

Those Tiresome Facts

A Reply by Michael Gennaco
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The June 2005 edition of the Dispatcher contains an article authored by Richard A. Shinee, ALADS Chief Legal Counsel entitled “Who Watches the Watch Dog.” In that article, Mr. Shinee alleged that the facts indicate that I, as Chief Attorney of the Office of Independent Review (“OIR”), “orchestrated” the recent federal prosecution of two LASD deputy sheriffs. This conjecture is plainly wrong and, as a close examination of the article demonstrates, is based on no real evidence. More importantly, it does a disservice to the deputies who read it by fostering an unwarranted climate of distrust and hostility.

It is true that I am a former federal prosecutor, true that I maintain contact with former colleagues in the FBI and Department of Justice, and true that I would not hesitate to suggest that LASD investigators seek the review of federal authorities in the appropriate case. However, as I have personally and repeatedly told Mr. Shinee in the past, I was not involved in the referral of this particular matter. Nor do I have the influence, the power or the inclination to pull a case from the District Attorney’s Office and insist that the federal government seize control and initiate a prosecution.

Instead, it is my understanding that the federal government’s initial involvement in the recently concluded case arose from an evolution in investigative strategy by LASD’s Internal Criminal Investigations Bureau (“ICIB”). Within a few weeks of the alleged assault at the Inmate Reception Center, ICIB determined that a grand jury investigation would be particularly desirable based on the number of potential deputy witnesses and because those law enforcement witnesses, some based on advice of counsel from Mr. Shinee’s own law firm, had declined to voluntarily provide complete information to ICIB. Because at that time the federal government had the resources to commence such a grand jury investigation on a faster timetable than the District Attorney’s Office, ICIB turned in that direction. By no means did anyone from the federal investigative or prosecutorial team “snatch” the investigation from the Office of the District Attorney. Mr. Shinee’s bald assertion that such happened here demonstrates ignorance about the dynamics and relationships between federal and state authorities.

As for the rest of the article, one of Mr. Shinee’s more offensive insinuations is that I somehow endorsed “fairly brutal” tactics through which the federal government allegedly coerced false testimony from deputy witnesses for the prosecution at trial. Again, I am not aware of the specific details regarding how the government developed the evidence it presented. I do, however, know – as does Mr. Shinee – that the deputies he describes each had private counsel with them at trial and during their prior interviews with the government. I would expect that these private lawyers represented their clients’ interests faithfully and would have stood in the way of the deployment of any of these “brutal” tactics of which Mr. Shinee speculates. If Mr. Shinee does have any real information supporting these serious charges, I urge that he pass them on to both LASD and federal authorities for review.

The misinformation in Mr. Shinee’s article is not limited to my role. He wrongly

suggests that the absence of serious injuries to complainants, the affability of involved deputies, their length of service, and a lack of prior discipline for excessive force would preclude serious federal consideration of the facts in a given case. The truth is that the majority of officers prosecuted by federal authorities for excessive force do not have a history of prior excessive force violations -- if they did, they usually do not last very long in progressive police agencies. Contrary to Mr. Shinee's implication, it is not the past nature or employment history of the peace officer that decides whether federal investigators will initiate an investigation. Rather, as all deputies should know, the decision to investigate police misconduct for the federal authorities focuses on the alleged violation itself. If the allegations would constitute a violation of federal criminal civil rights if proven, the investigation will proceed.

The distorted view of reality promoted by Mr. Shinee has significant implications. Misinformation hampers deputies' ability to make reasoned assessments regarding both high-profile cases and their own experiences with the Department's review process as well as the review process of outside prosecutorial entities. Any deputy who relies on Mr. Shinee's representations and takes his claims seriously may develop a profound cynicism not only about the Office of Independent Review but more importantly about LASD internal investigators and command staff, and federal and state authorities. That cynicism leads to the sort of defensive, negative mind set that turns investigations into ordeals and impairs both public confidence and effective policing itself.

Apart from the wish that Mr. Shinee would be more scrupulous before attacking any person's integrity and motivations, one would hope that he would have more regard for the interests of the many deputies who belong to ALADS and read the Dispatcher. I believe the deputies themselves would agree that misinformation and spurious conjecture does little to advance those interests. In the meantime, though, his article makes clear that deputies who are truly interested in events like the recent federal trial might do well to seek their information from a range of sources.