

COMPLAINT – COLIN STEWART

Employee: Colin Stewart
Santa Clara Police Department

Complainant: Garrett Bondaug
[Redacted]

Police Report: 11-12465

Please note that within two weeks from this incident a **filing of an official complaint was attempted but records of the incident and a complaint form were denied Mr. Bondaug by officer Steven Ernst** who was working the front records desk at Santa Clara Police Department. A letter from Records Manager, Gina McWilliam, on behalf of the acting Police Chief, Kevin Kyle, is attached to this complaint.

A Santa Clara County Grand Jury, in its 2012-2013 Final Report, found that the City of Santa Clara and its police department (1) did not provide Public Access to Complaint Procedure and (2) did not provide either online, in the lobby or by request Public Access to Complaint Form. Subsequently, it wasn't until **September 25, 2013** when Mayor Jamie Matthews, City Manager Julio Fuentes, and Police Chief Michael Sellers confirmed that the Grand Jury's findings were acknowledged and Grand Jury recommendations for remedy implemented. A copy of the City of Santa Clara's response to *"2013-2013 Santa Clara County Civil Grand Jury, Law Enforcement Public Complaint Procedures"* is attached to this complaint.

INCIDENT/TIME: December 2, 2011

INCIDENT CASE NUMBER: 11-12465

INCIDENT LOCATION: [Redacted] Wilson Court, Santa Clara, CA 95051

EMPLOYEES INVOLVED (IF KNOWN): Gregory Deger, Colin Stewart, Thomas Nelson, Lauren Larsen (Eldridge), David Schneider, Cory Morgan, Derek Rush, Wahid Kazem, Jamie Ellis.

WITNESSES: Daniela [Redacted], Sandra [Redacted], Tatiana [Redacted]

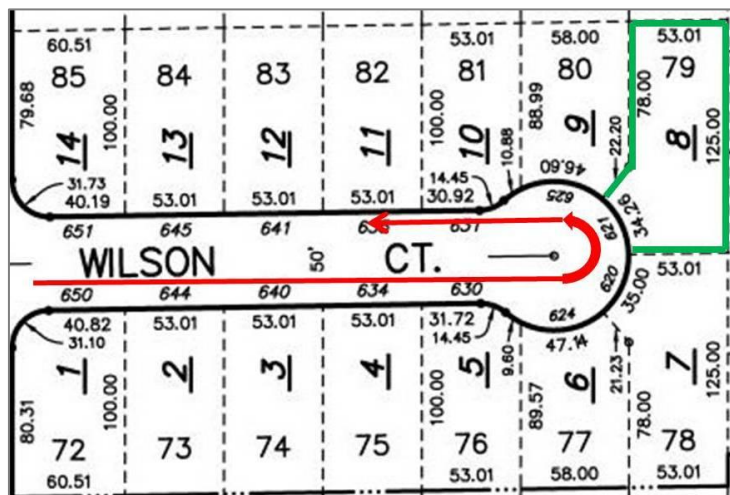
Complaint against Colin Stewart, Santa Clara Police Department

1. Stewart intentionally failed to follow police procedure.
2. Stewart made his report or conducted police business in less than a truthful and/or cooperative manner.
3. Stewart failed to complete reports accurately and completely.
4. Stewart used Unnecessary and Excessive Force.
5. Stewart did not report use of force accurately either orally or in writing, as required by SCPD.
6. Stewart's conduct harmed and discredited is reputation and that of the department.
7. Stewart committed perjury.

THE FOLLOWING HAPPENED:

1. **Failure to follow Santa Clara Police Department Procedure for 415(d) call for service.** Upon receiving a call for service, Colin Stewart, at the time a peace officer with the Santa Clara Police Department, responded to the area estimated by reporting party. **Stewart knew that policy mandates two officers respond to an alleged 415(d).** In responding to this call for service, Stewart took it upon himself to break from department protocol by allowing Gregory Deger, a junior officer at the time with less than two years accumulated service as a peace officer, to proceed without a backup officer. **I ask that an independent investigator consider the below facts in finding that Stewart intentionally violated department policy while responding to an alleged 415(d) on December 2, 2011 at [Redacted] Wilson Court.**

- a) Prior to arriving at Wilson Court, **Stewart testified he was just a couple minutes away from the subject area** when Deger reported he arrived on scene.
- b) Upon reaching the scene, Stewart failed to ensure the junior officer was completely aware that he was present to ensure higher probability that department policy was enforced.
- c) Stewart testified that he drove to the end of Wilson Court, where the [Redacted] Residence is located, made a left hand turn at the bulbous end in front of [Redacted] Wilson Court, and then proceeded to drive north back towards the opening of Wilson Court (Stewart deposition, page 38 lines 16-22). Review diagram and then scrutinize Stewart’s inconsistencies...



- i. If (1) Stewart entered the cul-de-sac as he testified and (2) Deger was already on the well illuminated porch then Stewart continued to drive by both Deger and Bondaug in plain sight and didn’t stop. Stewart and Deger’s testimony regarding arriving on Wilson

Court that evening completely contradict each other. **Stewart's testimony that he was 50-80 yards away when Deger started his unwarranted assault and battery is false.**

2. **False Police Report. Stewart's Police Report is Full of Inconsistencies. I ask that an independent investigator consider the below facts in finding that Stewart made his report and/or conducted police business in less than a truthful and/or cooperative manner intentionally violating department policy.**

- a) Deger's testimony is that it took approximately 2 seconds for each of the ASP baton strikes, that Stewart saw, to impact Mr. Bondaug. **Stewart intentionally dismissed the integrity of the Court in trying to convince it that he broke land speed records by running 80 yards, and around two vehicles, in less than 4 seconds** (page 52, lines 12-15). Stewart's testimony is, "When I got out of my car...I look up. I did see officer Deger and Mr. Bondaug...squaring off at each other. They were standing face to face. I proceeded to run towards both of them..." (page 28, lines 1-9).
- b) Officer Tom Nelson was also at the scene. **In an attempt to make the scene more ominous than it actually was, Stewart intentionally omits any mention of a third officer**, Nelson, from his police report.
- c) Stewart testified that he's the only one that punched Mr. Bondaug in the face with a closed fist. Sgt Rush's Arrestee Injury Report and SCPD pictures clearly show at least 7 areas of abrasion, redness and swelling on Mr. Bondaug's head. **Stewart intentionally omits multiple fist and boot strikes to Mr. Bondaug's body and head from his report.**
- d) All the homes on Wilson Court were built in 1955, very little has changed, if anything at all, with the front porches, garages, or front foundation of any home since that time. **The porch of [Redacted] Wilson Court runs parallel**, not perpendicular or in any angle to the Wilson Court street. Stewart testified that standing at the door of his patrol car he looked up and saw Deger and Mr. Bondaug "squaring off" with one another (page 28, lines 1-9) and that he could see both of their side profiles (page 48, lines 19-24). **Stewart's testimony about his ability to see Deger, Mr. Bondaug and the front porch of [Redacted] Wilson Court is an egregious lie.** Also consider the following...
 - i. **Ms. [Daniela]** has been associated with the [Redacted] Wilson Court property since 1955 and in the thousands of times, if not **tens-of-thousands of times**, that she's

travelled into that cul-de-sac she **has never been able to see the front porch** until she arrived in the bulbous end where her driveway is.

- ii. **Mr. Bondaug** has been associated with the [Redacted] Wilson Court property since 1971 and in the **thousands of times** that he's travelled into that cul-de-sac he **has never been able to see the front porch** until he arrived in the bulbous end where the driveway at his family's home.
- iii. On the night of December 2, 2011 Mr. Bondaug's white Mitsubishi Endeavor, a SUV with a roof height of 70 inches, and Ms. [Daniela]'s Kia Rondo with a roof height of 65 inches were both parked on the [Redacted] Wilson Court driveway.
- e) **Mr. Mike Yorks, a retired police officer, current Scenario Event Coordinator at the South Bay Regional Public Safety Training Consortium (The Academy), and private investigator** was hired by Mr. Bondaug's attorneys Mr. Steven Usoz(SJPD, ret.) and Daniel Jensen (SJPD, fmr.) to investigate and evaluate the scene located at [Redacted] Wilson Court. Recreating the scene, and using testimony of Colin Stewart, Mr. Yorks took pictures of the entire scene using his natural height of 70 inches and atop an 8 foot (96 inch) ladder. With many decades of crime scene investigation experience and many years as a POST instructor supporting his investigation, **Mr. Yorks determined that it is impossible for anyone to have seen the front porch of [Redacted] Wilson Court from where Stewart testified he was. Colin Stewart fabricated his police report, treacherously lied in his deposition, and intentionally falsified his testimony to the Superior Court.**
- f) **Stewart falsified his report by stating that there was a lawful order given to Mr. Bondaug,** "So at that point, my assessment of it was that he was giving him a *lawful order* after he struck him on the leg to take him into custody or detain him." (page 51, lines 15-18)

Attorney	Stewart
Was officer Deger in a bladed position also?	Yes.
What was my client saying at that point?	Nothing.
Did Mr. Bondaug throw a punch at officer Deger that you saw as you were running up to the scene?	No.
Did he throw a kick?	No.
Did he head-butt him?	No.
Did you see officer Deger strike my client?	Yes.
How many times?	Twice.
Isn't it fair to say the only resistance you had seen at that point was he wouldn't get on the ground?	Yes.

- i. There is absolutely no one who will deny that Mr. Bondaug was at all times on the property of his family's private residence.

- ii. (page 76, lines 8-12) Attorney: “And you also became aware that officer **Deger had been advised repeatedly by the women that everything was okay** at the residence, didn’t you, that night? **Stewart: Yes.**”
- iii. (page 76, lines 14-17) Attorney: “You said **Bondaug, my client, told officer Deger that everything was okay?** **Stewart: Yes.**”

3. Wrongful Arrest for 647(f) Drunk in Public. While at the scene, Stewart took statements from the female witnesses that they had told Deger “everything was okay at the residence.” None of the witnesses, reporting party, EMT’s, firefighter-paramedics assessed or accused Mr. Bondaug of being drunk in public. Stewart is complicit with Deger in formulating a false accusation and arrest of Mr. Bondaug for being drunk in public. Stewart knowingly took injury pictures with “647(f)/148” on a ruler to try and inappropriately book Mr. Bondaug for that crime. **I ask that an independent investigator consider the facts below and find that Stewart was in fact complicit in assisting Deger to arrest Mr. Bondaug for 647(f) and then colluded with fellow officers and supervisors to cover up the illegal and unconstitutional arrest.**

- a) **Independent from any evidence** Santa Clara Police Department possessed, prior to any officer depositions, and before evidence was presented to Mr. Bondaug’s attorney, **Ms. [Sandra] testified on September 3, 2014** that Deger proclaimed he was arresting Mr. Bondaug for being drunk in public. (page 28, lines 13-15)
- b) **December 3, 2014** attorney for the City of Santa Clara, John Haeblerlin, handed attorney Steven Usoz a CD containing evidence from Santa Clara Police Department. On that CD were two pictures (DSC03415, DSC03417) taken by officer Chris Bell that depicts a ruler with “**647(f)/PC148**” written in the Crime section. **This corroborates Ms. [Redacted]’s independent testimony** that Deger arrested Mr. Bondaug for being drunk in public (647(f)) while at a private residence and with no evidence that Mr. Bondaug was intoxicated.
- c) Officer Chris Bell was not at the [Redacted] Wilson Court scene on December 2, 2011. Officer Bell was tasked to take injury pictures of Deger and Stewart at the Santa Clara Police Department and of Mr. Bondaug at Valley Medical Center.
- d) **Officer Chris Bell testified that it was either Stewart or Deger who told him that Mr. Bondaug was arrested for 647(f) therefore that’s what he wrote on the ruler seen in the pictures. Officer Chris Bell’s independent recollection and testimony validates witness testimony of the event and directly contradicts Deger’s testimony.**

e) After careful and meticulous review of all police reports, photographic evidence provided by SCPD, evaluation of independent witness testimony, and chronological event scrutiny, **it is the professional determination by Police Use of Force, Police Policy, and Police Investigations expert, Mr. Timothy Williams** (Los Angeles Police Department, retired) **that Stewart and Deger initially arrested Mr. Bondaug for being Drunk in Public (647(f)) while sitting in a private residence.** An inappropriate arrest that was intentionally altered by Stewart and Deger so it wouldn't show up on their report.

4. **Stewart Used Unnecessary and Excessive Force.** There is simply too much testimony validating that Mr. Bondaug never became physically aggressive or verbally combative with either Deger or Stewart. Despite his fantasied report writing and scripted testimony, there is absolutely no evidence to support that Stewart or Deger faced an imminent attack upon themselves or anyone else. **There was never a reason for Stewart to use force against Mr. Bondaug striking him in the head multiple times. I ask that an independent investigator carefully consider the facts below and pay close attention to who were the persons physically contacting another person in finding Stewart used excessive and unreasonable force.**

- a) Ms. [Daniela], 63 years old at that time, opened the front door of her home and told Deger that no call was made from her home and that nothing had happened there.
- b) Ms. [Sandra] and Ms. [Tatiana] were with Ms. [Daniela] at the threshold of the front door and **all three told them that there was no problem at Ms. [Daniela]'s home.**
- c) Testimony by all three women mentioned above and testimony from Stewart is that **Mr. Bondaug never raised his hand or voice at Deger.**
- d) While at the scene, **Deger never told other officers present that Mr. Bondaug had grabbed or attempted to physically touch him.**
- e) (page 62, lines 20-24) Attorney: **"Did he (Mr. Bondaug) say anything up to the time you knocked him to the ground that you heard? Stewart: Not that I can remember. No.**
- f) (page 63, lines 16-20) Attorney: "And as you knocked him to the ground, **did he throw a punch at you? Stewart: No; Attorney: Did he kick at you? Stewart: No."**
- g) (page 64, lines 17-20) Attorney: **"Had he made any overt threatening actions towards you of throwing a punch and/or kicking out at you? Stewart: No."**
- h) In review of site defensive use of force policy there is no reasonable explanation why Stewart chose to use close fist strikes (punches) to Mr. Bondaug's head other than the

opportunity to simply sustain trauma against a person who was non-aggressive. Recall from Stewart’s report, deposition and testimony: Mr. Bondaug didn’t utter a word, he never attempted to strike or kick anyone, and there was no immediate danger witnessed.

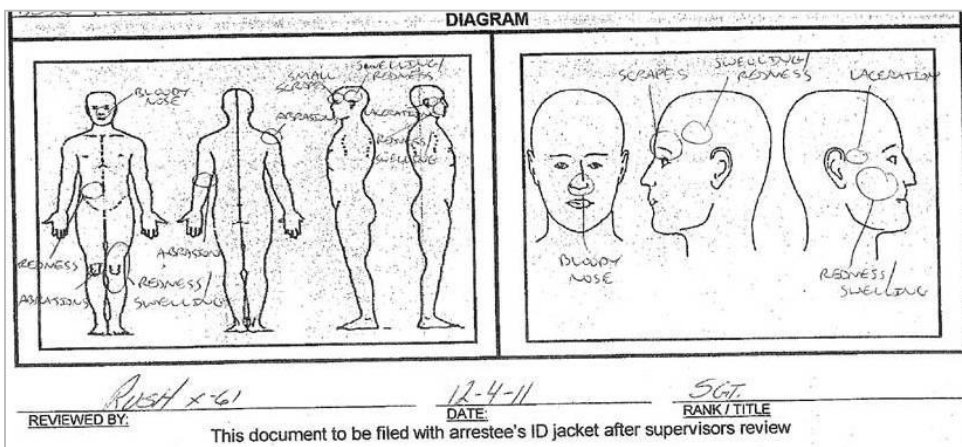
Attorney	Stewart
Was officer Deger in a bladed position also?	Yes.
What was my client saying at that point?	Nothing.
Did Mr. Bondaug throw a punch at officer Deger that you saw as you were running up to the scene?	No.
Did he throw a kick?	No.
Did he head-butt him?	No.
Did you see officer Deger strike my client?	Yes.
How many times?	Twice.
Isn’t it fair to say the only resistance you had see at that point was he wouldn’t get on the ground?	Yes.

5. **Omission of Facts, Embellishment of a Police Report, False Testimony.** Throughout this entire ordeal, Stewart has waffled on simple facts in an attempt to seem credible. I believe he was so enamored with his attorney’s offer to script testimony that he strayed far off course from what is the simple truth and reality. Even if independent from other acts of misconduct found in this complaint, **Stewart’s failure to report use of force accurately - either orally or in writing as required by Santa Clara Police Department – is grounds for termination. I ask that an independent investigator consider the below facts in finding that Stewart intentionally omitted facts, embellished his police report, and knowingly testified falsely.**

- a) **Santa Clara Police Manual section 26.3.3(BB)** provides: Testifying, making reports or conducting police business in a less than a truthful and/or cooperative manner is **grounds for discipline.**
- b) There are only three officers (Stewart, Nelson, Deger) who put their hands on Mr. Bondaug’s face and head but only one officer has admitted to striking Mr. Bondaug. **Six of at least seven strikes to Mr. Bondaug’s head is unaccounted for in Stewart’s police report.**
 - i. Mr. Bondaug testified that the first physical engagement by officer Stewart was a fist strike to the left side of Mr. Bondaug’s head while he was standing on the porch of his mother’s residence. As Mr. Bondaug was face-down with the weight of three officers on him, Stewart voluntarily struck Mr. Bondaug at least once in the face. Mr. Bondaug also testified that wounds on the right side of his head was delivered viciously by Stewart as Mr. Bondaug laid face-down with the weight of three officers on his back, approximately 600 pounds (Stewart, Deger, Nelson plus 30 lbs gear each). The diagram in Santa Clara Police Department’s *Arrestee Injury Report*

independently support Mr. Bondaug's claim that he was struck multiple times in the head by Stewart. **Stewart purposefully omitted this fact from his police report and intentionally lied in his deposition and during Court testimony.**

- ii. Stewart, Mr. Bondaug, Ms. [Daniela], Ms. [Sandra] and Ms. [Tatiana] all testified that **Stewart struck the right side of Mr. Bondaug multiple times with fists. The head, face and upper torso injuries to the right side of Mr. Bondaug coincide with the SCPD Arrestee Injury Report and Mr. Bondaug's testimony but do not comport with Stewart's police report.**



- iii. The “swelling/redness” on the right side of Mr. Bondaug’s head does not comport with the one strike that Stewart testified delivering. **Stewart intentionally omitted from his police report all the strikes he mercilessly delivered upon Mr. Bondaug.**
 - iv. Just on the right side of Mr. Bondaug’s head there is a black eye, swollen cranium, swelling/redness of his cheek. **This was all delivered by Stewart in addition to multiple strikes after Mr. Bondaug was handcuffed and Code-4 was declared.**
 - v. Soon after the incident and years before Mr. Bondaug was allowed to see SCPD pictures and the Injury Report Diagram, Mr. Bondaug memorialized in a statement and testified *exactly where Stewart first struck him with a closed fist*. That first strike was to Mr. Bondaug’s left temple region of his head and **SCPD’s own evidence pictures supports Mr. Bondaug’s claim and testimony.**
- c) As stated in Filing a False Police Report and Detailed in Section 2 above, Stewart lied during his sworn deposition and testimony:

- i. Stewart intentionally dismissed the integrity of the Court in trying to convince it that he broke land speed records by **running 80 yards, and around two vehicles, in less than 4 seconds (page 52, lines 12-15)**. Deger testified each baton strike took 2 seconds, Stewart says he witnessed 2 baton strikes.
- ii. **The porch of [Redacted] Wilson Court runs parallel**, not perpendicular or in any angle to the Wilson Court street. Stewart testified that standing at the door of his patrol car he looked up and saw Deger and Mr. Bondaug “squaring off” with one another (page 28, lines 1-9) and that he could see both of their side profiles (page 48, lines 19-24). **Stewart’s testimony about his ability to see Deger, Mr. Bondaug and the front porch of [Redacted] Wilson Court is an egregious lie.**
- iii. Mr. Mike Yorks, a retired police officer, current Scenario Event Coordinator at the South Bay Regional Public Safety Training Consortium (The Academy), and private investigator. Mr. Yorks determined that it is impossible for anyone to have seen the front porch of [Redacted] Wilson Court from where Stewart testified he was. **Colin Stewart fabricated his police report, treacherously lied in his deposition, and intentionally falsified his testimony to the Superior Court.**

6. Stewart’s conduct is harming and discredits his own reputation and that of the department. In conjunction with the facts detailed above and the claim of perjury made below, **I ask that an independent investigator also look into the official records held by the City and Police Department of Santa Clara where the investigator may find Stewart has a documented history of excessive force. I believe Stewart’s employment as a peace officer puts at risk the liberty and safety of all who reside, visit or pass through the City of Santa Clara and sullies the good name and reputation that other officers in Santa Clara are trying to maintain.**

- a) Ms. [Daniela] has lived in the [Redacted] Wilson Court residence since 1955, 56 years at the time of the incident, and, in part, **because of Stewart’s actions is now very reluctant to rely on emergency services in the City of Santa Clara.**
- b) All immediate witnesses to this event how have little to **no faith in the ability for Colin Stewart to conduct himself in a trustworthy, responsible and community service oriented manner.**
- c) **Stewart’s lack of professionalism** as a peace officer for the City of Santa Clara **has drawn enough attention from local media** that it is the subject of ongoing production.

7. **Stewart Committed Perjury.**

PENAL CODE SECTION 118. (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

118.1. Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This section shall not apply to the contents of any statement which the peace officer attributes in the report to any other person.

- a) **There is plenty indirect evidence** in the form of Ms. [Daniela], Ms. [Sandra], Ms. [Tatiana], Mr. Bondaug and officer Stewart testifying **that Mr. Bondaug never grabbed Deger's arm** or any other part of his body. Although knowing that Deger wrote in his report that Mr. Bondaug grabbed his forearm, Stewart intentionally avoided reporting to superiors at SCPD that he never witnessed Mr. Bondaug grab Deger. **There was never charge of assault or battery imposed or implied against Mr. Bondaug.**
- b) **Mr. Bondaug was never placed in the back of Deger's patrol car.** From Ms. [Daniela]'s front porch, to being escorted down the street, and placed into the WRAP restraint, Mr. Bondaug was always in the presence of officers Stewart and Nelson. **Neither Stewart or Nelson documented Mr. Bondaug being placed in the back of Deger's patrol car** and none of them, including Deger filled out the appropriate paperwork documenting the need to pull Mr. Bondaug from the back of Deger's patrol car if he, in fact, was ever there. **If Stewart is to support Deger's testimony that Mr. Bondaug was in fact placed in the back of Deger's patrol car, he knowingly omitted that fact from his police report. Stewart testified that he was with Mr. Bondaug the entire time from first encounter to when Sgt. Rush arrived and at no time was Mr. Bondaug placed in the back of Deger's patrol car.**
- c) **Stewart Assisted Deger in Hiding that Deger's Initial Arrest of Mr. Bondaug was for 647(f), drunk in public.** Stewart is clearly visible in pictures taken by officer Chris Bell at SCPD headquarters immediately after leaving the scene at Wilson Court. There is testimony by expert witnesses that, based upon their many decades of training and experience, **Deger**

and Stewart initially arrested Mr. Bondaug for PC 647(f), Drunk in Public. The EMT personnel, fire-paramedic personnel, nurses and doctors at Valley Medical Center all stated that **Mr. Bondaug was fully oriented** – there was **not one single note from any medical professional that Mr. Bondaug was intoxicated**. Audio recording of Mr. Bondaug irrefutably demonstrates that Mr. Bondaug was not intoxicated nor was he slurring his speech. Officer Ellis testified that Mr. Bondaug was cordial and held conversations with her.

- *Intoxicated defined: To stupefy or excite by the action of a chemical substance such as alcohol*
 - *Stupefy is the inability to think clearly or be sensitive to the surroundings; daze.*

I ask that an independent investigator also look into the official records held by the City and Police Department of Santa Clara where the investigator may find Stewart has a documented history of excessive force. Based upon the facts above, I believe Stewart's employment as a peace officer puts at risk the liberty and safety of all who reside, visit or pass through the City of Santa Clara and sullies the good name and reputation that other officers in Santa Clara are trying to maintain.

As guaranteed by Santa Clara Police Department's policy for responding to citizen Commendation, Inquires or Complaints policy: I expect to receive written notification every 30 days regarding the progress of the investigation all the way through completing a findings report.

Garrett Bondaug
[Address and Contact Information Redacted]