

Ruling Will Help Hold Public Employees Accountable for Their Work

By Jennifer Chin
and John Russo

Last month, the California Supreme Court issued an important decision that helps maintain real accountability for police officers, teachers and other public employees accused of misconduct on the job.

The court's decision in *Spielbauer v. County of Santa Clara*, 45 Cal.4th 704 (2009), upholds a public employer's right to ask employees questions related to job performance or allegations of misconduct — even when the underlying conduct could result in criminal prosecution — without first giving the employee a formal grant of immunity.

Recently, the city of Oakland concluded an eight-year legal battle with three former police officers

who were fired in part for refusing to answer questions about allegations of misconduct.

Although the city ultimately won that battle, *Spielbauer* confirms that we could have avoided the entire expensive and frustrating mess had the attorneys for those cops advised their clients to follow the law and answer questions in the first place.

The cases in question started back in 2000, when a unit of cops known as the "Riders" was accused of beating suspects, planting evidence, kidnapping and committing other crimes during a campaign of violent misconduct on the Oakland's streets in the late 1990s.

On the advice of their private attorneys, the Riders refused to answer Internal Affairs' questions about the allegations. They were subsequently fired for insubordination as well as the underlying

charges of misconduct. The alleged ringleader of the group fled the country and remains a fugitive, but the other three cops in the unit challenged their terminations and filed civil complaints against the city.

In the *Spielbauer* case, the plaintiff, a former deputy public defender, was fired for refusing to answer questions about allegations that he had made deceptive statements to the court when representing a criminal defendant. His supervisor told him that his refusal to cooperate would be deemed insubordination, warranting discipline up to and including dismissal, but advised him any answers he gave could not be used in a subsequent criminal proceeding.

The Supreme Court reversed the Court of Appeal, essentially clarifying existing law, that a formal grant of immunity was not required before questioning a public employee about allegations of misconduct.

The trial court upheld the plaintiff's termination, but the Court of Appeal reversed, holding that a public employer could not discipline an employee for refusing to answer job-related questions unless he or she was first given a formal grant of criminal use immunity.

The Supreme Court reversed the Court of Appeal, essentially clarifying existing law, that a formal grant of immunity was not required before questioning a public employee about allegations of misconduct.

Perhaps more notable than the decision itself is the advice often given by attorneys representing

public employees, especially law enforcement employees, to remain silent and not give a statement when the alleged misconduct could also have criminal repercussions — no matter how remote those repercussions may be. This advice directly contradicts the *Spielbauer* decision and its progeny.

At the time of the investigation into the Riders' alleged misconduct, and their subsequent termination, the prevailing case in California on whether an employee could be compelled to respond to questions that might lead to criminal prosecution was *Lybarger v. City of Los Angeles*, 40 Cal.3d 822 (1985).

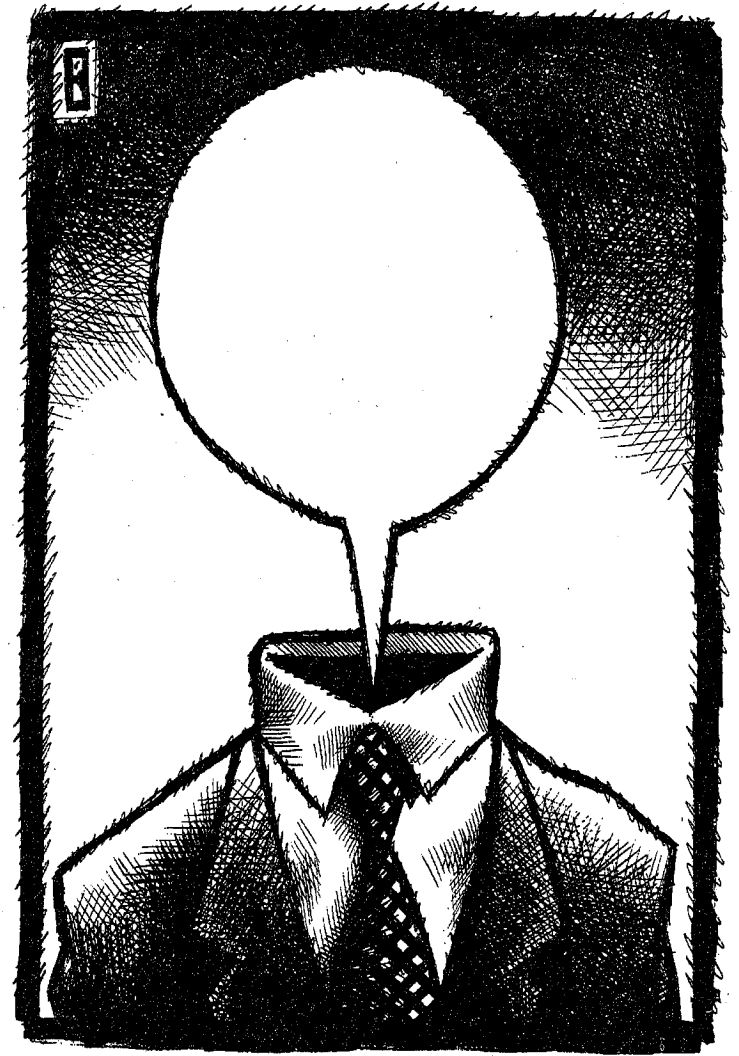
In *Lybarger*, a police officer was interviewed by the department's internal affairs division during an investigation into allegations that the officer's unit had engaged in misconduct. When the internal affairs investigator ordered the officer to answer questions, he refused, relying on advice of counsel.

The court made it clear in *Lybarger* that a public employee "had neither a constitutional nor a statutory right to remain silent free of administration sanction." The court further stated that "[a]s a matter of constitutional law, it is well established that a public employee has no absolute right to refuse to answer potentially incriminating questions posed by his employer."

Thus, attorneys for the Riders displayed a complete disregard for *Lybarger* when they advised their clients to remain silent and refuse to cooperate with internal affairs. However, criminal proceedings against the Riders basically ended with two hung juries — one of the defendants was acquitted, and none were convicted of any crimes. After the trials, two of the Riders sought to return to their jobs as police officers in Oakland.

In February, an arbitrator finally ruled that the city was within its rights to fire those two officers for insubordination. None of the officers will receive a dime from the city, and they certainly won't get their jobs back. Although the city settled the matter without paying anything to the officers, we were forced to expend a significant amount of time and money to uphold completely justified terminations.

From the beginning, our office



was determined to uphold the principle that law enforcement officers have a responsibility to cooperate with investigators when facing allegations of misconduct.

As it stands, public safety officers already receive a significant amount of statutory protection under the Peace Officer's Bill of Rights, Government Code Section 3300, et seq., when faced with an administrative investigation into alleged misconduct. We hope that *Spielbauer* will make it easier for cities to uphold the principle of police accountability in the future.

Any other result would, in effect, have placed officers beyond the reach of their own commanders — an unacceptable result in a profession that requires both a quasi-military structure and the highest degree of accountability to the public.

The court's decision recognizes that public employees subject them-

selves to dismissal if they refuse to account for their performance of their public trust. And that is as it should be.

Jennifer Chin is a deputy city attorney and John Russo is city attorney for the city of Oakland.

Write to Us

The Daily Journal welcomes your feedback on news articles, commentaries and other issues. Please submit letters to the editor by e-mail to sara_libby@dailyjournal.com. Letters should be no more than 500 words and, if referencing a particular article, should include the date of the article and its headline.

Daily Journal

Charles T. Munger
Chairman of the Board
J. P. Guerin
Vice Chairman of the Board

Gerald L. Salzman
Publisher / Editor-in-Chief
Robert E. Work
Publisher (1950-1986)

David Houston
Editor

Alexia Garamfalvi
San Francisco Editor

Sara Libby
Legal Editor

Jack Chang
Associate Editor,
San Francisco

Christian Berthelsen, Susan McRae, Daniel Yi
Associate Editors,
Los Angeles

Aris Davoudian, Designer

Los Angeles Staff Writers

Pat Alston, Amanda Becker, Rebecca U. Cho, Mindy Farabee, Cortney Fielding, Gabe Friedman, Evan George, Sandra Hernandez, Greg Katz, Ciaran McEvoy

San Francisco Staff Writers

Rebecca Beyer, Laura Ernde, Amelia Hansen, Dhyana Levey, Jill Redhage, John Roemer, Fiona Smith, Amy Yarbrough

Bureau Staff Writers

Craig Anderson, San Jose, Jason W. Armstrong, Riverside, Pat Broderick, San Diego, Don J. DeBenedictis, Santa Ana, Lawrence Hurley, Robert Iafolla, Washington D.C.

Martin Berg, Columnist

Robert Levins, S. Todd Rogers, Photographers

Sara Randazzo, Editorial Assistant

Rulings Service

Sharon Liang, Rulings Editor
Kenneth Hsu, Verdicts and Settlements Editor
Linda Choi, Seena Nikravan, Legal Writers

Advertising

Audrey L. Miller, Corporate Display Advertising Director
Sheila Sadaghiani, Monica Smith, Los Angeles Account Managers
Allie Giesen, Joel Hale, Michelle Kenyon, San Francisco Account Managers
Jesse Rios, Display Advertising Coordinator
Nikki Delucchi, San Francisco Administrative Coordinator

Art Department

Kathy Cullen, Art Director

The Daily Journal is a member of the Newspaper Association of America, California Newspaper Publishers Association, National Newspaper Association and Associated Press