

**CASE STUDY:
CRIMINAL DEFENSE INVESTIGATION
AGGRAVATED ASSAULT ON POLICE OFFICER
By Alex Toia, CCLA, LPI
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Assignment

Criminal Defense Counsel requested a thorough investigation on behalf of his client pertaining to Aggravated Assault and Resisting Arrest charges on a Police Officer. The names and places surrounding this New Jersey case are fictitious.

Case History

Frederick Robert Walters was commonly referred to by his nickname “Buddy.” His former childhood best friend was Richie Jorgensen, also known as “RJ.” RJ lost his mother at an early age, and Sally Walters, Buddy’s mom, had assumed a surrogate role and became very close to RJ. The Walters family treated him as another son.

RJ betrayed that friendship when he borrowed \$3,000 from Buddy and wasted it up his nose, partying with cocaine and whatever women would have sex with him. He further angered Buddy by having sex with Buddy’s former girlfriend. While RJ was only five feet, seven inches tall, his upper body was massive from weight lifting and steroids. He had a hair-trigger temper and often started fights. Buddy is 6-3, 227 pounds and very solid. Tattooed from neck to ankle, Buddy is not a friend when his anger flairs, and can be a very menacing sight and deadly opponent.

Their friendship further soured when RJ was drunk at a family party celebrating Sally’s 50th birthday. Buddy sneered at his behavior, and in a drunken rage, RJ screamed at Buddy to mind his own “&%#%\$@!” business. The two lunged at one another, and Sally stepped between them to avert the fight. RJ swung hard at Buddy and squarely connected with Sally knocking her out cold. Six large young men were needed to keep Buddy from ripping RJ apart.

The Facts

This relationship continued to go from bad to worse. Wherever the two young men crossed paths, sparks flew. Their feud spilled into a public tavern one dreary, foggy night. Buddy and several friends, Chuck Moore, Bernie Quigley, and four others met for dinner and drinks. RJ happened in towards the end of their meal, and as soon as he spotted Buddy, words were exchanged. Bouncers immediately intervened and escorted RJ to the opposite side of the tavern.

Upon leaving the bar, Buddy, Chuck, and Bernie rifled parting remarks at RJ, and the loud curses disturbed some patrons, one of which was an off duty local detective, who just had walked in. By the time the detective walked over to where RJ and a bouncer were located, Buddy’s group was being escorted outside by the second bouncer. They did not see the detective.

The bouncer walked Buddy and his group to their cars, and then returned inside. When he came in, his partner told RJ to go home. When RJ walked outside, Chuck Moore continued to harass him, as Quigley was starting his car. RJ rushed up to the driver’s window, reached in, and grabbed at him. Moore yelled and cursed loudly from the passenger side, and Buddy, who had parked near

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the end of the lot, perked up to what was happening. He recognized RJ swinging at his friend and ran to Bernie's assistance.

As he approached the vehicle, he was grabbed from the side and thrown against a van by an unknown guy who stated he was a cop. Buddy did not hear anything that sound like police officer and literally threw him aside. He was focused on assisting his friend. The guy tackled him and brought him to the ground, slamming his forearm into Buddy's back, pinning him on the pavement. Still, Buddy had no idea who this was, thinking it was an associate of RJ. No further police identification was spoken or shown, although the detective claims he was vocal about representing his position. Buddy struggled to get free until he was subdued with handcuffs; then he heard the guy say he was a cop.

RJ saw Buddy's struggle and immediately left the area. Buddy was arrested and charged.

Investigation Results **START HERE

Bernie Quigley was the defense's star witness. He was the only sober person besides the cop in the parking lot and heard everything that transpired. The officer never properly identified himself, and the jury sided with our client, who in the tenor of the moment thought this was one of RJ's friends. He was merely going to the aid of his friend.

What really broke the case, however, was Buddy's former girlfriend. She knew the detective. He had hit on her often when she was dating Buddy. She also friends knew Andrea, Buddy's cousin, who the detective also hit on when he got nowhere with the girlfriend. He had pulled Buddy over one day for no other reason than to try to develop information about dating Buddy's cousin.

The detective charged Buddy with resisting arrest and aggravated assault, but it was later learned that when he had been assigned to the road, he had tried to date Buddy's sister, who rebuffed him. He had been quite persistent, and Andrea had Buddy speak to him once when he called when Buddy was at her house. Evidently, the cop never forgot the tongue lashing and threats Buddy dished out to him on the call. Buddy did not know he was a cop; his sister probably didn't wither, until later in her life. Buddy did not remember the police unit that had pulled him over a couple times when he had done nothing wrong. The cop let him go both times and used his leniency to try and hook up with Andrea another time. He just wasn't getting the message. Buddy had no idea who this guy was the night of his arrest.

RJ confirmed in a written statement that no one identified themselves as police officers. He had looked back as he was leaving and . However, because of his hatred towards Buddy, he refused to aid in his defense. Before he refused to continue cooperating, I read RJ's statement to him over the phone, and he attested to the fact that it was true to the best of his knowledge and belief.

Because RJ refused to finalize his statement, I noted on the bottom, signed, and dated the following:

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“I spoke to RJ on Wednesday, September 28, 2005 and read him this statement. He agreed to sign it, but later in the week changed his mind.”

Interviews

1) Tammy Horneck, Telephone Interview September 6, 2005 (732-625-0163)

Summary

Mrs. Horneck’s son was arrested for 4 grams of marijuana possession with intent to distribute. She approves of his use because it helps his Tourette's Syndrome. Other than her personal experience with Officer Denham and his disrespect towards her and her son, she did not have other helpful information. Moreover, her son pled guilty, was sentenced to probation and fined. Based on the conviction and sentence, he might not be a good witness for the defense. Had the charges been dismissed for illegal search and seizure, Eric would have been interviewed for his version of the incident and Officer Denham’s behavior and demeanor.

Details of Interview

Tammy Ann Horneck, 152 Spotted Oak Drive, Freehold Twp., NJ (732-625-0163; cell: 732-740-6679) lives with husband, Frank and their six children, ages 4-22. Son Eric (20) was working at Manhattan Bagel and driving home. He had just left the shop and was a quarter-mile down the road, when an 83 year old man turned in front of him causing the accident. Eric’s car was totaled, and he required emergency room hospital care for neck and back injuries. He was still in his car when Officer Michael Denham put his head inside the vehicle and said “Yup,” indicating he smelled or saw drugs in the car.

The officer proceeded to rip the car apart and found a duffel bag in the backseat or trunk. Inside the bag were 4 grams of marijuana, each in small 1 gram measurements inside plastic bags. Mrs. Horneck had put the empty lunch bags in herself for a trip to great Adventure the previous day. Because Eric suffers from Tourette’s Syndrome, the marijuana helps his condition. He has been on other medications which did not work and made him vomit. Mrs. Horneck knows it is illegal, but says her son is a handsome, well mannered, student with a good work-ethic whose condition is greatly improved by the drug, which he buys in small packets, and aids daily functions. Because there were several plastic sandwich bags found, Officer Denham used those bags to charge Eric with intent to distribute. He was not charged with any traffic offenses because the accident was not his fault.

After the accident, Eric was taken to the hospital and given strong medication immediately. He was very much out of it from that point on. Officer Denham told Mrs. Horneck that her son had to come down to police headquarters that night for questioning. She called the police to see if they could come to the house or if they could go the next day because it was late and Eric was in a lot of pain and unable to talk coherently or ambulate. She was told he had to come down then, but there was a wheelchair for him to use. That “wheelchair” turned out to be a desk chair with

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wheels. She felt Denham spoke to her in a disrespectful tone and acted in an unprofessional manner when she arrived at headquarters. Her husband was out of town on business, and she had never had this type of experience before. She was frightened, confused, and upset, thinking her son was going to jail. Eric was questioned by police, but because of the medication, he could not respond.

Officer Denham and a lieutenant came out to talk to Mrs. Horneck. Denham called Eric “a stupid asshole” who refused to speak to them and emphasized Eric was in serious trouble. He menacingly looked at Mrs. Horneck and told her he wanted the names of the people Eric did business with. Then he made gestures with his hands as if washing them, expressing if her son cooperated, this entire experience would be washed away as if it never occurred. Because this was a scary, new experience, Mrs. Horneck told Denham she needed to speak to her husband, who was away on business, as well as an attorney. She felt he was playing on her naivety and trying to intimidate her.

Mrs. Horneck said that since this incident, there have been other times when Eric has been pulled over and ticketed by Officer Denham for not wearing a seatbelt when he was. Denham has followed him and harassed him. Knowing that Eric was scheduled for court on the marijuana charges, Denham gave him a ticket with that same court date for failure to wear the seatbelt. Family and lawyer feel it was harassment. She felt Denham was targeting her son purposely.

Because Eric pled guilty to the marijuana charges, he was not interviewed.

2) Kelly Rogers, Michael’s Sister, Telephone Conversation, September 12, 2005

Summary

There was no substantive evidence other than Kelly’s experiences with Denham. In an effort to develop information on Officer Mike Denham, Kelly said she has known him for four to five years. She was a First Aid volunteer and knew a number of police officers on a casual basis, and Denham was in that category. They were by no means friends. Other police officers that Kelly was friends with told her Mike Denham has always been crazy, very weird, someone who hurt animals when he was younger. She could not be more specific or provide substantive leads. I had heard that Kelly’s fiancé, Jesse Moore, a police officer in Howell, NJ, had information about Denham, but did not want to get involved. Kelly later explained that everything he knew, he had heard from her.

An example she gave pertaining to Denham’s abuse of authority was at TGI Friday’s about a year or two ago. Mike cornered Kelly in the smoking area and imposed himself on her for an hour or more. He intimidated her, and remarked that, “Buddy is going to get his.” Another time she became fearful of him was at a party at George Burns house when he screamed at her for taking too many hamburgers. She had no idea what his motivations were for that treatment, but could not elaborate. She heard he had a crush on her and displayed those affections in unusual ways. One time he pulled Buddy over just to talk to him. She suspected it may have been to get closer to her, and she was outraged by that experience. She says Denham is also disliked by other cops, but

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could not provide any specific incidents as to how this is true. The rap on him is that Denham tries to influence people. He may have been this way with the bouncer at Escondido's.

Kelly also mentioned a woman by the name of Christie Mitchell who Denham allegedly stalked four to five years ago. That may have been before he became a cop. She became so terrified, she moved from the area.

3) Charles R. Mullen, Notarized Statement, September 21, 2005.

Chuck is a Culinary Institute graduate, specializing in vegetable preparation at the Ryland Inn, Old Highway 28, Whitehouse, NJ. He recently moved there to live on grounds. His cell number is 732-740-3331.

Summary

As a passenger in the Jeep Ben was driving, and within hearing distance of the activities around him, Chuck did not hear anyone announce being a police officer. Mike Rogers had no idea the guy who grabbed him was an off-duty police officer.

Witness Evaluation

Mullen is an intelligent young man, appears to have a good work ethic, and makes a good appearance. He strongly feels his friend was unjustly detained without hearing any announcement for police identification. Because he was so vociferous about Buddy having been unjustly arrested, he was taken into custody as well. Chuck admits he had been drinking for about two hours prior to this event. Full details of what he saw and heard are included in his statement.

4) Raymond "RJ" Caponetti, Jr., Telephone Interview, September 23 & 24, 2005

When I first spoke to Buddy about his case, I asked him if there was anyway he could mend his relationship with RJ, as they had grown up together and been very close during childhood. Even though RJ used money Buddy had lent him for cocaine, Buddy was willing to forget and forgive. In speaking to individual members of the family, Mrs. Rogers contacted RJ to find out if he would talk to me, and he agreed. She mentioned that RJ had approached her within the past couple of months about resolving the issues between him and her son. There was little she could do at the time because Buddy was still angered, but we agreed this would be an ideal opportunity for her to get back in touch with him.

On September 24th, I talked to RJ over the telephone and could hear the anger and hurt in his voice regarding his relationship with Buddy. He spewed accusations, curses, and instances where he and Buddy had issues. He was not willing to spend too much time helping someone he despises. Based on the notes from our conversation, I developed the statement below and read it to him on September 28th over the phone. He had me omit a few comments he made during our initial conversation. One was that he was drunk. It was changed to say he was drinking. Another

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revision was that he and Ben Quinones were having words, instead of what he originally said about their pushing and shoving.

Summary

He did not hear anyone announce being a cop. He saw someone in regular clothes take Buddy down, but could not identify that person. Much of his attention was focused on Ben Quinones, not Buddy's situation. After reading the completed edition to him over the phone, he agreed that it was a correct statement. He said he would swear to its authenticity and sign it in my presence for notarization. We discussed the best time to meet. After an 8:30 p.m. appointment was scheduled for September 29th at his house, he told me to be sure I was on time as he had things to do. We agreed I would call him on the 29th to confirm the meeting, which I did. He called back and spoke to my assistant saying he would not sign the statement. When I reached him later in the day, he was against supporting Buddy because of a new issue that he would not elaborate upon. He did not want to discuss it. While he and I had developed a working rapport, his negative feelings for Buddy overshadowed everything we discussed. I convinced him to at least consider meeting with me to talk when I was in Freehold, as I could not force him to sign the statement. He reluctantly agreed, and emphasized he was not signing the statement. When I was in town and called him at eight o'clock, his voicemail picked up the call, and I left a detailed message saying I was at Escondido's. I placed another call a half hour later, but did not receive a response.

Details of Interview

His unsigned statement that he attested to reads:

My name is Raymond Caponetti, Jr., age 25, but everybody calls me RJ. I was born on September 1, 1980. I live at 67 Glenbrook Road, Freehold, NJ 07728. My cell phone is 732-861-1234. I work for DHL as a driver out of the Manasquan, NJ office.

I don't remember the date, but it was July of this year. I was alone at Escondido's Bar and had been drinking. Towards closing time, around 1:45 a.m., I saw Buddy Rogers and his friend Ben Quinones. There was some mouthing off between us, and me and Buddy had words inside the bar. There was a lot of spit flying and nasty words thrown back and forth at each other. Buddy and me used to be friends, but we have had our problems, and we don't get along now. We were going to take our conversation outside and settle it out there. Outside, there was nothing physical between me and Buddy, just words. Most of my attention was focused on Ben. We were having words with one another.

During my dispute with Ben, I saw this guy take Buddy down, but I did not know who this guy was. I did not hear anyone announce that he was a cop before Buddy was thrown to the ground. Buddy did not assault him because Buddy did not see him coming. After Buddy was already on the ground and trying to get up from under this guy, that's when I heard this guy say he was an off-duty cop. I did not hear him identify himself as a cop before then. We were all within hearing distance of each other, about 20 feet apart at most. Everybody outside the bar was wearing regular

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clothes. Nobody was in uniform. I did not know who this other guy was that grabbed Buddy. I don't know if Buddy knew he was a cop. When Buddy was on the ground with this guy on top of him, Buddy was moving around trying to get free. My attention was more focused on Ben at that time.

There was a bouncer from Escondido's named Rob who was there and probably knows a lot more than I do. I go to Escondido's every Wednesday night and see Rob working the door. He starts work at 9:00 p.m. I don't know his last name. There also was another guy that came running out of Escondido's, but I don't know if he was another bouncer, someone who worked inside, or just a patron that came out to see what was going on.

I don't know Officer Michael Denham. I don't remember seeing him in Escondido's that night. Cops generally don't hang out at Escondido's. They tend to hang out next door at Moore's Tavern. Escondido's and Moore's front entrances are only 30 feet away from each other. This incident happened in the parking lot between the two places. Because of my condition at the time, I would not be able to recognize that officer again. After the undercover cop had taken Buddy down and then announced he was an off-duty cop, I did not stick around to wait for the other cops to arrive.

I have reviewed my statement above, and I swear it is true to the best of my knowledge and belief.

5) Benjamin Jose Quinones, Notarized Statement, September 29, 2005.

Ben is a college graduate of the University of Las Vegas who is the PC Area Manager at Best Buy, 300 Route 18, East Brunswick, NJ 08816 (732-257-5293, ext. 2021). He has his own apartment and lives with a roommate at 52 Federal Key, Coltsneck, NJ 07722. He can also be reached on his cell phone 732-682-1892.

Summary

This is your best support witness because he was the designated driver for his friends that night and did not have any alcohol. RJ caused this altercation, and the bouncers that responded grappled with RJ in front of Ben's driver side window. As Buddy was leaving in his car, it appeared to him that his friend was being attacked by three people. He came back to help. As he was moving towards the driver's side door, he was blind-sided by an unknown male in regular clothes. Ben did not know who this person was and did not hear him identify himself as a police officer. While RJ started the problems, he left before the police arrived, and Buddy was arrested. Ben had a clear view of this situation as it developed just outside his open window. Buddy was taken down by a man he never saw, and he had done nothing to that point to warrant detainment.

Witness Evaluation

This is Buddy's best witness. Ben has a good job at Best Buy in charge of the Geek Squad, a team that makes field PC repairs. As a retail sales manager, he is extremely busy and makes a very

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good professional appearance. He keeps his body in good physical shape visiting the gym early in the morning and considers Buddy a true little brother. Ben is intelligent and converses well. He provided three diagrams that depict the scene as it unfolded before him. He is a polite, respectable, low key young man who would make a believable witness in front of a jury.

6) Robert Knowles, Bouncer, Interview at Escondido's Mexican Restaurant, 402 West Main Street, Freehold, NJ, September 29, 2005.

Rob Knowles is an unmarried 35 year old male who works three jobs. His full time position is with Leisure Village Maintenance, 13-A Buckingham Drive, Lakewood, NJ. His two part-time positions include Patio Bar, Point Pleasant, NJ, which is now closed for the season, and Escondido's, where he has worked for almost a year on Wednesdays from 9-12 midnight and Thursdays from 9 p.m.-1 a.m. He resides at 31 parkway Drive, Brick, NJ 08723 and uses his cell phone for communications (732-600-9741).

Summary

Robert Knowles was the only bouncer working the night of the altercation between Raymond "RJ" Caponetti, Jr. and Michael "Buddy" Rogers, Jr. He heard Officer Mike Denham, whose last name he did not know at the time, tell Buddy he was a cop when he intercepted Buddy as he was running towards RJ, who was being restrained by this witness. The officer, who was dressed casually in blue jeans, shirt, and cowboy boots, grabbed Buddy and put him up against a parked vehicle, stating, "I'm a police officer; calm down, we'll straighten everything out." The bouncer says Denham repeated that he was a police officer twice more, and the third time said, "I'm a police officer; now you're under arrest."

Details of Interview

Rob Knowles works alone. He wears an Escondido's tee shirt that has a small logo over the left breast and a picture on the back. Earlier in the evening there had been a couple of scuffles inside the bar between patrons unrelated to Buddy Rogers or RJ, and the police responded both times. Through the course of his employment at the restaurant, officers are called in to settle disputes. They also frequent the establishment as customers when off duty. He knows the policemen by their first names and has seen Officer Mike Denham when he has been in uniform and been called to restore order. He did not know Denham was "Mike's" last name.

The incident began on a Wednesday night when the bouncer was standing near the bar and RJ, who he knows as a regular on Wednesday nights, went after another young man he was unfamiliar with. RJ was alone, and the other guy was with a group of friends that totaled six to seven. Because Rob was within reaching distance, he intercepted RJ before he could get to this other person and pinned him against the bar. About 12-12:12 a.m. there was another scuffle, pushing, shoving, loud voices, and cursing between this group and RJ that again required Rob's intervention. He ejected the larger group of young men and told them they were to leave the bar. He remained with RJ and instructed him to stay in the bar as the group departed.

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Twenty minutes later, he escorted RJ out of the restaurant and told him he was no longer permitted in that establishment. As they were walking out the door, an off-duty police officer who Rob only knew as “Mike,” walked into the foyer. They greeted one another, and Rob continued outside with RJ. After walking through the front door towards the parking lot, they crossed a brick patio. High vegetation, foliage, and a large clock tower obstruct the view to the parking lot. As they entered the lot, there was a lot of shouting and cursing at RJ from a parked SUV. It was the guys who had been told to leave, but had yet to vacate the premises. RJ ran over to the driver’s side of the SUV and began throwing punches into the driver’s side window.

Rob ran to RJ and grabbed him from behind in a bear hug to remove him from the driver’s window. This all unfolded very quickly, and at the same time Rob saw a silver car pass him to his left and noted brake lights and a guy get out running towards him and RJ. At this time a crowd from inside the restaurant had formed at the base of the clock tower, curbside to the parking lot, and the bouncer saw off-duty police officer Mike coming towards him. In the scuffle with RJ, Rob was pulled towards the front of the SUV, which cut off line of sight between the approaching officer Mike and the bouncer. Rob saw the guy who had stopped the silver car coming from his left side with his left arm cocked and hand in a fist. He did not recognize this person and did not know his intent. As the police officer came closer to Rob from his right, Rob said to him, “Don’t worry about me; get the one coming from behind me.”

Officer Mike intercepted the guy who was headed towards Rob and put him face-first up against a parked vehicle in a standing position. The officer held the young man there and said, “I’m a police officer; calm down, we’ll straighten everything out.” The guy cursed him and remarked, “I don’t give a fuck!” The man held against the parked vehicle by the officer was trying to get free, and Rob heard Mike say again that he was a cop. There was a lot of yelling and shouting by the group of young men who had been in the bar from near-distances away. The guy who was under detention from the police officer was yelling that his father was a police captain, cursing, and trying to free himself. There was a great deal of commotion. When the officer exclaimed he was a cop the second time, the man against the vehicle responded that he did not care. Then the man against the car, made a quick spin turn to break away, but the officer took him down to the ground onto his belly. He said a third time, “I’m a police officer, and now you’re under arrest.” He pushed the guy down and held his arm behind his back with a knee in his back. That’s when the officer told Kelly, a former part-time student employee, to go inside and call the police.

The friends of this guy, who were later identified as having the problem with RJ inside the bar, were still yelling and making noise in the parking lot. Another young man, who was a member of this group, approached his friend with Officer Mike holding him down and mouthed off to the officer. Mike told him to back off and quiet down, or he would be arrested, too. Because the cops had been called, Rob told RJ to leave, go home and not come back.

At some point during this altercation when Officer Denham had Buddy on the ground, his friends were yelling about his father being a police captain, at which time Denham remarked, “Now he has embarrassed his family.”

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The police came and restored order. While in the parking lot as the scene was being reorganized, Rob talked to some of Buddy's friends who mentioned there was trouble between him and RJ. They spoke of an incident where RJ and Buddy got into a dispute at Buddy's house when RJ attempted to hit his adversary and struck Buddy's mom instead. That caused another physical clash and a major rift between the two.

After work, Rob went to police headquarters to fill out an incident report. He was not questioned by police, and Officer Mike was in the back at the time he was writing. He remembers speaking to Mrs. Rogers and that she became angry with him, but could not be more descriptive.

Witness Evaluation

Knowles communicates well, is clean cut, holds three jobs, and was very respectful to me during our hour-long interview. He took me outside to the scene and walked through the incident. He has intervened between a number of altercations at the bar and sees the police on a regular basis. He does not have a personal relationship with Officer Mike Denham and only knows RJ because of his patronage on Wednesday nights. He is very clear about what he experienced. Many of his facts correspond to Ben Quinones and Charles Mullen except for the fact that he heard Officer Denham identify himself as a police officer three times. There was a great deal of commotion and extremely hostile feelings between Buddy and RJ. Chuck Mullen and RJ, by their own admissions to me, were drunk. I suspect the other's in Buddy's group, except for Quinones, who said he was the designated driver, were also somewhat intoxicated. Robert Knowles had a clear head and experience dealing with these types of situations. He could have been the most under control to provide a detailed account of the actions and comments. Not having any personal ties to the parties, he would be most effective in front of a jury.

Note

Mrs. Rogers feels he may have been coerced or persuaded by police to write a report that was supportive of Officer Denham. If that is the case, his demeanor and discourse during the interview did not show it because I questioned him about his relationships to the police, Officer Denham, and what occurred at police headquarters.

Conclusion

This concludes the first report. The Rogers family has paid a total of \$3,500 for the work thus far, and while I exceeded this amount, I capped the costs here. An invoice marked paid is enclosed for your records.

Suggestions for future investigation include:

- 1) Subpoena Denham's personnel and Internal Affairs file to find out if there are complaints made by citizens about him. If so, those people can be located and interviewed.

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- 2) Contact AJ, the Freehold councilman's son, who reportedly has information beneficial to your client. There was not enough budget remaining to follow up with him.
- 3) Conduct a full background investigation into Denham's past to find out if there is animal cruelty in his past. Newspaper reports might also be revealing.

If you have any other suggestions or ideas for further pursuit, I would be happy to hear them. This concludes phase one of the assignment.

Thank you for the opportunity to assist with your investigation.

Sincerely,

L. Alexander Toia, CCLA
President/Case Manager

Enclosures