

September 30, 1986

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
RE: RECENT LITIGATION

John Cox v. Michael Burstein
Federal Court Case # 83-0620-E(M)

Plaintiff, an off-duty deputy sheriff, now retired, was arrested by San Diego Police Officer Michael Burstein for battery on a Police Officer. Plaintiff filed suit in Federal Court for violation of civil rights and battery. The case was tried before a jury which returned a verdict in favor of the defendant Police Officer.

FACTS

In the late afternoon and evening of June 14, 1982, plaintiff, and several friends, were in the Leisure Lagoon area of Mission Bay Park. Plaintiff alleged that he approached defendant, Michael Burstein, who was patrolling in the San Diego Police Beach Wagon, along with his partner, Officer Steve Sanders, in an attempt to determine if the area was safe for him and his friends to continue their picnic. Plaintiff alleged that he attempted to flag down the police officers and they ignored his attempts to do so. Plaintiff further alleged that immediately after the police officers passed the plaintiff in the beach wagon, the officers suddenly stopped, Officer Burstein exited the beach wagon and placed plaintiff under arrest. Plaintiff also claimed that he was verbally harassed and abused by Officer Burstein. Plaintiff lastly alleged that it was only after plaintiff requested that Officer Burstein call the Police supervisor, and the supervisor arrived on the scene, that he was released.

Officer Burstein, on the other hand, testified that he was patrolling in the beach wagon and observed plaintiff approaching. Officer Burstein claimed that, as he passed plaintiff, he felt a liquid substance, later determined to be coffee, come through the

window of the beach wagon and strike him on the shoulder. Officer Burstein then exited the beach wagon and asked plaintiff what had occurred. Receiving no response, Officer Burstein placed plaintiff under arrest for battery upon a police officer.

Officer Burstein summoned the police supervisor on duty. The supervisor arrived and decided that since the matter was relatively insignificant and no harm had occurred, plaintiff

could be released. No arrest report was ever completed on the case and plaintiff has no arrest record.

LITIGATION

Plaintiff filed a lawsuit in Federal Court alleging a violation of his civil rights and battery upon his person. The case was tried before a jury, the Honorable Gordon Thompson Presiding. After a two (2) day trial, the jury returned a verdict on July 30, 1986 in favor of the defendant, Officer Burstein. Plaintiff has not appealed the verdict and the decision is now final.

Deputy City Attorney Leslie J. Girard tried the case on behalf of Officer Burstein.

Respectfully submitted,
JOHN W. WITT
City Attorney

LJG:JWW:vtc
RC-86-27