



San Joaquin Sheriff's Sergeant Ordered Reinstated

ALISON BERRY WILKINSON
Principal Attorney
Berry Wilkinson Law Group

I share something in common with San Joaquin Sheriff's Sergeant William "Bully" Mitchell. Our involvement in his termination appeal began with a simple and all-too-typical phone call. The phone call to me was made by the Legal Defense Fund, started with the statement "We know you are busy, but..." and ended with me agreeing to take over a case that had originally been handled by another attorney and was on the eve of arbitration.

For Sergeant Mitchell, the path to arbitration also began with a phone request for assistance and his agreement to help out. That call was made by a Lathrop Police lieutenant on August 27, 2009, because a piece of video evidence had been discovered that needed to be immediately secured and delivered to the detective sergeants in charge of that criminal investigation. As Mitchell was the only one still in the detective unit at that time, he agreed to help out, even though it was not his case.

There was nothing unusual about how Mitchell handled the video evidence that was delivered to him. A 20-year veteran of the San Joaquin County Sheriff's Department, he had a proven history of handling matters by the book. This seasoned, experienced, hardworking detective sergeant simply did what was expected and routine. Mitchell notified his supervisor of the development, contacted the lead detective sergeant handling the case that the video concerned, secured the recording, arranged for copies to be made, and began the paperwork necessary to document the chain of custody. He had done these exact tasks countless times during his career.

What was unusual about this particular recording was that it had suddenly surfaced on the eve of a high-profile criminal trial based on a grand jury indictment charging San Joaquin County Deputy Sheriff Marcus Smith with felony assault likely to produce great bodily injury for an alleged use of force while on duty and assigned to Lathrop Police Services. Unbeknownst to Mitchell, the lead detective sergeants handling that case had previously told the district attorney that the video did not exist. The appearance of the video, along with other misconduct by one of the sergeants, resulted in the criminal charges against Smith being dismissed. Smith was ultimately exonerated of the excessive force charge. (See the April 2011 *PORAC Law Enforcement News* article "San Joaquin County Deputy Sheriff Prevails in Arbitration Over Excessive Force Charges.")

Deflecting attention from their failures and misconduct, the lead detective sergeants accused Mitchell of mishandling the video, colluding with the defense attorneys to give them an unauthorized copy, and untruthfulness. Arbitrator Fred D'Orazio saw right through that maneuver, found that there was no evidence to support the charges, reversed the termination, reinstated Mitchell with full back pay, and ordered that all records of the termination be purged from his personnel file.

In ruling for Mitchell, Arbitrator D'Orazio condemned the *Smith* detective sergeants who made the accusations. The arbitrator noted that the testimonies of both sergeants were defensive and inconsistent efforts to cover up their own insubordination for having delegated the critical task of securing a key item of evidence to Mitchell, and for having talked about the investigation despite a

strict confidentiality order from their direct supervisor. The arbitrator further noted that their defensiveness reflected "embarrassment that [their] investigation had failed to uncover the video... a key piece of evidence."

Also significant to the arbitrator was a missing four-minute segment from the audio recording of Mitchell's interview with one of the sergeants, in which he described the process of having secured the video. Mitchell consistently insisted throughout the disciplinary proceedings that his internal interview included the information that he was alleged to have purposefully omitted in order to conceal his alleged collusion with the *Smith* defense attorneys. Upon the order of the arbitrator, the County produced the original recording, and not just the transcript that it was trying to rely upon. The recorded, announced start and stop time reflected a 10-minute-and-10-second interview. But the recording produced by the County was only six minutes and 50 seconds. That discrepancy, coupled with the fact that the County did not recall the interviewing sergeant to explain the discrepancy, caused the arbitrator to conclude that the recording had been edited to remove the portion that Mitchell testified was part of the original interview.

In the end, the arbitrator concluded that Mitchell's testimony was detailed, consistent and clear, making him "much more credible" than the detective sergeants, whose inconsistent explanations did "not ring true" and who had "a motive to be untruthful" in order to avoid discipline for insubordination to the captain's directives on how to handle the *Smith* case.

It was a long and winding road to exoneration for Mitchell, with a detour to the

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Superior Court to obtain an order compelling the County to arbitrate his case. I am honored that he and the LDF trusted that I could use my skill and experience to right the wrongs he suffered, and am glad that the back pay he is receiving will be put to good use: sending his daughter to college at my alma mater, UC Santa Cruz.

Go Banana Slugs! I felt truly blessed and humbled when Sergeant Mitchell sent me the following kind note: "Thank you, because without you I would not have my reputation returned or be able to care for my family. You are one of those people I strive to be, whose work benefits future generations. My daughter was accepted to UC Santa Cruz next year. I doubt she would be there without your work helping myself and my family."

About the Author

Alison Berry Wilkinson has been providing effective, quality representation to PORAC members in civil, criminal, disciplinary and collective bargaining matters for over 25 years. Her firm, the Berry Wilkinson Law Group, focuses on all aspects of labor and employment law, with a special emphasis on the representation of peace officers in complex disciplinary and civil cases. ☪