never made aware

of the potential impact of this provision on the large backlog of civil cases awaiting trial. Once again, these important policy considerations were buried amongst the mass of unrelated subjects contained in Proposition 8. As a result, the people were denied their right to consider and vote selectively on the merits of this provision.

Also, consider the provision of the initiative which purports to mandate the use of all prior felony convictions, "adult or juvenile," for impeachment and sentence enhancement. With these few words, juvenile court adjudications may have been transformed into the equivalent of adult convictions. Such a change represents a fundamental alteration of the policies which have long required a distinction between the treatment of juvenile and adult offenders. Yet, the voters were forced to pass judgment on this major change as only one small portion of an all-or-nothing package involving many unrelated but equally basic changes.

Other provisions of the initiative also demonstrate that Proposition 8 confronted the voters with an unconstitutional grouping of unconnected subjects. For example, the right to restitution is not related to the rules of evidence, bail release or the use of prior convictions. The provisions governing diminished capacity and insanity, while arguably related to each other, are not interdependent with the provisions governing victims' statements at sentencing and parole hearings or with the limitations on commitments to the Youth Authority.

Legislative developments at the time Proposition 8 was drafted and petitions circulated provide further evidence of the independence of the measure's provisions. During that period a substantial number of bills were before the Legislature relating to portions of Proposition 8. According to amicus Pacific Legal Foundation, there were more than a dozen such bills, each "closely related" to one of eleven "provisions" of the initiative measure.

Significantly, each of these bills concerned but *one field of legislation and pertained to only one of the provisions of Proposition 8.* None had a scope even remotely resembling that of the initiative. By contrast, the draftsmen of this initiative sought to collect and combine into one package *all* of the diverse legislative fields addressed by all these individual bills.[11]

[11]It is interesting to note that the Legislature has provided further indication that it considered the changes attempted by Proposition 8 to be distinctly separate subjects. Thus, the Legislature placed on the June ballot Proposition 4, dealing with bail, and by

The narrow focus of the bills before the Legislature suggests that it viewed each of them as an independent subject properly submitted as a separate proposal. Certainly, the single-subject rule applies with no less force to the draftsmen of initiatives than to legislators. The sheer number and diversity of legislative bills sought to be wedged without interlock into one initiative is further evidence that the measure embraced more than one subject.

The Attorney General points to the result in *Fair Political Practices Com.* v. *Superior Court, supra*, 25 Cal.3d 33 to support his claim that Proposition 8 embraces but one subject. His reliance on that case is misplaced. The Fair Political Practices initiative concerned a comprehensive attempt to lessen the influence of wealth on California government and elections. There, the court apparently felt that each of its provisions was necessary to achieving that goal, by preventing the mere shift of wealth from one sphere of political influence to another. The provisions were also linked by common means of enforcement. Moreover, unlike Proposition 8, none of the provisions contradicted the initiative's general purpose, and none was unrelated to the common goal.

Finally, the general subject of the initiative, the corruptive influence of money in politics, was specifically addressed by a constitutional provision which reserves to the people the right to act by initiative to protect themselves against such corruption. Article IV, section 5 of the Constitution provides in pertinent part, "The Legislature shall enact laws to prohibit members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities; provided that the people reserve to themselves the power to implement this requirement pursuant to Section 22 of this article [now art. II, § 8, defining the initiative power]."

Each of these factors distinguishes the Fair Political Practices initiative from Proposition 8, and highlights the drafting deficiencies which render Proposition 8 constitutionally invalid.

Not only does Proposition 8 violate the terms of the single-subject rule as set forth in the case law, it also flouts the policy concerns underlying the voters' enactment of the rule in the first place.

separate enactment scuttled the Mentally Disordered Sex Offenders program. (See Stats. 1981, ch. 928, § 2, No. 6 Deering's Adv. Legis. Service, p. 586.) Clearly, these were not deemed to be interdependent or part of a single subject.

By lumping so many fundamental changes into one measure, the initiative effectively deprived the voters of their opportunity to consider and pass on the merits of the individual proposals. Each of these provisions created a *different* and *distinct* alteration of our constitutional or statutory framework. As a whole they did not present a coherent, interlocking program. Yet the electorate was forced to vote either "yes" or "no" on a single initiative containing this wide a variety of controversial and complex proposals.

The disparate votes on Proposition 8 and Proposition 4, a bail reform initiative on the same ballot, provide a vivid illustration of the dilemma Proposition 8 created for the voters of the state. Proposition 4 passed with over 82 percent of the electorate voting in its favor. Proposition 8 received only 56 percent of the votes cast. These figures seem to indicate that over 25 percent of the voters favored bail reform but nevertheless voted against Proposition 8 because they opposed other provisions included in the measure. Here is yet another graphic example that the voters of California were deprived of their constitutionally protected right to be able to evaluate independently each proposal of an initiative.

In essence, the draftsmen confronted the voters with a Hobson's choice, an electoral contract of adhesion. Had the separate provisions of the initiative been interdependent, it might have been reasonable to ask the electorate to vote on the entire initiative as a package. Since they were *independent*, encompassing a wide variety of disparate and conflicting concepts, the voters were deprived of their constitutional right to consider the proposals individually and to evaluate each in a more discriminating fashion.

The "multifarious" nature of this initiative created an additional problem. When the voters of California went to the polls on June 8, 1982, it is unlikely they were fully aware of all of the provisions of Proposition 8.

Can anyone seriously argue that the voters knew that Proposition 8 would (1) abolish the protection previously afforded to victims of sex crimes regarding the "exclu[sion] from evidence [of their] current address and telephone number" (Evid. Code, § 352.1); (2) permit testimony from those children and mentally incompetent persons who are "incapable of understanding the duty . . . to tell the truth" (*id.*, § 701, subd. (b)); (3) authorize witnesses to testify to matters about which they have no personal knowledge (*id.*, § 702); (4) repeal the rule that

"[e]vidence of his religious belief or lack thereof is inadmissible to attack or support the credibility of a witness" (*id.*, § 789); (5) permit opinion testimony by non-expert witnesses (*id.*, § 800); and (6) authorize the trial court to exclude certain relevant evidence (*id.*, § 352)?

Those voters who relied on section 1 of the initiative may well have assumed that they were voting for a "Victims' Bill of Rights" without realizing that they were also adopting a new provision guaranteeing "safe, secure and peaceful" schools (for which they might have to pay a steep price) and substantially revising pretrial detention practices, rules of criminal evidence, criminal procedure, sentencing, and juvenile law. Similarly, those who relied on the accuracy of the title, "Criminal Justice" initiative, may well have been unaware of the provision affecting schools.

The risk that the electorate was unaware of many of Proposition 8's provisions was aggravated by the numerous inconsistencies among the initiative's various sections. The most glaring example is the contrast between the proposition's self-proclaimed title, the "Victims' Bill of Rights," and *the fact that many provisions of the initiative may actually be harmful to victims of crime.*

Additional examples abound. For instance, while one section states that generally, "relevant evidence shall not be excluded in any criminal proceeding," another section specifically requires the exclusion of evidence of lack of capacity to form a specified mental intent. (Compare Prop. 8, § 3, new art. I, § 28, subd. (d) with Prop. 8, § 4, new Pen. Code, § 25, subd. (a).) Yet another section appears to require the admission of certain *irrelevant* evidence—all prior felony convictions, whether or not relevant to credibility. (Prop. 8, § 3, new art. I, § 28, subd. (f).)

The initiative presented the additional danger of "logrolling"—aggregating the votes of those who favored parts of it into a majority for the whole, even though it was possible that some or all of its provisions were not supported by a majority of voters. Thus, those who favored better protection for victims of crime may not have favored a wholesale repeal of the state's Evidence Code, which may allow victims of crime to be subjected to searing cross-examination concerning their private lives. In like manner, those who wanted to ban plea bargaining may not have wanted to pay the high price in taxes necessary to ensure that schools are safe and secure from acts of nature or of man.

By placing these separate and quite disparate provisions in one initiative, the draftsmen of Proposition 8 deprived the voters of this state of an opportunity to analyze and vote on these provisions selectively. The people of California enacted the single-subject rule to prevent initiative draftsmen from unfairly foisting upon them just such misleading groupings of unrelated provisions.

In a final, overarching attack on petitioners' claim that the single-subject rule has been violated, the Attorney General claims that a "strict" interpretation of the rule violates precedent. However, he overlooks the fact that the standard applied here is the same as that applied in *Amador Valley*. In turn, *Amador Valley* described that standard as the "primary lesson" of another case which involved an initiative measure and was decided 30 years earlier. (22 Cal.3d at p. 230, referring to *Perry* v. *Jordan, supra*, 34 Cal.2d 87.) Even prior to *Perry*, it had long been established that the provisions of a single act should be "so related and interdependent as to constitute a single scheme." (*Evans* v. *Superior Court, supra*, 215 Cal. at p. 62.)

The single-subject rule does not prevent the submission to the voters of comprehensive programs of reform. Rather, it merely limits the form in which such programs may be presented. If proposed constitutional or statutory changes embrace more than one subject, they must be presented to the voters in more than one initiative. The proposed provisions of an initiative must be "'reasonably germane' to each other," creating a coherent, interdependent scheme. (*Amador Valley, supra*, 22 Cal.3d at p. 230.)

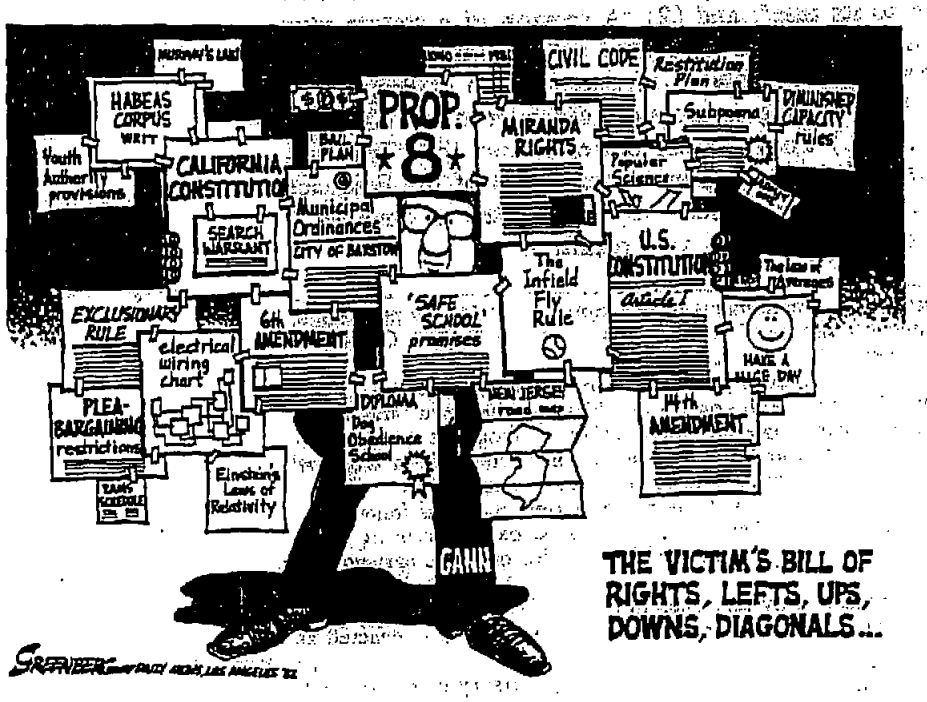
The single-subject requirement thus operates not as a limit on the people's reserved power to legislate by initiative, but as a *limit* on the *draftsmen* of *initiative measures*. The rule demands that initiative proposals be presented to the voters in a format that ensures the *integrity* of the cherished initiative process.

The Constitution permits the drafters of initiative measures to draw up their proposals without any input—direct or indirect—from the people. Thus, it is logical that the draftsmen are constitutionally required to submit initiatives to the electorate in coherent, single-subject packages, so that voters are able to make rational decisions that accurately and completely reflect their wishes. Just as consumers demand the right to buy what they want, the voters of this state have demanded that initiative sponsors give them the right to vote for the proposals they favor.

They have refused to be forced to accept unrelated provisions wrapped in deceptive packaging.

Initiatives which embrace more than one subject *weaken* rather than strengthen a citizen's right to vote. They threaten to undermine the *integrity* and *strength* of the whole initiative process. If the voters are confused or misled, or if they vote for or against a proposal because they favor or oppose one or two of its provisions, the initiative process has not served to implement the will of the people. Rather, it has sanctioned a warped expression of the wishes of some of those people, while *thwarting* the will of the majority. Only through careful adherence to the objective constitutional regulations governing the initiative process can the true purposes of the right to the initiative be realized. Bending those rules weakens the process, thereby diminishing the people's control over their government.[12]

[12]It is said that one picture is worth more than ten thousand words. The following is ample proof of that adage.



[Sept. 1982]

II.

In addition to the constitutional challenge based on the single-subject rule of article II, section 8, subdivision (d), there are other challenges to the presentation and enactment of Proposition 8. These include (1) whether the draftsmen failed to disclose on the face of this initiative the full purpose and effect of its provisions, in violation of article IV, section 9 and (2) whether they revised the Constitution, rather than *amended* it, thus running afoul of article XVIII, which limits the use of the initiative process to constitutional amendments. These issues are treated in order.

Failure to Disclose Full Purpose and Effect

Petitioners contend that the draftsmen of Proposition 8 failed to "disclose on [the] face [of the initiative] the full purpose and effect of its provisions," as required by article IV, section 9.

Their arguments are founded upon the last two sentences of that section. These sentences set forth a pair of rules: (1) "A statute may not be amended by reference to its title"; and (2) "A section of a statute may not be amended unless the section is re-enacted as amended."[13] Petitioners allege that the first rule was violated by that portion of Proposition 8 which repealed the law relating to mentally disordered sex offenders (M.D.S.O.). (Prop. 8, § 9.) They further contend that the "Truth-in-Evidence" provision amended by implication nearly all of the Evidence Code. Since none of the Evidence Code was "re-enacted as amended," they contend a violation of the second rule resulted.

[13]Although certain constitutional amendments were adopted in 1966 "for purposes of clarity," in fact they introduced a degree of ambiguity into section 9. (Cal. Const. Revision Com., Proposed Revision of Cal. Const. (1966) p. 34.)

Section 9 consists of four sentences, each purportedly concerning "statute[s]." However, as is immediately apparent from both context and history, the word "statute" as used in the first two sentences means something quite different from the word as employed in the final sentences. The opening sentences use "statute" to signify a *proposed* law or bill; in the last sentences, the word refers to an *already enacted* law.

Divided for clarity into separate sentences, section 9 provides in full as follows:

(1) "A statute shall embrace but one subject, which shall be expressed in its title."

(2) "If a statute embraces a subject not expressed in its title, only the part not expressed is void."

(3) "A statute may not be amended by reference to its title."

(4) "A section of a statute may not be amended unless the section is re-enacted as amended."

A law, once enacted, is not required to have a title. Even a cursory glance through

The first of these arguments lacks merit. The attempt by the draftsmen of Proposition 8 to repeal the M.D.S.O. laws was mooted by legislative enactment in 1981. The voters were twice informed of this fact in the ballot pamphlet. (Ballot Pamp., Primary Elec. (June 8, 1982), analysis by Legislative Analyst, p. 55, and rebuttal to argument in favor of Prop. 8, p. 34.) Indeed, the voters were explicitly advised that the initiative measure's attempt to repeal the M.D.S.O. laws "has no effect." (*Id.*, at p. 55.) It would be too severe a rule to hold that the entire proposition should be invalidated for such a technical violation of the prohibition against repeal by reference to a law's title. In all probability, no voter confusion was caused by this violation.

Petitioners' second contention—that numerous statutes relating to the admissibility of evidence were implicitly amended without being "reenacted as amended"—poses a more difficult question. The purpose of such a constitutional provision is clear. "It is to compel [a proposed law] to disclose on its face something of its purpose and effect . . . ." (*Myers* v. *Stringham* (1925) 195 Cal. 672, 675 [235 P. 448]; see also *Brosnahan* v. *Eu*, *supra*, 31 Cal.3d at p. 12 (conc. and dis. opn. of Mosk, J.).)

There is no case which directly decides whether amendments proposed by statewide initiative are subject to the constitutional requirement of article IV, section 9, regarding reenactment of amended

our codes indicates that our codified laws only occasionally have titles. However, a legislative bill must have a title, since "[n]o bill may be passed [by the Legislature] unless it is read *by title* on 3 days in each house . . ." (Art. IV, § 8, subd. (b), italics added.) Clearly then, the first two sentences of section 9 apply to proposed legislation, not to enacted laws.

On the other hand, it would be meaningless to say that a legislative bill "may not be amended by reference to its title" and "may not be amended unless [a] section [of the bill] is re-enacted as amended." These provisions manifestly were intended to apply to laws already on the books.

That this interpretation is the correct one is confirmed by the history of section 9. Prior to the 1966 amendment, its provisions were found in article IV, section 24. That section did not contain the word "statute" at all. In its first two sentences, it used the word "act," obviously referring to a legislative act or bill. (Legislative bills were formerly titled "an act appropriating the sum of . . ." or "an act to amend an act entitled . . . .") In the predecessors to what are now the last two sentences of section 9, former section 24 employed the words "law" and "act . . . or section," clearly referring to already enacted provisions.

The 1966 constitutional amendment replaced both "act" and "law" with "statute." The change was not intended to be substantive, but merely "for purposes of clarity." Unfortunately, by using one word to cover two different concepts, the 1966 amendment may have created more confusion than clarity.

statutes.[14] However, in *Myers* v. *Stringham, supra*, 195 Cal. 672, a substantially similar requirement in a city charter was held to apply to an attempt to amend a city ordinance by the initiative process.

No reason has been suggested why a statewide initiative should be treated differently from a local initiative or a legislatively enacted statutory amendment in this regard. The purpose of the requirement is equally applicable to statewide initiatives. An amendment by initiative should "disclose on its face something of its purpose and effect . . . ." (See *Myers, supra*, 195 Cal. at p. 675.) Indeed, that purpose would seem to be even more important in the context of initiatives since they are frequently drafted by "a small group of people" (*Wallace, supra*, 200 Cal. at p. 592), without the opportunity for inquiry, explanation, and critical analysis that is available for amendments considered by the Legislature.

It is true that the requirement for reenactment of amended statutes is found in article IV, which deals with "Legislative" matters. However, this fact does not justify the conclusion that the application of the requirement is limited to amendments passed by the Legislature, since the initiative power reserved to the people is itself a reserved legislative power. (See art. IV, § 1.) As this court has noted on several occasions, "'By the enactment of initiative and referendum laws the people have simply . . . reserved to themselves the right to exercise a part of their inherent *legislative* power.'" (*Hays* v. *Wood, supra*, 25 Cal.3d at p. 786,

[14]In *Wallace* v. *Zinman, supra*, 200 Cal. 585, this court held that some provisions of article IV, section 24 (the predecessor to current § 9) do apply to initiative measures. At issue in *Wallace* was the requirement that the initiative's subject "shall be expressed in its title." (See sentence (1) of current § 9, *ante*, fn. 13.)

Subsequently, this court held to the contrary in *Prince* v. *City & County of S.F.* (1957) 48 Cal.2d 472, 475 [311 P.2d 544]. However, *Prince* failed even to mention *Wallace* and, in support of its conclusion, cited two prior cases which had nothing whatsoever to do with initiative measures. The United States Supreme Court granted certiorari in *Prince* and reversed the judgment of this court on grounds which reduced to dictum *Prince*'s discussion of article IV, section 24. (See *Speiser* v. *Randall* (1958) 357 U.S. 513 [2 L.Ed.2d 1460, 78 S.Ct. 1332].)

Wallace and *Prince* have each been cited once on this point since they were handed down. (See *Hays* v. *Wood* (1979) 25 Cal.3d 772, 786, fn. 3 [160 Cal.Rptr. 102, 603 P.2d 19] [citing *Wallace*]; *Morris* v. *Priest* (1971) 14 Cal.App.3d 621, 624 [92 Cal.Rptr. 476] [citing *Prince*].)

It is not necessary in the present case to resolve the conflict between *Wallace* and *Prince*. As previously noted, the requirement of reenactment of amended "statutes" imposes restrictions on amending laws *already enacted*. (*Ante*, fn. 13.) Both *Wallace* and *Prince* dealt with the provisions of article IV, section 24 relating to the titles of proposed laws, a subject not involved in the case at bench.

fn. 3, quoting *Dwyer* v. *City Council* (1927) 200 Cal. 505, 513 [253 P. 932], italics added in *Hays*.)

That the effect of Proposition 8 was to alter a substantial number of statutes is undeniable. Petitioners list more than two dozen statutes the provisions of which have, by necessary implication, been amended by the "Truth-in-Evidence" provision alone. (Prop. 8, § 3; see also *ante*, at pp. 278-279.) None of these statutes was set forth or reenacted in the initiative measure. Nor were they detailed in the analysis or the arguments in favor of the proposition. Thus, the voters could not have had a realistic idea as to the scope of the statutory changes which would result from the enactment of the measure.

Further, the voters could not possibly have known what existing evidentiary provisions were being preserved. As presented to the electorate, the initiative mandated that "relevant evidence shall not be excluded in any criminal proceeding." However, it also provided exceptions to this rule for "any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103."

Nowhere were the people even given a hint as to what these exceptions to the relevant evidence rule entailed. Such information was not contained within the four corners of the proposition. Sections 352, 782, and 1103 of the Evidence Code were neither set forth in the initiative, nor were their contents alluded to in the ballot pamphlet. The same is true for the "existing statutory rule[s] of evidence relating to privilege or hearsay" and for the rules governing the press.

Thus, not only was the electorate unable to determine what statutes *were* being altered, it also could not determine what statutes *were not* being changed. In short, the voters had no way of knowing what the law relating to admissibility of evidence would be following the enactment of Proposition 8.

Respondents cite cases which hold that article IV, section 9 does not apply to "independent" enactments which amend existing statutes "by implication," rather than by explicit terms. (See *Evans* v. *Superior Court, supra*, 215 Cal. at pp. 65-66; *Hellman* v. *Shoulters* (1896) 114 Cal. 136, 150-153 [44 P. 915, 45 P. 1057].) One such case, *Hellman*, involved a purported amendment to the "Vrooman Act of 1885," which set forth certain procedures for the enactment of local ordinances for street improvements. In 1891, the Legislature adopted an act which

professed to "amend" the Vrooman Act by "adding thereto an additional part," providing for an alternative street ordinance procedure. This court held that since the 1891 act added "new sections which *leave in full operation* all the language of the [existing law] which it purports to amend," there was no "amendment" of that law within the meaning of former article IV, section 24 (now § 9). (114 Cal. at p. 151, italics added.)

Further, even if the 1891 act were viewed as amending the Vrooman Act, it would amend "only by implication." (*Id.*, at p. 152.) Former article IV, section 24 "does not apply to amendments by implication," the court concluded. (*Id.*, at p. 153.) "To say that every statute which [by implication] affects the operation of another is therefore an amendment of it would introduce into the law an element of uncertainty which no one can estimate. It is impossible for the wisest legislator to know in advance how every statute proposed would affect the operation of existing laws.... 'The mischief designed to be remedied was the enactment of statutes in terms so blind that ... *the public, from the difficulty of making the necessary examination and comparison, failed to become appraised of the changes made in the laws.... But an act complete in itself is not within the mischief designed to be remedied by this provision*, and cannot be held to be prohibited by it without violating its plain intent.'" (*Id.*, at pp. 152-153, italics added.)

The *Hellman* discussion of amendments by implication was picked up in *Evans, supra*, 215 Cal. 58. Under attack in *Evans* was the initial codification by the Legislature of the Probate Code. This court noted that some provisions of the new Code were inconsistent with existing statutes, but held nevertheless that compliance with the requirement that amended statutes be reenacted was not necessary. The Constitution, it was reasoned, "'does not apply to an independent act' [nor] '... to amendments by implication.'" (*Id.*, at pp. 65-66, quoting *Pennie* v. *Reis* (1889) 80 Cal. 266, 269 [22 P. 176], and *Hellman, supra*, 114 Cal. at p. 153.)

The holdings of both *Hellman* and *Evans* involved amendatory laws enacted by the Legislature. They did *not* involve amendments adopted through the initiative process. Sound reasons exist for treating initiative amendments with even more care.

It is the very essence of the legislative process to deal with and become immersed in laws, existing and proposed. A legislator's

professional life is one of passing and amending laws. This daily involvement with the law, combined with ready access to extensive professional research staffs and legal libraries, creates an expertise in the Legislature that is impossible to duplicate, or even approximate, among the electorate at large.

As the late Justice Wiley Manuel noted, "Voters have neither the time nor the resources to mount an in depth investigation of a proposed initiative." (*Schmitz* v. *Younger, supra*, 21 Cal.3d at p. 99 (dis. opn.); see also *Wallace, supra*, 200 Cal. at pp. 592-593.) This is not true of legislators. Thus, it makes eminently good sense to attribute to legislators knowledge of the primary purpose and effects of a proposed statutory amendment, even if not explicitly set forth. However, the same cannot be said for the voting public.

Further, the problems posed by Proposition 8 far exceed those addressed in *Hellman* or *Evans*. Unlike the amendatory enactments in *Hellman* and *Evans*, the initiative measure now before this court is not "complete in itself." It is not a wholly "independent act." This is immediately apparent from the fact that the voters could not have determined—either from the initiative measure itself or from the official ballot pamphlet—"what the effect of its adoption would be . . . ." (See *Myers, supra*, 195 Cal. at p. 675.)

All that the voters would have been able to ascertain, without spending tedious hours in a law library, was that the initiative measure would create both a *rule* admitting relevant evidence and several *exceptions of undisclosed magnitude*. In the language of *Hellman*, Proposition 8 fails to inform the voter "of the changes made in the laws."

In this regard, the present case is similar to *Myers* v. *Stringham, supra*, 195 Cal. 672. (See *Brosnahan* v. *Eu, supra*, 31 Cal.3d at pp. 12-13 (conc. and dis. opn. of Mosk, J.).) In *Myers*, a proposed local initiative measure sought to amend a city's general zoning ordinance by (1) adding a new subsection, describing the boundaries of a plot of land and (2) repealing another subsection, identified only by number. The city charter contained a provision regarding reenactment of amended laws which closely resembled the corresponding portion of former article IV, section 24.

This court found that the initiative measure violated the charter requirement. "The purpose of the charter provision is plain. It is to

compel an ordinance to disclose on its face something of its purpose and effect as a legislative enactment. The wisdom of the requirement is at once apparent from an inspection of the proposed ordinance. The new subsection sought to be added to the section by amendment is no more than a description of certain real property. It does not purport to disclose what the effect of its adoption would be either on the status of the particular property described or on its relation to the general zoning classifications in the city. Considered in and by itself it is unintelligible and meaningless. It cannot be determined from its inspection what is sought to be accomplished." (195 Cal. at p. 675.)

Like the initiative in *Myers*, the "Truth-in-Evidence" provision of Proposition 8 does not "disclose on its face something of its purpose and effect." It gives the voters little inkling as to what changes are being made in the current law. The provision purports to impose new rules of evidence throughout the criminal justice system of this state. The voters, when called upon to approve or reject the initiative, could not determine the meaning of those new rules no matter how extensive their inspection of the measure or the ballot pamphlet. They were informed only as to the section numbers, not the content of the statutes being incorporated into the Constitution.

In short, the draftsmen of Proposition 8 failed to disclose to the people the purpose and effect of its provisions. As a result, they violated the constitutional standard set forth in article IV, section 9.

There is an additional defect of the measure which has apparently escaped the notice of the draftsmen of the initiative as well as those who challenged the measure's validity. The draftsmen of Proposition 8 sought to use this one initiative measure to make changes in *both* our Constitution and our codified laws. Such a combination of statutory and constitutional alterations is unusual.

To our knowledge, only once in this state's long history has an attempt been made to join both statutory and constitutional changes in a single initiative. Although this court upheld that initiative against a one-subject attack in *Perry v. Jordan, supra*, 34 Cal.2d 87, the court did not consider the propriety of combining statutory and constitutional changes in a single initiative. Indeed, the court did not appear to recognize that the initiative before it contained proposals for statutory change.

Perry preceded by nearly two decades the most recent comprehensive revision of our Constitution in 1966. That revision clearly sought to perpetuate the distinction between the use of the initiative process to effect constitutional change and its use to bring about statutory changes. (See, e.g., Cal. Const. Revision Com., Proposed Revision of Cal. Const. (1966) pp. 43-44; see also *Wallace* v. *Zinman, supra*, 200 Cal. at p. 593 ["Throughout section 1 of article IV of the constitution [predecessor to current art. II, §§ 8-11, and art. IV, § 1] a distinct line of demarcation is kept between a law or an act and a constitutional amendment."].) Subdivision (b) of section 8 of article II states that "[a]n initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute *or* amendment to the Constitution ...." (Italics added.) The use of the disjunctive is indicative of this differentiation.

Unfortunately, the majority ignores the issue of combining statutory and constitutional changes in a single initiative, giving no guidance to drafters of future initiatives other than a green light to go and violate the Constitution with impunity.

Revision or Amendment

The subject of "Amending and Revising the Constitution" is covered by article XVIII of our Constitution. Pursuant to its terms, the Legislature may propose "an amendment or revision of the Constitution," while an initiative may be used to "amend the Constitution." (Art. XVIII, §§ 1, 3; see also art. II, § 8, subd. (a) ["The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them"].)[15]

The courts have long been aware of the "fundamental distinction" between a constitutional revision and a constitutional amendment. (See *Amador Valley, supra*, 22 Cal.3d at p. 222; see also *Livermore* v. *Waite* (1894) 102 Cal. 113, 117-119 [36 P. 424].) Thus, it is firmly established that the initiative process may be used to amend our Constitution, but not to revise it. (*Amador Valley, supra*, 22 Cal.3d at p. 221; *McFadden* v. *Jordan, supra*, 32 Cal.2d at pp. 331-334.)

[15]Section 2 of article XVIII also permits a revision to be proposed to the electorate by a constitutional convention. Such a convention is called only after the Legislature, by a two-thirds vote, "submit[s] at a general election the question whether to call a convention to revise the Constitution" and a majority of voters approve. (Art. XVIII, § 2.)

Although a precise line of demarcation between amendment and revision may be difficult to draw, this court outlined the distinction in general terms nearly 90 years ago. "The very term 'constitution' implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed." (*Livermore, supra*, 102 Cal. at pp. 118-119.)

In 1948, this court struck down as a "revision" an initiative proposal that would have effected "extensive alterations in the basic plan and substance of our present Constitution . . . ." (*McFadden, supra*, 32 Cal.2d at p. 347.) The initiative challenged in *McFadden* would have added 21,000 words to the Constitution and would have repealed or substantially altered 15 of its 25 articles.

Included within the "vast sweep" of the measure were matters "from gamblers to ministers; from mines to civic centers; from fish to oleomargarine; from state courts to city budgets; from liquor control to senate reapportionment . . . ." (*Id.*, at p. 349.) This court seemed most troubled by the initiative's creation of a new commission, whose virtually unfettered exercise of far-reaching powers would have placed it "substantially beyond the system of checks and balances which heretofore has characterized our governmental plan." (*Id.*, at p. 348.)

Recently, this court spoke to the issue as it applied to the enactment by initiative of article XIII A. (*Amador Valley, supra*, 22 Cal.3d 208.) A dual test, "quantitative and qualitative in nature," was applied. "[A]n enactment which is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof. However, even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also. In illustration, the parties herein appear to agree that an enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change." (*Id.*, at p. 223.)

Petitioners in *Amador Valley* challenged the initiative tax relief measure on the ground, inter alia, that it had the qualitative effect of impairing the established principle of "home rule." (22 Cal.3d at p. 224.) This loss of home rule was claimed to be a consequence of (1) restrictions which article XIII A placed on local government's power to tax and (2) the resulting need to look to the state Legislature for a substantial portion of funds for local purposes. In rejecting this argument, the court found that the "probable effects [of the initiative measure] are not as fundamentally disruptive as petitioners suggest" and that the initiative would not "*necessarily and inevitably*" result in the loss of home rule. (*Id.*, at pp. 224, 226.)

Under the particular theories advanced by the petitioners, it would appear that the "Victims' Bill of Rights" does not amount to a constitutional revision. Considering the measure's quantitative effect, it bears noting that less than half of the measure purports to change the content of the Constitution. The remainder of the proposition alters statutes, and by its very terms, the prohibition of revision by initiative applies to *constitutional*, not statutory, changes.

Only sections 2 and 3 of the initiative purport to directly alter the Constitution itself. They repeal one section of article I and add another. The net effect is the addition of about 660 words to our Constitution. This may be more words than were added by Proposition 13 (400 words), but in purely quantitative terms, it cannot be said to be so substantial as to amount to a revision of a document that already contains 21 articles, 277 sections, and approximately 35,000 words.

Petitioners' primary contention is that Proposition 8 fails the qualitative test of *Amador Valley* and *McFadden*. They argue that the measure accomplishes "far reaching changes in the nature of our basic governmental plan," by altering our court system and our system of public education. (See *Amador Valley, supra*, 22 Cal.3d at p. 223.)

Sections of Proposition 8 do make significant substantive changes across an extensive range of subjects, but these changes relate primarily to matters which previously had been covered by statute and were not a part of the Constitution. For example, the so-called "Truth-in-Evidence" provision would appear to alter by implication many of this state's evidentiary rules. (See Prop. 8, § 3, subd. (d).) However, most of these rules are statutory or have been developed over the years in the common law. Since petitioners have not argued that Proposition 8's

changes with respect to constitutionally based rules of evidence are a revision of the Constitution, that issue is not considered here.

Petitioners contend that Proposition 8 will prevent the judiciary from processing civil cases, in violation of article VI, section 1. That section vests the "judicial power of this State . . . in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." The argument is advanced that Proposition 8 will create such an enormous backlog of *criminal* cases that "for all practical purposes, . . . the judiciary [will be precluded] from performing their [*sic*] constitutional obligation to decide . . . civil matters."

This backlog of criminal cases will be caused, it is said, by the enactment of the Penal Code provisions which (1) limit plea bargaining (Pen. Code, § 1192.7; Prop. 8, § 7), (2) require that victims have the opportunity to attend sentencing proceedings in misdemeanor cases (Pen. Code, § 1191.1; Prop. 8, § 6, subd. (a)), and (3) enable prosecutors to obtain longer sentences for defendants by bringing and trying charges separately (Pen. Code, § 667; Prop. 8, § 5).

Petitioners also foresee serious consequences for our system of public education as a result of the provisions in Proposition 8 regarding the right to "safe, secure and peaceful" schools. (Art. I, § 28, subds. (a), (c); Prop. 8, § 3.) They argue that with budgets already trimmed, "the schools will have little choice but to curtail instruction" in order to comply with the newly imposed duty to provide "safe, secure and peaceful" campuses. This contraction of educational services would amount to a substantial impairment of the fundamental constitutional right to education, they contend. (See art. IX, § 1; *Serrano* v. *Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241].)

These predictions may well be accurate, but they do not justify the legal conclusion that Proposition 8 amounts to a constitutional revision, rather than an amendment, under the present state of the case law. (See *Amador Valley, supra*, 22 Cal.3d at pp. 223-224.)

Moreover, each argument is premised on assumptions concerning matters that are outside the four corners of the initiative measure itself, i.e., that there will be insufficient resources to cope with the changes mandated therein. No hard facts have been produced. This court has been and should continue to be reluctant to declare an initiative measure to be a revision based solely on speculation as to its fiscal effect.

Initiative measures frequently have an impact on the public fisc, and hence on matters of constitutional concern. (Cf. *Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, 144 [130 Cal.Rptr. 465, 550 P.2d 1001].) If that reason alone were sufficient to deem a measure to be a revision—and forbidden by article XVIII—then the power to improve our laws through the initiative process would be stringently curtailed.

There is, however, a serious problem presented by the manner in which the draftsmen of Proposition 8 attempted to alter the Constitution. Article XVIII sets forth the *exclusive* means by which the California Constitution may be amended or revised. The *sine qua non* of these provisions is that the voice of the citizens must be heard. Regardless of how the process is initiated, *every* constitutional amendment or revision must be submitted to a vote of the people.

Proposition 8 created a new section of the Constitution which contains direct reference to a specific statutory provision of the Penal Code. Subdivision (e) of section 28 of article I forbids release on his or her own recognizance of any person charged with the commission of any "serious felony," as defined in subdivision (g). In turn, subdivision (g) defines that term solely by reference to the list of "serious felonies" found in Penal Code section 1192.7, subdivision (c). In this manner the contents of this statute are imported into the Constitution.

Statutes, of course, may generally be amended by the Legislature without the necessity of referral to, and approval by, the people. However, the Constitution has established special rules for amending statutes (like § 1192.7) that are created by the initiative process. (See art. II, § 10, subd. (c).) When amending this type of statute, the Legislature must seek the people's approval unless the measure initially passed by the voters specifically authorized amendment without the need for such approval.

That is precisely the situation in the present case. The draftsmen of Proposition 8 explicitly provided a mechanism by which the Legislature, by a two-thirds vote and without the people's participation, can amend section 1192.7 and its list of enumerated "serious felonies" (Pen. Code, § 1192.7, subd. (d)). Such an arrangement ostensibly may be in keeping with the requirements of subdivision (c) of section 10 of article II. However, due to the unusual manner in which the draftsmen have linked statute to Constitution, legislative amendments to section 1192.7 would affect far more than the statutory law of this state. They would

alter the Constitution itself by changing the scope of the constitutional provisions into which they had previously been incorporated.

The flaw in this scheme is evident. It deprives the people of this state of their paramount role in approving or rejecting changes in their Constitution. In effect, it revises the Constitution by creating a method by which that document may be altered *without the participation of the electors*. As such, it represents an attempt by the draftsmen to fundamentally reorder the distribution of power between the Legislature and the citizens of this state.

It could be argued that if rules of statutory construction were applied to the context of the Constitution, the constitutionality of incorporating the specified Penal Code provision into section 28 might be upheld. It has been held that "where a *statute* adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified .... [Citations omitted.]" (*Palermo* v. *Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 58-59 [195 P.2d 1], italics added.) It might be argued that this statutory rule should apply to a constitutional amendment. (Cf. *State School Bldg. Fin. Com.* v. *Betts* (1963) 216 Cal.App.2d 685, 692 [31 Cal.Rptr. 258].)

Subdivisions (e) and (g) of section 28 thus would be read as having incorporated the specified code provisions "in the form in which they exist[ed]" at the time of the passage of Proposition 8. Subsequent legislative modifications of these provisions would be ignored. As such, it would be contended that section 28 would not amount to a revision of the Constitution because future legislative amendment of Penal Code section 1192.7 would have no effect on subdivisions (e) and (g) of that provision.

This interpretation, however, ignores the fact that the draftsmen of Proposition 8 created a scheme expressly authorizing the Legislature, acting *alone*, to alter the provisions of Penal Code section 1192.7.

By incorporating the provisions of Penal Code section 1192.7, subdivision (c) into the Constitution and by providing in subdivision (d) of that section a mechanism for *legislative* amendment of the provisions of subdivision (c), the draftsmen clearly intended to empower the Legisla-

ture to modify the Constitution without ever referring such action to the electorate for approval.

In the face of such explicit evidence of the draftsmen's intent, the rule enunciated in *Palermo* is not applicable. Statutory construction is an effective means by which courts may resolve ambiguities created by the wording or grammatical construction of statutes. Here, however, there is no ambiguity. The rules of construction will not save a measure which is clearly and unambiguously unconstitutional, one which impermissibly reallocates power from the people of this state to the Legislature.

The draftsmen of Proposition 8 created a mechanism by which the Legislature can transmute a statutory modification into a constitutional amendment.

With one wave of the wand, this act of electoral alchemy revised the Constitution by devising a means of altering that document without the citizens' participation. Such a change, which strikes at the very essence of our form of government and the power of the people, violates article XVIII's prohibition against constitutional revision by initiative.

III.

CONCLUSION

The wisdom of the policies which the draftsmen of Proposition 8 sought to implement is not at issue in this case. I take no position on those policies for that is for the people to decide.

I have great respect for the will of the people. The sovereign power is theirs, and they have chosen to express that power through the Constitution which they, in their wisdom, saw fit to establish. *Respect for the Constitution is the truest measure of a justice's respect for the people. The Constitution speaks for the people, and as long as its voice remains strong, the voice of the people will not be muffled.*

I would give voice to the provisions the people have placed in their Constitution to ensure that initiative measures truly express their will. The Constitution sets forth the basic requirements for drafting a proper initiative measure. These requirements are simple and straightforward. They are there to protect the people, not from themselves but from un-

skilled, careless, or guileful draftsmen. When those rules are violated, this court must not look the other way, however easy and popular such a course of conduct might be at a given moment.

The majority opinion implies that the passage of a proposition somehow creates a conclusive presumption in favor of its constitutionality. Such a view sadly mistakes the role of this court. It is *not* our duty to certify the results of elections; that is the role of the Secretary of State. It *is* our duty to let the Constitution speak for the people so that their will may be given its fullest and truest expression.

What is essentially at issue here is the improper manner in which the *draftsmen* of Proposition 8 used the initiative process to achieve their goals.

The people of this state have no voice—either directly through the exercise of their franchise or indirectly through their elected representatives—in the formulation or drafting of proposals presented to them by initiative. Thus, the people have seen fit to establish specific constitutional safeguards to ensure that when initiatives are submitted to them, the outcome will be "the expression of the *true will* of the people." (See *Canon* v. *Justice Court* (1964) 61 Cal.2d 446, 453 [39 Cal.Rptr. 228, 393 P.2d 428], italics added.)

The people have entrusted to the courts the responsibility for preserving the integrity of the initiative process. In exercising that responsibility, this court must ensure that no initiative is enacted by means of the creation of false majorities, the presentation of deceptive or misleading proposals, or the imposition of forced electoral compromises.

Proposition 8, as drafted and presented to the voters of this state in June of 1982, violated virtually every one of these fundamental rules with its "multifarious" provisions.

The draftsmen presented the voters with a false bill of goods. They called the initiative the "Victims' Bill of Rights" when in truth the victims of crime *lost* many rights. Rape victims are just one graphic example of the draftsmen's deceptive packaging of this initiative. In fact, the draftsmen of Proposition 8 have allowed victims of crime themselves to be placed on trial. Under Proposition 8, basic protections that previously limited the scope of cross-examination of crime victims were repealed.

The single-subject rule is the constitutional equivalent of a truth-in-advertising requirement for the draftsmen of initiatives. When the contents of the package are disguised by its wrapping, the people are denied the Constitution's protection. That is exactly what happened here.

By presenting the voters with an all-or-nothing choice involving a large number of disparate and complex matters, the draftsmen of this initiative violated the single-subject rule of article II, section 8, subdivision (d).

Moreover, by failing to inform the voters either about the changes they were making in the current law of this state or about the scope of the law they sought to impose in the future, the draftsmen violated the constitutional requirement of full disclosure found in article IV, section 9.

Finally, by depriving the people of this state of their paramount role in approving or rejecting changes in their Constitution and by impermissibly transferring power from the people to the Legislature, the draftsmen of Proposition 8 have attempted to alter the fundamental distribution of power between the people and their elected representatives. They have thereby violated the prohibition against constitutional revision by initiative.

Our constitutional duty as the highest court in this state is to reassert the people's quintessential role in the initiative process and to reaffirm the vitality of the constitutional safeguards designed to protect the integrity of that process. Sadly, a majority of this court has today turned its back on fulfilling that difficult but essential obligation.

The late commentator Elmer Davis once remarked that "the republic was not established by cowards, and cowards will not preserve us." His words apply equally well to the Constitution.

MOSK, J.—I dissent.

A bare majority of this court have rejected fundamentals of constitutional law that have consistently guided this state in the conduct of its affairs. In lieu of those basic principles, four justices now declare that initiative promoters may obtain signatures for any proposal, however radical in concept and effect, and if they can persuade 51 percent of

those who vote at an ensuing election to say "aye," the measure becomes law regardless of how patently it may offend constitutional limitations.

The new rule is that the fleeting whims of public opinion and prejudice are controlling over specific constitutional provisions. This seriously denigrates the Constitution as the foundation upon which our governmental structure is based.

James Madison, in the Federalist Papers (No. LXXVIII), wrote, inter alia, "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It, therefore, belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body [or the people acting in 'a legislative capacity]."

Crime is indeed a serious problem of society. But it must be approached with determination and intelligence, not by destruction of the values that have made this the greatest nation on earth. A thoughtful political observer (Tom Wicker in the New York Times) has written: "It is a good thing that neither the Bill of Rights nor the Magna Carta is the pending business of [legislative bodies] these days . . . . [I]n the present mood of political panic and myopia, it would undoubtedly be voted down as a needless restraint in the war on crime." In the same vein, Chief Justice Warren spoke about "straws in the wind" that worried him, and "which cause some thoughtful people to ask whether ratification of the Bill of Rights could be obtained today if we were faced squarely with the issue." (Katcher, Earl Warren (1967) p. 332.)

It is not unduly dramatic to suggest that proponents of this initiative have yielded to "panic and myopia" in what they describe as a "war on crime." In submitting to the same fears, four justices by a stroke of their pen have obliterated a section of the California Constitution in deference to what they charitably describe as "the extremely broad sweep of this legislation."

Article II, section 8, subdivision (d), is now virtually a dead letter. If an initiative that adds seven separate subdivisions to the Constitution, repeals one section of the Constitution, adds five new sections to the Penal Code and three more sections to the Welfare and Institutions Code, can be held to contain "one subject," then any combination of topics un-

der the rubric of "general welfare" or "pursuit of happiness" can be deemed one subject. If the 12 separate subjects enumerated by the Attorney General in his ballot title of the measure can be determined to be merely one subject, then Orwellian logic has become the current mode of constitutional interpretation.

In sum, I adhere to the views on the one-subject rule expressed in my dissent in *Brosnahan* v. *Eu* (1982) 31 Cal.3d 1, 5-14 [181 Cal.Rptr. 100, 641 P.2d 200]. I conclude that Proposition 8 fails to meet the provisions of article II, section 8, subdivision (d), of the Constitution under either the "reasonably germane" test of *Evans* v. *Superior Court* (1932) 215 Cal. 58 [8 P.2d 46], or the "functionally related" test proposed by the late Justice Manuel in *Schmitz* v. *Younger* (1978) 21 Cal.3d 90 [145 Cal.Rptr. 517, 577 P.2d 652] and endorsed by this court in *Amador Valley Joint Union High School Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208 [149 Cal.Rptr. 239, 583 P.2d 1281].

Constitutional principles, wrote Chief Justice Warren, "are the rules of government." (*Trop* v. *Dulles* (1957) 356 U.S. 86, 103 [2 L.Ed.2d 630, 644, 78 S.Ct. 590].) And, added Justice Jackson, "the great purposes of the Constitution do not depend on the approval or convenience of those they restrain." (*Everson* v. *Bd. of Education* (1947) 330 U.S. 1, 28 [91 L.Ed. 711, 729-730, 67 S.Ct. 504, 168 A.L.R. 1392].) Chief Justice Wright also said it well: "A democratic government must do more than serve the immediate needs of a majority of its constituency —it must respect the 'enduring general values' of the society. Somehow, a democracy must tenaciously cling to its long-term concepts of justice regardless of the vacillating feelings experienced by a majority of the electorate." (Wright, *The Role of Judiciary* (1972) 60 Cal.L.Rev. 1262, 1267.)

The Goddess of Justice is wearing a black arm-band today, as she weeps for the Constitution of California.

Broussard, J., concurred.

The application of petitioners Brosnahan and Raven for a rehearing was denied October 13, 1982. Bird, C. J., and Broussard, J., were of the opinion that the application should be granted.

[Sept. 1982]

APPENDIX

CRIMINAL JUSTICE—INITIATIVE STATUTES AND CONSTITUTIONAL AMENDMENT

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly repeals and adds existing provisions of the Constitution, and adds provisions to the Penal Code and the Welfare and Institutions Code; therefore, provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SEC. 1. This amendment shall be known as "The Victims' Bill of Rights".

SEC. 2. Section 12 of Article I of the Constitution is repealed.

~~SEC. 12. A person shall be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required.~~

~~A person may be released on his or her own recognizance in the court's discretion.~~

SEC. 3. Section 28 is added to Article I of the Constitution, to read:

SEC. 28. (a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruptions of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall thereafter be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

SEC. 4. *Diminished Capacity; Insanity.* Section 25 is added to the Penal Code, to read:

25. (a) The defense of diminished capacity is hereby abolished. In a criminal action, or any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged.

(b) In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.

(c) Notwithstanding the foregoing, evidence of diminished capacity or of a mental disorder may be considered by the court only at the time of sentencing or other disposition or commitment.

(d) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 5. *Habitual Criminals.* Section 667 is added to the Penal Code, to read:

667. (a) Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(b) This section shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this section to apply.

(c) The Legislature may increase the length of the enhancement of sentence provided in this section by a statute passed by majority vote of each house thereof.

(d) As used in this section "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 6. *Victim's Statements; Public Safety Determination.*

(a) Section 1191.1 is added to the Penal Code, to read:

1191.1 The victim of any crime, or the next of kin of the victim the victim has died, has the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

The victim or next of kin has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consid

[Sept. 1982]

Propositions 8—Text—Continued

the statements of victims and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(b) Section 3043 is added to the Penal Code, to read:

3043. Upon request, notice of any hearing to review or consider the parole eligibility or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(c) Section 1767 is added to the Welfare and Institutions Code, to read:

1767. Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 608 shall be sent by the Youthful Offender Parole Board at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole. The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 7. *Limitation of Plea Bargaining.* Section 1192.7 is added to the Penal Code, to read:

1192.7 (a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of a residence; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (25) any attempt to commit a crime listed in this subdivision other than an assault.

(d) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 8. *Sentencing.* Section 1731.5 is added to the Welfare and Institutions Code, to read:

1731.5. Notwithstanding any other provision of law, no person convicted of murder, rape or any other serious felony, as defined in Section 1192.7 of the Penal Code, committed when he or she was 18 years of age or older shall be committed to Youth Authority.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 9. *Mentally Disordered Sex Offenders.* Section 6331 is added to the Welfare and Institutions Code, to read:

6331. This article shall become inoperative the day after the election at which the electors adopt this section, except that the article shall continue to apply in all respects to those already committed under its provisions.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 10. If any section, party, clause, or phrase of this measure or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

8 Criminal Justice—Initiative Statutes and Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

CRIMINAL JUSTICE. INITIATIVE STATUTES AND CONSTITUTIONAL AMENDMENT. Amends Constitution and enacts several statutes concerning procedural treatment, sentencing, release, and other matters for accused and convicted persons. Includes provisions regarding restitution to victims from persons convicted of crimes, right to safe schools, exclusion of relevant evidence, bail, use of prior felony convictions for impeachment purposes or sentence enhancement, abolishing defense of diminished capacity, use of evidence regarding mental disorder, proof of insanity, notification and appearance of victims at sentencing and parole hearings, restricting plea bargaining, Youth Authority commitments, and other matters. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: As the fiscal effect would depend on many factors that cannot be predicted, the net fiscal effect of this measure cannot be determined with any degree of certainty. However, approval of the measure would result in major state and local costs. The measure could: increase local administration costs; increase state administrative costs; increase claims against the state and local governments relating to enforcement of the right to safe schools; increase school security costs to provide safe schools; increase the cost of operating county jails by increasing the jail populations; increase court costs; and increase the cost of operating the state's prison system by increasing the prison population (estimated to be about $47 million increased annual prison operating costs and $280 million prison construction costs based on various assumptions)

Analysis by the Legislative Analyst

Background:

The California criminal justice system is governed by the State Constitution, by statutes enacted by the Legislature and the people, and by court rulings.

Under the criminal justice system, persons convicted of *misdemeanors* may be fined or sentenced to a county jail term, or both. Those convicted of *felonies* may be fined in some cases, sentenced to state prison, or (if they were under 21 years of age at the time they were apprehended) committed to the Youth Authority, or both fined and imprisoned. For some crimes, a person may receive "probation" in lieu of a prison sentence or a fine.

Proposal:

This initiative proposes many changes in the State Constitution and statutory law that would alter criminal justice procedures and punishments and constitutional rights. The major changes are summarized below.

Restitution. Under existing law, victims of crime are not automatically entitled to receive "restitution" from the person convicted of the crime. (Restitution would involve, for example, replacement of stolen or damaged property, or reimbursement for costs that the victim incurred as a result of the crime.) In some cases, however, the courts release a convicted person on probation, on the condition that restitution be provided to the victim or victims.

This measure would grant crime victims who suffer losses a constitutional right to receive restitution. Except in unusual cases, convicted persons would be required to make restitution to all of their victims who suffer losses. The extent to which restitution would be made would depend on how many convicted persons have or acquire sufficient assets to make restitution.

The Legislature would be responsible for adopting laws to implement this section of the measure.

Safe Schools. The Constitution currently provides that all people have the inalienable right of "pursuing and obtaining safety, happiness, and privacy." In addition, statutory law prohibits various acts upon school grounds which disturb the peace of students or staff, or which disrupt the peaceful conduct of school activities. This measure would add a section to the State Constitution declaring that students and staff of public elementary and secondary schools have the "inalienable right to attend campuses which are safe, secure, and peaceful."

Evidence. Under current law, certain evidence is not permitted to be presented in a criminal trial or hearing. For example, evidence obtained through unlawful eavesdropping or wiretapping, or through unlawful searches of persons or property, cannot be used in court. This measure generally would allow most relevant evidence to be presented in criminal cases, subject to such exceptions as the Legislature may in the future enact by a two-thirds vote. The measure could not affect *federal* restrictions on the use of evidence.

Bail. Under the State Constitution and statutory law, the courts generally must release on bail all persons accused of committing a crime, while they await trial. The courts may deny bail *only* for those who are accused of felonies punishable by death if the court determines that the proof of guilt is evident or the presumption of guilt is great.

In fixing the amount of bail, courts are required by statute to consider the seriousness of the offense with which the person is charged, the defendant's previous criminal record and the probability that the defendant will appear at the trial or hearings of the case. The State Constitution prohibits courts from setting "excessive" bail.

The courts also may allow those accused of commit-

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Proposition 8—Analysis—Continued

ting a crime to be released without bail upon their written promise to appear in court when required. The failure to appear in court as promised can result in additional criminal charges being filed against the accused.

Court decisions have held that the purpose of bail is to assure that the defendant will appear in court to stand trial, rather than to protect the public's safety.

This measure would amend the State Constitution to give the courts discretion in deciding whether to grant bail. It would, however, continue the prohibition on bail in felony cases punishable by death when the proof of guilt is evident or the presumption of guilt is great.

In addition, the measure would add to the State Constitution a provision requiring the courts—in fixing, reducing, or denying bail or permitting release without bail—to consider the same factors that they now are required by statute to consider in fixing the amount of bail. It would also make protection of the public's safety the primary consideration in bail determinations. Moreover, the measure would prohibit the courts from releasing without bail persons charged with certain felonies.

Finally, the measure would require the court to state for the record its reasons for deciding to (a) grant or deny bail or (b) release an accused person without bail.

Prior Convictions. The measure would amend the State Constitution to require that information about prior felony convictions be used without limitation to discredit the testimony of a witness, including that of a defendant. Under current law, such information may be used only under limited circumstances.

Longer Prison Terms. Under existing law, a prison sentence can be increased from what it otherwise would be by from one to ten years, depending on the crime, if the convicted person has served prior prison terms, and a life sentence can be given to certain repeat offenders. Convictions resulting in probation or commitment to the Youth Authority generally are not considered for the purpose of increasing sentences, and there are certain limitations on the overall length of sentences.

This measure includes two provisions that would increase prison sentences for persons convicted of specified felonies. First, upon a second or subsequent conviction for one of these felonies, the defendant could receive, on top of his or her sentence, an *additional* five-year prison term for each such prior conviction, regardless of the sentence imposed for the prior conviction. This provision would not apply in cases where other provisions of law would result in even longer prison terms. Second, any prior felony conviction could be used without limitation in calculating longer prison terms.

Defenses of Diminished Capacity and Insanity. The measure would prohibit the use of evidence concerning a defendant's intoxication, trauma, mental illness, disease, or defect for the purpose of proving or contesting whether a defendant had a certain state of mind in connection with the commission of a crime. Legislation enacted in 1981 significantly limited use of this type of evidence.

This measure would provide that in order to be found not guilty by reason of insanity a defendant must prove that he or she (1) was incapable of knowing or understanding the nature and quality of his or her actions and (2) was incapable of distinguishing right from wrong at the time of the crime. These provisions could increase the difficulty of proving that a person is not guilty by reason of insanity.

If this measure is approved, evidence of diminished mental capacity or a mental disorder could be considered at the time of sentencing.

Victim Statements. Under existing law, statements of victims or next of kin are requested for various reports which are submitted to the court. In many cases, parole boards are not required to notify victims or next of kin about hearings.

This measure would require that the victims of any crimes, or the next of kin of the victims if the victims have died, be notified of (1) the sentencing hearing and (2) any parole hearing (if they so request) involving persons sentenced to state prison or the Youth Authority. During the hearings, the victim, next of kin, or his or her attorney would have the right to make statements to the court or hearing board. In addition, this measure would require the court or hearing board to state whether the convicted person would pose a threat to public safety if he or she were released on probation or parole.

Plea Bargaining. The measure would place restrictions on plea bargaining in cases involving specified felonies and offenses of driving while under the influence of an intoxicating substance. "Plea bargaining" is a term used to describe situations in which the defendant agrees to plead guilty in exchange for a reduced charge or sentence.

Exclusion of Certain Persons from Sentencing to the Youth Authority. Under current law, persons who commit certain sex crimes at the age of 18 years or older and some other youthful offenders are not sent to the Youth Authority. This measure would prohibit sending to the Youth Authority persons who were 18 years of

age or older at the time they committed murder, rape, or other specified felonies. As a result, they would be sentenced to state prison or local jails, or receive probation.

Mentally Disordered Sex Offenders. This measure contains a provision which would have changed the law concerning the treatment of certain sex offenders. However, legislation enacted in 1981 achieved the same purpose. Consequently, this provision has no effect.

Fiscal Effect

The net fiscal effect of this measure cannot be determined with any degree of certainty. This is because the fiscal effect would depend on many factors that cannot be predicted. Specifically, it would depend on:

- how various provisions are implemented by the Legislature, local governments, and school districts,
- how the rights established by the measure are enforced by the courts,
- how many persons are incarcerated in state prison or detained in county jails for longer periods of time,
- how the various provisions affect criminal behavior (that is, to what extent the measure has a deterrent effect), and
- how the criminal justice system reacts to the measure.

We conclude, however, that approval of the measure would result in major state and local costs. This is because the measure, taken as a whole, could:

- increase local administration costs (for example, there would be a cost to implement the restitution procedures and to notify victims of sentencing hearings),
- increase state administrative costs (for example, there would be a cost to notify victims of parole hearings),
- increase claims against the state and local governments relating to enforcement of the right to safe schools,
- increase school security costs to provide safe schools,
- increase the cost of operating county jails by increasing the jail populations (for example, more persons accused of crimes could be denied bail in order to assure public safety and more persons could be detained in jail while awaiting trial due to the elimination of plea bargaining),
- increase court costs (for example, costs could increase due to more extensive bail hearings and the elimination of plea bargaining), and
- increase the cost of operating the state's prison system by increasing the prison population (for example, by increasing terms for certain repeat offenders). Based on various assumptions, the Department of Corrections estimates that the provisions that would result in longer prison terms for repeat offenders would lengthen the terms of at least 1,900 persons each year. The department states that this estimate may be low for several reasons. In addition, the measure's impact on conviction and sentencing trends and patterns cannot be predicted. As a result of these uncertainties, we cannot estimate how many persons would serve longer prison terms if this measure is approved. If, however, 1,900 persons per year were to receive the new sentences instead of the sentences provided under current law, annual state prison operating costs would increase by about $47 million (in 1982–83 prices) by the mid-1990s. This cost estimate assumes that the state's prison population would be about 3,600 higher than under existing law. In addition, the state might need to spend up to $230 million (in 1982 prices) to construct facilities to house these additional prisoners. The construction cost estimate assumes that existing standards for prisons would be followed when the new facilities were constructed, and that the custody levels (for example, maximum security) required for the additional inmates would match current housing patterns. To the extent that some of the additional prisoners could be housed by crowding existing facilities, both the estimated operating and construction costs could be reduced.

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8 Criminal Justice—Initiative Statutes and Constitutional Amendment

Arguments in Favor of Proposition 8

It is time for the people to take decisive action against violent crime. For too long our courts and the professional politicians in Sacramento have demonstrated more concern with the rights of criminals than with the rights of innocent victims. This trend must be reversed. By voting "yes" on the Victims' Bill of Rights you will restore balance to the rules governing the use of evidence against criminals, you will limit the ability of violent criminals to hide behind the insanity defense, and you will give us a tool to stop extremely dangerous offenders from being released on bail to commit more violent crimes. Your action is as vital and necessary today as it was in 1978 when I urged Californians to take property taxes into their own hands and pass Proposition 13. If you believe as I do that the first responsibility of our criminal justice system is to protect the innocent, then I urge you to vote "yes" on Proposition 8.

MIKE CURB
Lieutenant Governor

Crime has increased to an absolutely intolerable level.

While criminals murder, rape, rob and steal, victims must install new locks, bolts, bars and alarm systems in their homes and businesses. Many buy tear gas and guns for self-protection. FREE PEOPLE SHOULD NOT HAVE TO LIVE IN FEAR.

Yet, higher courts of this state have created additional rights for the criminally accused and placed more restrictions on law enforcement officers. This proposition will overcome some of the adverse decisions by our higher courts.

THIS MEASURE CREATES RIGHTS FOR THE VICTIMS OF VIOLENT CRIMES. It enacts new laws that those of us in law enforcement have sought from the Legislature without success.

While there are more people going to state prison than there were three years ago, only 6.5 percent of those persons *arrested* for felonies are sent to state prison. Of those *convicted* of felonies, one-third go to state prison and the remaining two-thirds are back in the community in a relatively short period of time.

THERE IS ABSOLUTELY NO QUESTION THAT THE PASSAGE OF THIS PROPOSITION WILL RESULT IN MORE CRIMINAL CONVICTIONS, MORE CRIMINALS BEING SENTENCED TO STATE PRISON, AND MORE PROTECTION FOR THE LAW-ABIDING CITIZENRY.

IF YOU FAVOR INCREASED PUBLIC SAFETY, VOTE YES ON PROPOSITION 8.

GEORGE DEUKMEJIAN
Attorney General

Why is it that the Legislature doesn't start getting serious about a problem until we, the people, go out and qualify an initiative?

Four years ago it was Proposition 13, which I coauthored, to cut skyrocketing property taxes.

A year later we had to go to the initiative process to place a lid on government spending. That effort, the Gann Spending Limitation Initiative, was carried with a landslide 79 percent of the vote.

Today it is the forgotten victims of violent crime that the Legislature has so callously ignored. Again, it is up to the people to bring about reasonable and meaningful reform.

Your "YES" vote on Proposition 8 will restore victims' rights and help bring violent crime under control.

PAUL GANN
Proponent, Victims' Bill of Rights

Rebuttal to Argument in Favor of Proposition 8

WHY DON'T THE POLITICIANS SUPPORTING PROPOSITION 8 TELL YOU WHAT IT REALLY DOES? Look closely at their arguments. They are simply political slogans and anticrime propaganda.

Every responsible citizen opposes crime, but we should also be very HESITANT to make *RADICAL* changes in our Constitution.

Yet Proposition 8 does just that . . . it needlessly reduces your personal liberties . . . and clearly harms true efforts to fight crime.

CONSIDER THESE EFFECTS OF PROPOSITION 8:

Takes away everyone's right to bail. (Compare Proposition 4, which targets only violent felons.)

Allows strip searches of minor traffic offenders.

Condones the use of wiretapping and seizure of your telephone and credit records without a warrant.

Permits spying on you in a public restroom.

Either Proposition 8 takes away your rights, or it is unconstitutional . . . in which case valid *criminal convictions will be thrown out.*

The other reason they say nothing specific is that MUCH OF PROPOSITION 8 IS ALREADY LAW. These laws:

Send mentally disordered sex offenders to prison.

Eliminate the diminished capacity defense.

Provide life sentences for habitual criminals.

Guarantee victim input.

Place controls on plea bargaining.

Restrict bail for violent felons (Proposition 4).

Proposition 8 will *undermine these new laws* by imposing its confusing language on top of clear, well-thought-out reforms.

Proposition 8 is the kind of abuse of the initiative process by political candidates which should be condemned. If you care about your privacy . . . and especially if you care about effective, responsible law enforcement . . . VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. BODEN
District Attorney, Santa Barbara County

TERRY COGGIN
Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency

[Sept. 1982]

Criminal Justice—Initiative Statutes and Constitutional Amendment 8

Argument Against Proposition 8

You're afraid of crime—and you have the right to be.

If Proposition 8 would end crime, we would be the first to urge you to vote for it.

But Proposition 8 is a hoax . . . there is no other way to describe it.

Some ambitious politicians may think this ill-conceived measure helps them. It will certainly help keep an army of appellate lawyers fully employed . . .

But it will not reduce crime, help victims, or get dangerous criminals off the streets.

As professionals, charged with the responsibility of controlling crime and prosecuting criminals . . . we ask YOU to PLEASE VOTE NO on PROPOSITION 8.

Proposition 8 is so badly written *it mangles* nearly every aspect of the criminal justice system it touches.

READ the PROBLEMS it will cause:

UNCONSTITUTIONAL INITIATIVE TAKES CONVICTED KILLERS OFF DEATH ROW

Even some of Proposition 8's supporters agree it may be unconstitutional. But unconstitutional laws cause sentences to be overturned. Thirty convicted killers were recently taken off death row because of one unconstitutional line in the 1978 Death Penalty Initiative.

CONVICTING PEOPLE LIKE THE "FREEWAY KILLER" NEARLY IMPOSSIBLE

Proposition 8 seeks to stop plea bargaining. Its wording, however, would take away law enforcement's ability to negotiate with criminals to get them to testify against each other . . . This is how the "Freeway Killer" was convicted. It is how law enforcement fights organized crime and gang violence.

FREES DEFENSE LAWYERS TO SMEAR POLICE WHO TESTIFY IN COURT

Under current law, a defense lawyer cannot attack the character of a police witness. If Proposition 8 passes he could.

REQUIRES MILLIONS OF DOLLARS IN NEW COURT PROCEDURES—BUT NO MONEY TO PAY FOR THEM

Look at the cost of Proposition 8 at the top of this measure. Why is it so expensive?

A major share is for extra court hearings and elaborate new red tape in every criminal case—most of which are misdemeanors. This will require more courts, judges, clerks, and probation officers.

Proposition 8 does not provide one cent to pay for these things.

COURTS IN CHARGE OF PUBLIC SCHOOLS

Nobody knows what the so-called "safe schools" section means. The likely result of this provision is constant court battles over compliance. This will no doubt lead to judges running some of our schools. It also could give children the constitutional right to refuse to attend school.

VICTIM RESTITUTION—A MEANINGLESS PROMISE

What good is a right to restitution when so many victims are harmed by criminals who can't pay? (Ever been hit by an uninsured motorist?) Besides, victims already have the right to collect from criminals who can pay.

PROPOSITION 8—A POLITICAL PLOY

As professionals, we know our criminal justice system needs carefully written, tough, constitutional laws and procedures.

Proposition 8 is none of these. It makes it harder to convict criminals, will lead to endless appeals, and will create chaos in the legal system.

It may be good politics, but it is bad law.

PLEASE, VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. RODEN
District Attorney, Santa Barbara County

TERRY GOGGIN
Member of the Assembly, 65th District
Chairman, Committee on Criminal Justice

Rebuttal to Argument Against Proposition 8

LAW ENFORCEMENT SUPPORTS PROPOSITION 8

Proposition 8 has been endorsed by more than 250 police chiefs, sheriffs and district attorneys. It has the support of more than 30,000 rank-and-file police officers.

Senior Assistant Attorney General George Nicholson, a chief architect of the Victims' Bill of Rights and a former murder prosecutor, has called Proposition 8 "the most effective anticrime program ever proposed to help the forgotten victims of crime."

ANTICRIME LEGISLATIVE LEADERS SUPPORT PROPOSITION 8

Proposition 8 coauthor Assemblywoman Carol Hallett says, "A generation of victims have been ignored by our Legislature, thanks to the Assembly Criminal Justice Committee. Proposition 8 takes the handcuffs off the police and puts them on the criminals, where they belong."

THE PEOPLE SUPPORT PROPOSITION 8

Throughout California, hundreds of thousands of your fellow citizens carried and signed petitions to place this vital initiative on the ballot. Many of these people have lost family members or are themselves victims of crime.

But they are not only victims of crime, they are victims of our criminal justice system—the liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent.

It's time to restore justice to the system.

VOTE YES FOR VICTIMS' RIGHTS.

VOTE YES ON PROPOSITION 8

PAUL GANN
Proponent, Victims' Bill of Rights

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency

[Sept. 1982]

ATTACHMENT "3"

Unger v. Superior Court (Marin County Democratic Central Com.) (1980)

102 Cal.App.3d 681; 162 Cal.Rptr. 611

[Civ. No. 47927. First Dist., Div. Two. Feb. 27, 1980.]

SAMUEL UNGER, Petitioner, v.
THE SUPERIOR COURT OF MARIN COUNTY, Respondent;
MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE, Real Party in Interest.

SUMMARY

A candidate for election as a member of the governing board of a community college district sought review by extraordinary writ of the dismissal of his mandamus petition seeking to enjoin a county central committee of a political party from indorsing or supporting candidates for the nonpartisan office on the ground the committee's activities violated Cal. Const., art. II, § 6, providing that judicial, school, county and city offices shall be nonpartisan.

The Court of Appeal denied relief on the ground the election had already taken place, but held that the explicit and unqualified language of Cal. Const., art. II, § 6, prohibits a political party and, in particular, a county central committee of a political party, from indorsing, supporting, or opposing a candidate for the office of governing member of the board of a community college district, a nonpartisan school office within the meaning of the constitutional provision, in any election. The court held the prohibition did not infringe on freedom of speech or association, or the right of suffrage. (Opinion by Miller, J., with Taylor, P. J., and Rouse, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Constitutional Law § 7—Operation and Effect—Mandatory, Directory, and Self-executing Provisions.**—Cal. Const., art. I, § 26, providing that constitutional provisions are "mandatory and pro-

hibitory, unless by express words they are declared to be otherwise," applies to all sections of the Constitution alike and is binding on all branches of the state government, including courts, in their construction of the provisions of Cal. Const., art. II, § 6, which provide that judicial, school, county and city offices shall be nonpartisan.

(2) **Elections § 1—Nonpartisan Offices—Constitutional Prohibition.**—The explicit and unqualified language of Cal. Const., art. II, § 6, providing that judicial, school, county and city offices shall be nonpartisan, prohibits a political party and, in particular, a county central committee of a political party, from indorsing, supporting, or opposing a candidate for the office of member of the governing board of a community college district, a nonpartisan school office within the meaning of the constitutional provision, in any election. Such prohibition does not infringe on freedom of speech or association, or restrict the right of suffrage. The provisions of Cal. Const., art. II, § 6, are self-executing, and will be given effect without implementing legislation. Legislative inaction cannot qualify constitutional provisions capable of self-execution whose language adequately sets forth the rule through which the duty imposed may be enforced. Moreover, the constitutional grant constitutes a restraint on the law-making powers of the state, and legislative enactments contrary to its provisions are void.

[See **Cal.Jur.3d**, Elections, § 118; **Am.Jur.2d**, Election, 117.]

(3) **State of California § 10—Attorney General—Opinions.**—Although opinions of the Attorney General, who is charged with the duty to enforce the law, are entitled to great weight, they are not controlling as to the meaning of a constitutional provision or statute.

COUNSEL

Lynn S. Carman for Petitioner.

No appearance for Respondent.

Herbert G. Hawkins and Hawkins & Petersen for Real Party in Interest.

[Feb. 1980]

OPINION

MILLER, J.—In this extraordinary writ proceeding, we consider whether article II, section 6 of the California Constitution prohibits a county central committee of a political party from indorsing, supporting or opposing a candidate for a school office.

Article II, section 6 of the California Constitution provides: "Judicial, school, county, and city offices shall be nonpartisan."

The salient facts are undisputed. Petitioner Samuel Unger is a resident and registered voter of the County of Marin and was a duly qualified candidate on the ballot for election as a member of the governing board of the Marin Community College District at the November 6, 1979, election. On or about September 1, 1979, real party in interest Marin County Democratic Central Committee, a county central committee created pursuant to Elections Code section 8820 et seq., invited all registered Democrats who were candidates for the governing board of the district to attend a September 6, 1979, meeting of the county central committee to seek the indorsement of the county central committee for the office and to apply for financial assistance.[1] Petitioner neither attended the meeting nor sought the endorsement or assistance of the county central committee. On September 6, 1979, the county central committee did in fact indorse four registered Democrats (out of six registered Democrats, four registered Republicans and three registered Independents) for the vacancies on the governing board to be filled at the November 6, 1979, election. The county central committee subsequently sent letters to unsuccessful applicants, publicly announced the indorsement of the four candidates, and planned to make "small" financial contributions to the candidates it had indorsed.

On September 12, 1979, petitioner filed a verified petition in respondent court seeking relief by mandate or by injunction to enjoin the county central committee from indorsing or supporting candidates for the nonpartisan office of member of the governing board of the district in the forthcoming November election and in all future elections for such nonpartisan office on the ground that the county central commit-

[1]Section 8500 et seq. of the Elections Code contains provisions governing the organization, operation, and functions of that political party known as the Democratic Party of California. Similar provisions exist for the Republican Party of California (§ 9000 et seq.), the American Independent Party of California (§ 9600 et seq.), and the Peace and Freedom Party of California (§ 9750 et seq.).

tee's activities violated article II, section 6 of the California Constitution and section 37 of the Elections Code.[2] Petitioner alleged that the conduct of the county central committee was causing great and irreparable injury to him in his capacity as resident, registered voter and candidate for the governing board of the district, an injury which was continuing and for which he had no plain, adequate or speedy remedy other than in the proceeding instituted by him.

On September 27, 1979, respondent court sustained a demurrer to the action without leave to amend and ordered that the action be dismissed.[3] Although the order of dismissal is a final judgment (Code Civ. Proc., § 581d) which is appealable (Code Civ. Proc., § 904.1), petitioner sought review by extraordinary writ, contending that appeal was not an adequate remedy in that he needed relief prior to the November 6, 1979, election. The issue of the absence of an adequate remedy in the ordinary course of law has been determined by the Supreme Court in its order directing the issuance of an alternative writ of mandate to be heard before this court. (*Brown* v. *Superior Court* (1971) 5 Cal.3d 509, 515 [96 Cal.Rptr. 584, 487 P.2d 1224].)

In its return to the alternative writ, real party does not deny that it had engaged in the conduct objected to by petitioner; real party contends that its conduct was in conformance with accepted practice which it believed to be proper. Real party has submitted declarations attesting to the fact that the county central committees have been openly indorsing and supporting candidates for nonpartisan office for many years. The declarations show that the practice is widespread in the San Francisco Bay Area.[4]

[2]Section 37 of the Elections Code provides: "'Nonpartisan office' means an office for which no party may nominate a candidate. Judicial, school, county and municipal offices are nonpartisan offices."

[3]The demurrer was based on two grounds: (1) that the complaint did not state a cause of action, and (2) that the complaint was uncertain.

[4]The declaration of Agar Jaicks, chairman of the Democratic Central Committee for the City and County of San Francisco, avers that the San Francisco central committee has been indorsing and actively supporting candidates for the nonpartisan offices of mayor, board of supervisor, board of education, community college board and judge since 1967. The declaration of Sal Bianco, chairman of the Santa Clara County Democratic Central Committee, avers that the Santa Clara County central committee has been indorsing candidates for nonpartisan offices since 1972. The declaration of Mary Warren, chairperson of the Alameda County Democratic Central Committee, avers that over the past 5 years the Alameda County central committee has indorsed at least

Before examining the provisions of article II, section 6 of the Constitution (added to the Const. as § 5 in 1972 and renumbered § 6 in 1976), we note that the Constitution furnishes a rule for its own construction. (1) That rule, unchanged since its enactment in 1879, is that constitutional provisions are "mandatory and prohibitory, unless by express words they are declared to be otherwise." (Art. I, § 26, Cal. Const.)[5] The rule applies to all sections of the Constitution alike and is binding upon all branches of the state government, including this court, in its construction of the provisions of article II, section 6. (*State Board of Education* v. *Levit* (1959) 52 Cal.2d 441, 460-461 [343 P.2d 8].)

Section 26 of article I "'not only commands that its provisions shall be obeyed, but that disobedience of them is prohibited. Under the stress of this rule, it is the duty of this court to give effect to every clause and word of the constitution, and to take care that it shall not be frittered away by subtle or refined or ingenious speculation. The people use plain language in their organic law to express their intent in language which cannot be misunderstood, and *we must hold that they meant what they said.*'...[Citation.]" (*State Board of Education* v. *Levit, supra*, at p. 460, italics added.)

Applying the foregoing rule of construction, the language of the constitutional provision is plain, explicit and free from ambiguity. "There is no necessity or opportunity to resort to judicial construction to ascertain its meaning. When the facts in any particular case come within its provisions it is the duty of the court to apply and enforce it." (*French* v. *Jordan* (1946) 28 Cal.2d 765, 767 [172 P.2d 46].)

It cannot be denied that the office for which petitioner was a candidate was a "school" office within the meaning of the constitutional provision. "Nonpartisan" is defined as "not affiliated with or committed to the support of a particular political party: politically independent... viewing matters or policies without party bias...held or organized with all party designations or emblems absent from the ballot.... composed, appointed, or elected without regard to the political party affiliations of members..." (Webster's New Internat. Dict. (3d ed. 1965).)

100 candidates for the nonpartisan offices of supervisor, city council member, school board member and judge.

[5]Present section 26 of article I appeared as section 22 thereof in the Constitution of 1879. It was repealed and readopted, as section 28 but otherwise unchanged, by vote of the people on November 5, 1974; on June 8, 1976, it was renumbered as section 26.

(2) In light of the foregoing, we hold that the explicit and unqualified language of article II, section 6 prohibits a political party and, in particular, a county central committee of a political party, from indorsing, supporting, or opposing a candidate for the office of governing member of the board of a community college district, a nonpartisan school office within the meaning of the constitutional provision, in any election.[6]

Real party acknowledges that it is prohibited by the "Truth in Endorsements Law" (Elec. Code, § 11700 et seq.) from indorsing, supporting, or opposing any candidate for nomination for partisan office in the direct primary election, but suggests that if the doctrine of *expressio unius est exclusio alterius* is applied, section 11702 constitutes the sole limitation upon its activities, and that it may participate in nonpartisan elections.[7]

We do not agree. Former article II, section 2-1/2, in which the "Truth in Endorsements Law" finds its genesis, expressly empowered the Legislature to regulate the manner in which political parties could participate in the direct primary election. (*Cal. Democratic Council* v. *Arnebergh* (1965) 233 Cal.App.2d 425 [43 Cal.Rptr. 531].)[8] Reasonable regulation pursuant to such a constitutional grant in order to prevent evils which formerly had been prevalent does not infringe on freedom of speech or association guaranteed by the federal and state Constitutions (*Cal. Democratic Council* v. *Arnebergh, supra*, at p. 429; petn. for hg. den.; app. dism. for want of a substantial federal question, 382 U.S. 202 [15 L.Ed.2d 269, 86 S.Ct. 395]), nor does such regulation, even to the extent that it excludes parties and individuals from

[6]Section 19 of the Elections Code provides that "'Election' means any election, including a primary which is provided for under the provisions of this code."

[7]Section 11702 of the Elections Code provides: "The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." Any registered voter may apply to the superior court for a restraining order or injunction in the event of a violation of this chapter. (Elec. Code, § 11706.)

[8]In 1963, at the time the "Truth in Endorsements Law" was enacted, former article II, section 2-1/2 provided that "[t]he legislature shall have the power . . . to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in any . . . primary election." Former article II, section 2-1/2 was repealed November 7, 1972, and superseded by article II, section 5 which provides in relevant part, "[t]he Legislature shall provide for primary elections for partisan offices . . . ."

participating in primary elections under certain conditions, restrict the constitutional right of suffrage. (*Communist Party* v. *Peek* (1942) 20 Cal.2d 536, 544-545 [127 P.2d 889].)[9]

In a nonpartisan election, "the party system is not an integral part of the elective machinery and the individual's right of suffrage is in no way impaired by the fact that he cannot exercise his right through a party organization." (*Communist Party* v. *Peek, supra*, at p. 544.) The evils of partisanship in certain offices are well illustrated in *Moon* v. *Halverson* (1939) 206 Minn. 331 [288 N.W. 579, 581-582, 125 A.L.R. 1041] (conc. opn. of Loring, J.). No constitutional provision was at issue in *Moon*; here, by constitutional command, the People have directed that certain offices *shall* be nonpartisan. The provisions of article II, section 6, unlike the provisions of former article II, section 2-1/2, are self-executing; these provisions will be given effect without implementing legislation. (*Chesney* v. *Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *Taylor* v. *Madigan* (1975) 53 Cal.App.3d 943, 950-952 [126 Cal.Rptr. 376].)[10] Although the Legislature may enact legislation to implement a self-executing provision of the Constitution (*Chesney* v. *Byram, supra*, at p. 463), "'"[i]t is not and will not be questioned but that . . . it is not within the legislative power, either by its silence or by direct enactment, to modify, curtail or abridge this constitutional grant." [Citations.]'" (*Flood* v. *Riggs* (1978) 80 Cal.App.3d 138, 154 [145 Cal.Rptr. 573].)

Legislative inaction can in no manner qualify constitutional provisions capable of self-execution whose language adequately sets forth the rule through which the duty imposed may be enforced. (*Flood* v. *Riggs, supra*, at p. 155.) Moreover, the constitutional grant constitutes a restraint upon the law-making powers of the state, and legislative enactments contrary to its provisions are void. (*Sail'er Inn., Inc.* v. *Kirby* (1971) 5 Cal.3d 1, 8 [95 Cal.Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351].)

[9]Real party has acknowledged that it is bound by section 11702 of the Elections Code (*ante*, at p. 686, and fn. 7), which is not here under attack (see *People* v. *Crutcher* (1968) 262 Cal.App.2d 750, 752-753 [68 Cal.Rptr. 904], but see *Abrams* v. *Reno* (S.D.Fla. 1978) 452 F.Supp. 1166, a decision of a lower federal court by which this court is not bound (*People* v. *Bradley* (1969) 1 Cal.3d 80, 86 [81 Cal.Rptr. 457, 460 P.2d 129])).

[10]A constitutional provision may be said to be self-executing "if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced." (*Chesney* v. *Byram, supra*, at p. 462; *Taylor* v. *Madigan, supra*, at p. 950, fn. 3.)

We also disapprove the opinion of the Attorney General relied upon by real party (59 Ops.Cal.Atty.Gen. 60 (1976)) to the extent that it is inconsistent with the constitutional mandate herein expressed. (3) Although opinions of the Attorney General, who is charged with the duty to enforce the law, are entitled to great weight, the opinions of the Attorney General are not controlling as to the meaning of a constitutional provision or statute. (*Smith* v. *Municipal Court* (1959) 167 Cal.App.2d 534, 539 [334 P.2d 931].)

Because this case poses a question which is of broad public interest, is likely to recur, and should receive uniform resolution throughout the state, we have undertaken to resolve the issue raised by petitioner even though an event occurring during its pendency would normally render the matter moot. (*Zeilenga* v. *Nelson* (1971) 4 Cal.3d 716, 719-720 [94 Cal.Rptr. 602, 484 P.2d 578].) Although we have concluded that petitioner's complaint stated a proper cause against the demurrer, it is obvious that by reason of the election of November 6, 1979, having taken place, this court cannot grant the relief sought by petitioner (*Kagan* v. *Kearney* (1978) 85 Cal.App.3d 1010, 1014 [149 Cal.Rptr. 867]; *Gold* v. *Los Angeles Democratic League* (1975) 49 Cal.App.3d 365, 372 [122 Cal.Rptr. 732]), and we deem it unlikely that real party, having been apprised of this decision, will repeat the conduct which precipitated this proceeding.

The alternative writ, having served its purpose, is discharged, and the peremptory writ is denied. All other relief sought by petitioner is denied.

Taylor, P. J., and Rouse, J., concurred.

A petition for a rehearing was denied March 28, 1980, and the opinion was modified to read as printed above. Petitioner's application for a hearing by the Supreme Court was denied May 22, 1980. Mosk, J., and Newman, J., were of the opinion that the application should be granted.

ATTACHMENT "4"

Porten v. University of San Francisco (1976)

64 Cal.App.3d 825; 134 Cal.Rptr. 839

[Civ. No. 38930. First Dist., Div. Four. Dec. 14, 1976.]

MARVIN L. PORTEN, Plaintiff and Appellant, v. UNIVERSITY OF SAN FRANCISCO, Defendant and Respondent.

SUMMARY

The trial court dismissed a cause of action after a demurrer to the complaint was sustained without leave to amend. The complaint sought damages against an in-state university arising out of the university's claimed misconduct in disclosing to the State Scholarship and Loan Commission the grades plaintiff had earned at an out-of-state university before transferring to the local university. (Superior Court of the City and County of San Francisco, No. 689956, Charles S. Peery, Judge.)

The Court of Appeal reversed with directions to overrule the general demurrer. The court held that, while the complaint did not state a cause of action for the public disclosure of private facts about plaintiff, the communication not being to the public in general, the complaint did state a cause of action under Cal. Const., art. I, § 1, as amended in 1972, to protect the right to privacy. The court declared that elevation of the right to be free from invasions of privacy to constitutional stature was apparently intended to expand the right and to give a cause of action for the improper use of information, properly obtained for a specific purpose, for another purpose, or the disclosure of the information to a third party. (Opinion by Christian, J., with Caldecott, P. J., and Rattigan, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Privacy § 8—Actions—Pleading—Public Disclosure of Private Facts.**—The tort of public disclosure of private facts about plaintiff requires communication to the public in general or to a large number of persons, as distinguished from communication to one individual or to a few. The interest to be protected is individual freedom from the wrongful publicizing of private affairs and activities that are outside the relm of legitimate public concern. Hence, a complaint seeking damages against a university in this state arising out of the university's claimed misconduct in disclosing to the State Scholarship and Loan Commission the grades plaintiff had earned at an out-of-state university before transferring to the university does not state a cause of action for the public disclosure of private facts.

[See **Cal.Jur.3d**, Assault and Other Wilful Torts, § 119; **Am. Jur.2d**, Privacy, §§ 26, 42.]

(2) **Privacy § 3—Nature and Extent of Right—Constitutional Provision.**—Elevation of the right to be free from invasions of privacy to constitutional stature, by amendment of Cal. Const., art. I, § 1, apparently was intended to expand the right of privacy.

(3) **Privacy § 3—Nature and Extent of Right—Constitutional Provision as Self-executing.**—The constitutional right to privacy contained in Cal. Const., art. I, § 1, is self-executing and confers a right of action on all Californians for invasions of privacy, not merely by the state, but by anyone.

(4) **Privacy § 8—Actions—Pleading—Improper Use of Information Obtained for Specific Purpose.**—A complaint seeking damages against a local university arising out of the university's claimed misconduct in disclosing to the State Scholarship and Loan Commission the grades plaintiff had earned at an out-of-state university before transferring to the local university adequately stated a cause of action for invasion of privacy under Cal. Const., art. I, § 1.

(5) **Pleading § 15—Construction—On Appeal—As Abandoning Theory of Complaint.**—The policy of the law is to construe pleadings liberally to the end that cases will be tried on their merits, rather than be disposed of on technicalities of pleadings. Thus, plaintiff's complaint was not defective because the legal theory was first labeled by him "breach of confidential relationship," where it stated a cause of action for an asserted "invasion of privacy" by a local university, in disclosing to a scholarship commission the grades plaintiff had earned at an out-of-state university.

COUNSEL

Marvin L. Porten, in pro. per., for Plaintiff and Appellant.

Low, Ball & Lynch and David R. Vogl for Defendant and Respondent.

OPINION

CHRISTIAN, J.—Marvin L. Porten appeals from a judgment of dismissal rendered after a demurrer to his complaint was sustained without leave to amend. Appellant's complaint prayed damages against respondent University of San Francisco arising out of the university's claimed misconduct in disclosing to the State Scholarship and Loan Commission the grades appellant had earned at Columbia University before transferring to the University of San Francisco. Appellant alleged that he had sought and received assurances from the university that his Columbia grades would be used only for the purpose of evaluating his application for admission, that they would be kept confidential and that they would not be disclosed to third parties without appellant's authorization. It is also alleged that the State Scholarship and Loan Commission did not ask the university to send appellant's Columbia University transcript and that the commission did not have a need for that transcript.

Respondent's demurrer is to be treated as admitting the truthfulness of all properly pleaded factual allegations of the complaint, but not contentions, deductions or conclusions of fact or law. (See *White* v. *Davis*

(1975) 13 Cal.3d 757, 765 [120 Cal.Rptr. 94, 533 P.2d 222]; *Serrano* v. *Priest* (1971) 5 Cal.3d 584, 591 [96 Cal.Rptr. 601, 487 P.2d 1241]; *Daar* v. *Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) The legal effect of the facts alleged in the complaint is a question of law. (*Hendrickson* v. *California Newspapers, Inc.* (1975) 48 Cal.App.3d 59, 61 [121 Cal.Rptr. 429]; Code Civ. Proc., § 589.)

According to Prosser, the courts have recognized four distinct forms of tortious invasion of privacy: (1) the commercial appropriation of the plaintiff's name or likeness (codified in California in 1971 in Civ. Code, § 3344, subd. (a)); (2) intrusion upon the plaintiff's physical solitude or seclusion; (3) publicity which places the plaintiff in a false light in the public eye; and (4) public disclosure of true, embarrassing private facts about the plaintiff. (Prosser, Torts (4th ed.) § 117, pp. 804-814; see also *Johnson* v. *Harcourt, Brace, Jovanovich, Inc.* (1974) 43 Cal.App.3d 880, 887 [118 Cal.Rptr. 370].)

In discussing the right of privacy as it relates to the public disclosure of private facts, Prosser states: "Some limits of this branch of the right of privacy appear to be fairly well marked out. The disclosure of the private facts must be a public disclosure, and not a private one; there must be, in other words, publicity." (Prosser, Torts, *supra*, § 117, p. 810.) (1) Except in cases of physical intrusion, the tort must be accompanied by publicity in the sense of communication to the public in general or to a large number of persons as distinguished from one individual or a few. (*Schwartz* v. *Thiele* (1966) 242 Cal.App.2d 799, 805 [51 Cal.Rptr. 767].) The gravamen of the tort is unwarranted publication of intimate details of plaintiff's private life. (*Coverstone* v. *Davies* (1952) 38 Cal.2d 315, 322, 323 [239 P.2d 876]; *Schwartz* v. *Thiele, supra*, 242 Cal.App.2d at p. 805.) The interest to be protected is individual freedom from the wrongful publicizing of private affairs and activities which are outside the realm of legitimate public concern. (See *Coverstone* v. *Davies, supra*, 38 Cal.2d at p. 323; *Stryker* v. *Republic Pictures Corp.* (1951) 108 Cal.App.2d 191, 194 [238 P.2d 670].)

In this case, the university's disclosure of the Columbia transcript to the Scholarship and Loan Commission was not a communication to the public in general or to a large number of persons as distinguished from a communication to an individual or a few persons. Therefore, the university is correct in its contention that appellant's complaint fails to

state a cause of action based on the so-called "public disclosure of private facts" branch of the tort of invasion of privacy.

Appellant argues however that his complaint states a cause of action under the privacy provision added to the state Constitution in 1972. Section 1 of article I of the California Constitution provides:

"[*Inalienable Rights*]

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, *and privacy.*" (Italics added.)

The new language was first construed by the California Supreme Court in *White* v. *Davis, supra,* 13 Cal.3d 757: "the full contours of the new constitutional provision have as yet not even tentatively been sketched, . . ." (*White* v. *Davis, supra,* at p. 773; see also *Valley Bank of Nevada* v. *Superior Court* (1975) 15 Cal.3d 652, 656 [125 Cal.Rptr. 553, 542 P.2d 977].)

(2) The elevation of the right to be free from invasions of privacy to constitutional stature was apparently intended to be an expansion of the privacy right. The election brochure argument states: "The right to privacy is much more than 'unnecessary wordage.' It is fundamental to any free society. Privacy is not now guaranteed by our State Constitution. This simple amendment *will extend various court decisions* on privacy to insure protection of our basic rights." (Cal. Ballot Pamp. (1972) p. 28.)[1] (Italics added.)

(3) The constitutional provision is self-executing; hence, it confers a judicial right of action on all Californians. (*White* v. *Davis, supra,* 13 Cal.3d at p. 775.) Privacy is protected not merely against state action; it is considered an inalienable right which may not be violated by anyone.[2]

[1]In *White* v. *Davis*, the California Supreme Court pointed to the election brochure argument as the only legislative history available in construing the constitutional amendment. In footnote 11 at page 775, the court stated: "California decisions have long recognized the propriety of resorting to such election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people. (See, e.g., *Carter* v. *Com. on Qualifications, etc.* (1939) 14 Cal.2d 179, 185 [93 P.2d 140]; *Beneficial Loan Society, Ltd.* v. *Haight* (1932) 215 Cal. 506, 515 [11 P.2d 857]; *Story* v. *Richardson* (1921) 186 Cal. 162, 165-166 [198 P. 1057, 18 A.L.R. 750]; *In re Quinn* (1973) 35 Cal.App.3d 473, 483-486 [110 Cal.Rptr. 881].)"

[2]The language of the election brochure argument refers to "*effective restraints on the information activities of government and business.*" (Cal. Ballot Pamp. (1972) p. 26.)

(See *Annenberg* v. *Southern Cal. Dist. Council of Laborers* (1974) 38 Cal.App.3d 637 [113 Cal.Rptr. 519]; 26 Hastings L.J. 481, 504, fn. 138 (1974).)

The California Supreme Court has stated that the privacy provision is directed at four principal "mischiefs": "(1) 'government snooping' and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records." (*White* v. *Davis, supra,* 13 Cal.3d at p. 775.) The *White* case concerned the use of police undercover agents to monitor class discussions at a state university. In ruling on the sufficiency of a complaint challenging the legality of such a practice, the Supreme Court found that a cause of action had been stated on the basis that the practice threatened freedom of speech and association and abridged the students' and teachers' constitutional right of privacy. The *White* court noted that the police surveillance operation challenged there epitomized the kind of governmental conduct which the new constitutional amendment condemns. (See *White* v. *Davis, supra,* 13 Cal.3d at p. 775.)

Appellant's complaint obviously involves a far different factual situation from that before the court in *White*; appellant contends that the allegedly unauthorized transmittal of his Columbia University transcript to the State Scholarship and Loan Commission falls within the proscribed third "mischief"—"the improper use of information properly obtained for a specific purpose, *for example, the use of it for another purpose or the disclosure of it to some third party.*" (*White* v. *Davis, supra,* 13 Cal.3d 757, 775.) (Italics added.)

It should be noted that former section 22504.5[3] of the Education Code (in effect during the events in issue here) provided:

"§ 22504.5.

"No teacher, official, employee, or governing board member of any public or private community college, college, or university shall permit access to any written records concerning any particular pupil enrolled in

[3](Repealed by Stats. 1975, ch. 816, § 5.)

the school in any class to any person except under judicial process unless the person is one of the following:

"(a) Either parent or a guardian of such pupil.

"(b) A person designated, in writing, by such pupil if he is an adult, or by either parent or a guardian of such pupil if he is a minor.

"(c) An officer or employee of a public, private, or parochial school where the pupil attends, has attended, or intends to enroll.

"(d) An officer or employee of the United States, the State of California, or a city, city and county, or county seeking information in the course of his duties.

"(e) An officer or employee of a public or private guidance or welfare agency of which the pupil is a client.

"Restrictions imposed by this section are not intended to interfere with the preparation and distribution of community college, college and university student directories or with the furnishing of lists of names, addresses, and telephone numbers of community college, college and university students to proprietors of off-campus housing. Such restrictions are not intended to interfere with the giving of information by school personnel concerning participation in athletics and other school activities, the winning of scholastic or other honors and awards, and other like information.

"Notwithstanding the restriction imposed by this section, a governing board may, in its discretion, provide information to the staff of a college, university, or educational research and development organization or laboratory if such information is necessary to a research project or study conducted, sponsored, or approved by the college, university, or educational research and development organization or laboratory and if no pupil will be identified by name in the information submitted for research. Notwithstanding the restrictions imposed by this section an employer or potential employer of the pupil may be furnished the age and scholastic record of the pupil and employment recommendations

prepared by members of the school staff."[4] Moreover, recently enacted federal and state statutes recognize a right of privacy in student records. (See 20 U.S.C.A. § 1232g (Family Educational Rights and Privacy Act of 1974); see also Ed. Code, §§ 25430-25430.18.)[5]

(4) In view of the foregoing considerations and the broad language of the California Supreme Court in *White* to the effect that the new constitutional provision protecting privacy is aimed at curbing "the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party," the allegations of appellant's complaint, which for present purposes must be deemed true,[6] state a prima facie violation of the state constitutional right of privacy. At trial, of course, the university may contest any of the allegations of the complaint as well as show some compelling public interest justifying the transmittal of the Columbia transcript to the commission. (See *White* v. *Davis, supra,* 13 Cal.3d at p. 775; see also *Loder* v. *Municipal Court* (1976) 17 Cal.3d 859 [132 Cal.Rptr. 464, 553 P.2d 624]; 64 Cal.L.Rev. 347, 352 (1976).)[7]

[4]Subdivision (d) of former section 22504.5 of the Education Code provides that colleges shall permit access to student records to officers or employees of the State of California seeking information in the course of their duties. It cannot be determined from the record on appeal whether an officer or employee of the State Scholarship and Loan Commission, in the proper course of his duties, sought Porten's complete undergraduate transcript. If this were shown to be the case, as seems possible, appellant's invasion of privacy action might well be disposed of upon a motion for summary judgment.

[5]This new legislation permits access to student records without student consent when given to agencies or organizations in connection with a student's application for, or receipt of, financial aid. (See 20 U.S.C.A. § 1232g, subd. (b)(1)(D); see also Ed. Code, § 25430.15, subd. (b)(3).)

[6]It should be noted that former section 31243 of the Education Code (which was in effect during the events leading to this action but was repealed by Stats. 1975, ch. 1270, § 5) provided that the State Scholarship and Loan Commission "*may* take into account such factors as the following:

"

"(b) Grades in the total undergraduate program." (Italics added.) However, appellant's complaint, here accepted as true, alleges that: "27. The California State Scholarship and Loan Commission did not request that defendant send to it plaintiff's Columbia University transcript, nor did said Commission have a need for plaintiff's Columbia University transcript."

[7]The election brochure argument states: "This right should be abridged only when there is compelling public need. Some information may remain as designated public records but only when the availability of such information is clearly in the public interest.

"

"The right to privacy will not destroy welfare nor undermine any important government program. It is limited by 'compelling public necessity' and the public's need to know." (Cal. Ballot Pamp. (1972) p. 28.)

(5) The university contends that the appeal is defective because appellant has abandoned the theory of his complaint. Appellant's legal theory was first labeled by him "breach of confidential relationship." Although the complaint may not be a model pleading, the policy of the law is to construe pleadings liberally to the end that cases will be tried on their merits rather than disposed of on technicalities of pleadings. (*Taylor* v. *S & M Lamp Co.* (1961) 190 Cal.App.2d 700, 703 [12 Cal.Rptr. 323]; Code Civ. Proc., § 452.) Mistaken labels and confusion of legal theory are not fatal; if appellant's complaint states a cause of action on any theory, he is entitled to introduce evidence thereon. (See *Barquis* v. *Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103 [101 Cal.Rptr. 745, 496 P.2d 817]; *Lacy* v. *Laurentide Finance Corp.* (1972) 28 Cal.App.3d 251, 256-257 [104 Cal.Rptr. 547]; *Taylor* v. *S & M Lamp Co., supra,* at pp. 704, 712.) An action cannot be defeated merely because it is not properly named. (*Taylor* v. *S & M Lamp Co., supra,* at p. 712.)

The judgment is reversed with directions to overrule the general demurrer.

Caldecott, P. J., and Rattigan, J., concurred.

ATTACHMENT "5"

Laguna Publishing Co. v. Golden Rain Foundation (1982)

131 Cal.App.3d 816; 182 Cal.Rptr. 813

[Civ. No. 20650. Fourth Dist., Div. Two. May 18, 1982.]

LAGUNA PUBLISHING COMPANY, Plaintiff and Appellant, v. GOLDEN RAIN FOUNDATION OF LAGUNA HILLS, Defendant and Respondent.

SUMMARY

A newspaper publisher that had been prevented from making unsolicited distributions by private carrier of its giveaway newspaper in a private residential community filed a complaint against the corporation that owned the sidewalks, streets, and other common areas in the community and the publisher of another similar giveaway newspaper, in which it sought damages and an injunction against excluding its newspaper from the community. Plaintiff alleged it had been deprived by such exclusion of its constitutionally protected rights of freedom of speech and press and that it was entitled to damages by reason of the violation of Cal. Const., art. I, § 2, and under the federal Civil Rights Act (42 U.S.C. § 1983). It also alleged a cause of action under the Cartwright Act (Bus. & Prof. Code, § 16720) against defendants for their alleged conspiracy in restraint of trade in excluding plaintiff's newspaper from the community. After a trial by jury, judgment was entered against plaintiff. The jury also awarded defendant publisher compensatory and exemplary damages on its cross-complaint against plaintiff. (Superior Court of Orange County, No. 207112, Walter W. Charamza, Judge.)

The Court of Appeal reversed the judgment insofar as it denied plaintiff's application for an injunction with directions to enter judgment granting the application on terms and conditions set forth in the opinion. The court further directed the trial court, on due application of plaintiff, to try, with a jury if requested, the issue whether plaintiff suf-

fered any damages caused by its exclusion from the community in violation of its free speech and free press rights, and issues as to whether plaintiff was entitled to any damages under the Cartwright Act. The court struck, as unsupported by the evidence, a determination of the trial court to the effect that only owners or occupants of real property in the community or their invitees had been authorized to enter since the community's inception. The judgment on the cross-complaint was affirmed. The court held that the discriminatory action of defendant owner of the common areas in denying plaintiff distribution rights it had afforded for many years to defendant rival publisher was an unconstitutional deprivation of plaintiff's free speech and free press rights under Cal. Const., art. I, § 2. It further held that the trial court properly ruled that plaintiff had neither pleaded nor proved a right to damages under the federal Civil Rights Act. However, the court held that a direct right to sue for damages accruing from plaintiff's exclusion arose under Cal. Const., art. I, § 2, and that a predicate for recovery of such damages was provided by Civ. Code, §§ 1708, 3333, relating to noncontractual injuries and the measure of damages therefor. In conclusion, the court held plaintiff was entitled to consideration of its claims of conspiracy to unreasonably restrain trade or commerce in violation of Bus. & Prof. Code, § 16720, and damages arising therefrom. (Opinion by McDaniel, J., with Gardner, J.,* concurring. Separate concurring and dissenting opinion by Kaufman, Acting P. J.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Constitutional Law § 57—First Amendment and Other Fundamental Rights of Citizens—Scope and Nature—Freedom of the Press—Distribution of Newspapers in Private Residential Community.**—In an action by the publisher of a giveaway commercial newspaper against a corporation that owned all the streets, sidewalks, and other common areas of a private residential community and the publisher of another similar giveaway newspaper, in which plaintiff alleged that the conduct of defendant owner in preventing unsolicited carrier distribution of plaintiff's paper in the community infringed on its rights to free speech and freedom of the press,

*Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

the trial court erred in denying plaintiff an injunction against such conduct, where the record showed that for many years defendant owner had permitted defendant publisher to make unsolicited deliveries of its paper to residents of the community. Defendant owner, in the exercise of its private property rights, could choose to exclude all giveaway, unsolicited newspapers from the community. However, in view of the preferred status of the rights of free speech and free press existing under Cal. Const., art. I, § 2, it impermissibly discriminated against plaintiff, when, acting with the implicit sanction of the state's police power behind it, and without authority from the residents of the community, it excluded plaintiff from the community, after having chosen to permit defendant publisher to make unsolicited deliveries therein.

[See **Cal.Jur.3d**, Constitutional Law, § 247; **Am.Jur.2d**, Constitutional Law, § 520.]

(2) **Civil Rights § 8—Actions—Restrictions on Freedom of Press—Federal Civil Rights Act—Exclusion of Giveaway Newspaper From Private Residential Community.**—In an action by the publisher of a giveaway commercial newspaper against a corporation that owned all the streets, sidewalks, and other common areas of a private residential community and the publisher of another similar giveaway newspaper, in which plaintiff alleged that the conduct of defendant owner in preventing unsolicited carrier distribution of plaintiff's paper in the community infringed on its rights to free speech and freedom of the press, the trial court properly ruled that plaintiff neither pleaded nor proved a right to damages under 42 U.S.C. § 1983, which provides for recovery of damages against any person "who, under color of any statute, ordinance, regulation, custom or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States." There was no deprivation of any right, privilege, or immunity secured by the Constitution and laws of the United States. Though "state action" was present in plaintiff's exclusion, plaintiff established impermissible discrimination solely with reference to its free-speech, free-press rights secured under the California Constitution.

(3) **Constitutional Law § 55—First Amendment and Other Fundamental Rights of Citizens—Scope and Nature—Freedom of Speech and**

Expression—Abridgement—Right to Damages.—In an action by the publisher of a giveaway commercial newspaper against a corporation that owned all the streets, sidewalks, and other common areas of a private residential community and the publisher of another similar giveaway newspaper, in which plaintiff alleged that the conduct of defendant owner in preventing unsolicited carrier distribution of plaintiff's paper in the community infringed on its rights to free speech and freedom of the press, the trial court erred in foreclosing plaintiff's right to present evidence of damages it sustained as allegedly arising from the unconstitutional exclusion of its newspaper from the community. A direct right to sue for damages accruing from plaintiff's exclusion arose under Cal. Const., art. I, § 2. Furthermore, since the constitutional violation arose from plaintiff's discriminatory exclusion with the implicit sanction of state action behind such exclusion, a predicate for recovery of money damages was provided by Civ. Code, § 1708, which provides that "every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights," and the provision of Civ. Code, § 3333, that the measure of damages for a breach of an obligation not arising from contract is the amount which will compensate for all detriment proximately caused thereby.

(4) **Monopolies and Restraints of Trade § 10—Under Cartwright Act—Remedies of Individuals—Damages—Conspiracy to Discriminate Against Newspaper Publisher.**—In an action for damages by a newspaper publisher, prevented from unsolicited distribution by private carrier of its commercial, giveaway newspaper in a private residential community, against a rival newspaper and a corporation that owned all the streets, sidewalks, and other common areas in the community, in which the record established constitutionally impermissible discrimination in favor of the rival newspaper and against plaintiff, the trial court erred in ordering plaintiff not to advert in the jury's presence to any deprivation of its constitutional right to freedom of the press due to exclusion of its newspaper from the community. Moreover, the matter of the exclusion of the newspaper should have been considered by the jury under such instructions as would have enabled it to decide whether the exclusion was the result of conduct by defendants that constituted a combination of acts by two or more persons to unreasonably restrain trade or commerce in violation of the Cartwright Act (Bus. & Prof. Code, § 16720), and whether as the result of any such vio-

lation plaintiff received injuries to its business so as to be entitled to compensation in accordance with Bus. & Prof. Code, § 16750.

COUNSEL

W. Mike McCray for Plaintiff and Appellant.

Pacht, Ross, Warne, Bernhard & Sears, Michael D. Koomer, Scott Z. Zimmermann and Carol A. Schneiderman for Defendant and Respondent.

OPINION

McDANIEL, J.—In this case we decide that it violated the plaintiff's free-speech, free-press rights secured under article I, section 2 of the California Constitution when unsolicited, live-carrier delivery of plaintiff's giveaway newspaper was made the object of discriminatory exclusion from Rossmoor Leisure World by defendant Golden Rain Foundation of Laguna Hills. The extent to which plaintiff is entitled to damages, if any, beyond injunctive relief lifting such exclusion, must be resolved at a new trial of issues as later defined.

The action in the trial court was brought by Laguna Publishing Company (plaintiff) against assorted defendants after plaintiff's give-away newspaper, the Laguna News Post, was excluded by way of a denial of entry into Rossmoor Leisure World for unsolicited, free delivery to the residents of Leisure World, a private, residential, walled community where only resident-approved access is permitted through guarded security gates. The defendants named included Golden Rain Foundation of Laguna Hills (Golden Rain), the entity which finally decided to exclude plaintiff's newspaper from Leisure World, and which owns the streets, sidewalks, and other common areas within its boundaries for the benefit of its residents. Also named as a defendant was Golden West Publishing Corp. (Golden West), publisher of the Leisure World News, a give-away type newspaper which *is* and for years has been accorded the exclusive privilege of entry into Leisure World for free, unsolicited delivery to its residents.

The fourth amended complaint upon which the case went to trial, undertook to plead several theories of entitlement to relief. Plaintiff alleged that Golden Rain and Golden West had engaged in a conspiracy in restraint of trade, violative of the Cartwright Act, and that Golden West had also engaged in certain conduct against plaintiff violative of the Unfair Trade Practices Act.

For its part, Golden West cross-complained against plaintiff and its principal, Vernon R. Spitaleri, alleging the latter's violations of the Cartwright Act, the Unfair Trade Practices Act, in addition to other conduct allegedly amounting to unfair competition under the common law.

The respective claims noted were all tried to a jury which resolved the issues raised by the complaint against the plaintiff and resolved those raised by the cross-complaint in favor of Golden West. The latter was awarded $5,000 compensatory and $50,000 exemplary damages.

Otherwise, and of central importance here, the plaintiff asserted that the exclusion of its newspaper from Leisure World constituted a deprivation of its free speech and free press rights secured to it under either the federal or state Constitutions. Based on such assertion, plaintiff prayed for an injunction to lift such exclusion and for money damages either under the federal civil rights statute, 42 United States Code section 1983, or on the basis of a claimed "self-executing" modality under article I, section 2, of the California Constitution.

Procedurally, the manner in which the constitutional issues were presented and resolved was somewhat complex. Nine months before trial, the court granted a defense motion that certain issues of fact be deemed without substantial controversy. They are:

"1. Leisure World of Laguna Hills is a private residential housing project, consisting of dwelling units, streets, maintenance and, other facilities.

"2. All of the real property within Leisure World is privately owned and is used only for private purposes.

"3. Leisure World is not open to the general public.

"4. Entry into Leisure World is restricted to authorized persons who must pass through gates guarded by private security guards.

"5. Since the inception of Leisure World in 1964, only the owners or occupants of real property within Leisure World, or their invitees, have been authorized to enter Leisure World.[1]

"6. There are no business districts or commercial facilities or areas such as stores, shopping centers, office buildings, or the like within Leisure World, nor have there ever been any such districts, areas, or facilities therein.

"7. Beginning in late 1967, and continuing to date, plaintiff has been denied permission to enter Leisure World for the purpose of delivering its newspapers by carrier boy on an unrequested basis."

Item 8, argued as a part of such motion to the effect that exclusion of the Laguna News-Post from Leisure World did *not* violate plaintiff's constitutional rights, was excepted from the order granting the motion. However, the court did grant a later defense motion for an order that plaintiff refrain, in the presence of the jury, from making any reference to its claim of free speech abridgement.

The net legal effect of the later order was the same as if the court had sustained a general demurrer to plaintiff's theory of relief based upon a claimed violation of its constitutional rights of free speech and free press; hence, the jury trial of those issues arising under the respective allegations characterized as violations of the Cartwright Act and the Unfair Trade Practices Act proceeded without recognition of the claimed deprivation of plaintiff's constitutional rights.

After the jury brought in its verdict, the court, sitting in equity, took further evidence on plaintiff's application for an injunction and then denied such application. In support of that denial, it made extensive findings of fact and conclusions of law. In this connection, it is appropriate to observe, in terms of extrinsic, observable events, that there was little if any conflict in the evidence. The dispute between the parties lay

[1]All the evidence in the record is to the contrary, and so No. 5 above will be ordered stricken. The actual fact is that the Leisure World News was and at all times has been admitted to Leisure World without any expression of assent or invitation by any resident of Leisure World whatsoever.

in their divergent views of the legal consequences of those events which all agree happened, and so the findings add nothing to aid our decisional task in terms of the customary office fulfilled by findings of fact as part of a record on appeal. In other words, the constitutional issue, as defined hereinafter, is solely one of law with reference to which the jury verdict and the court's findings have no significance whatsoever. That legal issue derives from the order *in limine* which emasculated plaintiff's deprivation of constitutional rights theory.

The plaintiff and the cross-defendants appealed from the judgment, and, in the opinion filed in our initial effort to dispose of the appeal, we held that plaintiff was entitled to an injunction by the terms of which it would be accorded access to Leisure World on the same terms and conditions as those enjoyed by the Leisure World News. We held further that plaintiff was entitled to a limited new trial on those issues of fact arising from its exclusion, solely in light of state statutes proscribing conspiracies in restraint of trade, the same considered in light of plaintiff's unconstitutional exclusion from Leisure World. Otherwise, the judgment as it reflected the jury's verdict was affirmed.

Both defendants petitioned for rehearing. We granted those petitions; the matter was reargued and submitted for decision.

While the case was under submission, counsel for Golden West informed us that the appeal against it would soon be dismissed.[2] That has occurred, and so only Golden Rain continues to oppose the appeal.

In the opinion filed following the first rehearing, we reached the same result as the first time, i.e., reversing with directions: (1) to grant plaintiff's application for equitable relief; and (2) to conduct a further trial of the Cartwright Act issues in light of the unconstitutionality of plaintiff's exclusion from Leisure World. Both sides again petitioned for

[2]Our information supplied by counsel was that plaintiff had sold its newspaper to Media General, a publishing company which had previously purchased the assets of Golden West. In this connection, we were further informed by counsel for plaintiff that Laguna Publishing Company had nevertheless retained ownership of its causes of action against both Golden Rain and Golden West; however, we were further advised that Laguna Publishing Company, as a condition of the sale of its newspaper to Media General, was required to negotiate a settlement with Golden West.

Thereafter, we were informed that a settlement had been reached and that the superior court had confirmed it within the contemplations of sections 877 and 877.6 of the Code of Civil Procedure. Following those proceedings, the appeal as to Golden West was dismissed October 27, 1981.

rehearing, and both petitions were again granted. Thus, the matter is once more before us for disposition.

THE CONSTITUTIONAL ISSUE

I

The complexity of the procedures in the trial court by which the constitutional issue was presented and resolved has necessarily resulted in prolix assignments of error relative to that issue. The plaintiff contends that the trial court's ruling of December 5, 1977, which precluded it from arguing or in any way adverting in the presence of the jury to its claim of constitutional deprivation was improper because Golden Rain's exclusion of plaintiff's newspaper from Leisure World was tantamount to state action which operated to abridge plaintiff's rights of free speech and free press. This contention proceeds upon two theories under which the exclusion from Leisure World is characterized by plaintiff as impermissible state action: (1) Leisure World is the legal equivalent of a municipality under the "company town" cases; (2) Leisure World's development and construction were accomplished only as a consequence of federally guaranteed financing, with the result that its actions partake of a public quality.

In our view, it more simply frames the issue to ask, on the undisputed extrinsic facts presented by this record, if plaintiff's free speech and free press rights, secured under either the state or federal Constitutions, were abridged by the actions of Golden Rain in excluding plaintiff's employees from Leisure World and thereby preventing the unsolicited, live carrier distribution of plaintiff's newspaper, the Laguna News-Post, to the residences in Leisure World.

II

The trial court reserved its ruling on any right to an injunction until after the jury phase of the trial had been completed. That the trial court eventually denied plaintiff's application for an injunction, which would have forced Golden Rain to cease its exclusion of the Laguna News-Post from unsolicited, live carrier distribution within Leisure World, necessarily indicates that nothing which the trial court received in the way of evidence during the five-month, jury trial or during the additional period thereafter, during which it took evidence, operated in

its view to demonstrate any deprivation of plaintiff's constitutional rights.

This observation is confirmed by certain of the trial court's conclusions of law reached after promulgating 23 paragraphs of findings extending to over a dozen pages of the record. Such conclusions are: (a) "Plaintiff has no federal or state constitutional right to enter Leisure World of Laguna Hills to distribute its newspaper by carrier to occupants of dwelling units therein without any request or subscription therefor by such occupants"; (b) "Plaintiff has no federal or state constitutional right to enter Leisure World of Laguna Hills to distribute its newspapers by carrier to the occupants of dwelling units without any request or subscription therefor by such occupants when Golden Rain Foundation of Laguna Hills, acting within the scope of its authority, in behalf of its members, has denied Plaintiff permission to enter to make such distribution."

In our view, those conclusions are wrong insofar as the state Constitution is concerned. As a consequence, plaintiff is entitled to an injunction which will terminate its exclusion from Leisure World and thus enable it to distribute its newspaper there upon the same terms and conditions as the Leisure World News is now distributed therein,[3] subject nevertheless to such reasonable regulations as to time, place, and manner as Golden Rain may elect to adopt to regulate disposition of all newspapers within Leisure World.

III

What then are the facts which are material to the question of whether plaintiff's free speech and free press rights were abridged when it was excluded by Golden Rain from distributing its unsolicited, giveaway newspaper to the residences of Leisure World?

Before answering that question, we are constrained to observe again, despite the evidence presented to the court in the second, nonjury phase of the trial, following which extensive findings were made, that on the

[3]Following the filing of our initial opinion, it would not require much imagination to suppose that Golden Rain would undertake directly or would authorize others to solicit personally each residence in Leisure World for the purpose of obtaining something in writing from each, specifically requesting delivery of the Leisure World News to that residence. If this were done, the import of this decision would require that the same opportunity to solicit each residence in Leisure World be accorded to plaintiff.

constitutional issue *this is not an evidence case.* The material, extrinsic facts are not disputed. In effect, the trial court ruled as a matter of law, without the need to resolve any issues of fact, that no constitutional deprivation had occurred as a consequence of the exclusion of plaintiff's newspaper by Golden Rain from Leisure World.[4]

From this perspective, we shall recite the undisputed facts which provide the basis for our reversal. Our factual recitation of what we see to have been significant in reaching our decision, of course, starts with the several items settled nine months before trial as being without substantial controversy, with the exception of course of No. 5 which is wholly without any evidentiary support in the record.

Supplementing the six valid items noted, the record shows that the entire residential community of Leisure World, consisting of both condominiums and cooperative housing units, is comprised of roughly contiguous groups of residents sometimes referred to as "mutuals." These mutuals are also organized as nonprofit corporations and are responsible for the actual maintenance and preservation of the residential property within their respectively defined areas. As already noted, Golden Rain owns all the *common areas* within Leisure World, including the streets and sidewalks. As a consequence, Golden Rain is responsible for the maintenance and upkeep of these non-residential areas for the benefit of all the residents of Leisure World. *All residents of Leisure World are not members of Golden Rain.* Its members must apply for and be accepted for membership, such acceptance being subject to assuming certain financial obligations.

To accomplish their respective maintenance and upkeep objectives, both the mutuals and Golden Rain early on contracted with yet another legal entity to perform the actual work functions. From 1964 to the end of 1972 the entity with such contracts was the Leisure World Foundation (hereinafter LWF), and, since 1972, Professional Community Management, Inc.

[4]Because the determination of the constitutional issue is and always has been an issue of law, both in the trial court and before us, we have now reached a point of aggravated impatience with counsel for Golden Rain because of their dogged advocacy on this point as illustrated by a statement in the current petition for rehearing, namely, "The legal principles coined by the Court are constructed on the Court's own independent fact searching and drawing of inferences in derogation of established rules of appellate review. As a consequence, the Court has become an advocate for plaintiff." Such intemperate and wholly inaccurate assertions are of no aid to us in the task of trying to decide a difficult case.

Although not a prescribed part of its duties under its contract with Golden Rain, LWF, from the outset of its management of Leisure World, published and delivered, *unsolicited*, to each residence therein a community-type newspaper under the banner of the Leisure World News which Golden Rain has steadfastly described as a "house organ." LWF continued to do this until it sold the Leisure World News to defendant Golden West, initially incorporated as Birchall, Smith & Weiner, Inc., by the young men, who, as employees of LWF, had performed the functions necessary to get out the paper, including the sale of advertising.

During the beginning years of its publication by LWF, the Leisure World News was a losing effort financially. Some of the costs of printing and distributing the paper were defrayed by the sale of advertising, but in the earlier years of its publication the larger share of such costs was borne as a direct expense by LWF. As time passed, this direct expense was increasingly offset by advertising revenues, but even as late as 1967 the deficit for an operation which brought in $138,390 was still $6,055, reflecting expenses of $144,445.

In 1967, the two young men who had been hired by LWF to perform the task of putting out the Leisure World News discussed with Edward Olsen, president of LWF, the possibility, while continuing to work for LWF, of their being accorded permission by their employer to publish for their own account a so-called "shopper" for distribution to persons *outside* Leisure World.

Permission to launch the new venture was granted; thereupon Carlton Smith and Richard Birchall commenced publication of the News Advertiser for circulation outside Leisure World. Smith and Birchall were allowed to maintain an office for the News Advertiser in the same space provided them by LWF to enable them to perform their duties in putting out the Leisure World News. Advertising in the News Advertiser was sold to many of the same businesses as those who bought space in the Leisure World News. This advertising was sold at the same time by the same salesmen who represented the Leisure World News.

The consequence of this was that the Leisure World News defrayed and/or absorbed many of the expenses of Birchall, Smith & Weiner, Inc., the firm eventually organized to publish the "outside" publication which Smith and Birchall had been given permission by LWF to pub-

lish while they continued to work for LWF in space provided for them. Despite this increased overhead, the steadily increasing advertising revenue of the Leisure World News brought in a net for it in 1971 of $44,630 based on a gross of $318,616.

During this interval of time, i.e., from 1967 through 1971, the Leisure World News was delivered unsolicited to all residences within Leisure World by LWF with the full knowledge of and without any objection from Golden Rain. In addition, such deliveries were carried out with a tacit understanding with Golden Rain that no competing unsolicited, give-away newspaper could be distributed within Leisure World except by mail.[5]

As a consequence of the exclusive access accorded the Leisure World News by LWF, a meeting was arranged between publishers of three of the area's competing newspapers, including plaintiff, on the one side, and Edward Olsen of LWF on the other. The basic complaint voiced to Mr. Olsen was that Leisure World's management was subsidizing the News Advertiser, published by employees of LWF, while at the same time refusing to allow its competitors inside Leisure World except by mail. Olsen responded to such complaint by asserting that this policy of LWF had been adopted and was being followed to allow LWF to recoup the losses it had suffered during the earlier years in publishing the Leisure World News.[6]

[5]In the earlier petitions of both defendants for rehearing this statement of fact in our original opinion was challenged as unsupported by the record. Golden West argued that the jury's verdict and the court's findings are to the contrary, explicitly pointing out that the trial court found there was no conspiracy. That argument begs the question, for such finding is based on the previous legal determination of the court that no constitutional deprivation was involved in the exclusion of plaintiff's newspaper. In any case, the facts recited above do *not* necessarily describe a conspiracy.

[6]At the initial oral argument, Mr. Watson, appearing for Golden West, referred us to pages 31-35 of Golden West's petition for rehearing as demonstrating by citations to the record a refutation that Mr. Olsen had stated that the reason for the policy which excluded all give-away newspapers except the Leisure World News was to enable LWF to recoup the losses it had suffered in earlier years. We have with exacting particularity gone through the record cited by Mr. Watson, and otherwise, and can find nothing which *directly* contradicts the testimony of Mr. Moses at reporter's transcript volume XXIII, p. 5772, lines 9-14. Just because Mr. Olsen testified that he did not recall what was said 10 years earlier does not disprove the Moses testimony. Moreover, we must again point out that arguments about substantial evidence on this point are meaningless because the court had ruled *in limine* that no constitutional right had been abridged by excluding plaintiff's newspaper. Accordingly, the necessary starting point in any analysis of the constitutional issue is a hypothesis which must ignore any findings of fact as meaningless to this issue.

Beginning in 1972 there was a series of letters and other communications between Birchall, Smith & Weiner, Inc., on the one hand, and LWF on the other, the latter being represented by Edward Olsen, the president, and Otto Musch, an accountant. No good purpose would be served here to summarize all of the steps and the numerous communications utilized to develop a "record" in the corporate minutes of the two entities. It is enough to state that the end result was that Birchall, Smith & Weiner, Inc., purchased from LWF the Leisure World News for $48,000. This price was agreed to be paid at $1,000 per month for only so long as the buyer elected to continue with publication of the newspaper, or until the 48 monthly payments had been made.

Referring again to the net of $44,630 earned by the Leisure World News in calendar 1971, which accrued even though the Leisure World News was absorbing certain of the expenses of the newspaper published by Birchall, Smith & Weiner, Inc., the record reflects, out of the mouth of the president of LWF, that LWF realized and was well aware that *if* the Leisure World News could *not* be distributed inside Leisure World on an unsolicited basis it would cease to be profitable. More particularly, Edward Olsen testified concerning the agreement to sell the Leisure World News to Birchall, Smith & Weiner, Inc., "that if the Leisure World News could not be distributed inside Leisure World on a permissive basis, that Leisure World News would have no value ...."

Otherwise, by the end of 1972 during which the gross of Birchall, Smith & Weiner, Inc., had grown to $559,112, Olsen and Musch had organized another corporation and had entered into contracts with the various mutuals and with Golden Rain to take over all the management functions performed up to that time by LWF for the residents of Leisure World. This new corporation as earlier noted is known as the Professional Community Management Corporation.

During this same time the pressure continued to mount from other publishers, including the plaintiff, to gain access to Leisure World for unsolicited carrier delivery. It is a reasonable inference to be drawn from the extrinsic facts that in response to that pressure, under date of March 30, 1973, a written agreement was entered into between Golden Rain and Birchall, Smith & Weiner, Inc. (by then owned 51 percent by the same persons who owned an interest in the management company servicing Leisure World),[7] which provided that Golden West would de-

[7]As a consequence of other litigation, the stock in Birchall, Smith & Weiner, Inc., acquired by Olsen and Musch was later restored to Smith and Birchall.

liver the Leisure World News to all of the residents of Leisure World. This arrangement covered over 10,000 copies per week at an annual rate of $3,600. As a consequence, the unsolicited carrier delivery of the Leisure World News to all residences of Leisure World continued just as before. However, a representation was then made to the competition, including plaintiff, that the Leisure World News was being delivered in compliance with the rules and regulations of Golden Rain which required that newspapers could only be delivered by carrier within Leisure World to *subscribers*. Nevertheless, the record fails to disclose that any resident of Leisure World ever sought execution of the agreement or even knew of its existence.

More particularly, as stated in plaintiff's opening brief, "[t]he Defendants never asked permission of the residents to allow BIRCHALL, SMITH & WEINER, INC. to distribute and the record is completely void of any evidence which showed that [even] one resident of LEISURE WORLD OF LAGUNA HILLS ever requested that the LEISURE WORLD NEWS be delivered to them over the period of 1965 through the time of trial."

Otherwise, on the record, it is doubtful whether the board of directors of Golden Rain had authority to enter into the agreement providing for unsolicited delivery of the Leisure World News to *all* the residents of Leisure World.

We have already related that the board of directors of Golden Rain on March 30, 1973, entered into a written agreement with the predecessor of Golden West by means of which Golden Rain undertook on behalf of all the residents of Leisure World to "subscribe" to the Leisure World News for each of those residents.[6]

In our original opinion, we characterized this agreement as a "cosmetic subterfuge," and we remain persuaded that this is an accurate characterization of the agreement. To be more explicit in disclosing our reasons for this view of the matter, we note that the record includes copies of both the articles of incorporation and bylaws of Golden Rain.

[6]There appears to be a disparity of viewpoint between the two defendants as to the import of this agreement. Golden Rain in its earlier petition for rehearing states, "Nothing in the agreement designates the residents of Leisure World as 'subscribers.'" On the other hand, Golden West in its petition for rehearing quotes at length the testimony of George Bouchard of Golden Rain to the effect that it was the intent of the agreement to make the residents of Leisure World "subscribers" to the Leisure World News. Otherwise, in the body of Golden West's petition for rehearing references are made repeatedly to the "subscription agreement."

These items are significant not only in what they show but in what they do not show. Nowhere in either instrument is there delegated to the board of directors of Golden Rain any authority to decide what persons or publications shall be afforded *uninvited* entry into Leisure World for purpose of delivery to the individual residences of Leisure World. Actually the subject is not dealt with at all.

In addition, the bylaws of Golden Rain, exhibit "J," provide, in article II, for two classes of membership in the corporation as well as for qualification and admission to membership. *Membership is not automatic.* A resident must apply for membership in a mutual and at the same time for membership in Golden Rain. The pertinent provision states, "When a subscriber has been admitted to membership in a Mutual and has paid an initiation fee as fixed and determined by the board of directors, he shall be admitted to resident membership in the corporation, which membership shall be appurtenant to his membership in the Mutual."

In going through exhibit "I," the articles of incorporation, we noted that attached to the original draft were certain amendments. Of interest here is the fact that each amendment carried a recitation of the number of members entitled to cast votes for the amendment. The latest amendment constituting a part of this exhibit was dated February 8, 1971, at which time 7,379 members were entitled to vote and did consent to the amendment. According to the record otherwise there were at the time of the events here material to this litigation some 20,000 residents of Leisure World scattered through 12,000 residences. From this it appears that a substantial number of residents of Leisure World were *not* members of Golden Rain during the period here involved.

The consequence of all this, of course, is that Golden Rain purported to "subscribe" to the Leisure World News on behalf of a large number of residents who not only had *not* delegated any such authority to Golden Rain in its articles and bylaws, *but who in fact were not even members of Golden Rain.* In short, what Golden Rain undertook to do by means of the March 30, 1973, agreement was presumptuous, if not brazen, and therefore can fairly be described as a "cosmetic subterfuge."

In any event, in May of 1973, the plaintiff's general manager sent a letter to the presidents of each of the mutuals in Leisure World as follows: "Last November the News-Post submitted a request to the

management of Leisure World to be allowed permission to distribute the News-Post by carrier in Leisure World. We were promised that each mutual board would be consulted at their December meetings and we would have an answer within a month. [¶] After a luncheon with Robert Price and several telephone inquiries, we were told late in March that our request was denied. Further inquiries have indicated that directors of the various mutuals have never been made aware of our request. [¶] We feel the management of Leisure World would prefer not to have an independent local newspaper distributed in Leisure World. Therefore they have made it as difficult as possible for us to distribute our newspaper, and we must go to the considerable expense of mailing to our readers. [¶] The News-Post has published news stories that the management would prefer not to come to the attention of the residents. However, we do not feel the residents of Leisure World want someone else to determine what they might read. It is unfair and discriminatory to deny to one newspaper a privilege that is granted to another, even if the other newspaper can be controlled. [¶] We request that your mutual board take our request under consideration. I would be glad to appear before your board to answer any questions your directors might have. We believe their judgments are more representative of your residents and less influenced by the pressures of management. [¶] I will be anxious for your reply by mail or phone. All we want is a fair shake."

In reply thereto the then president of Golden Rain wrote some four months later, "[u]nder date of May 11, 1973, you sent a letter to the Presidents of all Mutual Corporations within the community of Leisure World, Laguna Hills. Since the subject matter of your letter relates to the community as a whole, all recipients of your letter are replying [by] this letter. [¶] Please be advised that existing regulations have been, since inception of Leisure World and remain so at the present time, that delivery of newspapers within the community can be made by your company, providing you abide by the community's rules, which presently include the privilege extended to your newspaper to have carriers deliver copies to each and all of your subscribers. [¶] You are therefore permitted to deliver newspapers within Leisure World so long as you abide by the above regulation."

The letter was also signed by the presidents of 11 of the mutuals. The position of Golden West and Golden Rain, maintained from the time of the agreement between Golden Rain and Birchall, Smith & Weiner, Inc., was that carrier delivery of the Leisure World News to every resi-

dence in Leisure World was permitted by Golden Rain because each such residence was regarded as a paid "subscriber" thereto by reason of the March 30, 1973, agreement noted earlier.[9] In this connection, we point out again that Golden Rain had neither legal nor ostensible authority to act for any resident who was not a member, and it is clear from the record that not every resident of Leisure World was a member of Golden Rain.

Otherwise, we are constrained to observe that there was a period of at least six years, i.e., from 1967 to 1973, during which there was no "subscription" agreement and during which the Leisure World News enjoyed a live carrier, exclusive access for give-away type newspapers within Leisure World to the exclusion of the Laguna News-Post and other similar publications. This circumstance was instituted and enforced by LWF, the publisher of the Leisure World News, while LWF had a management contract with Golden Rain which apparently well knew what was going on and suffered it to continue. On this point, we note once more that defendants argue that the arrangement with LWF was only an innocuous policy of Golden Rain to provide for a "house organ." In light of such argument, we find it significant that it was Edward Olsen himself, president of LWF, and not someone from Golden Rain with whom a representative of plaintiff met in an effort to break the exclusion. Moreover, it was Olsen who stated that the exclusive access allowed the Leisure World News was a policy explicitly adopted by LWF to recoup its earlier losses sustained in publishing the Leisure World News. In this connection, while Golden Rain may have owned the streets and sidewalks within Leisure World, it was LWF which employed the security personnel which enforced the exclusion it had instituted with no exception thereto taken by Golden Rain.

Nevertheless, soon after the letter last quoted above was received, this litigation was begun.

Referring to Golden Rain's current petition for rehearing, we note that a vigorous argument is again made that the Leisure World News is a "house organ" quite different in its content and purpose from those give-away type newspapers, including plaintiff's, which have been excluded. While this may be true in a sense, it conveniently overlooks the compelling feature of the Leisure World News and of those excluded

[9]See footnote 8 where we referred to the testimony of George Bouchard to this effect.

which is the same, namely their advertising content. More exactly, we are not here concerned with why the Leisure World News was *admitted* to Leisure World, i.e., even if as a "house organ," but why plaintiff's newspaper was *excluded*.

Whether the Leisure World News is or is not a "house organ" has no significance as a fact for consideration in reaching our decision. On the contrary, it was the *similarities* of the Leisure World News and plaintiff's newspaper which were what spawned this litigation and necessarily provide the basis for its resolution. In other words, what is significant is that the Leisure World News carries advertising and that it is the only give-away type newspaper carrying advertising which reaches the huge audience comprised of the residents of Leisure World. It is a competitor for the advertising dollar which retailers spend in this area of Orange County, and the fact that it has a captive audience of 20,000 affluent people whom advertisers are trying to reach is an overriding factor which no amount of sophistry emphasizing that the Leisure World News is a "house organ" can evade. The consequences of this fact are both dramatic and decisive in guiding our approach to a decision in this case. To resort to the overworked cliche, "the bottom line," here it is $1,873,204, which represents the gross revenues of the publishers of the Leisure World News who started with an initial investment of $1,000 and in just 10 years built their business to one with the almost $2 million gross noted. No doubt good management played an important part in this success story, but *exclusive access* of the advertising in the Leisure World News to the residents of Leisure World must be regarded as having played a decisive part in this success, even by the most begrudging advocate. In a word, the plaintiff's newspaper and the Leisure World News are *identical* insofar as they play their roles in competing for the local advertising dollar. Moreover, it was plaintiff's exclusion from the opportunity to compete for these advertising revenues which raised this dispute, and, parenthetically, it was this theory which plaintiff was precluded from presenting to the jury in its constitutional proportions.

To summarize, then, it emerges clearly from the foregoing synopsis that in the first instance, i.e., from 1964 up to May 1, 1972, after which the management company, LWF, sold the Leisure World News to defendant Golden West (then Birchall, Smith & Weiner, Inc.), that LWF, with the tacit concurrence of Golden Rain, distributed the Leisure World News to all residences within Leisure World by live carrier on *an unsolicited basis*. Beginning in 1967, the same year in which Bir-

chall et al., started up their "shopper," LWF, with the tacit concurrence of Golden Rain, excluded from Leisure World all other give-away type newspapers, including plaintiff's, except those to which the residents of Leisure World had subscribed.

From May 1, 1972, to March 30, 1973, during a time when the president of the management company was also a shareholder in defendant Golden West, the same arrangement continued, and the Leisure World News was accorded exclusive live carrier circulation privileges within Leisure World to the exclusion of plaintiff's newspaper. On the latter date, an agreement was entered into which purported, at least in the view of George Bouchard, a member of the Board of Directors of Golden Rain, to make all the residents of Leisure World "subscribers" to the Leisure World News and thus to place it arguably within the same category as other newspapers delivered within Leisure World on a subscription basis. This position was taken notwithstanding that all residents of Leisure World were not then members of Golden Rain.

The facts are clear. Plaintiff was purposefully excluded from Leisure World, and this operated to foreclose plaintiff's opportunity to communicate its advertising to the residents of Leisure World, notwithstanding that the Leisure World News, a similar publication, in that it carried advertising, was afforded that opportunity. This alignment of competitive factors must be viewed in light of the fact that Golden West within 10 years after its predecessors became operative with a $1,000 investment was able to generate gross advertising revenue of $1,873,204. (1) Whether or not the curtailment of plaintiff's opportunity to communicate with the residents of Leisure World under these precisely defined circumstances and thereby to be denied an equal chance to compete for those revenues was an abridgement of its constitutional rights of free speech and free press is the threshold question which we must address.

IV

Before proceeding with efforts to answer this question, we hasten to note that such efforts have been undertaken with a full awareness that any *constitutional* issue necessarily arises in the arena of a contest between the citizen and his government. Thus, the basic issue in many cases involving a claimed deprivation of constitutional rights is whether or not so-called state action is present. So it is here, and historically, the free speech, private property cases have fallen generally into two

groups. The first group is comprised of the company town cases descending from *Marsh* v. *Alabama* (1946) 326 U.S. 501 [90 L.Ed. 265, 66 S.Ct. 276], which involved an individual who was arrested for attempting to sell religious publications on the streets of a privately owned company town, Chickasaw, Alabama. In the litigation which was finally resolved in the Supreme Court of the United States, it was determined that the action of the company in excluding private individuals from exercising their free speech rights on the streets of the company town was unconstitutional.

Without going into an extensive recitation of the rationale of the decision, it is enough for our purposes here to observe that the high court looked upon the company town as tantamount to a municipality. This imputation imported the concept of state action of a kind proscribed under the Fourteenth Amendment, for the exercise of free speech cannot be limited by a true municipality. On this latter proposition, reference is made to *Van Nuys Pub. Co.* v. *City of Thousand Oaks* (1971) 5 Cal.3d 817 [97 Cal.Rptr. 777, 489 P.2d 809], which struck down a city ordinance which prohibited unsolicited delivery to private residences of precisely the same kind of newspaper as published by plaintiff.

Plaintiff relies heavily on certain language in *Marsh* in arguing that its exclusion from Leisure World amounted to state action, entitling it not only to injunctive relief but affording it a further claim for damages arising under 42 United States Code section 1983. However, even though resourceful in its arguments by analogy, plaintiff has not persuaded us that Leisure World is a company town for purposes of resolving the free speech, discrimination issue. There are no retail businesses or commercial service establishments in Leisure World. It is solely a concentration of private residences, together with supporting recreational facilities, from which the public is rigidly barred. However, the peculiar attributes of Leisure World which in many ways approximate a municipality bring it conceptually close to characterization as a company town, and such attributes do weigh in our decision as will be later discussed.

The other line of free speech, private property cases is that involving regional shopping centers, which, for our purposes, starts with *Diamond* v. *Bland* [*I*] (1970) 3 Cal.3d 653 [91 Cal.Rptr. 501, 477 P.2d 733], followed by *Lloyd Corp.* v. *Tanner* (1972) 407 U.S. 551 [33 L.Ed.2d 131, 92 S.Ct. 2219], which led to *Diamond* v. *Bland* [*II*] (1974) 11 Cal.3d

331 [113 Cal.Rptr. 468, 521 P.2d 460]. In the *Diamond* cases, which were an outgrowth of an exclusion from a San Bernardino regional shopping center of solicitors of signatures for an antipollution initiative, the court ultimately held, because the plaintiffs had effective, alternative channels of communication with the public, and because the solicitation activities bore no relationship to the shopping center activities, that it was permissible to exclude the plaintiffs. The court said, "[u]nder these circumstances, we must conclude that defendants' private property interests outweigh plaintiffs' own interests in exercising First Amendment rights in the manner sought herein." (*Diamond* v. *Bland* [*II*], *supra*, 11 Cal.3d 331, 335.)

However, that is not the last word on the subject. More recently, the California Supreme Court, acting expressly under the California Constitution, reversed its position on the regional shopping center, doing so in *Robins* v. *Pruneyard Shopping Center* (1979) 23 Cal.3d 899 [153 Cal.Rptr. 854, 592 P.2d 341]. In *Pruneyard*, on facts strikingly similar to those in *Diamond*, the court ruled that the exercise of free speech rights unrelated to the customary commercial activities conducted within a privately owned, regional shopping center cannot be prohibited by the shopping center, provided the free speech activity does not interfere with or impinge in any way upon such customary commercial activity.

The *Pruneyard* case was appealed to the United States Supreme Court, which, recently, handed down its opinion. (*Pruneyard Shopping Center* v. *Robins* (1980) 447 U.S. 74 [64 L.Ed.2d 741, 100 S.Ct. 2035].) The United States Supreme Court decided that our state Constitution *could* provide more expansive rights of free speech than that provided by the federal Constitution, and that the state Constitution in affording these expanded free speech rights, as announced in *Pruneyard*, does *not* import a violation of the shopping center owner's or tenants' property rights under the Fifth or Fourteenth Amendments to the United States Constitution.

Because the public is not invited but excluded from Leisure World, and because we read *Diamond* [*I*] and *Pruneyard* to reach the results they do primarily because of this feature of unlimited public access, notwithstanding the stated basis for the decision of the United States Supreme Court in *Lloyd Corp.* v. *Tanner*, *supra*, 407 U.S. 551, we have concluded, while such cases are of no direct assistance, that they do define certain concepts for us to build on in reaching our decision here.

Pruneyard is an intriguing decision. Our Supreme Court decided that plaintiffs' free speech rights as guaranteed by the state Constitution had been abridged when they were excluded from a regional shopping center, and it did so without ever once discussing or even impliedly dealing with the phenomenon of *state action* except in its discussion of *Lloyd*.

Proceeding from this perception of *Pruneyard's* content, it could be argued that the decision, by implication, stands for the proposition, in California, that a *private individual* can be held to have violated the state constitutional rights of another, at least the latter's free speech rights. However, we do not choose to interpret *Pruneyard* that broadly, leaving it to the Supreme Court itself to do so if *Pruneyard* actually was intended to extend the notions of state constitutional law into such an unexplored salient.

It is enough to conclude here that *Pruneyard*, by reason of its emphasis on the unrestricted access to the shopping center accorded the public, held that the limitations upon plaintiff's free speech rights were impermissibly proscribed under a rationale closely approximating that developed in *Marsh*. In other words, because the public had been *invited* on to private property, they would be deemed as remaining clothed with their free speech rights secured under the state Constitution for so long as the exercise of those rights did not impinge on the property rights of the merchants doing business in the shopping center, all with the result that any attempted curtailment of those rights imported the implicit sanction of state action.

Otherwise, to emphasize the dignity of the right of free speech under the California Constitution, *Pruneyard* drew upon language from *Agricultural Labor Relations Bd.* v. *Superior Court* (*ALRB*) (1976) 16 Cal.3d 392 [128 Cal.Rptr. 183, 546 P.2d 687], that "all private property is held subject to the power of the government to regulate its use for the public welfare." (*Id.* at p. 403.)

This *ALRB* case was further invoked to announce, "'We do not minimize the importance of the constitutional guarantees attaching to private ownership of property; but as long as 50 years ago it was already "'thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination of the rights of society. Although one owns property, he may not do with it as he pleases any more than he may act in accordance with his personal desires. As the interest of society justifies restraints upon

individual conduct, so, also, does it justify restraints upon the use to which property may be devoted. It was not intended by these constitutional provisions to so far protect the individual in the use of his property as to enable him to use it to the detriment of society. By thus protecting individual rights, society did not part with the power to protect itself or to promote its general well-being. Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare.'" (*Agricultural Labor Relations Bd.* v. *Superior Court, supra*, 16 Cal.3d at p. 403, . . .)" (*Robins* v. *Pruneyard Shopping Center, supra*, 23 Cal.3d 899, 906.)

Pruneyard, in further reliance on the *ALRB* case, observes "that the power to regulate property is not static; rather it is capable of expansion to meet new conditions of modern life. Property rights must be '"redefined in response to a swelling demand that ownership be responsible and responsive to the needs of the social whole. Property rights cannot be used as a shibboleth to cloak conduct which adversely affects the health, the safety, the morals, or the welfare of others."' (16 Cal.3d at p. 404, quoting Powell, *The Relationship Between Property Rights and Civil Rights, supra*, 15 Hastings L.J. at pp. 149-150.)" (*Id.* at pp. 906-907.)

To this we add that the gated and walled community is a new phenomenon on the social scene, and, in the spirit of the foregoing pronouncement, the ingenuity of the law will not be deterred in redressing grievances which arise, as here, from a needless and exaggerated insistence upon private property rights incident to such communities where such insistence is irrelevant in preventing any meaningful encroachment upon private property rights and results in a pointless discrimination which causes serious financial detriment to another.

This observation suggests that the facts of the case before us include two additional ingredients not found in the *Pruneyard* mix. While the public is not invited into Leisure World, Leisure World in many respects does display many of the attributes of a municipality. That is to say, although the public generally is not invited, there is substantial traffic into Leisure World of a variety of vendors and service persons whom the residents of Leisure World do invite in daily to accommodate the living needs of a community this large. By this we mean to refer to

plumbers, electricians, refrigeration repairmen, painters, United Parcel deliverymen, to name a few, plus the carriers of newspapers to which the residents have subscribed.

The other ingredient noted is the exclusion of plaintiff while the Leisure World News has been accorded unrestricted entry by Golden Rain even though no individual resident has invited in the Leisure World News. Suppose Golden Rain had undertaken to impose on the residents of Leisure World a rule that only one particular plumber would be allowed to enter Leisure World to perform this kind of service. If such an effort were made by Golden Rain, the discrimination would be apparent to anyone, not to mention its limitation on the residents' freedom of choice.

Thus, the question arises as to whether the factor of discrimination is significant. To answer this question, there is a line of constitutional cases involving *discrimination* which does open the door to decision here. Just as we have interpreted *Pruneyard*, these cases do find "state action" present in an analogous way as an element affecting decision where there is actual or even threatened enforcement by state law in aid of *discriminatory* conduct. That concept is central, for instance, to the decisions in the so-called lunch-counter cases. Equally important to our analysis here there is a suggestion in *Lloyd* itself that such concept would even apply in federal First Amendment cases. And why not? Surely the First Amendment shares equal dignity with the Fourteenth.

Turning then in this context to *Lloyd Corp.* v. *Tanner*, *supra*, 407 U.S. 551, that case was a so-called shopping center case in which the respondents undertook to distribute handbills in the interior mall area of petitioner's large, privately owned, regional shopping center. Just as in *Pruneyard*, private security guards invited the respondents to repair to the adjoining public streets to distribute their literature. Respondents did so and then sought an injunction against their exclusion, claiming a violation of their First Amendment rights. The Supreme Court of the United States reversed the judgment which granted respondents the injunction they sought and, in so doing, held that there had been no dedication of petitioner's privately owned and operated shopping center to public use so as to entitle respondents to exercise any First Amendment rights therein unrelated to the shopping center's operations. The case further held that petitioner's property did not lose its private character and its right to protection under the Fourteenth Amendment

merely because the public had generally been invited to come into the premises for the purpose of doing business with petitioner's tenants.

As already noted, this led to the California Supreme Court's decision in *Diamond* [*II*], which in turn was reversed on *state* constitutional grounds by *Pruneyard*.

However, of significance to the issue here is certain language in *Lloyd* which suggested that a different result might have been reached had there been a different scenario. In the latter portion of the decision, the United States Supreme Court said, "The basic issue in this case is whether respondents, in the exercise of asserted First Amendment rights, may distribute handbills on Lloyd's private property contrary to its wishes and contrary to a policy enforced against all handbilling. In addressing this issue, it must be remembered that the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner[s] of private property used *nondiscriminatorily* for private purposes only." (*Lloyd Corp. v. Tanner, supra*, 407 U.S. 551, 567 [33 L.Ed.2d 131, 142]; original italics deleted, our italics added.)

The key word is "nondiscriminatorily." As an indication that this notion was not suggested by an inadvertent choice of words, the opinion soon thereafter states, "'The United States Constitution does not forbid a State to control the use of its own property for its own lawful *nondiscriminatory* purpose.'" (*Id.* at p. 568 [33 L.Ed.2d at p. 142]; italics added; quoting from *Adderley v. Florida* (1966) 385 U.S. 39, 48 [17 L.Ed.2d 149, 156, 87 S.Ct. 242].) From this language we deduce, if the court had been faced with a *discriminatory* limitation of free speech on private property, that it may well have reached a different result.

Returning to California cases, our analysis brings us to *Mulkey v. Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825]. That celebrated case struck down as unconstitutional Proposition 14 which appeared on the statewide ballot in 1964. That measure, adopted by popular vote, sought to restrict the power of the state to legislate against the right of any person, desiring to sell, lease or rent his real property, "to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses." (Former Cal. Const., art. I, § 26.)

This proposition was a direct reaction to the Hawkins Act and the subsequent Rumford Fair Housing Act which were aimed at eliminating racial discrimination in housing. The legal effect of Proposition 14 was to nullify these legislative efforts as they applied to discrimination in the housing market of California. The California Supreme Court in *Mulkey* exhaustively marshaled the authorities to demonstrate the presence of state action in the operation of Proposition 14 so as to bring it within the equal protection clause of the Fourteenth Amendment. Relying in the first instance on *Shelley* v. *Kraemer* (1948) 334 U.S. 1 [92 L.Ed. 1161, 68 S.Ct. 836, 3 A.L.R.2d 441], the court in *Mulkey* said, "*Shelley*, and the cases which follow it, stand for the proposition that when one who seeks to discriminate solicits and obtains the aid of the court in the accomplishment of that discrimination, significant state action, within the proscription of the equal protection clause, is involved." (*Mulkey* v. *Reitman, supra*, 64 Cal.2d 529, 538.)

Mulkey went on to observe, "It must be recognized that the application of *Shelley* is not limited to state involvement only through court proceedings. In the broader sense the prohibition extends to any racially discriminatory act accomplished through the significant aid of any state agency, even where the actor is a private citizen motivated by purely personal interests. [Citing *Burton* v. *Wilmington Pkg. Auth.* (1961) 365 U.S. 715, 722 (6 L.Ed.2d 45, 50-51, 81 S.Ct. 856).]" (*Id.* at p. 538.)

Other cases relied upon in *Mulkey* demonstrate the nature and extent of just what it meant by significant state involvement so as to bring essentially private conduct dependent on state implementation within the ambit of proscriptions on unconstitutional state action included: *Evans* v. *Newton* (1966) 382 U.S. 296 [15 L.Ed.2d 373, 86 S.Ct. 486]; *Terry* v. *Adams* (1953) 345 U.S. 461 [97 L.Ed. 1152, 73 S.Ct. 809]; *Robinson* v. *Florida* (1964) 378 U.S. 153 [12 L.Ed.2d 771, 84 S.Ct. 1693]; and *Anderson* v. *Martin* (1964) 375 U.S. 399 [11 L.Ed.2d 430, 84 S.Ct. 454].

The end result in *Mulkey* was to declare unconstitutional Proposition 14 because it operated to deny the plaintiffs equal protection of the laws in a case where the trial court had awarded a summary judgment against them in an action seeking relief under sections 51 and 52 of the Civil Code as those sections then read.

When *Mulkey* and the alternative scenario in *Lloyd* are viewed along with the "state action" implications of *Pruneyard*, the outline of a work-

able rule emerges for application to the facts of the case before us. Its rationale derives from the differential view of "state action" as characterized in the *discrimination* cases when compared to that in other constitutional cases. In this case, while Leisure World is not a "company town" so as to require that it yield to the results reached in *Marsh*, it is a hybrid in this sense.[10] The question then becomes, notwithstanding that the public is generally excluded except upon invitation of the residents, whether its town-like characteristics compel Golden Rain's yielding to certain constitutional guarantees as a consequence of its adding discrimination to the picture. When that element is added, the balance tips to the side of the scale which imports the presence of state action per *Mulkey* and the lunch counter cases. In other words, Golden Rain, in the proper exercise of its private property rights, may certainly choose to exclude *all* give-away, unsolicited newspapers from Leisure World, but once it chooses to admit one, where that decision is not made in concert with the residents, then the discriminatory exclusion of another such newspaper represents an abridgement of the free speech, free press rights of the excluded newspaper secured under our state Constitution.

In the current petition for rehearing Golden Rain devotes considerable ink in support of its contention that there could have been no discrimination practiced against plaintiff's newspaper because "Discrimination presupposes meaningful similarity." We are indebted to counsel for Golden Rain for supplying us the concise terms we have labored to locate. "Meaningful similarity," that's it! On the undisputed facts before us there could be no more meaningful similarity possible than emerges in the comparison of the Leisure World News and plaintiff's newspaper. That *meaningful similarity* lies in their common role as competitors for the advertising dollars to be spent in this marketing area, an area where the Leisure World News has exclusive access to the residents of Leisure World and from where plaintiff was barred from making the unsolicited deliveries available to the Leisure World News. Thus, the legal conclusion that there was unconstitutional discrimination practiced against plaintiff's newspaper is inescapable.

Based upon the foregoing, keeping in view the greater status of the rights of free speech and free press existing under the California Consti-

[10]Leisure World at the time material to this litigation had about 20,000 residents, its own system of roads and streets, its own security force, its own parks, its own recreation facilities, and a hybrid form of self-government which dealt with matters of internal maintenance, security, and operation of the 8 square miles of the project.

tution as delineated in *Pruneyard*, and keeping in mind also that discriminatory proscription of free speech on private property may even be questionable under the federal Constitution, as suggested by *Lloyd*, we hold that Golden Rain, acting with the implicit sanction of the state's police power behind it, impermissibly discriminated against the free speech and free press rights of plaintiff, guaranteed to it under the state Constitution, by excluding it from Leisure World after it, Golden Rain, without authority from the residents of Leisure World, had chosen to permit the unsolicited delivery of the Leisure World News to the residents of Leisure World. As a consequence, for so long as Golden Rain permits the unsolicited[11] delivery of the Leisure World News to the residents of Leisure World, then it cannot permissibly discriminate against plaintiff's opportunity to communicate with the residents of Leisure World by excluding unsolicited delivery of its newspaper to these same residents.

V

Defendant Golden Rain has argued that to subject the residents of Leisure World to unsolicited delivery of plaintiff's newspaper would frustrate their investment expectations of privacy and freedom from the intrusions of those who have not been invited, citing *Kaiser Aetna* v. *United States* (1979) 444 U.S. 164 [62 L.Ed.2d 332, 100 S.Ct. 383]. Without more we would agree with such contention; however, *it was the management of Leisure World itself which let down the bars, and Golden Rain which suffered the discrimination to continue.* It was thus the choice of Golden Rain which resulted in the threat of any claimed encroachment on the privacy of the residents of Leisure World. In this vein, it is pertinent to observe, if the residents of Leisure World do not want *unsolicited*, give-away newspapers delivered to their homes by live carrier, then Golden Rain should cease its discrimination and exclude them all, including the Leisure World News.

Actually, as a practical matter, in response to the turgid rhetoric about the imposition on privacy and property rights which admission of plaintiff's newspaper to Leisure World would supposedly represent, it is fair to say that there would be no imposition of substance. Parentheti-

[11]Again, we observe that a substantial number of the residents of Leisure World are not even members of Golden Rain, and so the steps taken by which Golden Rain purported to "subscribe" to the Leisure World News for all such residents were meaningless in terms of the issue here presented.

cally, what we see happening is plaintiff's delivery personnel being screened in the same way that the carriers of the Los Angeles Times are screened; we see plaintiff's delivery personnel being instructed that they are permitted to move about the streets of Leisure World during certain daylight hours on certain days; we see plaintiff's delivery personnel placing copies of the Laguna News-Post on the front steps or porch of each residence of Leisure World in much the same manner as would a United States Postal Service employee deliver the newspaper if it were mailed in. This hardly represents an assault upon the privacy of any resident of Leisure World beyond what is already occurring, *especially when no resident of Leisure World has actually requested delivery of the Leisure World News either.*

Nevertheless, if this activity represents an unacceptable intrusion upon the privacy of the residents of Leisure World, a privacy which it is argued they paid for when they bought homes there, then Golden Rain should cease its discrimination and exclude *all* newspapers to which individual residents have not *personally* subscribed.

The rule we announce as the basis for resolution of this phase of the case will not result in requiring unrestricted admittance to Leisure World of religious evangelists, political campaigners, assorted salespeople, signature solicitors, or any other uninvited persons of the like. It will compel admission only of those who wish to deliver a newspaper like the Leisure World News, "like" in the sense that it is a competitor of Leisure World News for the same advertising dollars to be spent by businesses in Southern Orange County. In short, for purposes of avoiding discrimination against the state constitutional guarantees of free speech and free press, the right of any and all to enter this private, gated community to exercise this state constitutional right must be exactly measured by the right accorded to one, both as to the nature of the activity of that one as well as to the conditions of his admission. Under such a rule, the owners of this private property still remain in *complete* control of who shall enter Leisure World, while Golden Rain is yet required only to act fairly and without discrimination toward others in the exercise of their state constitutional rights of free speech and free press which rights Golden Rain itself has chosen to accord exclusively to the Leisure World News while acting wholly beyond the knowledge and complicity of any resident of Leisure World.

[May 1982]

VI

In one of the earlier petitions a worried concern was voiced that the rule here announced would confer a kind of "equal time" entitlement on any who wished to enter should persons of opposite or different views have been "invited" into Leisure World to speak or to entertain. To note these objections to the rule is itself enough to demonstrate how wide they are of the mark. The rule we have announced has nothing to do with instances where persons are *invited* into Leisure World *by its residents*. The premise on which the rule here announced has derived is the discrimination by Golden Rain which has allowed an exclusive opportunity to Golden West to deliver its Leisure World News to the residents of Leisure World *where, as to those residents individually, such deliveries are wholly unsolicited.* To this extent, Golden Rain, with absolutely no advice from or consultation with the actual residents, by its own choice and not that of the residents, has rendered Leisure World an area where a singular member of the public is admitted for this limited purpose. Thus, the rule has absolutely no application to any person who or activity which the *residents* of Leisure World may choose to invite to come in.

The principal argument advanced by *Golden Rain* in its earlier petition for rehearing which challenged our initial decision was also that it contravened constitutionally guaranteed rights to privacy and freedom of association. No good purpose would be served here to respond specifically to each of the points contained in the 10 pages of learned constitutional discourse offered under point IV of Golden Rain's earlier petition for rehearing except to say that we can only agree with the propositions there recited. The problem with the petition is that it ignores the realities of this case.

We have already noted the letter directed to plaintiff by the president of Golden Rain which closed with the statement that "you are therefore permitted to deliver newspapers within Leisure World so long as you abide by the above regulation" which meant that plaintiff could enter Leisure World and deliver its newspaper to any of its "subscribers." Of course, we all know that in the nature of things there are no "subscribers" to give-away newspapers which subsist entirely by advertising. However, the point remains that Golden Rain specifically indicated that it had no objection to associating with plaintiff's carriers provided those carriers were inside the gates of Leisure World solely to deliver plaintiff's newspaper to its "subscribers." Just how these very same carriers

would ipso facto become a threat to the freedom of association and right of privacy within Leisure World just because they would be delivering plaintiff's newspaper on an unsolicited instead of a subscription basis escapes us.

Similarly, much is made of the fact that residents of Leisure World actually performed the distribution of the Leisure World News, the implication being that some infectious, undisciplined rabble would overrun Leisure World if plaintiff were allowed to distribute its newspaper there.[12]

If this is truly a concern, we see no legal problem in Golden Rain's imposing a regulation which would require employment of only Leisure World residents for delivery of *any* unsolicited publication. This would fall well within the ambit of Justice Traynor's time, place, and manner rule in *Hoffman*.[13] Otherwise, Golden Rain could prescribe that any resident who elected not to receive the unsolicited delivery would need only notify Golden Rain of such wishes and that would terminate delivery at that residence.

The significant point is that we see nothing in the record which indicates that the individual residents of Leisure World have expressed themselves on what give-away newspaper is to be allowed to enter and what ones are to be excluded. The discriminatory exclusion has been imposed solely by the owner of the common areas, i.e., the owner of the streets and sidewalks, not the owners of actual residences. Thus, we are forced to conclude that the real reason for the exclusion of the plaintiff's newspaper had and continues to have little if anything to do with an actual concern for the preferences of the residents as to whom they shall associate with. In short, at the time this litigation began and continuing to the present, the distribution to the residents of Leisure World of the Leisure World News was and is just as much *unsolicited* by them as was and is that of the Laguna News-Post.[14]

[12]Here it is again appropriate to refer to Golden Rain's letter to plaintiff advising that it was free to enter to deliver its newspaper to subscribers. With this the case, we fail to see the relevance of the strident pleas about rights to privacy and to freedom of association.

[13]*In re Hoffman* (1967) 67 Cal.2d 845, 852-853 [64 Cal.Rptr. 97, 434 P.2d 353].

[14]Here is the appropriate place to observe that we do not regard this case as one likely to generate a great constitutional upheaval despite the stentorian tones in which Golden Rain has portentously argued it. The reason this litigation was commenced and has been so vigorously defended is money, and it has nothing to do with protecting any private rights of association. It began because of a fight between two newspapers over

VII

Based upon the foregoing discussion of points IV, V and VI, the trial court's denial of plaintiff's application for an injunction to end its exclusion from Leisure World will be reversed.

Having determined that there is a legal basis for reversal as discussed above, there is no need to address plaintiff's other contention that state action was implicit from the fact that Leisure World was developed with federally insured financing.

DAMAGES FOR THE CONSTITUTIONAL DEPRIVATION

I

(2) Because we do not wish to extend this opinion beyond its already inordinate length, it is enough to observe here that we agree with the trial court and hold that plaintiff neither pleaded nor proved a right to damages under 42 United States Code section 1983. That section provides for recovery of damages against any person "who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Under our decision we have ruled that there has been no deprivation of any right, privilege or immunity secured by the Constitution and laws of the United States.

In other words, it is an answer to plaintiff's claim of right to an opportunity to prove alleged damages under 42 United States Code section 1983 to observe that the discrimination which we hold was here practiced was solely with reference to the plaintiff's free-speech, free-press rights secured under the *California Constitution*. To this, plaintiff could conceivably respond that in our decision we have noted a suggestion in *Lloyd Corp. v. Tanner, supra*, 407 U.S. 551, that discriminatory conduct in a First Amendment context might well have led to a different result, and that therefore we must further decide explicitly, because we have held "state action" to have been present in plaintiff's exclusion

advertising revenues, and just why Golden Rain has taken sides in the dispute, even to the point of practicing free press discrimination, eludes us. This is purely and simply a discrimination case with substantial economic consequences, and not one truly involving the resolution of the rights of free speech in conflict with the vested rights of private property.

from Leisure World, whether a federal constitutional right was abridged in order to afford a full and complete disposition of plaintiff's claim to damages under the federal civil rights statute. To this we say again that no *federal* right is here involved and that *Lloyd* only suggested the thread by which the knot was unraveled. Moreover, it is enough to decide, which we do, that the "state action" necessary to import the sanction of constitutional restraint dictated by the Constitution of California is not coextensive with and is something less than that degree of conduct sufficient to entitle one to a right of action for damages under 42 United States Code section 1983 where a federal right allegedly has been violated.

Just what that quantum of difference is we need not define. Because of the special dignity accorded the rights of free speech arising under the California Constitution as announced in *Pruneyard*, it is enough to state that the difference is readily recognizable here, and it is the more recognizable because of the palpably serious economic consequences which were caused by Golden Rain's discriminatory exclusion of plaintiff's newspaper from Leisure World.

II

(3) Although plaintiff has no claim to damages under the federal civil rights statute, because we have decided that it was constitutionally impermissible under the California Constitution for Golden Rain to exclude plaintiff's newspaper from Leisure World after it had for years allowed exclusive access to Leisure World by the Leisure World News, it remains to be decided if there is any *other* theory upon which plaintiff could be entitled to damages.

Plaintiff contends that the court compounded the error of its December 5, 1971, ruling by means of amplifying remarks made at the time it granted the defense motion above noted in which remarks it stated that there was no right to money damages in any event because the state constitutional right, if there were one, is not "self-executing."

It is clear from the record that the trial court at the time of the ruling of December 5, 1977, was of the view, based solely on the pleadings, and in light of the six factual items earlier noted as deemed to be without substantial controversy, that plaintiff was not entitled to money damages even if the court were to rule that there had been an abridgement of plaintiff's constitutional free speech and free press rights;

hence, the prohibition of any references thereto in the presence of the jury.[15]

In other words, plaintiff contends that the trial court erred in denying it the opportunity to put on evidence of the damages which it incurred as a result of the abridgement of its right of free speech, and we assume, for the sake of analysis, that the plaintiff has suffered actual,

[15]The following is a full text of the court's remarks made at the time of the December 5, 1977, ruling:

"There remains the one question of the motion to exclude from the jury references to Plaintiff's claim of violation of or infringement of the rights, that is, the alleged constitutional rights of free press. And the motion is to exclude reference to that in voir dire, opening statements, evidence, argument or other proceedings before the jury....

"All right. The motion is granted.

"Now, let me elaborate on that. The motion to exclude from the jury references to the Plaintiff's claim of the violation of [its] constitutional rights is granted.

"If such a violation occurred, it does not give the right to damages in the Plaintiff. There are insufficient allegations in the Complaint to bring the Plaintiff's claim under the provisions of the Federal Civil Rights Act, the 1983 sections, and that is, the provision under Federal law that would have to be—with which we would have to be concerned if the Plaintiff were asserting a right to damages because of the claim of the violation of the right to a free press by virtue of the fact that they were precluded from delivery within the gates of Leisure World Laguna Hills.

"The Complaint does not allege facts that would show any conduct under color of State law or statute or ordinance or custom, as is required by that act. It would appear that the initial conduct that is alleged did occur beyond the date that the statute would permit an action for recovery, that is, sometime in 1967, and the Complaint was filed in 1973. The question of whether or not the Defendants should be restrained from excluding Plaintiff from the grounds of Leisure World Laguna Hills is before the court and is properly a question for the court to decide, that is, should an injunction issue? And I anticipate that when the matter is submitted to the jury on the Cartwright assertions, that is, the assertions under the Cartwright Act, and the assertions under the Unfair Trade Practices Act, if there is other evidence that any party wants to present to the court on the issue of whether or not the injunction should issue after the jury has the case, you may present any additional evidence that has to do with the item of the injunction.

"The question under the State Constitution, that is, assuming there is an assertion of a violation of constitutional rights, should there be a right to recover damages in a State court because the allegations are that it violates the State Constitution. When there is an assertion of an inverse condemnation by the State, clearly, there is a right to recover damages because that is compensation for the taking of property. But in those instances where there is an assertion of violation of free press or free speech, there is no State statute on that subject. There is a State statute that gives the right to damages on a violation of the civil rights, and that is the Unruh Act. The legislature saw fit to enact the Unruh Act and give the right to damages for a violation of civil rights, but I don't believe the California Constitution is self-executing in other circumstances.

"So, we will proceed to trial on the Plaintiff's claim for damages under the Unfair Trade Practices Act, and under the allegations of violations of the Cartwright Act, and on the Cross-Complaint where the Cross-Complainant is asserting, at least, some acts that they contend are also a violation of the Unfair Trade Practices Act and the Cartwright Act."

demonstrable, compensatory damages arising solely from its exclusion from Leisure World and could have proved such damages had it been permitted to put on such evidence.

The issue, as posed by the parties' briefs, therefore, is whether the free speech clause of the California Constitution (art. I, § 2) affords a right to money damages without the benefit of enabling legislation.[16]

Passing for the moment that both the plaintiff and the trial court have mistakenly equated the right to money damages for a constitutionally defined grievance with the "self-executing" nature or lack of it in the California Constitution, we note that great emphasis is placed by plaintiff on the right-to-privacy cases as supporting its position.

In *Porten* v. *University of San Francisco* (1976) 64 Cal.App.3d 825 [134 Cal.Rptr. 839], dealing with the new state constitutional provision assuring the individual right to privacy (art. I, § 1), the court said, "The constitutional provision is self-executing; hence it confers a judicial right of action on all Californians. (*White* v. *Davis, supra*, 13 Cal.3d at p. 775 [120 Cal.Rptr. 94, 533 P.2d 222].) Privacy is protected not merely against state action; it is considered an inalienable right which may not be violated by anyone. [Fn. omitted.] (See *Annenberg* v. *Southern Cal. Dist. Council of Laborers* (1974) 38 Cal.App.3d 637 . . . ." (*Id.* at pp. 829-830.)

In *Porten* the plaintiff sought damages against the University of San Francisco for its alleged infringement of his right to privacy when it disclosed to a state agency his grades earned at Columbia before transferring to San Francisco. In applying the rule above recited, the appellate court reversed the trial court's judgment of dismissal after sustaining of a general demurrer. From this we conclude that plaintiff was thereafter afforded an opportunity to put on evidence of any damages he had suffered by reason of the infringement upon his constitutional rights to privacy.

The self-executing nature of the constitutional provision above noted as recited in *Porten* was confirmed in passing by Justice Sims in

[16]Plaintiff's brief argues its right to money damages in terms of whether the state Constitution is "self-executing." This approach begs the question. We have already deemed it to be "self-executing" to the extent that injunctive relief is available without the need for enabling legislation.

Emerson v. *J. F. Shea Co.* (1978) 76 Cal.App.3d 579, 591 [143 Cal. Rptr. 170]. It is also recognized with approval by Witkin. He writes, "... it has been declared that a [state] constitutional provision will now be presumed to be self-executing, and will be given effect, without legislation, unless it clearly appears that this was not intended." (5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, § 38, p. 3278.)

Having moved through this exposition of cases dealing with the right-to-privacy amendment to the California Constitution, we must observe that the issue remains, without more, unresolved; after all, *White* v. *Davis, supra*, 13 Cal.3d 757, 775, the leading case which passed upon and construed the consequences of the new amendment, and upon which *Porten* relied, was an *injunction* case.

Here, we part company with our decision after the first rehearing. In that opinion we proceeded to discredit *Porten* as authority by way of analogy for allowing money damages for violation of other state constitutional rights because, as we stated, the right to privacy had previously existed as a *common law* right.

In its current petition for rehearing, the plaintiff has effectively demonstrated that we were wrong in such latter pronouncement, and we must therefore retract it. In such petition plaintiff has directed our attention to *Melvin* v. *Reid* (1931) 112 Cal.App. 285 [297 P. 91], which reversed a judgment of dismissal, after a demurrer had been sustained, in an action which included a count for damages brought over 50 years ago under section 1 of article I of the California Constitution and based on allegations that a right of privacy had been illegally encroached upon. This, of course, was long before the 1973 amendment construed by *White*, relied upon in *Porten*.

In the course of its decision, the *Melvin* court categorically rejected the suggestion, insofar as California is concerned that a right of privacy existed as common law. The court went on to say, "We find, however, that the fundamental law of our state contains provisions which, we believe, permit us to recognize the right to pursue and obtain safety and happiness without improper infringements thereon by others. [¶] Section 1 of article I of the Constitution of California provides as follows: 'All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and

obtaining safety and happiness.' [¶] The right to pursue and obtain happiness is guaranteed to all by the fundamental law of our state. This right by its very nature includes the right to live free from the unwarranted attack of others upon one's liberty, property, and reputation. Any person living a life of rectitude has that right to happiness which includes a freedom from unnecessary attacks on his character, social standing or reputation.... We believe that the publication by respondents of the unsavory incidents in the past life of appellant after she had reformed, coupled with her true name, was not justified by any standard of morals or ethics known to us and was a direct invasion of her inalienable right guaranteed to her by our Constitution, to pursue and obtain happiness. Whether we call this a right of privacy or give it any other name is immaterial because it is a right guaranteed by our Constitution that must not be ruthlessly and needlessly invaded by others." (*Id.* at pp. 291-292.)

From the foregoing, it is too plain for argument that our state Constitution has been interpreted to support an action for damages for a violation of rights arising under old section 1, article I, and that such an action was possible without the need for enabling legislation. In reliance thereon and because of the *special dignity* accorded the rights of free speech and free press under the California Constitution, whether they be described as "inalienable" rights or not, it is not illogical in view of *Melvin* to hold, which we do, that a direct right to sue for damages also accrued here by reason of plaintiff's exclusion from Leisure World, and that it accrued under article I, section 2 of the California Constitution.

Counsel for plaintiff has persuasively pointed out further, accepting that plaintiff has suffered a violation of its state constitutional rights, that Civil Code sections 1708 and 3333 together also provide a predicate for recovery of money damages in instances of such violations.

Section 1708 provides that "[e]very person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights."

Section 3333 provides that "[F]or the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

The question then is whether the constitutionally protected right of plaintiff which we have held to have been violated comes within the ambit of section 1708. We can find no good reason why it does not, and so as pointed out by plaintiff, it follows "as night follows day," that a violation of that right imports by reason of section 3333 a correlative right to recover any damages proximately resulting from the violation of such right, keeping in perspective that we regard the constitutional violation here as having arisen from plaintiff's discriminatory exclusion from Leisure World with the implicit sanction of *state action* behind such exclusion.

Based upon the foregoing, it was error for the trial court to foreclose the plaintiff's right to present evidence of damages it sustained as allegedly arising from the unconstitutional exclusion of its newspaper from Leisure World.

III

(4) Having concluded that it was constitutionally impermissible for Golden Rain to discriminate against plaintiff's newspaper by excluding it from Leisure World, we next decide whether the trial court, upon a new trial, should entertain plaintiff's efforts to prove damages on the further theory that Golden Rain and Golden West allegedly acted in concert unconstitutionally to limit access to Leisure World only to the Leisure World News to the exclusion of plaintiff's newspaper and thereby brought about an unreasonable restraint of trade.

The plaintiff in its opening brief argues that the error of December 5, 1977, was also compounded because plaintiff was not allowed to introduce evidence in support of or to argue to the jury a theory of relief based upon a "conspiracy to deprive plaintiff of [its] constitutional rights [of free speech] as overt acts" such as to qualify as a violation of the Cartwright Act.

Referring to the trial already had, it logically followed, in view of the trial court's order *in limine*, that the jury did not consider the wrongful discriminatory exclusion from Leisure World of plaintiff's newspaper as an element in connection with its finding or not finding a conspiracy or combination resulting in an unreasonable restraint of trade as alleged by plaintiff in the fourth amended complaint. However, because we have concluded that such discriminatory exclusion was wrongful, it nec-

essarily follows that the court erred in applying its December 5, 1977, order so as to prevent the plaintiff from adverting in the presence of the jury to the constitutional deprivation as an element of its theory of grievance against both defendants. This limitation was necessarily reflected in a refusal to instruct the jury in keeping with what we have here held to be plaintiff's unconstitutional exclusion from Leisure World.

In arguing the Cartwright Act phase of the case to us, defendant has repeatedly asserted that an illegal restraint of trade does not require that the overt acts of the individuals themselves be illegal. While this may be true as a general proposition, it is an irrelevant if not diversionary argument here. As we understand plaintiff's position, it contends that the trial court erred in preventing it from arguing the *unconstitutional* nature of plaintiff's exclusion as only one element for the jury to weigh in deciding whether the restraint implicit in the exclusion was unreasonable. We agree. In other words, just because an unreasonable restraint *can arise* from *legal* overt acts does not mean that an unreasonable restraint *cannot* arise from *illegal* overt acts.

Thus, there can be no question that the discrimination against the Laguna News-Post in the form of its unconstitutional exclusion from Leisure World presented an additional circumstance which the jury should have considered under such instructions as would have enabled it to decide if there had been acts in concert by two or more persons to carry out an unreasonable restraint on trade or commerce. (Bus. & Prof. Code, § 16720.) If the jury were to find that there were such an unreasonable restraint, then the consequences thereof would be governed by Business and Professions Code section 16750 under which the jury would be entitled to decide further whether the plaintiff was injured in its business by reason of any such unreasonable restraint found to have occurred as defined by Business and Professions Code section 16720.

Because of the error of the trial court at the outset as represented by its order of December 5, 1977, all of the urgings of Golden West in its petition for rehearing about there being substantial evidence to support the jury's verdict which held against plaintiff on its theory of an illegal combination in restraint of trade are meaningless. The ground rules under which the jury decided the case were wrong, and plaintiff, should it seek a new trial, is entitled to try to prove that Golden West participat-

ed in influencing Golden Rain's *unconstitutional* exclusion of the plaintiff's newspaper from Leisure World and to try to prove additionally that this resulted in an unreasonable restraint of trade which proximately caused damages to the plaintiff for the applicable period not barred by the statute of limitations.

Unless there were such complicity which resulted in an unreasonable restraint of trade and commerce, no violation of section 16750 of the Business and Professions Code occurred. Otherwise, even though the appeal has been dismissed as to Golden West, plaintiff is still entitled to pursue the foregoing theory against Golden Rain as a possible participant in the alleged conspiracy.

THE REMAINING ISSUES

On the factual issues actually tried to the jury on the cross-complaint under the Cartwright Act and the Unfair Trade Practices Act, there was substantial evidence abounding to sustain the jury's verdicts on the cross-complaint, and we see no good purpose to be served in pursuing a detailed recitation of such evidence. The judgment in that respect is affirmed.

DISPOSITION

Item No. 5 deemed to be without substantial controversy is stricken, there being absolutely no evidence in the record to support such a determination. Insofar as the judgment denied plaintiff's application for an injunction to terminate its exclusion from Leisure World, the judgment is reversed with directions. The trial court is directed to enter a new and different judgment granting such application on terms and conditions substantially as follows: For so long as Golden Rain or any other entity, exercising a power of control over the right of entry into Leisure World, authorizes or suffers the unsolicited, live carrier delivery of any giveaway type newspaper, including the Leisure World News, to any residence in Leisure World where any occupant thereof has not personally requested or subscribed to such delivery, the plaintiff shall be entitled to enter Leisure World for the purpose of delivering its newspaper, unsolicited, to any such residence in Leisure World, provided nevertheless that such delivery shall be under the same rules and regulations as to time, place, and manner as apply to the delivery of e.g., the Los Angeles Times and other newspapers offered for sale to subscribers, and provided further that if any resident of Leisure World shall expressly

state in writing to Golden Rain or to the management of Leisure World that he or she does not wish to receive unsolicited delivery of the Laguna News-Post to his or her residence, then plaintiff shall refrain thereafter from any delivery to that resident. In this latter instance, plaintiff shall be entitled to verify independently by telephone call or personal visit that any given resident does not wish to receive unsolicited delivery of the Laguna News-Post.

Because we have decided that plaintiff's exclusion from Leisure World was unconstitutional discrimination and therefore wrongful as a matter of law, the trial court is further directed, upon due application of plaintiff, to try, with a jury if requested, those issues of damages arising from the illegality of the exclusion of the Laguna News-Post from Leisure World, namely: (1) whether plaintiff suffered any damages caused by its illegal exclusion from Leisure World as measured by sections 1708 and 3333 of the Civil Code; (2) whether there was any concerted action or agreement between Golden Rain and Golden West, per section 16720, subdivision (a) of the Business and Professions Code, which caused the unconstitutional exclusion of the Laguna News-Post from Leisure World such as to constitute an unreasonable restraint of trade; and (3) whether there were any actual damages proximately resulting from any such unreasonable restraint of trade over the four years next preceding the filing of the action for assessment per section 16750.1 of the Business and Professions Code.

Except as reversed with directions above, the judgment is affirmed, and each party shall bear its own costs on appeal.

Gardner, J.,* concurred.

KAUFMAN, Acting P. J., Concurring and Dissenting.—Somewhat reluctantly,[1] I concur in the opinion and judgment except insofar as it holds that a discriminatory violation of a newspaper's constitutional right to freedom of the press gives rise to a direct cause of action for damages outside the parameters of recognized tort law and independent of the statutory law dealing with unlawful restraints of trade and unfair business practices. Not a single case or authority so holding is cited for that novel proposition, and the authorities that are cited in support of it are neither compelling nor persuasive.

*Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

[1]My reluctance is based on my agreement with the majority (see majority opn., *ante*, pp. 847-848, fn. 14) that this case really involves nothing more than a commercial dispute between two entities engaged in the newspaper business and my regret that plain-

Even if the majority were correct that the provision in the California Constitution guaranteeing freedom of the press (art. I, § 2, subd. (a)) is self-executing, that would not automatically and necessarily result in the conclusion that a violation of that right gives rise to a cause of action for damages. Self-executing means no more than that the constitutional right will be enforced without enabling legislation. The fact that a constitutional provision is self-executing does not establish the remedies that are available for its enforcement. Injunctive or declaratory relief may be available to the exclusion of money damages.

Moreover, it is clear that the free press provision of the California Constitution is not self-executing, at least in the sense that its violation gives right to a direct cause of action for damages. Subdivision (a) of section 2 of article I provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. *A law may not restrain or abridge liberty of* speech or *press*." (Italics added.) A constitutional provision may be regarded as self-executing "if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms . . . ." (*Taylor* v. *Madigan* (1975) 53 Cal.App.3d 943, 951 [126 Cal. Rptr. 376]; accord; *Chesney* v. *Byram* (1940) 15 Cal.2d 460, 462 [101 P.2d 1106]; *Flood* v. *Riggs* (1978) 80 Cal.App.3d 138, 154 [145 Cal. Rptr. 573].) Obviously, the language "a law may not restrain or abridge liberty of . . . press" falls a bit short of fixing the "extent of the right conferred" and, a fortiori, "the liability imposed." Indeed, inasmuch as the prohibition is against abridgement of the right by "[a] law," it is problematical whether the constitutional provision has any application to the conduct of nongovernmental entities.

The last observation is pertinent also to the fundamental distinction between the case at bench and the right of privacy cases cited by the majority. The initiative constitutional amendment to section 1 of article I of the California Constitution, adding privacy to the enumerated inalienable rights,[2] had a unique "legislative" history that indicated the

plaintiff has been successful in importing into the dispute the revered constitutional right of freedom of the press. Although I find it difficult to argue with the logic of the discussion of constitutional issues in the majority opinion, I have the uneasy feeling that by right this case should not, and in fact does not, involve the grave constitutional concerns confronted in the majority opinion.

[2]The language of article I, section 1, of the California Constitution is: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

provision was meant to protect the right of privacy against unlawful intrusions by either governmental or private entities and was intended to be enforceable without more. (See *White* v. *Davis* (1975) 13 Cal.3d 757, 773-776 [120 Cal.Rptr. 94, 533 P.2d 222]; *Porten* v. *University of San Francisco* (1976) 64 Cal.App.3d 825, 829 [134 Cal.Rptr. 839].) The courts in both the *White* and *Porten* decisions relied entirely on that unique "legislative" history in determining that the provision establishing an inalienable right to privacy was self-executing and, apparently in *Porten*, that its violation gives rise to a direct cause of action for damages. Thus those decisions constitute no authority for a damage action based on article I, section 2, subdivision (a). Neither does the observation in *Emerson* v. *J. F. Shea Co.* (1978) 76 Cal.App.3d 579, 591 [143 Cal.Rptr. 170], that in *White* the court indicated that the constitutional amendment adding privacy to the list of inalienable rights was intended to be self-executing.

Civil Code section 3333 is not a substantive statute; it merely prescribes the general measure of damages in tort cases. Civil Code section 1708 which provides that every person is bound to abstain from injuring the person or property of another or infringing any of his rights, states a general principle of law, but it hardly provides support for the adoption of the novel legal proposition that a violation of subdivision (a) of section 2 of article I of the California Constitution gives rise to a direct cause of action for damages outside the parameters of recognized tort law and independent of the statutory law governing unlawful restraints on trade and unfair business practices.

A petition for a rehearing was denied June 16, 1982, and respondent's petition for a hearing by the Supreme Court was denied August 18, 1982.

[May 1982]

ATTACHMENT "6"

Weiss v. State Board of Equalization (1953)
40 Cal.2d 772; 256 P.2d 1

[L. A. No. 22697. In Bank. Apr. 28, 1953.]

ALFRED K. WEISS et al., Appellants, v. STATE BOARD OF EQUALIZATION et al., Respondents.

[1] Intoxicating Liquors—Licenses—Discretion of Board.—In exercising power which State Board of Equalization has under Const., art. XX, § 22, to deny, in its discretion, "any specific liquor license if it shall determine for good cause that the granting . . . of such license would be contrary to public welfare or morals," the board performs a quasi judicial function similar to local administrative agencies.

[2] Licenses—Application.—Under appropriate circumstances, the same rules apply to determination of an application for a license as those for its revocation.

[3] Intoxicating Liquors — Licenses — Discretion of Board.—The discretion of the State Board of Equalization to deny or revoke a liquor license is not absolute but must be exercised in accordance with the law, and the provision that it may revoke or deny a license "for good cause" necessarily implies that its decision should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals.

[4] Id.—Licenses—Discretion of Board.—While the State Board of Equalization may refuse an on-sale liquor license if the premises are in the immediate vicinity of a school (Alcoholic Beverage Control Act, § 13), the absence of such a provision or regulation by the board as to off-sale licenses does not preclude it from making proximity of the premises to a school

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[1] See Cal.Jur.2d, Alcoholic Beverages, § 25 et seq.; Am.Jur., Intoxicating Liquors, § 121.

McK. Dig. References: [1, 3-7] Intoxicating Liquors, § 9.4; [2] Licenses, § 32.

an adequate basis for denying an off-sale license as being inimical to public morals and welfare.

[5] Id.—Licenses—Discretion of Board.—It is not unreasonable for the State Board of Equalization to decide that public welfare and morals would be jeopardized by the granting of an off-sale liquor license within 80 feet of some of the buildings on a school ground.

[6] Id.—Licenses—Discretion of Board.—Denial of an application for an off-sale license to sell beer and wine at a store conducting a grocery and delicatessen business across the street from high school grounds is not arbitrary because there are other liquor licensees operating in the vicinity of the school, where all of them, except a drugstore, are at such a distance from the school that it cannot be said the board acted arbitrarily, and where, in any event, the mere fact that the board may have erroneously granted licenses to be used near the school in the past does not make it mandatory for the board to continue its error and grant any subsequent application.

[7] Id.—Licenses—Discretion of Board.—Denial of an application for an off-sale license to sell beer and wine at a store across the street from high school grounds is not arbitrary because the neighborhood is predominantly Jewish and applicants intend to sell wine to customers of the Jewish faith for sacramental purposes, especially where there is no showing that wine for this purpose could not be conveniently obtained elsewhere.

APPEAL from a judgment of the Superior Court of Los Angeles County. Frank G. Swain, Judge. Affirmed.

Proceeding in mandamus to compel State Board of Equalization to issue an off-sale liquor license. Judgment denying writ affirmed.

Riedman & Silverberg and Milton H. Silverberg for Appellants.

Edmund G. Brown, Attorney General, and Howard S. Goldin, Deputy Attorney General, for Respondents.

CARTER, J.—Plaintiffs brought mandamus proceedings in the superior court to review the refusal of defendant, State Board of Equalization, to issue them an off-sale beer and wine license at their premises and to compel the issuance of such a license. The court gave judgment for the board and plaintiffs appeal.

Plaintiffs filed their application with the board for an off-sale beer and wine license (a license to sell those beverages to be consumed elsewhere than on the premises) at their premises where they conducted a grocery and delicatessen business. After a hearing the board denied the application on the grounds that the issuance of the license would be contrary to the "public welfare and morals" because of the proximity of the premises to a school.

According to the evidence before the board, the area concerned is in Los Angeles. The school is located in the block bordered on the south by Rosewood Avenue, on the west by Fairfax Avenue, and on the north by Melrose Avenue—an 80-foot street running east and west parallel to Rosewood and a block north therefrom. The school grounds are enclosed by a fence, the gates of which are kept locked most of the time. Plaintiffs' premises for which the license is sought are west across Fairfax, an 80-foot street, and on the corner of Fairfax and Rosewood. The area on the west side of Fairfax, both north and south from Rosewood, and on the east side of Fairfax south from Rosewood, is a business district. The balance of the area in the vicinity is residental. The school is a high school. The portion along Rosewood is an athletic field with the exception of buildings on the corner of Fairfax and Rosewood across Fairfax from plaintiffs' premises. Those buildings are used for R.O.T.C. The main buildings of the school are on Fairfax south of Melrose. There are gates along the Fairfax and Rosewood sides of the school but they are kept locked most of the time. There are other premises in the vicinity having liquor licenses. There are five on the west side of Fairfax in the block south of Rosewood and one on the east side of Fairfax about three-fourths of a block south of Rosewood. North across Melrose and at the corner of Melrose and Fairfax is a drugstore which has an off-sale license. That place is 80 feet from the northwest corner of the school property as Melrose is 80 feet wide and plaintiffs' premises are 80 feet from the southwest corner of the school property. It does not appear when any of the licenses were issued, with reference to the existence of the school or otherwise. Nor does it appear what the distance is between the licensed drugstore and any school buildings as distinguished from school grounds. The licenses on Fairfax Avenue are all farther away from the school than plaintiffs' premises.

Plaintiffs contend that the action of the board in denying them a license is arbitrary and unreasonable and they particu-

larly point to the other licenses now outstanding on premises as near as or not much farther from the school.

The board has the power "in its discretion, to deny . . . any specific liquor license if it shall determine for good cause that the granting . . . of such license would be contrary to public welfare or morals." (Cal. Const., art. XX, § 22.) [1] In exercising that power it performs a quasi judicial function similar to local administrative agencies. (*Covert* v. *State Board of Equalization*, 29 Cal.2d 125 [173 P.2d 545]; *Reynolds* v. *State Board of Equalization*, 29 Cal.2d 137 [173 P.2d 551, 174 P.2d 4]; *Stoumen* v. *Reilly*, 37 Cal.2d 713 [234 P.2d 969].) [2] Under appropriate circumstances, such as we have here, the same rules apply to the determination of an application for a license as those for the revocation of a license. (*Fascination, Inc.* v. *Hoover*, 39 Cal.2d 260 [246 P.2d 656]; Alcoholic Beverage Control Act, § 39; Stats. 1935, p. 1123, as amended.) [3] In making its decision "The board's discretion . . . however, is not absolute but must be exercised in accordance with the law, and the provision that it may revoke [or deny] a license 'for good cause' necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals." (*Stoumen* v. *Reilly*, *supra*, 37 Cal.2d 713, 717.)

[4] Applying those rules to this case, it is pertinent to observe that while the board may refuse an on-sale license if the premises are in the immediate vicinity of a school (Alcoholic Beverage Control Act, *supra*, § 13) there is no such provision or regulation by the board as to off-sale licenses. Nevertheless, proximity of the licensed premises to a school may supply an adequate basis for denial of a license as being inimical to public morals and welfare. (See *Altadena Community Church* v. *State Board of Equalization*, 109 Cal.App.2d 99 [240 P.2d 322]; *State* v. *City of Racine*, 220 Wis. 490 [264 N.W. 490]; *Ex parte Velasco*, (Tex.Civ.App.) 225 S.W. 2d 921; *Harrison* v. *People*, 222 Ill. 150 [78 N.E. 52].)

The question is, therefore, whether the board acted arbitrarily in denying the application for the license on the ground of the proximity of the premises to the school. No question is raised as to the personal qualifications of the applicants. [5] We cannot say, however, that it was unreasonable for the board to decide that public welfare and morals would be jeopardized by the granting of an off-sale license at premises

within 80 feet of some of the buildings on a school ground. As has been seen, a liquor license may be refused when the premises, where it is to be used, are in the vicinity of a school. While there may not be as much probability that an off-sale license in such a place would be as detrimental as an on-sale license, yet we believe a reasonable person could conclude that the sale of any liquor on such premises would adversely affect the public welfare and morals.

[6] Plaintiffs argue, however, that assuming the foregoing is true, the action of the board was arbitrary because there are other liquor licensees operating in the vicinity of the school. All of them, except the drugstore at the northeast corner of Fairfax and Melrose, are at such a distance from the school that we cannot say the board acted arbitrarily. It should be noted also that as to the drugstore, while it is within 80 feet of a corner of the school grounds, it does not appear whether there were any buildings near that corner, and as to all of the licensees, it does not appear when those licenses were granted with reference to the establishment of the school.

Aside from these factors, plaintiffs' argument comes down to the contention that because the board may have erroneously granted licenses to be used near the school in the past it must continue its error and grant plaintiffs' application. That problem has been discussed: "Not only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviation from the principle of stare decisis. Like courts, agencies may overrule prior decisions or practices and may initiate new policy or law through adjudication. Perhaps the best authority for this observation is *FCC* v. *WOKO* [329 U.S. 223 (67 S.Ct. 213, 91 L.Ed. 204).] The Commission denied renewal of a broadcasting license because of misrepresentations made by the licensee concerning ownership of its capital stock. Before the reviewing courts one of the principal arguments was that comparable deceptions by other licensees had not been dealt with so severely. A unanimous Supreme Court easily rejected this argument: 'The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem com-

parable.' In rejecting a similar argument that the SEC without warning had changed its policy so as to treat the complainant differently from others in similar circumstances, Judge Wyzanski said: 'Flexibility was not the least of the objectives sought by Congress in selecting administrative rather than judicial determination of the problems of security regulation. . . . The administrator is expected to treat experience not as a jailer but as a teacher.' Chief Justice Vinson, speaking for a Court of Appeals, once declared: 'In the instant case, it seems to us there has been a departure from the policy of the Commission expressed in the decided cases, but this is not a controlling factor upon the Commission.' Other similar authority is rather abundant. Possibly the outstanding decision the other way, unless the dissenting opinion in the second Chenery case is regarded as authority, is *NLRB* v. *Mall Tool Co.* [119 F.2d 700.] The Board in ordering back pay for employees wrongfully discharged had in the court's opinion departed from its usual rule of ordering back pay only from time of filing charges, when filing of charges is unreasonably delayed and no mitigating circumstances are shown. The Court, assuming unto itself the Board's power to find facts, said: 'We find in the record no mitigating circumstances justifying the delay.' Then it modified the order on the ground that 'Consistency in administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.' From the standpoint of an ideal system, one can hardly disagree with the court's remark. But from the standpoint of a workable system, perhaps the courts should not impose upon the agencies standards of consistency of action which the courts themselves customarily violate. Probably deliberate change in or deviation from established administrative policy should be permitted so long as the action is not arbitrary or unreasonable. This is the view of most courts." (Davis, Administrative Law, § 168; see also Parker, Administrative Law, pp. 250-253; 73 C.J.S., Public Administrative Bodies and Procedure, § 148; *California Emp. Com.* v. *Black-Foxe M. Inst.*, 43 Cal.App.2d Supp. 868 [110 P.2d 729].) Here the board was not acting arbitrarily if it did change its position because it may have concluded that another license would be too many in the vicinity of the school.

[7] The contention is also advanced that the neighborhood is predominantly Jewish and plaintiffs intend to sell wine to customers of the Jewish faith for sacramental purposes. We fail to see how that has any bearing on the issue. The wine

to be sold is an intoxicating beverage, the sale of which requires a license under the law. Furthermore, it cannot be said that wine for this purpose could not be conveniently obtained elsewhere.

The judgment is affirmed.

Gibson, C. J., Shenk, J., Edmonds, J., Traynor, J., Schauer, J., and Spence, J., concurred.

Appellants' petition for a rehearing was denied May 21, 1953.

ATTACHMENT "7"

Sierra Club v. San Joaquin Local Agency Formation Commission (1999)
21 Cal.4th 489; 87 Cal.Rptr. 2d 702; 981 P.2d 543

[No. S072212. Aug. 19, 1999.]

SIERRA CLUB et al., Plaintiffs and Appellants, v.
SAN JOAQUIN LOCAL AGENCY FORMATION COMMISSION, Defendant and Respondent;
CALIFIA DEVELOPMENT GROUP et al., Real Parties in Interest and Respondents.

SUMMARY

The trial court dismissed a petition for a writ of mandate filed by an environmental group and others, challenging a local agency formation commission's approval of a proposed city annexation, on the ground that plaintiffs had failed to exhaust their administrative remedies under Gov. Code, § 56857, subd. (a), which provides that a person or agency "may" seek rehearing of a commission action. (Superior Court of San Joaquin County, No. CV001997, Bobby W. McNatt, Judge.) The Court of Appeal, Third Dist., No. C027361, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal and remanded for further proceedings. The court held that, when the Legislature has provided that a person or agency "may" seek reconsideration or rehearing of an adverse administrative agency decision, that person or agency need not exercise that rehearing option prior to seeking judicial recourse. The exhaustion of administrative remedies doctrine is adequately safeguarded by the requirement that the administrative proceeding must be completed before the right to judicial review arises. A person or agency is not required, after an agency's final decision, to raise for a second time the same evidence and legal arguments previously raised solely to exhaust administrative remedies. The court further held that this new judicial rule was entitled to retroactive application. (Opinion by Werdegar, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) **Administrative Law § 95—Judicial Review and Relief—Mandamus—Quasi-Legislative Determination: Municipalities § 7—Alteration and Disincorporation—Annexation—Agency Determination.**—A determination regarding a proposed city annexation by a local agency formation commission is quasi-legislative; judicial review thus arises under the ordinary mandamus provisions of Code Civ. Proc., § 1085, rather than the administrative mandamus provisions of Code Civ. Proc., § 1094.5.

(2) **Administrative Law § 86—Judicial Review and Relief—Exhaustion of Administrative Remedies.**—Exhaustion of administrative remedies is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of stare decisis, and binding upon all courts. Exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts.

(3) **Administrative Law § 88—Judicial Review and Relief—Exhaustion of Administrative Remedies—Particular Applications—When Rehearing Prescribed.**—When the administrative procedure prescribes a rehearing, the rule of exhaustion of remedies will apply in order that the board may be given an opportunity to correct any errors that it may have made.

(4a-4f) **Administrative Law § 89—Judicial Review and Relief—Exhaustion of Administrative Remedies—Exceptions—When Statute Provides Person or Agency "May" Seek Reconsideration of Adverse Agency Decision.**—The trial court erred in dismissing a petition for a writ of mandate filed by an environmental group and others, challenging a local agency formation commission's approval of a proposed city annexation, on the ground that plaintiffs had failed to exhaust their administrative remedies by failing to request rehearing of the agency's decision under Gov. Code, § 56857, subd. (a), which provides that a person or agency "may" seek rehearing of a commission action. When the Legislature has provided that a person or agency "may" seek reconsideration or rehearing of an adverse administrative agency decision, that person or agency need not exercise that rehearing option prior to seeking judicial recourse. The exhaustion of administrative remedies doctrine is adequately safeguarded by the requirement

that the administrative proceeding must be completed before the right to judicial review arises. A person or agency is not required, after an agency's final decision, to raise for a second time the same evidence and legal arguments previously raised solely to exhaust administrative remedies. Furthermore, this new judicial rule was entitled to retroactive application, which would not create any unusual hardships. (Overruling *Alexander* v. *State Personnel Bd.* (1943) 22 Cal.2d 198 [137 P.2d 433], *Clark* v. *State Personnel Bd.* (1943) 61 Cal.App.2d 800 [144 P.2d 84], and *Child* v. *State Personnel Bd.* (1950) 97 Cal.App.2d 467 [218 P.2d 52], to the extent they held otherwise.)

[See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 309.]

(5) **Administrative Law § 87—Judicial Review and Relief—Exhaustion of Administrative Remedies—Purpose.**—The basic purpose of the doctrine of exhaustion of administrative remedies is to lighten the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the wanted relief. Even when the administrative remedy may not resolve all issues or provide the precise relief requested by a plaintiff, the exhaustion doctrine is still viewed with favor because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency. It can serve as a preliminary administrative sifting process, unearthing the relevant evidence and providing a record which the court may review.

(6) **Courts § 39.5—Decisions and Orders—Doctrine of Stare Decisis—Opinions of California Supreme Court.**—It is a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy, known as the doctrine of stare decisis, is based on the assumption that certainty, predictability, and stability in the law are the major objectives of the legal system; that is, that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law. It is likewise well established, however, that this policy is a flexible one which permits the California Supreme Court to reconsider, and ultimately to depart from, its own prior precedent in an appropriate case. Although the doctrine of stare decisis does indeed serve important values, it nevertheless should not shield court-created error from correction.

(7) **Courts § 37—Decisions and Orders—Doctrine of Stare Decisis—Application—Significant Legislative Reliance on Prior Decision.**—

The significance of stare decisis is highlighted when legislative reliance is potentially implicated. Certainly, stare decisis has added force when the Legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, since overruling the decision would dislodge settled rights and expectations or require an extensive legislative response.

(8) **Administrative Law § 89—Judicial Review and Relief—Exhaustion of Administrative Remedies—Exceptions—Administrative Procedure Act—Failure to Seek Rehearing.**—The Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), which governs a substantial portion of the administrative hearings held in this state, was the final culmination of a detailed Judicial Council administrative law study ordered by the Legislature two years earlier. The Legislature determined the right to judicial review under the APA would not be affected by failure to seek reconsideration before the agency in question, because of the council's finding that the policy requiring the exhaustion of administrative remedies is adequately safeguarded by the requirement that the administrative proceeding must be completed before the right to judicial review exists. In the absence of compelling language in the APA to the contrary, it is assumed that the Legislature adopted the proposed legislation with the intent and meaning expressed by the council in its report.

(9a, 9b) **Courts § 39.5—Decisions and Orders—Prospective and Retroactive Decisions—Judicial Discretion—Factors Considered.**—A decision of the California Supreme Court overruling one of its prior decisions ordinarily applies retroactively. A court may decline to follow that standard rule when retroactive application of a decision would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law. In other words, courts have looked to the hardships imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases. All things being equal, it is preferable to apply decisions in such a manner as to preserve, rather than foreclose, a litigant's day in court on the merits of his or her action.

COUNSEL

Brandt-Hawley & Zoia and Susan Brandt-Hawley for Plaintiffs and Appellants.

Nancy N. McDonough and David Guy for Plaintiff and Appellant San Joaquin Farm Bureau Federation.

Remy, Thomas and Moose, Michael H. Remy, James G. Moose, John H. Mattox and Lee Axelrad for the Planning and Conservation League as Amicus Curiae on behalf of Plaintiffs and Appellants.

Herum, Crabtree, Dyer, Zolezzi & Terpstra, Steven A. Herum and Thomas H. Terpstra for Defendant and Respondent and for Real Parties in Interest and Respondents Gold Rush City Holding Company, Inc., and Califia Development Group.

Susan Burns Cochran, City Attorney, for Real Party in Interest and Respondent City of Lathrop.

Van Bourg, Weinberg, Roger & Rosenfeld and Sandra Rae Benson for the Northern California District Council of Laborers as Amicus Curiae on behalf of Defendant and Respondent and Real Parties in Interest and Respondents.

Meyers, Nave, Riback, Silver & Wilson, Andrea J. Saltzman and Rick W. Jarvis for Seventy Four California Cities as Amicus Curiae on behalf of Real Parties in Interest and Respondents.

OPINION

WERDEGAR, J.—In *Alexander* v. *State Personnel Bd.* (1943) 22 Cal.2d 198 [137 P.2d 433] (*Alexander*), we held that when the Legislature has provided that a petitioner before an administrative tribunal "may" seek reconsideration or rehearing[1] of an adverse decision of that tribunal, the petitioner always must seek reconsideration in order to exhaust his or her administrative remedies prior to seeking recourse in the courts. The *Alexander* rule has received little attention since its promulgation, and several legal scholars and at least one Court of Appeal have expressed the belief that the rule has been abandoned or legislatively abrogated. That conclusion was premature; the rule remains controlling law. However, as it serves little practical purpose and is inconsistent with procedure in parallel contexts, we hereby abandon it. This is not to say that reconsideration of agency actions need never be sought prior to judicial review. Such a request is necessary

[1] The terms "reconsideration" and "rehearing" are used interchangeably by the literature and case authority in this area, as well as by the parties to this appeal. Perceiving no fundamental difference between the two terms for purposes of this case, we will do the same.

where appropriate to raise matters not previously brought to the agency's attention. We simply see no necessity that parties file pro forma requests for reconsideration raising issues already fully argued before the agency, and finally decided in the administrative decision, solely to satisfy the procedural requirement imposed in *Alexander*.

I. FACTUAL AND PROCEDURAL HISTORY

In early 1996, the City of Lathrop (City) approved a proposal for a large development project on several thousand acres of farmland outside of city limits. A plan was approved, an environmental impact report (EIR) was certified, and a development agreement was executed. A second plan was approved to double the capacity of the City's wastewater treatment facility, and a separate EIR was certified for that project.

Proceedings were commenced before the San Joaquin Local Agency Formation Commission (SJLAFCO) to obtain approval of the City's annexation of the territory. The Sierra Club, the San Joaquin Farm Bureau Federation, Eric Parfrey and Georgianna Reichelt (collectively petitioners) objected in that proceeding. SJLAFCO overruled their objections and approved the proposed annexation; it also adopted a finding of overriding considerations with regard to the environmental impacts identified in the EIR.

Parfrey sent a letter to SJLAFCO requesting reconsideration of the approval. In the letter he asserted the required $700 filing fee for the reconsideration would be forthcoming. The next day he withdrew his request and, together with the other petitioners, filed this mandamus petition in the superior court. The suit named SJLAFCO as respondent, and various developers including Califia Development Group (Califia), the City and others as real parties in interest. The petition alleged a lack of substantial evidence to support the finding of overriding considerations with respect to the environmental impacts identified in the EIR and, alternatively, that SJLAFCO failed to follow the applicable statutory provisions related to territory annexation.

Califia moved to dismiss the petition. Observing that Government Code section 56857, subdivision (a) provides that an aggrieved person may request reconsideration of an adverse local agency formation commission (LAFCO) resolution, Califia argued that under the authority of *Alexander*, *supra*, 22 Cal.2d at page 200, such a request is a mandatory prerequisite to filing in the courts. Petitioners responded that the *Alexander* rule is no longer good law, as reflected in *Benton* v. *Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1475 [277 Cal.Rptr. 481]. The trial court granted the motion to dismiss.

The Court of Appeal affirmed. The majority concluded dismissal was compelled by *Alexander*, despite its view that the *Alexander* rule is "outmoded" and "presents a fitful trap for the unwary." We granted review.

II. THE LAFCO STATUTORY SCHEME

LAFCO's are administrative bodies created pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.) to control the process of municipality expansion. The purposes of the act are to encourage "planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns" (*id.*, § 56300), and to discourage urban sprawl and encourage "the orderly formation and development of local agencies based upon local conditions and circumstances" (*id.*, § 56301). (1) A LAFCO annexation determination is quasi-legislative; judicial review thus arises under the ordinary mandamus provisions of Code of Civil Procedure section 1085, rather than the administrative mandamus provisions of Code of Civil Procedure section 1094.5. (*City of Santa Cruz* v. *Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 387, 390 [142 Cal.Rptr. 873].)

Government Code section 56857, subdivision (a) provides: "Any person or affected agency *may* file a written request with the executive officer requesting amendments to or reconsideration of any resolution adopted by the commission making determinations. The request shall state the specific modification to the resolution being requested." (Italics added.) Such requests must be filed within 30 days of the adoption of the LAFCO resolution, and no further action may be taken on the annexation until the LAFCO has acted on the request. (*Id.*, subds. (b), (c).) Nothing in the statutory scheme explicitly states that an aggrieved party must seek rehearing prior to filing a court action.

III. THE *ALEXANDER* RULE

(2) That failure to exhaust administrative remedies is a bar to relief in a California court has long been the general rule. In *Abelleira* v. *District Court of Appeal* (1941) 17 Cal.2d 280 [109 P.2d 942, 132 A.L.R. 715] (*Abelleira*), a referee issued a ruling awarding unemployment insurance benefits to striking employees. The affected employers filed a petition for a writ of mandate without first completing an appeal to the California Employment Commission, as required by the statutory scheme. The appellate court issued an alternative writ and a temporary restraining order blocking payment of the benefits. We, in turn, issued a peremptory writ of prohibition restraining the appellate court from enforcing its writ and order. In so doing, we stated

the general rule that exhaustion of administrative remedies "is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of *stare decisis*, and binding upon all courts. . . . [E]xhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (*Id.* at p. 293, italics in original.)

The employers in *Abelleira* argued that completing the administrative process would have been futile because the commission had already ruled against their position in prior decisions based upon similar facts. We rejected this argument, noting that a civil litigant is not permitted to bypass the superior court and file an original suit in the Supreme Court merely because the local superior court judge might be hostile to the plaintiff's views. "The whole argument rests upon an illogical and impractical basis, since it permits the party applying to the court to assert without any conclusive proof, and without any possibility of successful challenge, the outcome of an appeal which the administrative body has not even been permitted to decide." (*Abelleira*, *supra*, 17 Cal.2d at p. 301.)

We then stated: "It should be observed also that this argument is completely answered by those cases which apply the rule of exhaustion of remedies to rehearings. Since the board has already made a decision, if the argument of futility of further application were sound, then surely this is the instance in which it would be accepted. (3) But it has been held that where the administrative procedure prescribes a rehearing, the rule of exhaustion of remedies will apply in order that the board may be given an opportunity to correct any errors that it may have made. [Citations.]" (*Abelleira*, *supra*, 17 Cal.2d at pp. 301-302.)

Two years later we issued *Alexander*, *supra*, 22 Cal.2d 198. In that case two civil service employees sought a writ of mandate directing the State Land Commission to reinstate them after the State Personnel Board had upheld their dismissals in an administrative proceeding. The Civil Service Act at the time provided that employees "may apply" for a rehearing within 30 days of receiving an adverse decision of the State Personnel Board. The employees did not seek rehearing before filing the writ petition, and the deadline for doing so passed. The trial court sustained the defendants' demurrer. (*Id.* at p. 199.)

We affirmed. "The rule that administrative remedies must be exhausted before redress may be had in the courts is established in this state. (*Abelleira* v. *District Court of Appeal*, 17 Cal.2d 280 [109 P.2d 942, 132 A.L.R. 715],

and cases cited at pages 292, 293, 302.) The provision for a rehearing is unquestionably such a remedy. . . . [¶] The petitioners ask this court to distinguish between a provision in a statute which requires the filing of a petition for rehearing before an administrative board as a condition precedent to commencing proceedings in the courts [citations], and a provision such as in the present act which it is claimed is permissive only. The distinction is of no assistance to the petitioners under the rule. If a rehearing is available it is an administrative remedy to which the petitioners must first resort in order to give the board an opportunity to correct any mistakes it may have made. As noted in the Abelleira case, *supra*, at page 293, the rule must be enforced uniformly by the courts. Its enforcement is not a matter of judicial discretion. It is true, the Civil Service Act does not expressly require that application for a rehearing be made as a condition precedent to redress in the courts. But neither does the act expressly designate a specific remedy in the courts. So that where, as here, the act provides for a rehearing, but makes no provision for specific redress in the courts and resort to rehearing as a condition precedent, the rule of exhaustion of administrative remedies supplies the omission." (*Alexander*, *supra*, 22 Cal.2d at pp. 199-200.)

Justices Carter and Traynor each dissented.[2] Both dissents noted that the Legislature has the ability to make an administrative rehearing a mandatory requirement if it chooses to do so, and that it had already done so explicitly in two statutory schemes enacted prior to *Alexander*. (22 Cal.2d at p. 201 (dis. opn. of Carter, J.); *id.* at pp. 204-205 (dis. opn. of Traynor, J.).) Justice Carter further emphasized that the majority's broad interpretation of the exhaustion requirement is contrary to the principles of procedure ordinarily applicable in judicial and quasi-judicial forums. (*Id.* at p. 201.) For example, a litigant need not make a motion for a new trial before pursuing an appeal after final judgment in the trial court, nor must that litigant petition the Court of Appeal for rehearing prior to seeking review (or, at that time, hearing) before the Supreme Court after the appellate court issues its decision. (*Ibid.*) Justice Traynor additionally noted that the majority's interpretation was neither compelled by *Abelleira* (22 Cal.2d at p. 205) nor in accordance with the federal rule (*id.* at p. 204).

In 1945, the Legislature passed the Administrative Procedure Act (APA) (then Gov. Code, § 11500 et seq., now Gov. Code, § 11340 et seq.), which governs a substantial portion of the administrative hearings held in this state. The APA and related legislative enactments were the final culmination of a detailed Judicial Council administrative law study ordered by the Legislature

[2]Chief Justice Gibson did not participate in the decision.

two years earlier.[3] The Judicial Council reported its conclusions and recommendations in its Tenth Biennial Report to the Governor and the Legislature. With regard to permissive rehearings, the report states: "The [draft] statute provides . . . that the right to judicial review is not lost by a failure to petition for reconsideration. The Council decided that the established policy requiring the exhaustion of administrative remedies is adequately safeguarded by the requirement that the administrative proceeding must be completed before the right to judicial review exists. . . . [¶] The proposals in the field of judicial review are in substantially the form in which they were submitted publicly in a tentative draft. They have received general approval from the agencies and from members of the bar and the Council believes that the enactment of these recommended statutes will produce a substantial improvement in our present procedure for the judicial review of administrative orders and decisions." (Judicial Council of Cal., 10th Biennial Rep. (1944) Rep. on Administrative Agencies Survey, p. 28.)

In enacting the APA, the Legislature concurred with this recommendation. Government Code section 11523 controls judicial review of agency rulings under the APA and provides that "[t]he right to petition shall not be affected by the failure to seek reconsideration before the agency." Of course, section 11523 applies only in proceedings arising under the APA.

Over the next half-century, the *Alexander* rule remained controlling authority but garnered little attention in either case law or legal scholarship. *Alexander* was expressly followed in two early decisions. (*Clark* v. *State Personnel Board* (1943) 61 Cal.App.2d 800 [144 P.2d 84]; *Child* v. *State Personnel Board* (1950) 97 Cal.App.2d 467 [218 P.2d 52].) While over the decades *Alexander* was cited in decisions several dozen other times, the citation was nearly always a reference to the *Abelleira* principle, i.e., the general proposition that one must exhaust administrative remedies before seeking recourse in the courts.

The specific effect of failing to seek a seemingly permissive rehearing was not at issue in another published case until *Benton* v. *Board of Supervisors*, *supra*, 226 Cal.App.3d 1467. In *Benton*, opponents of a California Environmental Quality Act (CEQA) decision by a county board of supervisors did not request reconsideration by the board before seeking a writ of mandate in the superior court. The Court of Appeal rejected the argument the petitioners

[3]The Judicial Council was entrusted to "make a thorough study of the subject . . . of review of decisions of administrative boards, commissions and officers . . . [and] formulate a comprehensive and detailed plan . . . [including] drafts of such legislative measures as may be calculated to carry out and effectuate the plan." (Stats. 1943, ch. 991, § 2, p. 2904.)

had failed to exhaust administrative remedies, concluding that because county ordinances and CEQA guidelines expressly denied the board any authority to reconsider its decision, there was no additional remedy to pursue. (*Id.* at pp. 1474-1475.)

The Court of Appeal went on to bolster its conclusion, stating: "Second, even if we assume arguendo that the board had the authority to reconsider its adoption of the mitigated negative declaration, we are satisfied that the Bentons exhausted their administrative remedies. At one time, the California Supreme Court required an aggrieved person to apply to the administrative body for a rehearing after a final decision had been issued in order to exhaust administrative remedies. (*Alexander* v. *State Personnel Bd.* (1943) 22 Cal.2d 198, 199-201 [137 P.2d 433]; see 3 Witkin, Cal. Procedure ([4th]ed. [1996]) Actions, § [309, p. 398].) This holding—criticized by at least one legal scholar as 'extreme'—has been repealed by statute. (Gov. Code, § 11523 [Administrative Procedure Act cases]; see 3 Witkin, Cal. Procedure, *supra*, § 309, p. 398].) Therefore, we are not bound by it. The Bentons complied with the exhaustion requirement when they filed a timely appeal of the commission's decision to the board and argued their position before that body. [Citations.]" (*Benton* v. *Board of Supervisors*, *supra*, 226 Cal.App.3d at p. 1475, fn. omitted.)

The Legislature, of course, did not directly overturn the *Alexander* rule by enacting the APA, because the procedural changes it created were limited to APA cases. To directly repudiate the *Alexander* rule, the Legislature would have had to enact a contrary statute of general application, providing that in all cases not otherwise provided for by statute or regulation, the failure to seek reconsideration before an administrative body does not affect the right to judicial review. The *Alexander* rule thus remains the controlling common law of this state, even though the only recent case specifically to discuss that rule opined it is no longer in force.

IV. MERITS OF THE *ALEXANDER* RULE

(4a) We have reconsidered the *Alexander* rule and come to the conclusion that it suffers from several basic flaws. First, the *Alexander* rule might easily be overlooked, even by a reasonably alert litigant. At the most basic level, when a party has been given ostensibly permissive statutory authorization to seek reconsideration of a final decision, that he or she is affirmatively *required* to do so in order to obtain recourse to the courts is not intuitively obvious. Even to attorneys, the word "may" ordinarily means just that. It does not mean "must" or "shall."

Likewise, attorneys and litigants familiar with the rudiments of court procedure know that one need not make a request for a new trial prior to filing an appeal of an adverse judgment, nor seek reconsideration of an adverse appellate decision prior to seeking review in this court. Without receiving explicit notification from within the statutory scheme, they are unlikely to anticipate that a different rule will apply in administrative proceedings. This requirement, indeed, may not be apparent even to practitioners with experience in administrative law, since under the APA a rehearing opportunity styled as permissive is actually permissive, and not a mandatory prerequisite to court review. (Gov. Code, § 11523.)

Nor would an attorney familiar with federal law be placed on notice. The relevant section of the federal Administrative Procedure Act, 5 United States Code section 704, provides: "Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes [of judicial review] whether or not there has been presented or determined an application . . . for any form of reconsideration . . . ." In spite of the citations to federal case law in the *Alexander* majority opinion, this is the common law rule in federal courts and had been for decades before *Alexander* was decided. (See, e.g., *Prendergast* v. *N. Y. Tel. Co.* (1923) 262 U.S. 43, 48 [43 S.Ct. 466, 468, 67 L.Ed. 853]; *Levers* v. *Anderson* (1945) 326 U.S. 219, 222 [66 S.Ct. 72, 73-74, 90 L.Ed. 26].)[4]

In sum, even an alert legal practitioner could overlook the necessity of seeking rehearing, as a condition to judicial review, until after the deadline to act had passed, and many who petition before administrative bodies do so without the benefit of legal training. In recent years, moreover, even an awareness of the rehearing issue might not have avoided the potential pitfall, given that the only recent Court of Appeal decision (*Benton* v. *Board of Supervisors*, *supra*, 226 Cal.App.3d at p. 1475) declares the rule to have been legislatively repealed, and a leading treatise on California procedure, citing that decision, strongly implies the rule is no longer in force.[5]

[4]Neither federal case relied upon by the *Alexander* majority actually holds that a rehearing must be sought whenever available. In each case, the litigants attempted to raise issues before the courts that had never been raised in the proceeding before the administrative tribunal. (*Vandalia R. R.* v. *Public Service Comm.* (1916) 242 U.S. 255 [37 S.Ct. 93, 61 L.Ed. 276]; *Red River Broadcasting Co.* v. *Federal C. Commission* (D.C. Cir. 1938) 98 F.2d 282 [69 App.D.C. 1].) Neither case stands for anything more than a general exhaustion principle, à la *Abelleira*.

[5]Witkin states: "In [*Alexander*], a split court took the extreme position that the exhaustion doctrine included a requirement of application to the administrative body for a *rehearing* of its final determination. [Citation.] This view was later repudiated by statute, both for the Personnel Board (Govt.C. 19588) and for agencies under the Administrative Procedure Act (Govt.C. 11523)." (3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 309, p. 398, italics in

Of course, circumstances can exist where enforcement of a judicially created procedural rule is justifiable even though the rule is neither intuitively expected nor consistent with other procedural schemes. If the *Alexander* rule were necessary to the purposes behind the doctrine of exhaustion of administrative remedies, or at least significantly advanced those purposes, then its usefulness might well outweigh its drawbacks. This does not appear to be the case.

(5) "There are several reasons for the exhaustion of remedies doctrine. The basic purpose for the exhaustion doctrine is to lighten the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the wanted relief.' (*Morton* v. *Superior Court* [(1970)] 9 Cal.App.3d 977, 982 [88 Cal.Rptr. 533].) Even where the administrative remedy may not resolve all issues or provide the precise relief requested by a plaintiff, the exhaustion doctrine is still viewed with favor 'because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency.' (*Karlin* v. *Zalta* (1984) 154 Cal.App.3d 953, 980 [201 Cal.Rptr. 379].) It can serve as a preliminary administrative sifting process (*Bozaich* v. *State of California* (1973) 32 Cal.App.3d 688, 698 [108 Cal.Rptr. 392]), unearthing the relevant evidence and providing a record which the court may review. (*Westlake Community Hosp.* v. *Superior Court* (1976) 17 Cal.3d 465, 476 [131 Cal.Rptr. 90, 551 P.2d 410].)" (*Yamaha Motor Corp.* v. *Superior Court* (1986) 185 Cal.App.3d 1232, 1240-1241 [230 Cal.Rptr. 382].)

(4b) In cases such as this, however, the administrative record has been created, the claims have been sifted, the evidence has been unearthed, and the agency has already applied its expertise and made its decision as to whether relief is appropriate. The likelihood that an administrative body will reverse itself when presented only with the same facts and repetitive legal arguments is small. Indeed, no court would do so if presented with such a motion for reconsideration, since such a filing is expressly barred by statute. (Code Civ. Proc., § 1008.)

We also think it unlikely the *Alexander* rule has any substantial effect in reducing the burden on the courts. When the parties are aware of the rule and

original.) Some specific practice guides are even more emphatic in their view the *Alexander* rule is no longer good law. (See, e.g., 1 Fellmeth & Folsom, Cal. Administrative and Antitrust Law (1992) § 8.04, p. 361 ["Although at one time a litigant was required to seek a rehearing or petition for reconsideration, that requirement is no longer commonly applied." (Fn. omitted.)]; 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 1997) § 23.100, pp. 1015-1016 ["The continuing vitality of the *Alexander* rule . . . is questionable."].)

comply with it, the administrative body presented with the same facts and arguments is unlikely to reverse its decision. The only likely consequence is delay and expense for both the parties and the administrative agency prior to the commencement of judicial proceedings. Of course, the courts' burden is marginally reduced by the occasional case when a party, unaware of the rule, fails to comply and thus is barred from seeking judicial review, but we believe the striking of potentially meritorious claims solely to clear them from a court's docket should not stand as a policy goal in and of itself.

The primary useful purpose the rule might serve was expressed in *Alexander* itself: Theoretically, the rule "give[s] the [administrative body] an opportunity to correct any mistakes it may have made." (*Alexander*, *supra*, 22 Cal.2d at p. 200.) We presume, however, that the decisions of the various agencies of this state are reached, in the overwhelming majority of the proceedings undertaken, only after due consideration of the issues raised and the evidence presented. While occasional mistakes are an unfortunate by-product of all tribunals, judicial or administrative, the fact remains that a petition for reconsideration, raising the same arguments and evidence for a second time, will not likely often sway an administrative body to abandon the conclusions it has reached after full prior consideration of those same points.

We are not alone in our reasoning. After a multiyear consideration and public review process, the California Law Revision Commission recently issued a report recommending a complete overhaul and consolidation of the myriad statutes for judicial review of California agency decisions under one uniform procedural scheme. (Judicial Review of Agency Action (Feb. 1997) 27 Cal. Law Revision Com. Rep. (1997) p. 13 (Revision Report).) The commission's proposed legislation provides in pertinent part: "all administrative remedies available within an agency are deemed exhausted . . . if no higher level of review is available within the agency, whether or not a rehearing or other lower level of review is available within the agency, unless a statute or regulation requires a petition for rehearing or other administrative review." (*Id.*, § 1123.320, p. 75.) The comment to this section is clear: "Section 1123.320 restates the existing California rule that a petition for a rehearing or other lower level administrative review is not a prerequisite to judicial review of a decision in an adjudicative proceeding. See former Gov't Code § 11523, Gov't Code § 19588 (State Personnel Board). This overrules any contrary case law implication. *Cf.* Alexander v. State Personnel Bd., 22 Cal.2d 198, 137 P.2d 433 (1943)." (*Id.* at pp. 75-76.)

The Revision Report also contains several background studies by Professor Michael Asimow, who was retained by the commission as a special

consultant for this project. In discussing this issue, Professor Asimow opines: "Both the existing California APA and other statutes provide that a litigant need not request reconsideration from the agency before pursuing judicial review. However, the common law rule in California may be otherwise [citing *Alexander*]. A request for reconsideration should never be required as a prerequisite to judicial review unless specifically provided by statute to the contrary." (Revision Rep., *supra*, at pp. 274-275, fns. omitted.) We recognize that, to date, the Legislature has not acted on the Law Revision Commission's recommendations; we do not suggest that the unenacted recommendation reflects the current state of California law. It does reflect, however, the opinion of a learned panel as to the wisdom of and necessity for the *Alexander* rule.

Over 50 years ago, the United States Supreme Court suggested that: "motions for rehearing before the same tribunal that enters an order are under normal circumstances mere formalities which waste the time of litigants and tribunals, tend unnecessarily to prolong the administrative process, and delay or embarrass enforcement of orders which have all the characteristics of finality essential to appealable orders." (*Levers* v. *Anderson*, *supra*, 326 U.S. at p. 222 [66 S.Ct. at pp. 73-74]; see also Rames, *Exhausting the Administrative Remedies: The Rehearing Bog* (1957) 11 Wyo. L.J. 143, 149-153.) We agree. There is little reason to maintain "an illogical extension of this general rule [of exhaustion of administrative remedies that] require[s] an idle act." (Cal. Administrative Mandamus (Cont.Ed.Bar. 1989) § 2.30, p. 52.) Were the issue before us in the first instance, we would have little difficulty concluding that the rule concerning administrative rehearings should be made consistent with judicial procedure, the federal rule, and California's own APA.[6]

V. STARE DECISIS AND LEGISLATIVE INTENT

(6) The issue of whether seemingly permissive reconsideration options in administrative proceedings need be exhausted is not before us for the first time, however, and we do not lightly set aside a 50-year-old precedent of this court. "It is, of course, a fundamental jurisprudential policy that prior

[6]An amicus curiae submission from 74 California cities suggests that reversing the *Alexander* rule would interfere with the uniformity of California exhaustion law and create confusion as to which administrative remedies need be followed and which could be bypassed. The concern is overstated. There is nothing uniform about the current state of exhaustion law with regard to permissive reconsideration. Reversal would merely make California common law consistent with the APA, federal law, and parallel judicial procedure. The effect of such a reversal is limited to reconsideration and has no effect on general principles requiring that each available stage of administrative appeal be exhausted.

applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy, known as the doctrine of stare decisis, 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law.' [Citation.] [¶] It is likewise well established, however, that the foregoing policy is a flexible one which permits this court to reconsider, and ultimately to depart from, our own prior precedent in an appropriate case. [Citation.] As we stated in *Cianci* v. *Superior Court* (1985) 40 Cal.3d 903, 924 [221 Cal.Rptr. 575, 710 P.2d 375], '[a]lthough the doctrine [of stare decisis] does indeed serve important values, it nevertheless should not shield court-created error from correction.' " (*Moradi-Shalal* v. *Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 296 [250 Cal.Rptr. 116, 758 P.2d 58].)

(7) The significance of stare decisis is highlighted when legislative reliance is potentially implicated. (See, e.g., *People* v. *Latimer* (1993) 5 Cal.4th 1203, 1213-1214 [23 Cal.Rptr.2d 144, 858 P.2d 611] (*Latimer*).) Certainly, "[*s*]*tare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response." (*Hilton* v. *South Carolina Public Railways Comm'n* (1991) 502 U.S. 197, 202 [112 S.Ct. 560, 564, 116 L.Ed.2d 560].)

In *Latimer*, *supra*, 5 Cal.4th 1203, we considered the ongoing vitality of a 30-year-old precedent of this court interpreting Penal Code section 654 as prohibiting multiple punishments for multiple criminal acts when those acts had been committed with a single intent and objective. (*Neal* v. *State of California* (1960) 55 Cal.2d 11, 19 [9 Cal.Rptr. 607, 357 P.2d 839] (*Neal*).) Although the *Neal* rule had been the subject of criticism, and we acknowledged we might now decide the matter differently had it been presented to us as a matter of first impression (*Latimer*, *supra*, 5 Cal.4th at pp. 1211-1212), we concluded we were not free to do so because of the collateral consequences such a reversal might have on the entire complicated determinate sentencing structure the Legislature had enacted in the intervening years. "At this time, it is impossible to determine whether, or how, statutory law might have developed differently had this court's interpretation of section 654 been different. For example, the limitations the *Neal* rule placed on consecutive sentencing may have affected legislative decisions regarding the length of sentences for individual crimes or the development of sentence enhancements. [¶] . . . [¶] . . . What would the Legislature have intended if it had

known of the new rule? On a more general front, what other statutes and legislative decisions may have been influenced by the *Neal* rule, and in what ways? These are questions the Legislature, not this court, is best equipped to answer." (*Id.* at pp. 1215-1216.)

Of course, principles of stare decisis do not preclude us from ever revisiting our older decisions. Indeed, in the same year we decided *Latimer* we overruled a different sentencing precedent in *People* v. *King* (1993) 5 Cal.4th 59 [19 Cal.Rptr.2d 233, 851 P.2d 27] (*King*). The primary difference between the cases was the extent to which a reversal of precedent would cast uncertainty on the appropriate interpretation of the other statutes and case law that make up California's criminal sentencing structure. As we explained in *Latimer*, the sentencing precedent at issue in *King* "was a specific, narrow ruling that could be overruled without affecting a complete sentencing scheme. The [rule at issue in *Latimer*], by contrast, is far more pervasive; it has influenced so much subsequent legislation that stare decisis mandates adherence to it. It can effectively be overruled only in a comprehensive fashion, which is beyond the ability of this court. The remedy for any inadequacies in the current law must be left to the Legislature." (*Latimer*, *supra*, 5 Cal.4th at p. 1216.)

(4c) We do not perceive legislative reliance to be a substantial obstacle in this case. Like the precedent at issue in *King*, *Alexander* sets forth a narrow rule of limited applicability. Certainly, no reason appears to believe the rule is a vital underpinning of the entire administrative law structure of California. Unlike the precedent at issue in *Latimer*, little hard evidence suggests the Legislature has affirmatively taken the *Alexander* rule into account in enacting subsequent legislation.

Unlike the rules at issue in both *King* and *Latimer*, the *Alexander* rule is not a matter of statutory interpretation, as it does not hinge on the meaning of specific words as used in a particular statute. It is a rule of procedure that comes into play whenever the Legislature offers parties the option to seek reconsideration of a final administrative decision without specifying in the relevant statute the consequences, if any, of failing to do so. Thus, the Legislature has not had an opportunity affirmatively to acquiesce in the *Alexander* rule by reenacting or reaffirming exact statutory language. (See, e.g., *Fontana Unified School Dist.* v. *Burman* (1988) 45 Cal.3d 208, 219 [246 Cal.Rptr. 733, 753 P.2d 689]; *Marina Point., Ltd.* v. *Wolfson* (1982) 30 Cal.3d 721, 734 [180 Cal.Rptr. 496, 640 P.2d 115, 30 A.L.R.4th 1161].)

Likewise, as noted previously, in order directly to repudiate the *Alexander* rule, the Legislature would have been required to enact a contrary statute of

general application, providing that in all cases not otherwise provided for by statute or regulation, the failure to seek reconsideration before an administrative body does not, standing alone, affect the right to judicial review. The Legislature has not enacted such a statute, but that it has not chosen to do so is not necessarily dispositive of its intentions. "The Legislature's failure to act may indicate many things other than approval of a judicial construction of a statute: the '"'sheer pressure of other and more important business,'"' '"'political considerations,'"' or a '"'tendency to trust to the courts to correct their own errors . . . .'"'" (*County of Los Angeles* v. *Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 391, 404 [179 Cal.Rptr. 214, 637 P.2d 681]; see also *King*, *supra*, 5 Cal.4th at p. 77; *Latimer*, *supra*, 5 Cal.4th at p. 1213; *People* v. *Escobar* (1992) 3 Cal.4th 740, 750-751 [12 Cal.Rptr.2d 586, 837 P.2d 1100].)

No explicit evidence of legislative acquiescence in the *Alexander* rule appears. Neither are there any indications of a legislative view as to the application of the *Alexander* rule specifically to the LAFCO statutory scheme. Respondents argue the Legislature must have enacted Government Code section 56857, subdivision (a) with the implicit understanding the *Alexander* rule would apply and with the affirmative intention that it do so. As we have noted, nothing in the language of the statute compels this conclusion or provides affirmative evidence of legislative approval or disapproval, or even awareness, of the *Alexander* rule.

Respondents alternatively argue that the Legislature invested the LAFCO reconsideration remedy with special significance by providing that, if a request for amendment or reconsideration is filed, the annexation process is suspended until the LAFCO has acted upon the request. (Gov. Code, § 56857, subd. (c).) From this, they extrapolate that the Legislature must consider reconsideration to be especially meaningful in the LAFCO context and, thus, that the Legislature must affirmatively believe requests for reconsideration are a mandatory remedy that must always be exhausted prior to judicial review. We do not agree. These sections merely demonstrate the Legislature considers such requests to have significance when they are actually made. They cast no light on whether the Legislature wants parties to file pro forma requests for reconsideration.

We have not been provided with, nor has our research disclosed, any legislative history demonstrating that, in enacting Government Code section 56857, subdivision (a), the Legislature affirmatively considered the significance of providing a permissive reconsideration remedy to a party who has already obtained a final decision. In lieu of direct indications of legislative

intent, respondents argue the Legislature's awareness and approval of the general applicability of the *Alexander* rule may indirectly be demonstrated by the existence of other statutes containing reconsideration options. The Legislature has enacted several statutes that provide for reconsideration before the administrative body, but specify that the right to seek judicial review is *not* affected by the failure to seek reconsideration. Respondents have identified several statutes worded in this manner, in addition to the APA itself. (Wat. Code, § 1126, subd. (b); Health & Saf. Code, § 40864, subd. (a); Gov. Code, § 19588; Stats. 1989, ch. 1392, § 421, pp. 6023-6024, Deering's Wat.—Uncod. Acts (1999 Supp.) Act 2793, p. 162; Stats. 1989, ch. 844, § 504, p. 2777, Deering's Wat.—Uncod. Acts (1999 Supp.) Act 4833, p. 26.) Because these statutes postdate and thus supersede the *Alexander* rule where applicable, their enactment permits an inference of ongoing legislative awareness of the *Alexander* rule. Reversing course at this date, respondents maintain, would render the relevant language in these provisions surplusage.

As petitioners point out, however, at least one statute provides the opposite. Labor Code section 5901 was amended in 1951 to provide in pertinent part: "No cause of action arising out of any final order, decision or award made and filed by a [workers' compensation] commissioner or a referee shall accrue in any court to any person until and unless . . . such person files a petition for reconsideration, and such reconsideration is granted or denied." (Stats. 1951, ch. 778, § 14, pp. 2268-2269.) Among other things, the 1951 amendment replaced the word "rehearing" in the statute with the word "reconsideration." (See Historical Note, 45 West's Ann. Lab. Code (1989 ed.) foll. § 5901, p. 177.) Thus, the Legislature chose to fine-tune language in a statute providing that a workers' compensation claimant must request reconsideration of a final decision prior to recourse to the courts, even though the entire provision would be surplusage were we to assume the Legislature's awareness of the rule of general application provided by *Alexander*.

Further ambiguity may be found in other statutes. Health and Safety Code section 121270, the AIDS Vaccine Victims Compensation Fund statute, provides in pertinent part: "(h) . . . Upon the request by the applicant within 30 days of delivery or mailing [of the written decision], the board may reconsider its decision. [¶] (i) Judicial review of a decision shall be under Section 1094.5 of the Code of Civil Procedure, and the court shall exercise its independent judgment. A petition for review shall be filed as follows: [¶] (1) If no request for reconsideration is made, within 30 days of personal delivery or mailing of the board's decision on the application. [¶] (2) If a

timely request for reconsideration is filed and rejected by the board, within 30 days of . . . the notice of rejection. [¶] (3) If a timely request for reconsideration is filed and granted by the board, ... [within 30 days of the final decision]." Although the statute does not expressly state that a party who fails to seek reconsideration may seek judicial review, by providing for different time limitations depending on whether reconsideration was sought, the statutory wording arguably implies that in enacting the statute the Legislature was operating under the assumption that failure to seek reconsideration of a final administrative decision is not ordinarily a bar to further judicial review. Any such inference, however, is weak.

In sum, all the inferences the parties would have us draw are insubstantial and do not provide us with a sufficient basis to extrapolate legislative approval of the *Alexander* rule. The most one can say is that at times the Legislature has had a specific intention regarding the significance of reconsideration in an administrative scheme and has chosen to craft a statute so as to accomplish its intentions.

We ultimately return to the sole reliable indication of the Legislature's view of the need for the *Alexander* rule. (8) In enacting the APA, the Legislature was aware it was creating a general statutory framework that would be applied by myriad agencies under varying circumstances, not a specific scheme applicable to only one type of administrative hearing. Despite this anticipation of broad applicability, the Legislature determined the right to judicial review under the APA shall not be affected by failure to seek reconsideration before the agency in question, because the "policy requiring the exhaustion of administrative remedies is adequately safeguarded by the requirement that the administrative proceeding must be completed before the right to judicial review exists." (Judicial Council of Cal., 10th Biennial Rep., *supra*, at p. 28.)

"[The Tenth Biennial Report] is a most valuable aid in ascertaining the meaning of the statute. While it is true that what we are interested in is the legislative intent as disclosed by the language of the section under consideration, the council drafted this language at the request of the Legislature, and in this respect was a special legislative committee. As part of its special report containing the proposed legislation it told the Legislature what it intended to provide by the language used. In the absence of compelling language in the statute to the contrary, it will be assumed that the Legislature adopted the proposed legislation with the intent and meaning expressed by the council in its report." (*Hohreiter* v. *Garrison* (1947) 81 Cal.App.2d 384, 397 [184 P.2d 323]; accord, *Anton* v. *San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 817 [140 Cal.Rptr. 442, 567 P.2d 1162].)

(4d) Neither the APA nor any other statute has any compelling language to the contrary. As best we can surmise, the considered public policy judgment of the Legislature is that the exhaustion of administrative remedies doctrine is adequately safeguarded by the requirement that the administrative proceeding must be completed before the right to judicial review arises. This judgment is consistent with our own conclusion the *Alexander* rule is neither necessary nor useful.

Respondents argue that if we determine to overrule the *Alexander* rule, the decision should have only prospective effect. We do not agree. (9a) A decision of this court overruling one of our prior decisions ordinarily applies retroactively. (*Newman* v. *Emerson Radio Corp.* (1989) 48 Cal.3d 973, 978 [258 Cal.Rptr. 592, 772 P.2d 1059]; *Peterson* v. *Superior Court* (1982) 31 Cal.3d 147, 151 [181 Cal.Rptr. 784, 642 P.2d 1305].) Admittedly, "we have long recognized the potential for allowing narrow exceptions to the general rule of retroactivity when considerations of fairness and public policy are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule. A court may decline to follow the standard rule when retroactive application of a decision would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law. In other words, courts have looked to the 'hardships' imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases." (*Newman*, *supra*, at p. 983.)

(4e) We do not perceive that retroactive application of our decision will create any unusual hardships. *Alexander* set forth a rule of very limited application. That the general administration of justice will be significantly affected by its abrogation or many pending actions will be affected is unlikely. No issue of substantial detrimental reliance is present here; no one has acquired a vested right or entered into a contract based on the existence of the *Alexander* rule. (E.g., *Peterson* v. *Superior Court*, *supra*, 31 Cal.3d at p. 152.) (9b) Finally, all things being equal, we deem it preferable to apply our decisions in such a manner as to preserve, rather than foreclose, a litigant's day in court on the merits of his or her action. (See, e.g., *Newman* v. *Emerson Radio Corp.*, *supra*, 48 Cal.3d at p. 990; *Moradi-Shalal* v. *Fireman's Fund Ins. Companies*, *supra*, 46 Cal.3d at pp. 304-305.)

(4f) Respondents argue that to permit petitioners to receive the benefit of our decision would be inequitable, since they were presumably aware of the *Alexander* rule and made a voluntary decision to ignore it. Respondents

infer this awareness solely from petitioner Parfrey's initial request for reconsideration of SJLAFCO's approval of the annexation of the development property, which he later withdrew. In reality, the filing and subsequent withdrawal of a reconsideration request are equally consistent with an understanding that reconsideration is merely permissive as with a belief it is mandatory. Indeed, to assume petitioners consciously chose to expose their action to dismissal on purely procedural grounds is difficult. Moreover, as we have discussed in detail above, although *Alexander* was decided over a half-century ago, the rule of the case has remained relatively obscure since that time, and that a litigant would be uncertain of its vitality today is not at all unlikely. The filing and withdrawal of a request for reconsideration appear to reflect only a judgment that perfecting the request would not be worthwhile.

We hereby overrule *Alexander*, *supra*, 22 Cal.2d 198, and hold that, subject to limitations imposed by statute, the right to petition for judicial review of a final decision of an administrative agency is not necessarily affected by the party's failure to file a request for reconsideration or rehearing before that agency.

We emphasize this conclusion does not mean the failure to request reconsideration or rehearing may never serve as a bar to judicial review. Such a petition remains necessary, for example, to introduce evidence or legal arguments before the administrative body that were not brought to its attention as part of the original decisionmaking process. (See, e.g., 2 Davis & Pierce, Administrative Law Treatise (3d ed. 1994) § 15.8, p. 341.) Our reasoning here is not addressed to new evidence, changed circumstances, fresh legal arguments, filings by newcomers to the proceedings and the like. Likewise, a rehearing petition is necessary to call to the agency's attention errors or omissions of fact or law in the administrative decision itself that were not previously addressed in the briefing, in order to give the agency the opportunity to correct its own mistakes before those errors or omissions are presented to a court. The general exhaustion rule remains valid: Administrative agencies must be given the opportunity to reach a reasoned and final conclusion on each and every issue upon which they have jurisdiction to act before those issues are raised in a judicial forum. Our decision is limited to the narrow situation where one would be required, after a final decision by an agency, to raise for a second time the same evidence and legal arguments one has previously raised solely to exhaust administrative remedies under *Alexander*.

The judgment of the Court of Appeal is reversed, and the cause is remanded for further proceedings in accordance with this decision.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Chin, J., and Brown, J., concurred.

ATTACHMENT "8"

Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992)
6 Cal.App.4th 1233; 8 Cal.Rptr.2d 298

[No. G009097. Fourth Dist., Div. Three. May 26, 1992.]

HALBERT'S LUMBER, INC., Plaintiff and Appellant, v. LUCKY STORES, INC., et al., Defendants and Respondents.

SUMMARY

A lumber company signed a subcontractor's conditional release of a mechanic's lien (Civ. Code, § 3262, subd. (d)(1)), although it had not billed, and had not been paid, for two truckloads of "glu lam" beams delivered to a project site. After the subcontractor filed for bankruptcy, the lumber company filed a mechanic's lien, which included the cost of the beams. The lumber company filed suit to recover from a bond which had been issued to release the lien, but the trial court denied the company's recovery. (Superior Court of Orange County, No. 506378, Gary L. Taylor, Judge.)

The Court of Appeal affirmed. The court held that upon delivery of the beams to the work site, the company had waivable mechanic's lien rights, even though the beams had not yet been installed in the work of improvement. The court held that the release signed by the company released all mechanic's lien rights which potentially existed as of the release date as long as the progress payment specified in the release was made. Thus, the court held that the release covered the claim for the beams, even though the company had not included the cost of the beams in the progress payment specified in the release. (Opinion by Sills, P. J., with Wallin and Sonenshine, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) **Statutes § 19—Construction—Rules of Interpretation—Sequence.** —There is order in the most fundamental rules of statutory interpretation, and the key is applying those rules in proper sequence. First, a court should examine the actual language of the statute. The court should give to the words of the statute their ordinary, everyday meaning, unless the statute itself specifically defines those words to give them a special meaning. If the meaning is without ambiguity, doubt, or

uncertainty, then the language controls and there is nothing to interpret or construe. However, if the meaning is not clear, the second step is to refer to the legislative history. The final step, which should be taken only when the first two steps fail to reveal clear meaning, is to apply reason, practicality, and common sense to the language. If possible, the words should be interpreted to make them workable and reasonable, in accord with common sense and justice, and avoid an absurd result.

(2) **Mechanics' Liens § 4—Work or Materials for Which Lien may be Obtained—Materials Furnished to Site—Before Installation.**—Upon delivery of beams to a work site, a lumber company had waivable mechanic's lien rights in those beams, even though the beams had not yet been installed in the work of improvement. Civ. Code, § 3110 (persons entitled to mechanic's lien), requires suppliers to show two things to have a lien. First, they must furnish materials to be used in a work of improvement upon property, and second, the property must have had the materials furnished upon it. The usual, ordinary import of "furnish" is to make something available, and to deliver materials to a job site is to provide materials. Mechanic's lien rights attach at the time of delivery.

(3) **Mechanics' Liens § 1—Definition: Words, Phrases, and Maxims—Mechanic's Lien.**—The term "mechanic's lien" derives from the older meaning of "mechanic," meaning manual worker or artisan, which includes skilled construction workers such as carpenters and masons. Mechanic's liens are a peculiar legal remedy available to workers and suppliers in the construction industry, and specifically provided for in Cal. Const., art. XIV, § 3. The remedy seeks to protect labor and materials contractors in the construction industry, whose risks are not as diffused as, and who are therefore typically more vulnerable than, other creditors.

(4) **Mechanics' Liens § 20—Release—Conditional Waiver—Scope.**—The trial court properly did not allow a lumber company to recover from a bond, which had been issued to release the company's mechanic's lien for beams supplied to a construction site, where the company signed a "conditional waiver release upon progress payment" (Civ. Code, § 3262, subd. (d)(1)) after the beams had been delivered to the site. Although the language and legislative history of Civ. Code, § 3262, subd. (d)(1), is ambiguous, lien rights are a remedy available to workers and suppliers who have not been fully paid, and the purpose of the statute is to provide for releases that lenders and owners could rely

on if a certain payment was made. Accordingly, the release signed by the company released all mechanic's lien rights which potentially existed as of the release date as long as the progress payment specified in the release was made. Thus, the release covered the claim for the beams, even though the company had neither billed for nor been paid for the beams, and had not included the cost of the beams in the progress payment specified in the release.

[See Cal.Jur.3d, Mechanics' Liens, § 102; 3 Witkin, Summary of Cal. Law (9th ed. 1987) Security Transactions in Real Property, § 59.]

COUNSEL

Hunt, Ortmann, Blasco, Palffy & Rossell, Gordon Hunt and Ronald E. White for Plaintiff and Appellant.

Voss, Cook, Casselberry & Thel and Edward L. Laird for Defendants and Respondents.

OPINION

SILLS, P. J.—

INTRODUCTION

This case presents a real doozy of a puzzle in mechanic's lien law. What is the scope of the "conditional waiver release" of mechanic's lien rights prescribed by Civil Code section 3262, subdivision (d)(1)? This statute specifies the language and format of a release of mechanic's lien rights in return for a progress payment. The parties here used a release form following the statutory language virtually verbatim.

Two questions confront us. The first is the meaning of the word "furnished" as used in the release form. Does "furnished" mean delivery of materials to a construction site, or does it mean the actual use or incorporation of those materials into the structure?

This is the less difficult of the two questions. The ordinary meaning of "furnished" is delivery to the jobsite.

The second question is the extent of the mechanic's lien rights that are being released. Does the release extend only to the materials for which the

supplier has actually been compensated, or does it extend to all materials furnished through the date of the progress payment? Both the statutory language and legislative history on this point are ambiguous; they shine like a dim lantern though a frosty window in a snowstorm.

In such a case, where neither language nor legislative intent is readily discernable, we are forced to interpret the statute to make it reasonable, practical, and avoid an absurd result. In so doing, we affirm the decision of the trial judge. A release is intended to be a release, not a glorified receipt. If the release form here only covered mechanic's lien rights to the extent the payment actually compensates for the materials furnished, the Legislature need not have bothered. The statute would be mere surplusage and accomplish nothing.

FACTS

In November 1985, Near-Cal Corporation (the general contractor) agreed to build a supermarket for Lucky Stores, Inc. (the owner) in Fountain Valley. In February 1986, M & F Development and Construction (the subcontractor) agreed with the general contractor to provide rough framing. On April 22, 1986, the subcontractor placed an order with Halbert's Lumber, Inc. (the lumber company) for about two truckloads of "glu lam" beams for use in the project. The subcontractor needed the beams as soon as possible.

The order was too large for the lumber company to supply from its own yard, so it placed an order with Laminated Timber Service to have the beams shipped directly to the jobsite. The lumber company did not bill the subcontractor for the beams at that time; its practice was *not* to bill its customers when it placed an order, but wait until it received proof the materials were on the jobsite.

The beams arrived on May 12, 1986, and May 15, 1986, when they were delivered to a parking lot. About May 20, 1986, the subcontractor told the lumber company it wanted a release of the lumber company's lien rights through May 19. The lumber company signed a release, which read:

"CONDITIONAL WAIVER RELEASE UPON PROGRESS PAYMENT

"Upon receipt by the undersigned of a check from [the general contractor] in the sum of $24,187.09 payable to [the lumber company] and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release pro tanto* any mechanic's lien, stop notice, or bond right the undersigned has on the job of

[the owner] located at Brookhurst & Ellis in the city of Fountain Valley, California, to the following extent. This release covers a progress payment for materials furnished to [the subcontractor] through May 19, 1986 only and does not cover any retention or items furnished after said date. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

"Dated: May 20, 1986 By Russell Halbert

Title VP/Gen. Mgr.

" *for so much; for as much as may be; as far as it goes."

When it signed the release, the lumber company had not yet posted the cost of the beams for billing to the subcontractor. The $24,187.09 figure was based on five or six invoices for other lumber which had been posted prior to May 20. The lumber company was not aware the beams were already at the jobsite and the figure did not include the cost of those beams, although it did have the invoice showing the subcontractor's order in April and a "due in" date of May 12.

The beams were installed in the period June 3 through June 5. About four days later, on June 9, the lumber company posted its invoice on the subcontractor's order for the beams for billing to the subcontractor. The earlier claim for $24,187.09 was paid in early July.

The lumber company was never compensated for the beams, however. The general contractor terminated its contract with the subcontractor, and the subcontractor eventually filed for bankruptcy, listing the lumber company as one of its creditors. In August, the lumber company filed a mechanic's lien for $70,122.04—a figure which *did* include the beams as well as lumber delivered after the release. In October a bond to release the mechanic's lien was filed, and in November the lumber company filed this lawsuit. Because of the release, the judgment of the trial court did not allow the lumber company to recover the cost of the beams from the issuer of the bond, and from that judgment the lumber company appeals.

DISCUSSION

The Problem of Statutory Interpretation

More than 40 years ago, Karl Llewellyn authored a now classic law review article in which he took great delight in listing, side by side,

contradictory maxims of statutory interpretation.[1] Llewellyn's thesis was that judges pick and choose among the rules to arrive at a result consonant with their own judicial temperament and philosophy.

At its logical extreme, Llewellyn's thesis would mean there is no law when it comes to the interpretation of law itself. It all depends on the "felt need" emanating from the particular "situation" and "controversy" before the court.[2] But the rules of statutory interpretation are not quite so plastic as Llewellyn's article might lead us to believe. (1) There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in proper *sequence*.

First, a court should examine the actual language of the statute. (*Mercer* v. *Department of Motor Vehicles* (1991) 53 Cal.3d 753, 763 [280 Cal.Rptr. 745, 809 P.2d 404]; *Curl* v. *Superior Court* (1990) 51 Cal.3d 1292, 1300 [276 Cal.Rptr. 49, 801 P.2d 292]; *Solberg* v. *Superior Court* (1977) 19 Cal.3d 182, 198 [137 Cal.Rptr. 460, 561 P.2d 1148]; *Leroy T.* v. *Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438 [115 Cal.Rptr. 761, 525 P.2d 665]; *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) Judges, lawyers and laypeople all have far readier access to the actual laws enacted by the Legislature than the various and sometimes fragmentary documents shedding light on legislative intent. More significantly, it is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed "into law" by the Governor. The same care and scrutiny does not befall the committee reports, caucus analyses, authors' statements, legislative counsel digests and other documents which make up a statute's "legislative history."

In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning (e.g., *People* ex rel. *Younger* v. *Superior Court* (1976) 16 Cal.3d 30, 40 [127 Cal.Rptr. 122, 544 P.2d 1322]; *Merrill* v. *Department of Motor Vehicles* (1969) 71 Cal.2d 907, 918 [80 Cal.Rptr. 89, 458 P.2d 33]; see also *Mercer* v. *Department of Motor Vehicles*, *supra*, 53 Cal.3d at p. 763 [traditional and plain meaning]) unless, of course, the statute itself specifically defines those words to give them a special meaning (*Security Pacific National Bank* v. *Wozab* (1990) 51 Cal.3d 991, 998

[1]Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed* (1950) 3 Vand.L.Rev. 395, 401-406 (Llewellyn).

[2]See Llewellyn, *supra*, 3 Vand. L. Rev. at page 398.

[275 Cal.Rptr. 201, 800 P.2d 557]; *Great Lakes Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 156 [137 Cal.Rptr. 154, 561 P.2d 244]).

If the meaning is without ambiguity, doubt, or uncertainty, then the language controls. (*Security Pacific National Bank* v. *Wozab, supra*, 51 Cal.3d at p. 998; *Delaney* v. *Superior Court* (1990) 50 Cal.3d 785, 798 [268 Cal.Rptr. 753, 789 P.2d 934]; *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348 [158 Cal.Rptr. 350, 599 P.2d 656]; *Great Lakes Properties, Inc.* v. *City of El Segundo, supra*, 19 Cal.3d at p. 155; *Armstrong* v. *County of San Mateo* (1983) 146 Cal.App.3d 597, 610 [194 Cal.Rptr. 294]; *Smith* v. *Rhea* (1977) 72 Cal.App.3d 361, 365 [140 Cal.Rptr. 116].) There is nothing to "interpret" or "construe." (*Lungren* v. *Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115 [755 P.2d 299]; *IGA Aluminum Products, Inc.* v. *Manufacturers Bank* (1982) 130 Cal.App.3d 699, 703 [181 Cal.Rptr. 859]; *Roulston* v. *Pacific Tel. & Tel. Co.* (1979) 96 Cal.App.3d 149, 154 [158 Cal.Rptr. 43]; *People* v. *Flores* (1979) 92 Cal.App.3d 461, 472 [154 Cal.Rptr. 851]; *Skivers* v. *State of California* (1970) 13 Cal.App.3d 652, 655 [91 Cal.Rptr. 707]; *People* v. *Pacific Guano Co.* (1942) 55 Cal.App.2d 845, 847-848 [132 P.2d 254].)

But if the meaning of the words is not clear, courts must take the second step and refer to the legislative history. (*Long Beach Police Officers Assn.* v. *City of Long Beach* (1988) 46 Cal.3d 736, 743 [250 Cal.Rptr. 869, 759 P.2d 504]; *Sand* v. *Superior Court* (1983) 34 Cal.3d 567, 570 [194 Cal.Rptr. 480, 668 P.2d 787].)

The final step—and one which we believe should only be taken when the first two steps have failed to reveal clear meaning—is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable (e.g., *Regents of University of California* v. *Superior Court* (1970) 3 Cal.3d 529, 536-537 [91 Cal.Rptr. 57, 476 P.2d 457]; *People* v. *Zikorus* (1983) 150 Cal.App.3d 324, 330 [197 Cal.Rptr. 509]; *Estate of Cottle* (1983) 148 Cal.App.3d 1023, 1028 [196 Cal.Rptr. 440]; *County of Orange* v. *Cory* (1979) 97 Cal.App.3d 760, 768 [159 Cal.Rptr. 78]; *Intoximeters, Inc.* v. *Younger* (1975) 53 Cal.App.3d 262, 270 [125 Cal.Rptr. 864]; *Committee of the Rights of the Disabled* v. *Swoap* (1975) 48 Cal.App.3d 505, 512 [122 Cal.Rptr. 52]), practical (*People* v. *Hinojosa* (1980) 103 Cal.App.3d 57, 64 [162 Cal.Rptr. 793]; *Fireman's Fund Ins. Co.* v. *Security Pacific Nat. Bank* (1978) 85 Cal.App.3d 797, 815 [149 Cal.Rptr. 883]), in accord with common sense and justice, and to avoid an absurd result (*In re Eric J.* (1979) 25 Cal.3d 522, 537 [159 Cal.Rptr. 317, 601 P.2d 549]; *Clements* v. *T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 233 [273 P.2d 5]; *Lampley* v. *Alvares* (1975) 50

Cal.App.3d 124, 128-129 [123 Cal.Rptr. 181]). We now apply this three-step approach to the two questions on which this case turns: the meaning of "furnished" and the extent of the release.

The Meaning of "Furnished"

The release form purports to "release pro tanto any mechanic's lien, stop notice, or bond right" the lumber company had on the supermarket project. Therefore the first issue is whether the lumber company had any waivable "mechanic's lien . . . right" arising out of the delivery of the glu lam beams before their installation. (2) The lumber company contends its lien rights in the glu lam beams did not arise until the beams were actually installed in the new market and therefore the release could not include them.

We need only resort to the first level of statutory analysis—the ordinary meaning of the language—to determine whether the beams were "furnished" to the site within the meaning of the release. The usual, ordinary import of "furnish" is to make something *available*. The first definition of "furnish" in Webster's Third New International Dictionary (1986) at page 923, is: "to provide or supply with what is needed, useful, or desirable." To deliver materials to a job site is certainly to "provide" materials.

The ordinary import of "furnished" is consistent with case law on when mechanic's liens "attach." The issue was first addressed in *People* v. *Moxley* (1911) 17 Cal.App. 466 [120 P. 43]. The facts in *Moxley* are not set out in detail, but apparently involved a defendant who had obtained money by making false statements before a notice of lien was recorded. The appeal required the court to determine "when the liens of mechanics and materialmen attach." (17 Cal.App. at p. 468.) The court determined such liens attach "as the material is furnished or labor performed." (*Ibid.*) Further, the mechanic's lien "exists with all of its force at all times between the furnishing of the material or the performing of the labor, and the expiration of the time within which such notices of lien may be filed." (*Ibid.*) The "as the material is furnished" language from *Moxley* has been reiterated in several subsequent cases. (*English* v. *Olympic Auditorium, Inc.* (1933) 217 Cal. 631, 638 [20 P.2d 946, 87 A.L.R. 1281]; *Schrader Iron Works, Inc.* v. *Lee* (1972) 26 Cal.App.3d 621, 631-632 [103 Cal.Rptr. 106];[3] *Mazzera* v. *Ramsey* (1925) 72 Cal.App. 601, 606 [238 P. 101].)

Additionally, *Walker* v. *Lytton Sav. & Loan Assn.* (1970) 2 Cal.3d 152 [84 Cal.Rptr. 521, 465 P.2d 497] demonstrates mechanic's lien rights attach at

[3]In *Schrader Iron Works* the court said the plaintiff's lien attached on the date certain structural steel was first installed. (Compare 26 Cal.App.3d at p. 632 [lien attached on Sept. 22] with 26 Cal.App.3d at p. 627 [steel installed on Sept. 22].) The facts of *Schrader Iron Works*, however, did not require the court to address the issue of whether any waivable lien rights arose upon delivery.

the time of delivery. In *Walker*, architects prepared plans and specifications for a proposed apartment building before any work was done on the owners' property or any materials were delivered. Later—but still before any work had been done or materials delivered—a lender made a construction loan and recorded a deed of trust. Afterward, existing structures were demolished, and the building site was graded, excavated, and fenced. No further work occurred and the architects recorded a claim of mechanic's lien. The Supreme Court was eventually called upon to decide who had priority, the lender or the architects. That issue, in turn, required the court to determine if the work of improvement had "commenced" with the architects' off-site plans and drawings. If so, then their lien would have priority. But the court ruled against the architects, holding their lien did not attach "before any work ha[d] been done on the owners' property or *materials delivered* thereto for a planned improvement." (2 Cal.3d at p. 159, italics added.)

Walker shows the Supreme Court considered delivery of material to be sufficient to constitute the "commencement" of the work of improvement. This is significant because no matter when any given mechanic's lien comes into existence, it "relates back" to the "commencement" of the work of improvement. (Civ. Code, § 3134; *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 808 [132 Cal.Rptr. 477, 553 P.2d 637].) It would be anomalous indeed if the mechanics' liens which arose on a given project all related back to a time—delivery—which did not itself see the inception of *any* mechanic's lien rights. Because, under *Walker*, all liens relate back to the delivery date, it should also be the date when waivable lien rights at least *begin* to arise.

Moreover, use of the ordinary meaning of the word "furnished" is consistent with the context of California mechanic's lien law. (Cf. *Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 814 [114 Cal.Rptr. 577, 523 P.2d 617].) Civil Code section 3110[4] sets out the lien rights of materials suppliers. It provides, in applicable part: "[M]aterialmen . . . furnishing materials . . . to be used or consumed in . . . a work of improvement shall have a lien upon the property upon which they have . . . furnished materials . . . for the value of such . . . materials furnished . . . ."

This language requires suppliers to show two things to "have a lien." First, they must "furnish materials . . . to be used" in a work of improvement upon some property. Second, the property must have had the materials furnished "upon" it.

The two requirements involve two different time frames. The first requirement is prospective—bearing on the reason the materials are supplied. The

[4]All statutory references are to the Civil Code unless otherwise indicated.

focus is on the materials. Just any materials will not do. They must be materials "to be" used in the improvement.

The second requirement is retrospective—focusing on what was actually done with the materials after they were supplied. This requirement has attracted judicial attention since Millard Fillmore was President (*Bottomly* v. *Grace Church* (1852) 2 Cal. 90, 91 ["The materials must . . . have been used in the construction of the building . . . ."]) and has been reiterated many times.[5]

There is a difference, however, between furnishing materials to a *subcontractor* and furnishing materials *upon a building*. In the former, all the supplier must do is "provide" the subcontractor with materials—something manifestly accomplished by delivering the materials. In the latter, the supplier must wait for someone to make use of materials already delivered.

If both requirements must be satisfied for a materials supplier to possess an enforceable mechanic's lien on property, one might ask whether any waivable lien rights can exist prior to actual incorporation of materials into the improvement. But a number of requirements must be satisfied before a mechanic's lien is *enforceable*, including giving a 20-day notice (§ 3114), timely recordation of a claim of lien (§§ 3115-3116), and timely filing of an action to foreclose the lien (§ 3144). Just because lien rights are not yet enforceable does not mean they are not yet waivable.

Mechanic's lien rights are inchoate, abstract, almost spectral creatures in California law. They *begin* to form when materials are delivered or work is performed, but must wait until the materials become a part of the property before they can actually haunt the owner. At what point, then, may they be exorcised? If, as *Walker* indicates, these ghosts can travel back in time to the date of delivery, then they should be capable of obliteration at that time as well.

[5]E.g., *Ensele* v. *Jolley* (1922) 188 Cal. 297, 300 [204 P. 1085] ("in order to entitle a materialman to a lien as against the owner of premises . . . the materials must . . . also have been used therein"); *Wilson* v. *Nugent* (1899) 125 Cal. 280, 284 [57 P. 1008] (lack of finding materials furnished were used in building "fatal" to judgment); *Roebling Sons Co.* v. *Bear Val. I. Co.* (1893) 99 Cal. 488, 490 [34 P. 80] (quoting *Bottomly*); *Silvester* v. *Coe Quartz Mine Co.* (1889) 80 Cal. 510, 513 [22 P. 217] (holding lien claimant could not recover for track-iron furnished for use in repairing mine but not actually used); *Holmes* v. *Richet* (1880) 56 Cal. 307, 310 (quoting *Houghton, infra*); *Houghton* v. *Blake* (1855) 5 Cal. 240, 240-241 ("to enable a material man to enforce a lien upon a building for materials furnished, it must be alleged and proved not only that the materials have been used in the construction of the building . . . ."); *Consolidated Elec. Distributors, Inc.* v. *Kirkham, Chaon & Kirkham, Inc.* (1971) 18 Cal.App.3d 54, 58 [95 Cal.Rptr. 673] ("materials must not only be furnished for, or delivered to the site of, the particular building, but must actually be used in the construction in order to sustain a mechanic's lien").

There are, however, two ostensibly contrary authorities. A treatise, 8 Miller and Starr, California Real Estate (2d ed. 1990) Mechanics' Liens, section 26:15, page 425, states: "The mechanic's lien attaches when the mechanic's materials are physically incorporated into the structure." Miller and Starr do not cite any authority for this statement. Rather, the statement appears to be the implication of the next sentence in their text, "A mechanic cannot impose a lien for materials which remain personal property and are not attached to the building as a fixture." Miller and Starr support this second sentence with a reference to section 26:9 of their text, which covers the subject of material suppliers' liens generally.

Section 26:9 says, "the material supplied must be attached to and incorporated into the project so that it becomes a fixture, and the supplier cannot have a lien if it remains personal property." (8 Miller & Starr, *supra*, § 26:9, p. 381, fn. omitted.) This sentence appears to be the basis of the statement about attachment at the time of physical incorporation. Miller and Starr support this sentence with a citation to a line of cases discussing whether certain items of personal property qualified for mechanic's liens. In none of the cases did the court confront the precise issue of whether delivery of items *to be used* in the work of improvement (i.e., were destined "to be" fixtures) gave rise to inchoate lien rights which might be waived prior to actual incorporation. Rather, the court was concerned with the nature of the item, i.e., whether it became a fixture or remained personal property.[6] Therefore the statement in Miller and Starr's text is not dispositive.

[6]See *Ogden* v. *Byington* (1926) 198 Cal. 151 [244 P. 332] (farming equipment used to construct irrigation ditches and do levee work in a rice field was not lienable because there was no permanent visible change in the surface of the land); *Jordan* v. *Myres* (1899) 126 Cal. 565, 570 [58 P. 1061] (hoisting machinery fixed to mine remained personal property); *Hamilton* v. *Delhi Mining Co.* (1897) 118 Cal. 148, 153-154 [50 P. 378] (mining equipment fixed to building subject to lien); *Cornell* v. *Sennes* (1971) 18 Cal.App.3d 126, 135 [95 Cal.Rptr. 728] (by repossessing air conditioning units, sellers elected to treat units as personal property and thereby waived right to mechanic's lien); *Howard A. Deason & Co.* v. *Costa Tierra Ltd.* (1969) 2 Cal.App.3d 742, 757 [83 Cal.Rptr. 105] ($35 worth of chlorine used in a swimming pool could not be classified as a permanent improvement and was not a "lienable item"); *Kruse Metals Mfg. Co.* v. *Utility Trailer Mfg. Co.* (1962) 206 Cal.App.2d 176 [23 Cal.Rptr. 514] ("bag house" sandblasting filtration system not a fixture); *Daniger* v. *Hunter* (1952) 114 Cal.App.2d 796, 798 [251 P.2d 353] ("sink unit" consisting of gas stove, kitchen sink, and refrigerator not a fixture because easily disconnected without damage); *Shelley* v. *Kofka* (1951) 107 Cal.App.2d 827, 830 [237 P.2d 984] (tackless carpet would not be fixture if it could be taken up without injury to house); *Cain* v. *Whinton* (1943) 58 Cal.App.2d 738, 745-746 [137 P.2d 479] (oil rig accessories and equipment not part of improvement and therefore not within lien); *Hammond Lumber Co.* v. *Gordon* (1927) 84 Cal.App. 701 [258 P. 612] (removable balconies were fixtures because nailed and bolted to building); *Moses* v. *Pacific Building Co.* (1922) 58 Cal.App. 90, 94 [207 P. 946] (electrical wiring, conduits and switchboards not within lien because there was no intention material should ever become permanently attached to building).

The other authority is dicta in the Supreme Court case of *Bennett* v. *Beadle* (1904) 142 Cal. 239 [75 P. 843]. *Bennett* held materials suppliers had no right to a lien under California's vessel lien statute[7] where they arranged for delivery of materials to common carriers in San Francisco who, in turn, delivered the materials to Coos Bay, Oregon, where the vessel was being constructed. In the process of so holding, the court discussed the mechanic's lien statute[8] and mentioned, in passing, that unless materials were "used in the building, they are not 'furnished upon' the same." (142 Cal. at pp. 242-243.)

This dicta does not require us to equate "furnishing" materials with their actual incorporation into a structure. The *Bennett* dicta refers to the second requirement in section 3110, namely that the material be "furnished upon" the work of improvement. The dicta merely requires the *eventual* incorporation of the materials into the structure for the materials to have been "furnished upon" it. It does not say what the words "furnished to" mean as used in the release prescribed in section 3262, and specifically whether lien rights which *potentially* arise out of material "furnished to" a subcontractor might be waived before the material is "furnished upon" the structure.

Moreover, reading the *Bennett* dicta to say "delivering" materials does not amount to "furnishing" them ignores the everyday meaning of the two words. The *Bennett* court itself was unable to describe the basic facts before it without equating furnishing with delivery. Twice within the first four sentences of the opinion the court said the materials suppliers in that case "furnished" materials for use in the construction of the vessel in a context which clearly meant delivery. (142 Cal. at p. 240.)

Thus with the delivery of the beams to the site, the lumber company had waivable mechanic's lien rights in those beams. We must now examine whether those potential lien rights were within the scope of the release.

The Extent of the Release

The Language

The release consists of three sentences. The first states the broad purpose of the release, i.e., "to release pro tanto any mechanic's lien . . . right the undersigned has on the job . . . to the following extent." The second *defines* in greater detail what it means to "release pro tanto . . . to the following extent," i.e., specifies the release "covers a progress payment for materials

[7]Then Code of Civil Procedure section 813, now Harbors and Navigation Code section 491.
[8]Then Code of Civil Procedure section 1183, now Civil Code section 3110.

furnished to" the subcontractor through a certain date. The second sentence also specifies what the release does not cover. It does not cover "any retention or items furnished after said date." The final sentence contains a caveat to verify evidence of payment before any reliance is put on the release.

It is the second sentence that controls the scope of the release. The first sentence only leaves the reader hanging: a right is being released pro tanto ("as far as it goes") "to the following extent." But to what extent?

The second sentence purports to answer the question. The release covers a progress payment for materials furnished through a certain date. It is tempting to stop with the phrase "covers a progress payment" and say that proves the release extends only as far as there is actual compensation for the materials furnished. This, however, ignores the balance of the sentence ("for materials furnished to [so and so] through [a certain date]").[9] The idea of a "progress payment" is that a certain amount of work has been done, i.e., work through a certain date. Taken as a whole, the second sentence assumes that the progress payment covers work through a certain date the same way the release covers the progress payment. Indeed, the scope of the progress payment itself is defined by reference to the date.

Moreover, not only does the release cover a "progress payment," but it expressly "does not cover any retention or items furnished *after* said date." (Italics added.) By saying one thing and excluding the other, the reader would naturally conclude that the release did cover items furnished *before* "said date."

There is also the problem of retention. If the release did not cover any retention at all, then one could conclude that it covered at least some items furnished "before said date." But the release does not say that. It does not say "does not cover any retention at all," or even "does not cover any retention, or items furnished after said date." A comma, necessary for the latter interpretation, is missing.[10]

Then again, the second sentence does not say "all" materials furnished through a certain date, just "materials" furnished. One might infer the release lets some materials furnished through the date escape its net.

[9]One is reminded of the story of the Victorian preacher who, disliking a popular women's hairstyle involving knotted hair at the top of the head—a "top knot"—began a sermon by admonishing his congregation with a quotation from the Bible: "top [k]not come down!" The complete quotation, of course, conveyed an altogether different meaning: "let him which is on the housetop not come down." (See Matthew 24:17.)

[10]The placement of commas can be important. Consider the distinction, sometimes employed by comedians, between, "What is this thing called love?" and "What is this thing called, love?"

But if some rights escape, why purport to release "any" mechanic's lien right the material supplier has on the job? If the release language actually contemplated *some* lien rights surviving, it could have spoken of "those lien rights covered by a progress payment . . . ." Moreover, it is the nature of a progress payment to reflect completion of a certain amount of work, and the natural implication of the word is that it entails all work completed (or materials furnished) through that point. Why not just say "payment for materials" and omit the reference to a date certain if some rights are to survive?[11]

The lumber company also makes an interesting argument concerning the use of the words "pro tanto" in the first sentence of the release. The argument is essentially this: if the words "pro tanto" were deleted from the release, the release would clearly cover all materials furnished, even if unpaid for. Therefore, if one reinserts the words "pro tanto," the release does *not* cover all materials furnished, even if unpaid for. The foundation of the argument is the rule against rendering any part of a statute surplusage. (E.g., *Palos Verdes Faculty Assn.* v. *Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659 [147 Cal.Rptr. 359, 580 P.2d 1155].)[12]

The argument, however, is a non sequitur. "Pro tanto," we are told by the release form itself, means "for so much; for as much as may be; as far as it

[11] *Consumers Holding Co.* v. *County of L.A.* (1962) 204 Cal.App.2d 234 [22 Cal.Rptr. 106] suggests that lien rights can survive a release when the payment prompting the release does not include the work or materials giving rise to the rights, but, as explained below, does not help us in interpreting the scope of the release here.

In *Consumers Holding*, a plumber began work on an apartment building. As work progressed, he sent weekly invoices for progress payments, but made no effort to have the invoices cover the exact amount due. As progress payments were made, the plumber signed both releases on the payment checks and separate lien waivers which made specific reference to the last invoice. The job terminated when the state began eminent domain proceedings. At that time, the plumber had completed 70 percent of his contract, but had billed only 64 percent. The trial court allowed the plumber to testify he signed "merely as to the amounts billed."

Without elaboration the appellate court ruled the lien waivers were ambiguous "because reference is made to the particular invoice and then followed by words of acknowledgment of full payment or of general release." (204 Cal.App.2d at pp. 240-241.) Given the ambiguity, the court upheld the use of the plumber's testimony to establish he had not released his claim to a mechanic's lien for the amounts yet unpaid. *Consumers Holding* was decided before the Legislature prescribed the release here at issue, and involved the interpretation of an ambiguous private contract. It cannot tell us whether any rights survived *this* waiver.

[12] The lumber company's position is also supported by a brief reference in a practice handbook, California Mechanics' Liens and Other Remedies (Cont.Ed.Bar 1988) section 4.39, page 217: "By executing either a release or a waiver, a claimant gives up the rights to a mechanics' lien or a stop notice. Usually, these rights are released on a pro tanto basis, *i.e.*, to the extent of the payment, and usually only to the date of the document." This statement suggests "pro tanto" means "to the extent of the payment," but it also suggests it means "to the extent of the date of the document." The handbook does not appear to be particularly concerned with a situation, such as the present case, where the two meanings might yield

goes." It does not mean "not." It does not have the effect of rendering language the opposite of what it was.

Emphasis on the words "pro tanto" also begs the question. For so much as what? For as much as what may be? As far as what goes? When read in context (see *Johnstone* v. *Richardson* (1951) 103 Cal.App.2d 41, 46 [229 P.2d 9] [words of a statute "must be construed in context"]), the words "pro tanto" take their meaning from the second sentence of the release form, the scope of which, as has already been discussed above, twists and turns back on itself like a mobius strip—a figure which has no front or back. Put another way, the words "pro tanto" in the first sentence do nothing to blow away the fog that enshrouds the meaning of the second.[13]

Rather than try to twist actual language of the statute to make it fit, kicking and screaming, one of the two interpretations proposed by the parties, it seems more straightforward to call the language what it is—genuinely ambiguous on the point before us. We therefore turn to the legislative history of the release form for whatever light it might cast on the matter.

The Legislative History

Mechanics' liens "relate back" to the time work first commences on a project. (§ 3134.[14]) The relation back feature of mechanics' liens is of particular importance to construction lenders. Lenders who have made loans after the commencement of work on a jobsite have found their loans subordinate to mechanics' liens arising out of work performed or material

different results. Nor does the handbook cite any authority for its statement. The brief reference in the handbook therefore does not help us determine the meaning of "pro tanto."

[13]Section 3262, subdivision (d) lists four different release forms to cover four different situations: when the claimant is about to receive a progress payment (subd. (d)(1)), when the claimant has already received a progress payment (subd. (d)(2)), when the claimant is about to receive the final payment (subd. (d)(3)), and when the claimant has already received final payment (subd. (d)(4)). The forms for the situations where the claimant has already received a progress or final payment include language telling the claimant the release is effective even if the claimant has not been paid. The form at issue here, however, has no such language. Does this imply pro tanto necessarily means "to the extent" of payment? No, but it does mean the claimant must actually be paid the progress payment referred to in the release for the release to be effective at all. There is a difference between the fact of receiving or not receiving a certain progress payment, on the one hand, and the precise work or materials that progress payment covers, on the other. The release form prescribed by subdivision (d)(1) is "conditional" on the progress payment clearing the bank. It is not conditional upon that progress payment actually including all materials "furnished to" a customer through the release date.

[14]Section 3134 provides, in applicable part: "The liens provided for in this chapter . . . are . . . preferred to any . . . other encumbrance upon the work of improvement and the site, which attaches subsequent to the commencement of the work of improvement . . . ."

delivered after trust deeds securing those loans were recorded because some work was performed or materials delivered before recordation. (E.g., *J. & W. C. Shull* v. *Brooke* (1930) 107 Cal.App. 88 [289 P. 885]; *Simons Brick Co.* v. *Hetzel* (1925) 72 Cal.App. 1 [236 P. 357]; *Hardy* v. *Frey* (1920) 49 Cal.App. 551 [196 P. 92].) Accordingly, lenders typically require releases of existing lien rights before they will make progress payments on construction loans. (Cf. *Santa Clara Land Title Co.* v. *Nowack & Associates, Inc.* (1991) 226 Cal.App.3d 1558, 1569 [277 Cal.Rptr. 497].)

In 1982, however, the ability of construction lenders to obtain valid releases of liens was undercut by *Bentz Plumbing & Heating* v. *Favaloro* (1982) 128 Cal.App.3d 145 [180 Cal.Rptr. 223]. *Bentz* construed Civil Code section 3262 to render *all* lien waivers null and void. (*Id.* at pp. 149-150.) The decision dried up construction loans and plunged construction lending in California into chaos.[15]

In response, Assemblyman Bill Lancaster introduced Assembly Bill No. 844 in February 1983, sponsored by the Associated General Contractors and Southern California Contractors Association. The bill amended section 3262 to create four kinds of waiver and release of mechanic's lien rights, and prescribed a form for each one. The release form employed in this case is found in subdivision (d)(1).

In examining the various reports prepared as Assembly Bill No. 844 wound its way through the corridors of Sacramento, we find no comment focusing on the precise extent of the conditional waiver set out in section 3262, subdivision (d)(1). But we do find material to support both readings of the statute proffered by the parties.

On the one hand, a letter from attorneys for a number of the construction industry groups who sponsored the bill stated, "The first waiver form (the Conditional Waiver) releases *all* lien rights upon payment to the Subcontractor . . . ." (This language appears to have been repeated in a consultant's report to the Assembly Judiciary Committee.) A staff comment found in another of the consultant's reports said, "The bill's source states that lien waivers are necessary in order to assure owners and lenders that subcontractors and materialmen with *potential* lien claims on their property

[15]Part of the legislative history material furnished by the parties to the trial court was a letter written on behalf of the Associated General Contractors of California, Associated General Contractors of San Diego, Southern California Contractors Association, and the Underground Contractors Association to Governor Deukmejian dated May 31, 1984. The letter pointed out *Bentz* "seriously impede[d] the cash flow of construction projects since the lender has always required lien release before making progress payments." It went on to describe the "situation" after *Bentz* as "chaotic."

have been paid by the prime contractor." A letter from the legislative representative of the State Bar supported the bill "because it makes the mechanic's lien rights waivable, within certain ground rules, after the laborer, subcontractor or materialman *provides* the services or goods." The author's statement to the bill said that "the first release (the conditional release) waives and releases the mechanics' or materialmen's lien upon payment . . . ." (Italics added throughout paragraph.) These statements all indicate that, as long as the payment described in the conditional waiver is actually made (i.e., the check does not bounce), all lien rights existing at the time, including those arising from a materials supplier having "provided" materials to a site, are covered by the waiver.

On the other hand, the Senate Insurance, Claims and Corporations Committee's digest of Assembly Bill No. 844 stated conditional waivers would "release any mechanic's lien, stop notice or bond right the claimant has on the job *to the extent of the progress payment.*" (Italics added.) (This comment was repeated a number of times throughout the legislative materials.) Moreover, the author's statement to Assembly Bill No. 844 also stated, "AB 844 codifies the *Bentz* case with respect to the conditional waiver and hopefully overrules the *Bentz* case with respect to the unconditional waiver."

We do not consider any of these bits and pieces dispositive. The most enigmatic is Assemblyman Lancaster's comment about "codifying" *Bentz* with regard to the conditional waiver. The comment is not elaborated upon. One could take it to mean that the material supplier only gives up rights to the extent they are strictly paid for. But not necessarily. It might also simply mean that the material supplier must get paid before any rights are waived, a reading supported by the caveat in the form that before any recipient relies on it, the recipient should "verify evidence of payment."

The problem in this case, of course, is that the lumber company *was* paid the payment mentioned in the form. The check for $24,187.09 was good. Any person wanting to rely on the release could have "verified" the evidence of payment to a fare-thee-well and still not have known that the payment did not fully compensate the lumber company for material that had already been delivered to the site.

The legislative history is thus no more conclusive than the legislative language. Consequently, we are now forced to interpret the release to make it reasonable, practical, and avoid absurdity.

Reason, Practicality, and the Avoidance of Absurdity

In general, mechanics' liens have nothing to do with mechanics—that is, people who work on cars. In modern usage, the term is misleading. (See 44

Cal.Jur.3d, Mechanics' Liens, § 1, p. 36.) (3) The term derives from the older meaning of "mechanic"—meaning manual worker or artisan—which included such skilled construction workers as carpenters and masons. (See Webster's Third New Internat. Dict. (1986) p. 1400.)

Mechanics' liens are a peculiar legal remedy available to workers and suppliers in the construction industry. Such liens are specifically provided for in the California Constitution, which states: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." (Cal. Const., art. XIV, § 3.) No other creditor's remedy has such a "constitutionally enshrined status." (*Connolly Development, Inc. v. Superior Court, supra*, 17 Cal.3d at p. 808.) The remedy seeks to protect labor and materials contractors in the construction industry, whose risks are not as diffused as, and who are therefore typically more vulnerable than, other creditors. (*Id.* at pp. 826-827.)

(4) It is thus fundamental that lien rights are a remedy available to workers and suppliers who have not been fully paid. If the release form prescribed in section 3262, subdivision (d)(1), covered only suppliers who had no claim for *further* payment for materials delivered through the release date, the form would release nothing that otherwise would not be released anyway. A materials supplier could still assert a given payment was not "for" materials furnished to a customer through the release date, contrary to the recitation of the second sentence of the release form. No potential disputes over whether a given progress payment covered certain work or materials would be resolved, and the parties would remain uncertain of their rights, including the relative priority of any mechanic's lien that might yet be filed. The reading urged by the lumber company would thus render section 3262, subdivision (d)(1), an absurdity. It would make the release nothing more than a glorified receipt. While the intent of the Legislature as to the precise scope of the conditional waiver release set forth in section 3262, subdivision (d)(1) is a bit murky, the general purpose of the statute is reasonably clear. Assembly Bill No. 844 was introduced in the wake of *Bentz* to provide for releases lenders and owners could *rely* on if a certain payment were indeed made. A handwritten comment on an Assembly Judiciary Committee worksheet, responding to the "Problem or deficiency in the present law which the bill seeks to remedy," stated: "Court findings [presumably the *Bentz* decision] made use of lien waivers in construction useless in paying sub contractors [*sic*], materialmen, etc."

If, as in this case, the payment specified in the release could be made and material suppliers were still able to assert mechanics' liens, the release

would be "useless" in paying material suppliers. No rights would be released that would not be released by virtue of the payment *anyway*.

Moreover, pegging the scope of the release strictly to the extent of payment rather than all work or materials furnished through a certain date is impractical. Lenders would need to physically monitor the progress of the work at the site in order to ascertain whether any given progress payment "covered" all the work and material which might potentially give rise to mechanic's lien rights. Unless every last piece of lumber were accounted for, lenders would be unable to be certain of the relative priority of their encumbrances—even after they had loaned the money for a progress payment.

In light of the foregoing, we decline to adopt the lumber company's interpretation of the release form prescribed by section 3262, subdivision (d)(1). (See *Gilles* v. *Department of Human Resources Development* (1974) 11 Cal.3d 313, 324, fn. 12 [113 Cal.Rptr. 374, 521 P.2d 110, 90 A.L.R.3d 970] ["all statutes should be interpreted to promote, rather than defeat, the general purpose of the law"].) The release covered *all* mechanic's lien rights which potentially existed as of the release date as long as the $24,187.09 payment was actually made.

CONCLUSION

While the text and statutory history of the release here are less than pellucid, there is only one interpretation that is workable. The other accomplishes nothing and gives no assurance that lien rights have been waived even if the payment specified in the release is made. A release should not be a weak stick which, if one leans on it, breaks and splinters in one's hand. Accordingly, we hold the release covered the glu lam beams. The judgment is affirmed.

Wallin, J., and Sonenshine, J., concurred.

Appellant's petition for review by the Supreme Court was denied August 27, 1992. Lucas, C. J., Mosk, J., and Panelli, J., were of the opinion that the petition should be granted.

ATTACHMENT "9"

Californians Against Waste v. Department of Conservation (2002)
104 Cal.App.4th 317; 274 Cal.Rptr. 286

[No. H006381. Sixth Dist. Sept. 26, 1990.]

DANIEL FRANCIS ELLIOTT, JR., Plaintiff and Appellant, v. CONTRACTORS' STATE LICENSE BOARD, Defendant and Respondent.

SUMMARY

A contractor whose license was revoked on a complaint by a customer, petitioned for a writ of mandate to set aside the revocation. The trial court denied the writ on the grounds that the petition was not filed within the applicable statute of limitations, that the contractor had "unclean hands," and that that he was then contracting without a license and had obtained his prior license by fraud. (Superior Court of Santa Clara County, No. 683226, Leslie C. Nichols, Judge.)

The Court of Appeal affirmed, rejecting the contractor's contention the board was estopped to raise the statute of limitations defense by having ignored the contractor's request for information on appeal procedures. Noting the time limit was jurisdictional, the court held the late filing could not be viewed as mere technical noncompliance with the statute of limitations. It also held the trial court correctly found that the contractor lacked clean hands, since he failed either to file a replication or to submit proof countervailing the board's affirmative defense that he had obtained his license fraudulently. The court also held that allegation established unclean hands. (Opinion by Cottle, J., with Agliano, P. J., and Bamattre-Manoukian, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Administrative Law § 80—Judicial Review and Relief—Limitations on Availability—Time Requirements.**—The time within which a party must institute judicial review of administrative action is generally held to be jurisdictional.

(2) **Administrative Law § 80—Judicial Review and Relief—Limitations on Availability—Time Requirements—Estoppel.**—The Contractors' State License Board was not estopped to assert the statute of limitations defense to a contractor's petition for writ of mandate to review a decision of the board revoking his license by ignoring the contractor's request for information concerning appeal procedures. A defendant is estopped to assert the statute of limitations if its conduct caused the plaintiff to delay filing the action. Some affirmative misleading conduct on the part of the agency is necessary to support a finding of estoppel. Because the board neither owed nor assumed a duty to advise the contractor of his rights, its inaction could not reasonably have lulled him into a sense of security that prevented him from filing his petition before the running of the statute of limitations.

(3) **Administrative Law § 80—Judicial Review and Relief—Limitations on Availability—Time Requirements—Technical Noncompliance.**—A contractor's late filing of a petition for mandamus review of a decision of the Contractors' State License Board revoking his license was not a mere technical noncompliance that would excuse the untimely filing. Compliance with the time requirements was jurisdictional and the contractor filed a petition more than two months after the running of the limitations period. Late filing is not the same as technical noncompliance.

(4) **Mandamus and Prohibition § 64—Mandamus—Demurrer to Answer; Countervailing Answer—Affirmative Defense.**—In a hearing on a petition for mandamus by a contractor challenging the revocation of his contractor's license, the trial court correctly found that the contractor lacked clean hands, where he failed either to file a replication or to submit proof countervailing the Contractors' State License Board's affirmative defense that the contractor had obtained his license fraudulently. Factual allegations in an answer to a petition for a writ of mandate must be countervailed by proof at trial or by replication, or they are taken as true (Code Civ. Proc., § 1091). The fact the allegations of the answer were unverified was immaterial, since a pleading by the state or a subdivision of the state need not be verified (Code Civ. Proc., § 446). Thus, the allegations were not legally incompetent merely by being unverified.

[See **Cal.Jur.3d,** Mandamus and Prohibition, § 45; 8 **Witkin,** Cal. Procedure (3d ed. 1985) Extraordinary Writs, § 182.]

(5) **Mandamus and Prohibition § 51—Mandamus—Defenses—Unclean Hands.**—In mandamus proceedings by a contractor to overturn a

decision of the Contractors' State License Board revoking his license on complaint of a customer, the board established the defense of unclean hands by allegation that the contractor had obtained his license by fraud. Although the defense of unclean hands is unavailable when the wrongdoing is unrelated to the matter before the court, the allegation of fraud in the license application was not too tenuously connected with the disciplinary proceedings initiated by the customer to be raised in an affirmative defense to the mandamus petition. The license law was enacted to protect the public against dishonesty and incompetence in the business of contracting, and an applicant's misrepresentation of a material fact in obtaining a license is cause for disciplinary action. Because the ultimate issue before the trial court was whether the license, then revoked, should be restored, public policy supported consideration of the allegation of fraudulent license application in the mandamus proceeding, and the court properly denied the petition.

COUNSEL

M. Jean Starcevich for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, Wilbert E. Bennett and John E. Barsell, Deputy Attorneys General, for Defendant and Respondent.

OPINION

COTTLE, J.—Daniel Francis Elliott, Jr., appeals from a judgment of the Santa Clara County Superior Court denying a writ of mandate to review an administrative decision. (Code Civ. Proc., § 1094.5.) The petition asked the court to set aside the revocation of appellant's contractor's license. The court denied the writ on the grounds that (1) the petition was not filed within the applicable statute of limitations; (2) Elliott had "unclean hands," in that he was then contracting without a license and had obtained his prior license by fraud; and (3) the petition failed to state a cause of action because the registrar of contractors was not named as a party. Appellant challenges the denial of the writ on each of the grounds asserted by the trial court. Additionally, appellant challenges the findings made and the penalty imposed by the administrative law judge. Because the petition was not filed within the statutory time limit and because the trial court correctly applied

the doctrine of unclean hands, we affirm the judgment. We do not reach the merits of the license revocation and penalty determination.

FACTUAL AND PROCEDURAL BACKGROUND

In August 1986 appellant was a roofing contractor doing business as Dan Elliott Roofing. He had obtained his first roofing contractor's license, number 338626, in 1979 while doing business as Dance Roofing Company. That license expired on April 30, 1982. In January 1982 Dan Elliott, Inc., doing business as Dance Roofing Company, was issued license number 416501. License number 416501 was suspended on January 11, 1987, due to the failure of Dan Elliott, Inc., to post the contractor's bond required by statute. In October 1986, appellant, doing business as Dan Elliott Roofing, was issued license number 500298. Revocation of the latter license is the subject of these proceedings.

During August 1986 a homeowner, Aldo Bacigalupo, received in the mail a flier advertising the services of Dance Roofing Company. The flier, which listed license number 388626 [*sic*], stated that "Dan Elliott Roofing" had been serving the San Jose area since 1979.

Mr. Bacigalupo contacted Dan Elliott Roofing. One of appellant's employees met with Mr. Bacigalupo and issued a bid to reroof his home. On August 27, 1986, work began despite the fact that appellant had neither provided Mr. Bacigalupo with a written contract nor obtained the necessary permit. Appellant eventually obtained the permit. On September 3, 1986, Mr. Bacigalupo expressed extreme dissatisfaction with the work and terminated Dan Elliott Roofing. He filed a small claims action against appellant seeking amounts he spent in completing the roofing job. Appellant satisfied the ensuing judgment against him. Mr. Bacigalupo also caused the initiation of proceedings against appellant's license before respondent Contractors' State License Board.

Following hearings held in November 1988, the administrative law judge filed a proposed decision revoking appellant's license on the grounds that he had violated Business and Professions Code sections 7115, 7028, 7161, and 7026.7 (by false advertising and contracting without a valid license), 7154 and 7159 (by employing a nonregistered salesperson and failing to provide a homeowner with a proper home improvement contract), and 7111 (by failing to keep and produce proper records). On January 6, 1989, the registrar of contractors adopted the order of the administrative law judge. The registrar's decision became effective on February 5, 1989.

On May 18, 1989, appellant filed a petition for a writ of mandate to set aside the revocation of his license, naming as respondent the Contractors'

State License Board. Respondent filed its answer on June 28, 1989. The answer included an allegation that appellant obtained his license on the basis of fraudulent representations concerning earlier unpaid debts as a contractor and prior disciplinary action. Appellant did not file a responsive pleading.

On August 25, 1989, the trial court denied the writ, and appellant filed a timely appeal. Appellant unsuccessfully sought a writ of supersedeas to stay enforcement of the trial court's judgment.

DISCUSSION

1. *Statute of Limitations*

The time within which appellant was required to file his petition for a writ of mandate to challenge the revocation of his license is determined by Government Code sections 11521 and 11523. (Bus. & Prof. Code, § 7091.) Under Government Code section 11521, the registrar's power to order reconsideration of its decision expired on February 5, 1989, when the decision became effective. (Gov. Code, § 11521, subd. (a).) Under Government Code section 11523, appellant then had 30 days from the effective date of the decision within which to petition for judicial review. The last day on which he could seek judicial review was, therefore, March 7, 1989. He filed his petition on May 18, 1989, more than two months later.

(1) The time within which a party must institute judicial review of administrative action is generally held to be jurisdictional. (*Tielsch* v. *City of Anaheim* (1984) 160 Cal.App.3d 576, 578 [206 Cal.Rptr. 740]; *United Farm Workers* v. *Agricultural Labor Relations Board* (1977) 74 Cal.App.3d 347, 350 [141 Cal.Rptr. 437]; but see *Ginns* v. *Savage* (1964) 61 Cal.2d 520, 524 [39 Cal.Rptr. 377, 393 P.2d 689].) Appellant does not argue otherwise.

(2) Instead, appellant urges that the trial court erred in not holding that respondent was estopped to assert the statute of limitations. In support of this contention, appellant points out that he is not an attorney; that almost immediately after he received the registrar's decision, he wrote to respondent, stating he wished to appeal the decision and needed information about procedures and forms in order to do so; that he wrote to the administrative law judge to seek clarification of her order; and that he received no reply either from the administrative law judge or from respondent.[1]

[1] Observing that the declarations containing these facts were never offered or received into evidence, respondent implicitly invites us to dispose of the estoppel argument in summary fashion. We note, however, that the declarations were attached to appellant's memorandum of points and authorities filed in opposition to respondent's affirmative defense based on the

A defendant is estopped to assert the statute of limitations if its conduct caused the plaintiff to delay filing the action. (*Kupka* v. *Board of Administration* (1981) 122 Cal.App.3d 791, 795 [176 Cal.Rptr. 214].) Some affirmative misleading conduct on the part of the agency appears necessary to support a finding of estoppel. (See *Sinetos* v. *Department of Motor Vehicles* (1984) 160 Cal.App.3d 1172, 1177 [207 Cal.Rptr. 207].) Because respondent neither owed nor assumed a duty to advise appellant of his rights, its inaction could not reasonably have lulled appellant into a sense of security that prevented him from filing his petition before the running of the statute of limitations. It cannot be said that by ignoring appellant's request for information respondent took unfair advantage of appellant, estopping it to raise the defense of statute of limitations.

(3) Alternatively, appellant asks us to view his late filing as a mere technical noncompliance with the statute of limitations. Appellant argues that by sending respondent a letter, well within the limitations period, advising it of his intent to appeal the registrar's decision, he made an attempt to exercise his rights of appeal sufficient to avoid the bar of limitations.

Under certain circumstances, technical noncompliance with *nonjurisdictional* filing requirements will not cause a petition to be deemed untimely filed. In *United Farm Workers of America* v. *Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912 [210 Cal.Rptr. 453, 694 P.2d 138], a petition for a writ of review was submitted to the clerk's office of the court of appeal on the last day for filing. A deputy clerk stamped the petition "received," but returned it to the petitioner for lack of verification. A verified petition was then filed three days after the last day for filing. The California Supreme Court held that the petition was timely filed, since filing—for purposes of the statute of limitations—means actual delivery to the clerk at his or her place of business during office hours. (*Id.* at p. 918.) The clerk's rejection of the petition for a technical defect could not, the court reasoned, undo a filing that had already occurred. (*Ibid.*) The court distinguished several cases that had strictly applied the statute of limitations. In none of those cases, the court noted, was a petition timely submitted; all involved attempts to extend the deadline. (*United Farm Workers of America, supra*, 37 Cal.3d at 916-917; see, e.g., *Hollister Convalescent Hosp., Inc.* v. *Rico* (1975) 15 Cal.3d 660, 674 [125 Cal.Rptr. 757, 542 P.2d 1349]; *United Farm Workers* v. *Agricultural Labor Relations Board, supra*, 74 Cal.App.3d at p. 350.)

Unlike the petitioner in *United Farm Workers*, appellant did not actually file his petition within the period of limitations. Instead, he filed it more

statute of limitations. Thus the declarations were before the trial court, and we may properly consider their contents.

than two months after the running of the limitations period. Late filing is not the same as technical noncompliance.

The trial court correctly denied the petition as untimely filed.

2. *Unclean Hands as Alternative Ground of Revocation*

As an alternative basis for its denial of the writ, the trial court found that appellant had "unclean hands" warranting revocation of his license. The trial court found both that appellant had obtained his license by fraud and that he was, as of the time of trial, contracting with an expired license in violation of Business and Professions Code section 7028. Appellant contends both findings are erroneous.

Based on our review of the augmented record, we believe the "unclean hands" finding could not be sustained solely on the basis that appellant was contracting without a license. Respondent's answer did not allege that appellant was contracting without a license; the issue seems to have been raised for the first time at the hearing. As we read the record, counsel for appellant did not concede that appellant was practicing as an unlicensed contractor at the time of the hearing, and in fact submitted to the trial court documents refuting the suggestion. Under the circumstances, the trial court would not have acted within its discretion had it denied the petition solely on respondent's representation that appellant was engaging in unlicensed practice at the time of trial.

(4) Nevertheless, the trial court correctly found that appellant lacked clean hands, since he failed either to file a replication or to submit proof countervailing respondent's affirmative defense that he had obtained his license fraudulently. Factual allegations in an answer to a petition for a writ of mandate must be countervailed by proof at trial or by replication, or they are taken as true. (Code Civ. Proc., § 1091; *Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 623 [191 P.2d 426].)

Appellant argues that the allegations of the answer cannot constitute evidence because they were unverified. We disagree. A pleading by the state or a subdivision of the state need not be verified. (Code Civ. Proc., § 446.) The allegations were not legally incompetent merely because they were unverified. Appellant cites *Central Bank* v. *Superior Court* (1978) 81 Cal.App.3d 592 [146 Cal.Rptr. 503] for the proposition that an unverified answer is insufficient to deny the allegations of a verified petition. However, the respondent in *Central Bank* was an individual, not the state or a subdivision of the state. (*Id.* at pp. 596, 600.) Appellant also notes that verification on information and belief is inadequate to support a petition,

citing *Star Motor Imports, Inc.* v. *Superior Court* (1979) 88 Cal.App.3d 201, 204-205 [151 Cal.Rptr. 721]. The pleader in *Star Motor Imports*, as in *Central Bank*, was an individual rather than the state or one of its subdivisions. (*Id.* at pp. 204-205.) Appellant also cites *May* v. *Board of Directors* (1949) 34 Cal.2d 125 [208 P.2d 661], but *May* does not assist him. In *May*, the respondent board of a water district denied the allegations of a petition in mandamus proceedings by alleging it had no knowledge or information sufficient to enable it to answer. (*Id.* at p. 127.) The California Supreme Court held that form of denial was inadequate to put the denied fact in issue. (*Ibid.*)

No case appellant cites, therefore, dictates rejection of respondent's unverified affirmative defense based on the allegation of fraudulent license application.

(5) Appellant contends that even if the allegation were true, it could not establish unclean hands so as to preclude him from overturning his license revocation stemming from the Bacigalupo incident. We cannot agree. Although the defense of unclean hands is unavailable when the wrongdoing is unrelated to the matter before the court (*Pepper* v. *Superior Court* (1977) 76 Cal.App.3d 252, 259-260 [142 Cal.Rptr. 759]; *McCarthy* v. *City of Oakland* (1943) 60 Cal.App.2d 546, 552 [141 P.2d 4]), the allegations of fraud in appellant's license application were not too tenuously connected to the disciplinary proceeding initiated by Mr. Bacigalupo to be raised in an affirmative defense to the petition. The Contractors' State License Law was enacted to protect the public against dishonesty and incompetence in the business of contracting (*Lewis & Queen* v. *N. M. Ball Sons* (1957) 48 Cal.2d 141, 149-150 [308 P.2d 713]; *Rushing* v. *Powell* (1976) 61 Cal.App.3d 597, 604-605 [130 Cal.Rptr. 110]), and an applicant's misrepresentation of a material fact in obtaining a license is cause for disciplinary action. (Bus. & Prof. Code, § 7112.) The ultimate issue before the trial court was whether appellant's contractor's license, then revoked, should be restored. Public policy thus supported consideration of the allegation of fraudulent license application in the mandamus proceedings. Appellant cites no authority that would demand initiation of separate disciplinary proceedings to determine the truth of the fraud allegations, and we find none.

Like the trial court, we find this case analogous to *Wallace* v. *Board of Education* (1944) 63 Cal.App.2d 611, 617 [147 P.2d 8], which denied a writ of mandate to compel reinstatement of a petitioner to his job following his mandatory retirement due to age. The petitioner in *Wallace* alleged that he had lied on his employment application, and that he was actually four years younger than he had represented. The court denied the writ for want of clean hands. (*Ibid.*) Similarly, appellant's misrepresentations in his license

application were properly considered in the revocation proceedings set in motion by the Bacigalupo incident.

3. *Failure to Name Registrar of Contractors as Respondent*

Appellant argues that the trial court erred in holding that his petition failed to state a cause of action because it did not name the registrar of contractors as respondent. Generally, a petition for a writ of mandate should name as respondent the decisionmaking authority of the agency. (Cal. Administrative Mandamus (Cont.Ed.Bar 2d ed. 1989) § 6.4, p. 229.) The registrar of contractors is empowered to investigate the actions of any contractor in California and to take disciplinary action. (Bus. & Prof. Code, § 7095.) The Contractors' State License Board has the discretion to review and sustain or reverse any action or decision of the registrar. (Bus. & Prof. Code, § 7013.) In this case, the board did not exercise its discretion to review the registrar's decision. Therefore, the better practice would have been to name the registrar of contractors as respondent. Because the alternative defenses of the statute of limitations and unclean hands are dispositive of this appeal, we need not consider whether the failure to name the registrar would have been a sufficient reason, standing alone, to deny the writ.

DISPOSITION

The judgment is affirmed.

Agliano, P. J., and Bamattre-Manoukian, J., concurred.