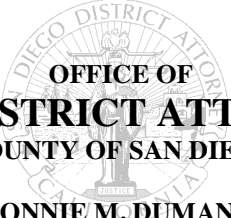


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August 25, 2009

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RE: Arrest of Shari Lynn Barman and Pamela Ann Morgan at 1366 Rubenstein Avenue
on June 26, 2009

Gentlemen:

In early July, the District Attorney's Office began an independent investigation and review of the facts surrounding the June 26, 2009 arrests of Shari Lynn Barman and Pamela Ann Morgan. We identified and attempted to contact 100 possible witnesses. We were able to conduct interviews with 77 of them. District Attorney Investigators spent many hours interviewing those guests in attendance, a valet, a caterer, event workers, the responding deputies, a paramedic and neighbors. A written statement provided to the media by Ms. Barman, as well as other witness statements provided by their defense attorneys were reviewed. In addition, the arresting deputy, Marshall Abbott, was interviewed by District Attorney Investigators.

Our decisions are the result of an independent investigation and review of the facts and the evidence. In an effort to maintain public confidence in the criminal justice system, it is important to explain how and why these decisions were reached.

As a result of our investigation, we have determined the following:

This entire incident arose out of a noise complaint. When the San Diego Sheriff's Department receives a complaint about a disturbance or noise in a neighborhood and the reporting party

wants to sign a noise complaint, the department has an obligation to respond. The County of San Diego as well as the City of Encinitas each has ordinances spelling out noise complaint parameters. The Sheriff's Encinitas substation routinely receives calls about noise at parties and this particular deputy has responded to dozens of such citizen noise complaints.

The ordinances require a deputy to fill out a Noise Complaint Form on the first visit, which includes the responsible party's name, address and date of birth, among other information. The ordinances also allow the city to bill the responsible party if a deputy has to respond more than once to a noise complaint within 24 hours.

There was a noise complaint called in at 8:38 p.m. by one of the neighbors and the San Diego Sheriff's Department dispatched a deputy to respond to it.¹ The deputy was diverted to another call and was not able to arrive to the noise disturbance call until 9:37 p.m.

There was a political fundraiser that evening for Francine Busby at the Rubenstein address. The fundraiser was attended by up to 100 people from 7:00 p.m. to 9:00 p.m. Sometime around 8:15 p.m., Ms. Busby spoke to the attendees on an outside patio with the use of a microphone and speaker system. She spoke for about 25 minutes. During her speech, she was interrupted by a heckler on an adjacent property. It is impossible to determine the identity of the heckler, and his identity has no bearing upon the events leading up to the arrests. We can corroborate the heckler yelled out several anti-Francine Busby remarks, and some anti-gay statements. However, the only specific remarks recalled by attendees were the ones negatively addressing Ms. Busby's prior campaigns for office. Her speech concluded before 9:00 p.m. and some of the attendees began to leave.

The events that transpired from the moment the first responding deputy arrived at 9:37 p.m. and some order was restored at 9:51 p.m. upon the arrival of additional deputies will, in all likelihood, forever be the source of disagreement. Witness accounts in this case vary dramatically. Multiple witnesses to an incident may often see or hear it differently based upon their own perceptions. For example, one witness was adamant that the deputy was wearing long sleeves and therefore could not have been scratched, yet a picture taken by another attendee clearly shows the deputy with short sleeves. This kind of witness inconsistency is addressed in California's jury instructions, which note that a discrepancy in testimony does not necessarily mean a person is lying, but that innocent mis-recollection is not uncommon.

Most, if not all the witnesses saw only portions of the contact between Deputy Abbott and Ms. Barman and their descriptions of the events vary widely. We can break down the facts as corroborated and uncorroborated. Where several witnesses report facts substantially the same, we can classify those as corroborated. On the other hand, where we have only one eyewitness report concerning a fact it should be considered uncorroborated, unless we have other corroborating evidence.

¹ Due to a large amount of public interest in the original noise complaint call, a copy of the transcript is attached with reporting party's personal information redacted. The call itself is exempt from public records request.

We can corroborate that upon arriving at the Rubenstein address, the gate and front door were both open. The deputy spoke to a campaign worker at a check-in table just inside the front door and asked where the homeowner was. The campaign worker identified Ms. Barman.

We can confirm that the deputy and the P.E.R.T. clinician², who was riding along with the deputy that night, then approached Ms. Barman. The deputy told Ms. Barman he was there as a result of a noise complaint by a neighbor, that he had a form to fill out and needed information.

The facts show that Ms. Barman indicated she did not think a noise complaint was valid so early in the evening. The deputy explained to Ms. Barman that the time of day had no bearing on the Sheriff's Department's response to a noise complaint. Whether the noise complaint had merit or not, the deputy had a duty to respond. Ms. Barman confirmed her name and address but would not provide her date of birth for the noise complaint form.

We can also confirm that after first being contacted by the deputy, Ms. Barman walked away from him and then returned toward him twice. Those closest to the deputy and Ms. Barman corroborate that the deputy informed Ms. Barman he would arrest her if she did not give her date of birth. She once again refused, turned, and began to walk away. It was at this point the deputy grabbed Ms. Barman's arm/wrist area in his attempt to detain her. (Whether this tactic was appropriate is not within the purview of this office but rather that of the Sheriff's internal investigation.)

We can confirm that Ms. Barman yelled out. Between six and twenty attendees then moved in Ms. Barman's direction forming a close semi-circle around the deputy. Emotions ran high and the advancing crowd grew increasingly agitated, leading to a chain of events with a confusing timeline.

Witnesses confirm that attendees yelled at the deputy to let Ms. Barman go and chanted statements such as "No! No! No! No!" As the crowd came within feet of the deputy, the P.E.R.T. clinician was caught up in the chaos and was shoved, kicked and elbowed, leaving a noticeable red welt under her eye. (Her injury was documented in a photograph after the incident.) We can also confirm that several attendees attempted to physically interfere with Ms. Barman's arrest—some grabbing Ms. Barman, some grabbing the deputy.

We can confirm that Ms. Barman went to the ground at two different points during the scuffle. Because accounts of the incident vary significantly, it is also impossible to determine if Ms. Barman was pushed, fell or was forced to the ground. With the assistance of attendees who had surrounded the deputy, Ms. Barman was able to break free and walk away. Out of fear for his own safety and the safety of the P.E.R.T. clinician, and in an attempt to control the crowd and place Ms. Barman under arrest, the deputy then deployed his pepper spray and at 9:41 p.m., put out a radio call that he had used force on the attendees. (That call occurred four minutes after the deputy arrived at the residence.) After the deployment of the pepper spray, the P.E.R.T. clinician took that opportunity to get around the crowd to the door, leave the home and radio for help.

² P.E.R.T. (Psychiatric Emergency Response Team) clinicians are specially-trained mental health professionals who are paired up with law enforcement to ride along in case they are needed to assist with on-scene situations involving people with mental illness. They are not employees of the San Diego County Sheriff's Department.

Some in the crowd began to disperse and it is corroborated that the deputy was able to detain Ms. Barman a second time. Even though pepper spray had been deployed, some of the attendees continued their attempts to stop the deputy, advancing toward him again. The deputy pushed away those who tried to interfere, including Ms. Barman's partner. At this point in the scuffle, drinking glasses were broken inciting the crowd further. The deputy aimed his taser gun at one attendee who was pulling on Ms. Barman's legs, warning him to stay back.

At that time, several 911 calls were received from attendees requesting additional deputies and medical assistance. The deputy again requested back-up. Additional deputies then began arriving. It took several minutes, and additional deputies to restore order, eventually allowing medical personnel into the home to treat attendees for the effects of pepper spray at the scene. Deputy Abbott sustained several scratches on his arm which were later documented in a photograph.

Ms. Barman was arrested for resisting arrest and battery upon a police officer. Ms. Morgan was arrested by one of the responding deputies for interfering with an officer in the line of duty, based upon her actions of repeatedly attempting to pull Ms. Barman away from Deputy Abbott and trying to prevent him from arresting Ms. Barman.

We cannot corroborate that Ms. Barman hit the deputy.

In evaluating the facts and conduct of all involved, it is clear there were many opportunities by all the principle players to prevent this incident from happening. It is hard to imagine respected, responsible adults, or a decorated Marine with five years of service and an unblemished record of service in the Sheriff's Department, ending up in such a situation. Cooler heads could have intervened to diffuse, not escalate the situation.

An officer faces potentially-deadly violence in all kinds of unlikely situations. They are trained to be on guard because no threat can be discounted.

That is why the public should remember that when law enforcement officers are engaged in carrying out their sworn duties and members of the public do not feel the officer is acting properly or are unhappy with the tactics being used, the solution is not to interfere with, resist or fight the officer. This is not the time to challenge or threaten. A citizen can ask for the officer's supervisor or if this is not possible, upon conclusion of the contact file a complaint with the department's internal investigations.

The District Attorney's Office conducted an independent investigation and assessment of the circumstances surrounding the use of force. This review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, this review should not be interpreted as expressing an opinion on these matters. After this review of the deputy's actions, we see no legal basis to bring criminal charges against Deputy Abbott.

In addition, our review of the evidence indicates there has been a misdemeanor violation of the law by both Ms. Barman and Ms. Morgan. They delayed and obstructed the officer while he was performing his duties. However, based upon all of the many conflicting accounts, our office

would not be able to prove this case beyond a reasonable doubt to a jury. Accordingly, in the interest of justice, no charges will be filed against either Ms. Barman or Ms. Morgan.

Regards,

Bonnie M. Dumanis
San Diego County District Attorney