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January 16, 2008

Dear Mr. Russo:

Re: Allegations Surrounding Investigation/Prosecution of Ignacio De La Fuente, Jr.

The Allegations

In October of 2007, we were asked to conduct an investigation into allegations of misconduct by the Oakland Police Department (OPD) surrounding the investigation and resulting prosecution of Ignacio De La Fuente, Jr. After Mr. De La Fuente, Jr.'s guilty plea to four sexual assaults and related charges, numerous allegations were publicly raised regarding the proceedings that led to the defendant's conviction:

1. The OPD may have fabricated evidence relating to the case against the defendant.

2. The OPD (and other parties to the investigation and prosecution)[1] failed to sufficiently follow up with potential exculpatory witnesses to the alleged assaults.

3. The OPD (and other parties to the investigation and prosecution) may have assisted the accusers in exchange for their testimony by not pursuing pending charges against them or by persuading other agencies to drop pending charges.

[1] The allegations surrounding the investigation and prosecution are not limited to the Oakland Police Department but also include the prosecutor and the district attorney investigator assigned to the case.

4. The OPD (and other parties to the investigation and prosecution) may have coached witnesses at the criminal proceedings.

5. The OPD (and other parties to the investigation and prosecution) failed to adequately consider how the accusers' testimony was internally inconsistent with previous statements and the accusers' and other witnesses' testimony was inconsistent with each other's testimony.

6. The OPD (and other parties to the investigation and prosecution) may have failed to provide impeachment evidence to the defense.

7. The supposedly coincidental presence of an off-duty OPD officer at the scene when one of the four accusers reported a sexual assault was suspicious and was never adequately explained by authorities.

8. The OPD (and other parties to the investigation and prosecution) failed to adequately insulate the photo array identification procedures as to two of the accusers from unfair pre-investigation publicity, thereby compromising the validity of those identifications.

9. The OPD officer entrusted to supervise the investigation had a checkered history and a bias against the defendant and his family, and after the trial received a reward (reinstatement of rank) for this participation in the case against the defendant.

10. The OPD failed to explain why its personnel waited four days to contact the defendant after they began to suspect his participation in the 2005 sexual assault, when an honest belief in the charges would presumably have prompted faster action.

11. The OPD failed to adequately explain how valid investigative practices would have allowed it to obtain a Redwood City address for the defendant.

12. The OPD went to extraordinary means to develop the case against the defendant, as exemplified by the active participation of a deputy chief in surveillance.

13. The OPD reports demonstrate that the Department had immediately viewed the case as involving multiple victims before multiple victims were even identified, thereby revealing the predisposed bias of involved personnel.

14. The OPD (and other parties to the investigation) failed to adequately consider the lack of physical evidence of assault in deciding to bring charges against the defendant.

15. The OPD (and other parties to the investigation) failed to adequately consider the polygraph examination of the defendant and the exculpatory responses it elicited.

16. The OPD failed to adequately explain why the alleged "911" calls in the four incidents were not recoverable.

17. The OPD orchestrated negative media coverage by not cancelling an all points bulletin seeking information about an at-large Mr. De La Fuente, Jr. when in fact he had voluntarily surrendered to the police hours before.

18. The OPD failed to adequately pursue/investigate other potential perpetrators of the alleged assaults.

19. The inappropriate handling of this case by OPD fits within a history of malfeasance and corruption.

20. The OPD had a bias against the defendant and/or his father that caused the Department to overzealously pursue the defendant.

Per your request, we independently examined each of these allegations of misconduct. The following report provides an overview of our activities and findings. It sets forth the evidence and analysis that leads us to our ultimate conclusion: namely, that the evidence does not establish misconduct on the part of involved officers of OPD or has sufficient basis in proof to warrant further action from the City or OPD.

Factual Overview: The Prosecution

The trial of Ignacio De La Fuente, Jr. ended in May of 2007 when he pled guilty to sexual assault charges relating to four separate incidents and victims:

- October 21, 2003: Victim 4 ("V4")[2] -- an acknowledged prostitute, she alleged that De La Fuente, Jr. drove her to the Berkeley marina after picking her up in Oakland in his truck. He allegedly forced her to orally copulate him and he digitally penetrated her. She ran from his truck without her pants after telling him she needed to get out to urinate. She attracted the attention of two restaurant employees who were just leaving work; they called the police on her behalf.

[2] The defendant was eventually charged with assaulting four victims from 2003 to 2005. Consistent with state law and in order to protect their identity, they will be referred to as V1, V2, V3 and V4 respectively. The victims are numbered in order of when they were linked to the defendant as the investigation unfolded.

- October 22, 2003: Victim 3 ("V3") -- an acknowledged prostitute, she alleged that she was driven to a remote Oakland location and assaulted in De La Fuente, Jr.'s truck. According to her testimony, she attempted to attract the attention of a passing vehicle by screaming and honking the horn, and was pulled down by De La Fuente, Jr. He then shoved her from the vehicle without her shirt, shoes, and cell phone. She immediately went to a nearby residence and called the police.

- August 25, 2004: Victim 2 ("V2") -- an acknowledged prostitute, she alleged that she was driven to a remote location, punched, and raped. She claimed that De La Fuente, Jr. parked his truck in a way that left her unable to open the passenger door. As De La Fuente, Jr. drove off, she flagged down a passing motorist, who happened to be an off-duty OPD officer.

- April 16, 2005: Victim1 ("V1") -- this victim was 15 years old at the time of the incident. She maintained throughout the proceedings that she was not a prostitute, a position vehemently disputed by the defense. She did have a criminal record (for a drug charge) at the time of her encounter with De La Fuente, Jr., but denied entering his truck voluntarily. She claimed that De La Fuente, Jr. forced off her pants and raped her after a considerable struggle. After getting out of his truck, she attracted the attention of a passing female motorist ("Angie") with a child in her car. At V1's request, Angie brought her to a specific address and dropped her off; V1 eventually had a friend summon the police.

The V1 case provided significant leads that made Mr. De La Fuente, Jr. the focus of OPD's investigation, and established a starting point that led back to the other, earlier incidents. (The three had remained unsolved as of April 2005.) An apparently shaken V1 had recited a license plate number to Angie right after her encounter with Mr. De La Fuente, Jr.; this matched the defendant's truck's plate exactly. She also offered a physical description that matched him and most importantly, a medical examination of V1 on the night of the incident produced DNA evidence that connected Mr. De La Fuente, Jr. to the crime after he provided a DNA sample to OPD investigators.

The V2 investigation was the next to be connected to Mr. De La Fuente, Jr.; the DNA evidence that investigators acquired during the examination after her 2004 assault was matched to the De La Fuente, Jr. sample taken in April of 2005. Other particulars of her contemporaneous allegations (suspect description, truck description, circumstances of the assault) reinforced the suspicions against Mr. De La Fuente, Jr.

The same OPD officer happened to investigate both the V2 case and the V3 case, which had occurred a year earlier. His recollection of the similarities between V2's story and V3's caused him to turn his attention back to that earlier matter. Additionally, the V4 incident was linked in his mind to the V3 case because it had happened just one day earlier and, again, seemed to have some similarities in terms of modus operandi. The V4

case had been investigated originally by the Berkeley Police Department. Though it took several weeks for Berkeley to find and produce its records from that case, it eventually did. V3 and V4 were re contacted by an investigator from the District Attorney's Office and identified Mr. De La Fuente, Jr. in a photographic "six pack" lineup in October of 2005.

The preliminary hearing took place in June of 2006; all four victims testified and the court found sufficient evidence to bind the defendant over for trial.

The trial occurred in May of 2007. After several days of testimony, including direct and cross-examination of three of the victims, Mr. De La Fuente, Jr. agreed to plead guilty before the prosecution had concluded its case in chief.

The allegations noted above regarding concerns about the conduct of OPD in the investigation surfaced in September of 2007. On October 26, 2007, Mr. De La Fuente, Jr. was sentenced to 14 years in state prison.

The Methodology

We began with a thorough review of the allegations. By cataloguing the various allegations and points of contention they contain, we established the parameters for our review. We then turned our attention to the police reports and other official documents from the OPD investigation files, as provided to us by the City at the outset of our work.

After our initial document review, we conducted in person interviews of Ms. Elvia De La Fuente, mother of Ignacio De La Fuente, Jr. and Council President Ignacio De La Fuente, Sr. We also conducted in-person interviews, on separate occasions, of Mr. De La Fuente Jr. himself and his counsel of record.

During our investigation, we also conducted in-person interviews of the OPD personnel responsible for the investigation of the sexual assaults. In addition, we spoke to the prosecutor from the District Attorney's Office assigned to the case, as well as the District Attorney investigator involved in the investigation and prosecution.

In addition to these in-person interviews, we also reviewed the preliminary hearing transcripts, other court filings, and numerous other documents. By the time we had completed our review, we had conducted lengthy interviews of the complainants and potential subjects of the allegations and had reviewed hundreds of pages of documents and evidentiary materials.

Assessment of the Allegations of Misconduct

We turn now to the specific allegations and offer our findings and conclusions in relation to each:

1. The OPD may have fabricated evidence relating to the case against the defendant.

Of the numerous concerns brought forward about this investigation, only a few of them actually and specifically intimate that evidence was fabricated by the OPD. The first allegation stems from the meeting between the defendant, OPD personnel, and then-counsel of record for the defendant. The purpose of the meeting was to execute warrants for DNA evidence and a search of the defendant's truck. At this meeting, a report was prepared by OPD personnel indicating that the defendant had been observed to have scratches on his forearms. The defendant and his counsel deny this observation, contesting that such observations could not be made since at the time, defendant was wearing a long-sleeved shirt. OPD personnel indicate that they did make the observations of injury noted in the report.

During our review, we learned that the defense may have raised this allegation at trial should the prosecution have attempted to introduce this evidence of injury. We were informed that then-counsel of record was prepared to testify that while he could not recall the actual shirt that the defendant was wearing on the day in question, his recollection was that the defendant was wearing a long-sleeved shirt on the day in question. However, because the prosecution did not seek to introduce evidence of these asserted observations of defendant's injuries, testimony seeking to refute those observations was not introduced. Accordingly, we are left with insufficient evidence to establish that OPD personnel fabricated their observations of injury to the defendant on the day in question.[3] In addition to the evidence being insufficient to prove the allegation, the dispute did not end up being a focal point that materially influenced the trial.[4]

Another allegation that intimated fabrication by OPD concerned the supposed altering of police reports prepared in relation to the assaults. The first of these deals with the assault of V3 and her description of the assailant's vehicle. The allegation is that in

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[3] Another defense theory that emerged in our review was that any visible scratches observed by OPD were the result of a physical confrontation between the defendant and an unrelated man that had occurred prior to the alleged assault on V1. This alternate explanation is arguably a concession by the defendant that he may have had scratches on him at the time that OPD retrieved the DNA sample and lends support to the argument that OPD personnel observed relevant evidence as reported.

[4] While we did not interview then-counsel of record regarding his assertions about the defendant wearing a long sleeved shirt on the day in question, we assume that is what he would have stated were we to have done so. Our assessment however, is that his statement and the statement of the defendant would not be sufficient to prove that the OPD investigating officer was not truthful when he reported that he observed scratches on the defendant on the date in question. Even if counsel was correct in his recollection that the defendant was wearing a long sleeved shirt, injuries to the forearm could have been observed depending on sleeve length, how the defendant gesticulated during his encounter with the police, and precisely where the injuries were observed on the forearm.

the original police report, there is no description in the narrative of V3 reporting the vehicle having a broken side mirror; instead, the responding officer "squeezed" such a description elsewhere in the vehicle description part of the report. Our review of this allegation revealed no evidence that the report was altered by anyone to bring it – at a later date – more in line with testimony of other victims. In addition, it should be noted that as to V3, the defendant did not dispute that he used his vehicle to have an encounter with her on the date in question. This concession would seemingly undermine the motivation of any officer (even an unscrupulous one) to engage in the criminal act of false reporting.

A third allegation that intimated fabrication by OPD dealt with the fact that in V3's signed statement made at the time of the assault, she indicated that the assailant "grabbed her neck" and pulled her down. In the OPD responding officer's narrative of the incident, he indicated that V3 told him that the assailant had "choked" her. The allegation is that the responding officer intentionally described an action by the assailant as significantly more egregious than the witness had described. Our review of this allegation does not find the description of the assailant's actions as sufficiently different to indicate an intentional fabrication. In addition, at the criminal proceedings V3 indicated that during the assault she was not able to breathe. Finally, it is important to remember that at the time that this original police report was written, Mr. De La Fuente, Jr. had not been linked to the crime, so there would have been no motivation for the responding officer to enhance the criminal act in order to make it worse for Mr. De La Fuente, Jr.

2. The OPD (and other parties to the investigation and prosecution) failed to sufficiently follow up with potential exculpatory witnesses to the alleged assaults.

This allegation focuses on a number of witnesses deemed important by the defense that could have refuted or undercut the prosecution's case. Perhaps the individual most often cited as an important witness and allegedly ignored by the investigators was a witness named "China" (last name unknown) who was alleged to have been with V1 shortly before the assault. During our review, we were informed that involved officials actually did make a considerable effort to locate "China", as corroborated by a thirty-page computer print out documenting those unsuccessful attempts. Accordingly, there is documentary and testimonial evidence that refutes this allegation.

In addition, we also learned that the defense did locate an individual claiming to be "China" who indicated that she was in fact with V1 on the night in question. However, this witness further claimed that she was with V1 during the time that the encounter with the defendant occurred. Accordingly, this witness' account of the

incident does not correspond with the defendant's version of events[5], and is therefore of questionable value.

The allegations further take OPD to task for not pursuing the testimony of Sam Walker, V1's boyfriend at the time of the assault who was allegedly with her prior to and subsequent to the assault. However, Sam Walker did testify at the preliminary hearing for the defense and, in our assessment, did not significantly undercut V1's testimony or the prosecution's theory of the case.[6] Accordingly, to the degree that Sam Walker's knowledge of the assault was not thoroughly plumbed by the investigation team, the harm to the defense was apparently negligible. This speaks not just to the materiality of the allegation, but also to the investigators' lack of motive for intentionally disregarding a key witness.

3. **The OPD (and other parties to the investigation and prosecution) may have assisted the accusers in exchange for their testimony by not pursuing pending charges against them or by persuading other agencies to drop pending charges.**

The investigation revealed that several of the victims had previous criminal histories. The investigation further revealed that during the pendency of the alleged assaults, some of the victims either had or picked up outstanding warrants that OPD ignored. The allegations criticized OPD for failing to address the criminal activities of the victims, despite having knowledge of them.

For example, it was noted that at the time that she notified the police, V3 had an outstanding warrant, yet the responding officer did not take the victim into custody with respect to that warrant. The intimation is that in order to gain the continued cooperation of the victims, OPD personnel ignored the criminality engaged in by them. The allegations go further to suggest that OPD agreed to look the other way or work with outside agencies to dismiss the charges in exchange for ensuring the victim's incriminating testimony against the defendant – regardless of its honesty.

Our investigation did reveal occasions during the investigation in which OPD authorities were aware of pending charges against the victims yet took no action to effectuate the warrants. However, there is nothing particularly unusual about the exercise of this type of discretion by police detectives, particularly those investigating sexual assaults of prostitutes. It is common knowledge among experienced sexual assault investigators that many times, those individuals who are working on the edge of criminality themselves are reluctant to report to police and cooperate when they become victims of violent crimes. That experience also teaches that the aggressive pursuit of low-level criminality does not enhance trust or promote cooperation. Considering this,

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[5] Mr. De La Fuente, Jr. acknowledges an encounter with V1 but maintains it was consensual.

[6] In fact, during his preliminary hearing testimony, Mr. Walker testified that V1 had told her immediately after the incident that she had been sexually assaulted.

we conclude that any decisions made by OPD investigators to not arrest victims of sexual assaults for relatively minor offenses were not inconsistent with progressive investigative police practices. Certainly, these discretionary decisions do not constitute misconduct. It is also worth noting that such decisions were "fair game" for the defense to raise during the criminal proceedings in a challenge to the victims' credibility.

Regarding the more significant allegations that OPD caused pending criminal charges against the victims to "disappear" in exchange for their cooperation, this charge was adamantly denied by OPD personnel. Nor is there any substantive evidence to support those allegations.

4. The OPD (and other parties to the investigation and prosecution) may have coached witnesses at the criminal proceedings.

These allegations stem from a perception that the victims' testimony changed and "improved" over time, disingenuously emerging at trial as a seamless story in which the various observations of the victims demonstrated a pattern of behavior. The allegations point to new information being elicited from the victims at trial that do not appear in the police reports or the preliminary hearing. However, even if assumed true for the sake of argument, this fact does not in and of itself point to inappropriate witness "coaching" and may just as readily be a simple function of the different purposes of information in a police report, testimony in a preliminary hearing, and testimony at trial.

With regard to a police report, while it is hoped that any narrative will be complete as practicable, certain details of the event may largely escape documentation. At a preliminary hearing, the prosecution need only develop sufficient evidence to establish probable cause, thus the minute-by-minute chronology of the event may not be presented to the judge. At trial, however, the prosecutor does have an interest in eliciting as much factual detail as possible, so that the jury can have the clearest understanding of what has occurred. Accordingly, without more, the mere occurrence of additional details of the assault emanating from the victim does not, in and of itself, establish impermissible coaching by the victims. Moreover, as the details of the crime are more particularly elicited at trial, the phenomenon allegedly observed of the victims' testimony becoming more similar could just as easily be attributed to the fact that the eliciting of those details fleshed out a common modus operandi of the assailant.

5. The OPD (and other parties to the investigation and prosecution) failed to adequately consider how the accusers' testimony was internally inconsistent with previous statements and the accusers' and other witnesses' testimony was inconsistent with each other's testimony.

This allegation is the exact obverse to the "coaching" allegation raised above. This allegation points to inconsistencies in the police reports and testimony of the victims as evidence that they did not testify truthfully. These allegations also center on inconsistencies among victims, for example, noting that one victim stated that the vehicle

in question had a Raider ball on the antenna, while others did not. While there may have been inconsistencies between the recollection of a witness four years after an incident and what she related at the time, such inconsistencies are not unexpected or uncommon. Moreover, as was elicited during the criminal proceedings, some of the victims, such as V4, were indeed not entirely truthful regarding their status and criminality. As inconsistencies are presented in a criminal case, it is expected that prior differences in testimony (particularly prior false statements) will be ferreted out by the adversary system, and if they are particularly egregious, will cause the credibility of the witness to be irreparably harmed to the extent that they will not be believed. Moreover, and most importantly, there is no evidence that any inconsistent statements made by the victims are the product of misconduct by OPD personnel.

6. **The OPD (and other parties to the investigation and prosecution) may have failed to provide impeachment evidence to the defense.**

It was alleged that with regard to V1, prior criminal proceedings involving illegal narcotics was not properly disclosed to the defense. There was no evidence that any particular OPD officer had knowledge of these prior offenses and deliberately kept them from the purview of the defense. It was also conceded that the defense did learn of these prior proceedings on its own initiative and in sufficient time to use them as impeachment evidence against V1. Our assessment is that this allegation may, at most, be a possible violation of the discovery rules of the court and not a violation amounting to OPD misconduct. We have confidence that, to the degree that there was such a violation, it would have been brought to the court's attention and that any appropriate remedial action would have occurred through the court proceedings.

7. **The supposedly coincidental presence of an off-duty OPD officer at the scene when one of the four accusers reported a sexual assault was suspicious and was never adequately explained by authorities.**

As noted above, after she was assaulted, V2 flagged down a passing motorist who happened to be an off-duty OPD officer. The allegations question the officer's version of the route he took to be in the area, indicating that it is not the most direct route to take for his purported goal of meeting friends in a particular location. The implication is that the off-duty officer was either following De La Fuente, Jr. (which would support the contention of an actively hostile OPD) or involved in nefarious activities himself.

We find this allegation lacking in significance. Not only is there no corroboration for the theory that the officer's reasons for being in the area were improper, but they are ultimately irrelevant to his presence at the scene. As for the alternative theory that the officer was following Mr. De La Fuente, Jr. as part of a corrupt effort to "get" him by monitoring his activities, this is belied by the lack of identification of *any* suspect – in spite of the collection of DNA evidence – at the time of the allegation by V2. If the officer had been tailing Mr. De La Fuente, Jr. in order to trump up charges against him, his failure to seize the opportunity makes no sense.

8. The OPD (and other parties to the investigation and prosecution) failed to adequately insulate the photo array identification procedures as to two of the accusers from unfair pre-investigation publicity, thereby compromising the validity of those identifications.

Perhaps the most cogent issue raised in the allegations deals with the identification of Mr. De La Fuente, Jr. by V3 and V4. After there were indicia that Mr. De La Fuente, Jr. was involved in the prior reported assaults by V3 and V4, they were shown a photo array and identified him as the perpetrator in their respective cases.[7] By this time, of course, the arrest of Mr. De La Fuente, Jr. for the assault of V1 had been well-publicized. By the time OPD and the DA investigator had potentially linked De La Fuente, Jr. to the V3 and V4 assaults, the victims may well have had an opportunity to see a photograph in the media coverage of the assaults of V1 and V2. Thus, their identification of Mr. De La Fuente, Jr. as the assailant in their case may have been because of their conscious or unconscious familiarity with him being in the news media and linked to a sexual assault, rather than an independent recollection of him being the assailant in their case.

However, this identification issue has less to do with misconduct by the investigators, but rather is a familiar consequence of any high profile case in which a suspect's visage might be made known to other potential victims through news reports. Additionally, these identification issues were used during the criminal proceedings by the defense. In fact, during those criminal proceedings, V3 acknowledged during cross-examination that she may well have seen the news photo of the defendant prior to her identifying him in the photo array, despite the investigator's protestations to the contrary. Yet in this case, the defendant did not contest the identification by V3, thus rendering moot any consequences as they may have pertained to her case.[8]

9. The OPD officer entrusted to oversee the investigation had a checkered history and a bias against the defendant and his family and after the trial received a reward (reinstatement of rank) for this participation in the case against the defendant.

Assuming for the sake of analysis that the supervisor at issue had controversial events in his employment history, there is no indicia that these prior incidents had any bearing on this case. Without more, the existence of prior problems or controversies is not sufficient as proof of malfeasance in the context of this case. As it happens, our investigation revealed that this supervisor had a minor role in the development of the investigation, and did not attend the preliminary hearing or trial. Nor is there any

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[7] It was also alleged that the identification procedures should have been tape-recorded. At the time of this incident, there was no OPD policy requiring tape recording of identification procedures.

[8] V4, the only victim that the defendant denied he was with on the dates in question, never admitted that her identification was influenced by pre-identification publicity surrounding the defendant.

evidence of a connection between the return to rank of this supervisor (after a previous demotion) and his participation in the case. Moreover, there is no tangible evidence that this supervisor, or any other OPD employee for that matter, had any bias towards the defendant or his family. Certainly, a Department that was corruptly intent on ensuring the conviction of Mr. De La Fuente, Jr. would never have demoted the supervising officer in the first place, especially since this administrative action occurred right in the middle of the criminal investigations.

10. The OPD failed to explain why its personnel waited four days to contact the defendant after they began to suspect his participation in the 2005 sexual assault, when an honest belief in those charges would presumably have prompted faster action.

Our review of the documentary evidence and interviews of the involved officer show no intentional delay in their search for him. Police logs and information show repeated efforts to locate Mr. De La Fuente, Jr. at various locations in Oakland and Redwood City. In addition, while the search for Mr. De La Fuente was occurring, investigators were preparing an application for a warrant to search his vehicle and collect DNA. Moreover, even if OPD personnel decided to wait four days to contact the defendant, the allegations point to no theory as to how such an intentional delay amounts to officer misconduct.[9]

11. The OPD failed to adequately explain how valid investigative practices would have allowed it to obtain a Redwood City address for the defendant.

The police reports note that when OPD was attempting to locate Mr. De La Fuente, Jr. they located a Redwood City address for his residence. The allegations indicate skepticism about OPD's ability to identify this address as a place where Mr. De La Fuente, Jr. was residing.[10] Our investigation revealed that one of the OPD officers who was attempting to locate Mr. De La Fuente, Jr. had used a database that OPD has access to that turned up the Redwood City address. It is unclear how the actions of OPD to locate Mr. De La Fuente, Jr, amounted to misconduct in any way.

12. The OPD went to extraordinary means to develop the case against the defendant as exemplified by the active participation of a deputy chief in surveillance.

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[9] In fact, the way in which the defendant was eventually contacted was through his father and attorney. Even with the evidence collected to date that implicated him in the sexual assault, he was not arrested until the DNA evidence linked him up to two of the alleged assaults.

[10] It was later learned that the Redwood City address was the address of Mr. De La Fuente's then girlfriend and that he occasionally stayed there.

On April 16, 2005, after V1 identified De La Fuente, Jr. in a photo lineup, the investigating officer put out radio traffic and a crime bulletin in an effort to locate and seize the suspect's vehicle. According to the report, a Deputy Chief volunteered the information that he was himself in Redwood City (where the suspect's then girlfriend apparently resided) and he offered to drive by the address in an effort to help locate the vehicle. He later called with information that the vehicle was not there.

The allegation raised by this action is that this sort of line-level, out of jurisdiction policing by a Deputy Chief is anomalous, and "a peculiar detail that merits further scrutiny." The implied point is that this action reflects a zeal that is consistent with the family's claims of bias and unfairness.

We raised the point with OPD personnel, who confirmed that this Deputy Chief happened to be in the Redwood City area when the call went out, and offered his assistance, which was accepted by the investigators handling the sexual assault investigation. By this time OPD had identified De La Fuente, Jr. as the primary suspect in the sexual assault case, and personnel were assigned to find him and the vehicle he was driving and attempt to question him. It is correct that the involvement in "line officer" police work by a Deputy Chief is out of the ordinary. However, it is not consequential. The action by the Deputy Chief, with no resulting development of either exculpatory or inculpatory evidence, had no practical effect on the case, and the allegation relies on a pejorative interpretation that is not substantiated.

13. The OPD reports demonstrate that the Department had immediately viewed the case as involving multiple victims before multiple victims were even identified, thereby revealing the predisposed bias of involved personnel.

It was alleged that the use by the first responding officer to the 2005 assault and his reference to the victim as "V1" was evidence that while no other victims had been identified, OPD was already thinking of the case as one involving multiple victims. The apparent implication is that the officer was either jumping to conclusions about the likelihood of additional victims or inadvertently revealing bias or pre-judgment about additional cases that the Department hoped to pin on Mr. De La Fuente, Jr.

The Department informed us that "V1" is standard usage in police reports, and does not imply a future or past V2. We found corroboration for this in the form of pre-printed report forms with "V1" pre-printed in the box; indeed, the responding officer's police report uses the standard pre-printed form used by every OPD officer who prepares a report.

14. The OPD (and other parties to the investigation) failed to adequately consider the lack of physical evidence of assault in deciding to bring charges against the defendant.

It was alleged that when OPD decided to arrest Mr. De La Fuente, Jr. that the investigators soon were able to make contact with him and that he agreed to voluntarily surrender in short order. It was further alleged that despite this occurrence, the all points bulletin submitted to the news media indicating Mr. De La Fuente Jr.'s at-large status was not cancelled until thirteen hours later. The implication is that OPD intentionally did not timely cancel the bulletin so that the news media could continue to broadcast the inflammatory allegations and compound them with the untrue image of a dangerous fugitive roaming the streets of Oakland – as opposed to someone who had hours before voluntarily surrendered.

While there is evidence that OPD did take several hours to effectuate cancellation of the bulletin, a more extensive look at the investigator's log sheds additional light on the issue. First, the log shows that the warrant for the defendant's arrest was actually signed the afternoon before OPD decided to execute it. The log further shows that at least five officers spent all of the next day attempting to locate Mr. De La Fuente, Jr. with negative results. According to the log, after not being able to locate Mr. De La Fuente, Jr., OPD spent three hours that evening attempting to contact Mr. De La Fuente, Jr.'s attorney of record. At that time, telephone contact was made; shortly thereafter, Mr. De La Fuente, Jr. voluntarily surrendered.

The log itself undercuts the assertion that OPD intentionally used the issuance of the bulletin to manipulate the media coverage of Mr. De La Fuente, Jr. in any significant way. If the five OPD officers assigned to effectuate his arrest had been able to locate Mr. De La Fuente, Jr. on the date in question, no bulletin would have been necessary. However, after a day of searching for him proved fruitless, the bulletin was prepared and the suspect's attorney was contacted in an attempt to gain his cooperation in bringing Mr. De La Fuente, Jr. into custody. The apparent failure of OPD to immediately cancel the bulletin, in this context, does not establish a conscious effort to turn the media or public against Mr. De La Fuente, Jr.

18. The OPD failed to adequately pursue/investigate other potential perpetrators of the alleged assaults.

It is alleged that another serial rapist who was convicted for assaults occurring between 2001 and 2004 could have been responsible for the assaults in question. In fact, because identity was not an issue in three of the four assaults for which the defendant was charged, this allegation can only logically apply to the assault of V4. We questioned investigators as to whether this other identified person could have been the perpetrator, and all gave unequivocally negative responses. One investigator noted that in her original police report, V4 describes the perpetrator as Hispanic. He noted that the defendant is Hispanic and that the alternative perpetrator is African-American.

19. The inappropriate handling of this case by OPD fits within a history of malfeasance and corruption.

The allegations are that the injuries suffered by the victims are relatively minor or attributable to other encounters they had that predated their contact with the defendant. The allegations also point to the lack of any torn clothing to demonstrate trauma to corroborate the accounts of the victims. To the degree that the allegations accurately characterize the state of the evidence, they are an assessment of the relative strength or weakness of the prosecution's case and not a potentially viable or actionable allegation of OPD misconduct. The criminal justice system is designed to address weak cases and deficiencies in proof, and there is no evidence that such access was prevented to the defendant in this case.

15. The OPD (and other parties to the investigation) failed to adequately consider the polygraph examination of the defendant and the exculpatory responses it elicited.

It was alleged that Mr. De La Fuente, Jr. took a polygraph test that indicated that he was not guilty of the offenses for which he was charged. Efforts to introduce the results of those tests at the criminal trial were defeated. While we have not been provided the actual results of the test, the discretion in interpretation in polygraph results has led to a tradition of finding them inadmissible due to their unreliability. Accordingly, the results of the test do not offer anything to demonstrate OPD misconduct.

16. The OPD failed to adequately explain why the alleged "911" calls were not recoverable.

It is accurately alleged that none of the "911" calls were recovered. With regard to the V1 incident, there is notation in the investigative files that there was a timely request for the call, it is further indicated that the equipment responsible for recording the calls for the City was not recording calls for a two hour stretch of time, including the time in which the 911 call reporting V1's assault would have been made. Because the import of the 911 calls were not recognized until several months and more after their occurrence, those calls would not have been as readily retrievable by the investigators.

While it is always disheartening when evidence is not retrievable, our investigation did not reveal any intentional destruction of evidence that could lead to sustaining a misconduct allegation. Moreover, to the degree that the allegations intimate that the missing calls suggest that the incidents did not occur or at least did not occur in the way described by the victims, the identification and presence of uninvolved witnesses who first encountered each of the victims after the assaults undercuts the likelihood that the 911 calls would have been particularly helpful to the defense.

17. The OPD orchestrated negative media coverage by not cancelling an all points bulletin seeking information about an at-large Mr. De La Fuente, Jr., when in fact he had voluntarily surrendered to the police hours before.

Certainly, serious issues of misconduct have emerged over the years in connection with OPD (as with most if not all large law enforcement agencies). However, the blanket statement about those challenges and the submission of unrelated complaints of misconduct do not provide or establish any significant nexus between those concerns and the allegations specified here. Accordingly, this observation does not contribute to the targeted inquiry conducted in this case.

20. The OPD had a bias against the defendant and/or his father that caused the Department to overzealously pursue the defendant.

The allegations here focus on Mr. De La Fuente, Sr., the president of the Oakland City Council and a former candidate for mayor. The allegations are that the Council member was openly disliked by more than a handful of Oakland's high-ranking police officers, who resented his involvement in police affairs and who felt threatened by his willingness to address the Department's "bad seeds." This unsubstantiated assertion provides the implied motivation for what the published allegations describe as a "classic set-up" of De La Fuente, Jr. In short, the allegation is that the police knowingly manipulated evidence and otherwise behaved unscrupulously in developing a case against De La Fuente, Jr. The argument is that they did so in an effort to retaliate against the father.

However, and importantly in our view, the foundational claim of official "dirty politics" as the impetus for a biased investigation is not supported in significant detail. It therefore does not convincingly establish that such hostility even existed among the OPD investigators assigned to solve the sexual assaults in question – let alone that it fueled a series of improper official acts by these investigators and their supervisors.

As noted above, we interviewed those members of OPD who worked on the sexual assault investigations. Their categorical denials of intentional wrongdoing with regard to the De La Fuente, Jr. case were, of course, not surprising. However, more than one of them also expressed their genuine surprise over the allegations of bias, given the Department's generally positive history with the Councilman. They noted that the police union had actually endorsed De La Fuente, Sr. in the mayoral race, and that De La Fuente, Sr. had long been seen by OPD as the most "pro-law enforcement" elected official in the Oakland political scene. In their view, these realities made him the opposite of a logical or likely target for retaliation by the Department.

That the involved Department members were conscious of the De La Fuente family's prominence, and acted "differently" in light of it, seems clear. For example, the lead investigator told us that he involved his supervisor at an earlier point in the investigation than he otherwise would have so that OPD leadership could be informed about the progress of the investigation that was likely to attract media attention. Similarly, the supervisor of the unit said that he contacted his superiors – including, at times, the OPD Chief – to make them aware of the evolving case. We also learned that the Police Chief himself personally met with Mr. De La Fuente, Sr. to inform him of the preliminary allegations surrounding his son. The question is whether these differences

distorted the investigation in any way, or compromised its integrity. Our independent review of this matter has established no evidence to support this notion.

Conclusion

A certain number of loose ends or inconsistencies in the body of evidence are inevitable in the prosecution of a series of violent crimes – especially ones involving multiple victims that occurred over the course of eighteen months, and all of which occurred two to four years before trial. This reality seems even more assured when the victims have criminal records and/or documented histories of drug abuse, and when the arena for the alleged crimes is a marginalized subculture of society. However, it is our belief that none of these is so important, either individually or taken as a whole, as to undermine our assessment of the legitimacy of official conduct in this matter.

Accordingly, and in conjunction with more definitive refutations of individual allegations as documented above, we conclude that none of the allegations that we have assessed during the course of our independent review suggests inappropriate conduct by OPD personnel during this matter. We welcome you to contact us should you have further questions about this correspondence or the issues covered within it.

Very truly yours,

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