

The Ultimate Backup

A Client News Bulletin

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California Supreme Court Decides *Spielbauer v. County of Santa Clara* and Affirms the Right of Agencies to Issue *Lybarger*-Type Admonitions in Internal Affairs Investigations

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The long-awaited decision by the California Supreme Court in the case entitled *Thomas Spielbauer v. Santa Clara County* has just arrived, and the Supreme Court has upheld the right of public agencies, including Police Departments, to impose disciplinary action on employees who refuse to answer questions in Internal Affairs (administrative) investigations after being ordered to do so.

Although the *Spielbauer* case involved the refusal of a Santa Clara County Deputy Public Defender to make statements to his employer after being ordered to do so and being threatened with discipline for insubordination, the Court's decision and reasoning in the *Spielbauer* case very clearly applies to police agencies conducting Internal Affairs investigations.

In *Spielbauer*, the County of Santa Clara and the Santa Clara Public Defender's Officer terminated Mr. Spielbauer for engaging in "deceptive court conduct" and for disobeying orders to answer questions during the County's "administrative" investigation. A Superior Court upheld the right of the County to dismiss Spielbauer, but that decision was reversed by the Court of Appeal, which concluded that the County

did not have the "power" to compel a statement in an administrative investigation under the threat of discipline. The Court of Appeal had reasoned that a grant of "use immunity" (which is what occurs when an officer is given a *Lybarger* warning) can only occur under a much more formalized process, where the grant of immunity is sought by a criminal prosecutor, and approved by a court.

Obviously, the most important issue the court had to decide was whether or not an agency in an Internal Affairs type of investigation needed to provide an employee with a "formal grant of criminal use immunity", or whether an employee's Internal Affairs interview statement would be "cloaked" with "use immunity" after the employee was ordered by a superior officer in his/her agency to answer questions and threatened with discipline if he/she refused to cooperate. In deciding this issue, the Supreme Court stated as follows:

We are therefore persuaded that neither the Federal nor the California constitutional privilege against self-incrimination requires a

public employer to provide its employee with a *formal* grant of criminal use immunity before it can require the employee, upon threat of job discipline, to answer questions relating to the employee's job performance.

The Meaning and Significance of This Decision to Police Officers and Police Employers

The Supreme Court's decision in *Spielbauer* essentially returns the Internal Affairs investigation process to where it was before *Spielbauer* was decided by the Court of Appeal; police agencies still have a right to issue a *Lybarger* admonition to officers in Internal Affairs investigations, and the officers' statements given under such admonitions are entitled to "use immunity." If the officers fail or refuse to give statements, the employer can discipline them for insubordination.

Police Officers Should Understand That Their *Lybarger*-Immunized Statements Can Still Be Turned Over To and Reviewed By Prosecutors Conducting Investigations of an Officer for Criminal Wrongdoing

For those officers or law enforcement agencies in California who automatically assume that a *Lybarger*-immunized Internal Affairs statement cannot be reviewed by a prosecutor who is investigating the officer for possible criminal wrongdoing, they

should think again. California Penal Code Section 832.7 authorizes a District Attorney's office, the Attorney General's office, or a Grand Jury who is conducting an investigation concerning the "conduct of peace officers" to obtain *Lybarger*-immunized statements made by the officer, even though the officer's *Lybarger*-immunized statement is not supposed to be introduced into evidence as an admission or confession if criminal charges are filed, and is not to be used to further investigatory efforts by a Grand Jury, the District Attorney, or the Attorney General. See *People v. Gwillim* (1990) 223 Cal.App.3d 1254, where an officer's *Lybarger*-immunized Internal Affairs interview was provided, pursuant to Penal Code Section 832.7, to the District Attorney investigating the same officer for the event which he discussed during the interview.

Thus, while the *Spielbauer* decision essentially solidifies the past practice of allowing agencies to "informally" grant use immunity through a *Lybarger* admonition, officers should always consult with legal counsel in serious cases which could involve both administrative wrongdoing and criminal wrongdoing in order to discuss an appropriate course of action to follow in connection both investigations.

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