

March 21, 1991

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

BRIAN WESTERMIER, ET AL. V. CITY OF SAN DIEGO, ET AL.  
SAN DIEGO SUPERIOR COURT CASE NO. 614512

The City recently prevailed in litigation brought by Brian Westermier, George Phillips and Delora Phillips against police officers Robert M. Fowler and James C. Clark, and the City of San Diego in the Superior Court for San Diego County. Plaintiffs claimed injuries as a result of the police entering their home (trespass) and arresting Brian Westermier (false arrest/false imprisonment), allegedly without probable cause.

FACTS

Plaintiffs, George and Delora Phillips, testified that Officers Fowler and Clark came to their home, at 8460 Tommy Drive, on October 30, 1988 at approximately 11:15 p.m. and "demanded entry." They also testified that the officers refused to leave when requested, gave little or no excuse for being there, then "barged" into their home with the intention of "beating up" or "shooting" their son, Timothy. Plaintiff, Brian Westermier, testified that he prevented Officer Fowler from harming Timothy, while in the Phillips home. He further testified that Officer Fowler then left the house and as Westermier was being escorted home by Officer Clark, Officer Fowler came forward and arrested him.

The officers testified that they came to Tommy Drive as a result of a "911" call placed by a neighbor, who observed three individuals, in the street, pushing, shoving and trying to open car doors. Upon arrival, Officer Fowler saw three individuals (later identified as Timothy Phillips, Katie Phillips and Brian Westermier), who matched the description he had been given, run into the house at 8460 Tommy Drive.

He approached the house, knocked and was greeted by Delora Phillips. Not only was she uncooperative from the beginning, but Timothy Phillips almost immediately began yelling obscenities at the officer. Officer Clark then arrived and observed as Officer

Fowler attempted to explain his presence. George Phillips, Timothy's father, in an attempt to push Timothy away from the door, threw him into a wall. When Timothy turned on his father, the officers entered, were physically blocked by Brian Westermier, and then placed Westermier under arrest for

obstructing a police officer. George Phillips declined to press charges against his son.

All plaintiffs claimed emotional distress. Westermier also claimed medical expenses and lost wages. Plaintiffs also sought punitive damages against the officers.

#### LITIGATION

The case proceeded to trial before the Honorable Gale E. Kaneshiro, specially presiding as a Superior Court judge, on January 28, 1991. The parties testified as stated above. Additionally, the neighbors testified regarding the "911" call, confirming the officers' testimony; Westermier's former employers testified that his leaving their employment had nothing to do with his arrest. On February 1, 1991, after deliberating approximately twenty minutes, the jury returned a verdict finding that the officers had reasonable cause to enter the house and that reasonable cause existed to arrest Westermier.

After the trial, the members of the jury expressed their extreme admiration for the Police Department generally, and for the two officers in particular. Deputy City Attorney Penny L. Castleman tried the case on behalf of the officers and the City of San Diego.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

CMF:PLC:eh(043.1)  
RC-91-10