

LAW OFFICES OF STEPHEN G. DE NIGRIS

A PROFESSIONAL CORPORATION REPRESENTING LAW ENFORCEMENT OFFICERS AND PUBLIC EMPLOYEES AT THE FEDERAL, STATE AND LOCAL LEVELS.

STEPHEN G. DE NIGRIS*
MICHAEL L. MICHETTI, JR. †
OF COUNSEL

*ADMITTED IN FL, NY, D.C.
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2117 L. ST., N.W.
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WASHINGTON, D.C. 20037-1524



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March 17, 1999

Sandra Thomas
U.S. Office of the Special Counsel
1730 M Street, N.W.
Suite 300
Washington, D.C. 20037-1524

Re: DoD Police Officer James W. Waters
OSC File No. MA-99-0838

Dear Ms. Thomas:

This office represents Department of Defense Police Officer James Waters in the above-referenced complaint filed with the Office of the Special Counsel on March 3, 1999. This complaint was filed in response to the Agency's action ordering Officer Waters to attend counseling sessions and the continued harassment of Officer Waters. The complaint alleged the Agency had committed prohibited personnel practices in violation of 5 U.S.C. § 2302(b)(9) and (11). I am now contacting you to inform you of recent actions taken by the Agency which give rise to an additional complaint under 5 U.S.C. § 2302(b)(8).

As I informed you in the original complaint, on September 8, 1998, Officer James W. Waters was assaulted by his supervisor, Lieutenant Larry Graves. Officer Waters' left knee was sprained and required medical attention from an orthopedic surgeon. Following the alleged assault, Officer Waters filed a report with the Metropolitan Police Department concerning the incident. The MPD report number is CCN638528. On December 7, 1998, Officer Waters, through counsel, notified United States Attorney for the District of Columbia, Sherri Berthrong, of the situation and informed her that he wished to pursue criminal charges against Lt. Graves. Further, counsel notified the Agency that the Officer Waters was actively pursuing criminal charges against Lt. Graves through the U.S. Attorney's Office.

As noted in the original complaint, on February 25, 1999, the Agency ordered Officer Waters to report to counseling following another incident between Officer Waters and Lt. Graves. This office then filed the above-referenced complaint on behalf of Officer Waters and notified the U.S. Attorney's Office of the situation. In addition, counsel reminded the Agency, including Chief of Police Harry T. Sell of the complaint to the U.S. Attorney's Office and of the complaint to the Office of the Special Counsel. In this regard, Officer Waters has made numerous protected disclosures by providing information that he reasonably believed evidenced a violation of the law

to the U.S. Attorney's Office and to the U.S. Office of the Special Counsel.

On March 15, 1999, the Agency proposed to suspend Officer Waters for fourteen days for the incident involving Lt. Graves. The Agency appears to be retaliating against Officer Waters for filing a criminal complaint, seeking the assistance of U.S. Attorney's Office and for filing a formal complaint with the Office of the Special Counsel. In this regard, the Agency is in violation of the Whistleblowers Protection Act of 1989 and has committed a prohibited personnel practice under 5 U.S.C. § 2302(b)(8). Moreover, the Agency's proposal demonstrates that it will use specious tactics in order to vindicate Lt. Graves and spare the Agency the embarrassment a criminal indictment might yield against a supervisor.

Concerning the Agency's proposal, the Agency's conveniently fails to mention material facts surrounding the incident at the gate. Further, the proposal contains flat out lies. The proposal fails to indicate that another U.S.N.O. Police Officer, Officer Rucker, was on the scene and informed Lt. Graves that if he really needed to have his car "mirrored," he (Officer Rucker) would do it. The proposal fails to mention that Lt. Graves proceeded to ignore Officer Rucker and insisted that Officer Waters perform this action, thereby harassing and intimidating a potential criminal witness. The proposal fails to mention that another supervisor Lt. Cooper instructed Graves to proceed through the gate because it was not necessary for either individual to mirror his vehicle. Lt. Graves again ignored Lt. Cooper's instructions and continued to harass my client despite this directive.

Instead, the proposal states that "Lt. Graves then placed a call to Lt. Cooper to notify him that you were refusing to check Lt. Graves' vehicle," and implies that Lt. Cooper diffused the confrontation by calming Officer Waters. These statements and implications are blatant fabrications. Lt. Graves never called Lt. Cooper. In actuality, Officer Waters called Lt. Cooper in order to bring the on duty supervisor to the scene to talk some sense into Lt. Graves. In fact, Officer Waters sought assistance from several sources including, the U.S. Secret Service Uniformed Division Officers on the scene at the time, Officer Rucker, and Lt. Cooper. However, statements from Officer Rucker and Lt. Cooper were never considered prior to the issuance of the proposed suspension.

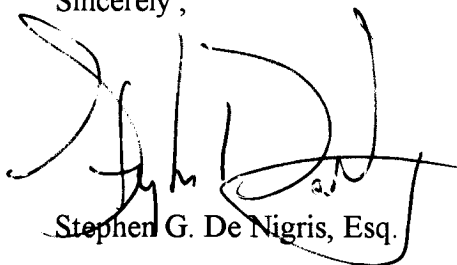
As I noted previously, on February 25, 1999, Harry T. Sell, Chief of Police at the U.S. Naval Observatory ordered Officer Water to report to the Counseling and Referral Service and placed Officer Waters on administrative duty. Chief Sell is aware of the explosive nature of Lt. Graves' personality, the previous criminal complaint filed with U.S. Attorney's Office, and the complaint filed with the Office of Special Counsel. No action has ever been taken against Lt. Graves. I hesitate to use the word "conspiracy" but given the blatantly untruthful statements contained in the proposal letter it is clear that Chief Sell and the Agency are attempting to cover up Lt. Graves' conduct. At the very least, the appearance of impropriety and misconduct by the Agency is impossible to ignore.

Officer Waters continues to fear for his safety. Thus, I have again contacted the U.S. Attorney's Office notifying them of the recent developments and the retaliatory prohibited personnel practices taken by the Agency. I have enclosed with this letter a copy of all material

correspondences between this office and the U.S. Attorney's Office apprizing them of the Agency's actions. Furthermore, I have enclosed the letters I have sent to the Agency as evidence that the Agency and Chief of Police Sell were on notice of the criminal complaint filed against Lt. Graves and the complaint to the Office of the Special Counsel. Finally, I enclosing statements from Lt. Cooper and Officer Rucker which refute the false allegations contained in the Agency's proposal to suspend Officer Waters.

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have nay questions.

Sincerely ,

A handwritten signature in black ink, appearing to read "Stephen G. De Nigris". The signature is stylized and written over a horizontal line.

Stephen G. De Nigris, Esq.

Enclosures:

March 16, 1999, letter to U.S. Attorney Sherri Berthrong

March 15, 1999, Proposed Suspension of Officer James Waters

March 2, 1999, letter to U.S. Attorney Sherri Berthrong

February 26, 1999, letter to Chief of Police Harry T. Sell, U.S. Naval Observatory

February 24, 1999, Voluntary Statement of DoD Police Officer David Rucker

February 24, 1999, Voluntary Statement of DoD Police Lt. Cooper

December 12, 1998, Acknowledgment from U.S. Attorney Sherri Berthrong

December 7, 1998, Letter to U.S. Attorney Sherri Berthrong

October 5, 1998, letter to CMDR Mark Gunzelman, Deputy Superintendent, U.S.N.O.

12752
20080107
17 Dec 08

From: Chief of Police, Naval Support Activity, North Potomac, (NSA-NP)
To: James W. Waters, Police Officer, GS-0083-06

Subj: DECISION TO EFFECT YOUR SUSPENSION

Ref: (a) Letter of Proposed Suspension, issued 15 October 08
(b) Written Reply, dated 6 November 08
(c) Collective Bargaining Agreement between Naval District Washington (NDW) and the Fraternal Order of Police NDW Labor Committee (FOP), dated 21 September 07

1. Reference (a) proposed a five (5) calendar day suspension for Disrespectful Conduct to a Supervisor and Using Profane Language. Reference (a) also advised you I would give consideration to any explanation, facts or rebuttal you elected to present me upon exercising your right to reply to the proposed action.

2. I carefully reviewed reference (a) and the related case file and fully considered the written reply, reference (b), before making any decision. I concluded from my review that the reasons and specifications as outlined in reference (a) are sustained by preponderance of the evidence and that your actions did adversely affect the efficiency of the service. As a police officer, you have the responsibility to conduct yourself in a professional manner and neither exhibit disrespectful conduct to a supervisor nor use profane language at work.

3. You responded to reference (a) in reference (b). As reference (b) concerned a number of issues, I will address the points that appear to be material and relevant to a proper review of this case. You stated that there was a pyramiding of charges as the same facts were used for two separate reasons. You also stated that the Law Enforcement Code of Ethics can not be used for disciplinary purposes as it is not a sanctioned policy for discipline nor has it according to reference (c), been negotiated or approved by the union. In your letter, you also state the fact that the sequence of events is not logical as Officer Waters stated his comments twice.

4. After careful thought and thorough analysis of reference (a), the related case file and reference (b), I find preponderant evidence is on the record to sustain each reason and specification included in reference (a). I have concluded the following:

(a) In response to the argument that the charges were pyramided, this is not shown by the evidence. There were two separate reasons in this proposal. The first reason was disrespectful conduct to a supervisor, and the second reason was using profane language. It strains credulity to state that this incident cannot give rise to two separate reasons, because, your conduct at issue while occurring at the same incident exhibited

12752
20080107
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Subj: DECISION TO EFFECT YOUR SUSPENSION

both disrespect towards your supervisor and profane language. Either of these, standing alone is unacceptable and would warrant disciplinary action. Both your use of profane language and disrespectful conduct to a supervisor was completely out of line with conduct acceptable in any workplace. Your repeated use of the F-word as documented in reference (a) was particularly egregious since your language was directed at your supervisor Lt. Anton O'Bryant. Your words directed at Lt. O'Bryant, not once but twice, "fuck you, and get the fuck out of my face," are far outside the bounds of words tolerated in the normal course of duty. As well, your additional comment stating that Lt. O'Bryant was, "in Colonel Grave's ass" is nothing less than profane and disrespectful. Your behavior as well as your language as specified in reference (a) was completely inappropriate and cannot be condoned.

(b) You also claimed that the Law Enforcement Code of Ethics cannot be used for disciplinary purposes. This is an inaccurate statement as the Law Enforcement Code of Ethics is part of reference (c) as such this document is considered a binding contract on management, the union and employees. This document can therefore be used for disciplinary purposes as it is enforceable for purposes of conditions of employment. The union voted to ratify reference (c). The claim that this document cannot be used for disciplinary purposes is not in accordance with the facts.

(c) The claim is also made that the sequence of events is not logical since Officer Waters would not have made the two statements consecutively. Your letter does not provide any evidence to back up this assertion. Indeed, your letter states that there was provocation on the part of Lt. O'Bryant. These unsubstantiated allegations concerning Lt. O'Bryant acting in a threatening manner are not supported by the facts.

(d) The penalty of a five (5) day suspension promotes the efficiency of the service. It is appropriate, reasonable and proportionate to the facts and considerations.

In review of the record and reference (b), I find, as explained above, that the record supports my conclusion that you committed the misconduct at issue of disrespectful conduct to a supervisor and using profane language.

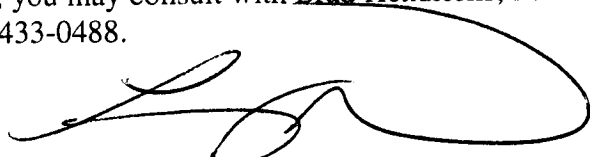
5. In making my decision on this matter, I considered aggravating factors such as the seriousness of this offense and its relation to the nature of this position. Your conduct evidenced above clearly has a detrimental effect on the vital mission of protecting the public. There is a higher standard of conduct for police officers. Your actions lead to an erosion in a supervisor's confidence. I have also considered mitigating factors such as your twenty-five (25) years of federal service, acceptable performance, as well as your lack of a disciplinary history. Given the serious nature of the above offense, and the inadequacy of lesser sanctions, this suspension is the minimum disciplinary action which I find can be reasonably expected to impress upon you the seriousness of your misconduct. I find the misconduct so serious that I would sustain a five calendar day suspension for either charge standing alone. Therefore, you will be suspended from NSA-NP effective

Subj: DECISION TO EFFECT YOUR SUSPENSION

January 11, 2009 through January 15, 2009. Your last day of active duty status prior to the start of your suspension will be January 7, 2009. You will be expected to return to work on January 18, 2009.

6. You may grieve this action in accordance with the negotiated grievance procedure, contained in Article 34 of reference (c).


7. Copies of applicable regulations as well as the official case file are available to you and your representative, if appropriate, in the Labor-Management Relations Department, Human Resources Office, Washington, D.C. 20374-5041. Should you require assistance or further information regarding your rights, you may consult with Brad Hendricks, Labor Relations Specialist, HRO-W, on (202) 433-0488.



COLONEL LARRY GRAVES

12-17-08
Date

Richard
Richard to sign
Employee's Signature

WITNESS: LT. LEON 

Your signature above only acknowledges receipt of this document. It does not indicate agreement or disagreement with its contents.

Copy to:
HRO-W
Stephen G. De Nigris, FOP Representative

LAW OFFICES OF STEPHEN G. DE NIGRIS

STEPHEN G. DENIGRIS
ADMITTED IN FL, NY, D.C.

2100 M STREET, N.W.
SUITE 170-283
WASHINGTON, D.C. 20037-1233

TELEPHONE: 703-416-1036
TELECOMER: 703-416-1037



MEMORANDUM

To: Commander

From: Anthony Meely, Chairman FOP Labor Committee via Stephen G. DeNigris, Esq.
Chief Legal Counsel FOP NDW Labor Committee *ASD*

Re: Step 3 Grievance - 5-day Suspension Police Officer James Waters
Naval Support Activity North Potomac

Date: December 24, 2008

Sir:

The FOP is grieving the five day suspension of the above-referenced police officer. The incident which gave rise to the imposition of the suspension was a one-on-one incident with no independent witnesses. Indeed, when the proposing official attempted to elicit a statement from another employee who was present, the employee's version did not support the proposing official's description of the events. One suspects that if the events described in the notice of proposed suspension occurred as described by the proposing official, then someone would have heard the alleged commotion.

The sequence of the alleged events is not logical and leaves several questions about the accuracy and completeness of the proposal. For example, the proposing official alleges that Officer Waters stated that he was being bothered. Without any additional facts, he claims Officer Waters stated "fuck you, and "get the fuck out of my face." This proposing official suggests that the officer made two comments without any intervening involvement by the proposing official.

However, as one reads the proposal, it's apparent that something transpired in between the two comments which are attributable to the proposing official. If the comment is to be believed, then it is obvious that the proposing official moved into my client's personal space to the extent that he was now in Officer Water's face.

My client confirms that the proposing official approached him in an aggressive manner necessitating that he move backwards quickly. He told the proposing official to back off and get out of his face. He denies the use of any expletive.

The proposing official then claims that my client described his relationship Chief Graves in a less than appropriate manner. Absent is any foundation concerning the context of when this alleged statement was made, if it was made at all. My client denies the specification.

The proposing official is known for his use of intemperate and vulgar language toward his subordinates and during roll call. A supervisor is held to an even higher standard of conduct than an employee. He is required to set an example. Confronting a subordinate in an aggressive manner, leaving out facts, duplicating charges, reporting statements which did not occur and reliance upon a code of ethics which has not been approved as a basis for discipline does not support the proposal or the discipline proposed.

It should be noted that the proposing official has pyramided charges against my client. In this regard, he has relied upon the same conduct to support additional specifications to justify a disproportionate penalty. Secondly, reliance on the "Law Enforcement Code of Ethics" as a basis for disciplinary action is improper. It is not a sanctioned policy for discipline and has certainly not been negotiated as a disciplinary formula with or approved by the union. Moreover, contractual provisions cannot be used as a basis for discipline. Lastly, the penalty is excessive and not in accordance with principles of progressive discipline. A meeting is requested.

Contractual Articles violated:

10.05	Fair Application of the Agreement
43.02	Standard
43.03	Prior Measures

And any other policy, rule, regulation or contractual provision which may apply.

Remedy sought:

Rescission/Reduction 5-day Suspension
Removal of all documentation concerning or touching upon the suspension
Rescission of SF-50 indicating suspension
Back pay and all lost federal benefits
Attorney fees and costs
Any other remedy the arbitrator deems necessary appropriate and just.

Received
By LT. Appl
24 Dec 2008

Waters, James W CIV USNO Washington, N9

From: Sutton, Donnie CIV NSF Naval Observatory, N9
Sent: Sunday, December 28, 2008 5:45 PM
To: Waters, James W CIV USNO Washington, N9
Subject: Statement

The month of October the first week LT O'Bryant ask me to come in to his office at 1800 hr. to talk to me about a conversation that occurred. He stated that I must write a statement. if not disciplinary action will be taken against me.

DEPARTMENT OF THE NAVY
VOLUNTARY STATEMENT

1. PLACE

Bldg 59

2. DATE

10/08/08

Rate/Rank/Grade Name (FIRST, Full MIDDLE NAME, LAST)

Dennis Ray Sutton

Social Security Number

, make the following

free and voluntary statement to

Lt O'Bryant

whom I know to be

NDW Police

I make this statement of my own free will and without any threats or promises extended to me. I fully understand

that this statement is given concerning my knowledge of:

I work at:

NDW Naval Observatory

Command/Employer:

Department/Division:

DOD

Work Address:

3450 Massachusetts Ave NW Washington DC 20392

Work Telephone Number:

202-762-0339

I live at:

Home Address:

Home Telephone Number:

My statement:

On Tuesday September 23, 2008 at 0330AM I was NOB Patrol arrived at Bldg 59 Cpl Water, and Lt O'Bryant, was in the com center talking appears a normal conversation. I approach the com center Cpl Water, and Lt O'Bryant was have a loud conversation, I left the Bldg 59 continued on Patrol at Naval Observatory North Potomac

DS "I state under penalty of perjury that the foregoing is true and correct."

This statement is presented and signed pursuant to 28 US Code § 1746 Unsworn declarations under penalty of perjury. Perjury is defined under 18 US Code § 1001 Statements or entries generally TEXT: (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

2219
TIME

10-8-08
DATE

Dennis Ray Sutton
SIGNATURE



**UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY**

FOR FLRA USE ONLY

Case No. _____

Date Filed _____

Complete instructions are on the back of this form.

<p>1. Charged Activity or Agency Name: Naval District of Washington Address: 1014 N Street SE Washington, DC Tel.#: () Ext. Fax#: ()</p>	<p>2. Charging Party (Labor Organization or Individual) Name: James W. Waters Address: 3209 Radford Lane Fort Washinaton, Marvland 20744 Tel.#: 301-248-0964 Ext. Fax#: ()</p>
<p>3. Charged Activity or Agency Contact Information Name: RADM. Terence E. McKnight Title: Commandant N1W Address: Tel.#: () Ext. Fax#: ()</p>	<p>4. Charging Party Contact Information Name: Title: Address: Tel.#: () Ext. Fax#: ()</p>

5. Which subsection(s) of U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and _____

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.
 The management of the Naval District of Washington has failed to hire any DOD Police Officers in the last 3-6 months. The officers assigned to the U. S. Naval Observatory are working under substandard conditions. The critical shortage of officers has placed the lives of the officers who work there on the line. The normal allotted manning is 6 officers, at present on the Midnight shift there are only 3 officers. This shortage creates a severe officer safety issue. It is the position of Mr. Norm Livingston Public Safety Director, Dept of Defense Police, NSA North Potomac (202-762-0086) that the agency will replace those officers with stationary cameras and other electronic monitoring devices. This does not cover the issue of the critical manpower shortage. Cameras and electronic monitoring devices can not respond to crimes committed on U. S. Naval Observatory property.

7. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where? [see reverse] _____

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] Fax 1st Class Mail In Person
 Commercial Delivery Certified Mail

James W. Waters

Type or Print Your Name

James W. Waters
 Your Signature

Mar 30 07

Date

10/23/2002

From: James Waters
To: Federal Labor Authority

Subject: Unfair Labor Practice of Northern Precinct Watch Schedule

On 17 October 2002 a watch realignment schedule was implemented to enhance manning for the Calvert Street gate and provide around the clock coverage for the Naval Observatory and Nebraska Avenue Complex and will assist in reducing shift manpower shortages in the event of a last minute call off.

The NDW Police Officers oppose of this watch schedule because it will impose undue hardship on an already overworked force due to the twelve-hour shifts. The reason why, the days off are not three consecutive days which would not allow one ample time to rest. For example, when the new watch schedule is in effect on 01 November 02, the officers will only have two days off each week and they are split days off. And as far as the evening watch (1745-0615) they will have to work five consecutive days before the next schedule day off.

For the past 3 years we have worked twelve-hour shifts after management stated that this would be a temporary situation. This is clearly a labor issue: because the officers will suffer serious fatigue and will not be able to perform at their fullest ability. This could possibly create a hazardous situation due to working twelve-hour shifts and not having adequate time off. We would appreciate your response in the next 10 days.

Very Respectfully,
James Waters

James Waters

VOLUNTARY STATEMENT

1. OFFICER

USNO DOD POLICE DEPT.

2. DATE

Feb 24, 1999

I, LT. Cooper, make the following free and voluntary statement to Capt. H. Sell whom I know to be Chief Of Police Of USNO DOD Police Dept.

I make this statement of my own free will and without any threats or promises extended to me. I fully understand that this statement is given concerning my knowledge of.

On February 24, 1999 at approximately 1725 hours, I received a radio transmission to respond to the South gate. Upon arriving I noticed Lt. Graves parked in the inbound lane, and Officer Waters on the telephone very upset about something Lt Graves was doing. I then told LT. Graves to go up to the office so I could find out what was going on without distraction. Officer Waters then told me that he was going to have Lt. Graves arrested, and that Lt Graves should not even be working around him, and that Chief Sell and everyone else knew about it. and that he had paperwork documenting his filing of same. He then handed me paperwork from the District Attorneys Office stating he had filed a case. I then was handed the phone by Officer Waters, and spoke to someone I presume was from the Metropolitan Police Department's dispatch and he said that he was sending officers to the scene. I then noticed Lt. Graves still there and told him to go to the office and I'll be there shortly. I then told the dispatcher that we would take of the situation and he said something to the affect that patrols will be dispatched regardless. I then told Officer Rucker to stay at the South gate with Officer Waters because he was still upset about the whole situation, and that I was enroute back to the office.

A large handwritten signature, possibly 'H. Sell', is written across the lower half of the page. There are also several horizontal scribbles and lines drawn across the page, some appearing to be redactions or corrections.

memorandum

DATE: February 24, 1999

U.S. SECRET SERVICE/UD 131.000

REPLY TO
ATTN OF:

Lieutenant Michael N. Carey

SUBJECT:

Altercation at the South Lot

TO:

Deputy Chief - Naval Observatory Branch

THRU: Captain James J. Hampton

On Wednesday, February 24, 1999, at approximately 1725 hours the undersigned lieutenant was notified by Officer Brandon M. Blucher that he received a call from the Foreign Missions Branch Control Center (FMB/CC) advising there was a fight between two armed security guards at the South Gate. He further advised that the FMB/CC was monitoring MPDC 2nd District frequency and they were also dispatching units.

Sergeant Garrett and myself responded to the scene at approximately 1727 hours. Upon our arrival DOD Officer Waters and Lieutenant Graves were being separated and interviewed by MPDC. MPDC Officers Connor and Mcvea and Sergeant Garrett and myself responded to the DOD Police office to speak with Lt. Graves. Officer Waters was relieved of his post and weapon.

Lt. Graves advises when he arrived at the South Gate Officer Waters lowered the bollards. Lt. Graves told Officer Waters to inspect his vehicle, Officer Waters refused. Lt. Graves called the on-duty Lieutenant, Lt. Cooper. Officer Waters called MPDC from the South Gate claiming he was being assaulted. The incident was dispatched as two armed security guards fighting. This turned out to be a "verbal" altercation.

Chief Sells was called by Lt. Cooper. When Chief Sells arrived he advised me that there was an on going dispute between Officer Waters and Lieutenant Graves. He further advised that he contacted the Director of NAVOBS, who concurred that Officer Waters' weapon be taken, and placed Officer Waters on administrative leave at 1745 hours.

RAD. Terence E. McKnight
Commandant
Naval District Washington
1014 N Street, SE
Washington, DC 20374-5001

Re: Supervisory Police Officer Lt. Emanuel Cowan

Dear RAD Terence E. McKnight:

My name is Officer James W. Waters, I am a DOD Police Officer for the Naval District Washington assigned to the U. S. Naval Observatory in Washington, DC. This letter is to advise you of something of a very serious nature going on at the Naval Observatory.

Back in November 2005 a female DOD Police Officer assigned to the Naval Observatory went to Col. Larry Graves to report that Lt. Emanuel Cowan was observed several times either purchasing or selling the drug Viagra while on duty, in uniform and in the police station (Bldg 59). In addition to Lt. Cowan's either purchasing or selling drugs while in the performance of his duties as a Supervisory Police Officer, there was another complaint regarding Lt. Cowan's unprofessional conduct where he would chase a certain female around the station making the statement "I sure would like to Fuck Lisa". The female officer was highly offended by Lt. Cowan's actions and filed a complaint with Col. who claimed that he had the complaints investigated. The investigation which took one year to complete gave the appearance of a major cover-up by management. The investigation should have been done by an outside agency such as NCIS or U. S. Attorneys Office for the District of Columbia or the FBI. The female officer who was offended by Lt. Cowan's actions filed a complaint with the Naval District Washington EEO Office. The case is currently at the U. S. Equal Employment Opportunity Commission.

In January 2007 Col. Graves issued the female officer who filed the complaint a Letter of Caution for what he stated was hearsay. The letter issued by Col. Graves was very untimely and his motives in the issue are very questionable. In addition there were no progressive disciplinary steps taken in this situation. The officer never received a verbal warning from Col. Graves for any wrongdoing. The letter of caution issued to the officer sends a message that any DOD Police Officer under Col. Graves command who comes forward with wrongdoing of any kind against Lt. Cowan will be punished.

Col. Graves talks about integrity and proper police procedures, well the last time I checked buying, selling and using drugs while on duty is totally against the law and all this happened under his command.

Approx. two months ago Lt. Cowan was transferred from the U. S. Naval Observatory to U. S. Naval Station Carter Rock to replace a Lt. who took Emergency Leave under the Family Medical Leave Act. On 23 April 2007 Lt. Cowan returned to his supervisory duties at the U. S. Naval Observatory.

Lt Cowan has not qualified with his service weapon in over a year. He is presently on Medical Waivers for unspecified reasons. He is assigned to administrative duties only. With this situation in mind, Lt. Cowan is not fit to back up any Police Officer on any shift. Col. Graves was advised of the situation on sever occasions and has not corrected the situation Lt. Cowan is a risk to all Police Officer on duty. In addition Lt. Cowan should not be handling/issuing weapons to officers because he is not qualified in accordance with OPNAV Instruction 5580.1A.

At no time has Col. Graves made any attempt to protect the victim of Lt. Cowan's unprovoked sexual harassment. He continues to cover for Lt. Cowan

Katz v. Dole, 709 F.2d 251, 254 (4th Cir 1983)

Having a policy against sexual harassment is not an adequate response. An employer is responsible for sexual harassment by its employees and is liable when it fails to respond to acts of harassment.

Regarding the Letter of Caution Col. Graves issued to the female officer:

Title 5 United States Code 2302(b)(8) prohibits an employee with personnel authority (Col. Graves) from taking a personnel action because of any disclosure of information by an employee that the employee reasonably believes evidences a violation of any law, rule or regulation.

Regarding the failure of the Headquarters Naval District Washington, including the Office of EEO at the Washington Navy Yard to protect the victim of the unprovoked sexual harassment of Lt. Cowan:

Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257(1998), and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998), The Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors.

I am requesting a full scale investigation into the actions of Col. Graves and Lt. Cowan. This investigation should be done by someone in the Law Enforcement community that has no ties to the Naval District of Washington.

Off. James W. Waters Dec 18 2007
Officer James W. Waters
3209 Radford Lane
Fort Washington, Maryland 20744
301-248-0964

VOTE OF NO CONFIDENCE

WHEREAS, the Fraternal Order of Police, Naval District Washington Labor Committee is the exclusive bargaining representative of a group of police officers at the Naval Support Activity, North Potomac (U.S. Naval Observatory), and

WHEREAS, the Fraternal Order of Police Naval District Washington Labor Committee has a collective bargaining agreement in effect setting forth the terms and conditions of employment for the police officers it represents, and

WHEREAS, the promotion and maintenance of good labor relations is essential to accomplishing the mission of Naval District Washington, and

WHEREAS, strong leadership and respect is essential for the maintenance of morale and dignity within the police department charged with the protection of persons and property at the U.S. Naval Observatory, and

WHEREAS, a strong understanding of modern police department management practices is essential for the accomplishment of the mission at the U.S. Naval Observatory, and

WHEREAS, discipline, when warranted, should be used as a training device and not as a punitive measure unless the employee had demonstrated an inability to conform his or her conduct to department requirements, and

WHEREAS, Colonel Larry Graves has repeatedly demonstrated his inability to maintain good labor relations with the Fraternal Order of Police, Naval District Washington Labor Committee, and

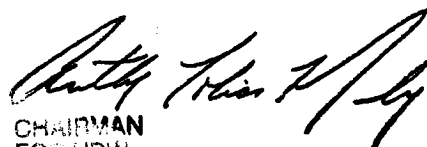
WHEREAS, Colonel Larry Graves has repeatedly failed to demonstrate the leadership skills essential for the maintenance of morale and dignity within the police department charged with the protection of persons and property at the U.S. Naval Observatory, and

WHEREAS, Colonel Larry Graves has repeatedly failed to enhance morale and foster dignity within the police department charged with the protection of persons and property at the U.S. Naval Observatory, and

WHEREAS, Colonel Larry Graves has repeatedly failed to demonstrate a strong understanding or adherence to modern police department management practices, and

WHEREAS, Colonel Larry Graves has utilized the disciplinary process against the police officers of U.S. Naval Observatory in a punitive and excessive manner,

By overwhelming vote of the membership, we issue this *Vote of No Confidence*.


CHAIRMAN
FOP NDW
LABOR COMMITTEE

I am requesting a full scale investigation into the actions of Col. Graves and Lt. Cowan. This investigation should be done by someone in the Law Enforcement community that has no ties to the Naval District of Washington.

Officer James W. Waters
3209 Radford Lane
Fort Washington, Maryland 20744
301-248-0964

A handwritten signature in cursive script that reads "James".

October 6, 1998

MEMORANDUM

From: Officer James W. Waters, Police Officer
To: Chief of Police, U.S. Naval Observatory
Subj: "Incident & Roll Call Training 8 September 98"

On October 6, 1998, you requested a statement explaining the events which occurred at roll call training on Tuesday 8 September between Lt. Larry Graves and myself. I am not sure what "incident" you are referring to. There was no "incident." As to events which occurred, again, I am not sure what "events" you are referring to. If you are seeking information about the discussions which took place approximately one month ago, this is my recollection of that night.

Lt. Graves was holding roll call. During roll call Officer Harris told Lt. Graves she was not feeling well and would like to go home. Lt. Graves left roll call room and made copies of some regulation on traumatic injuries. He handed them out to me, Officer Harris, Officer Whitfield and Officer Goosby. We looked at him and Officer Whitfield told him that these regulations on traumatic injury did not apply to Officer Harris because she was complaining of being sick. Lt. Graves refused to allow Officer Harris to go home. He said it was up to the supervisor to take any employee to the hospital and he could do this if he wanted to with Officer Harris. Officer Whitfield told him again that the regulation didn't apply to Harris. Roll call then ended.

The group then started discussing the B&G's. I then told Lt. Graves that his assignment of 4 B&G's per officer in one night was excessive and that no supervisor had ever required officers to do 4 B&G's per officer in one night. Lt. Graves then accused me of sleeping on the job in front of the other officers and told me that he better not catch me sleeping on the job. I replied that he never caught me sleeping on the job but that I had caught him sleeping while he was a supervisor. Lt. Graves was extremely angry and started stuttering. His voice became high pitch. He was almost shouting at me and I was speaking loudly back at him. I told him he was wrong about Harris and she had a right to go home. I told him we were going up to see Commander Gunzelman in the morning and file a complaint against him. Lt. Graves yelled back at me to go file a complaint with whoever you like. I stated that we were not children and that he was not going to work us like slaves while he acted like a house nigger. Lt. Graves stormed out of the room. Everyone then left.

DEPARTMENT OF THE NAVY
VOLUNTARY STATEMENT

1. PLACE

USNO

2. DATE

7/6/07

Rate/Rank/Grade Name (FIRST, Full MIDDLE NAME, LAST)

1. LORETTA KAYE BETHEN

Social Security Number

, make the following

free and voluntary statement to THE FACTS SURROUNDING TRAFFIC by Cpl WATERS

whom I know to be _____

I make this statement of my own free will and without any threats or promises extended to me. I fully understand

that this statement is given concerning my knowledge of: _____

I work at: USNO

Command/Employer: NAVAL DISTRICT OF WASHINGTON

Department/Division: SECURITY SERVICES

Work Address: 3450 MASS, AVE NW

Work Telephone Number: 202 762-0339

I live at:

Home Address:

Home Telephone Number:

My statement:

ON TUESDAY JULY 3, 2007, @ approximately 0650, while returning from DISA, ARLINGTON COUNTY, a traffic stop was initiated. The stop was made AS Cpl WATERS ~~MADE~~ ^{MYSELF} made a left turn on Wisconsin Ave leading to observatory circle. As we turned from the light there was another vehicle turning along side of us not yielding the stop sign. The vehicle, a Mercedes Benz, continued on up the hill, seemingly not paying attention. The driver pulled into a parking space outside of the south gate. Cpl WATERS pulled up ASKED the driver did he see the stop sign. The Driver ASKED "What stop sign." The driver appeared uncooperative while he stood outside of his car AS he WAS TALKING to Cpl WATERS with his ARMS folded. The driver WAS given a citation.

South Bethen

DEPARTMENT OF THE NAVY
VOLUNTARY STATEMENT

1. PLACE

USNO

2. DATE

7/6/07

Rate/Rank/Grade Name (FIRST, Full MIDDLE NAME, LAST)

1. GS-6/8 JAMES W. WATERS

Social Security Number

, make the following

free and voluntary statement to FACTS Running Stop TS-128

whom I know to be

I make this statement of my own free will and without any threats or promises extended to me. I fully understand

that this statement is given concerning my knowledge of: TRAFFIC CITATION

I work at: USNO

Command/Employer: N. D. W.

Department/Division: DOD Police Dept

Work Address: 3450 MASS. AVE N.W. D.C.

Work Telephone Number: 762-0339

I live at:

Home Address:

Home Telephone Number:

My statement: True - July 3, 2007 approx 0650 - Returning from Disa, Ark, Va
At Traffic light Mass Ave + Observatory Circle, A white Mercedes Benz took a right turn
left to Gibbs Gate, I took the second left to Observatory Circle - A stop sign for Vets
to my right coming on to Obsvry Circle, He didn't stop cut in front of the Police Vch, I put
on lights + sirens. - Stopped Mercedes content as till he park his Vch near South Gate Exit.

FACTS: I Cpt. WATERS Ask him three times for Decie + Vch Regs He told me he would call Cpt. GRAVES
I inform him - Cpt. GRAVES wasn't driving his Vch. Ticket was given. Returning to Police Vch
he Holhaw out (you don't have to curse @ him) 3 times. One Patrol AT scene - 2 OFFICERS
in Police Vch I was driving (windows Down - Plus OFFICER at the South Gate looking AT US,
FACT: I inform - Cpt. GRAVES about 15 mins AFTER,

FACT: His Call shows my Talking to someone while I was writing ticket, (He stated he would
call Cpt. GRAVES?)

FACTS. He was told he could Read Instr. on the back of this citation.

FACTS. I wouldn't allow to him trying to start an Argument.