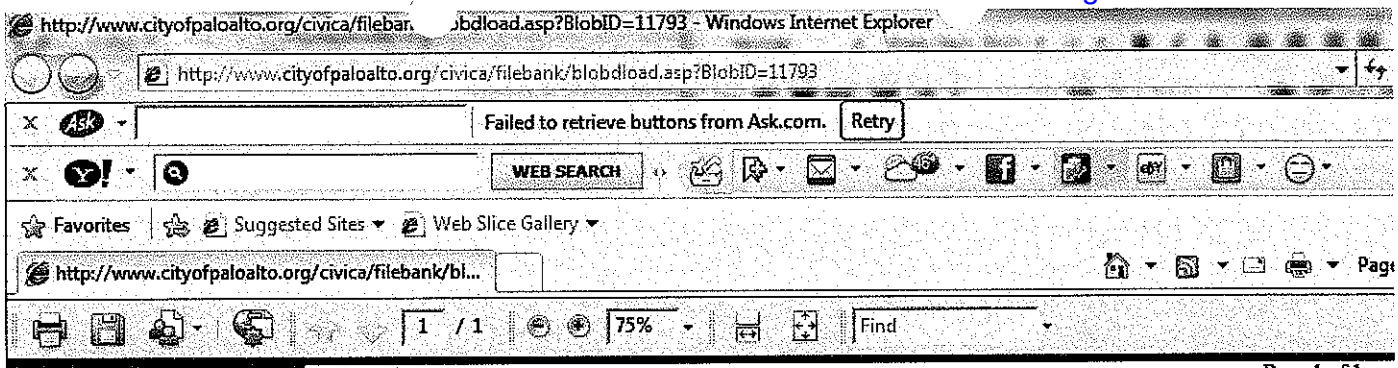
EXHIBIT 518



CITY of PALO ALTO

The City of Palo Alto
Public Information Office

250 Hamilton Ave
Palo Alto, CA 94301

04/25/2008

FOR IMMEDIATE RELEASE PRESS RELEASE #042508

Subject : **Open Letter to the Palo Alto Community**

Contact : Lynne Johnson, Chief of Police, Palo Alto Police Department 650-329-2115

Palo Alto, CA - There are significant gaps in the Palo Alto Daily News article published on Thursday April 24 concerning the investigation of the Galbraith case. The Galbraith investigation was a tragic case for all concerned. However, much of the information that was reported is incomplete and inaccurate. For example, statements that were attributed to a Palo Alto detective consist only of incomplete excerpts of responses to specific questions asked during a lengthy deposition. These excerpts were taken entirely out of context of the 181 page deposition transcript. The way the article was written and excerpted statements were chosen, it appears as though the newspaper intended to discredit the Palo Alto Police Department and impugn the reputation of a highly regarded detective sergeant.

The Galbraith case was an investigation into an unattended death, and like all unattended deaths was investigated as a case of suspicious circumstance. A criminal case goes to trial only after many agencies and their personnel have reviewed the case, contributed their expertise, conducted a thorough analysis and determined that the evidence has stood up to that intense scrutiny. There is never only one investigator assigned to a case, rather a team made up of police department detectives, District Attorney's Office and its investigators, the Coroner's Office and its investigators, and potentially other agencies.

The Palo Alto Police Department strictly adheres to this standard investigative protocol and followed this process on the Galbraith case specifically referenced in recent news accounts.

I am very proud of the dedicated members of the Palo Alto Police Department who work tirelessly 24/7 on behalf of the Palo Alto community. Many officers, including Sergeant Michael Yore, have received awards and commendations for their bravery, expertise, hard work and investigative skills, talents that my staff utilizes every day in the line of duty. The Palo Alto community is fortunate to have such competent employees working tirelessly on its behalf.

Sincerely,

Lynne Johnson

Police Chief

####

Beacom, Bob

From: McAdams, Karen
Sent: Thursday, June 12, 2008 1:33 PM
To: Beacom, Bob
Cc: Venable, Mark
Subject: Ciampi 08-1777
Importance: High
Sensitivity: Confidential

Bob,

While at the DA's office this morning I talked with DDA Rob Baker about a voicemail message that Mr. Ciampi left for DDA Peter Waite. DDA Waite had forwarded the message to DDA Baker, who then provided me a CD copy of the message and had me listen to it. It appears that Mr. Ciampi left a voicemail message for DDA Peter Waite regarding his current PAPD case. One can only surmise that Mr. Ciampi considers DDA Waite as some kind of ally due to the fact that DDA Waite was the prosecutor in the Kan/Lee case. However, DDA Waite did not review or issue charges in this case (DDA Baker did), nor will he be prosecuting it.

Mr. Ciampi discusses his perceived discrepancies in the case. He also plays a recording of what he calls a taped interaction with PAPD officers. I cannot tell if the recording is from the current case or not (I suspect it is).

As part of discovery, Mr. Ciampi's defense attorney has been provided with the MAV footage from both officers Temores and Burger (Temores is video only as the audio portion was not working, and the audio only from Burger as the location of where he parked his patrol car was on the other side of the defendant's van). They were also provided with video from the tasers of both Temores and Burger. Both have video and audio. I cannot tell if his recording is from one of the items we provided in discovery or if indeed Mr. Ciampi was audio taping the interaction. It should be noted that defense attorney's are not supposed to be providing copies to the defendant(s) of anything provided to them through the discovery process.

DDA Baker suggested that the message should go to the investigating officer to review. He also suggested that the CD be booked into evidence and a short supp report detailing the circumstances of how the CD was received be completed. However, I thought it should go through you first.

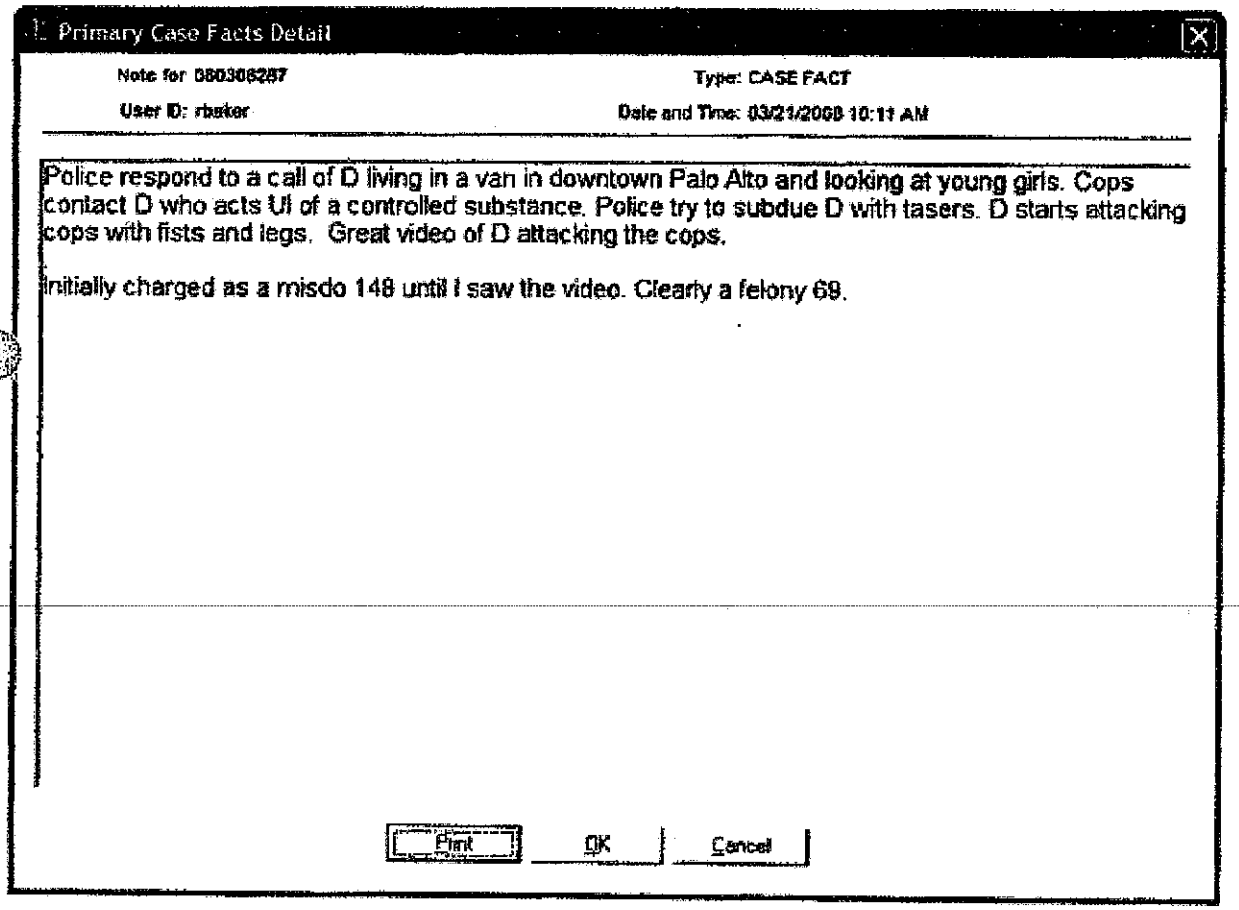
Additionally, the Chief has asked me about the status of this case and if discovery was provided. I believe Mr. Ciampi was contacting City Council and claiming we were not cooperating with the discovery process.

I am going to leave the CD in an envelope in your mailbox by Barb.

Please let me know if you need anything else.

Thanks, Karen

6/16/2008


Primary Case Facts Detail
Note for 880306287
Type: CASE FACT
User ID: rbaker
Date and Time: 03/21/2008 10:11 AM
Police respond to a call of D living in a van in downtown Palo Alto and looking at young girls. Cops contact D who acts UI of a controlled substance. Police try to subdue D with tasers. D starts attacking cops with fists and legs. Great video of D attacking the cops.
Initially charged as a misdo 148 until I saw the video. Clearly a felony 69.
Print
OK
Cancel

000000041

EXHIBIT 519

REPORT TYPE	OFFICE OF THE DISTRICT ATTORNEY	BOI CASE NUMBER
General Criminal	Bureau of Investigation NARRATIVE	B20080903230

DEFENDANT

Clampi, Joseph

Summary:

ASF video files saved on a hard disk drive (item 101A) and compact disk (item A) were compared based on MD5 hash values generated during the course of my examination. The hash value was different for each file; however the differences could be accounted for by the difference in metadata for each video file.

Investigation:

Forensic images of the hard drive (item 101A) were created using Safeback and "FTK Imager". The Safeback forensic image was saved to data tape (LAB2). A forensic image of the compact disk (item A) was created using "FTK Imager". Subsequent examinations of the forensic images were conducted using Forensic Toolkit (FTK).

A MD5 hash is a 128-bit value, which can be generated based on the contents of a file. Hash values are commonly used to check the integrity of files. When files have different hash values, the contents of the files are different.

Metadata is information about a file, stored within the file itself. For example, digital camera image and video files can contain information such as the make/model of the camera used, the date and time the image was taken along with any other data chosen by the camera manufacturer. Metadata is typically not displayed when the image or video file is viewed.

The Microsoft Windows XP operating system allows the creation of separate accounts for each computer user. One such account on the hard drive was named "npowers". The "Taser Cam" software, version 2.2, was installed on the computer. The "Taser Cam" program is used to export video files from a "Taser Cam" recorder sold by "Taser International". The application exports video files using the "ASF" format.

Six ASF video files were currently saved in the user's folders for the "npowers" account on the hard disk drive (item 101A). Five ASF video files were in the "Recycle Bin" folder for the "npowers" account. Two ASF video files were saved on the compact disk (item A). Three video files saved on the hard disk drive (item 101A) have the same names as the compact disk video files.

The MD5 hash values of the three video files on the hard drive and the two video files on the compact disk were compared. The five video files each had a different MD5 hash value. During the course of my examination I noticed the camera and "weapon" serial numbers along with a MD5 hash value were stored as metadata within each video file. Each of the metadata MD5 hash values was different. This difference in metadata alone would cause the difference in the MD5 values that were generated as part of my examination. The MD5 hash values generated for each ASF video file and the metadata MD5 hash values were saved in a document named "MD5HashSummary.pdf". The MD5 hash summary was included in a FTK report.

OFFICER'S NAME	ID NUMBER	DATE	REVIEWED BY	ID NUMBER	DATE	PAGE
Marc Soto	S2754	11/19/08	TN/NN	S3028	11/19/08	1 of 2

Marc Soto

DB1

REPORT TYPE	OFFICE OF THE DISTRICT ATTORNEY Bureau of Investigation NARRATIVE	BOI CASE NUMBER
General Criminal		B20080903230

DEFENDANT

Ciampi, Joseph

A web based FTK report was created which includes the ASF video files and "Weapon Summary" PDF files copied from the submitted hard drive (item 101A) and compact disk (item A). The report includes MD5 hash values and file properties for each of the exported files. Also included is the Recycle Bin data that lists the original name for each of the files located in the Recycle Bin of the "npowers account". The FTK report was then written to two compact disks. One compact disk was packaged for release (LAB1), the second disk will be kept in the laboratory case file.

Evidence:

Item	Description
101A L02790	One tape-sealed evidence envelope containing a Western Digital hard disk drive, serial number WMAJ71535835.
A L02791	One tape-sealed evidence envelope containing one CD-R compact disk.
LAB1 L02801	One tape-sealed evidence envelope containing a compact disk with the FTK report which includes file properties, MD5 hash values and exported files from hard drive (101A) and compact disk (A).
LAB2 L02802	One tape-sealed evidence envelope containing the Safeback image of the hard drive (item 101A) saved on data tape. Encase and ISO images of hard drive (101A) and compact disk (A) saved on DVDs.

All of the above items were returned to the laboratory property room. Please pick up the evidence at your earliest convenience.

OFFICER/PRINT NAME	ID NUMBER	DATE	REVIEWED BY	ID NUMBER	DATE	PAGE
Mario Soto	S2754	11/18/08	FTL/14th	53025	11/19/08	2 of 2

EXHIBIT 520

Temores' MAV video provided to Plaintiff during Plaintiff's **criminal case** has a date of last modification of **3/18/2008** and **1,374,892 KB** or **2,423,466 KB** of memory

VIDEO_TS	3/18/2008 4:21 AM	BUP File	12 KB
VIDEO_TS	3/18/2008 4:21 AM	IFO File	12 KB
VIDEO_TS	3/18/2008 4:21 AM	VOB File	1,180 KB
VTS_01_0	3/18/2008 4:21 AM	BUP File	36 KB
VTS_01_0	3/18/2008 4:21 AM	IFO File	36 KB
VTS_01_1	3/18/2008 4:21 AM	VOB File	1,048,574 KB
VTS_01_2	3/18/2008 4:21 AM	VOB File	1,048,574 KB
VTS_01_3	3/18/2008 4:21 AM	VOB File	325,042 KB

Temores' MAV video provided to Plaintiff during Plaintiff's civil case has a date of last modification of **10/12/2008** and **1,202,834 KB** of Memory.

VIDEO_TS	12 KB	BUP File	10/12/2008 11:32 ...
VIDEO_TS	12 KB	IFO File	10/12/2008 11:32 ...
VIDEO_TS	1,822 KB	VOB File	10/12/2008 11:32 ...
VTS_01_0	36 KB	BUP File	10/12/2008 11:32 ...
VTS_01_0	36 KB	IFO File	10/12/2008 11:32 ...
VTS_01_1	1,048,574 KB	VOB File	10/12/2008 11:32 ...
VTS_01_2	152,342 KB	VOB File	10/12/2008 11:32 ...

Temores' MAV video provided to Plaintiff during the October 28, 2010 inspection has a date of last modification of **10/28/2008** and **1,193,056 KB** of Memory.

VIDEO_TS	10/28/2010 11:03 ...	BUP File	12 KB
VIDEO_TS	10/28/2010 11:03 ...	IFO File	12 KB
VIDEO_TS	10/28/2010 11:03 ...	VOB File	2,018 KB
VTS_01_0	10/28/2010 11:03 ...	BUP File	36 KB
VTS_01_0	10/28/2010 11:03 ...	IFO File	36 KB
VTS_01_1	10/28/2010 11:03 ...	VOB File	1,048,574 KB
VTS_01_2	10/28/2010 11:03 ...	VOB File	142,368 KB

TEMORES MAV:	**MEMORY**
03/18/2008:	**1,374,892 KB** or **2,423,466 KB**
10/12/2008:	**1,202,834 KB**
10/28/2008	**1,193,056 KB**

MAV FRAMES PER SECOND (fps) COMPARISON

Utilizing Windows Media Player's "STEP" function which appears to move the video forward at half a frame at a time, the following results were achieved.

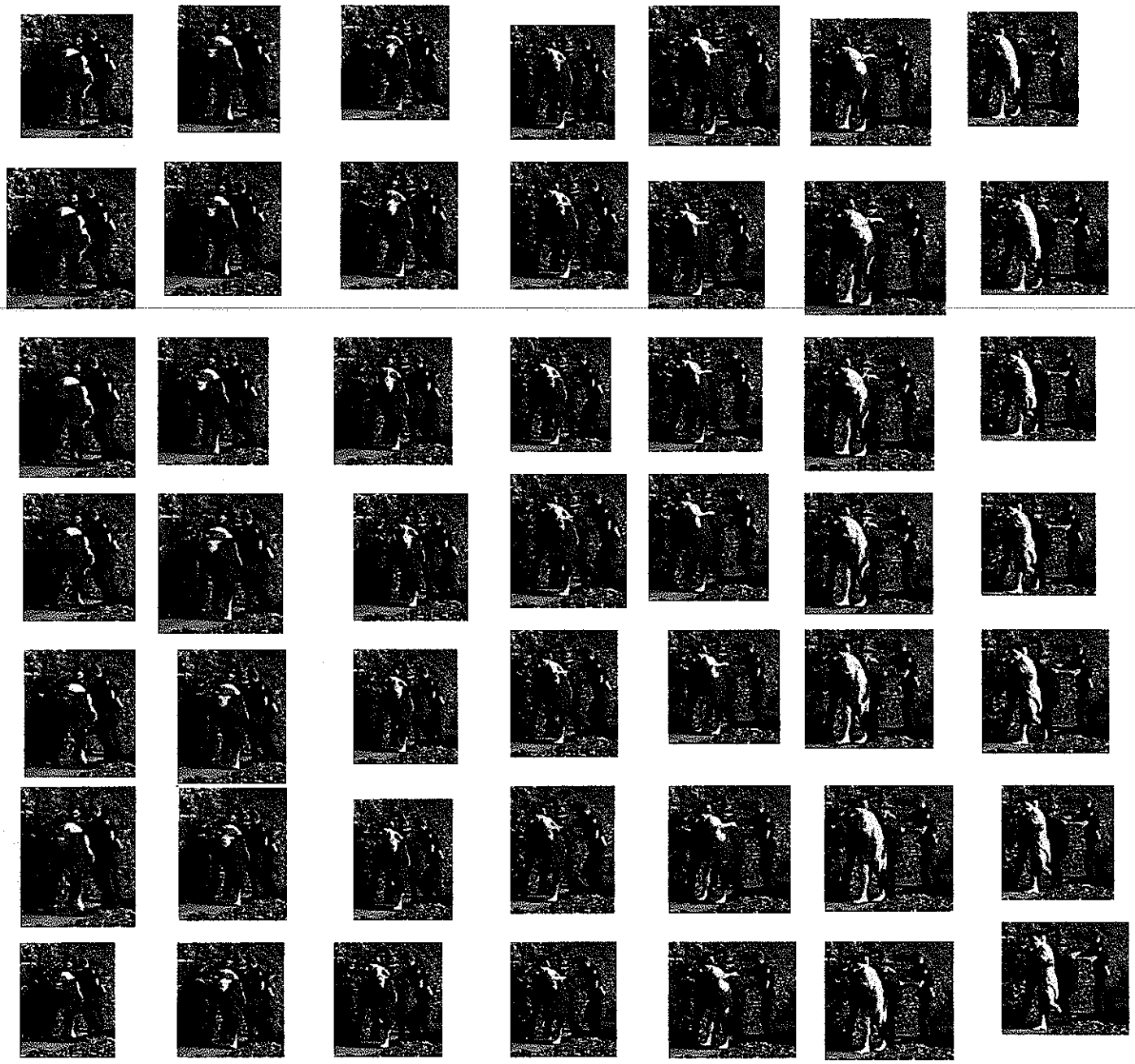
1) To obtain the results, activate the pause option on the WMP.

2) Activate the step option which advances the video one frame at a time.

TEMORES MAV
3/18/08

Utilizing Windows Media Player to advance Temores' MAV video, the video has a total of **29 frames** of video footage during the SECOND of 10:10:28

TEMORES MAV
10/28/10



520-5

TEMORES MAV
10/28/10

Utilizing Windows Media Player to advance Temores' MAV video, the video has a total of **59 frames** of video footage during the SECOND of 10:10:28.

TEMORES MAV

03/18/08	**29 frames**	**For One Second**
10/28/10	**59 frames**	**For One Second**

CONCLUSION: The first version of Temores' MAV video 3/18/08 has only half as many frames of video footage as the latest version, 10/28/10, 29 frames to that of 59 frames. It appears that in order to edit the video in a timely fashion to initially submit it to the Santa Clara County District Attorney, Defendants were forced to leave out numerous frames of video footage which resulted in the blurred nature of the video of the March 18, 2008 version and subsequently inserted the remainder of the frames resulting in a clearer picture as time permitted.

EXHIBIT 521

EXCERPTS FROM BURGER'S MAV RECORDING

(Burger's MAV Transcript-Exhibit 50 of Court Doc. 55)

C-Ciampi **W-Wagner** **T-Temores** **B-Burger**
P-Powers **H-Honniker** **M-Medic** **? -Unknown**

EXCERPTS OF AUDIO EDITING

Using headphones, audio from Burger's MAV recording is only heard through one speaker indicating that the audio has been tampered with.

Page 2

T: You on probation or parole.

10:10:08

C: Fuck you.

T?: Stop, stop hassling us.

Illogical Convoluted Statement

C: Why would I be (talking/popping?) me right there dumb fuck.

T: Why not.

Never Stated

Page 3

B: Stand right over here.

C: 550 for what?

W: Sir

B: Now I'm telling you, I'm telling you stand right here.

C: 550 for what?

10:10:48

Statement by Burger of placing Ciampi under arrest is missing

EXCERPTS OF AUDIO EDITING

Page 4

B: Back up, back up

B?/T?: Taser, taser, taser

Burger Stating two words simultaneously which is humanly impossible

Page 7

10:13: 54

C: It's called self defense, self defense,

C: You threatened me, you threatened me, you threatened me with a taser.

W: Where are the probes at?

C: All for nothing all for nothing man.

The statement of ***"You threatened me"*** has an obvious convoluted nature to it indicating that it has been edited

At precisely the 10:17:24/25 mark of Burger's MAV recording there is a definitive skip in the recording.

Page 10

W: During the ---

C: They threatened to tow my van for no reason.

C: The shooting me with a taser.

10:17:24

W: He was all over. Totally flinging, flailing.

C: This van has been here not even one full day.

Ciampi is recorded and Wagner is not even though Wagner is closer to Burger's microphone.

EXCERPTS OF AUDIO EDITING

Page 15

B: You o.k. April.

B: He was effected by the —

B: He went back—

P: Oh ha

B: He caught the wires.

P: O.k.

B: And he got—

B: And I think Manny drive stunned him.

B: And I think tha—

M: Just for our education, is it your policy, or is it just a subjective thing.

Four sentences cut short is an obvious sign of audio editing by removing dialog from the recording.

Page 18

B: How many probes are you looking for?

P: I've got two, I've got two that belong together this and this.

B: They should all be in this area.

P: But I don't have—

10:40:10

Another sentence cut short, ostensibly to cover up Power's statement that she does not have the 4th taser probe.

Page 3

10:10:48

B: Let me see your fucking hands.

T: Tase him, tase him.

B: Let me see your fucking hands or I'm going to tase you. You.

C: O.k. I'm calling

Def. Burger's Taser-Cam recording, (Defs.' Exh. 12) records the dialog, "You're not making it easy" at the same time Def. Burger is making the terroristic threats to the left. Def. Burger's MAV microphone is appx. 2 feet away from his Taser Cam microphone.

This is a clear case of an editing flaw in that Burger's MAV recording is missing the dialog recorded on Burger's Taser recording.

EXCERPTS VERIFYING FALSE ARREST BY BURGER

Page 3

B: Stand right over here.

C: 550 for what?

W: Sir

B: Now I'm telling you, I'm telling you stand right here.

C: 550 for what?

Ciampi thought he had been arrested for 5150 not 550 and wanted to know what he was being arrested for.

Page 7

?: Alright

C: (GARBLED) to 5150 me that's a.

B: Your under arrest for battery on a police officer so shut up.

10:13: 54

Another clear indication of audio editing in order to conceal Ciampi stating, that Burger falsely arrested for 5150.

Page 8

10:14:40

C: You're not going to 5150 me now.

B: Knock it off.

C: You're not going to 5150 me now?

C: You're not going to5150 me now?

B: Knock it off.

W: You have a problem

B: Ya

There is absolutely question by the statemates made by Ciampi, that Ciampi believed that Burger had arrested Ciampi for 5150 and not 550.

EXCERPTS VERIFYING FALSE ARREST BY BURGER

Page 12

10:25:54

M: Forearm one of the probes.

M: Puncture wounds a little bleeding but we cannot find the other one though

C: You gonna 5150 me now, why don't you 5150 me now

M: Just be cool. Just relax.

C: Are you happy winking at me, winking at me.

There is absolutely no question by the statements made by Ciampi, that Ciampi believed that Burger had arrested Ciampi for 5150 and not 550.

EXCERPTS VERIFYING UNLAWFUL ASSAULT AND BATTERY

THOUGH NOT DOCUMENTED IN BURGER'S MAV TRANSCRIPT-EXHIBIT 50 OF COURT DOC. 55, beginning at precisely the 10:22:38 mark of Burger's MAV recording, Ciampi is heard stating, ***"Had my hands up the whole time trying to make a phone call."***

This is another piece of indirect yet corroborating evidence that Def. Burger fired his Taser gun at Ciampi while Ciampi had his hands in the air.

EXCERPTS VERIFYING UNLAWFUL ASSAULT AND BATTERY

Pages 4 & 5

C: Aaahhh!

C: Sandy help me! Sandy help me!

4

Plaintiff Ciampi claims that 20 to 30 seconds of audio dialog is missing from Burger's MAV recording that corresponds to the 20 to 30 seconds of video footage that is missing from Temores' MAV recording.

What audio/video footage would the Defendants want to remove from the MAV recordings? The audio/video footage of unlawfully battering Plt. Ciampi.

C: Aaaahhh! Aaaahhh!

Page 6

10:12:41

C: Why did you do that to me man.?

?: Good!

Page 12

P: E.R. the medic van is going to take him

H/? You o.k. killer?

B: I'm good to go sarge.

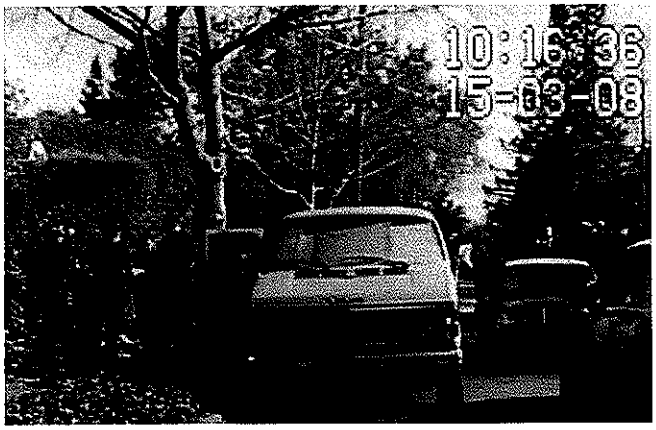
10:25:54

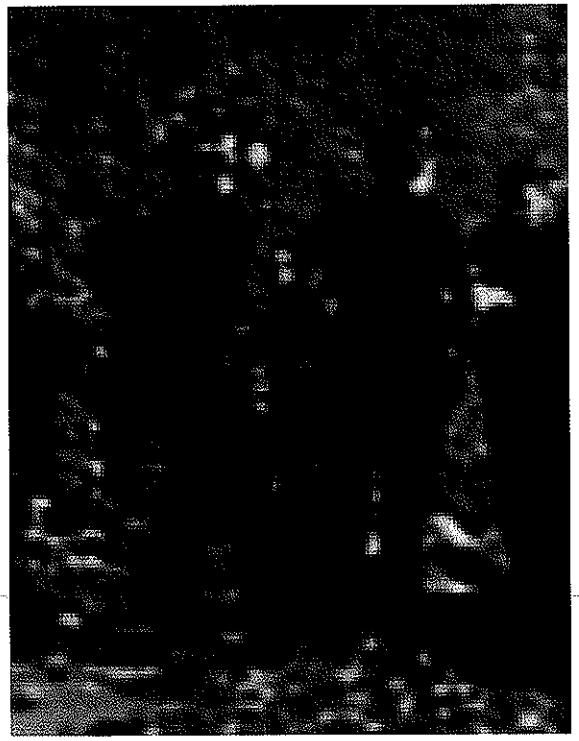
Ciampi referring to Burger initially firing his Taser gun at Ciampi's face without warning and repeatedly shocking Ciampi

Page 20

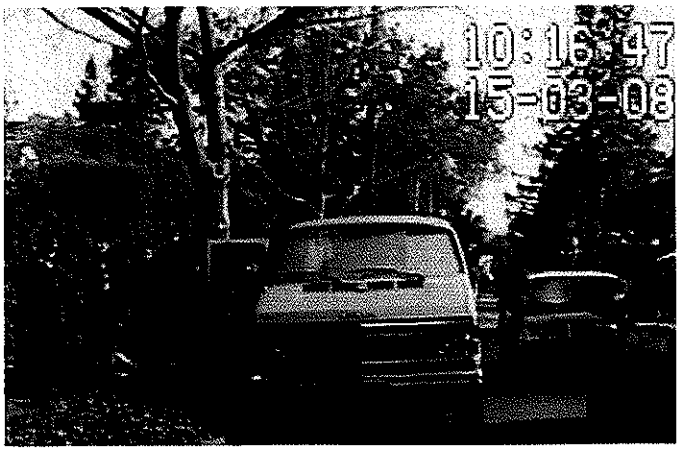
P: Ya, lets eight-tener it, ya fuck him.

Def. Powers makes her intentions very clear even before viewing any of the videos.





Defendant Wagner trying to give a bogus explanation to Defendant Powers as to why Defendant Burger first shot Plt. Ciampi.



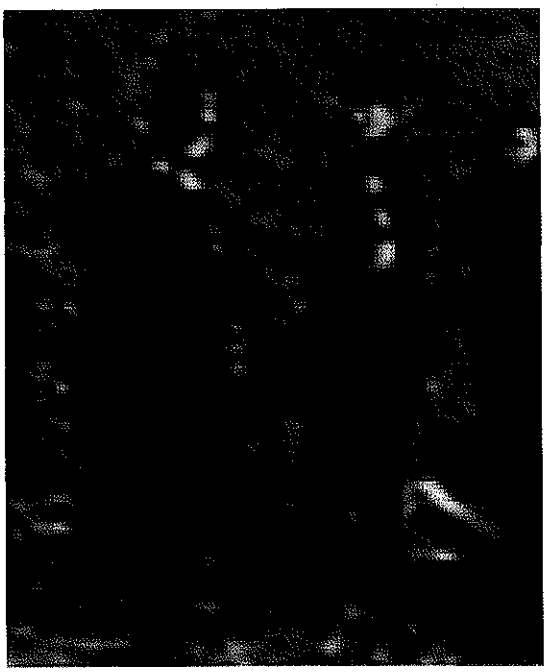
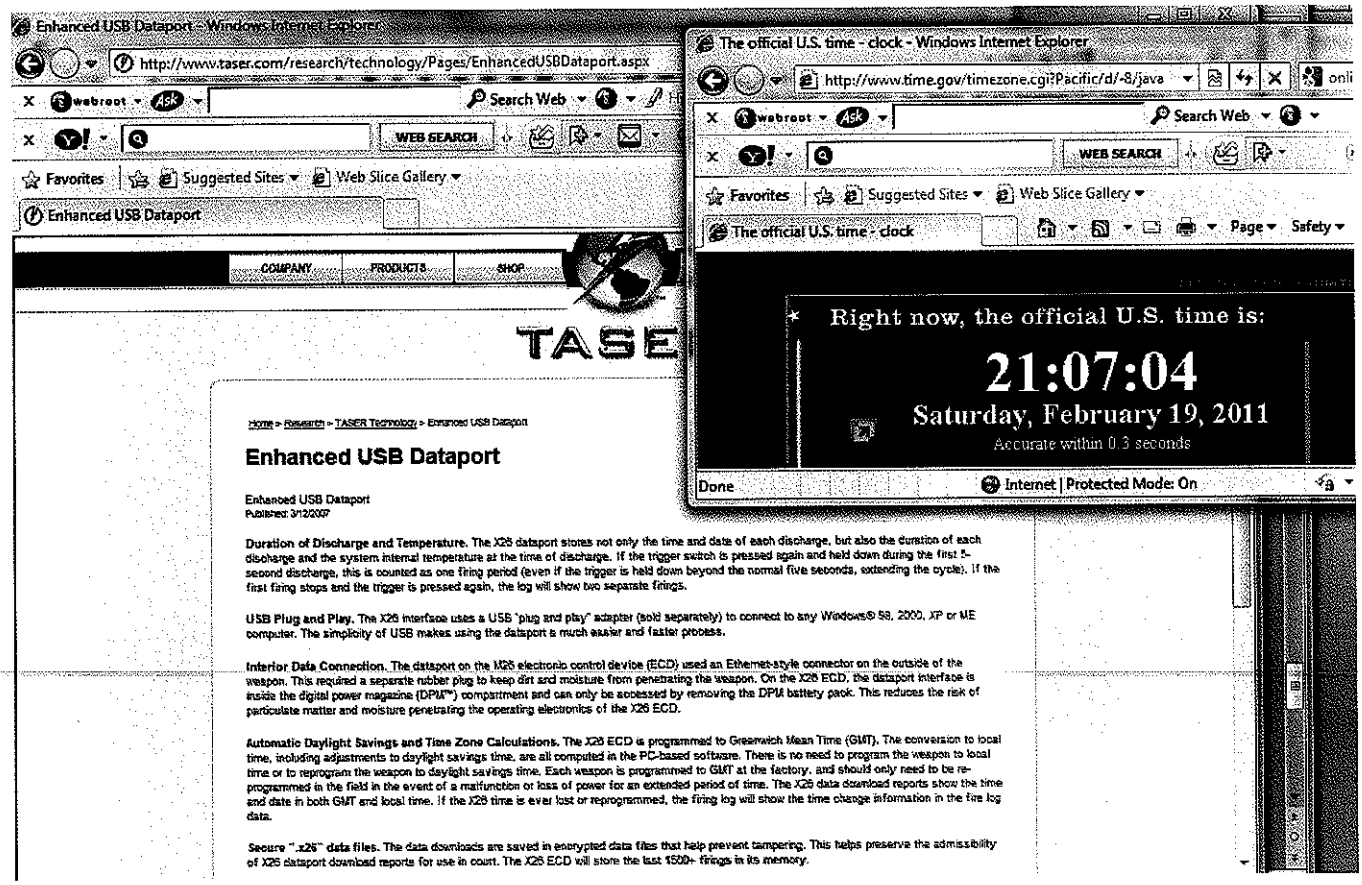
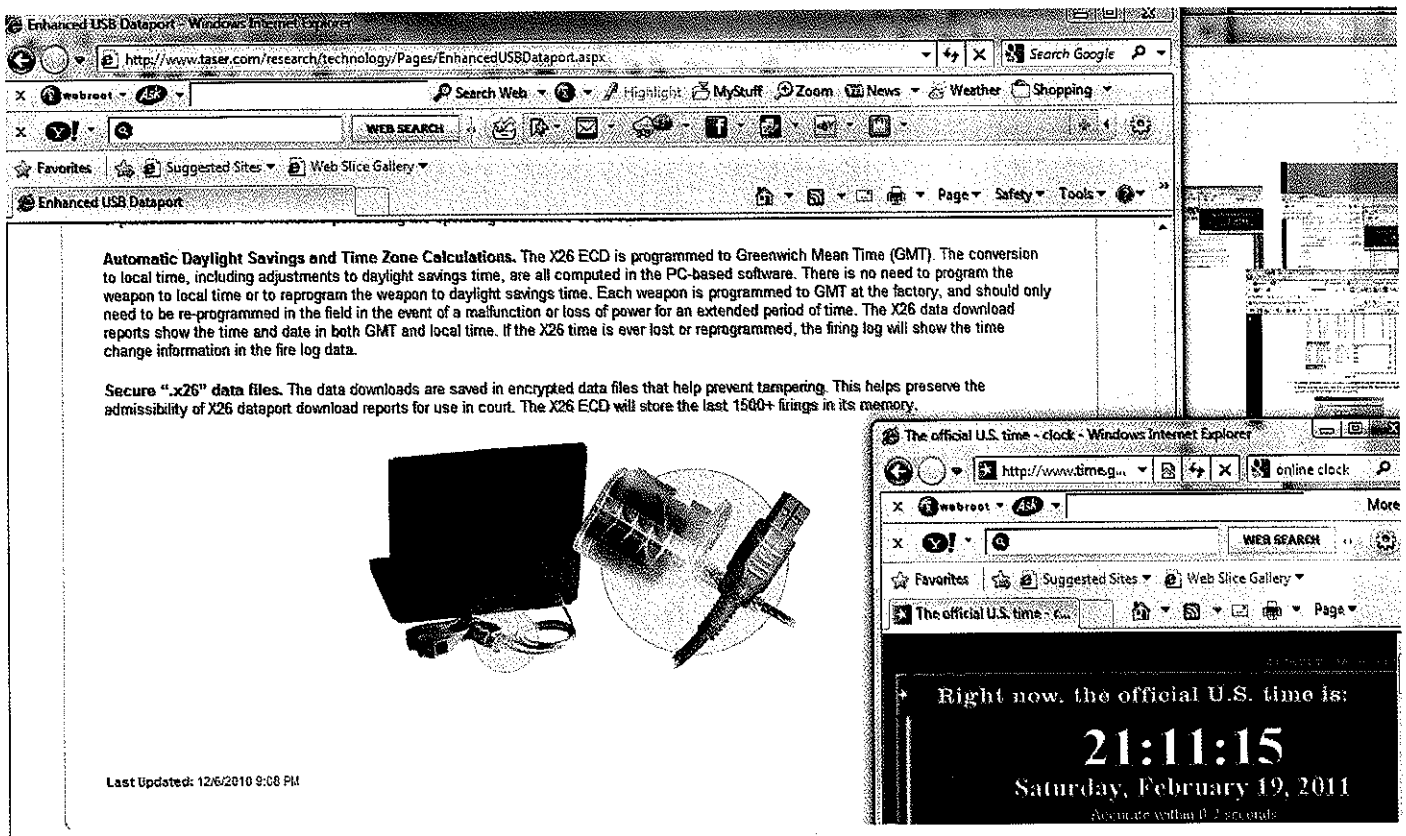


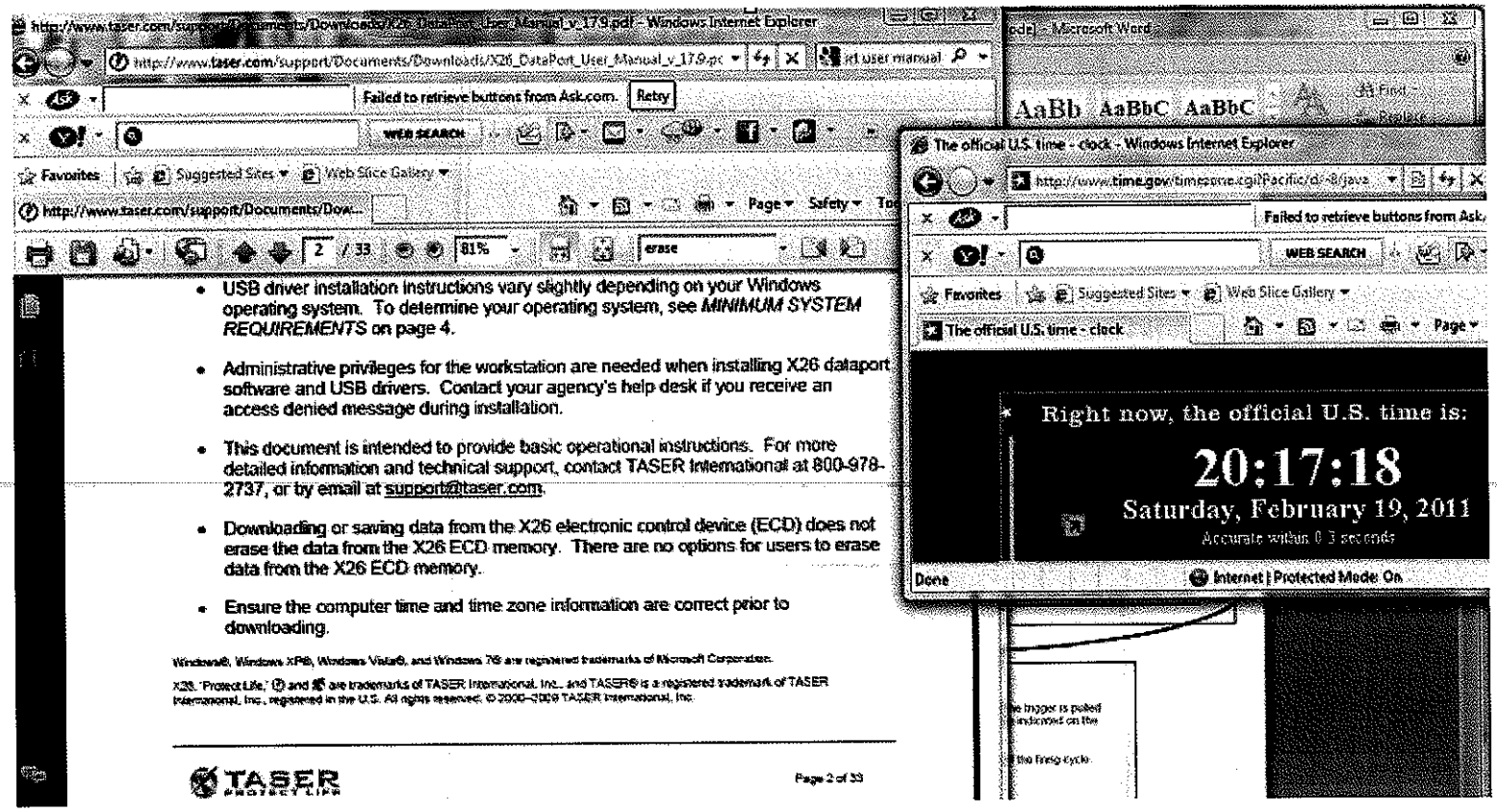
EXHIBIT 522





Secure ".x26" data files. The data downloads are saved in encrypted data files that help prevent tampering. This helps preserve the admissibility of X26 dataport download reports for use in court. The X26 ECD will store the last 1500+ firings in its memory.

The official U.S. t



- USB driver installation instructions vary slightly depending on your Windows operating system. To determine your operating system, see *MINIMUM SYSTEM REQUIREMENTS* on page 4.
- Administrative privileges for the workstation are needed when installing X26 dataport software and USB drivers. Contact your agency's help desk if you receive an access denied message during installation.
- This document is intended to provide basic operational instructions. For more detailed information and technical support, contact TASER International at 800-978-2737, or by email at support@taser.com.
- Downloading or saving data from the X26 electronic control device (ECD) does not erase the data from the X26 ECD memory. There are no options for users to erase data from the X26 ECD memory.
- Ensure the computer time and time zone information are correct prior to downloading.

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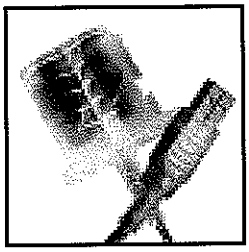
OPTIONS

EXTENDED WARRANTIES

See the *Warranty Policy* section for more information about extended warranties.



DATA DOWNLOAD KIT

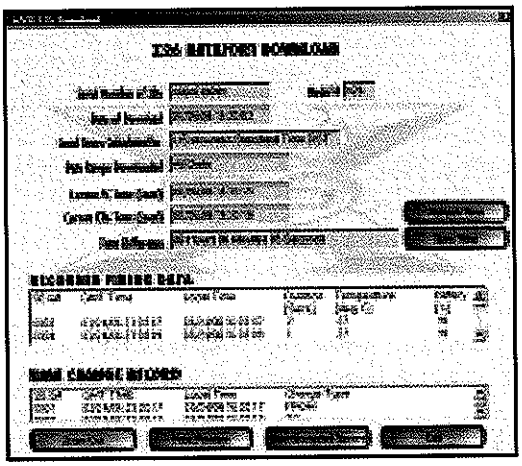
Optional download kits are available to permit departments to access the encrypted deployment information in the X26 memory. The X26 has a highly advanced download function that can help protect an officer from claims of excessive use of force by providing complete and accurate documentation of the time and date for each firing. The dataport also provides law enforcement with a powerful management tool to track usage patterns and prevent misuse.

The data download record includes the following information for the last 1,500+ discharges:

- Date, time, and duration of each discharge in both GMT and local time.
- Temperature and DPM percentage remaining at each discharge.
- Record of any time changes made to the weapon memory.
- Weapon serial number and current software version.

The X26 download interface uses a USB adapter to connect to any Windows™ 98, 2000, XP or ME computer. The simplicity of USB makes using the dataport an easy, fast process. The cable connects to the X26 device through the DPM compartment.

The X26 device is programmed to Greenwich Mean Time (GMT) at the factory. The conversion to local time, including adjustments to daylight savings time, are all computed in the PC-based software. There is no need to program the weapon to local time or to reprogram the weapon to daylight savings time.



Secure ".x26" data files: The data downloads are saved in encrypted .x26 data files that are more secure than a Word document. This preserves the integrity of X26 dataport download reports for court admissibility.

Weapon Summary

Weapon Serial	X00-292417 TEmoRES
Firing Count	144
Time change count	3
Video Incident Count	179
Downloaded By	Sergeant Natasha Powers
Department	Palo Alto Police Department / FSD
First download date on firing record	11/7/2007 6:10:28 AM
Last download date on firing record	8/31/2010 8:02:25 AM
First download date on video record	11/7/2007 6:01:04 AM
Last download date on video record	8/31/2010 8:00:47 AM

Firings

Sequence	GMT Time	Local Time	Duration	Temp (C)	Batt Remaining
3	6/27/2007 8:12:08 PM	6/27/2007 1:12:08 PM	00:00:05	29 °C	99%
3	1/9/2008 12:00:53 AM	1/8/2008 4:00:38 PM	00:00:01	11 °C	98%

REQUEST NO. 12:

Admit Defendant Temores' report attached with this Discovery Request as Exhibit 179 documents that Defendant Temores fired his taser gun 144 times.

RESPONSE TO REQUEST NO. 12:

Objection. This discovery request is argumentative, lacks foundation, and requires assumptions to ascertain its meaning. Further, the request is vague and ambiguous to such a degree as to render it unintelligible.

However and without waving said objections, Defendant admits that Exhibit 179, which concerns taser gun X00-292417 shows a combined activation count of 144 for the period of 2007-2008. This taser was assigned to Officer Temores on March 15, 2008. Defendant is unable to admit or deny that it was Officer Temores who activated/fired the weapon 144 times.

TASER
PROTECT LIFE

TASER Information		Downloaded By	
Serial #	*X00-292417*	**Name**	*Natasha Powers*
Model #	*X26*	**Dept**	*Palo Alto*
X26 Software Version	*20*	**Rank**	*Sergeant*
Dataport CD Version	*17.9*	**Windows Version**	*Windows XP*
Record Date Range	*All Data*		
Computer Time Zone	*Pacific Standard Time *DST*	**Report Generated**	*12/17/10 13:55:32 (local)*
Using Daylight Savings Time	*Yes*		

Recorded Firing Data

Seq	GMT Time	Local Time	Duration	Temp	Battery
0001	01/01/00 20:08:30	01/01/00 12:08:30	Old Time		
0002	08/31/10 15:01:56	08/31/10 08:01:56	New Time		
0003	01/09/08 00:00:59	01/08/08 16:00:59	2	33	98
0105	09/26/08 17:20:16	09/26/08 10:20:16	1	31	57
0106	09/26/08 22:27:35	09/26/08 15:27:35	1	27	61
0107	10/09/08 17:19:34	10/09/08 10:19:34	1	30	61

End of Report.

REQUEST NO. 13:

Admit that Defendant Temores' taser gun's, (X00-292417) Weapon Summary and Firing data, (activation data), provided to Plaintiff Ciampi during the December 17, 2010 inspection, attached to this Discovery Request as Exhibit 177 documents that Defendant Temores fired his taser gun 107 times.

///

RESPONSE TO REQUEST NO. 13:

Objection. This discovery request is argumentative, lacks foundation, and requires assumptions to ascertain its meaning. Further, the request is vague and ambiguous to such a degree as to render it unintelligible.

However and without waving said objections, Defendant admits that Exhibit 177, which concerns taser gun X00-292417 shows an activation count of 107 for the time period of 2008. This taser was assigned to Officer Temores on March 15, 2008. Defendant is unable to admit or deny that it was Officer Teores who activated/fired the weapon 107 times.

Weapon Summary

Weapon Serial	X00-292463 Burger
Firing Count	141
Time change count	3
Video Incident Count	135
Downloaded By	Sergeant Natasha Powers
Department	Palo Alto POlice Department / FSD
First download date of firing record	11/6/2007 4:07:43 PM
Last download date of firing record	8/31/2010 8:13:22 AM
First download date of video record	11/6/2007 3:31:03 PM
Last download date of video record	8/31/2010 8:12:10 AM

Firings

Sequence	GMT Time	Local Time	Duration	Temp (C)	Batt Remaining
3	6/27/2007 6:52:34 PM	6/27/2007 11:52:34 AM	00:00:05	28 °C	99%
3	3/21/2008 2:35:44 PM	3/21/2008 7:35:44 AM	00:00:02	24 °C	74%

REQUEST NO. 2:

Admit Defendant Burger's report attached with this Discovery Request as Exhibit 178 documents that Defendant Burger fired his taser gun 141 times.

RESPONSE TO REQUEST NO. 2:

Objection. This discovery request is argumentative, lacks foundation, and requires assumptions to ascertain its meaning. Further, the request is vague and ambiguous to such a degree as to render it unintelligible. Additionally, the request is vague as to the term "fired" so as to call for speculation to the true meaning of the word.

However and without waving said objections, Defendant admits that Exhibit 178, which concerns taser gun X00-292463 shows a combined activation count of 141 for the period of 2007-2008. This taser was assigned to Officer Burger on March 15, 2008. Defendant is unable to admit or deny that it was Officer Burger who activated/fired the weapon 141 times.

TASER

PROTECT LIFE

TASER Information		Downloaded By	
Serial #	*X00-292463*	**Name**	*Natasha Powers*
Model #	*X26*	**Dept**	*Palo Alto*
X26 Software Version	*20*	**Rank**	*Sergeant*
Dataport CD Version	*17.9*	**Windows Version**	*Windows XP*
Record Date Range	*All Data*		
Computer Time Zone	*Pacific Standard Time *DST*	**Report Generated**	*12/17/10 13:41:33 (local)*
Using Daylight Savings Time	*Yes*		

Recorded Firing Data

Seq	GMT Time	Local Time	Duration	Temp	Battery
0001	03/15/00 18:50:58	03/15/00 11:50:58	Old Time		
0002	08/31/10 15:12:55	08/31/10 08:12:55	New Time		
0003	03/21/08 14:35:44	03/21/08 07:35:44	2	24	74
0090	03/15/08 14:45:10	03/15/08 07:45:10	2	25	72
0091	03/15/08 17:04:55	03/15/08 10:04:55	2	23	72

End of Report.

REQUEST NO. 3:

Admit that Defendant Burger's taser gun's, (X00-292463) Weapon Summary and Firing data, (activation data), provided to Plaintiff Ciampi during the December 17, 2010 inspection, attached to this Discovery Request as Exhibit 175 documents

that Defendant Burger fired his taser gun 91 times.

RESPONSE TO REQUEST NO. 3:

Objection. This discovery request is argumentative, lacks foundation, and requires assumptions to ascertain its meaning. Further, the request is vague and ambiguous to such a degree as to render it unintelligible.

However and without waving said objections, Defendant admits that Exhibit 175, which concerns taser gun X00-292463 shows an activation count of 91 for the time period of 2008. This taser was assigned to Officer Burger on March 15, 2008. Defendant is unable to admit or deny that it was Officer Burger who activated/fired the weapon 91 times.

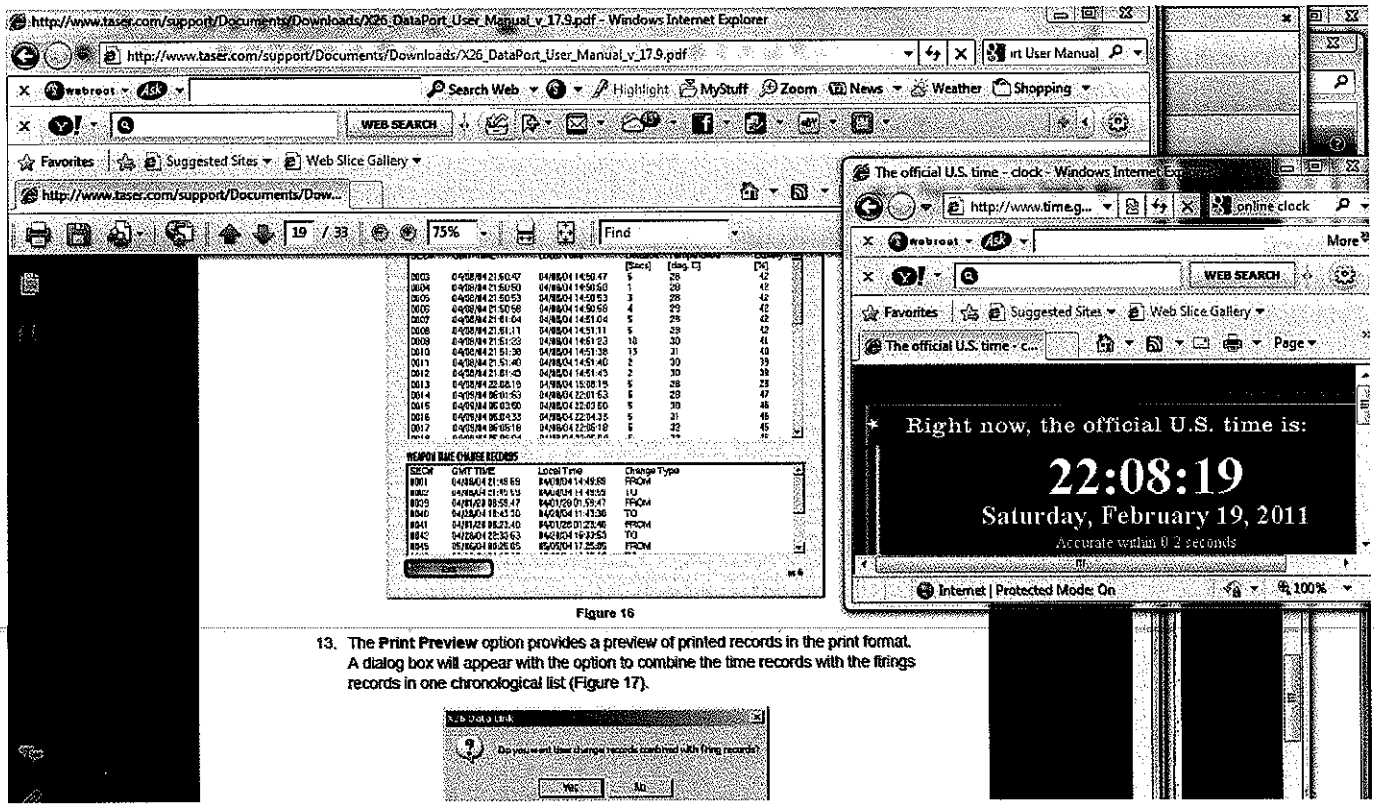


Figure 16

13. The **Print Preview** option provides a preview of printed records in the print format. A dialog box will appear with the option to combine the time records with the firings records in one chronological list (Figure 17).

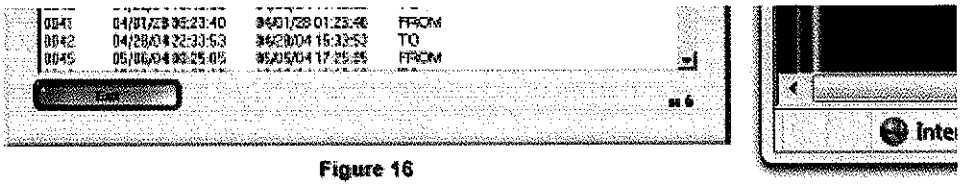
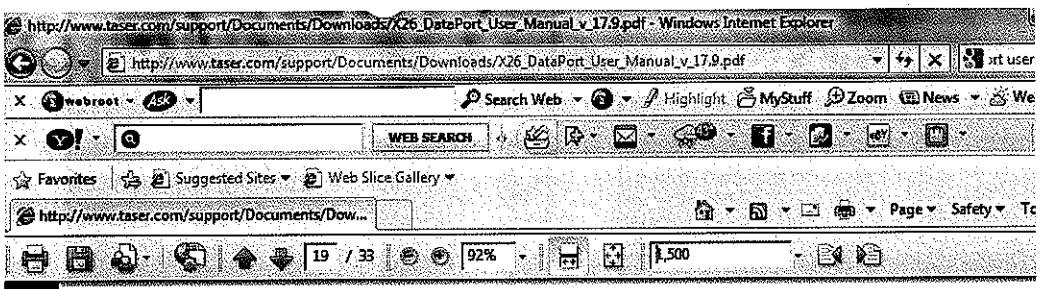


Figure 16

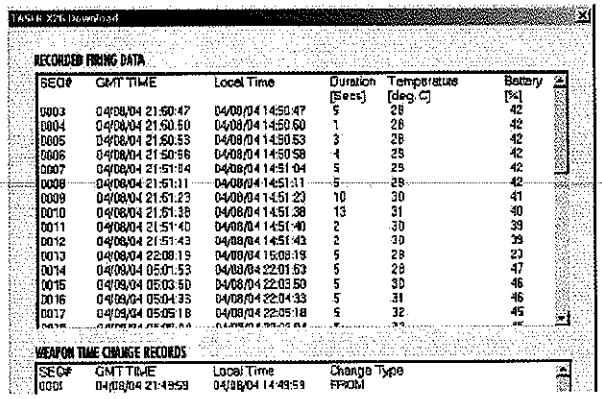
13. The **Print Preview** option provides a preview of printed records in the print format. A dialog box will appear with the option to combine the time records with the firings records in one chronological list (Figure 17).

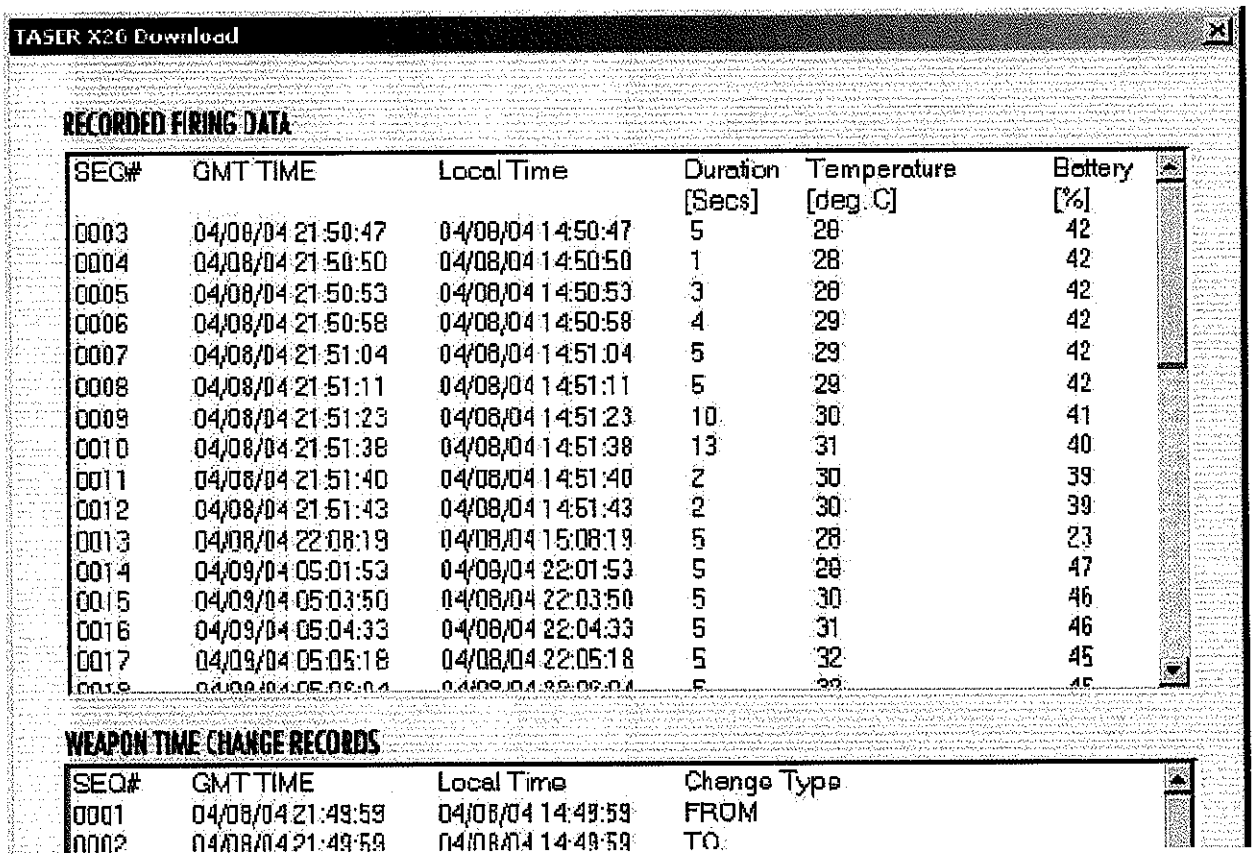


Title: X26 Dataport User Manual
Department: IT
Version: 6.0
Release Date: 11/20/2009

11. There are three options for viewing information: **Zoom Out, Print Preview,** and **Save Encrypted Record** (Figure 15).

12. The **Zoom Out** option provides an expanded view of the recorded firing data and time change records in separate lists (Figure 16).





As of February 19, 2011 according to the Data Port User Manual for a Taser X26 taser gun the **firing data** retained on a **Data Port** from a Taser International Taser gun is retained sequentially and in chronological order.

08/31/2010 Download of Temores' Taser gun X00-292417
Defs. Exh. 10 of Court Doc 125.

Firings

Sequence	GMT Time	Local Time	Duration	Temp (C)	Batt Remaining
3	6/27/2007 8:12:08 PM	6/27/2007 1:12:08 PM	00:00:05	29 °C	99%
3	1/9/2008 12:00:59 AM	1/8/2008 4:00:59 PM	00:00:02	33 °C	98%
4	6/27/2007 8:12:16 PM	6/27/2007 1:12:16 PM	00:00:05	29 °C	99%
4	1/9/2008 1:17:00 PM	1/9/2008 5:17:00 AM	00:00:02	25 °C	98%
5	6/27/2007 8:12:22 PM	6/27/2007 1:12:22 PM	00:00:05	29 °C	99%
5	1/9/2008 1:18:18 PM	1/9/2008 5:18:18 AM	00:00:01	26 °C	98%
6	9/18/2007 3:44:58 PM	9/18/2007 8:44:58 AM	00:00:05	31 °C	98%
6	1/9/2008 1:18:43 PM	1/9/2008 5:18:43 AM	00:00:02	26 °C	98%
7	9/18/2007 3:45:07 PM	9/18/2007 8:45:07 AM	00:00:05	32 °C	98%
7	1/10/2008 1:07:51 PM	1/10/2008 5:07:51 AM	00:00:02	26 °C	98%
8	9/18/2007 4:50:15 PM	9/18/2007 9:50:15 AM	00:00:05	34 °C	98%
8	1/11/2008 1:07:41 PM	1/11/2008 5:07:41 AM	00:00:01	24 °C	97%

70	12/26/2007 1:12:09 PM	12/26/2007 5:12:09 AM	00:00:02	25 °C	51%
70	6/11/2008 12:17:09 PM	6/11/2008 5:17:09 AM	00:00:02	28 °C	97%
71	1/1/2008 1:24:23 PM	1/1/2008 5:24:23 AM	00:00:01	24 °C	51%
71	6/12/2008 12:14:19 PM	6/12/2008 5:14:19 AM	00:00:01	26 °C	96%
72	1/2/2008 1:05:29 PM	1/2/2008 5:05:29 AM	00:00:02	25 °C	50%
72	6/17/2008 12:13:06 PM	6/17/2008 5:13:06 AM	00:00:03	26 °C	95%
73	1/3/2008 1:11:42 PM	1/3/2008 5:11:42 AM	00:00:02	25 °C	50%
73	6/18/2008 12:24:09 PM	6/18/2008 5:24:09 AM	00:00:02	26 °C	94%
74	1/4/2008 1:08:17 PM	1/4/2008 5:08:17 AM	00:00:01	26 °C	49%
74	6/19/2008 12:20:09 PM	6/19/2008 5:20:09 AM	00:00:03	26 °C	93%

CONCLUSION: Temores' firing data submitted to the Court by Defs as Exh. 10 of Sherman's Decl. is not in sequentially chronological order.

08/31/2010 Download of Burger's Taser gun X00-292463
Defs. Exh. 11 of Court Doc 125.

Firings

Sequence	GMT Time	Local Time	Duration	Temp (C)	Batt Remainin
3	6/27/2007 6:52:34 PM	6/27/2007 11:52:34 AM	00:00:05	28 °C	99%
3	3/21/2008 2:35:44 PM	3/21/2008 7:35:44 AM	00:00:02	24 °C	74%
4	6/27/2007 6:52:42 PM	6/27/2007 11:52:42 AM	00:00:05	28 °C	99%
4	3/21/2008 2:35:46 PM	3/21/2008 7:35:46 AM	00:00:01	24 °C	74%
5	6/27/2007 6:52:50 PM	6/27/2007 11:52:50 AM	00:00:05	29 °C	99%
5	3/23/2008 2:32:35 PM	3/23/2008 7:32:35 AM	00:00:02	25 °C	73%
6	9/15/2007 5:19:38 AM	9/14/2007 10:19:38 PM	00:00:03	27 °C	98%
6	3/23/2008 2:27:01 PM	3/23/2008 7:27:01 AM	00:00:02	24 °C	73%
7	9/15/2007 5:19:52 AM	9/14/2007 10:19:52 PM	00:00:01	28 °C	98%
7	3/24/2008 2:32:00 PM	3/24/2008 7:32:00 AM	00:00:02	25 °C	73%
8	9/15/2007 5:20:50 AM	9/14/2007 10:20:50 PM	00:00:01	28 °C	98%
8	4/6/2008 2:19:59 PM	4/6/2008 7:38:59 AM	00:00:02	26 °C	69%
9	9/15/2007 6:06:47 AM	9/14/2007 11:06:47 PM	00:00:03	25 °C	97%
9	4/7/2008 2:51:15 PM	4/7/2008 7:51:15 AM	00:00:03	26 °C	68%
10	9/15/2007 6:07:49 AM	9/14/2007 11:07:49 PM	00:00:03	26 °C	97%
10	4/8/2008 3:42:12 PM	4/8/2008 7:42:32 AM	00:00:01	26 °C	68%
11	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	9/14/2008 7:24:04 AM	00:00:01	25 °C	71%
53	1/1/2008 1:17:24 PM	1/1/2008 5:17:24 AM	00:00:01	23 °C	27%
53	8/15/2008 2:32:19 PM	8/15/2008 7:32:19 AM	00:00:01	25 °C	71%
54	1/2/2008 13:58:18 PM	1/2/2008 4:58:18 AM	00:00:01	23 °C	27%
54	8/28/2008 2:22:11 PM	8/28/2008 7:22:11 AM	00:00:01	25 °C	67%
55	1/3/2008 1:04:30 PM	1/3/2008 5:04:30 AM	00:00:01	24 °C	26%
56	1/4/2008 1:01:02 PM	1/4/2008 5:01:02 AM	00:00:01	24 °C	26%
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
89	3/14/2008 2:26:44 PM	3/14/2008 7:26:44 AM	00:00:02	25 °C	73%
90	3/15/2008 2:45:10 PM	3/15/2008 7:45:10 AM	00:00:02	25 °C	72%
91	3/15/2008 5:04:55 PM	3/15/2008 10:04:55 AM	00:00:02	23 °C	72%

CONCLUSION: Burger's firing data submitted to the Court by Defs as Exh. 11 of Sherman's Decl. is not in sequentially chronological order.

12/17/2010 Download of Temores' Taser gun X00-292417
Exh. 177 of Court Doc 109.

Recorded Firing Data

Seq	GMT Time	Local Time	Duration	Temp	Battery
0001	01/01/00 20:08:30	01/01/00 12:08:30	Old Time		
0002	08/31/10 15:01:56	08/31/10 08:01:56	New Time		
0003	01/09/08 00:00:59	01/08/08 16:00:59	2	33	98
0004	01/09/08 13:17:00	01/09/08 05:17:00	2	25	98
0005	01/09/08 13:18:18	01/09/08 05:18:18	1	26	98
0006	01/09/08 13:18:43	01/09/08 05:18:43	2	26	98
0007	01/10/08 13:07:51	01/10/08 05:07:51	2	26	98
0008	01/11/08 13:07:41	01/11/08 05:07:41	1	24	97
0009	01/12/08 13:09:21	01/12/08 05:09:21	2	25	96
0010	01/17/08 13:21:05	01/17/08 05:21:05	2	25	95
0104	09/26/08 15:59:08	09/26/08 08:59:08	1	26	67

0105	09/26/08 17:20:16	09/26/08 10:20:16	1	31	57
0106	09/26/08 22:27:35	09/26/08 15:27:35	1	27	61
0107	10/09/08 17:19:34	10/09/08 10:19:34	1	30	61

End of Report.

12/17/2010 Download of Burger's Taser gun X00-292463
Exh. 175 of Court Doc 109.

Recorded Firing Data

Seq	GMT Time	Local Time	Duration	Temp	Battery
0001	03/15/00 18:50:58	03/15/00 11:50:58	Old Time		
0002	08/31/10 15:12:55	08/31/10 08:12:55	New Time		
0003	03/21/08 14:35:44	03/21/08 07:35:44	2	24	74
0004	03/21/08 14:35:46	03/21/08 07:35:46	1	24	74
0005	03/22/08 14:32:35	03/22/08 07:32:35	2	26	74
0006	03/23/08 14:27:01	03/23/08 07:27:01	2	24	73
0007	03/24/08 14:32:00	03/24/08 07:32:00	2	25	73
0008	04/06/08 14:39:59	04/06/08 07:39:59	2	26	69
0009	04/07/08 14:51:35	04/07/08 07:51:35	3	26	68
0010	04/08/08 14:42:32	04/08/08 07:42:32	1	26	68
0053	08/15/08 14:32:19	08/15/08 07:32:19	1	25	71
0054	08/28/08 14:22:13	08/28/08 07:22:13	1	25	67
0055	01/03/08 13:04:30	01/03/08 05:04:30	1	24	26
0056	01/04/08 13:01:02	01/04/08 05:01:02	1	24	26
0089	03/14/08 14:26:44	03/14/08 07:26:44	2	25	73
0090	03/15/08 14:45:10	03/15/08 07:45:10	2	25	72
0091	03/15/08 17:04:55	03/15/08 10:04:55	2	23	72

End of Report.

CONCLUSION: Burger's firing data obtained directly from Burger's Taser gun's Data Port on December 17, 2010,(Exh. 175 of Court Doc. 109) is not in sequentially chronological order.

As of February 19, 2011 according to the Data Port User Manual for a Taser X26 taser gun from Taser International the **firing data** retained on a **Data Port** from a Taser International Taser gun **cannot be erased.**

As of February 19, 2011 according to the X26 Taser Gun Manual and Taser International's website the **Data Port** from a Taser X26 taser gun **retains the last 1,500 firings.**

	BURGER'S TASER GUN **X00-292463**	TEMORES' TASER GUN **X00-292417**
Download August 31, 2010	**141 Firings**	**144 Firings**
Download December 17, 2010	**91 Firings**	**107 Firings**
MISSING	**50 Firings**	**37 Firings**

50 Firings disappeared from Burger's Taser gun's Data Port, **X00-292463**, in less than four months while the taser gun was secured in evidence.

37 Firings disappeared from Temores' Taser gun's Data Port, **X00-292417**, in four months while the taser gun was secured in evidence.

TEMORES' TASER GUN
X00-292417

Download
August 31, 2010

Sequence	GMT Time
3	6/27/2007 8:12:08 PM
3	1/9/2008 12:00:59 AM
4	6/27/2007 8:12:16 PM
4	1/9/2008 1:17:00 PM
5	6/27/2007 8:12:22 PM
5	1/9/2008 1:18:18 PM

70	12/26/2007 1:12:09 PM
70	6/11/2008 12:17:09 PM
71	1/1/2008 1:24:23 PM
71	6/12/2008 12:14:19 PM
72	1/2/2008 1:05:29 PM
72	6/17/2008 12:13:06 PM
73	1/3/2008 1:11:42 PM
73	6/18/2008 12:24:09 PM
74	1/4/2008 1:08:17 PM
74	6/19/2008 12:20:09 PM

Download
December 17, 2010

Recorded Firing Data

Seq	GMT Time
0001	01/01/00 20:08:30
0002	08/31/10 15:01:56
0003	01/09/08 00:00:59
0004	01/09/08 13:17:00
0005	01/09/08 13:18:18
0070	06/11/08 12:17:09
0071	06/12/08 12:14:19
0072	06/17/08 12:13:06
0073	06/18/08 12:24:09
0074	06/19/08 12:20:09
0103	08/28/08 03:20:44
0104	09/26/08 15:59:08
0105	09/26/08 17:20:16
0106	09/26/08 22:27:35
0107	10/09/08 17:19:34

CONCLUSION: **The 74th firing for the August 31, 2010** download states that it occurred on **1/4/2008** and the **74th firing** for the **December 17, 2010** download states that it occurred on **6/19/08.**
The dates of firings from one download to the other do not match.

CONCLUSION: The December 17, 2010 download is missing the 1/1/2008, 1/2/2008, 1/3/2008 and 1/4/2008 Taser gun firings.

CONCLUSION: The August 31, 2010 download is not in chronological order as the 3rd,4th and 5th firings occur on 1/9/2008 and the 71st firing occurs on 1/1/2008 and the 72nd firing occurs on 1/2/2008 and the 73rd firing occurs on 1/3/2008 and the 74th firing occurs on 1/4/2008.

BURGER'S TASER GUN
X00-292463

Download
August 31, 2010

52	12/27/2007 1:05:52 PM
52	8/14/2008 2:24:04 PM
53	1/1/2008 1:17:24 PM
53	8/15/2008 2:32:19 PM
54	1/2/2008 12:58:18 PM
54	8/28/2008 2:22:13 PM
55	1/3/2008 1:04:30 PM

Download
December 17, 2010

0052	08/14/08 14:24:04
0053	08/15/08 14:32:19
0054	08/28/08 14:22:13
0055	01/03/08 13:04:30

CONCLUSION: The December 17, 2010 download is missing the 1/1/2008 and 1/2/2008 Taser gun firings. **The 54th firing** for the **August 31, 2010** download states that it occurred on **1/2/2008** and the **54th firing** for the **December 17, 2010** download states that it occurred on ~~**8/15/08.**~~ 8/28/08. **The dates of firings from one download to the other do not match.**

Sequence	GMT Time
3	6/27/2007 6:52:34 PM
3	3/21/2008 2:35:44 PM
4	6/27/2007 6:52:42 PM
4	3/21/2008 2:35:46 PM
5	6/27/2007 6:52:50 PM
5	3/22/2008 2:32:35 PM
6	9/15/2007 5:19:38 AM
6	3/23/2008 2:27:01 PM
86	3/7/2008 9:42:00 PM
87	3/13/2008 2:45:43 PM
88	3/14/2008 2:26:34 PM
89	3/14/2008 2:26:44 PM
90	3/15/2008 2:45:10 PM
91	3/15/2008 5:04:55 PM

Recorded Firing Data

Seq	GMT Time
0001	03/15/00 18:50:58
0002	08/31/10 15:12:55
0003	03/21/08 14:35:44
0004	03/21/08 14:35:46
0005	03/22/08 14:32:35
0006	03/23/08 14:27:01
0086	03/07/08 21:42:00
0087	03/13/08 14:45:43
0088	03/14/08 14:26:34
0089	03/14/08 14:26:44
0090	03/15/08 14:45:10
0091	03/15/08 17:04:55

CONCLUSION: The August 31, 2010 and December 17, 2010 downloads are not in chronological order as the 3rd firing occurs on 3/21/2008 when the 91st firing occurs on 3/15/2008 and the 6th firing occurs on 3/23/2008 when the 89th firing occurs on 3/14/2008.

Below is an excerpt from Andrew Hinz's expert report, Dated January 26, 2011, Defs' Exh. 13 of Sherman's Decl.

Background: I have received copies of the police reports, car camera footage, TASER X26 download report and TASER cam videos from the event.

Summary: TASER Cam video from V06-015525 and V06-015020, as well as, the download reports from TASER X26 ECDs X00-292463 and X00-292417 were functioning within factory specifications for TASER X26 ECDs and TASER Cam video recording at the time of the event. There is absolutely no evidence to indicate editing or manipulation of the device data or video in question. Further, there is no evidence that Plaintiff did in fact receive the intended taser dart application.

Andrew Hinz
Director of Technical Services
TASER International

Below are excerpts from Andrew Hinz's Declaration, Dated February 22, 2011, Defendants' Supplemental Exhibit "13" in Support for Summary Judgment, Court Document 129-1

12. In order to clarify the TASER Cam serial numbers issue, I flew to Palo Alto on February 17, 2011, so that I could physically inspect the TASER ECDs and TASER Cams used on March 15, 2008.

13. It is my understanding from the Palo Alto Police Department that there are only two TASER X26 ECDs involved in the subject incident of March 15, 2008. Those two TASER X26 ECDs were identified as X00-292417 and X00-292463.

17. On February 17, 2011, I verified, by inspecting the two TASER Cams (V06-015530 and V06-015542) and two TASER X26 ECDs (X00-292417 and X00-292463), that the data from these devices was consistent with them being used during the March 15, 2008 incident. I also downloaded and watched the video footage from TASER Cams V06-015530 and V06-015542.

19. The TASER X26 ECDs with serial numbers X00-292417 and X00-292463 are recording data properly and accurately. These ECDs are operating within factory specifications for a TASER X26 ECD.

On **February 17, 2011** Mr. Hinz from Taser International physically inspected TASER X26 ECDs X00-292463 and X00-292417 at the Palo Alto Police Department and declared that these Taser X26 ECDs used during the March 15, 2008 incident and that **they were recording data properly and accurately within factory specification for a TASER X26 ECD.**

On **January 26, 2011** Mr. Hinz stated that he received the Taser X26 download reports of the March 15, 2008 incident. Mr Hinz from Taser International declared that the **download reports** from TASER X26 ECDs **X00-292463** and **X00-292417** were functioning within factory specifications for TASER X26 ECDs during the time of the event, (March 15, 2008). In addition Mr. Hinz declared that **there is absolutely no evidence to indicate editing or manipulation of the device data** or video in question.

According the reports provided to Plaintiff Ciampi by the Palo Alto Police Department, Defendants'. Exhibits 10 and 11 of Sherman's Declaration and the direct downloads produced on December 17, 2010, **50** taser gun **firings** were **removed** from Def. Burger's taser gun's Data Port **memory device,** X00-292463, between **August 31, 2010** and **December 17, 2010** and **37** taser gun **firings** were removed from Def. Temores' taser gun's Data Port **memory device**, X00-292417 between August 31, 2010 and December 17, 2010.

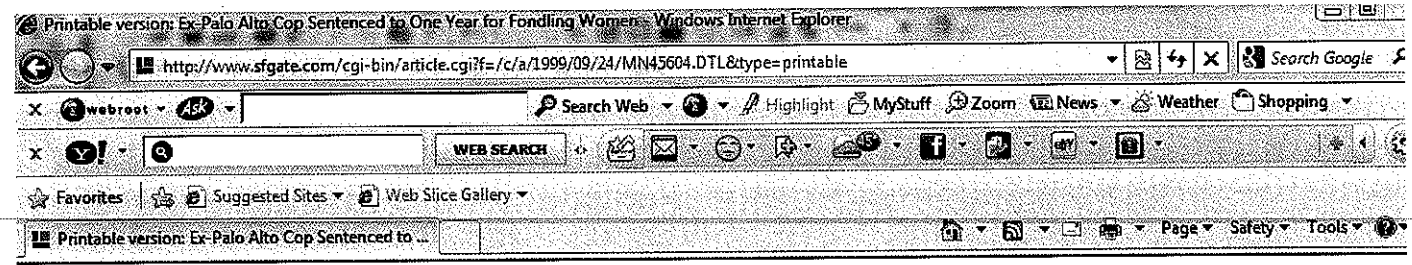
It is clear and convincing that Mr. Hinz has made false statements regarding the data retained on the taser gun memory devices.

Mr. Hinz give no explanation as to the missing taser gun firings from one report to the next. Mr. Hinz gives no explanation as to the firing data not being in chronological order.

CONCLUSION: Based upon the factual data provided by Taser International's specifications for their taser guns' Data Ports and "Firing Data," and the actual information provided by the Defendants and obtained directly from the devices in question, Mr. Hinz is completely contradicted in his assertion that no editing or manipulation has occurred.

EXHIBIT 523

http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/09/24/MN45604.DTL&type=printable



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Ex-Palo Alto Cop Sentenced to One Year for Fondling Women

Julie N. Lynem, Chronicle Staff Writer
Friday, September 24, 1999

(09-24) 04:00 PST PALO ALTO -- A former Palo Alto officer charged with fondling five women while on duty was sentenced yesterday to one year in the Santa Clara County Jail.

Luis Verbera stared straight ahead, motionless, as Santa Clara County Superior Court Judge Charles W. Hayden announced the punishment and expressed sorrow that Verbera's misconduct hurt so many people.

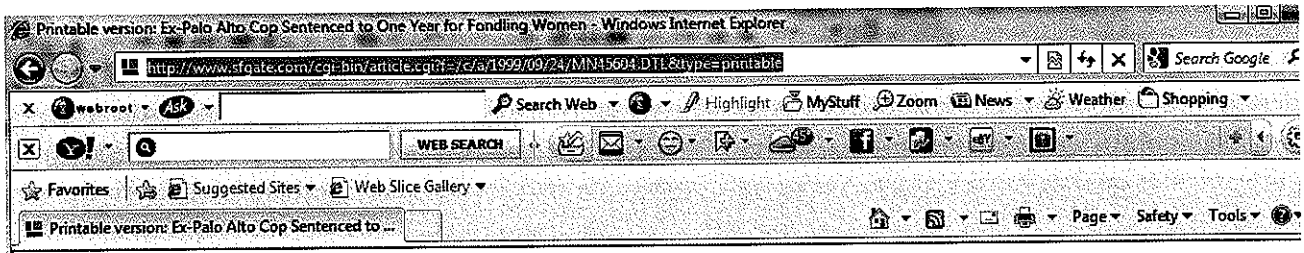
``My heart goes out to the victims and the Palo Alto Police Department," Hayden said. ``They have been damaged by his actions, and I hope for the best for the victims and our community."

In addition to the one-year jail term, Verbera, 34, will be required to register as a sex offender and enroll in a counseling program during his three to five years of probation. He also was ordered to pay $1,200 in fines, including $1,000 to the Santa Clara County battered women's shelter.

Hayden said he would refer Verbera to the county jail's work furlough program. Verbera gave no statement during the sentencing hearing, which was attended by several supporters.

In July, Verbera avoided a possible seven-year prison sentence when he pleaded no contest to four felony counts and one misdemeanor count of sexual battery as part of a plea bargain with county prosecutors.

Deputy District Attorney Joanne McCracken stands behind the plea agreement, saying that it was in the best interest of the women involved.



But McCracken said in court yesterday that she was appalled Verbera has shown no remorse for his actions and added that she regrets that ``Mr. Verbera ever set foot in our county."

Several of Verbera's victims, she said, are still traumatized by Verbera's sexual misconduct.

``The conduct Verbera displayed was the most lewd of any officer I've ever seen before," she said.

According to McCracken, Verbera has yet to seek counseling and has not given a statement of remorse to the county's Probation Department.

``He said he was very sorry for himself because he lost the job he had always wanted since he was 12 years old," she said.

Craig Brown, Verbera's attorney, rebuffed McCracken's statements.

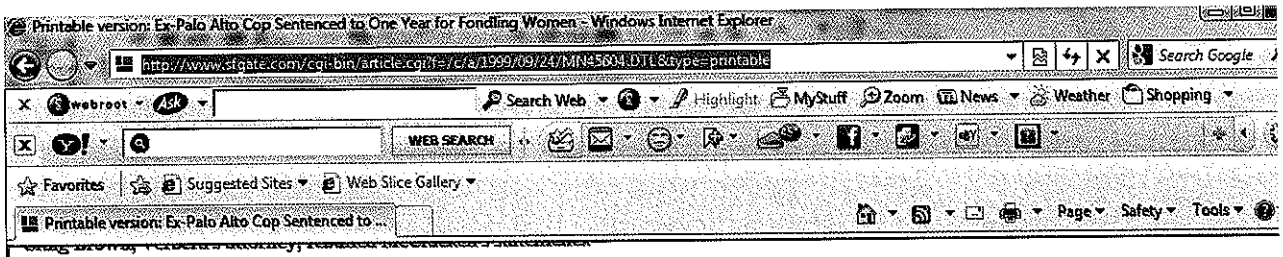
``They're based on speculation, not fact," he said.

The former officer resigned from the Palo Alto Police Department in March after the Santa Clara County district attorney's office charged him with misdemeanor sexual battery involving two women.

Prosecutors upgraded the charges to felonies a month later and added three charges -- two felony and one misdemeanor -- after police learned that three more women had been fondled by the former policeman since 1996.

The women alleged that Verbera touched them inappropriately under the pretense of searching for drugs and weapons.

One woman said Verbera touched her breasts and genital area while she sat handcuffed in the back of his squad car. Another told investigators that Verbera fondled her breasts and reached inside her pants in a Police Department garage.



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A nine-year veteran, Verbera once served as a detective, handling several sex crime cases. He was the lead detective in the regionwide investigation that led to the arrest and conviction of Romel Reid, the serial rapist who terrorized Peninsula women for several months in 1995 and 1996.

Chief Pat Dwyer said that while Verbera's conduct was difficult for the department and the community, the case has actually strengthened ties among officers and residents.

``If anything, it makes us adhere more vigorously to the high standards and professional ethics," he said. ``It reinforced that we have no tolerance for lack of integrity or misconduct in the Palo Alto Police Department."

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/09/24/MN45604.DTL

This article appeared on page A - 20 of the San Francisco Chronicle

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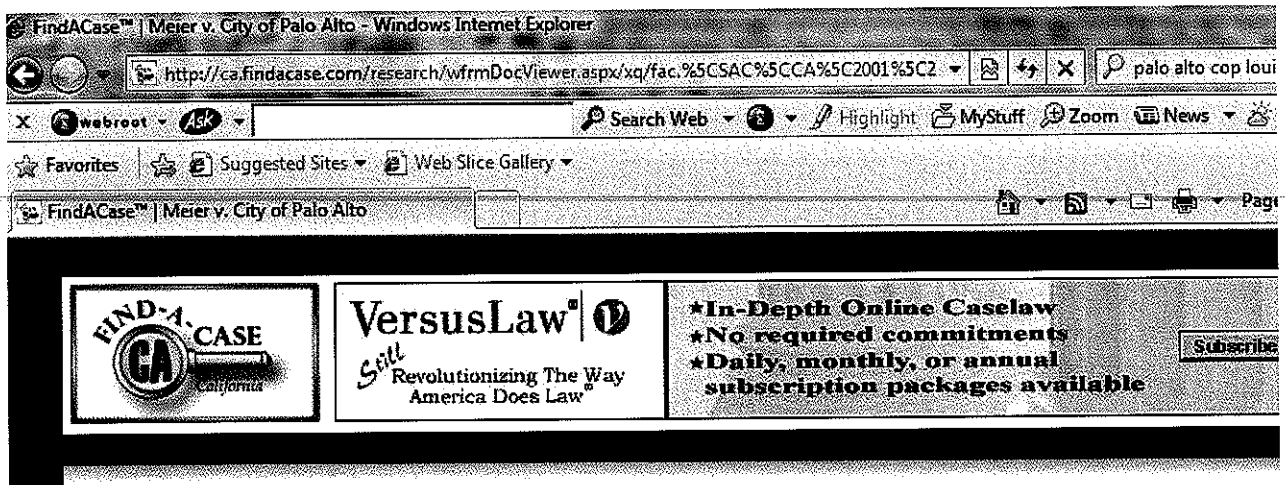


[U] Meier v. City of Palo Alto

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

Docket Number available at www.versuslaw.com

Citation Number available at www.versuslaw.com

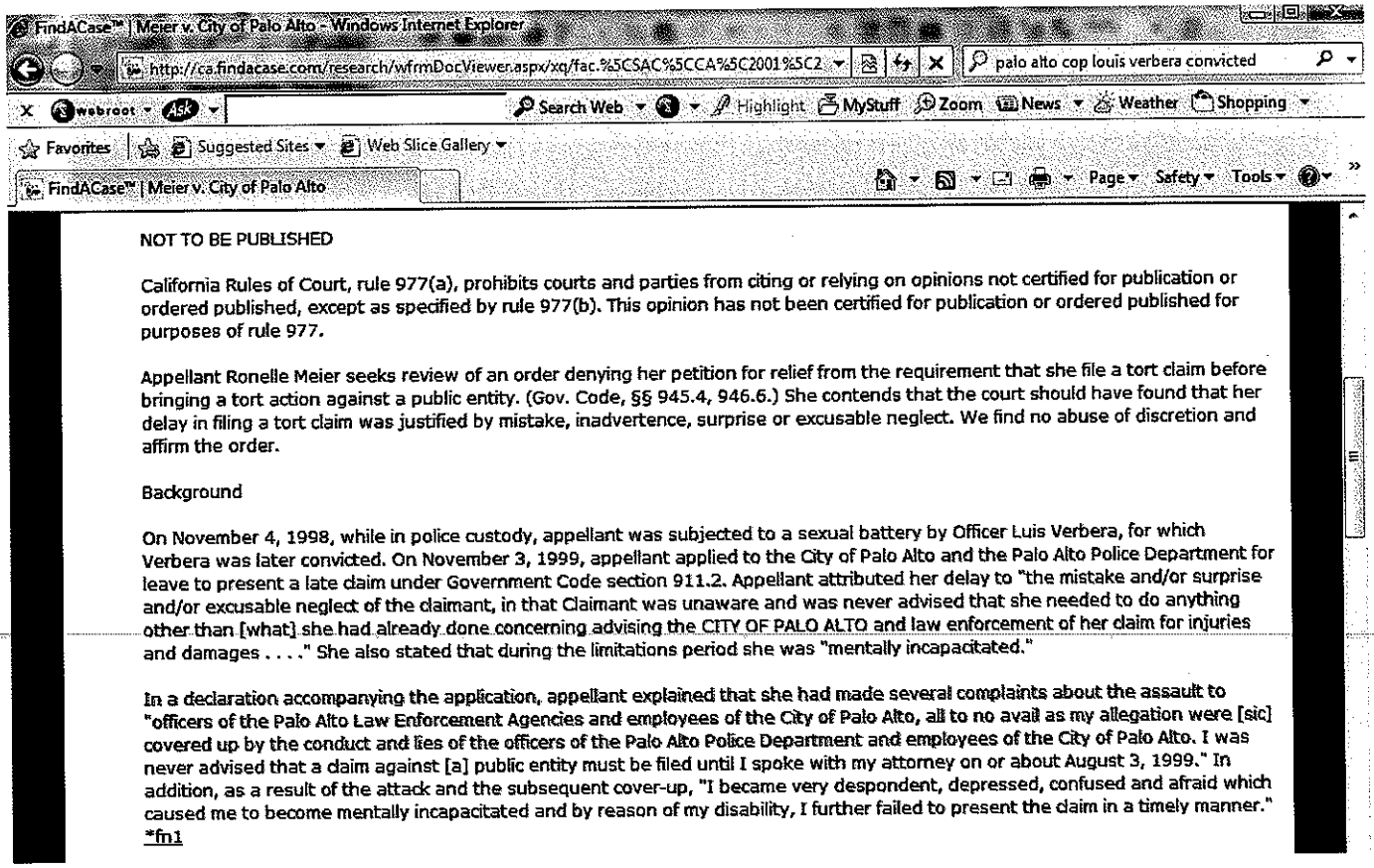
November 19, 2001

RONELLE MEIER, PLAINTIFF AND APPELLANT,
v.
CITY OF PALO ALTO, ET. AL., DEFENDANTS AND RESPONDENTS.

(Santa Clara County Super. Ct. No. CV789271)

The opinion of the court was delivered by: Elia, J.

NOT TO BE PUBLISHED



NOT TO BE PUBLISHED

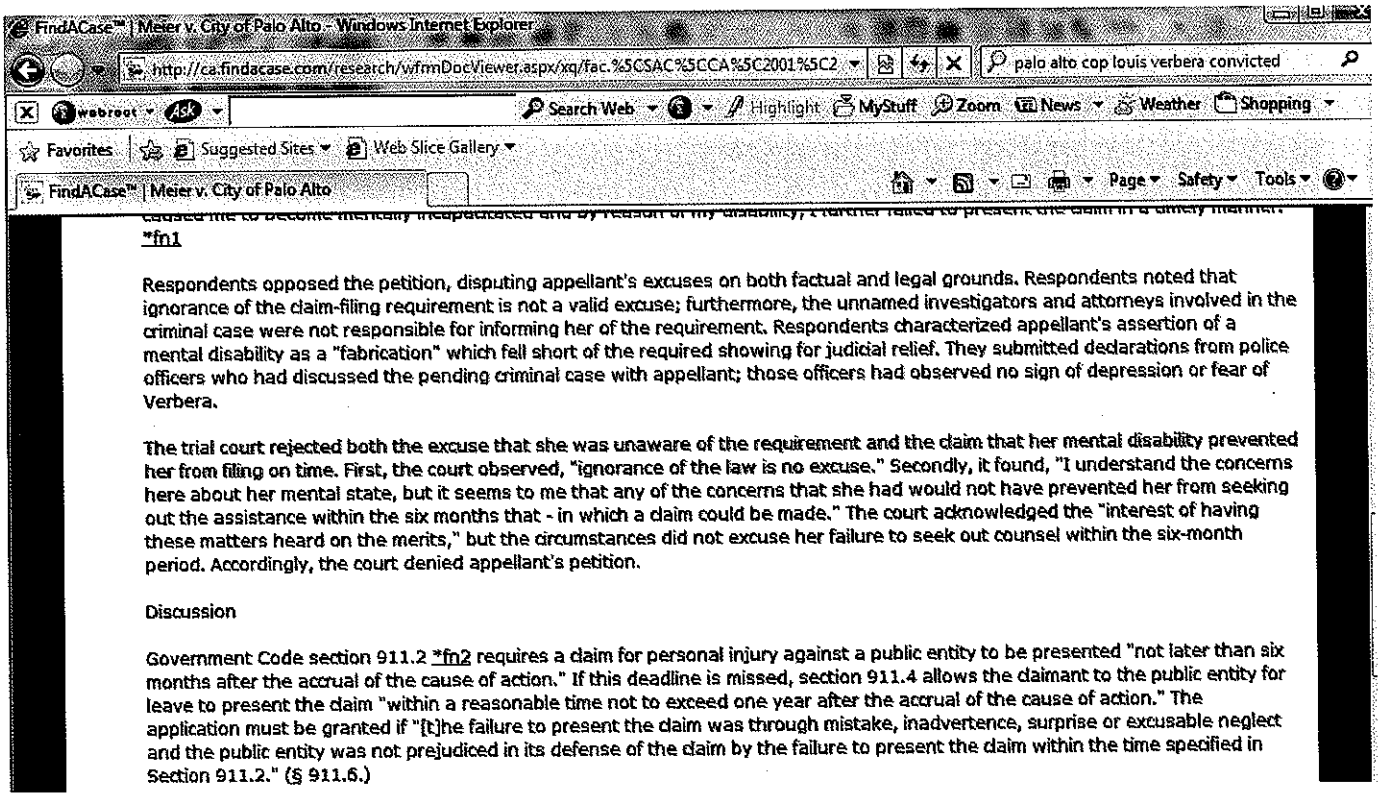
California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Appellant Ronelle Meier seeks review of an order denying her petition for relief from the requirement that she file a tort claim before bringing a tort action against a public entity. (Gov. Code, §§ 945.4, 946.6.) She contends that the court should have found that her delay in filing a tort claim was justified by mistake, inadvertence, surprise or excusable neglect. We find no abuse of discretion and affirm the order.

Background

On November 4, 1998, while in police custody, appellant was subjected to a sexual battery by Officer Luis Verbera, for which Verbera was later convicted. On November 3, 1999, appellant applied to the City of Palo Alto and the Palo Alto Police Department for leave to present a late claim under Government Code section 911.2. Appellant attributed her delay to "the mistake and/or surprise and/or excusable neglect of the claimant, in that Claimant was unaware and was never advised that she needed to do anything other than [what] she had already done concerning advising the CITY OF PALO ALTO and law enforcement of her claim for injuries and damages . . . ." She also stated that during the limitations period she was "mentally incapacitated."

In a declaration accompanying the application, appellant explained that she had made several complaints about the assault to "officers of the Palo Alto Law Enforcement Agencies and employees of the City of Palo Alto, all to no avail as my allegation were [sic] covered up by the conduct and lies of the officers of the Palo Alto Police Department and employees of the City of Palo Alto. I was never advised that a claim against [a] public entity must be filed until I spoke with my attorney on or about August 3, 1999." In addition, as a result of the attack and the subsequent cover-up, "I became very despondent, depressed, confused and afraid which caused me to become mentally incapacitated and by reason of my disability, I further failed to present the claim in a timely manner." *fn1



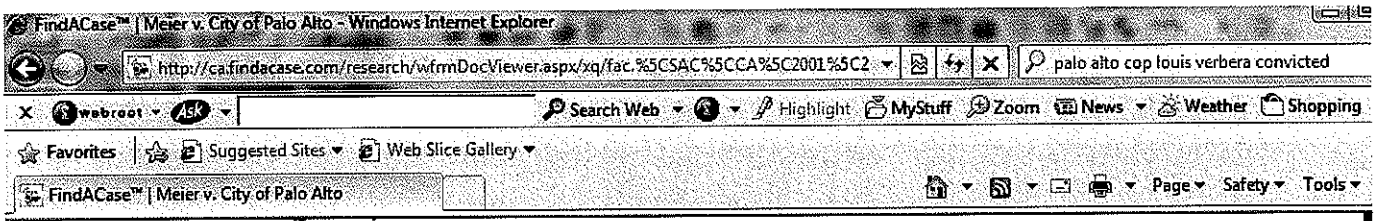
*fn1

Respondents opposed the petition, disputing appellant's excuses on both factual and legal grounds. Respondents noted that ignorance of the claim-filing requirement is not a valid excuse; furthermore, the unnamed investigators and attorneys involved in the criminal case were not responsible for informing her of the requirement. Respondents characterized appellant's assertion of a mental disability as a "fabrication" which fell short of the required showing for judicial relief. They submitted declarations from police officers who had discussed the pending criminal case with appellant; those officers had observed no sign of depression or fear of Verbera.

The trial court rejected both the excuse that she was unaware of the requirement and the claim that her mental disability prevented her from filing on time. First, the court observed, "ignorance of the law is no excuse." Secondly, it found, "I understand the concerns here about her mental state, but it seems to me that any of the concerns that she had would not have prevented her from seeking out the assistance within the six months that - in which a claim could be made." The court acknowledged the "interest of having these matters heard on the merits," but the circumstances did not excuse her failure to seek out counsel within the six-month period. Accordingly, the court denied appellant's petition.

Discussion

Government Code section 911.2 *fn2 requires a claim for personal injury against a public entity to be presented "not later than six months after the accrual of the cause of action." If this deadline is missed, section 911.4 allows the claimant to the public entity for leave to present the claim "within a reasonable time not to exceed one year after the accrual of the cause of action." The application must be granted if "[t]he failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2." (§ 911.6.)



In this case the City denied appellant's application, and appellant properly sought relief from the claim requirement in the superior court under section 946.6. That provision requires the court to make an independent determination of the merits of the petition based on the affidavits and any other evidence received. (§ 946.6, subd. (e).) The court followed this mandate in determining that appellant's untimeliness was inexcusable. As appellant recognizes, our review of that determination is limited. "The granting or denial of a petition for relief under section 946.6 rests within the discretion of the trial court and its determination will not be disturbed on appeal except for abuse of that discretion. [Citations.] It is true that an appellate court more carefully scans the denial than the allowance of such relief to the end that wherever possible cases may be heard on their merits. [Citation.] Nevertheless, we cannot arbitrarily substitute our judgment for that of the trial court." (Shank v. County of Los Angeles (1983) 139 Cal.App.3d 152, 156.)

On appeal, appellant offers a different theory of excusable neglect than the one she presented below. Appellant contends that her public defender, who learned of the assault through a paralegal in the office, "owed a duty to advise her of the potential civil action arising out of the sexual assault, or at the very least to consult a civil attorney about the matter." According to appellant, the trial court abused its discretion by failing to "consider the fact that Appellant did have an attorney shortly after the sexual assault occurred."

Appellant thus implies that she should be relieved from the timeliness requirement because of a breach of duty by her public defender. We reject the argument. Even if (1) her public defender had a duty to inform her of the claim statutes and (2) the public defender's failure to so inform her constituted a sufficient excuse for her untimeliness in pursuing her claim, it is evident that appellant did not present this theory to the trial court. Rather, her asserted justifications were that she "was never advised" of the need to file a claim even though City employees and police officers were aware of the incident, and that she was "mentally incapacitated" due to the depression, despondency, and confusion resulting from the attack and subsequent cover-up. Thus, she implied that it was these "Officers and the Palo Alto Police Department and employees of the City of Palo Alto" who were to blame for her failure to meet the statutory deadline. Appellant never explicitly blamed her public defender for failing to advise her of the claim-filing requirements. To permit her to raise this new theory on appeal "would not only be unfair to the trial court, but manifestly unjust to the opposing litigant." (Mattco Forge, Inc. v. Arthur Young & Co. (1997) 52 Cal.App.4th 820, 847.)

We need not address appellant's second argument, that respondents could have suffered no prejudice from the granting of relief. "[A] public entity has no burden to establish prejudice until the plaintiff has satisfied the trial court that his [or her] failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect." (Shank v. County of Los Angeles, supra, 139 Cal.App.3d at p. 159; Rivera v. City of Carson (1981) 117 Cal.App.3d 718, 726; cf. Tammen v. County of San Diego (1967) 66 Cal.2d 468, 478.) Because the trial court properly found that appellant's excuses for the late filing were inadequate, whether respondents would have been prejudiced by the delay is moot.

Disposition

The order denying appellant's petition is affirmed.

WE CONCUR:

Premo, Acting P.J.

Mihara, J.

Opinion Footnotes

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*fn1 In her points and authorities supporting the petition, appellant added that she was so afraid of retaliation or future sexual assault by Verbera that she hid in a remote area. There was no evidence of this assertion by way of declaration or testimony, however.

*fn2 All further statutory references are to the Government Code.

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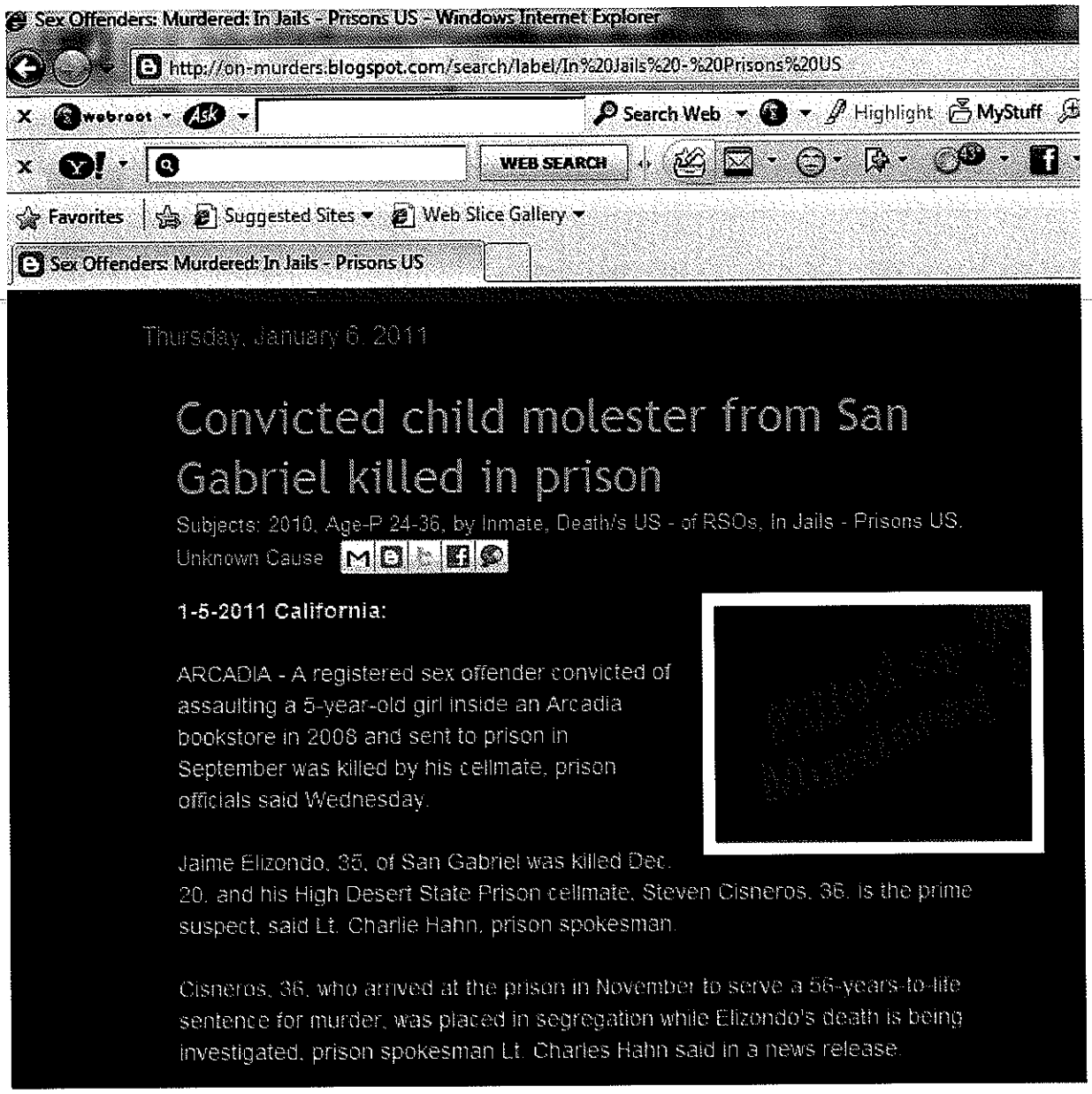
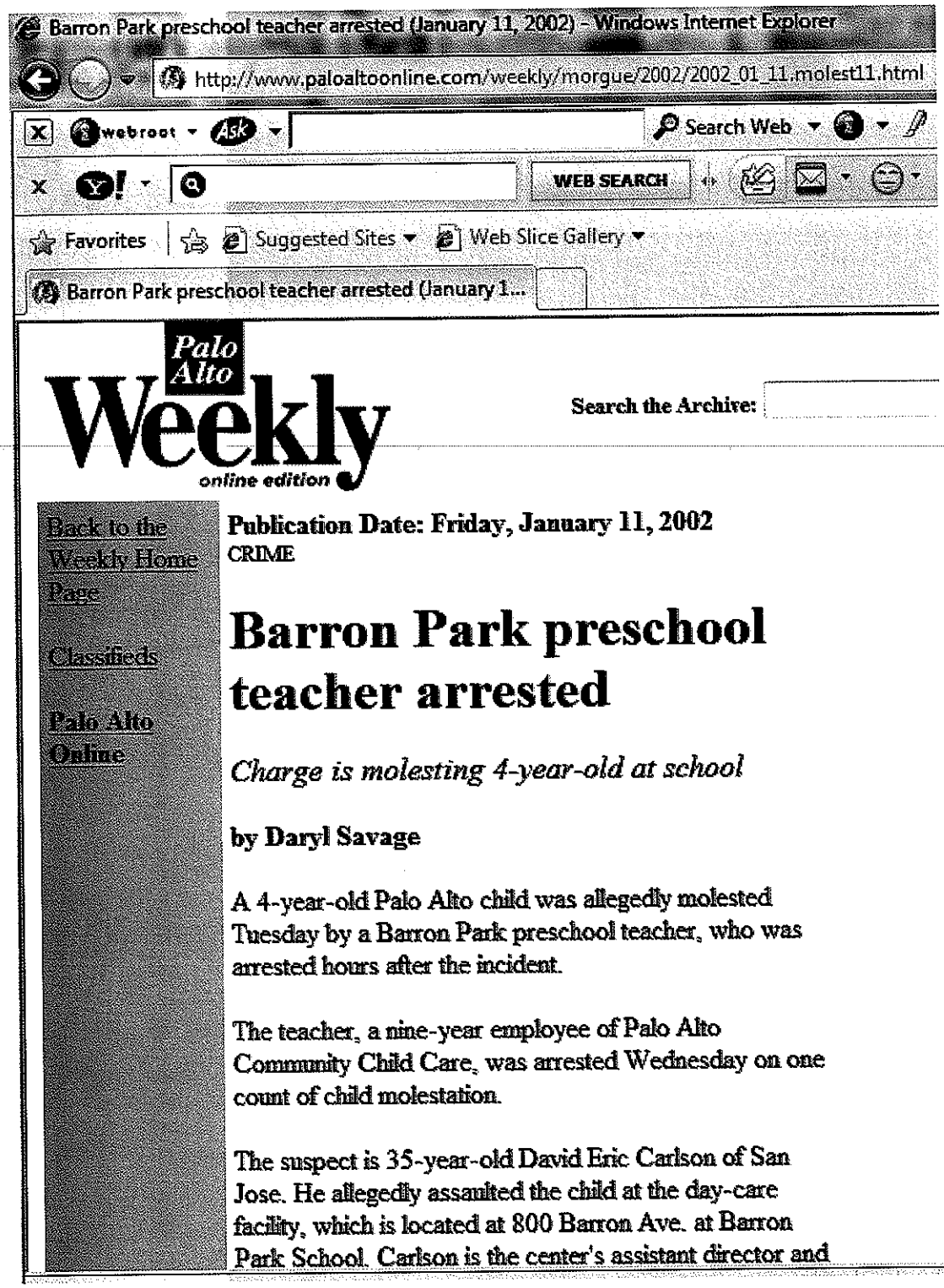




Publication Date: Friday, January 11, 2002
CRIME

Barron Park preschool teacher arrested

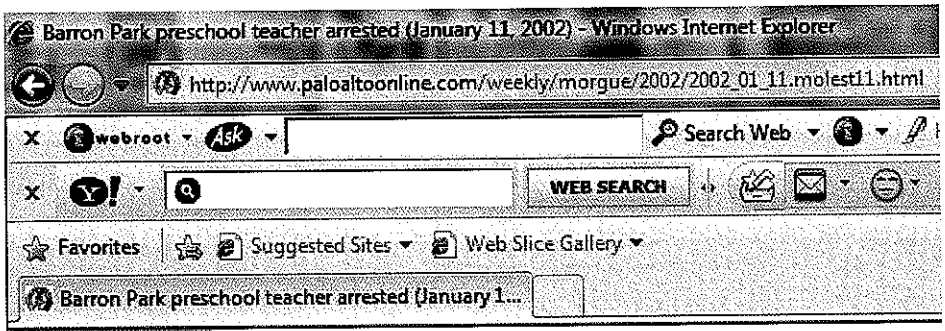
Charge is molesting 4-year-old at school

by Daryl Savage

A 4-year-old Palo Alto child was allegedly molested Tuesday by a Barron Park preschool teacher, who was arrested hours after the incident.

The teacher, a nine-year employee of Palo Alto Community Child Care, was arrested Wednesday on one count of child molestation.

The suspect is 35-year-old David Eric Carlson of San Jose. He allegedly assaulted the child at the day-care facility, which is located at 800 Barron Ave. at Barron Park School. Carlson is the center's assistant director and



"I'm scared, only because my son goes here," said Angie Banks, the mother of 6-year-old Angel and 11-month-old Cyan. She planned to talk with her son about the investigation and remind him how to react to unwanted attention from adults. "We just want to refresh his memory," Banks said.

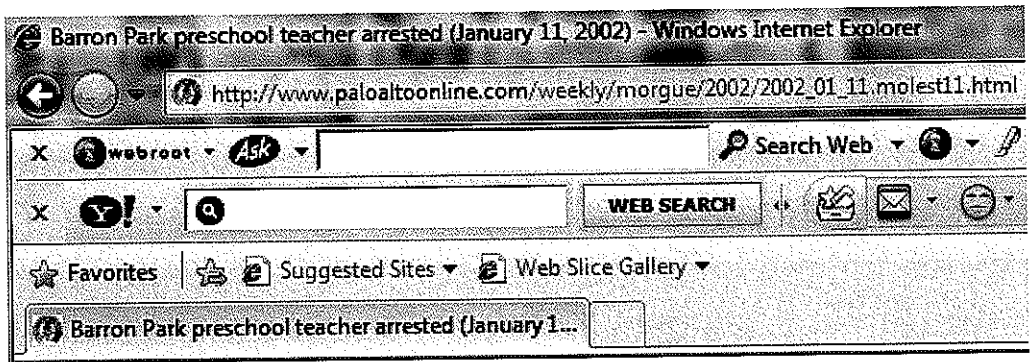
One father, who declined to be named, said he wanted to see efforts stepped up to escort children between portable buildings at the school as they change activities. "It needs to be refined," he said.

While horrified by the news, some parents stressed they hoped the investigation would be adequately thorough.

"If he's innocent, this will follow him for the rest of his life," said parent Jennifer Steck.

Police spokesman Jim Coffman said that not only is this tragic for the victim and the victim's family, it is a tragic time for everyone who has ever had contact with Carlson. This is something that affects the entire community, he said.

"The problem with pedophiles is that they don't stop at just one. But we're hoping this is the first time this guy has done this," he said.

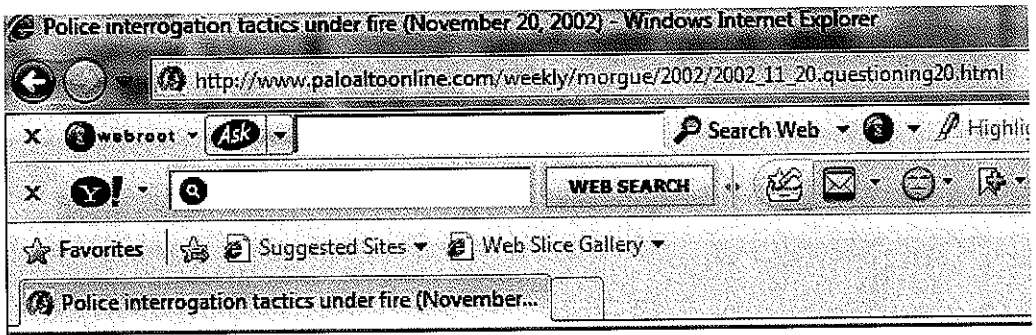


Coffman stressed the importance of parents talking to their children. "It was the parent-child relationship that opened up this case for us. If parents are sending a child out into the world, even if it's a day-care facility, they need to have the 'good touch, bad touch' talk with them. Of course, it has to be age-appropriate," he said.

Coffman said police are still investigating the incident. He emphasized that PACCC is a good organization and that it is required by law to do background checks on all of its employees. "I can't ever recall a problem before at PACCC," he said.

Police are urging anyone who has information about David Carlson to call Detective Natasha Powers at (650)329-2569.

Weekly staff writer Pam Sturner contributed to this report. E-mail Daryl Savage at dsavage@paweekly.com



Palo Alto Weekly online edition

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Palo Alto Online

Publication Date: Wednesday, November 20, 2002

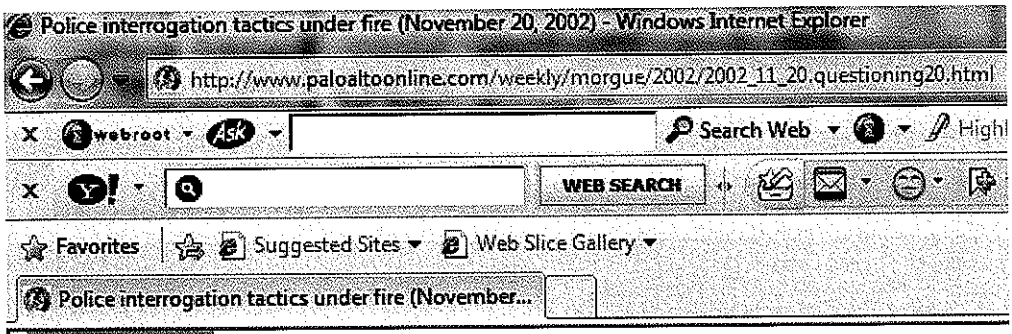
Police interrogation tactics under fire

Chief Dwyer defends department tactics

by Bill D'Agostino

Dismayed by a police investigation that produced the arrest and release of a young rape suspect, a city commission recommended last week that the Police Department amend its policy and tape all of its interrogations.

The Human Relations Commission's recommendation marked the first city criticism of the police's treatment of a case that has been widely observed throughout the state.



Hernandez was the second high-profile Palo Alto suspect this year that the department and the county district attorney released after getting DNA evidence.

In January, David Carlson, a Palo Alto child care teacher, was arrested by Palo Alto police and charged by the Santa Clara District Attorney's Office with molesting a 4-year-old child. After spending three weeks in jail, Carlson was released after DNA showed no crime had been committed.

Dwyer told the commission the department owes Carlson an apology. "The system in that case worked exactly the way it was supposed to," Dwyer added.

Was it a tragedy, nonetheless? Dwyer agreed it was. "It was a case where the system failed somebody."

E-mail Bill D'Agostino at bdagostino@paweekly.com

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Weekly

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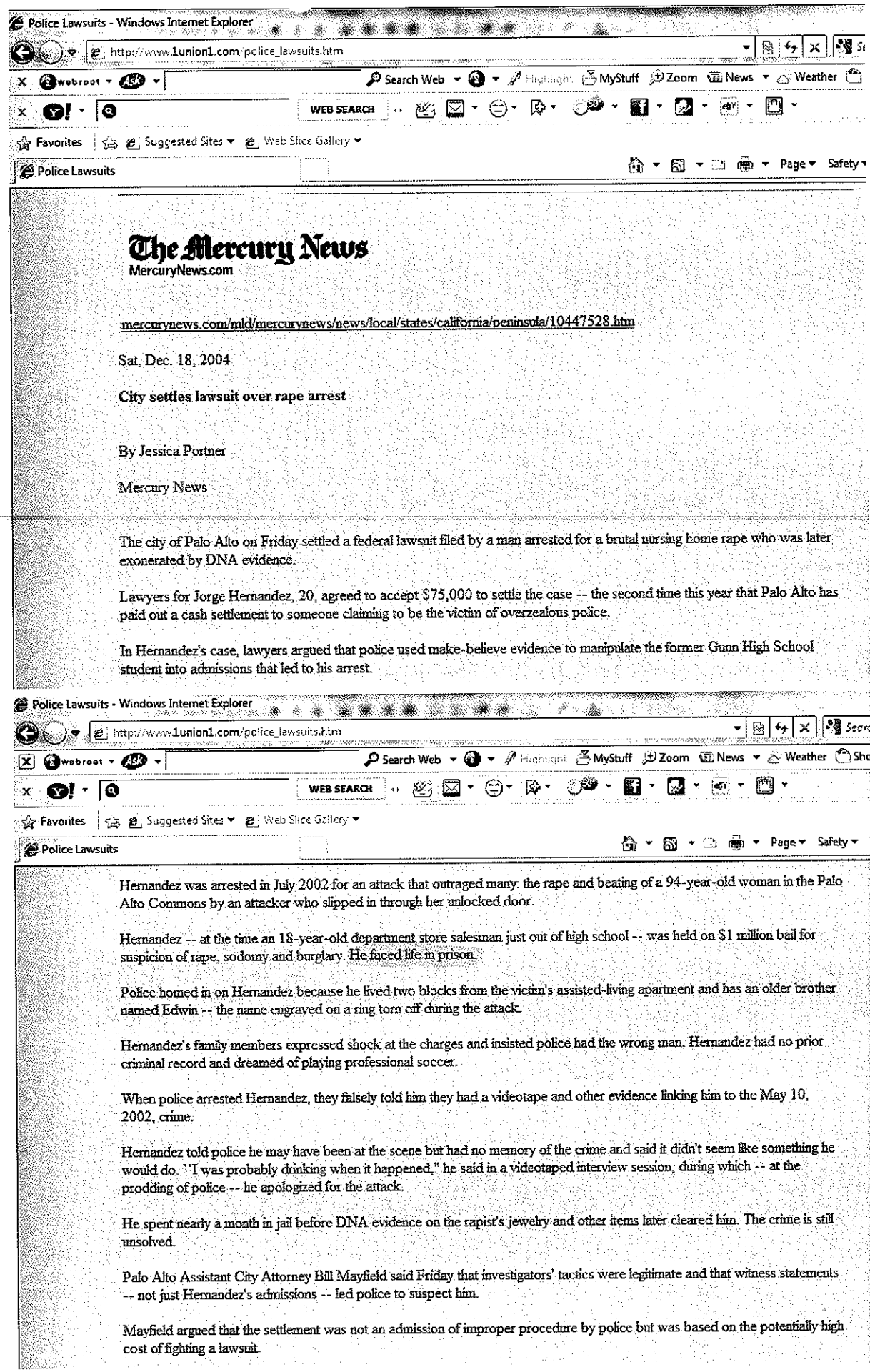

The Mercury News
MercuryNews.com

mercurynews.com/mld/mercurynews/news/local/states/california/peninsula/10447528.htm

Sat, Dec. 18, 2004

City settles lawsuit over rape arrest

By Jessica Portner

Mercury News

The city of Palo Alto on Friday settled a federal lawsuit filed by a man arrested for a brutal nursing home rape who was later exonerated by DNA evidence.

Lawyers for Jorge Hernandez, 20, agreed to accept $75,000 to settle the case -- the second time this year that Palo Alto has paid out a cash settlement to someone claiming to be the victim of overzealous police.

In Hernandez's case, lawyers argued that police used make-believe evidence to manipulate the former Gunn High School student into admissions that led to his arrest.

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Safety

Hernandez was arrested in July 2002 for an attack that outraged many: the rape and beating of a 94-year-old woman in the Palo Alto Commons by an attacker who slipped in through her unlocked door.

Hernandez -- at the time an 18-year-old department store salesman just out of high school -- was held on $1 million bail for suspicion of rape, sodomy and burglary. He faced life in prison.

Police homed in on Hernandez because he lived two blocks from the victim's assisted-living apartment and has an older brother named Edwin -- the name engraved on a ring torn off during the attack.

Hernandez's family members expressed shock at the charges and insisted police had the wrong man. Hernandez had no prior criminal record and dreamed of playing professional soccer.

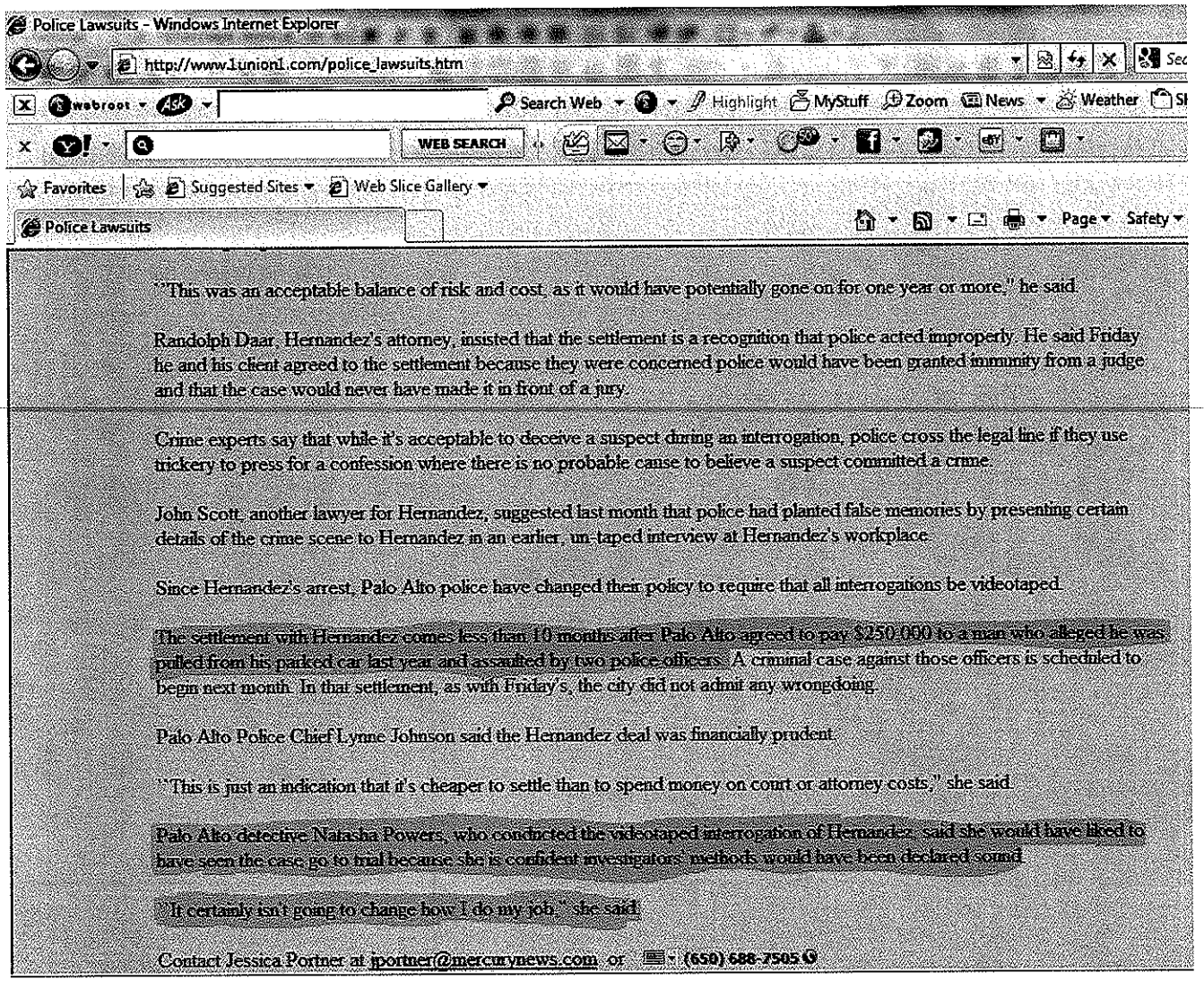
When police arrested Hernandez, they falsely told him they had a videotape and other evidence linking him to the May 10, 2002, crime.

Hernandez told police he may have been at the scene but had no memory of the crime and said it didn't seem like something he would do. "I was probably drinking when it happened," he said in a videotaped interview session, during which -- at the prodding of police -- he apologized for the attack.

He spent nearly a month in jail before DNA evidence on the rapist's jewelry and other items later cleared him. The crime is still unsolved.

Palo Alto Assistant City Attorney Bill Mayfield said Friday that investigators' tactics were legitimate and that witness statements -- not just Hernandez's admissions -- led police to suspect him.

Mayfield argued that the settlement was not an admission of improper procedure by police but was based on the potentially high cost of fighting a lawsuit.



"This was an acceptable balance of risk and cost, as it would have potentially gone on for one year or more," he said.

Randolph Daar, Hernandez's attorney, insisted that the settlement is a recognition that police acted improperly. He said Friday he and his client agreed to the settlement because they were concerned police would have been granted immunity from a judge and that the case would never have made it in front of a jury.

Crime experts say that while it's acceptable to deceive a suspect during an interrogation, police cross the legal line if they use trickery to press for a confession where there is no probable cause to believe a suspect committed a crime.

John Scott, another lawyer for Hernandez, suggested last month that police had planted false memories by presenting certain details of the crime scene to Hernandez in an earlier, un-taped interview at Hernandez's workplace.

Since Hernandez's arrest, Palo Alto police have changed their policy to require that all interrogations be videotaped.

The settlement with Hernandez comes less than 10 months after Palo Alto agreed to pay $250,000 to a man who alleged he was pulled from his parked car last year and assaulted by two police officers. A criminal case against those officers is scheduled to begin next month. In that settlement, as with Friday's, the city did not admit any wrongdoing.

Palo Alto Police Chief Lynne Johnson said the Hernandez deal was financially prudent.

"This is just an indication that it's cheaper to settle than to spend money on court or attorney costs," she said.

Palo Alto detective Natasha Powers, who conducted the videotaped interrogation of Hernandez, said she would have liked to have seen the case go to trial because she is confident investigators' methods would have been declared sound.

"It certainly isn't going to change how I do my job," she said.

Contact Jessica Portner at jportner@mercurynews.com or (650) 688-7505.

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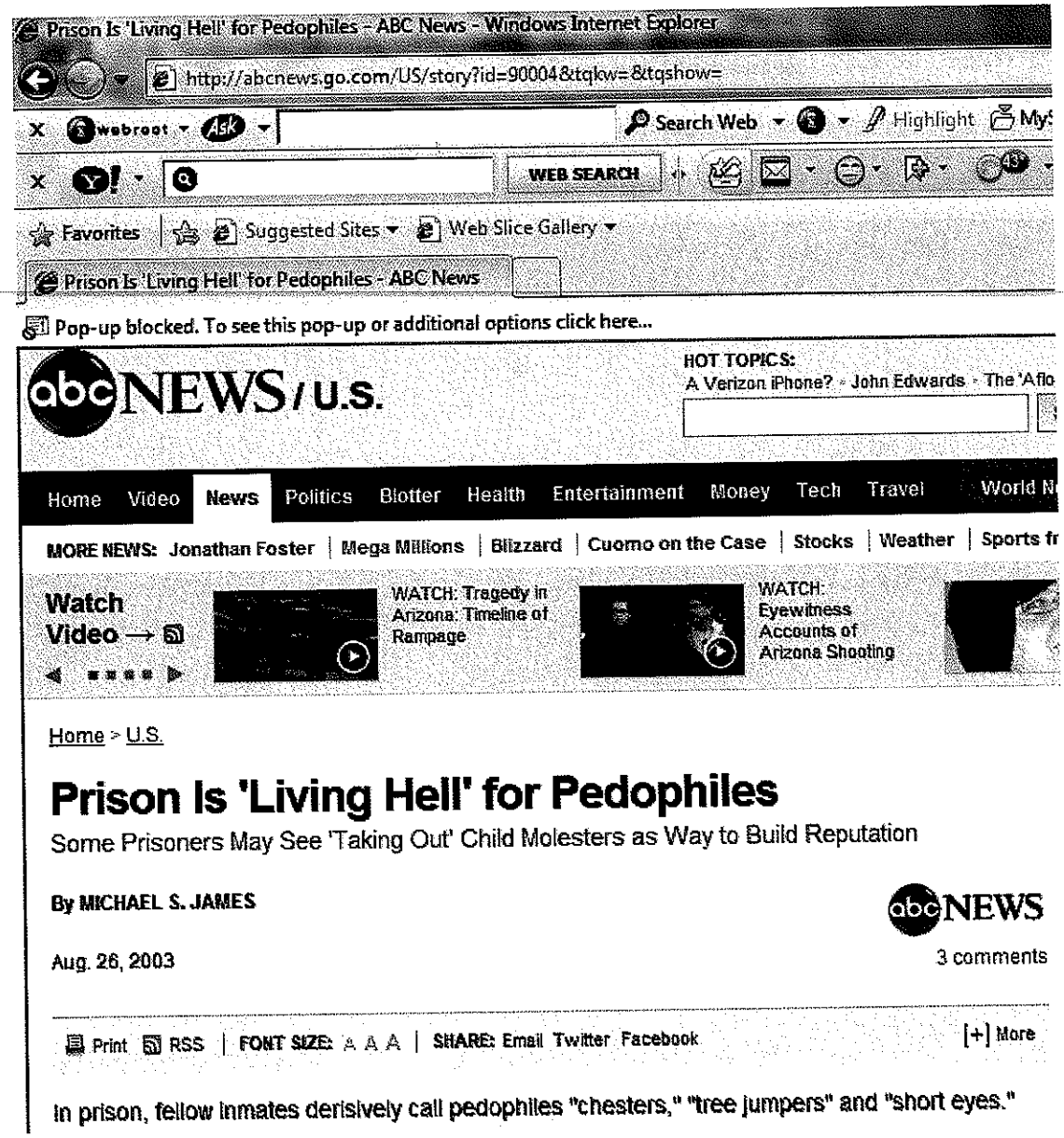


In prison, fellow inmates derisively call pedophiles "chesters," "tree jumpers" and "short eyes."

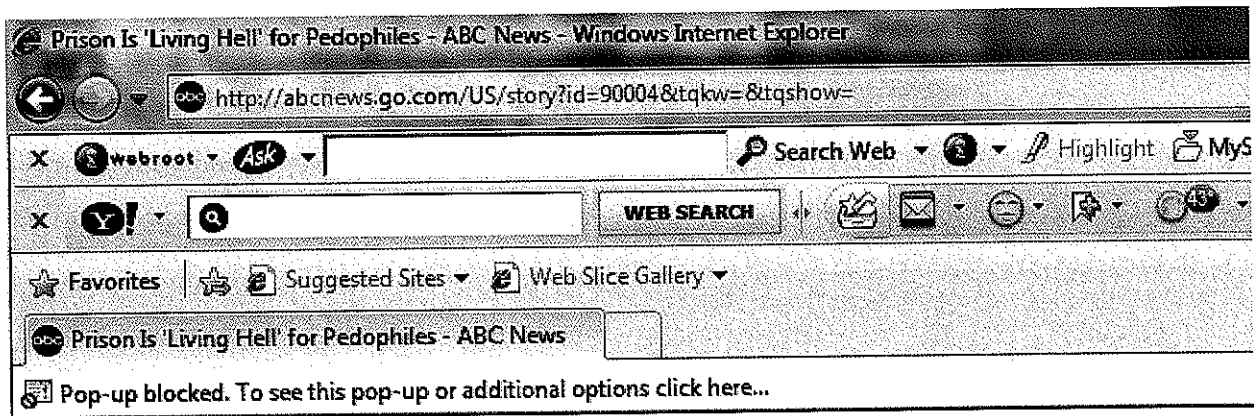
Prison can be a menacing place for child molesters like the former Roman Catholic priest John Geoghan, who was killed in his cell Saturday — or for other alleged pedophile priests working their way through the criminal justice system.

"If you take out a sex offender like this former priest in Massachusetts, maybe the person who took him out thought he'd make a name of himself," said Margot Bach, a spokeswoman for California Department of Corrections. "Taking [a pedophile] out would gain [the killer] a lot more respect among the other inmates."

In fact, Goeghan's accused killer, Joseph Druce, "looked upon Father Geoghan as a prize," and plotted his killing for a month, John Conte, district attorney for Worcester County, Mass., told reporters Monday.

Though prison officials in some Northeastern states question the idea of an automatic social hierarchy among prisoners based solely upon their offenses, most agree that if there is one, child molesters and informants — derided as "snitches" — occupy the lowest rungs.

'They Usually Don't Make It'



'They Usually Don't Make It'

Such offenders, including Geoghan, often are placed into protective custody with other prisoners seen to be under a threat.

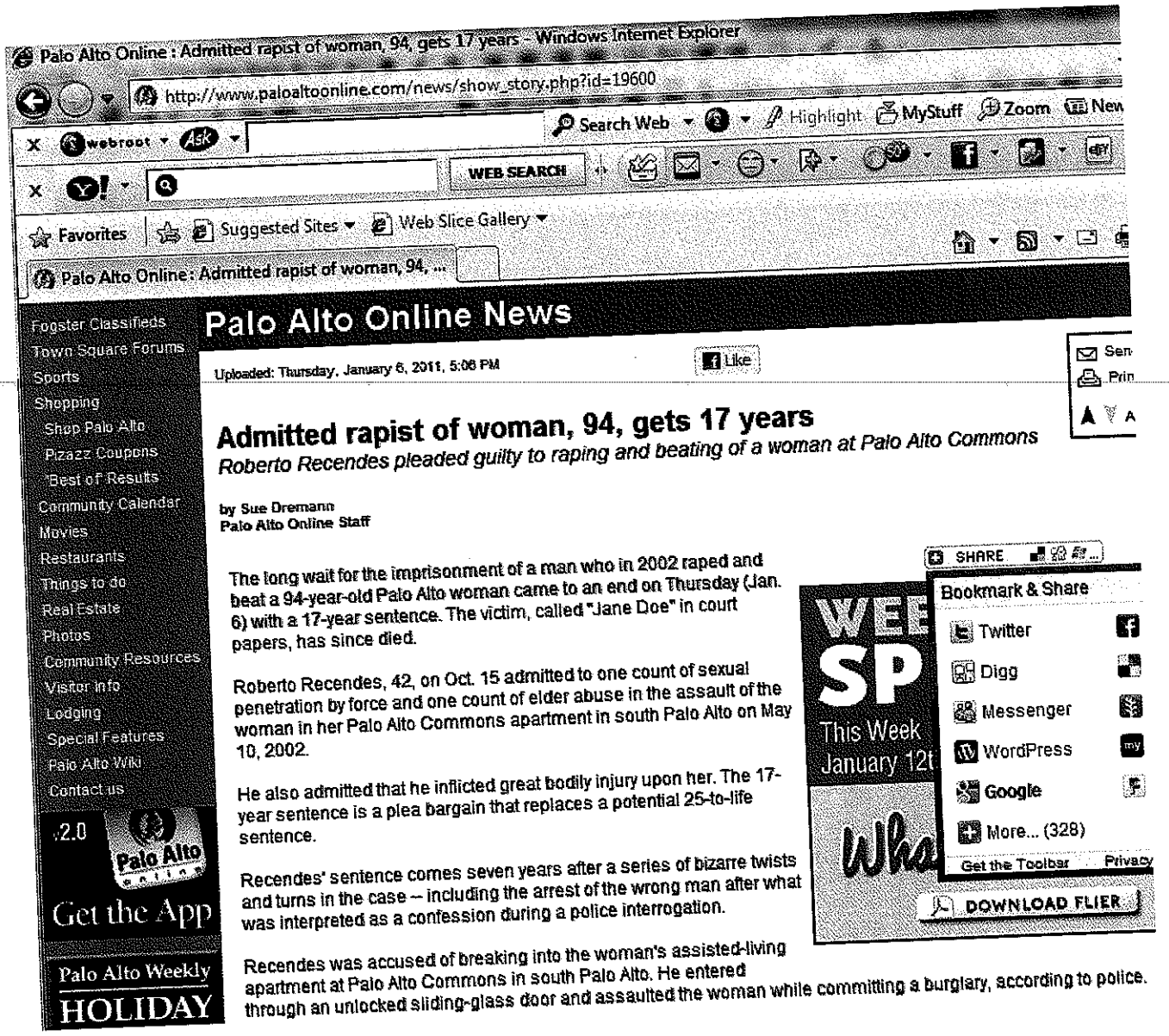
"Once their crime has become known, they usually don't make it" without protective custody, said Lt. Ken Lewis, a corrections officer and spokesman at California's Los Angeles County State Prison. "There's a lot of [pedophiles] that can successfully make it ... as long as they don't brag about their offense."

If they do talk, "they'll get beat up," Lewis added. "In some places he may even get his throat cut."

That potentially could mean a lot of inmates at risk. At the end of 2001, about 83,000 state prison inmates, or about 6.8 percent, were male sex offenders who had committed a rape or sexual assault against a minor under age 18, according to Allen Beck, chief of corrections statistics for the federal Bureau of Justice Statistics.

Just 56 state and federal prisoners out of a population of about 1.3 million were actually killed by other inmates during the yearlong period between July 1999 and June 2000, and it was unknown how many were pedophiles, Beck said.

But unpopular prisoners also can be harassed in other ways.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Admitted rapist of woman, 94, gets 17 years
Roberto Recendes pleaded guilty to raping and beating of a woman at Palo Alto Commons
by Sue Dremann
Palo Alto Online Staff
The long wait for the imprisonment of a man who in 2002 raped and beat a 94-year-old Palo Alto woman came to an end on Thursday (Jan. 6) with a 17-year sentence. The victim, called "Jane Doe" in court papers, has since died.
Roberto Recendes, 42, on Oct. 15 admitted to one count of sexual penetration by force and one count of elder abuse in the assault of the woman in her Palo Alto Commons apartment in south Palo Alto on May 10, 2002.
He also admitted that he inflicted great bodily injury upon her. The 17-year sentence is a plea bargain that replaces a potential 25-to-life sentence.
Recendes' sentence comes seven years after a series of bizarre twists and turns in the case -- including the arrest of the wrong man after what was interpreted as a confession during a police interrogation.
Recendes was accused of breaking into the woman's assisted-living apartment at Palo Alto Commons in south Palo Alto. He entered through an unlocked sliding-glass door and assaulted the woman while committing a burglary, according to police.
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The victim told police she was asleep when a Hispanic man who called himself "Manuel" entered her darkened apartment around 3 a.m. She fought back, scratching her assailant and tearing off his gold chain and watch, which were found in her apartment, according to a testifying officer.

Brooke Barloewen, a supervising criminalist for the Santa Clara County Crime Lab, testified during a preliminary hearing in 2009 that a hair found in an evidence bag containing sheets and blankets from the victim's bed matched Recendes' DNA. A second hair was a mix of DNA from the victim and possibly Recendes, she said.

Fingernail scrapings from the victim and DNA taken from two necklaces also showed Recendes as a possible source, she said.

One necklace, a gold chain with a nugget pendant found on the victim's bed, was identified by Recendes' former common-law wife, Artemesia Garcia, as belonging to Recendes.

Recendes had previously pleaded not guilty and was set to stand trial on the charges, along with an "enhancement" charge of committing sexual assault with great bodily injury during a burglary.

He was convicted of domestic violence against Garcia and sent to prison in July 2004. Upon He was paroled in 2006 and deported to Mexico.

As a convicted felon, he was required to provide a DNA sample upon his release from prison, which was later entered into a database, according to Santa Clara County Deputy District Attorney Brian Welch.

The sample was found to match the crime-scene DNA a few months after his deportation, Welch said.

After a manhunt, Recendes was arrested in Mexico in December 2007 and extradited several months later to Los Angeles. He was returned to Palo Alto and arrested on Aug. 20, 2008.

Police initially arrested Jorge Hernandez, a Gunn High School graduate, for the crime, because a ring found at the crime scene was engraved with his brother's name, "Edwin." Edwin Hernandez lived near Palo Alto Commons and had reported the ring stolen the prior year.

Police said Hernandez "confessed" to the crime during an extended interrogation, but there apparently was ambiguity in what he said that was misinterpreted by the interrogator. DNA evidence later exonerated him completely. Hernandez also emotionally denied the assault when his brother, Edwin, was brought in to talk with him.

http://www.talkleft.com/story/2007/4/
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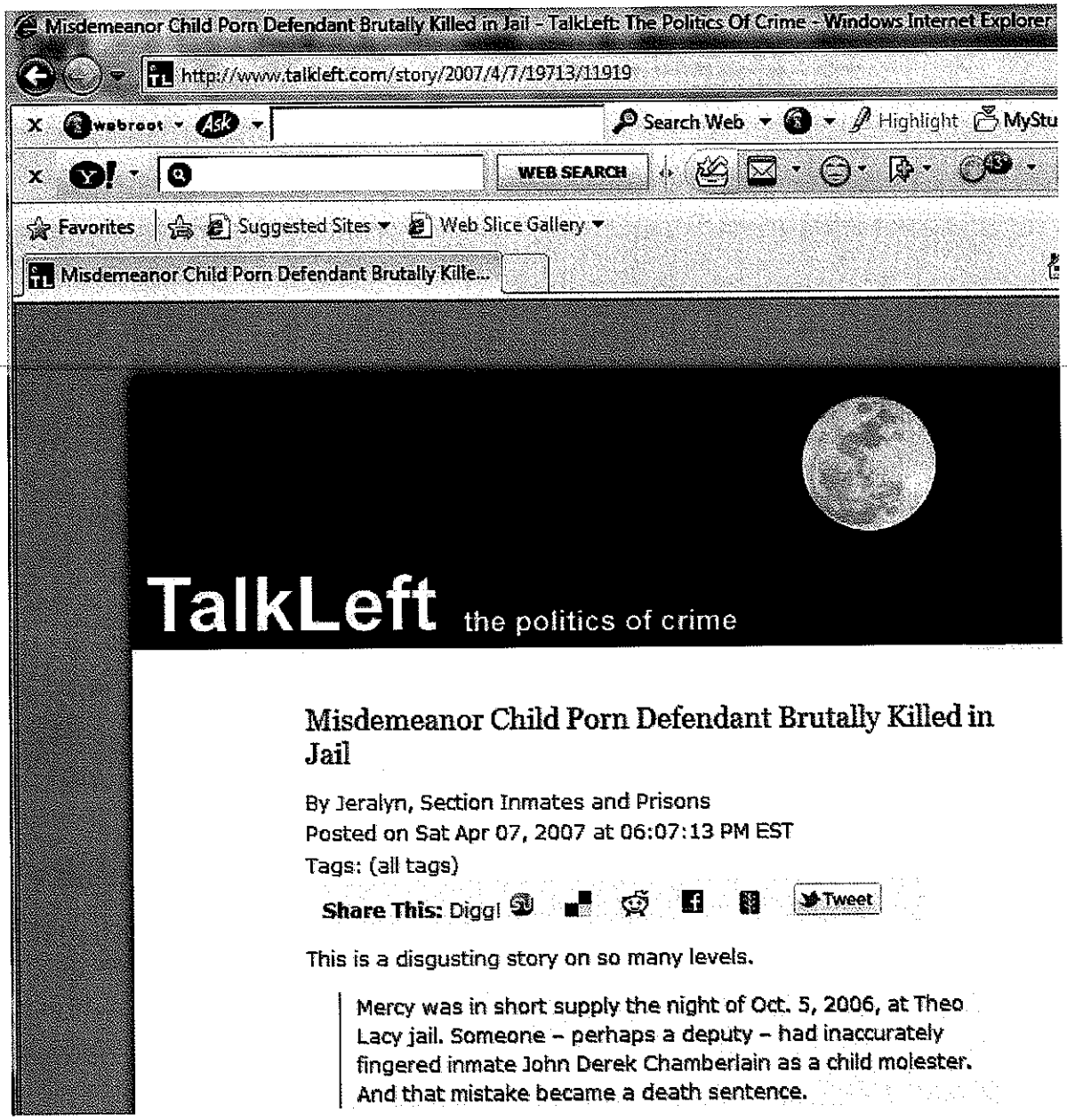
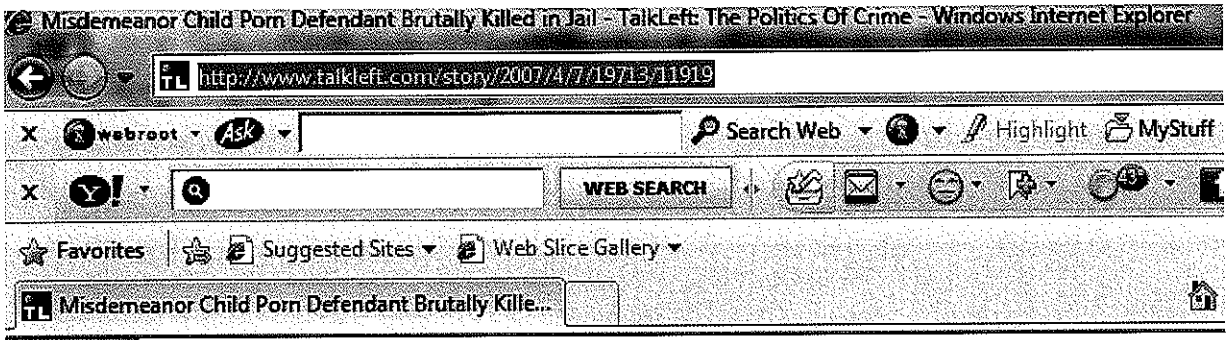




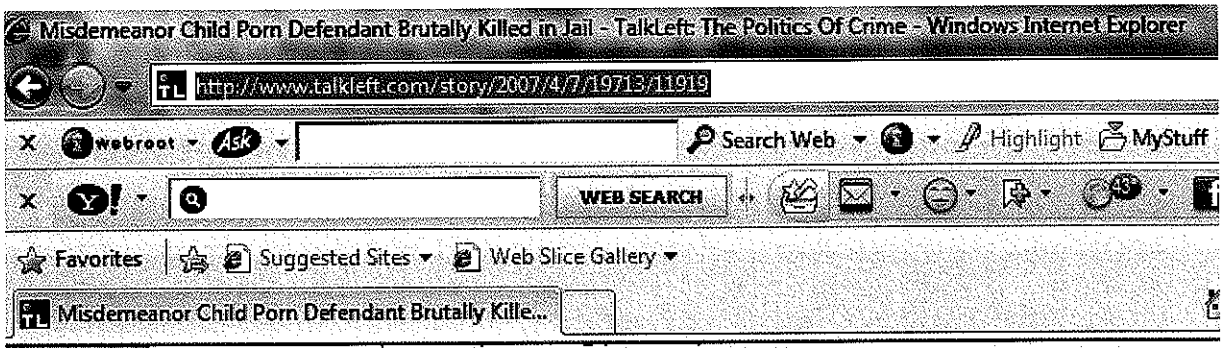
Chamberlain, a 41 year old software engineer, was in custody because he couldn't make bail on a $2,500.00 misdemeanor child porn charge. A deputy inaccurately told other inmates he was a child molester. Prison-style vigilantism took over and as the guard watched television, later saying he wasn't aware anything was going on, Chamberlain was brutally murdered by a gang of inmates.

In the days prior to his murder, Chamberlain had called his ex-girlfriend and his public defender to say he was afraid and being threatened. The public defender called the jail and asked if he should be moved. He wasn't moved.

The details of the grisly murder.

More...

> Chamberlain tried to defend himself but quickly fell to the concrete floor, curling into a ball. "Stop, please, stop," he screamed.
>
> The beating came in waves. As some inmates rested, others took their place. They stomped on his head, holding onto a bunk bed for leverage. One inmate punched Chamberlain so hard that he broke his hand. They used their tennis shoes as blackjacks. Somebody dumped scalding water onto Chamberlain's stripped-down body. Others spit and urinated on him, inserting plastic spoons into his rectum.



> Chamberlain crawled beneath a bed for protection, but they pulled him out, yelling "baby raper." They told him that molested kids hurt just as much. At one point, the attackers huddled to discuss whether someone should rape Chamberlain. As they rested, some of the attackers shook hands with each other, the report said.
>
> Inmates estimated that 12 to 20 people took part in the beating. The rest nervously watched the Dodgers or played dominoes, pingpong and cards. One inmate said the punches sounded like drums thumping. But in their enclosed guard station, Taylor, Chapluk and Le didn't hear the beating.

An investigation is underway, by the Sheriff's office. There's evidence of a potential coverup.

> The investigative file shows that Taylor watched television on duty and that deputies added an entry to the jail log after the death to reflect that Taylor had shown concern for Chamberlain's safety. Moreover, the file shows the department tolerated a jail subculture in which inmates enforce their own laws and inflict punishment on one another.

Why are they investigating themselves?

The Assistant Sheriff says his deputies did nothing wrong.

> Assistant Sheriff Charles Walters, who is in charge of the jails, did say, "There is nothing that leads us to believe there was any wrongdoing by our staff."

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Story Published: Nov 29, 2006 at 11:05 PM PST | Story Updated: Nov 29, 2006 at 11:34 PM PST

A convicted child molester has been beaten to death by other inmates at the state penitentiary, and the child victim's grandfather says his prayers have been answered.

Last April, Kevin Achartz was convicted of molesting a boy and sentenced to life in prison for his third strike. Btu before he was locked up at Walla Walla, he heard angry and emotional words from the victim's family.

Comments (0)

"Perhaps you will be the victim instead of the perpetrator, amen," said the victim's grandfather, Glenn Heyes, in court.

Achartz died in the hospital on Thanksgiving day, and Heyes said it was the best Thanksgiving present he could ask for.

"I prayed him to meet his maker. I did," he said. "He got justice because that's God's justice for what he's done to humanity."

The victim's mom, in a letter written from her home in Alaska, disagreed with her father.

"Kevin Achartz was someone's child also, and although he fell from grace, he did not deserve to be beaten to death. He was not given a death sentence by our judicial courts and should never

"Kevin Achartz was someone's child also, and although he fell from grace, he did not deserve to be beaten to death. He was not given a death sentence by our judicial courts and should never have had to die without such sentence imposed on him," she wrote.

Glenn Heyes said he only has sympathy for Achartz' family.

"I'm a mean sob but I tell you what. I sympathize with them and I'm sorry," he said.

But he also predicted in court that Achartz, a convicted child molester, would not last six months in prison. And he was right, almost to the day.

"He hasn't got the whole nine yards yet because he has hell to go to now," he said.