



### **Annual PORAC Conference**

The 61st Annual PORAC Conference of Members was held on Wednesday, November 20 through Sunday, November 24, 2013. This year, the event was held at LA Live in the heart of Downtown Los Angeles.

The conference included numerous informational classes for the membership. Topics this year included presentations about pension reform, changes to the long term disability plan (which are improvements), social media as it relates to law enforcement, and a very interesting presentation by Ed Fishman. He is an LDF administrator who spoke about a law firm that has since been removed as an LDF panel attorney.

Mike Durant was sworn in as President of PORAC. He has served as VP for the past seven years. Throughout the five day conference, the outgoing president, Ron Cottingham was presented with numerous awards from a variety of presenters. Ron is the longest serving PORAC President. He held the office for 10 years. We will miss his leadership, but look forward to working with Mike. He is well suited for the position and we offer him our full support.

### **Honorable vs Dishonorable Retirement for Purposes of CCW Permits**

Over the past year, this topic has been brought up on a few different occasions. The following is an article, authored by one of the labor attorneys who represents FDSA.

#### **PEACE OFFICER WHO RESIGNED 'IN LIEU OF TERMINATION' AND THEN RETIRED A YEAR LATER WAS NOT AN "HONORABLY RETIRED" PEACE OFFICER, FOR PURPOSES OF CCW PERMIT APPLICATION**

By Jason Jasmine

Former Yolo County District Attorney Investigator Rick Gore resigned pursuant to a settlement agreement following his appeal of the District Attorney's decision to terminate him for off-duty misconduct and insubordination. The next year, Gore began collecting his CalPERS retirement.

The DA's office denied Gore's request for a CCW (Carry Concealed Weapons) permit on the basis that he was not "honorably retired" within the meaning of Penal Code section 12027. In *Gore v. Yolo County District Attorney's Office* (2013) 213 Cal.App.4th 1487, the Court of Appeal punted on the issue of whether Gore's status was "honorable," and

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# FDSA

**FRESNO DEPUTY SHERIFF'S ASSOCIATION**

instead focused on whether Gore was a retired peace officer under the statute, since he did not retire from active duty when he left the DA's office (he was not yet eligible for retirement due to his age). Specifically, the court agreed that there is a difference between being a former peace officer and later qualifying for a pension, and being a peace officer who has qualified for and accepted a service retirement at the time of separation.

The court determined that when an employee leaves employment, he or she is in one of three categories—a resigned employee, a terminated employee, or a retired employee. The only persons entitled under the statute to carry a concealed weapon are retired employees—those employees who are no longer employed because they reached retirement age working as peace officers, and accepted retirement upon leaving employment.  
an honorably retired peace officer, even when they later reach retirement age and are entitled to collect their pension.”

### **SB313 Signed into Law**

With the recent passage of SB 313 (Brady and Termination), I have included an article that addresses a new law which is important to law enforcement. It is also educational and informative. Jason Jasmine also wrote this piece about how this law was adopted and its anticipated effect on our industry.

### **DISTRICT ATTORNEY'S ACTIONS RELATED TO PLACEMENT OF OFFICER ON BRADY LIST DOES NOT TRIGGER POBR PROTECTIONS**

A recent unpublished decision out of the Los Angeles area, though not breaking any new legal ground, confirmed the chipping away of peace officer rights under the Public Safety Officers Procedural Bill of Rights Act (“POBR”). (*Nazir v. County of Los Angeles, et al.* (2013 WL 1303327).)

The case arose out of an arrest in which a Torrance Police Department officer allegedly improperly failed to document the use of a confidential informant in his arrest report. As a result, the Los Angeles District Attorney's office placed the officer on its Brady list. Although the officer was afforded the right to provide objections or other written materials to the senior special assistant in the DA's office responsible for the office's Brady list, he was not afforded the right to any sort of actual administrative hearing. Further, the decision of the senior special assistant – as to inclusion on the list – was final.

The officer alleged that placement on the Brady list without affording him an administrative appeal hearing violated his rights under the POBR. The trial court sustained

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the County's demurrer, finding that the rights under the POBR apply only as between a peace officer and his/her employing agency.

Because the County of Los Angeles and the District Attorney's Office are public entities independent and unrelated to the officer's employing agency, the Court of Appeal upheld the trial court's decision.

Although this decision is hard to attack as it is consistent with other authority under the POBR, it is nonetheless frustrating. Placement on a Brady list can have a dramatic impact on a peace officer's career, effectively ending career advancement opportunities in many cases (assuming the officer keeps his or her job). Putting the power to make such an important determination into the hands of a person or a few people in another department, without any ability to have an administrative appeal is a large loophole in the rights afforded to peace officers under the POBR.

Furthermore in regards to "Brady," PORAC worked with Senator De León who authored SB 313; Public Safety Officers Procedural Bill of Rights Act.

The Public Safety Officers Procedural Bill of Rights Act prohibits any punitive action, or denial of promotion on grounds other than merit, against a public safety officer, as defined, without providing the officer with specified administrative procedural protections, including, but not limited to, the officer's right to inspect his or her own personnel file and an opportunity for the officer to file an administrative appeal under certain conditions. This bill would prohibit a public agency from taking punitive action, or denying promotion on grounds other than merit, against a public safety officer, because the officer's name was placed on a "Brady list," as defined. The bill would further prohibit the introduction of any evidence in an administrative appeal of a punitive action that the officer's name was placed on a Brady list, except as provided. The bill would specifically not prohibit a public agency from taking punitive or personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on the Brady list.

- (a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.
- (b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that

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officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

- (c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision
- (d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.
- (e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.

This bill was signed into law by Governor Brown on October 12, 2013.

### **Remembering Deputy Eddie Rodriguez**

I want to conclude this message on behalf of our friend and co- worker Eddie Rodriguez, who we laid to rest on this day.

Eddie has been in HIDTA for the last 14 years. He left Area Two as a property detective and was selected as a HIDTA detective when former Sheriff Richard Pierce created the

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HIDTA team. Eddie was assigned to the unit since then and continued to work throughout his battle with cancer.

Eddie brought a smile to many he worked alongside. About 16 years ago, I remember we partnered up during Operation Goldstar. We were interviewing a suspect who was lying about his name. While Eddie tried to make sense of this man's bogus story, I continued patting down this brown haired, blue eyed male, who repeatedly told us his name was Ramon Gomez. Eddie kept looking at him funny and asking why he is lying to us. I pulled out the suspect's driver's license from his pocket with the correct name. However, I failed to place handcuffs on him, (rookie deputy at the time) and he ran - over a fence, through an apartment complex, and was gone.

Eddie just stood there and looked at me. He said, "Eric, what happened? You are supposed to catch that guy!" For the following 16 years, whenever we would see each other, one of us would ask, "Hey have you caught that guy yet?" It's now a treasured memory.

Like so many other deputies and law enforcement officers who worked with Eddie, I am thankful to have known him. Although he will be deeply missed, I am grateful he is no longer in pain. He battled an aggressive cancer that really ravaged his body, but until the end, he had his smile and sharp mind.

I know many of you will keep his family and friends in your thoughts and prayers, especially during this holiday season.

I hope each of you are counting many blessings. Stay safe and enjoy your families.

-Eric

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