

RAINS, LUCIA & WILKINSON LLP

OAKLAND “RIDERS” ACQUITTED JURY RENDERS NOT GUILTY VERDICTS ON 8 COUNTS

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On its 56th day of deliberations, the jury in the Oakland police misconduct trial reached *not guilty* verdicts and acquitted three former Oakland police officers, Clarence “Chuck” Mabanag (represented by LDF panel attorney and lead defense counsel **Mike Rains** of Rains, Lucia & Wilkinson LLP), Jude Siapno (represented by LDF panel attorney **Bill Rapoport**) and Matthew Hornung (represented by LDF panel attorney **Ed Fishman**), on eight counts alleging that they assaulted and falsely arrested Oakland residents. The jury deadlocked on the remaining 27 charges, and a mistrial was declared on those counts.

All three former Oakland officers were provided representation through the PORAC Legal Defense Fund in what has become known as the longest criminal trial in Alameda County history.

Testimony in the trial began over a year ago, following three and one-half months of jury selection, which involved the individual questioning of 685 jurors due to extensive and inflammatory pretrial publicity. The trial itself consumed nine months and involved the testimony of over 90 witnesses and the introduction of over 400 items of evidence. The commitment of the Legal Defense Fund to provide all of the resources necessary to properly defend these charges is, without a doubt, one of the critical elements of this successful outcome.



Defense attorney Mike Rains speaks to reporters outside the courthouse following the verdicts

The criminal charges in this case arose out of arrests made by the three Oakland police officers between June 14 and July 3, 2000, and centered around eight separate incidents during this time frame. The case involved 26 separate felony charges, six separate counts alleging a criminal conspiracy, 40 overt acts alleged in furtherance of the conspiracy, and the introduction of numerous “uncharged” offenses to establish the defendants intent, or alleged similar modus operandi. The charges basically alleged that the officers conspired to falsely arrest and charge suspects during a series of arrests made of suspected drug dealers. The charges alleged that the officers wrote false police reports to support the arrests, and in several instances, engaged in excessive

force either during or immediately following the arrests. The defendants vehemently denied the allegations.

The Verdicts

The jury found all three officers, Mabanag, Siapno and Hornung ***not guilty*** of Penal Code section 182(a)(2), which alleged a conspiracy to falsely arrest or charge a drug dealer named Delphin Allen on June 27, 2000.

The jury also found defendant Jude Siapno ***not guilty*** of kidnapping Delphin Allen (Penal Code section 207(a)) and ***not guilty*** of Penal Code section 245(a)(1), allegedly assaulting Allen using force likely to produce great bodily injury.

Finally, the jury found defendant ***Chuck Mabanag not guilty*** of three counts of presenting false time sheets.



Post-verdict

Of the 27 remaining charges on which the jury deadlocked, the jurors indicated in post-trial proceedings that the majority of the panel had leaned toward acquittal. The jury foreman and three other members of the jury told the San Francisco Chronicle that five of the 12 jurors believed that the officers were “pretty much innocent of all charges.”

The verdicts were due in large part to the extensive trial preparation and effective cross-examinations of the prosecution’s key witnesses. Most jurors did not believe the testimony of the prosecution’s star witness, former Oakland rookie Keith Batt, and believed the defense assertions that the officers were framed by top brass and

overzealous prosecutors.

As one juror put it, the rookie officer who had accused his fellow officers of wrongdoing was “one of the biggest liars” among the prosecution witnesses. Another told the San Francisco Chronicle that “He admitted that it did not bother him to lie. He had no morals.”

A female juror told the Chronicle that she felt the officers were scapegoats and stated: “It was politically motivated from the very beginning. There was underlying feeling among many of us that this was all crap.” The jury foreman agreed. “We looked at all the evidence and it’s clear the prosecutors brought us a bogus case . . . This case was a political effort to blame all the problems in the Oakland Police Department on three officers.” The foreman and two other jurors agreed with defense attorneys that the only victims in this case were the three fired officers.

The Rookie’s Complaint that Started It All:

The criminal allegations initially arose from an Internal Affairs interview of former Oakland Police Officer (now Pleasanton Police Officer) Keith Batt who, after typing and signing a written resignation “for personal reasons”, stated that the “actual” reason for resigning was his need to disassociate himself with inappropriate behavior he claimed to have observed committed by the defendants during the two-and-one-half weeks he was being trained by his Field Training Officer, Chuck Mabanag.

Despite Batt’s claims that Mabanag had engaged in misconduct and directed him to falsify reports, he presented Mabanag with a bottle of wine after resigning but before reporting the alleged misconduct. Batt also testified that he was not bothered by writing false police reports, and that he did not “lose sleep” over having people who were falsely accused go to jail.

By all accounts, Batt told virtually no one he

talked to (friends or family) that Mabanag or others were involved in criminal wrongdoing during the more than two weeks he worked with Mabanag. These allegations did not get made until after he had resigned, the date of which coincided with the beginning of the week Batt was to start actually having written performance evaluations done by his FTO, Mabanag.

At the trial, the defense called Keith Batt's brother and a San Francisco police officer Batt had talked to that Batt, and both testified that Batt had not complained to his brother about criminal wrongdoing by Mabanag or others, but that Batt did indicate that the officers working in West Oakland were "lucky to get out of there alive" every night, that Batt had not been used to working around or being around African-Americans, and that he went home after every shift "scared and nervous."



Keith Batt

Batt also testified during trial that he destroyed documents and evidence that could have exonerated Mabanag. Although Batt alleged that he had been directed by Mabanag to revise draft reports to include false information, never produced copies of those drafts because he had destroyed them.

To support his claims that Mabanag directed him to prepare false reports, Batt enlisted the assistance of his academy classmate, Steve Hewison. Although Batt repeatedly denied ever telephoning Hewison on even one occasion, the telephone records subpoenaed by the defense revealed that Batt and Hewison had several

lengthy telephone conversations, including one the day immediately following Batt's initial internal affairs interview. In comments made after the trial was concluded, the jurors told defense counsel that they did not believe the testimony of either Hewison or Batt.

Although the prosecution continually tried to portray Batt as a "brave and courageous" whistleblower, the defense successfully showed that Batt's allegations had no credibility whatsoever. One juror commented that Batt was "one of the biggest liars" among the prosecution witnesses.

The Alleged "Victims"

All of the alleged "victims" who were arrested by the defendants were called as prosecution witnesses, with the exception of one individual, who was in custody in Reno, Nevada on drug charges. All of the alleged "victims" who were supposedly falsely arrested and falsely accused of possession of drugs had records of prior arrests and convictions for drug related offenses, and a number of the victims had been arrested previously by one or more of the defendants in the case. Many of the alleged victims were on probation/parole with search clauses. Jurors stated that they dismissed, or gave little weight, to the admitted drug sellers and users who testified at the trial.

In all but one of the incidents, the alleged victims had been contacted, detained, and/or arrested by the defendants while standing on corners in West Oakland which had been identified by the Oakland Police Department as "drug hot spots." All of the arrests occurred during the graveyard watch, the earliest arrest being at 10:34 p.m., and the latest being at approximately 3:15 a.m.

The defense, with the assistance of Investigator Mike Schott, was able to learn that a number of the alleged "victims" had been "networking,"

before they were initially interviewed, and that an alleged percipient witness to one of the most serious charged offenses also happened to be living in the same location with an alleged victim in another charged offense during the same time period. Had the defense investigation not uncovered this information, nothing learned from either the Internal Affairs investigation or from the prosecution's own "independent" investigation would have disclosed this information.

The Flawed Internal Investigation

The defense also discovered that two allegedly "independent" but similar sounding accusations of excessive force against defendant

Siapno were the product of Internal Affairs interviews between two victims which occurred in the afternoon of July 7, 2000, during the same period of time that Keith Batt had returned for a second Internal Affairs interview, and during a period of time when two other alleged "independent" percipient witnesses were also present in the Internal Affairs office.

Not only was there suspected collusion between the alleged prosecution "victims" and alleged percipient witnesses, but interview tactics by the Internal Affairs Investigator disclosed other irregularities; the initial approximate three and one-half hour taped interview of Officer Batt on July 5, 2000 was preceded by an "off tape interview" which also lasted about the same time period - three hours. According to the Internal Affairs Investigator, Batt gave an account of some incidents while "off tape" which was different than the account he gave when the tape



*The Rider defense team:
Mike Rains, Ed Fishman and
Bill Rapoport*

was turned on. Even so, no attempt was made by the Internal Affairs Investigator to ascertain why Batt's account of the same incident had changed in only a short period of time.

Despite the fact the Internal Affairs Investigator interviewed approximately 57 witnesses in a span of three months, only one page of handwritten notes was ever produced - he claimed he took no handwritten notes of interviews (other than the one page).

The alleged victims and Internal Affairs Investigators admitted that interviews were conducted "off tape" before a tape recorder was turned on and interviews were recorded. One of the alleged victims conceded that, before the tape recorder was turned on, the Internal Affairs Investigator advised him of assertions made by the "rookie" officer (Batt) and then asked if he agreed with those assertions. When he agreed, the tape recorder was turned on and an interview was recorded.

During the course of the trial, in approximately January 2003, the prosecution provided to the defense, for the first time, an alleged "draft" Internal Affairs report which was allegedly done in September 2000. The report suddenly surfaced just prior to the testimony of the lead Internal Affairs Investigator, who had admitted during the preliminary hearing during the summer of 2001 that Matthew Hornung had not been included as an accused officer in an initial "draft report" which he had prepared, and that Hornung had only been added as an accused officer after the Internal Affairs Lieutenant directed the investigator to do so. The alleged "draft" report given to the defense for the first time in 2003 showed Hornung's name as an accused officer and the Internal Affairs Investigator stated that his earlier preliminary hearing testimony was simply wrong and that he had been confused.

In contrast, the defense demonstrated, through the use of subpoenaing the Internal Affairs

Investigator's overtime records as well as closely examining the content of the alleged September 2000 "draft" report itself, that it had been fraudulently produced in a pathetic effort to bolster the credibility of the Internal Affairs Investigator and to eliminate the claim of defendant Hornung that he was added as a defendant in this in an effort to "silence" his criticisms of accusations made by Batt and Hewison.

In post-verdict commentary, many jurors reported that they felt that the internal affairs investigation done by the Oakland Police Department was so shoddy that it was sapped of credibility. Several jurors also stated that the internal affairs sergeant was untruthful in his testimony, stating that "he lied to us three times in one afternoon."

Political Scapegoats

The defense contended that all of the defendants were being unfairly targeted for going to work and doing their job - which involved carrying out mandates starting with Oakland Mayor Jerry Brown, the City Manager, and recently appointed Police Chief Richard Word.

The evidence showed the Brown, after becoming Mayor of Oakland in January 1999, replaced then Police Chief Joe Samuels with Richard Word, who, as a condition to taking the job, pledged that the Department would reduce crime in a single year by 20% (the highest previous one year decrease in crime before that was 11%).

After Word took office, with the assistance of the Mayor, the City Manager, and other outside consultants (including now LAPD Chief Bill Bratton) the Department instituted an aggressive program to combat street-level drug dealing called "Project SANE" (Strategic Application of Narcotics Enforcement).

Although Project SANE was "officially" in existence for only two or three months in the fall

of 1999, it was, according to written communications by the Chief and the Patrol Captain, to be continued after that. Huge amounts of arrests for drug related offenses were made by patrol officers and specialized officers working in the community policing unit during the initial period of Project SANE. The Department kept statistical production of the various officers and their units to track the number of drug related arrests and its impact on the crime rate.

Both during and after Project SANE, officers were corrected and encouraged in wanting to "take back the streets." Officers were specifically instructed by the Police Chief to make the community "hostile to criminals and those contemplating criminal activity." Unrefuted testimony was elicited that the Deputy Chief in charge of Project SANE told officers at line-up not to worry about "putting hands on people - we'll back your play."



The Police Department's final "Plan of Action" which was produced in a written document in December 1999, advised officers that **"no drug market goes untouched - participants will be arrested."** The same document further advised officers that **"disruptive activity and social disorder in the area of drug markets will not be allowed."** Finally, the same document announced that the Department had a **"zero tolerance for street-level drug dealing."** (This "zero tolerance" policy was announced despite earlier warnings by consultant Bratten that such a term should never be employed in the area of drug enforcement because of its potential to encourage officers to engage in oppressiveness and inappropriate behavior).

The defendants all admitted that they had, while

assigned to uniformed patrol duties on the graveyard shift in West Oakland, engaged in “directed patrol” activities under the direction and supervision of police administrators, in which they were instructed to utilize semi-marked police vehicles and/or undercover vehicles to “sneak up” on suspected drug dealers at selected “drug hot spots” and make “walking stops” on the suspected drug dealers in an effort to develop probable cause for detentions and arrests. The officers were also instructed to write Field Contact Cards on everyone contacted and to make it as uncomfortable as possible for the drug dealers and/or the drug buyers to continue to do business on the identified corners.

The defense demonstrated that Mabanag, Siapno, Hornung and Vasquez were simply **scape goats** to deflect inquiries or criticism away from the “zero tolerance” programs initiated by the Mayor and the Police Chief to achieve the unprecedented crime reduction in the City. Evidence showed that the Internal Affairs investigation was completed on or about September 22, 2000, the same day the Police Chief held a press conference announcing the existence of the investigation and insisting that the officers would be given appropriate “due process” once the investigation was completed. Despite these claims, Mabanag, Siapno and Vasquez got a notices of Intent to Terminate *only six days later* (September 28, 2000) and Department documents revealed that not a single supervisor or administrator at the Oakland Police Department had read or reviewed the extensive Internal Affairs investigation or its numerous attachments before their termination was recommended.

The Untimely and Prejudicial Civil Settlement

In addition to the criminal charges filed, approximately 119 plaintiffs filed a series of lawsuits against the City of Oakland, the Oakland Police Department, and approximately 42 members of the Oakland Police Department (which became known generally as the “Riders”

civil litigation). From the initial filing of the lawsuits until their settlement by the City (which occurred with great press coverage just as we were beginning our defense in the criminal case) the City of Oakland falsely represented to the public that the 119 plaintiffs were suing only “four rogue cops.”

The City’s settlement of the “Riders” civil litigation occurred without the plaintiffs taking a single deposition or asking a single interrogatory. The first deposition which was scheduled to occur was that of Police Chief Richard Word, but the City agreed to settle before his deposition was taken. After settling, the City Attorney, in a written press release, falsely represented that the 10.9 million dollar settlement related *only* to lawsuits against the four “rogue cops” failing to mention the fact that the defendants in the criminal case were not named in more than half of the civil suits as defendants, and that the civil suits named numerous other members of the Police Department, including Chief Richard Word, other than the officers who were being tried criminally.

Witness Intimidation

The defense established that from the prosecution’s initial entry into the case and its cooperative work with the Department’s Internal Affairs Unit, that it instilled a climate of fear and terror on the part of any officer who dared to step up and testify favorably to the defense. Witnesses who disagreed with Batt and/or Hewison (such as the defendant’s supervisor) were disciplined (the supervisor was demoted). Other witnesses who expressed concerns about the legitimacy of the prosecution were also disciplined. One officer who told the District Attorney he thought the case was “B.S.” got fired three weeks later for alleged misconduct which had occurred six to seven months earlier. Following arbitration, the officer was reinstated.

After the defendant’s supervisor was demoted

(because he disagreed with some of the statements made by both Batt and Hewison) he sought reinstatement through an arbitration request. The prosecutor in the case, who was not a party to the arbitration and had no standing to object to it proceeding, nevertheless, through the City Attorney's Office, continued the supervisor's arbitration upon the claim that to allow it to go forward would jeopardize the criminal prosecution of the defendants. Suffice it to say that this sent a very clear message of the prosecutions far reaching ability to affect the status and livelihood of officers willing to contradict some of the key prosecution witnesses.

The Defendants

The three officers who have spent the last three years fighting for their freedom were tragic victims of this greater drama. Their previously unblemished records have been forever tarnished by the experience.

Chuck Mabanag had been an Oakland Police Officer for more than 11 years and had worked both patrol and investigation (vice) assignments. He had been involved in four shootings (one fatal), had been named "dog watch officer of the year" in 1999 as well as "Best Dog Watch Preliminary Investigator" in 1999 and had no prior sustained Internal Affairs complaints during his entire period of time at the OPD. He had been a Field Training Officer for approximately six years, and had been involved in the training (as either a primary FTO, secondary FTO or substitute FTO) of approximately 30 rookie police officers.

Jude Siapno was a ten year veteran of the Oakland Police Department and had an unblemished career. He was a highly skilled boxer and had trained extensively in various forms of martial arts. He was described by character witnesses who knew him as calm, deliberate, composed, and not given to excessive use of force.

Matthew Hornung was a two year veteran of the Oakland Police Department, having originally been trained as a rookie by Chuck Mabanag. Testimony by one of the prosecution witnesses who had worked with Matthew Hornung described him as brave and courageous and extremely hardworking. That testimony remained uncontraverted during the trial. The testimony and evidence revealed he had no prior discipline.

Conclusion

This was an extremely complicated and lengthy trial. The law firm of Rains, Lucia & Wilkinson would like to conclude this article by acknowledging, on behalf of the defendants and all counsel, our thanks and gratitude to PORAC and its Legal Defense Fund for making it possible to mount a tenacious and effective defense to charges which were admittedly serious on their face. The Legal Defense Fund provided us the assistance and resources to make appropriate motions, to obtain expert testimony in several areas, and to make a motion to change venue which we desperately needed (and which, unfortunately, was not granted). The commitment of the Legal Defense Fund to provide all of the resources necessary to properly defend these charges is, without a doubt, one of the critical



Oakland POA President Bob Valladon celebrates the verdict with Mike Rains

elements of this successful outcome

