December 17, 2011

Office of the Chief Trial Counsel/Intake
The State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

This is a Supplement to the complaint filed on December 5, 2011 regarding the violations of the laws and State Bar Rules by **Attorney Don Larkin, Bar # 199759.**

Attached to this Supplemental Complaint are Exhibits 90 through 95.
More Significant Editing Flaws
Taser Gun Manual
Taser Data Port Manual
Taser Camera Manual
Palo Alto Use of Force Policy
Palo Alto Evidence Policy
Palo Alto MAV Specifications/Policy
Evidence of the Complicity of **Attorney Michael Gennaco, Bar # 112969.**

As pointed out in my initial complaint, **Violation Number Twenty-One: Violating Government Code 6250 and Bus. & Prof. Code 6068**, attorney Don Larkin failed to provide a response to my lawful request of public information within ten days pursuant to **Gov. Code 6253(c)** and thereby violated **Bus. & Prof. Code 6068(a)** for failing to uphold the law, **See Exhibit 93.** Since my initial submission, Attorney Don Larkin sent me an email stating that he never received my initial request in an attempt to cover up his violation, **See Exhibit 94**.

Mr. Larkin has verified that he violated **Gov. Code 6253(c)** and then tried to cover up his violation. Mr. Larkin cannot claim that he did not receive my email, for we have exchanged well over thirty and maybe as many as fifty emails since August 2011 and this is the first time that Mr. Larkin has claimed that he did not receive one.

Additionally on December 2, 2011 I informed Mr. Larkin that he receive my November 17, 2011 CPRA request and providing it to him once again. Furthermore I re-submitted my request to Mr. Larkin and his immediate supervisor, Palo Alto City Attorney Molly Stump, Bar # 177165, specifying exactly what I was requesting, **See Exhibit 95.**

As of the date of this correspondence, Mr. Larkin and Ms. Stump have not responded to my December 2, 2011 CPRA request and therefore violated **Government**

Code 6253(c). In violating Gov. Code 6253(c) Mr. Larkin and Ms. Stump have violated **Business and Professions Code 6068(a)** a **SECOND** time/ violation number **TWNETY-TWO.**

TWENTY-THREE: SUPRESSION OF USE OF FORCE REPORT PREPARED BY SGT. POWERS

The Use of Force Report of the March 15, 2008 incident was prepared by Sgt. Natasha Powers, **See Exhibit 96**. According to Discovery Requests submitted by my former attorney David Beauvais, Exhibits 2 and 2B Attorney Don Larkin was lawfully required to provide the Use of Force Report pursuant to Penal Code Pen. Code, § 1054.5, § 1054.1, *Brady v. Maryland* (1963) 373 U.S. 83, and State Bar Rule 5-220. This report was never provided to my attorney or me during my criminal case. It was first provided on September 3, 2009 as a result of a Discovery request in my Civil Case, C09-02655. By not providing this Use of Force Report, Attorney Don Larkin violated California Penal Code , § 1054.5, § 1054.1, *Brady v. Maryland* (1963) 373 U.S. 83, and State Bar Rule 5-220.

On October 20, 2010 Attorney Steven Sherman, Bar # 113621, conducted a deposition of me, Joseph Anthony Ciampi. During this deposition Mr. Sherman coerced me to answer questions that I believe I did not have to answer by threatening me that if I did not answer the questions he would go to the court and obtain an order from the court demanding that I answer the questions and force me to pay the additional deposition costs including the court reporter, the videographer and Mr. Sherman's time as well. I cannot cite all of it because I do not have a copy of the deposition. However I did take notes of he Deposition transcript and here are some of the statements made by Mr. Sherman and myself.

Mr. Sherman asked me about college, how many years did I attend. I responded approximately two years, **Pg. 17 of the Deposition Transcript**. Mr. Sherman then asked me what college I went to. I did not believe that it was relevant to the case and therefore informed Mr. Sherman as such. Mr. Sherman asked me when I went to college, again I said that it was not relevant to the case, **Pg. 18 of the Deposition Transcript.**

Mr. Sherman then asserted to me that there was not a judge in the world that is not going to make me answer. Mr. Sherman and I go back and forth over the issue as I keep informing him that my answer to his questions regarding my educational background is not relevant to what occurred on March 15, 2008, **Pgs. 19-21 of the Deposition Transcript.**

Mr. Sherman stated that the court could order me to pay for the expenses of retaking the deposition and asks me if I understand that which I replied that I did. Mr. Sherman then asked again the name of the college I went to in which I responded that, "it's not relevant." **Appx. Pg. 23 lines 17-22 of the Deposition Transcript.**

Mr. Sherman than stated, *"that's the only answer I going to get of your correct?"* I replied yes.

Mr. Sherman then stated, *"Okay. You understand I can still go to the court, file a motion and seek costs and fees?"*

I replied yes, **See Lines 21-25 of Pg. 23 of the Deposition Transcript.**

Mr. Sherman then asked me again what years I went to college in which I replied not relevant, **Lines 1-4 of Pg. 24 of the Deposition Transcript.**

Ultimately I caved in and answered the questions under the weight of Mr. Sherman's coercive tactic because he stated that he had been playing lawyer for over 25 years, **Line 15 of Pg. 25 of the Deposition Transcript.**

Whether or not a court would order me to answer Mr. Sherman's questions is not for Mr. Sherman to assume nor to use that assumption to coerce me to answer those questions by threatening me with the costs associated with another deposition. In threatening me with sanctions, an administrative charge to gain an advantage in the civil case, Mr. Sherman violated **State Bar Rule 5-100.**

Additionally, Mr. Sherman stated the following during the deposition taken from Pgs. 17 through 20 of Court Document 160:

BELOW FROM THE OCTOBER 20, 2010 DEPOSITION TRANSCRIPT, (Pages Approximate):

From Page 200

Sherman: ***"I'm going to really make it obnoxious for you. "Assuming God came down, and God said,*** *"These videos have not been altered," okay, the MAV video. Would then it seem reasonable to you that the taser videos have not been altered.?*

Ciampi: *That's –it's still speculative. I can't – you know, it's a hypothetical question, you know.*

Sherman: *"It is."*

Ciampi: *Yea.*

Sherman: *But assuming those facts.*

Ciampi: *I can't answer that question, because it's not what happened.*

Sherman: *And I appreciate that, and I understand that. I guess my question is better asked, since everything seems to flow –*

Ciampi: *Unbelievably so yes.*

Sherman: *Unbelievably so from your perspective. But from my perspective, since everything seems to flow, if – and I'm not saying it is, I'm – hypothetically, if the MAV videos have not been altered, and God comes down himself and says, "These videos have not been altered," would it stand to reason that the MAV videos – that the taser videos also have not been altered."*

From Page 201

Ciampi: *God saw everything, and – he's not going to say that.*

Sherman: *But if he did, would that make sense?*

Ciampi: *He wouldn't. He wouldn't if.*

Sherman*:* *But hypothetically if he did.*

Ciampi: *He wouldn't hypothetically.*

Sherman: *All I'm trying to – let me – let me try it this way. Will you –*

Ciampi: *I'm not going to go there. I mean, because it is what it is, and –*

Sherman: *I agree with that statement.*

From Page 202

Ciampi: *So reasoning would deduce that to that they would also remove the same footage from the MAV that they removed from the taser video.*

Sherman: *Okay. Let me ask it your way. If God came down and said, "oh, these taser videos have not been altered" –*

Ciampi: *He wouldn't do that.*

Sherman: *I know. Hypothetically speaking. Hypothetically speaking, not facts, not your beliefs, not your –*

Ciampi: *But this is supposed to be about facts.*

Sherman: *Well, but I'm also entitled to ask you hypothetical questions without – and if you can't answer them, then please, then you can't answer them, and you, you know –*

Ciampi: *Okay.*

From Page 203

Sherman: *I don't want you. But assuming – it's sort of like when I made the representation to you about, you know, a judge most likely ordering you to answer the question about school and basic stuff, that is just – you know, it's me saying trust me on this one. But that was reality.*

Sherman: *What I'm now asking you about is not what you believe to be reality, so it's a made-up question. It's a – it's a what if, what if, what if type question. That's why it starts off with "hypothetically speaking." It's not reality as far as you're concerned, but hypothetically speaking, made-up question. If the MAV – I'm sorry. I want to do it your way.*

Sherman: *If the taser videos have not been altered, would it also not seem unreasonable that the MAV videos have not been altered, because they all have to be altered, right?*

Ciampi: *Well, they all are. Excuse me. They all are altered, yes.*

Sherman: *According to you they have to be, otherwise one – they would not match, correct? They would not flow.*

Ciampi: *Correct.*

Sherman: *Okay. I'll be happy with that answer, beause I think that's all we're going to be able to get,*

From Page 204

Sherman: ***Because you – God is not going to come down, and you're not going to believe God even if he did.***

Ciampi: ***Oh, I believe God, yeah. He saw everything.***

Sherman: *Okay. Good.*

Ciampi: *One day we will all see that recording.*

Sherman: *Probably.*

END OF TRANSCRIPT

A copy of the Deposition may be obtained from Dan Mottaz Video Production 182 Second St. San Francisco, California—phone/ 415-624-1300 and Beach Court Reporting 17822 17th Street Suite 408 Tustin, California—phone 1-714-368-1010. Additionally, the December 17, 201 inspection was videotaped by McMahon Video of San Jose, California. The video of that inspections is also available from Beach Court Reporting.

For a quick and comprehensive understanding of the complicity of Judge Lucy Koh's concealment of the crimes of the Palo Alto Police and attorneys Steven Sherman and Don Larkin review Court Documents 169, 175, 200 & 209.

Additionally I have uploaded these complaints and all of the evidence onto a website for you to easily access at your convenience.
The Website is: www.larkinbarcomplaint.weebly.com

Given that Attorney Don Larkin committed significantly more egregious acts than Attorney Benjamin T. Field, Bar No. 168197; **Case Nos. 05-O-00815-PEM (06-O-11153; 06-O-12173); 06-O-12344 (Cons.),** it should be expected that Mr. Larkin receive a much more severe level of discipline than handed down to Mr. Field. **SEE BELOW:**

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (Chadwick v. State Bar (1989) 49 Cal.3d 103, 111; Cooper v. State Bar (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved four criminal matters that occurred in 1995, 2003 and 2005. The standards provide a broad range of sanctions ranging from actual suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. The applicable standards in this matter are standards 1.6, 2.3 and 2.6. The standards, however, are only guidelines and do not mandate the discipline to be imposed. (In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) —[E]ach case must be resolved on its own particular facts and not by application of rigid standards.‖ (Id. at p. 251.) While the standards are not binding, they are entitled to great weight. (In re Silverton (2005) 36 Cal.4th 81, 92.)

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person must result in actual suspension or disbarment. As discussed above, respondent's suppression of evidence and misrepresentations to the court in the Auguste and Ballard matters were acts of moral turpitude. Also, his rebuttal closing argument in the Shazier matter was an act of moral turpitude.

Standard 2.6 provides that culpability of supporting the United States and California law, disobeying court orders and being disrespectful to the court will result in actual suspension or disbarment, depending on the gravity of the offense or the harm to the client.

The State Bar urges three years' actual suspension while respondent argues that a dismissal or public reproval would be proper. Both parties cited to two Supreme Court cases involving prosecutorial misconduct in support of their recommended level of discipline – Noland v. State Bar (1965) 63 Cal.2d 298 [30 days actual suspension] and Price v. State Bar (1982) 30 Cal.3d 537 [two years actual suspension].

In Noland, a prosecutor counseled and aided in the unauthorized removal of the names of ―pro-defense‖ prospective jurors from the official jury list. His ex parte tampering with the selection of potential jurors to gain advantage at subsequent trials constituted the calculated thwarting of objective justice. The Supreme Court actually suspended the attorney for 30 days, finding that he had achieved no insight into the grave significance of his actions and that he must be discouraged from attempting any further zealous abuses of judicial administration. (Id. at p. 303.)

In Price, a prosecutor altered evidence in a criminal trial and attempted to prevent discovery of his misconduct by discussing the alteration with the judge in the absence of opposing counsel and communicating to the defendant – after conviction but before sentencing – an offer to seek favorable sentencing in exchange for defendant's agreement not to appeal the conviction. Because the attorney had no prior record of discipline in 11 years of practice, he was under mental and emotional stress, he was cooperative and remorseful throughout the proceedings, and witnesses testified to his good reputation as lawyer and his active involvement in civic affairs, the Supreme Court found that the mitigating evidence militate against disbarment. Thus, he was suspended for five years, stayed, placed on probation for five years, and actually suspended for two years. The court finds guidance in Price. Respondent similarly suppressed evidence in two criminal matters. But respondent's mitigation is not as compelling as that of the attorney in Price. Like Price, respondent also had an array of character witnesses testified to his good moral character and extensive public service.

But unlike Price, respondent has shown only some remorse or admitted to some mistakes made. He has not fully recognized his wrongdoing or its significant harm on the administration of justice and public confidence in the legal profession, particularly in view of his position as a prosecutor and the clear and convincing evidence that he deliberately withheld discoverable evidence favorable to the defense and that he illegally

obtained evidence without court approval. ***Respondent lacks the understanding or appreciation that his job carries a heavy burden and that it is his responsibility as a prosecutor to ensure that —justice shall be done.‖ Indeed, very high ethical standards are demanded of a prosecutor; respondent could not afford to be inattentive in carrying out his duties. Yet, respondent chose to ignore his ethical obligations and to be less than candid with the defense and the court.*** *His overzealous determination to punish the bad guys at all costs needs to be re-evaluated. In his closing argument in this proceeding, respondent still held fast to the position that he never intentionally did anything improper. He has not fully accepted responsibility for his misconduct. As a prosecutor, he knew or should have known that he —is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer.‖ (Berger v. United States (1935) 295 U.S. 78, 88.)*

It is well established that a prosecutor must be impeccably professional for he must meet standards of candor and impartiality not demanded of other attorneys. Prosecutors are held to an elevated standard of conduct because of their —unique function … in representing the interests, and in exercising the sovereign power, of the state.‖ (People v. Hill (1998) 17 Cal.4th 800, 820.) —The duty of the district attorney is not merely that of an advocate. His duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial … In the light of the great resources at the command of the district attorney and our commitment that justice be done to the individual, restraints are placed on him to assure that the power committed to his care is used to further the administration of justice in our courts and not to subvert our procedures in criminal trials designed to ascertain the truth.‖ (In re Ferguson, supra, 5 Cal.3d 525, 531.)

Here, it is clear that respondent failed to be candid and truthful in all dealings with the court and counsel. His overzealousness to convict and punish defendants who had murdered, robbed and raped obstructed his understanding of a prosecutor‘s special duty to promote justice and to seek truth. Consequently, respondent committed serious misconduct that warrants a more severe level of discipline than the two years of actual suspension imposed in Price or the three years as recommended by the State Bar.

In fact, disbarment would be the appropriate degree of discipline to be imposed in this case but for respondent's compelling mitigation – strong good character evidence and extensive pro bono activities. *Moreover, in California cases where disbarment was ordered, the attorneys were criminally convicted for their crime of bribery or perjury. (See In re Bloom (1977) 19 Cal.3d 175; In re Weber (1976) 16 Cal.3d 578; In re Allen (1959) 52 Cal.2d 762; and In re Hanley (1975) 13 Cal.3d 448.) Here, there was no criminal conviction for respondent‘s misconduct.*

Respondent's suppression of exculpatory evidence, misrepresentations to the court and disobeying court orders do not involve personal benefit or pecuniary gain and thus disbarment is not warranted. But, the case law and the standards provide that placing respondent on a long period of actual suspension would be appropriate to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. Because of the high ethical standard demanded of a prosecutor, respondent's prosecutorial misconduct and abuse of power in not one but four criminal matters warrant an unusual lengthy period of actual suspension, short of disbarment.

After balancing all relevant factors, including the underlying misconduct and the mitigating and aggravating circumstances, the court concludes that a four-year actual suspension would commensurate with the gravity of respondent's act and is necessary for the protection of the public, the courts and the legal profession. The court is mindful that four years' actual suspension would be detrimental to respondent's legal career as a prosecutor. But the need to uphold the administration of justice and the ―professional keeping of lawyers,‖ and not let those with power go rogue in violation of the constitutional rights of defendants, guilty or not, preempts respondent's personal career.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent ***Benjamin T. Field****, be suspended from the practice of law for five years, that execution of that suspension be stayed, and that respondent be placed on probation for five years, with the following conditions:*

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